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Somers, Town of and Local 456, International Brotherhood of Teamsters (Somers Highway)

Martin Ellenberg, Esq.

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Somers, Town of and Local 456, International Brotherhood of Teamsters (Somers Highway)

Abstract

In the Matter of the Impasse Between SOMERS, TOWN OF and LOCAL 456 INTERNATIONAL BROTHERHOOD OF TEAMSTERS (SOMERS HIGHWAY DEPARTMENT) CASE NO. M2002-278.

BEFORE: Martin Ellenberg, Esq., Fact-Finder

Keywords

Ellenberg, M2002-278, impasse,

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Impasse)	
)	
Between)	FACT-FINDING
)	
SOMERS, TOWN OF)	REPORT
)	
and)	AND
)	
LOCAL 456)	RECOMMENDATIONS
INTERNATIONAL BROTHERHOOD OF TEAMSTERS)	
(SOMERS HIGHWAY DEPARTMENT))	
)	
CASE NO. M2002-278)	

BEFORE: Martin Ellenberg, Esq.
 Fact-Finder

APPEARANCES:

For the Employer: Bond, Schoeneck & King, PLLC
 by Ernest R. Stolzer, Esq.

 Also Present: Paul Meyer, Town Board Member
 Thomas E. Chiaverini, Superintendent of Highways

For the Union: Barnes, Iaccarino, Virginia, Ambinder & Shepherd, LLC
 by Wendell V. Shepherd, Esq.

 Also Present: Louis A. Picani, Business Agent
 Michael T. Walsh, Shop Steward
 Craig Dufner, Negotiations Committee Member
 Peter H. Mohan, Negotiations Committee Member

Having determined that an impasse existed in the negotiations between the Town of Somers (Employer) and Local 456 IBT (Union), by Notice of Appointment dated December 29, 2005, the New York State Public Employment Relations Board (PERB), appointed the undersigned Fact-Finder, under the authority vested in the Board by

Sections 209 and 205.5(k) of the New York Civil Service Law, for the purpose of inquiring into the causes and circumstances of the dispute and to issue findings of fact and recommendations for resolution of the dispute.

BACKGROUND:

The predecessor Agreement between the Parties, which was their first collective bargaining agreement, expired on December 31, 2002. Negotiations for a successor Agreement did not commence until December 3, 2002. As stated in the Declaration of Impasse, “The delay for the start of negotiations was caused by the Union and the Town waiting for final classification of bargaining unit members Civil Service titles from the Westchester County Personnel Office.” By agreement of the Parties at their negotiations session on February 11, 2003, a Declaration of Impasse, dated February 13, 2003, was submitted to PERB by the Union.

Despite the assistance of a Mediator, appointed by PERB, the Parties did not reach agreement on terms of a new Agreement. The Fact-Finder was initially appointed by PERB on September 9, 2003. Following a series of unsuccessful efforts to have the Parties agree on dates for fact-finding, PERB issued a second Notice of Appointment to the Fact-Finder, dated December 29, 2005, with different Union representation and a different law firm now representing the Union.

As determined during Fact-Finding Hearings conducted on January 31st and August 30, 2006 and through the submission of exhibits, the positions of the Parties are summarized below.

The Union's "Demands", which were submitted to the Fact-Finder on January 31, 2006, include increases in the Wage Schedule, in Longevity Pay and of the payment for Premium Time, Paid Leave and Pensions. Demands regarding uniform allowance and for check-off of Union dues are also included..

The Town's "Proposals" seek to revise the overtime scheduling provision, to provide for paid meal allowances during overtime, to reduce the vacation schedule for new employees; to revise use of sick leave for visits to doctors or pharmacy; to require employees absent due to a Workers Compensation compensable injury to remain at home during regular hours of work except for medical reasons; to require employees and retirees to pay 50% of future increases in premium for health insurance and to require that grievances shall be detailed in writing when submitted at Step A.

The discussion between the Parties, as well as the presentations to the Fact-Finder, leave no doubt that, the long delay and the failure to reach agreement resulted from the Parties' primary focus and inability to agree on a new wage schedule.

Although the predecessor Agreement codified the conditions of employment typically found in a collective bargaining agreement, a major source of discontent, within the bargaining unit, was the perception that the wages of individual employees were not consistent with their assigned job duties. Dated September 26, 2002, a classification study performed by the Westchester County Department of Human Resources (WCDHR) found that, with the exception of the Assistant Road Maintenance Foreman, the remaining fifteen employees of the Somers Highway Department were all classified as Motor Equipment Operators (MEO). Based on its study of the work performed by

individual employees, it recommended that five additional titles should be established and that only seven of the employees should retain the MEO title.

Based on the various rates at which employees were paid in 2002, the last year of the predecessor Agreement, and recognizing the need to establish rates consistent with job classifications mandated by WCDHR, the wage schedules, below, are recommended in order to establish fair and equitable wage relationships for bargaining unit classifications, while affording due consideration to the positions of the Union and the Town.

RECOMMENDED TERM OF AGREEMENT:

Although the Town seeks to have an Agreement that extends through 2009, I find it inappropriate for a Fact-Finder, in this matter, to issue recommendations spanning a seven-year period. I recommend that this Agreement shall be for a term of five years, effective January 1, 2003 through December 31, 2007.

This expiration date should also allow sufficient time for the Parties to prepare to negotiate, without the presence of a mediator or fact-finder, for what will be their third Agreement.

RECOMMENDED SALARY SCHEDULE:

Assistant Road Maintenance Foreman (A. Vinberg)

Current		58,511
Effective	1/1/03	59,975
	1/1/04	61,475
	1/1/05	63,325
	1/1/06	65,225
	1/1/07	67,500

Senior Automotive Mechanic (L. Knapp)

Current		53,876
Effective	1/1/03	55,500
	1/1/04	57,200
	1/1/05	59,000
	1/1/06	61,000
	1/1/07	64,500

Heavy Motor Equipment Operator

R. Kramer	Current		51,559
	Effective	1/1/03	52,950
		1/1/04	54,500
		1/1/05	57,000
		1/1/06	60,000
		1/1/07	63,000
A. Guyot	Current		42,869
	Effective	1/1/03	44,500
		1/1/04	46,500
		1/1/05	50,000
		1/1/06	55,000
		1/1/07	63,000

Motor Equipment Operator

M. Mohan, M. Peters, G. Zinzer:	Current		53,877
J. Kegler, F. Leito:	Current		52,718
	Effective	1/1/03	54,300
		1/1/04	55,800
		1/1/05	57,400
		1/1/06	59,100
		1/1/07	61,000

Motor Equipment Operator/Welder (G. Luddermann)

	Current		38,993
	Effective	1/1/03	40,500
		1/1/04	42,800
		1/1/05	46,800
		1/1/06	51,800
		1/1/07	57,000

Automotive Mechanic Helper

F. Barachi	Current		41,131
	Effective	1/1/03	42,350
		1/1/04	43,700
		1/1/05	45,200
		1/1/06	46,800
		1/1/07	48,500

M. Walsh	Current		38,993
	Effective	1/1/03	40,350
		1/1/04	41,800
		1/1/05	43,500
		1/1/06	45,500
		1/1/07	48,500

Skilled Road Maintainer

C. Rahe	Current		42,870
	Effective	1/1/03	43,900
		1/1/04	45,000
		1/1/05	46,100
		1/1/06	47,250
		1/1/07	48,500

C. Dufner, P. Mohan, P. Westhoff	Current		38,993
	Effective	1/1/03	40,350
		1/1/04	41,800
		1/1/05	43,500
		1/1/06	45,500
		1/1/07	48,500

Laborer/Road Maintainer (C. Furu – Employed 1/20/05)

Current		36,740
Effective	1/1/06	41,000
	1/1/07	45,000

HIRING RATE:

The Town seeks to establish steps to attain the “job rate” commencing with Year 1 payable at 85% of the rate, with the full rate not payable until Year 6. I am not aware of a Union response to this proposal.

The predecessor Agreement provides that the hiring rate shall be ninety percent (90%) of the classification rate, until the completion of the twenty six (26) weeks of employment with the Town. The Agreement does not contain a list of job classifications or a rate schedule by classification.

It is RECOMMENDED that Article IV, Section of the Agreement be revised to provide that at the end of twenty-six (26) weeks of employment, the rate of pay for a new employee be increased to ninety-five percent (95%) of the classification rate then in effect, increased to the full rate on the completion of a full year of employment. This recommendation will require the new employee to have acquired work experience, with the Town, during the four seasons of the year.

OVERTIME MEAL/REST PERIOD:

The Union seeks a paid meal/rest period of one-half (1/2) hour after twelve (12) hours of work, a one (1) hour paid meal/rest period for each additional four (4) hours of

work and a four (4) hour paid meal/rest period after twenty-four (24) hours of work.. It seeks, also, meal purchase allowances, varying between \$10 and \$15.

The Town proposes a paid half (1/2) hour meal period after twelve (12) hours, but provides for a meal purchase allowance of \$6 with further paid meal period after six (6) additional hours of work.

RECOMMENDATION: Paid half-hour meal/rest period after twelve hours of work with an additional paid half-hour meal/rest period after each successive four hours of work. Further, I find a meal purchase allowance of \$10 to be more realistic.

The Union's request for a four (4) hours paid meal/rest period after twenty-four (24) hours of work is not recommended, herein. I believe that conditions that might be appropriate under such extended work requirements were not discussed sufficiently for the Fact-Finder to make a recommendation. That is true, also, regarding the Union's demand that "Hours worked between midnight and seven a.m. can be used immediately as compensatory overtime."

MISCELLANEOUS:

The Union's demand for increases of LONGEVITY payments are not recommended at this time in view of the extensive revision of the job classification rate schedule.

Various revisions of Article VIII, VACATIONS; Article IX, PAID LEAVE and Article XV, WELFARE BENEFITS requested by both the Union and the Town were not supported by argument demonstrating that changes are appropriate at this time.

The Union requests that Article II, Recognition, Section 2 (authorizing DUES DEDUCTION and the amount) be revised by deleting from the first sentence “so designated on the authorization cards” and substituting “designated by the Union.” I find this to be a matter internal to the Union to which the Town was unresponsive. The requested change is recommended.

The Town requests revision of Article IX, WORKERS’ COMPENSATION, adding a new Section which would restrict employees absent due to compensable injury to their homes. No pressing need was demonstrated for the change. If a finding has been made that an employee is medically disabled, I find that such restriction would be needlessly punitive. If the employee’s public conduct raises questions about his/her disability, other remedies are available to the Town.

The Union seeks to expand Article XIV, UNIFORMS AND EQUIPMENT. It seeks to have the Town provide, annually, seven (7) safety orange T-shirts and a \$100 work shoe allowance to each employee. The issuance of the T-shirts should promote safe working conditions and should not be disproportionately costly. The request for T-shirts is recommended with the proviso that the shirts may be worn only when at work and if worn at other times, the Town may deduct the cost of a new T-shirt from the employee’s pay.

The Town requests that Article XV, Welfare Benefits, Section 1 be revised to provide for employee contribution to payment of premiums. Consistent with my recommendations to deny the Union’s request for significant increases in benefits, I recommend, also, denial of the Town’s request to decrease this benefit.

Also under Article XV, the Town requests that if any employee and his/her spouse both work for the Town, that Section 2 shall be revised so that both employees do not receive coverage as “employee” rather than having one designated as “spouse.” I find this request to be appropriate but I refer the matter back to the Parties to resolve how to effect this change so that the benefits to the employee and spouse will not be diminished. Further, if effected, this change should result in a saving to the Town and I would recommend that such saving be shared, in some way, with the employee.

The Town also requests that Article XVIII, GRIEVANCE PROCEDURES AND ARBITRATION, be revised to require that grievances be presented in writing at Step A and that it state the “specific provision...alleged to have been violated,” the name of employees affected, the damages suffered by each grievant and that each grievance shall be numbered.

I find merit in the objectives of this proposal, primarily because it requires the Parties to clarify the issue and to more readily resolve the dispute. I RECOMMEND that grievances should be in writing at Step A, dated and numbered, sequentially, that the names of all affected employees be shown and that the remedy sought should also be stated. I would not find a grievance to be invalidated because if failed to correctly state the specific provision that was violated.

Finally, it is recommended that the Stipulation by and between the Parties, submitted herein as Joint Exhibit – 2, signed for the Union on October 14, 2001 and for the Town on February 8, 2002, be added to the new Agreement.

Other than the recommendations for revisions contained in this Fact-Finding Report, it is recommended that all other provisions of the predecessor Agreement shall continue unchanged for the term of this Agreement.

MARTIN ELLENBERG, ESQ.
FACT-FINDER

May 18, 2007