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Robert Kingsley Hull

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Wayne County and Wayne County Supervisory Unit and Wayne County Employees Unit , CSEA Local 859

Abstract

In the Matter of the Impasse in the Negotiations Between Wayne County (N.Y.) and Wayne County Local 859, CSEA, Local 1000, AFSCME, AFL-CIO (Wayne County Supervisory Unit and Wayne County Employees Unit). PERB Case Nos. M2006-139 and M2006-140. BEFORE: Robert Kingsley Hull, Fact Finder.

Keywords

PERB, fact, finding, wayne, M2006-139, M2006-140

NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

IN THE MATTER OF THE IMPASSE IN THE NEGOTIATIONS BETWEEN

WAYNE COUNTY (N.Y.)

and

WAYNE COUNTY LOCAL 859

THE CIVIL SERVICE EMPLOYEES ASSOCIATION, INC.

LOCAL 1000, AFSCME, AFL-CIO

(Wayne County Supervisory Unit and Wayne County Employees Unit)

PERB Case Nos. M2006-139 and M2006-140

Fact Finder's Report with Recommendations

Robert Kingsley Hull, Fact Finder

APPEARANCES:

For the County: Michael A. Richardson
Labor Relations Consultant

For the Union: Scott Seltzer
CSEA Labor Relations Specialist

HEARING: April 18, 2007

RECORD CLOSED: May 16, 2007

BACKGROUND

This fact-finding involves two collective bargaining units within Wayne County Local 859 of the Civil Service Employees Association: the general Employees' unit and the Supervisory unit. The units are parties to two-year collective bargaining agreements between the County and the Union that expired on December 31, 2005. Following eight months of negotiations that began shortly before the agreements expired, the County filed declarations of impasse relating to both units. After four months in mediation, the County requested the appointment of a fact finder in both cases.

I was appointed fact finder on February 13, 2007, by the Public Employment Relations Board pursuant to Sections 209 and 205.5(k) of the New York Civil Service Law, "to inquire into the causes and circumstances of the dispute" and to make "findings of fact and recommendations for resolution of the dispute."

Although there are many differences between the two units' collective bargaining agreements, the issues before me in the two cases are essentially identical. The cases were therefore consolidated for the April 18, 2007, fact-finding hearing, and a single fact-finding report with recommendations is being issued. While the report uses the singular, everything in it applies to both the Employees unit and the Supervisory unit.

Finding No. 1 – Regarding the Comprehensive Rewriting of the Agreement

The principal cause of this impasse was, without question, the County's surprise submission at the first bargaining session of a proposed wholesale rewriting of the existing collective bargaining agreement as one of the County's bargaining demands, and the County's subsequent inability to consider dropping the proposal in the face of the Union's preference for negotiating item-by-item changes.

The Union reports that at the initial bargaining session, the County's contracted consultant, Mr. Richardson, said that while the existing agreement was "a good agreement as labor agreements go, it's time to change it and make it more user-friendly." The Union recounts: "We were then given the agreement."

It would take dozens of pages to analyze the proposed revision, even in a summary fashion. As the time and budget allowed for fact-finding are limited, I advised the parties that I would not be undertaking such a task. It suffices to say that it

was clear—the County helpfully presented a single document that showed all proposed changes from and additions to the existing agreement—that thousands of words were proposed to be deleted and that thousands of words were proposed to be added. The union negotiating team was understandably overwhelmed at the prospect of having to analyze the substantive implications of that drastic a revision. While the Union was obligated to bargain in good faith over individual changes proposed by the County, it was not obligated to subscribe to the County’s comprehensive approach.

As a perfectionist myself, I can appreciate the appeal of Mr. Richardson’s project. And I do not doubt his claim that he has been able to persuade other bargaining units to go along with similar contract overhauls. In this case, however, he failed to prepare the ground for such a radical departure from traditional negotiating practice. At the same time, the County, by buying into Mr. Richardson’s vision of the flawless agreement in advance, became so invested in the idea’s acceptance that the County allowed it to derail the negotiations.¹

While Wayne County’s labor agreements may be “a hodge-podge,” as one person described them, they are a comfortably familiar hodge-podge. Those of us who like to fix things even when they are not obviously “broke” should not be surprised when we meet resistance. It is hard enough to reach an agreement—why make it harder than it has to be? The County allowed the revision proposal to become the driving force in the negotiations, without supplying the incentives that would have made it worth the Union’s while to entertain such a project.

Recommendation No. 1:

The County’s proposal to rewrite the entire collective bargaining agreement should be set aside until a future negotiation in order to clear the way for a transparent settlement of this impasse.

Any amendments to the parties’ agreement required by the changes I recommend in this Report should be harmonious with the current agreement. My recommendation of any County proposal is not an endorsement of the contract language that has been suggested by the County.

¹ Asked during mediation by PERB’s staff mediator to reduce the number of County proposals, the County did so, partly by combining groups of existing proposals. Then, in the cover letter to the mediator that accompanied its “re-formatted proposals,” the County announced: “Please note that the County has not withdrawn any of the other proposals contained in the ‘working drafts’ of the collective bargaining agreements . . .”

Finding No. 2 – Regarding Wage Increases During a Successor Agreement

Another cause of this impasse was the County’s wage proposal:

2006: Each employee . . . will receive a lump sum payment equal to [1½] percent of the employee’s [base pay for the year]. There will be no increase in the wage rate for 2006.

2007: The wage increase for 2007 will be determined in consideration of the following: reducing the increases in medical insurance costs; reducing the costs of paid leave; and, reducing the costs of contract administration.

The County made no wage proposal for 2008 despite the fact that when the impasse went to fact-finding we were already in 2007. An extension and pay increases beyond 2007 would be considered only in the context of the Union’s acceptance of “a comprehensive re-organization” of the agreement.

In its Pre-Hearing Brief at fact-finding, the County proposed a three-year agreement (2006-2008) with annual wage increases of 1 percent, 2 percent, and 3 percent if the Union agreed to the County’s proposal to make the County’s self-insured health insurance plan the sole health insurance offering for County employees. In its Post-Hearing Brief, the County stated that in the absence of such agreement, the employees should receive no wage increases for 2006 or 2007.

The Union’s opening demand in the parties’ negotiations was for a four year agreement (2006-2009) with 5 percent annual wage increases.² In mediation, the Union reduced its demand to a five-year agreement (2006-2010) with 3¼ percent annual wage increases. In its Pre-Hearing Brief, the Union noted that other Wayne County bargaining units, as well as non-represented Wayne County employees, had received 3 percent wage increases. It concluded by asking that I recommend increases “of no less than three percent.”

The Union’s latest wage increase proposals appear reasonable when Wayne County’s wage rates are compared with the wages of employees who perform

² The Supervisory unit’s opening demand, made several months later in the form of a roll-over proposal (where all terms of the agreement remain unchanged with the exception of pay rates), was for a two-year agreement (2006-2007) with 3½ percent annual wage increases.

similar services in comparable area counties, as detailed in the Job Title Wage Tables and Summary of Wage Comparison at the end of Exhibit 5 to the Union's Pre-Hearing Brief submitted at fact-finding.³

The County pointed out in its Pre-Hearing Brief, however, that under the current collective bargaining agreement, the County makes annual longevity payments to employees with more than five years' service. The payments start with a \$350 payment after five years and rise in steps to reach a maximum of \$2,000 after 25 years. The County claims—but makes no attempt to prove on a job-title-by-job-title basis—that the longevity payments “significantly reduce or nullify” the differentials between Wayne County wage rates and the higher rates paid by similar counties.

The Union did not discuss longevity payments in its Post-Hearing Brief, so I must assume that it concedes the point. But because the Wayne County longevity payments are two to three times those that are paid by the other counties that pay them, their omission works a severe distortion on the comparability of the wage rates.

Another factor that undermines the usefulness of the Union's Tables and Comparison is the fact that they compare 2005 Wayne County wage rates to the 2007 rates paid by the other counties.⁴ There was no intent to mislead—the fact is clearly stated in the Tables, and Wayne County's 2005 rates *are* in fact its 2007 rates. But the use of the other counties' 2007 rates has the effect of exaggerating the differential. It would have been fairer had the Union either used other counties' 2005 rates or factored *pro forma* 2006 and 2007 increases into the Wayne County rates.

Given the combined effect of the omission of longevity payments and the two-year lag in comparable wage rates, I am not persuaded that the 3 percent annual increases requested by the Union for 2006 and 2007 are necessary to maintain

³ In my March 23, 2007, Notice of Hearing to the parties, I asked them to avoid comparisons of *percentage increases* in wages and to document and compare *actual* wages and benefits. The parties in this case submitted both. I ignored the percentage increases, which alone prove nothing, since a percentage figure depends on the base to which it was applied, and the bases vary widely from job to job, as the evidence in this case confirms. I therefore limited my attention to the actual pay rates detailed in the Union's Tables and Comparison and the comparables presented in the County's Pre-Hearing Brief.

⁴ The Union's Tables and Comparison use 2006 Monroe County wage rates in their formula. I should note here that the County questions the merits of treating Monroe County, a highly urbanized county, as being comparable to Wayne County. I find that its inclusion did not prejudice the County, and that the Union's comparables formula, which averages data for Monroe, Ontario, Cayuga, Seneca, and Yates counties, is not demographically unfair to Wayne County.

fair average parity between the Wayne County unit's employees and employees performing similar services in comparable communities.

Recommendation No. 2:

In place of the Union's proposal of a 3 percent increase in wage rates for 2006 and the County's proposal of a 1½ percent lump sum payment for that year, I recommend that the parties agree on a 2 percent increase in wage rates retroactive to January 1, 2006.

If the parties agree to the County's proposal to make the County's self-insured health insurance plan the sole health insurance offering for County employees (as set forth in Recommendation No. 3 below), I recommend that the parties agree on a 4 percent increase in wage rates retroactive to January 1, 2007.

If the parties do not agree to make the County's self-insured health insurance plan the sole health insurance offering for county employees (as set forth in Recommendation No. 3 below), I recommend that the parties agree on a 2 percent increase in wage rates retroactive to January 1, 2007.

I recommend that the parties agree on a 3 percent increase in wage rates effective on January 1 in each additional year of the successor agreement, beginning with 2008.

If the parties agree that certain job titles need further adjustment, they can address that in a separate memorandum of understanding.

The County has asserted that were I to recommend pay increases in this case, I "would only encourage CSEA to thwart the negotiation process in the future." While the Union can be faulted—the Union admits as much in its Pre-Hearing Brief—for having at times relied on dramatics instead of a cool bargaining head in these negotiations, its members have paid a price for that misjudgment. By the same token, the County has suffered the consequences of its tactical mistakes. Rather than apportion blame or rehash this negotiation, the parties should focus on wrapping up an agreement that will give their relationship time to return to normal.

Finding No. 3 – Regarding making the County’s self-insured health insurance plan the sole health insurance offering for County employees.

Under the current collective bargaining agreement, employees can choose between two health insurance plans: Blue Choice Select and the self-insured Wayne County Health Care Plan (DHP15). Some long-term employees have grandfathered coverage from a Traditional Plan. As of a recent date, 263 employees were insured under Blue Choice, 206 had opted for the County’s self-insured plan, and 23 retained the Traditional Plan. Seventy percent of employees use this benefit. For most employees, the County pays 90% of the cost of single coverage and 80% of the cost of family coverage, with the employee contributing the balance.

One of the County’s main issues in this round of bargaining was to eliminate the fully-insured plans as an option and enroll all covered employees in the County’s self-insured plan. The County estimated that it would realize \$380,000 in savings through such a change, with a significant reduction in copayments benefiting employees. While health insurance costs continue to rise, the cost of the County’s self-insured plan has risen more slowly than the cost of fully-insured plans.

The Union proposed the substitution of alternative fully-insured plans that would bring lesser but still significant savings. The County rejected them on the grounds that they cost more and did not offer substantially equivalent benefits. In its Post-Hearing Brief, the Union pushed yet another proposal that it says would realize the savings that the County says it must have. I am unable to adequately assess that proposal at this late stage.

The Union’s opposition to the County’s proposal is based almost entirely on unsubstantiated fears of future reductions in benefits offered by the County’s plan. The inclusion of the County’s non-represented employees in the change should be reassuring. There is no evidence that the self-insured plan is deficient, and “choice” for the sake of choice is an insufficient reason to prevent the County from maximizing the savings made possible by self-insurance. The County stressed the beneficial effect of adding a significant number of additional employees to the insured pool—another reason to include non-represented employees.

Recommendation No. 3:

In the absence of agreement on another plan that would persuade the County to abandon its self-insured plan altogether, I recommend that the parties agree to make the County's self-insured plan the sole health insurance option for the employees in this unit effective January 1, 2008, provided, however, that the County's self-insured plan also be the sole health insurance option offered by the County to its non-represented (managerial) employees as of that same date.

Findings and Recommendations regarding the parties' remaining issues.

I make the following findings and recommendations regarding the remaining issues originally put forth by the parties:

Duration of Agreement

I find the parties urgently need to take a break from the negotiating table. **I recommend that the successor agreement cover five years: January 1, 2006 through December 31, 2010.**

Holidays

The County proposed that Election Day and Columbus Day be eliminated as employee holidays. The Union at one point during negotiations offered to convert the Election Day holiday to a "floating" holiday to be taken by employees some other day during the year. **I recommend that the parties agree on the Union's proposal.**

Vacation Leave

The County proposes to reduce the maximum number of annual vacation leave days earned by employees hired after January 1, 2006, from the current 24 days after ten years' service to 18 days after five years' service. **I recommend that this provision remain unchanged.**

Sell-Back of Sick Leave

Citing the importance of sick leave as an economic safety net, the County proposed to eliminate the provision that allows employees to trade in up to two unused sick leave days a year for cash and exchange two unused sick leave days for two days of vacation leave. The Union submits that this provision was originally designed to address absenteeism, and has proved successful. **I recommend that the provision remain, but that the minimum balance of sick leave days to be maintained by each employee be increased from ten to twenty.**

Other Proposals

Several other open issues between the parties were not addressed at the Hearing or in the parties' Pre-Hearing or Post-Hearing Briefs. They are left to the parties to address.

October 22, 2007

Robert Kingsley Hull, Fact Finder

STATE OF NEW YORK)
) ss.:
COUNTY OF YATES)

I, Robert Kingsley Hull, hereby affirm that I am the person named on and who executed this instrument, which is my Report with Recommendations as Fact Finder.

October 22, 2007

Robert Kingsley Hull, Fact Finder