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Oceanside Sanitary District No. 7 and International Brotherhood of Teamsters, Local 854

Eugene S. Ginsberg

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Oceanside Sanitary District No. 7 and International Brotherhood of Teamsters, Local 854

Abstract

In the matter of the fact-finding between the Oceanside Sanitary District No. 7, employer, and the International Brotherhood of Teamsters, Local 854, union. PERB case no. M2011-197. Before: Eugene S. Ginsberg, fact finder.

Keywords

New York State, PERB, fact finding

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

-----X
In the Matter of the Fact Finding
between

PERB Case No: M2011-197

OCEANSIDE SANITARY DISTRICT NO. 7
("District" or "Employer")

-and

**RECOMMENDATIONS
AND FACT FINDING
REPORT OF
EUGENE S. GINSBERG**

LOCAL 854, INTERNATIONAL BROTHERHOOD
OF TEAMSTERS
("Union" or "Employees")
-----X

Appearances

For the District

Bondi Iovino & Fusco

By: Anthony F. Iovino, Esq.

Jerome Z. Cline, Esq. (1/4/13)

For the Unit

Cary Kane, LLP

By: Walter Kane, Esq.

Daniel Gatto, President

Arthur Schnabel, Shop Steward

Richard Zappa (1/4/13)

BACKGROUND

A seven year Collective Bargaining Agreement ("CBA" or "Agreement") between Oceanside Sanitation Department (Sanitary District No. 7), Town of Hempstead and International Brotherhood of Teamsters, Local 854, commenced January 1, 2004 and expired December 31, 2010.

The Union and the District met and negotiated on January 5, February 28, May 13 and July 7, 2011. Impasse was declared by the Union on September 20, 2011 and it requested a mediator.

The parties had three sessions before Mediator Karen R. Kenney.

By letter dated September 24, 2012 the parties jointly requested fact-finding.

On November 16, 2012 I was appointed Fact Finder, pursuant to Sections 209 and 205.5(k) of the New York Civil Service Law Article 14 (Public Employees' Fair Employment Act, "Taylor Law") to, in sum and substance, inquire into the causes and circumstances of the dispute and, after hearings, where evidence is heard and /or taken make findings of fact and recommendations for the resolution of the dispute to the parties.

The Union represents drivers, helpers and laborers, excluding members of the C.S.E.A.

The District, as described by it:

is an independent governmental body created pursuant to the Town Law of the State of new York and operates within the confines of a portion of the town of Hempstead, State of New York. Its Board of Commissioners are publicly elected officials...(the District) is charged with the collection and disposal of waste within the hamlet of Oceanside, New York.

The day-to-day operation...is supervised by a General Supervisor and Assistant Supervisors...(and) currently employs 48 full-time sanitation workers, who are members of Local 854 I.B.T.

Hearings were held before me, and exhibits presented, January 4 and June 27, 2012. During that period the parties exchanged proposals and comments in support of their positions and in opposition to the positions of the other party. There were no post hearing submissions and the record was closed as of June 27, 2012.

In the Declaration of Impasse the Union described the unresolved issues as:

staffing of recycling routes, combining Lincoln's Birthday and Washington's Birthday Holidays into one Presidents day holiday, elimination of a floating holiday, providing doctors notes for sick days, fifth week of vacation for employees with more than 15 years of service with the employer, contribution for medical benefits, elimination of footwear reimbursement, elimination of eyewear reimbursement, wages, requiring employees to be examined by employers physician prior to returning to work after illness,

modification of compensatory time provision and staffing of recycling routes.

In the letter requesting Fact Finding the outstanding issues that remained were described as “wages, and when employees are required to provide a doctor’s note”.

DISTRICT POSITIONS, ARGUMENTS AND PROPOSALS

Positions

The District describes its Financial Circumstances as:

Oceanside Sanitary District No. 7 comprising predominately of the hamlet of Oceanside is facing a dire financial climate.

Since the commencement of the last contract (2007) (sic) the local economy has been racked by the financial services collapse, the collapse of the real estate market, and the subsequent enduring recession.

Funding for the District comes from real estate taxes which are, in part, dependent on the assessed value of the properties in Oceanside. The value of the average home in Oceanside has decreased by approximately 30% (citations omitted).

Unemployment in Nassau County has almost doubled, from 3.7% in 2007 to over 7% (citation omitted).

Oceanside has a foreclosure rate higher than the Nassau County average, with 1 in every 1387 Oceanside housing units in foreclosure in November 2012. The Nassau County average is 1 in 1,443...

The medium and long range impact of Hurricane Sandy on property values and the local economy, while speculative, certainly must be taken into account in this consideration.

Compounding the concerns of the District is the statute implemented by the State of New York which “caps” the budget increases for districts such as the Oceanside Sanitary District No. 7 to the lower of 2% per annum or the rate of inflation (citation omitted).

The annual budget for the Oceanside Sanitary District No. 7 since the imposition of the cap in June, 2011 has been as follows:

	Total Budget	% Increase
2011	\$8,352,294.00	
2012	\$8,518,768.00	1.9
2013	\$8,679,568.00	1.8

The District has complied with the State and maintained its budget increases within the 2% cap.

Proposal

Term: 5 years, commencing January 1, 2011 through December 31, 2015.

Wages:

2011:	0%
2012	0%
2013	1½%
2014	1½%
2015	1½%

Medical:

All employees to contribute 15% of the cost of the health insurance provided to them...

Arguments

The vast majority of the employees of Sanitary District No. 7 already enjoy a wage scale in excess of surrounding Districts. 18 members earn in excess of \$70,000.00 per year; 23 members, or approximately half of the workforce, earn in excess of \$60,000.00 per year.

In addition, the District has already been required to pay significant increases in the pension and medical insurance provided to the employees.

Annexed...is a chart [on Page 5, below] which contains the total budget of the District; the payroll attributable to the members; the pension contribution attributable to the members; and the health insurance costs attributable to the membership.

In considering the cost of employees, the District must view all relative costs, including items such as payroll, pension, medical and other components.

As can be seen, pension costs in the last four years have risen 150% from \$182,487.00 to \$455,405.00.

The cost of medical insurance for the membership has risen from \$327,590.00 to \$517,959.00, an increase of 58% in just four years.

The increase from 2012 to 2013 in pension and insurance alone is approximately \$117,000.00, or 4.7% of the payroll cost. In effect, the employees are receiving a 4.7% increase in compensation, without any adjustment to the salary scale.

In order for the District to meet the statutory requirement of a budgetary increase of under 2%, the wage adjustments offered by the District are as high as the District can afford.

Further, as set forth below, the increases of 0%, 0% 1-1½%, 1-1½% and 1-1½% comport with other agreements and fact finding reports which have been issued since the mandated cap was in place.

MEDICAL

Currently the employees do not contribute anything to the cost of health insurance. In analyzing the neighboring contracts and PERB decisions, it appears Oceanside is virtually unique in this respect. The taxpayers of the District can no longer bear this burden alone. Thus, a request that the employees contribute 15% is certainly within the range of other municipal employees in this area.

[The chart referred to above is]

Year	2009	2010	2011	2012	2013
<u>Budget</u>	\$ 7,882,482.00	\$ 8,120,604.00	\$ 8,352,294.00	\$ 8,518,768.00	\$ 8,679,568.00
<u>Payroll</u>	\$ 2,309,969.00	\$ 2,424,861.00	\$ 2,469,693.00	\$ 2,488,555.00	\$ 2,488,555.00
<u>Pension</u>	7.90%	6.90%	11.20%	15.60%	18.30%
<u>Cost</u>	\$ 182,487.55	\$ 167,315.41	\$ 276,605.62	\$ 388,214.58	\$ 455,405.57
<u>Medical</u>					
<u>Family</u>	\$ 1,282.17	\$ 1,330.93	\$ 1,513.92	\$ 1,562.80	\$ 1,686.56
<u>Individual</u>	\$ 598.58	\$ 612.34	\$ 693.92	\$ 712.75	\$ 767.98
<u>Dental</u>					
<u>Family</u>	\$ 55.00	\$ 55.00	\$ 55.00	\$ 55.00	\$ 59.00
<u>Individual</u>	\$ 22.00	\$ 22.00	\$ 22.00	\$ 22.00	\$ 24.00
<u>Shoe</u>	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00
<u>Optical</u>	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00	\$ 150.00
<u>Liability(Comp)</u>					
	\$ 327,590.00	\$ 440,886.99	\$ 301,033.97	\$ 467,940.91	\$ 517,959.88
<u>Uniform Cost</u>	8.84/Man	8.84/Man	8.84/Man	8.84/Man	11.50/Man

UNION POSITIONS, ARGUMENTS AND PROPOSALS

Positions and Arguments

According to Oceanside, the expired contract offers sanitation workers a “competitive salary” and “family health insurance with no individual contribution.” (reference omitted). However, the starting salary for a sanitation worker is \$23,800.40 (reference omitted). A sanitation worker receives wage increases that the parties negotiate. After nine years of service, a sanitation worker’s compensation is increased to \$50,000 (reference omitted). After the employee’s pay is increased to \$50,000 on the ninth anniversary of his or her employment, he or she continues to receive increases as provided by the CBA. The annual salary of the highest earning sanitation worker at Oceanside is about \$70,870. The most senior sanitation worker has worked at Oceanside for more than 30 years. Of the 48 sanitation workers, the average annual salary earned is approximately \$51,000...

An examination of the collective bargaining agreements submitted by both Oceanside and Local 854 reveal no similar workers have received a 0% increase in any recent year. Oceanside has also proposed that sanitation workers begin contributing 15% of the cost of health insurance provided to the. While this may be a logical element in the surrounding districts’ contracts, where the starting pay averages approximately \$43,402.65 and wages increase more quickly due to step programs, it is unconscionable at Oceanside, where new employees earn only \$23,800.40 per year and there is no step program. While Oceanside points to the surrounding districts as justification for requiring employees to contribute toward health insurance, it fails to consider the higher overall economic package paid to employees in those same districts.

Despite Oceanside’s contentions, the sanitation workers’ wages are not competitive. Of the agreements submitted by both parties, none of them pays a new hire as little as Oceanside pays. The public employer who comes closest is Sanitary District No. 1, which paid its newly hired sanitation workers \$32,604.46 in 2006. Seven years ago, newly hired sanitation workers in Sanitary District No. 1 were earning more than new hires in Oceanside earn now.

Moreover, most of the agreements submitted to the Fact Finder for comparison incorporate a wage step progression, in which the sanitation workers’ pay increases depending on his or her years of

service. The increases earned pursuant to the steps are in addition to the increases employers and the unions negotiate for the entire bargaining unit. For most of the sanitation workers in surrounding areas, their starting pay is in the \$40,000 to \$50,000 range. Their step schedules allow them to ascend to the top of the pay scale in 4-10 years. The top of the pay schedules range from the mid-\$50,000 to \$70,000 range. When sanitation workers in other areas reach the top of the scale, they continue to receive the negotiated wage increases.

In contrast, Oceanside sanitation workers do not have a step schedule; they wait nine years and then receive an increase to \$50,000. Sanitation workers in the areas surrounding Oceanside earn the same top pay as Oceanside sanitation workers in half the time, at most. Additionally, most of the other agreements provided by both Oceanside and Local 854 provide for longevity pay in varying forms, which thus further increase more senior sanitation workers' pay. Oceanside sanitation workers receive no such longevity pay, no matter how many years of service they devote to Oceanside...

Proposal

To address the problem of the junior sanitation workers' lower annual compensation, Local 854 proposes that the parties enter into a five year contract, and increase Oceanside's payroll for Local 854's members by 2½% in 2011, 2½% in 2012, 3% in 2013, 3% in 2014 and 3% in 2015. However, it further proposes that these increases be divided among the employees not receiving top pay.

Local 854's proposed increases are below the average increases in the surrounding areas. According to the comparable agreements submitted by both parties, the average payroll increases given to sanitation workers has been approximately 3.04% per year. Local 854 proposal seeks an average of only 2.8% increase per year. The above percentages of gross pay for all sanitation workers should be distributed equally among sanitation workers who make under \$70,093.00. Once sanitation workers in the middle of the seniority list reach \$70,093.00, they would cease receiving increases as well...

Local 854's proposal will narrow the gap between the more junior and senior sanitation workers. Its proposal increases the salaries of the more junior sanitation workers who need it most and are being paid well below their counterparts in surrounding districts.

DISCUSSION

The District submitted copies of five (5) CBA's. The Union submitted a "Comparison of Similar CBA's in Region" ("Comparison"). It reflected the 2004-2010 contract of the Parties and included among its twelve the five (5) referenced by the District. A copy of the Comparison follows:

Issues

I. Wages (Salary)

The Comparison reflects the starting wages of \$23,800.40 are the lowest of all. It also reflects \$50,000, as the lowest of the "Last Term Year Top Step Wages". However, the Union submitted a chart of its "Current Wage Proposal" ("Chart"). A column in the Chart called "Original Annual Salary" reflects eighteen (18) employees over \$70,000. These were either \$70,093 or \$70,870. The Chart also reflects eight (8) employees at \$23,800. Between these lowest and highest are: five (5) in the \$60,000 range; two (2) above \$50,000; six (6) at \$50,000; none in the \$40,000 range; four (4) in the \$30,000 range; one (1) at \$28,480; and two (2) at \$26,140 (above the eight at \$23,800).

The "Total" of the Original Salary Column is \$2,403,170.00.

The Union proposed that all of its proposed "increases be divided among the employees not receiving top pay" (i.e., \$70,093 or \$70,800) [Page 8, above].

Taking into consideration the Positions, Arguments and Proposals of both Parties I FIND there should be increases. Therefore I

RECOMMEND:

1. A. There be no (0%) change for the 2011 year;
- B. There be a one (1%) percent increase for the 2012 year;
- C. There be a one (1%) percent increase for the 2013 year;
- D. There be a one and one half (1½%) percent increase for the 2014 year; and
- E. There be a two and one half (2½%) percent increase for the 2015 year.
2. The respective increase be divided, pro-rata, among employees not yet receiving \$70,093.

Illustrations of Calculations resulting from above:

A. The rounded one (1%) percent increase for 2012 [1.B., above] would be \$24,032 (1% of \$2,403,170, the Total of the "Original Annual Salary").

B. The rounded one (1%) percent increase for 2013 [1.E., above] would be \$24,272 (1% of \$2,427,202 - The new Total of \$2,403,170 and \$24,032).

C. The rounded one and one half (1½%) percent increase for 2014 [1.D., above] would be \$36,772 (1½% of \$2,451,774 - The new total of \$2,427,202 and \$24,272).

D. The rounded two and one half (2½%) percent increase for 2015 [1.E., above] would be \$62,206 (2½% of \$2,488,246 - The new Total of \$2,451,474 and \$36,772).

E. The new total Annual Salary for 2015 would be \$2,550,452. This is an increase of \$147,282 over all five (5) years or an average of \$29,456 per year. The \$147,282 increase from \$2,403,170 is 6.13 percent over the five (5) years.

The pro rata share of the increase in "2." above can be ascertained by dividing the employee's Original Annual Salary by the Total Original Annual Salary on the Chart. This would result in a pro rata percentage share.

Continuing to use the same percentage share the resulting percentage of the annual increases referenced in A, B, C, and D above would then be the basis for an employee whose salary is below \$70,093 to receive his pro rata share.

Examples of such pro rata calculations:

A. An employee whose salary is \$23,800 is to receive 1% (rounded up from .99%) of the Increase. (\$23,800 divided by \$2,403,170 = .99%).

B. An employee whose salary is \$50,000 is to receive 2.1% (rounded up from 2.08) of the Increase (\$50,000 divided by \$2,403,170).

C. An employee whose salary is \$67,730 is to receive 2.8% of the Increase (\$67,730 divided by \$2,403,170).

D. For 2012, with an increase of \$24,032 the amount of each share, at the reflected percentage, the calculation of the resulting salary would be:

<u>Percentage</u>	<u>Share</u>	<u>Salary</u>
1	\$240.32	\$24,040.32
2.1	504.67	50,504.67
2.8	672.90	68,402.90

E. For 2013, with an increase of \$24,272 the amount of each share, at the reflected percentage, the resulting salary would be:

<u>Percentage</u>	<u>Share</u>	<u>Salary</u>
1	\$242.72	\$24,283.04
2.1	509.71	51,014.38
2.8	679.62	69,082.52

F. For 2014, with an increase of \$36,772 the amount of each share, at the reflected percentage the resulting salary would be:

<u>Percentage</u>	<u>Share</u>	<u>Salary</u>
1	\$ 367.72	\$24,650.76
2.1	772.21	51,780.59
2.8	1,029.62	70,112.14 ¹

G. For 2015, with an increase of \$62,206 the amount of each share, at the reflected percentage, the resulting salary would be:

<u>Percentage</u>	<u>Share</u>	<u>Salary</u>
1	\$ 622.06	\$25,272.82
2.1	1,306.33	53,092.92
2.8	none	(70,093.00)

¹ This is \$19.14 above the \$70,093 and such excess should not be included, but added, pro rata to those below such limit.

H. Health Insurance

Although this was not specifically referenced in the letter requesting Fact Finding (Page 3, above) it was on the Comparison (Pages 8 and 9, above) and has a direct effect on wages.

The Comparison reflects that the full cost of health benefits were paid by two Districts (Sanitary #1 and Sanitary #6). Those agreement terms were through years 2008 and 2010, respectively. The other ten reflect employee payments. Some are based upon hiring dates, and with or without maximums or for a limited times.

It is reasonable for the District to propose employee contributions. However, if they are required of the highest earners (above \$70,093), who will not receive any increase in wages it would result in less money being received by those employees. This should not occur, except as referenced below.

I FIND that there should be contributions by employees, with limitations.

I RECOMMEND

A. Employees whose Original Annual Salary, as reflected on the Chart, whose salaries are \$50,000 or more and less than \$70,093 shall contribute, for health insurance, starting in 2012, ten (10%) percent of the lower of (a) their share increase of salary or (b) the cost of health insurance provided to them. This affects those hired between August 30, 1991 and March 3, 2003. Not affected are those hired after March 3, 2003 whose salaries have not reached \$50,000.

Illustrations of Calculations relating to salary resulting from above:

<u>Year</u>	<u>Salary</u>	<u>Share of Increase</u>	<u>10% Contribution</u>	<u>Net Increase</u>
2012	\$50,504.67	\$ 504.67	\$ 50.47	\$ 454.20
	68,402.90	672.90	67.29	605.61
2013	51,014.38	509.71	50.97	458.74
	69,082.52	679.62	67.96	611.66
2014	51,780.59	772.21	77.22	694.99
	70,093.00	1,010.48 ²	101.05	909.43
2015 ³	53,092.92	1,306.33	130.63	1,175.70

B. Effective December 31, 2015, all employees shall contribute for health insurance, a percentage of the cost of health insurance provided to them, as follows:

<u>Salary</u>	<u>Contribution Percentage</u>
At or above \$70,093	15
At \$50,000 and less than \$70,093	10
At \$30,000 and less than \$50,000	5
Below \$30,000	2

To the extent that the District receives contributions based upon the foregoing such contributions reduce the District's costs of the increases that applied in year 2012 and thereafter.

II. Doctor's Note

This issue is referenced in the Declaration of Impasse as "providing doctor's notes for sick days" (Pages 2 and 3, above) and in the letter requesting Fact Finding (Page 3, above). However, no submissions or arguments were presented. Therefore, I make no comment or recommendation on the Doctor's Note. I also make no comment or recommendation on the other issues mentioned in the Declaration.

² reduced by \$19.14 to keep maximum \$70,093 salary

³ through December 30, 2015

Comment

The expired CBA was seven (7) years in duration. Both parties proposed a five (5) year term. Allowing and projecting the negotiation by the Parties of its successor in 2015 might result in only one full year, 2014, and part of the final year, 2015 without the cost and expense, of both Parties, related to a renewal.

Therefore, I suggest both Parties consider adding a sixth year. It could be based upon a projected optimistic view of the then economic conditions, with a reopener clause on reasonable conditions.

Monetary Impacts

There are financial effects of all parts of an agreement, whether it is five (5) or six (6) years. *The need of the Union and its members, as well as the obligations of the District, in the context of the general state of the economy and the burdens of the taxpayers must be taken into account.*

Living costs have risen and disposable income has fallen.

An attempt must be made to balance the results.

To ameliorate this financial squeeze employees look to their employers for relief. The District recognized that a salary raise was a responsible action. Its implementation and allocations over the five (5) or six (6) years term is reasonable.


The parties' positions on the issues have been put into this Report to assist a reader in understanding the components and pressures on employees and on taxpayers when the District attempts to reach an acceptable balance with its employees.

CONCLUSION

This report is limited to the issues referenced herein. Recommendations are not made in isolation but as a package. They include a balancing of the needs of the parties, as expressed by their respective proposals and responses, with consideration for taxpayers and the practical realities of current public sector labor relations.

The Recommendations provide the basis for a fair and reasonable settlement. The parties are urged to consider them with an open mind and with a view toward accommodations.

Dated: July 24, 2013



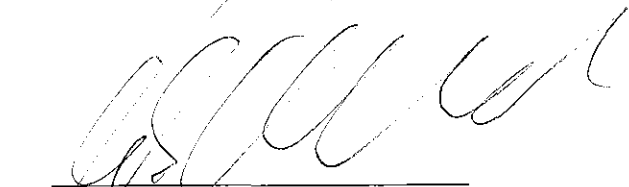
Eugene S. Ginsberg, Fact Finder
300 Garden City Plaza, 5th floor
Garden City New York 11530

AFFIRMATION

STATE OF NEW YORK)
COUNTY OF NASSAU)

I do hereby affirm that I am the individual described in and who executed the foregoing instrument, which is my Report of Findings and Recommendations.

Dated: July 24, 2013



EUGENE S. GINSBERG