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Thomas Linden

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Ridge Fire District and United Public Service Employees Union

Abstract

In the matter of the fact-finding between the Ridge Fire District, employer, and the United Public Service Employees Union, union. PERB case no. M2011-341. Before: Thomas J. Linden, fact finder.

Keywords

New York State, PERB, fact finding

**STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT-FINDING BETWEEN
RIDGE FIRE DISTRICT**

-And

**PERB Case No. M2011-341
Before: Thomas Linden
Fact Finder**

UNITED PUBLIC SERVICE EMPLOYEES UNION

REPRESENTATIVES

a. For the District

Jack Ahern, Esq.

b. For the Union

Ronald Cleary, Labor Relations Representative

BACKGROUND

The Ridge Fire District (hereinafter, "District") and the United Public Service Employees Union (hereinafter, "Union") are currently bargaining an initial collective bargaining agreement (hereinafter, "CBA"). On September 21, 2010, the Public Employment Relations Board (hereinafter, "PERB"), in Case No. C-5983, certified the

Union as the exclusive representative for purposes of collective negotiations and ordered the parties to begin bargaining. Negotiations commenced on March 24, 2011, and the parties engaged in eight more sessions with the last being held on February 2, 2012. After the negotiations failed to generate an agreement, the parties filed a joint declaration of impasse which was received by PERB on February 27, 2012. Shortly thereafter, mediator Karen Kenney was appointed to assist the parties and subsequently conducted three mediation sessions. Despite these efforts, no agreement was reached and accordingly, by letter of December 17, 2012 to PERB, the Union requested the appointment of a fact finder. (It should be noted that, according to the District's brief, "most issues were resolved over many months").

Thereafter, the undersigned was appointed as fact finder, via correspondence, dated January 29, 2013. An initial meeting was held on June 12 to discuss ground rules, and a formal hearing was held on June 26 at the Ridge fire house at which time it was agreed that the fact finder make recommendations on six items and that briefs with supporting data would be due on August 9, 2013. Upon receipt of the briefs and supporting data by the fact finder, the record was closed.

DISTRICT AND UNIT PROFILE

The Ridge Fire District is a municipal corporation formed in compliance with NYS Law in 1941. The District is governed by an elected Board of Fire Commissioners who serve five year terms with one seat being up for election each year. The BOFC elects one of its members to serve as Chairperson each year.

The District is approximately 26 square miles all of which are in the Township of Brookhaven in Suffolk County and is considered mostly residential and somewhat rural. The District operates three fire stations. In 2012 there were 1888 calls to the District for response which included 1645 for medical/rescue, 130 for fire emergency and 113 for accidents.

The bargaining unit consists of Emergency Medical Technicians who serve in three categories, 1. Basic, 2. Critical Care and 3. Paramedic. All employees in this unit qualify for District employment through the Suffolk County Civil Service Commission and serve a 26 week probationary period before being made permanent. At the present time the District reports that there are 25 members of the bargaining unit who work various schedules from once a month to regular 40 hour weeks. During the hearing on June 26 it was noted that employees work various weekly totals including 8, 12, 20, 36 and 40 hours per week.

In its letter of September 10, 2010, PERB certified the Union and the bargaining unit was defined as: "All regular full-time and regular part-time EMT and paramedic employees and regular weekly per diem and regular monthly per diem EMT and paramedic employees".

PRELIMINARY STATEMENT

Fact finding is part of the statutorily mandated process of alternate dispute resolution found in the Taylor Law. It is, by its nature, an extension of the bargaining process and comes about only after the parties, for whatever reason, have been unsuccessful in the negotiation and mediation process. The sole reason for the existence

of any of these extensions of the process is to bring the parties, sometimes kicking and screaming, to an agreement. Often, in the short term, the parties to the process lose sight of the long term perspective, the big picture. It is the fact finder's responsibility to help the parties overcome this shortsightedness and to pay a visit to the other side's perspective, even if they don't fully agree with it. It is obvious that the parties to this agreement had ambitious goals: it is now time to take stock of what can reasonably be attained in bargaining.

THE ISSUES

In an effort to add some efficiency to the fact finding process, the parties, at the fact finders suggestion, agreed to submit only six items for review and recommendation. Because the parties have made some significant progress in other areas and have reduced some of this to writing, the fact finder will limit this report to the following items.

- Duration of the CBA
- Wages and Retroactivity
- Health Insurance Contribution Rate
- Holidays
- Eligibility for Leave Benefits
- Grievance Procedure, Final Step

Duration of the CBA

District and Union Proposal

The District indicated in its brief that they would be amenable to a three year CBA to commence either January 1, or July 1, 2011 and run for three years to December 31, 2013 or June 30, 2014.

The Union notes that they initially proposed a three year agreement effective January 1, 2011 through December 31, 2013. In the Union's brief they indicate a willingness to have a four year agreement ending December 31, 2014. This additional year, they contend, would allow for a "cooling down" period from a "long negotiation." They offer that this would "provide a period of labor-management history while working within the collective bargaining agreement".

Fact Finder Discussion/Recommendation on Duration of the CBA

This is an initial CBA and something both parties will have to live with for many years. Bargaining an initial CBA is always difficult and the process is often protracted. The parties are cognizant of the fact that mistakes made at the beginning have a tendency to come back to haunt them later on, sometimes many years down the road. Therefore, it is often the case that the process at this stage of the relationship is somewhat of a grind.

The parties seem to be close to agreement on this issue and it is the fact finder's recommendation that the initial CBA commence on January 1, 2011 and run until December 31, 2015. Because we are still involved in the process, the fact finder is

hopeful that agreement be reached and the CBA ratified by both parties prior to the end of 2013. A 12/31/14 expiration date would give the parties a mere 12 months to live with the agreement, and bargaining for the successor agreement would likely commence prior to the completion of the full 12 month term. Therefore, the undersigned believes it makes sense to let the CBA run until December 2015, so the parties can indeed cool down and live within the terms of the new agreement. This would give them two full years of experience. A five year agreement seems to be the appropriate solution for both sides to move a step back, take a breather and enjoy a two year cooling off period.

Wages and Retroactivity

District Proposal on Wages and Retroactivity

The District is proposing no pay increase in any year prior to the ratification date of the new CBA. If I read their brief correctly, the District has proposed a pay increase tied to the Consumer Price Index for Northeast New Jersey and the NY Metro area, urban-clerical workers, that is not to exceed 2%. This proposed increase would take effect after ratification and is contingent upon the Union agreeing to the District's Health Insurance contribution rates. (These proposed rates are discussed in the next section of this report.) In addition, during the fact finding hearing on June 26, the District made it clear that they did not favor any pay increase that was retroactive to any dates. The District argues that any retroactive payments would constitute a "reward for bad behavior."

It is significant to note at this point that the District has never claimed inability to pay as the reason they did not offer unit members a pay increase. Data submitted by both parties indicates that the District is enjoying good financial health, and it should be noted that this is never an accident. The District commissioners should be applauded for their financial decision making that has resulted in adequate balances in general fund checking, money market and capital reserve accounts.

The District also made it clear they would not offer a pay increase that was not tied to contribution rates for health insurance premiums. Currently, there is no contribution by unit members towards these premiums and the District is asking employees to contribute. Until that happens, there will be no pay raises.

Union Position on Wages and Retroactivity

The Union contends that unit employees are deserving of pay increases and point to counterparts in nearby fire districts, all of whom are paid more, both at entry level and up through the pay scale or salary schedule. The Union asks for a 3% increase each year retroactive to January 1, 2011, which would amount to a cumulative 9% pay increase with 3% added on 1/1/2011, 1/1/2012 and 1/1/2013. The Union argues that the District has a “very healthy balance sheet including sufficient reserves to cover all retroactivity.” The Union posits that the District has a “fund balance of over 1.3 million dollars” as noted in the June 10, 2013 minutes of the fire commissioners’ meeting.

The Union also argues that the District has provided wage increases to all non-represented employees as follows:

Effective January 1, 2012 – 2% increase

Effective January 1, 2013 – 3% increase

The Union notes that if the wage increases are not retroactive, unit member will end up even further behind neighboring fire districts that, they argue, already pay more to the same class of employees.

Fact Finder Discussion/Recommendation, Wages and Retroactivity

My hope is that the recommendation in this section of the report will be an important factor in bringing the parties to an agreement. I have examined all the justifications and data presented to me, both in the briefs and at the meetings held, and I have come to the conclusion that I must make a recommendation that recognizes economic realities and at the same time does not penalize the District for its obvious showing of fiscal responsibility. However, even in this brief exposition of the arguments and data of the parties indicate that using relatively similar sources of data, the parties were able by selection and interpretation to come to very different conclusions concerning a proper economic package. The fact finder believes that the totality of circumstances supports a modest pay increase in each year of the new agreement, retroactive to January 1, 2011. The following pay increases are recommended:

1/1/2011	2%
1/1/2012	2%
1/1/2013	3%
1/1/2014	3%
1/1/2015	3%

These pay increases will take effect as soon as the parties ratify the agreement. Because the District has not increased wages since prior to the beginning of the proposed CBA and because the District has been fiscally responsible and owns a healthy balance sheet, retroactivity is recommended.

There is little doubt that the District will find this recommendation excessive. I would offer, however, that unit employees fare far worse than almost all neighboring wage comparables and that, barring some kind of salary reallocation, these wage increases will help close the gap that has developed.

Health Insurance Contribution Rate

District Proposal on Health Insurance Contribution Rate

Currently, all employees, union and non-union, are the beneficiaries of 100% payment of all health insurance premiums by the District. This includes enrollment in health, dental and optical plans. All district employees participate in the NYS Empire Plan and there are currently no other options. As of the most recent one year summary, as submitted by the District, insurance costs (including mandated payments for workers compensation) were approximately 42% of bargaining unit wages.

The District submits that from 1/1/2008 until 1/1/2013, the NYS Empire Plan increased by 30% for individual coverage, from \$7,104 per year to \$9,216. For family coverage premiums increased a hefty 34%, from \$15,108 to \$20,244. These represent,

respectively, increases of 6% and 7% annually. As of 2012, there were five unit employees enrolled in the family plan and four employees enrolled in the individual plan. These represent the only enrollment figures submitted to the fact finder.

In January 2012, the District noted in its Commissioners meeting minutes that non-represented employees will “maintain a 0% contribution” rate to their health insurance premiums. Thereafter, however, any “non union employee entering the health benefits plan shall contribute 15%” toward the cost of the yearly premium.

Union Proposal on Health Insurance Contribution Rate

It is the Union’s position that all current employees should continue to receive fully paid health insurance. In recognition of the never ending increases in health insurance premiums, the Union proposes that all employees hired post ratification, shall “receive fully paid individual coverage; those electing family coverage shall pay 10% of the difference between the individual coverage and the family coverage premium.”

The Union argues and submits data to support its claim that nearby districts all provide 100% payment of health insurance premiums with one exception, Smithtown Fire District, which pays 85% for employees hired after 2007.

Fact Finder Discussion/Recommendation on Health Insurance Contribution Rate

There is no question that health care costs have increased dramatically in the recent past. The vexing conclusion we must reach if we examine health care costs going back many years is that, in fact, they have never trended downward. In recent years, increases have far exceeded previous projections and actuarial assumptions and employee

contribution rates have been trending upward. There is also no question that with respect to employee contribution to health premium costs, dominoes have begun to fall. Recently, various police units, including the Suffolk County PBA Unit, have begun to participate in health plan payment, albeit on a small scale. This is also the trend in school districts on Long Island, although payment for health insurance premiums in these units predates payments made in police units. All in all, the tide is turning as we all come to grips with health costs spiraling upward.

After noting these changes in the climate, the undersigned is recommending that on 1/1/2014 all current employees contribute 5% per year toward payment of their health premium, both individual and family. For new employees hired after the ratification of the agreement, the contribution will be 15% per year.

In addition, the undersigned is recommending that as soon as practicable after the ratification of the new CBA, the parties begin discussion concerning how to deal with these ever escalating health insurance costs. We see in the health insurance provisions of many agreements, the tiered system I recommended in the paragraph above. These tiered systems provide employers with some relief against rising costs. We are also seeing groups instituting effective cost saving measures within a plan, such as increasing employee co-pay amounts. It is, of course, no secret that tiered systems are often anathema to unions. It seems, however, that embracing tiering may be a way out, albeit an unpopular one. Other options could also be looked at including the possibility of utilizing plans that may provide current benefit levels at a lower cost. Taking advantage of an Internal Revenue Code 125 “cafeteria plan” could prove to be a most effective way for Union members to cut costs of health insurance by paying pre-tax dollars for premium

costs. Looking at these options doesn't cost anything and working together to find win-win solutions will no doubt add to the healing process between the District and the Union.

Holidays

District and Union Proposal on Holidays

The Union's proposal for holidays is to increase by one day the number of holidays enjoyed by unit members who currently have ten. The District wishes to retain the status quo. The Union has stated verbally that they would like one additional holiday, either 9/11, or Christmas Eve. In its brief, the union submitted comparative data for nearby fire district employees who enjoy variations of this benefit.

Fact Finder Discussion/Recommendation on Holidays

The fact finder believes the holiday benefit currently enjoyed by unit employees should be continued and is, therefore, recommending the District's proposal. The current benefit is comparable to surrounding fire districts and there is no need to increase it at this time. Possible changes to this benefit should be left for future negotiations.

Eligibility for Leave Benefits

District and Union Proposal on Eligibility for Leave Benefits

The Union's proposal for eligibility for leave benefits is that part time employees who work 16 hours or more per week shall receive a prorated share of contractual time off benefits if regularly scheduled to work sixteen hours or more per week. The Union notes that the District currently provides part time benefits to non-union employees. The District wishes to maintain the status quo, arguing that changing the threshold for eligibility would negatively impact the District by providing additional costs for less time worked.

Fact Finder Discussion/Recommendation on Eligibility for Leave Benefits

While the fact finder is sympathetic to the District's concern relating to impact, the Union's position is recommended. Sixteen hours will be the threshold for eligibility for part timers to receive prorated leave benefits. This recommendation provides a fair and equitable solution to this problem.

Grievance Procedure, Final Step

District Proposal on Grievance Procedure, Final Step

Review of the partially completed draft, Memorandum of Agreement (hereinafter, the "MOA"), indicates agreement has been reached on the language for the grievance procedure for only the first two steps. Step One would be an informal meeting with the EMT Coordinator/Manager who would investigate and respond within 15 days of the informal discussion. Step Two would be a written filing to the Chairperson of the Board

of Fire Commissioners. Within 30 days of this filing the HR Committee would issue a formal written response.

What happens next is the sticking point, and the District proposes that the decision issued at Step Two will be final and binding. The District opposes any involvement of a neutral third party contending that there is “no record of disputes.” They also contend that the new CBA will be short term and at “the next set of negotiations the parties can review the history of any filings.”

Union Proposal on Grievance Procedure, Final Step

The Union, of course, takes the opposite view of this and contends that there were, in fact, disputes. Because there was no grievance procedure yet in effect, however, most of these disputes were not given the benefit of due process. The Union submitted various contracts for neighboring fire districts, all of whom have binding arbitration as the final step. Most of these arbitration clauses provide for filing with the American Arbitration Association who appoints an arbitrator. Costs of the arbitrator are shared between the parties.

Fact Finder Discussion/Recommendation on Grievance Procedure, Final Step

The fact finder believes that due process would be better served if there were a clause in the grievance procedure which provided final and binding arbitration. Allowing the fire commissioners to make the final ruling, “binding” or not, does not serve due process and would be a regression to what is currently the norm in public sector collective bargaining agreements.

The fact finder hereby recommends that the third step of the grievance procedure provide for final and binding arbitration through the American Arbitration Association. All costs of arbitration shall be shared by the parties.

Fact Finder's Recommendation Recap

Duration of the CBA

- From January 1, 2011 until December 31, 2015

Wages and Retroactivity

Effective:

- January 1, 2011 2% wage increase for all employees
- January 1, 2012 2% wage increase for all employees
- January 1, 2013 3% wage increase for all employees
- January 1, 2013 3% wage increase for all employees
- January 1, 2014 3% wage increase for all employees

All wage increases shall be retroactive to January 1, 2011 and shall be paid within 30 days of ratification of the CBA.

Health Insurance Contribution Rate

Effective:

- January 1, 2014 all employees contribute 5% yearly toward health insurance premium.
- New employees, after ratification, will contribute 15% yearly toward health insurance premium.

Holidays

No change recommended by fact finder

Eligibility for Leave Benefits

Employees scheduled to work 16 hours or more per week shall receive pro rated leave benefits.

Grievance Procedure, Final Step

The final step in the grievance procedure shall be final and binding arbitration through the American Arbitration Association.

Concluding Statement

The fact finder hopes that this report provides a roadmap to settlement. It is also hoped that the recommendations set forth herein be adopted and embraced by both parties and that they form the basis for the new CBA. The parties may not see these

recommendations as a perfect resolution to this impasse; however, they do represent a reasonable solution to resolving these negotiations. The parties are encouraged to adopt them as written and to do so as soon as practicable.

August 27, 2013

Thomas J. Linden, Fact Finder