4-3-2014

Westchester, County of and Westchester County Unit 9200, CSEA Local 1000, Local 860

Howard C. Edelman Esq.

Westchester, County of and Westchester County Unit 9200, CSEA Local 1000, Local 860

Abstract
In the matter of the fact-finding between the County of Westchester, employer, and the Westchester County Unit 9200, CSEA Local 1000, Local 860, union. PERB case no. M2011-307. Before: Howard C. Edelman, Esq., fact finder.

Keywords
New York State, PERB, fact finding

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

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In the Matter of the Arbitration	:	
- Between -	:	Case #M2011-307 Findings and Recommendations
COUNTY OF WESTCHESTER	:	
"County"	:	
- and -	:	
CIVIL SERVICE EMPLOYEES ASSOCIATION, INC., WESTCHESTER COUNTY, LOCAL 860, UNIT 9200	:	
"Union"	:	

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APPEARANCES

For the County
Vincent Toomey, Esq., Labor Counsel
Jaimee Pocchiari, Esq., Labor Counsel
Ann Marie Berg, Commissioner of Finance
Larry Soule, Budget Director
Gideon Grande, Budget Analyst
Justin Adin, Esq., Assistant County Attorney

For the Union
Lawrence Sparber, Labor Relations Specialist
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Kwabena Manu, President, Unit 9200
Junio Alvarado, First Vice-President, Unit 9200
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Teri Rella, Third Vice-President, Unit 9200
Anthony Savastano, III, Fourth Vice-President, Local 9200
Kimberly Gotzen, Secretary, Local 9200
Hattie Adams, Treasurer, Local 9200
Juliet Aguiar, Negotiating Committee Member, Local 9200
Karen Pecora, Negotiating Committee Member, Local 9200

BEFORE: HOWARD C. EDELMAN, ESQ., FACTFINDER

BACKGROUND

The parties are signatories to a Collective Bargaining Agreement which expired on December 31, 2011. Negotiations and mediation failed to produce a successor agreement. Consequently, and pursuant to the rules of the New York State Public Employment Relations Board ("PERB"), I was appointed Factfinder to issue findings and recommendations to resolve the dispute.

Hearings were held before me on June 20, 2013; August 20, 2013; September 25, 2013 and December 4, 2013. The first three sessions were devoted to mediation efforts. These proved unsuccessful. Consequently, the parties made factfinding presentations at the hearing of December 4, 2013, whereupon the record was closed. These findings and recommendations follow.

POSITIONS OF THE PARTIES[1]

Union

The Union seeks a five year agreement, retroactive to January 1, 2012. It points out that

[1] To expedite these findings, I have summarized the parties' positions.

the prior labor contract expired on December 31, 2011. In its view, a five year settlement will promote labor relations stability.

As to base wages, the Union makes the following proposal:

2. Compensation

A. 1. Effective January 1, 2012, each step in the salary schedule in effect on December 31, 2011 shall reflect an increase equivalent to the Consumer Price Index (CPI) [for Urban Wage Earners and Clerical Workers (Current Series) for New York-Northern New Jersey-Long Island, for All Items, Not Seasonally Adjusted] percentage in effect as of October 1st of the previous year, but in no event less than 2%, plus scheduled Steps.

2. Effective January 1, 2013, each step in the salary schedule in effect on December 31, 2012 shall reflect an increase equivalent to the Consumer Price Index (CPI) [for Urban Wage Earners and Clerical Workers (Current Series) for New York-Northern New Jersey-Long Island, for All Items, Not Seasonally Adjusted] percentage in effect as of October 1st of the previous year, but in no event less than 2%, plus scheduled Steps.

3. Effective January 1, 2014, each step in the salary schedule in effect on December 31, 2013 shall reflect an increase equivalent to the Consumer Price Index (CPI) [for Urban Wage Earners and Clerical Workers (Current Series) for New York-Northern New Jersey-Long Island, for All Items, Not Seasonally Adjusted] percentage in effect as of October 1st of the previous

year, but in no event less than 2%, plus scheduled Steps.

4. Effective January 1, 2015, each step in the salary schedule in effect on December 31, 2014 shall reflect an increase equivalent to the Consumer Price Index (CPI) [for Urban Wage Earners and Clerical Workers (Current Series) for New York-Northern New Jersey-Long Island, for All Items, Not Seasonally Adjusted] percentage in effect as of October 1st of the previous year, but in no event less than 2%, plus scheduled Steps.

5. Effective January 1, 2016, each step in the salary schedule in effect on December 31, 2015 shall reflect an increase equivalent to the Consumer Price Index (CPI) [for Urban Wage Earners and Clerical Workers (Current Series) for New York-Northern New Jersey-Long Island, for All Items, Not Seasonally Adjusted] percentage in effect as of October 1st of the previous year, but in no event less than 2%, plus scheduled Steps.

B. The salary schedule for employees hired AFTER ratification of the agreement shall contain ten (10) steps for each pay grade. Step ten (10) shall be equal to step five (5) of the Salary schedule for current employees in effect after ratification. The steps on the five (5) step schedule shall be recalculated to be equally distributed among the ten (10) steps.

C. Unless otherwise indicated, all salary and wage increases shall be (1) retroactive to January 1, 2012, (2) applied to all current employees on payroll at the time of ratification of an agreement, and (3) applied to all employees separated from the County for any reason except termination for cause, including deceased employees, since January 1, 2012.

These proposals are reasonable, the Union submits. It asserts that increases of two per cent or CPI advances, whichever is greater, will simply maintain the purchasing power of its members. In fact, it allows, for 2012 and 2013, the raises would be two percent, a modest increase in an improving economy. Furthermore, the Union insists, two per cent raises are in line with other settlements elsewhere.

Also, the Union alleges, the County has the ability to implement its wage proposal. It notes a 151 million dollar County surplus for 2011. Similar surpluses exist or will exist for future years, the Union submits. Hence, it argues, its wage proposals can be implemented without undue hardship upon County taxpayers.

In addition, its wage proposals are realistic, as the Union sees it, because it has agreed to an elongated wage progression for new hires. Thus, it asks me to adopt these proposals as presented.

The Union also seeks longevity increases of $250 per step, effective January 1, 2013; $275 per step, effective January 1, 2015; and $300 per step, effective January 1, 2016. These improvements are reasonable, the Union urges, because longevity stipends in this unit are substantially below the amounts granted to other County bargaining units. Finally, on this issue, the Union concedes that new hires would not be entitled to longevity payments until they have completed ten years' service with the County.

Concerning health insurance, the Union recognizes the increasing trend for employees to pay a portion of these premiums. It notes, however, that many of its members earn modest wages. Therefore, it insists, only a tiered system is fair to all employees. Consequently, it makes the following proposal:

A.

1. Effective July 1, 2014, all employees in Grades 1 through 7 shall contribute: 1% of Base Salary Annually for Individual Coverage (average* 5.4% of 2014 POMCO Premium) 2.5% of Base Salary Annually for Family Coverage (average* 5.2% of 2014 POMCO Premium) toward the cost of Health Insurance on a Pre-Tax Basis.

2. Effective July 1, 2014, all employees in Grades 8 through 10 shall contribute: 1.25% of Base Salary Annually for Individual Coverage (average* 8.0% of 2014 POMCO Premium) 2.75% of Base Salary Annually for Family Coverage (average* 8.0% of 2014 POMCO Premium) toward the cost of

Health Insurance on a Pre-Tax Basis.

3. Effective July 1, 2014, all employees in Grades 11 through 15 shall contribute: 1.5% of Base Salary Annually for Individual Coverage (average* 17.7% of 2014 POMCO Premium) 3% of Base Salary Annually for Family Coverage (average* 13.4% of 2014 POMCO Premium) toward the cost of Health Insurance on a Pre-Tax Basis.

*Averages based on CURRENT salary schedule at Step 5 for each band, and do not reflect proposed salary increases.

B. Health Insurance Buyout of 50% POMCO 2014 Individual Premium ($4354.80) paid in equal installments of $2177.40 semiannually. Subject to proof of alternate coverage. Choice shall be made each year during open enrollment period.

In addition, the Union argues that in light of increasing costs for dental and optical benefits, it asks that the County's contribution to its benefit fund be increased $100, effective January 1, 2014; $100, effective January 1, 2015 and $100, effective January 1, 2016.

Finally, the Union suggests that its members have been buffeted by unreasonable layoffs in the past. Consequently, it seeks a no layoff clause to protect its members from similar hardship in the future.

The County alleges its finances are precarious. A 160 million dollar fund balance is very small, the County urges. The Union's wage proposal cannot be met in light of this factor, it insists.

Moreover, the County maintains, other bargaining units settled for far less than the two per cent increases the Union seeks. It notes that non-uniformed personnel have settled for no raises in 2012 and 2013 (Teamsters and Nurses) and 2014 (Teamsters). It sees no reason why the CSEA's settlement should be any different.

As to health insurance, the County rejects the Union's proposal as wholly inadequate. It maintains that the Teamsters are contributing 10 per cent of premiums, effective January 1, 2012 and 12.5 per cent, effective January 1, 2015. Other civilian units pay at least as much, the County urges.[2] Given these circumstances, the County asks that employees on the payroll as of January 1, 2012 be required to pay 15 per cent of their health insurance premiums while those hired after that date contribute 25 per cent of the premiums. Also, the County asks that all

[2] The County acknowledges that Nurses do not contribute to their health insurance premiums but asserts it saved $6000 per Nurse by switching plans.

employees who have or will retire after January 1, 2012 be required to pay fifty per cent of the appropriate premium. In addition, the County seeks the right to modify health insurance benefits to reflect adjustments made in the Statewide Empire Plan.

In the County's view, no wage increases should be granted for 2012, 2013 and 2014. This is so, it stresses, because the Union received generous salary improvements in the prior agreement which exceeded those garnered by other bargaining units. Accordingly, it asks me to adapt its economic proposals as presented.

FINDINGS AND RECOMMENDATIONS

Initially, I am convinced that a four year agreement serves the mutual interests of the parties. The prior labor contract expired on December 31, 2011. An agreement of fewer years will return the parties to the bargaining table almost immediately. Such a result is to be avoided, if at all possible. Thus, I recommend that the successor Agreement commence on January 1, 2012 and expire on December 31, 2015.

As to the terms of the Agreement, several introductory comments are appropriate. The Taylor Law does not contain criteria for the resolution of factfinding disputes. However, the standards relating to Interest Arbitration matters are often applied in cases such as the one before me. They are:

a) comparison of wages, hours and conditions of employment of the employees involved in the arbitration proceeding with the wages, hours and conditions of other employees performing similar services or requiring similar skills under similar working conditions and with other employees generally in public and private employment in comparable communities;

b) the interest and welfare of the public and the financial ability of the public employer to pay;

c) comparison of peculiarities in regard to other trades or profession, including specifically, (1) hazards of employment; (2) physical qualifications; (3) educational qualifications; (4) mental qualifications; (5) job training and skills;

d) the terms of the collective agreements negotiated between the parties in the past providing for compensation and fringe benefits, including, but not limited to, the provisions for salary, insurance and retirement benefits, medical and hospitalization benefits, paid time off and job security.

The most significant criterion relates to the wages and benefits of other employees in the same jurisdiction performing similar functions. While no two bargaining units engage in identical tasks, the non-uniformed employees in Westchester County are the most relevant comparators to Unit 9200, I find.

A review of the settlements of those employees reveals that the past few years have yielded no general wage increases for them. For example, in 2012 and 2013, Teamsters and Nurses received no wage increases. Thus, the question to be asked is whether wages for Unit 9200 should be similarly frozen.

I believe they should. While CSEA employees generally earn less than the units cited, I find that the pattern established above should be followed to a large extent in this dispute. Regardless of wage rates, salary increases or lack of same should generally be comparable among all bargaining units within the same jurisdiction. Otherwise, dangerous "leapfrogging" ensues. When a unit achieves a greater wage increase later in a bargaining round, the earlier settlers are impelled to match those improvements in a later round which then prompts units to match those raises, and so on. Labor relations stability is not served by such negotiations.

In light of these factors and criterion (a) of the Taylor Law, I find that for 2012 and 2013 there should be no general wage increase. However, as noted above, wages within Local 9200 on average are lowest among all bargaining units. In my view, some economic adjustment is warranted as a result.

Consequently, while no general wage increase is recommended for 2012 and 2013, I find that two one time, unrepeated bonuses are in order for each of these two years. Though relatively small, they will serve to address, in a modest way, the disparity between the salaries in this unit and the other, higher paying County ones. Consequently, I recommend the following:

(a) For the year 2012, a one time bonus of \$100 for all unit members employed then and who continue to be employed by the County as of the date the bonus is paid, which shall be no later than sixty days after the ratification of this Agreement by the County and the CSEA.

(b) For the year 2013, a one time bonus of \$150 for all unit members employed then and who continue to be employed by the County as of the date the bonus is paid, which shall be no later than ninety days after the ratification of this Agreement by the County and the CSEA.

Should there be increases for 2014 and 2015? I am convinced there should be. Other bargaining units within the County have agreed upon increases for this period. For example, NYSNA received a two per cent increase for 2014. While the Teamsters did not receive a raise for this year, their averages salaries exceed CSEA's, the record reveals. In addition, wages for this unit will rise 2.75 per cent in 2015 and my recommendation falls substantially below that figure. Similarly Correction Officers' wages will be improved by 2.50 per cent for 2014 and 2015, as will PBA wages rise for 2014.[3]

In addition, it is undisputed that while the economy is not robust, it is better than it was. Under these circumstances, I am convinced, that while no base wage increases are warranted for 2012 and 2013, increases of two per cent for 2014 and 2015 are justified. It is so recommended.

Also, with respect to direct compensation, the Union has persuaded me that a minimal increase in longevity is reasonable. Thus, I conclude, a $100

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[3] It is true these are uniformed personnel subject to Interest Arbitration, while CSEA is not.

rise at each longevity step should be implemented, effective October 1, 2015, for employees hired prior to the ratification of the Agreement.

While current bargaining unit members should receive the increases noted above, a new salary schedule should be applicable to those individuals hired after the ratification of this Agreement, I find. New hires schedules are common. Moreover, there is no evidence in the record to suggest the County will have difficulty filling future vacancies with qualified applicants. As such, it is entitled to long term compensation savings. Thus, I recommend that a schedule be implemented for new hires containing the following elements:

1. A ten step schedule in which the top step shall equal Step 5 of the schedule in effect as of the date of ratification.

2. Longevity shall commence after ten years of service. For new hires the schedule shall be:

   a) After 10 years - $1200
   b) After 15 years - $1400
   c) After 20 years - $1700
   d) After 25 years - $2200

As to health insurance, there is no doubt that all employees, no matter what their earnings are, should pay a portion of these premiums. Virtually no employees are exempt from contributing to the cost of health insurance. This is true in and outside of Westchester. Here all non-uniformed bargaining units pay some percentage of these premiums. CSEA members must do so as well, I find.

How much should CSEA members pay? The Union argued vigorously that payments should be a percentage of base wages. I do not agree. Very few bargaining units do so and I see no reason to deviate from that principle here. On the other hand, I do agree with the Union that not all members should contribute the same amount. Wages in this unit vary widely, from below $40,000 to above $100,000. Under these circumstances, I find that contributions should be based upon three salary tiers; grades 1-7, 8-10 and 11 and above. These grades reflect, roughly, the numbers of members in each set and, consequently, should be grouped together.

What percentage of premiums should CSEA members contribute? Other units contribute up to fifteen per cent of premiums. However, they earn more than those in this unit. Also, I am convinced, rates should be skewed so that by the end of 2015, the highest earners pay ten per cent. In my view, then, the following chart reflects appropriate payment levels:

Grades	Contribution Rates for 2014	Contribution Rates for 2015
1-7	6%	7%
8-10	7%	8.5%
11 and above	8%	10%

These rates should be effective June 1, 2014 and June 1, 2015 respectively for members of the bargaining unit as of the ratification of this Agreement. Were the rates effective earlier in each year, a number of low earning employees would earn less in 2014 than they earned in 2013 or less in 2015 than they would earn in 2014. To reduce, though not necessarily eliminate this possibility, the premiums are to be implemented on the dates indicated.

As to newly hired employees, they, like their counterparts elsewhere, should be required to contribute more toward the cost of health insurance. Thus, I recommend that, effective upon the ratification of this Agreement, new hires shall contribute twenty per cent of the premium equivalent to the primary plan plus such additional amounts to the alternate plan. Upon their retirement, the County shall pay eighty per cent of the individual premium provided they have twenty years of service with the County.

I am also persuaded that two adjustments in benefits are warranted. Currently there is no co-pay for generic drugs. Payment should be increased to $5.00 effective June 1, 2014. Also, for 2015, the out-of-network deductible should be increased to $350 per individual and $950 per family. These modifications will lessen the impact of rising health insurance premiums. As such, they will help keep the cost, to employees and the County, lower than were no changes made.

Also, with respect to health insurance, there should be a plan for employees to decline same, consistent with State regulations. While paying a portion of premiums will provide some incentive, an additional rebate will provide more. Obviously, the greater the number of employees who decline insurance, the more the County will save. Thus, I recommend that the County pay employees who choose not to accept an insurance plan to which they would otherwise be entitled, fifteen per cent of the individual premium the County saves by such declination.

Finally, I am convinced the County is entitled to some savings with respect to tuition reimbursement. Therefore, I recommend that the program shall be suspended for the 2015 calendar year.

Several additional comments are warranted. I recognize that recipients of Factfinding recommendations tend to accept those favorable to its positions and to reject those with which they disagree. I would strongly urge the parties not to do so here. The prior labor Agreement expired on December 31, 2011, more than two years ago. Failure to adopt these findings in total will only lead to additional, protracted bargaining. Such a result is to be avoided, if at all possible. Consequently, I recommend that the parties adopt my findings as presented.

RECOMMENDATIONS

1. **Term of Agreement**: January 1, 2012 - December 31, 2015.

2. **Wages**

   a) No general increase for 2012 and 2013.

   b) Effective January 1, 2014 - two per cent increase.

   c) Effective January 1, 2015 - two per cent increase.

   d) Retroactive Bonus

      (1) Employees in pay status in 2012 and at the time of ratification shall receive a one time $100 bonus.

      (2) Employees in pay status in 2013 and at the time of ratification shall receive a one time $150 bonus.

   e) Longevity - Employees in pay status as of the date of ratification, shall receive a $100 increase in longevity payments, to the extent applicable, effective October 1, 2015.

3. **Health Insurance**

a) Effective June 1, 2014, employees in the bargaining unit as of the ratification of this Agreement shall pay health insurance premiums as follows:

Grades 1-7 - six per cent

Grades 8-10 - seven per cent

Grades 11 and above - eight per cent

b) Effective June 1, 2015, employees in the bargaining unit as of the ratification of this Agreement shall pay health insurance premiums as follows:

Grades 1- 7 - 7 per cent

Grades 8-10 - 8.5 per cent

Grades 11 and above - 10.0 per cent

c) Effective June 1, 2014 - the generic drug co-pay shall be $5.00.

d) Effective January 1, 2015 - Out-of-network deductibles shall be increased to $350 for individual coverage and $950 for family coverage.

e) Effective January 1, 2015, bargaining unit members shall be entitled to a health insurance opt-out if they decline applicable coverage for that year. Payment shall be fifteen per cent of the County's portion of individual coverage and shall be paid semi-annually. Election shall be made during the open enrollment period for 2015. Eligibility for the opt out shall be in accordance with County policy, State regulations and proof of alternate coverage.

4. **Tuition Reimbursement**: This program shall be suspended for the 2015 calendar year.

5. **New Hire Terms and Conditions of Employment**

   a. Wages

      1. Employees hired after the ratification of this Agreement shall be placed on a ten step schedule. Step ten of the schedule shall be equal to Step 5 of the schedule in effect upon ratification of this Agreement. The steps on the five step schedule shall be recalculated to be equally distributed among the ten steps.

      2. Longevity shall commence after ten years of service and shall be paid according to the following schedule:

After 10 years - $1,200

After 15 years - $1,400

After 20 years - $1,700

After 25 years - $2,200

b. Health Insurance

1. Bargaining unit members hired after the ratification of this Agreement shall contribute twenty per cent of the premium equivalent to the primary plan plus such additional amount attributable to the alternate plan.

2. Retiree Health Insurance coverage for bargaining unit members hired after the ratification of this Agreement shall be eighty per cent of the individual premium after twenty years of service.

6. All other proposals of the parties, whether or not addressed here, are not recommended.

DATED: 4/3/14

HOWARD C. EDELMAN, ESQ.,
FACTFINDER

STATE OF NEW YORK)
) s.:
COUNTY OF NASSAU)

I, Howard C. Edelman, Esq., do hereby affirm upon my oath as Factfinder that I am the individual described in and who executed this instrument, which is my Award.

DATED: 4|3|14

HOWARD, C. EDELMAN, ESQ.,
FACTFINDER