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Jefferson, County and Security and Law Enforcement Employees Council 82, AFSCME, AFL-CIO, Jefferson County Sheriff's Employees Local 3089

Don Mesibov

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Jefferson, County and Security and Law Enforcement Employees Council 82, AFSCME, AFL-CIO, Jefferson County Sheriff's Employees Local 3089

Abstract

In the matter of the fact-finding between the County of Jefferson, employer, and the Security and Law Enforcement Employees Council 82, AFSCME, AFL-CIO, Jefferson County Sheriff's Employees Local 3089, union. PERB case no. M2015-121. Before: Don Mesibov, fact finder.

Keywords

New York State, PERB, fact finding

**State of New York
Public Employment Relations Board
80 Wolf Road
Albany, New York 12205**

Case No. M2015 – 121

January 13, 2017

Report and recommendations of the Fact Finder

in the matter of the impasse between

Jefferson, County of

and

Jefferson County Sheriff's Employees Local 3089

Security and Law Enforcement Employees Council 82, AFSCME, AFL-CIO

Fact Finder: Don Mesibov

For Jefferson County: Valerie Nugent, Director of Human Resources

For Local 3089: Ennio J. Corsi, Council 82 General Counsel

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FACT-FINDER'S REPORT

BACKGROUND

THE ADVOCATES

The advocates for both negotiating teams are to be commended for the clarity of their presentations at the hearing and thoroughness of the information provided at the fact-finding hearings and in subsequent briefs and communications. Members of both bargaining teams conducted themselves in a professional manner that represented their respective constituents and themselves extremely well.

THE COUNTY

The brief submitted by the Union indicates that “Jefferson County is a county in New York State which sits adjacent to Lake Ontario, southeast from the Canada-United States border of Ontario. The county seat of Jefferson County is Watertown, New York. Jefferson County is northeast of the City of Syracuse, New York and northwest of the City of Utica, New York.

“As of the 2010 census, Jefferson County’s population was 116,229. According to the Jefferson County Industrial Development Agency’s website, Jefferson County is the fastest growing county in New York State, it has a higher than average percentage of high school and two-year college graduates and has a cost of living that is lower than the rest of New York State and the national average. Further, according to the JCIDA’s website, the Fort Drum military installation provides \$1,400,000,000 dollars annually in direct economic impact to the local economy. In addition, according to the JCIDA’s website Jefferson County is home to twenty major employers (those employing one hundred or more individuals.)”

THE UNION

The Jefferson County Sheriff’s Employees Local 3089, Security and Law Enforcement Employees Council 82, AFSCME, AFL-CIO, is the sole bargaining agent for the purpose of representing all full-time employees of its bargaining unit. The titles included in the bargaining unit are Correction Officer, Correction Sergeant, Dispatcher, Senior Dispatcher, and Technical Communications Officer.

BARGAINING HISTORY

According to the brief submitted by the union, negotiations began in September, 2014 for a successor agreement to the four-year agreement that was to expire on December 31, 2014. Following the sixth bargaining session, May 27, 2015, the parties jointly filed a declaration of impasse. Mediation sessions with a mediator appointed by PERB were unsuccessful and in February, 2015 PERB assigned Don Mesibov as fact-finder. An attempt at mediation by the fact-finder on April 18, 2016 failed to result in an agreement. Fact-finding hearings were conducted on October 6 and 13, 2016 with the union presenting its case on October 6th and the employer on the 13th. Briefs were submitted on December 23, 2016 and a bargaining session was scheduled for January 13, 2017 with the understanding that the fact-finder would bring his report to that session

THE BARGAINING ISSUES

ISSUE: HEALTH INSURANCE

COUNTYS POSITION: (1) Effective January 1, 2017 the employee cost of individual coverage is \$84.00 per bi-weekly pay period, up from \$74. The employee cost of family coverage is \$150 per bi-weekly pay period, up from \$130. (2) Effective January 1, 2019, the employee cost of individual or family coverage is 25% of the annual premium equivalent paid bi-weekly each pay period. (3) Increase drug co-pays from \$5 \$15 \$30 to \$10 \$20 \$40 on January 1, 2018.

UNION'S POSITION: Maintain the existing contract language except that effective with the first full payroll period following ratification of this agreement, the employee cost of individual coverage becomes \$84.00 per bi-weekly pay period, up from \$74. The employee cost of family coverage is \$150 per bi-weekly pay period, up from \$130. At no time during the length of this agreement is the dollar amount to be converted to a percentage.

ISSUE: SALARY

COUNTY'S POSITION: Employees shall receive a salary increase of 0% on January 1, 2015, a 0% increase effective January 1, 2016, a 1 % increase effective January 1, 2017, a 1% increase effective January 1, 2018 and a 1% increase effective January 1, 2019

UNION'S POSITION: (1) Employees shall receive a salary increase of 2.25% effective January 1, 2015 and a 2.25% increase each subsequent January 1 through and including January 1, 2019. In addition, employees not at the top of their grade shall move to the next step each year on January 1. No employee may exceed the maximum of the grade. Retroactive salary payments shall be made to current employees only. (2) Add one step at Step 7 effective January 1, 2017. (3) Change Appendix A to reflect the foregoing.

ISSUE: DOUBLE TIME FOR HOLIDAYS & MANDATORY OVERTIME WORK

COUNTY'S POSITION: No change in overtime pay

UNION'S POSITION: (1) Add: Employees working mandatory overtime shall receive double time for hours worked. (2) Increase pay for employees working legal holidays from time and a half to double time

ISSUE: VACATION

COUNTY'S POSITION: No change in vacation chart

UNION'S POSITION: Change vacation chart to allow for more rapid accumulation of vacation credit after 9 years of employment

ISSUE: LONGEVITY

COUNTY'S POSITION: Retain longevity increments at 10, 15, 20 and 25 years without adding an additional longevity increment at 17 years. Increase the longevity increment to 5% of step one for employees hired prior to January 1, 2015; change longevity increments to fixed amounts of \$500, \$1,000, \$1,500 and \$2,000 for employees hired subsequent to January 1, 2015.

UNION'S POSITION: Add a longevity increment after 17 years in addition to increments at 10, 15, 20 and 25 years.

ISSUE: SICK LEAVE

COUNTY'S POSITION: Credit sick leave to employees hired subsequent to January 1, 2015 at a flat rate of 10 days per year. Employees hired prior to January 1, 2015 shall continue to accumulate sick leave at the rate of 4.6 hours per bi-weekly payroll period.

UNION'S POSITION: (1) Credit sick leave at the rate of 4 hours per bi-weekly payroll period instead of the current 4.6 hours. (2) Eliminate cap on accumulation of sick leave. (3) Allow employees who retire from the County the option to either cash out sick leave accruals at 50% of value or use 100% of the cash value of accrued sick leave toward a medical insurance plan provided by the County for its retirees.

ISSUE: SHIFT DIFFERENTIAL

COUNTY'S POSITION: Change shift differential from 5% to \$.75 per hour

UNION'S POSITION: Change shift differential from 5% to 8%

ISSUE: DISCIPLINE

COUNTY'S POSITION: No change

UNION'S POSITION: Change the advisory nature of the disciplinary process with regard to non-termination cases to final and binding arbitration as it currently exists in situations in which the employer seeks dismissal of the employee.

ISSUE: DRY CLEANING OF UNIFORMS

COUNTY'S POSITION: No change

UNION'S POSITION: Change the language of Article 1-B, Section 11 (b) to require that all employees are reimbursed for dry cleaning services for their uniforms at the rate of two (2) dry cleanings per week per member up to a total of \$4,500 per year.

FACT-FINDER'S DISCUSSION OF THE ISSUES

Throughout the two fact-finding hearings, October 6 and 13, 2016, and in written briefs submitted December 23rd, both parties offered numerous pages of charts, written rationale and verbal explanations in support of their respective positions. The County representative expressed it well when she stated, "The management and union bargaining teams have primarily focused their efforts in the mediation process to reach settlement on the main issues of wages, employee contributions to health insurance, and cost sharing for the health insurance plan. The employer understands the difficulty in dealing with these issues."

The fact-finder would add that the union, too, acted responsibly in recognizing the difficulty of dealing with these issues.

On the one-hand, there is no question that the rising costs of health insurance combined with the recent Great Recession have challenged municipal governments in their efforts to maintain services that taxpayers have come to expect while simultaneously holding down the tax rate for constituents many of whom, themselves, are suffering from the effects of the weakened economy. However, on the other hand, union employees are among the constituents whose raises have been minimal and whose ability to maintain their own standards of living have been severely challenged.

The fact that both parties have recognized the legitimate concerns of the other is a tribute to their professionalism. Finding a fair and equitable balance between the needs of the taxpaying public and the hard working public servants is difficult and is the reason that, despite nine previous bargaining sessions, a contract that was due to expire in December, 2014 continues in full force and effect as required by law. In his brief, the Union representative cites a reduction of 72 positions in the past eight years which he asserts have been eliminated in order to save money. No doubt when a workforce has to absorb the loss of that many positions it increases the workload for those who remain in their jobs. Hence, both parties have legitimate cause to be concerned about their financial situations and it attests to the quality of the representatives on both sides of the table that while pursuing their advocacy of their constituents they are able to recognize that the cause of the difficulties they confront is not the fault of the other party.

It is the fact-finder's hope that he can recommend terms and conditions for a settlement that will achieve agreement from the parties as a reasonable compromise.

FACT-FINDER'S DISCUSSION OF THE ISSUES - continued

As indicated, both parties offered a plethora of data and information in support of their respective positions. After pouring through every page, graph, and chart, notes from the two hearings, and the written briefs of the parties, the fact-finder has come to these conclusions:

- **The county legislators are right to be concerned about the economic future of the county and to take a conservative approach toward bargaining.**
- **The financial situation in Jefferson County, while requiring fiscally conservative management is not any worse than that which faces many county governments.**
- **Employees must temper their financial demands in light of the spiraling costs of health insurance, but are entitled to emerge from negotiations with at least a reasonable amount of an increase in take home pay when concessions on health insurance are calculated along with salary raises.**
- **Comparisons with other counties do not reveal a differential in either party's favor that would justify a settlement that is not in line with what appears to be happening elsewhere. Each party can point to (and has) wage settlements and insurance agreements that present an argument for what they are asking.**

ISSUE: HEALTH INSURANCE

COUNTYS POSITION: (1) Effective January 1, 2017 the employee cost of individual coverage is \$84.00 per bi-weekly pay period, up from \$74. The employee cost of family coverage is \$150 per bi-weekly pay period, up from \$130. (2) Effective January 1, 2019, the employee cost of individual or family coverage is 25% of the annual premium equivalent paid bi-weekly each pay period. (3) Increase drug co-pays from \$5 \$15 \$30 to \$10 \$20 \$40 on January 1, 2018.

UNION'S POSITION: Maintain the existing contract language except that Effective with the first full payroll period following ratification of this agreement, the employee cost of individual coverage becomes \$84.00 per bi-weekly pay period, up from \$74. The employee cost of family coverage is \$150 per bi-weekly pay period, up from \$130. In arguing against an employee contribution toward health insurance premiums based on a percentage, the Union contends that this would deprive the employer of an incentive to go to the bargaining table. However, the union says it would go to a % if there is a cap.

FACT-FINDER'S RECOMMENDATION:

The fact-finder finds the County's rationale for relief with regard to health insurance compelling. During negotiations the County took offense at the implication that if employee contributions were based on a percentage of the cost of health insurance premiums it would not have an incentive to bargain in good faith. The fact-finder does not doubt that the County's intent is and would be to bargain in good faith over a successor agreement regardless of the terms of the current contract. Nevertheless, just as employees have an incentive to reach an agreement in order to receive retroactive pay raises, with no guarantee they will receive retroactivity in an agreement, it is fair for them to be concerned that the employer may not have the same incentive. Taking all of the foregoing into account, the fact-finder recommends as follows:

- Effective with the first full payroll period following ratification of this agreement, the employee cost of individual coverage becomes \$84.00 per bi-weekly pay period, up from \$74 and the cost of family coverage is increased from \$130 to \$150.
- Increase drug co-pays from \$5 \$15 \$30 to \$10 \$20 \$40 on January 1, 2018.
- Effective January 1, 2019, the employee cost of individual or family coverage is 18% of the annual premium equivalent paid bi-weekly each pay period.

The fact-finder believes these recommendations will offer the County a reasonable amount of relief from the rising costs of health insurance while allowing employees a reasonable raise when taken into account with the fact-finder's salary recommendations.

HEALTH INSURANCE RECOMMENDATIONS – continued

While the Union's concern about depriving the employer of an incentive to return to the bargaining table as the end of this agreement nears, the recommendation of 18 percent is such that by the time of negotiations for a successor agreement, if insurance costs continue to escalate at their current pace, it may be low in comparison with most comparable situations. Therefore, it could easily be to the Union's advantage to stay with the expiring agreement as much as to the employer's. But it does seem fair to have percentage contributions for two reasons: 1) a growing number of public sector employee units already contribute on a percentage basis; 2) if there is no new contract when this agreement expires the employer will continue to absorb cost increases and this way the employee will share in those increases while, probably, being glad that until they reach a new agreement their contribution rate will remain at 18%.

The fact-finder is sensitive to the excessive (and perhaps unfair) burden placed upon lower paid employees by having to pay the same amount toward their health insurance premium as higher paid employees. While he is not recommending a cap or any other solution, at this time, he urges the parties to consider this matter strongly in the next round of negotiations.

ISSUE: SALARY

COUNTY'S POSITION: Employees shall receive a salary increase of 0% on January 1, 2015, a 0% increase effective January 1, 2016, a 1 % increase effective January 1, 2017, a 1% increase effective January 1, 2018 and a 1% increase effective January 1, 2019

UNION'S POSITION: (1) Employees shall receive a salary increase of 2.25% effective January 1, 2015 and a 2.25% increase each subsequent January 1 through and including January 1, 2019. In addition, employees not at the top of their grade shall move to the next step each year on January 1. No employee may exceed the maximum of the grade. Retroactive salary payments shall be made to current employees only. (2) Add one step at Step 7 effective January 1, 2017. (3) Change Appendix A to reflect the foregoing.

FACT-FINDER'S RECOMMENDATION:

With his recommendation on health insurance, the fact-finder is asking employees to bite the bullet and recognize the need to alleviate the employer's health insurance costs, to some extent.

Now the fact-finder is asking the employer to recognize the fairness in seeing that employees end up with more in their paychecks even after taking into account the increased costs to them of their health insurance contributions and co-pays.

SALARY – continued

The fact-finder is recommending raises as follows:

January 1, 2015: 1.5%

January 1, 2016: 1.5%

January 1, 2017: 2.25%

January 1, 2018: 2.25%

January 1, 2019: 2.25%

In addition, employees not at the top of their grade shall move to the next step each year on January 1. No employee may exceed the maximum of the grade. Retroactive salary payments shall be made to current employees only. (2) Do not add a step at Step 7. (3) Change Appendix A to reflect the foregoing.

The fact-finder considers raises of 2.25% per year reasonable in the current environment, considering the insurance concessions he is asking of the union. However, had this agreement been reached at the end of December, 2014, it is likely an increase in insurance contributions would have been part of that agreement. In recommending raises less than 2.25% the fact-finder is recognizing that the County cannot now collect insurance contributions retroactive to January 1, 2015, hence a recommendation that raises be a little lower for the past two years.

The fact-finder would add that a recent report from the Department of Labor indicated that worker's pay raises have begun to accelerate for the first time in more than ten years and that this is due to an improving economy as assessed by much recently released data. The wages being recommended by the fact-finder will extend into the 2019 calendar year at which time they may actually be considered to be on the low side when compared with settlements being reached at that time.

ISSUE: DOUBLE TIME FOR HOLIDAYS & MANDATORY OVERTIME WORK

COUNTY'S POSITION: No change in overtime pay

UNION'S POSITION: (1) Add: Employees working mandatory overtime shall receive double time for hours worked. (2) Increase pay for employees working legal holidays from time and a half to double time

FACT-FINDER'S RECOMMENDATION:

The fact-finder recommends that this proposal not be included in the successor agreement.

There is a lot of legitimacy to the Union's rationale for this proposal. However, the fact-finder is offering recommendations that make it relatively easier to calculate costs and benefits. In asking the employer to agree to a higher salary proposal than he is sure it had in mind, he is doing so with the intent not to burden the County with any additional potentially significant cost items. Also this is the kind of proposal that is most likely to be achieved in a bargaining process when the parties are able to reach agreement early in, or prior to, the onset of impasse.

ISSUE: VACATION

COUNTY'S POSITION: No change in vacation chart

UNION'S POSITION: Change vacation chart to allow for more rapid accumulation of vacation credit after 9 years of employment

FACT-FINDER'S RECOMMENDATION:

The fact-finder recommends that this proposal not be included in the successor agreement.

Once again, the fact-finder believes that his recommendations on health insurance and wage increases reflect fairness, economically, to both parties and he is reluctant to recommend anything else that could have a significant economic impact.

ISSUE: LONGEVITY

COUNTY'S POSITION: Retain longevity increments at 10, 15, 20 and 25 years without adding an additional longevity increment at 17 years. Increase the longevity increment to 5% of step one for employees hired prior to January 1, 2015; change longevity increments to fixed amount of \$500, \$1,000, \$1,500 and \$2,000 for employees hired subsequent to January 1, 2015.

UNION'S POSITION: Add a longevity increment after 17 years in addition to increments at 10, 15, 20 and 25 years.

FACT-FINDER'S RECOMMENDATION:

The fact-finder recommends that this proposal not be included in the successor agreement for the same reason as stated with regard to the previous two issues.

ISSUE: SICK LEAVE

COUNTY'S POSITION: Credit sick leave to employees hired subsequent to January 1, 2015 at a flat rate of 10 days per year. Employees hired prior to January 1, 2015 shall continue to accumulate sick leave at the rate of 4.6 hours per bi-weekly payroll period.

UNION'S POSITION: (1) Credit sick leave at the rate of 4 hours per bi-weekly payroll period instead of the current 4.6 hours. (2) Eliminate cap on accumulation of sick leave. (3) Allow employees who retire from the County the option to either cash out sick leave accruals at 50% of value or use 100% of the cash value of accrued sick leave toward a medical insurance plan provided by the County for its retirees.

FACT-FINDER'S RECOMMENDATION:

The fact-finder recommends that this proposal not be included in the successor agreement for the same reason as stated with regard to previous issues.

ISSUE: SHIFT DIFFERENTIAL

COUNTY'S POSITION: Change shift differential from 5% to \$.75 per hour

UNION'S POSITION: Change shift differential from 5% to 8%

FACT-FINDER'S RECOMMENDATION:

The fact-finder recommends that this proposal not be included in the successor agreement for the same reason as stated with regard to previous issues.

ISSUE: DISCIPLINE

COUNTY'S POSITION: No change

UNION'S POSITION: Change the advisory nature of the disciplinary process with regard to non-termination cases to final and binding arbitration as it currently exists in situations in which the employer seeks dismissal of the employee.

FACT-FINDER'S RECOMMENDATION:

The fact-finder recommends that this proposal should be included in the successor agreement. However, reprimands should not be considered "discipline" under this proposal. The employer has a need to reprimand and to include any such reprimand in an employee's file in order to document a case for discipline if it should go before an arbitrator.

The fact-finder suggests that this proposal can actually benefit the employer as much as employees. If there is a situation where an employee is disciplined and an employer does not support the decision of an advisory arbitrator, the damage to morale and the potential for protest demonstrations is real. Employees will not accept a judgement with which they disagree if it is rendered by the employer over the recommendation of a neutral party. The entire rationale for arbitration in any situation is that the alternative is to have an employer act as judge and jury in a situation where it is asked to support or over-rule a decision by someone on its management team. In the rare instances where this occurs, the disruption to labor-management relations can be severe. A significant rationale for using an arbitration process is it takes away from the employees the perception that the employer is sitting in judgement of a decision made by a member of the management team.

There may never be a situation where a case that does not involve dismissal actually goes to arbitration. In the rare situation where this does occur, the employer is often better off allowing this neutral process to handle matters so that normal employer-employee functioning can continue.

Finally, this is one aspect of the current bargaining stalemate that the employer can agree to without making a commitment to additional expenditures and it seems fair to ask the County to make this concession in light of all the union proposals it feels compelled to reject because of the financial implications.

ISSUE: DRY CLEANING OF UNIFORMS

COUNTY'S POSITION: No change

UNION'S POSITION: Change the language of Article 1-B, Section 11 (b) to require that all employees are reimbursed for dry cleaning services for their uniforms at the rate of two (2) dry cleanings per week per member up to a total of \$4,500 per year.

FACT-FINDER'S RECOMMENDATION:

This Union Proposal should be included in the successor agreement. The cost is minimal, perhaps nothing at all above what is already in the contract and the Union rationale is persuasive.

FACT-FINDER'S ADDITIONAL RECOMMENDATION:

Any and all agreements reached prior to this date shall be incorporated in the successor agreement. All provisions of the previous agreement shall remain in full force and effect in the successor agreement except those expressly changed by these recommendations and any agreements previously reached by the parties.