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Westchester Joint Water Works and Utility Workers Union of America, Local 1-2

Peter A. Korn

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Westchester Joint Water Works and Utility Workers Union of America, Local 1-2

Keywords

New York State, PERB, fact finding

Comments

In the matter of the fact-finding between the Westchester Joint Water Works, employer, and the Utility Workers Union of America, Local 1-2, union. PERB case no. M2017-137. Before: Peter A. Korn, fact finder.

STATE OF NEW YORK
Public Employment Relations Board
Case No. M2017-137
January 14, 2019

-----X

In the Matter of
WESTCHESTER JOINT WATER WORKS
(“Water Works” or “WW”)

and
Utility Workers Union of America, Local 1-2
(“Union”)

-----X

FINDINGS OF FACT
and
RECOMMENDATIONS
FOR RESOLUTION

Peter A. Korn
Fact Finder

APPEARANCES

For the Water Works

Thomas P. McDonough, Esq.
Jackson Lewis, P.C.

For UWUA

Sidney H. Kalban, Esq.
General Counsel, UWUA

INTRODUCTION

This is the Fact Finder's report in the matter of the impasse between the Westchester Joint Water Works, Westchester County ("Water Works or WW") and the Utility Workers Union of America Local 1-2 ("Union") which are seeking to negotiate renewal terms and conditions of employment in a collective bargaining agreement ("CBA") that expired on December 31, 2015 and continued in effect. The report provides findings of fact and recommendations for resolution of the parties' impasse.

The Water Works is a public benefit corporation created pursuant to Chapter 654 of the Laws of 1927, and act to authorize two or more municipalities jointly to acquire, construct, lease and maintain a waterworks system and to obtain and distribute a supply of water. Its member municipalities are the Village/Town of Harrison, the Village of Mamaroneck and the Town of Mamaroneck. It also wholesales water to the Village of Larchmont and Suez Westchester Company serving Port Chester/Rye/Rye Brook. It operates as a utility and is owned by its three member municipalities, the chief elected officials of whom constitute its board of trustees.

UWUA Local 1-2 in the Water Works consists of one unit with 20 employees comprised of both clerical employees and blue collar employees in such titles as: Water Plant Operator II B, Plant Operator Trainee, Water Maintenance Foreperson, Motor Equipment Operator, Water Maintenance Worker Grade 1 (a) and Grade II (a), Laborer. Clerical employees are Inventory Control Clerk, Senior Data Entry Clerk, Senior Account Clerk, Intermediate clerk, Intermediate Account Clerk and Office Assistant Automated Systems.

Eight management staff employees are excluded.

The then-parties, UWUA Local 476 and the Water Works, entered into negotiations for a successor agreement in early 2016. They met fifteen (15) times between 1/13/16 and 3/30/17. In 2017, as the parties were negotiating, the bargaining unit employees voted to affiliate Local 476 with UWUA Local 1-2. Negotiations continued and the parties met four times until a Declaration of Impasse was made on December 4, 2017 and a PERB mediator was brought in.

After the parties failed to reach an agreement in mediation, the Union requested the appointment of a PERB Fact Finder on August 6, 2018.

On August 28, 2018 the New York State Public Employment Relations Board (“PERB”) appointed the undersigned as Fact Finder. A 7-1/4 hour fact finding hearing was held on October 10 at which the parties presented exhibits, background, data and position summaries and sought to explain their positions. The parties said they would provide written closing submissions postmarked November 15. The final post-hearing brief was received on November 26, 2018. All material submitted has been carefully examined and these findings and recommendations follow.

BACKGROUND

Some opening comments about the negotiating relationship and history of the parties are essential to understand their positions. These recent negotiations and lack of resolution stem from some basic disagreements: the Union believes that both comparables and the cost of living increases warrant a cumulative increase in the wage schedule that is paid retroactively. It believes that the employees’ 25% share of health insurance premiums is substantially higher than surrounding municipalities and warrants a smaller contribution. Further it claims that premium pay be paid for weekend and midnight shift work, as several comparables do.

The Water Works seeks limited changes in the CBA. It posits that bargaining unit members are well paid and that the 25% health insurance contribution rate was the offsetting cost that was assumed by members. Further the high salaries covered premium pay in this 24/7 operation. While it is prepared to increase wages, the payments are not to be made retroactively, but only paid moving forward and only to employees presently on the payroll, not newly hired employees. These are major differences and have led to the lack of settlement.

Because there is no other bargaining unit, there is no other internal settlement to which we can refer. However, the Water Works is what we would call today, an inter-municipal agency. It is formed by three municipalities and governed by the three chief elected officials of those

municipalities. A fourth municipality, Larchmont, receives all its water from the WW on a wholesale basis. Those four municipalities, along with one or two nearby others who have water treatment and distribution employees, provide the comparables to the extent they have bargaining settlements.

During the three years the parties were unable to reach agreement, these other municipalities developed a settlement pattern for both wage increases and employee contributions toward health insurance premiums. These established patterns cannot be ignored. Perhaps the solution will be for both parties to put aside their multi-year negotiating history and seek to identify what is fair during a difficult period ahead. The parties have asked the Fact Finder for recommendations for the 2016 through 2019.

ISSUES AND FINDINGS OF FACT

The pre-hearing briefs confirmed the identification of the following six issues as those in dispute that the parties wished to present to the Fact Finder for resolution:

- Health Insurance – Employee Cost Sharing (%);
- Basic Wage Schedule Adjustment, including step progressions;
- Wage rate upon promotion to the next higher title;
- Wages for and duties of mixed skill maintenance workers;
- Midnight premium wages;
- Saturday and Sunday and premium wages.

These items will be reviewed and discussed with the health insurance issue covered first. The Fact Finder hopes that the parties consider each recommendation on its merits, as well as the totality of the package. Much of the previous conversation appears to have been guided by unit unhappiness over a demand that they continue to contribute at a relatively high rate toward

health insurance costs that have increased each previous year, while the Water Works offers no retroactivity in wage adjustments nor make them available to new employees. The Water Works has raised the issue of financial capacity and this will be considered in analysis and discussion. This is a chance to look forward and consider the merits and equities of a proposed resolution.

Health Insurance – Employee Cost Sharing (%)

Members of the bargaining unit contribute 25% of health insurance premiums for their entire service. This contribution rate has been in effect since about 1997. That cost has increased substantially during the past several years, while the average unit employees share has increased from 5.45% to 8.68% of salary or family coverage. The Union fears that health insurance premiums will eat up more and more of employees' salaries over time. Presently, the annual contribution is \$3,045 (\$58.56/week) and \$7,044 (\$135.47/week). The Union seeks to revise the amount of health insurance premium to \$56.48/week for individual coverage and \$126.65/week for family coverage, effective January 1, 2019, and notes how much more bargaining unit members contribute compared to those in the three sponsor communities (Mamaroneck town and village, Harrison town/village) and Larchmont.

The Water Works asserts that wage and health insurance should be considered in tandem since the Union proposal would impose a significant financial hardship. The Water Works proposes to maintain the existing 25% contribution. It cites the testimony of the General Superintendent noting that the predecessor Union negotiated the 25% contribution rate in exchange for a contract which provided for "the high salaries now enjoyed by bargaining unit personnel." It notes that the Union plan would result in the Water Works paying an additional \$5,492/year and cites a bargaining history of providing employees with high salaries in return for health insurance contributions.

The Union proposal on premium contributions by employees cites a number of towns and villages in the geographical area of the Water Works. There is a wide range of percentage contributions depending on hiring dates and other considerations. For employees with about 10

years of experience, the Harrison contribution is 25% for years 1-14; Mamaroneck town 15% not to exceed 4% of base pay; Mamaroneck Village contribution is 25% for years 1-10 and 8% for years 11-16; Larchmont family plan contribution is 20% for years 1-10 and single plan is 10% for years 1-10; Scarsdale (Teamsters –Water) contribution is 2% of base pay; Larchmont-Mamaroneck Sanitation District is only for the first 15 years. The contribution rate for new employees in these jurisdictions varies between 10%-25%; two municipalities, Harrison and Mamaroneck Village, limit contributions to either the first 15 years or first 10 years of service, while three municipalities have no time limit. The Water Works contribution rate is 25% for an unlimited period of time and has been so for 20 years.

An analysis of these comparables for towns and villages indicates:

- The average new employee contribution is 19%;
- The average 10-year employee contribution is 16.5%;
- For most, but not all, the contribution is made on a continuing basis;
- A wide range in contribution rates, but consistently moving higher over time and none decreasing;
- The Water Works has the highest continuing employee contribution: 25% for an unlimited period of years;

The Union proposal maintains the high dollar amount of the current contribution rate, but caps it in the hope that the percentage may someday decrease and that any wage increase for employees will not be consumed by the rising cost of medical premiums. Alternatively it proposes that the premium percentage paid by employees should be reduced to a lesser amount, “such as the 15% or 20% paid by employees in comparable municipal employment”, or the employee contribution should end after 10 or 15 years, as several provide. Regardless, and correctly, the Water Works notes that no comparable municipality “has experienced a decrease in health insurance costs such as that proposed by the Union.

The Fact Finder’s recommendation is based on outside comparables where several area municipalities are at now at 20%-25% and others appear to be climbing to those rates.

Fact Finder Recommendation – Health Insurance

Health Insurance contributions for bargaining unit members should remain at 25%. There is no comparable or historical basis for reducing the negotiated health insurance contribution percentage, especially within the area of comparables and the sponsor municipalities.

Base Salary Schedule Adjustments

Both parties seek a CBA that covers the period January 2016 through December 31, 2019. UWUA proposes that employees should receive the following annual wage increases and that they be retroactive to the dates shown:

UWUA WAGE PROPOSAL

- January 1, 2016 One-time, \$1,700 not added to the wage schedule;
- January 1, 2017 2.00% added to the wage schedule
- January 1, 2018 2.25% added to the wage schedule
- January 1, 2019 2.25% added to the wage schedule

Wage increases to be retroactive to respective dates in 2017 – 2019. Initiate a new 8-step schedule for new hires after contract ratification to replace the existing five-step schedule. Upon promotion, the employee should receive the step at the next higher wage rate to that earned prior to promotion. Upon passing a test for promotion, the employee shall be promoted to the title for which the test was given.

WATER WORKS WAGE PROPOSAL

- January 1, 2016 One-time, \$1,100 not added to wage schedule
- January 1, 2017 1.75% added to wage schedule for current employees
+\$300 one-time payment not added to schedule
- January 1, 2018 2.00% added to schedule for current employees
- January 1, 2019 2.25% added to schedule for current employees

WW proposal is for no retroactivity of proposed wage increases. The new hire 8-step wage schedule is accepted, but exempted from contractual increases; the salary schedule for new hires

remains the same throughout the term of the agreement. WW does not propose any changes to the existing contract, including no provision for automatic promotions on passing an examination.

At the hearing and in its post-hearing brief, the WW alludes to the high salaries paid by the Water Works. It quotes the General Superintendent as saying that the 25% health insurance contribution was in return for “the high salaries now enjoyed by bargaining unit personnel” and “for working night and weekends, with no differentials or other extra pay”. When looking at comparables, it is generally true that WW salaries are at the upper end of the range, especially for many clerical and support jobs, but not always for plant operations and field staff. (See Water Plant Operator IIB, Water Maintenance Foreperson, Engineering Aide, Maintenance Worker Grade I(a) and II (a).

These plant and field salaries are competitive with comparables, but not when the health insurance contributions are factored in.

This year a WW Water Plan Operator IIB with 10 years of experience, paid \$7,044 for a Family health insurance plan. A similar Larchmont employee would contribute nothing, since no contribution is required after 10 years of service. Thus, the net salary of a Water Works Water Plan Operator IIB would be \$74,289 or almost \$3,000 less than the Larchmont plant operator (See Management Closing -17). A Scarsdale employee with 10 years of service would contribute 1% of base pay for health insurance, or about \$825 for 2018. This is about \$6200 less of a Family plan health insurance contribution than a WW employee is required to pay.

Assuming they use the NYSHIP plan, a ten-year employee paid \$80,000 in Mamaroneck town would no pay more than 4% of salary or \$3,200; in Mamaroneck Village would contribute 8% of pay or \$2,254; in Harrison the employee would contribute 25%, the same as WW, but nothing after 14 years. In the Larchmont-Mamaroneck Sanitation District, employees pay nothing for the Single plan and 30% of the differential between the Single and Family or about \$4,800. Except for Harrison, the savings to employees ranges as high as \$4,790.

These differentials in health insurance contribution dollars have to be considered in evaluating the base wage proposals of the parties. It is not just percentage differentials, but dollar differentials that affect bargaining unit members. While WW salary levels are on the high end of the various ranges, they are not so high as to be considered extraordinary or that the base wage adjustment should penalize employees.

Fact Finder Recommendation – Base Salary Schedule Adjustments, Promotions,

Retroactivity

| | |
|-----------------|--|
| January 1, 2016 | One-time \$1,200 <u>not</u> added to wage schedule |
| January 1, 2017 | +2.00% to wage schedule; + one-time payment of \$300 <u>not added</u> to wage schedule |
| January 1, 2018 | +2.00% to wage schedule |
| January 1, 2019 | +2.25% to wage schedule |

The recommended wage increases fall within the range (1.75% - 2.5%) of already agreed on increases for comparable and sponsor communities. Wage increases are to be retroactive; retroactivity of pay adjustments is standard and found in all comparable contracts. New employees hired during 2019 after ratification are not entitled to the January 1, 2019 wage adjustment. Employees promoted during 2019 are entitled to the benefits, if any, of the new schedule. Employees promoted to a higher title are entitled to be placed at the next higher step in the new title. This pay increase on promotion is fairly standard in area municipalities, including the WW sponsor municipalities.

Automatic Promotions: The Union seeks to have employees promoted when they pass a civil service examination for a higher title. They argue that it is a disincentive to test for a promotion if the WW can make the employee wait for that promotion “until some manager exercises some unlimited discretion to allow the promotion.” The Water Works wants no change.

The Union position indicates a lack of understanding about jobs, promotions and the civil service examination process. Management determines what kind of work is needed. A job title with duties and responsibilities is created and approved by county civil service specialists. Before a position can be filled on a permanent basis when there is no existing list of eligible candidates, County Human Resources will announce a test for the job and eligible candidates will take the test. The person selected must come from the top three candidates.

For example, if there is one position of senior operator and four junior operators take and pass the examination, the permanent candidate will come from the civil service list of eligibles. The Union position would require the WW to create multiple positions of senior operator when there may only be a need for one. WW should not be forced to create jobs just because multiple employees have qualified on an examination. The best candidate, one of the three, will ordinarily be selected for the vacancy. The others have to wait for a new vacancy. This is standard amongst the comparables and other municipalities.

The Union position on requiring promotion upon passing a civil service examination is not adequately supported and its position is denied.

MIXED SKILLS MAINTENANCE WORKER

A Mixed Skills Maintenance Worker pool was added during the negotiations that resulted in the 2015 Memorandum of Agreement. Water Maintenance Workers Grade II in the pool provide added flexibility to the Water Works by being able to work in different capacities as needed. Workers in the pool receive an additional \$1.35 for all hours worked, regardless of whether they are working as Water Plant Operator IIB or the lower level position of Water Maintenance Worker Grade II. Employees receive this additional pay supplement without having to take a civil service examination.

The Union seeks to have Mixed Skill Maintenance Workers who are qualified to and do work as Water Plan Operators IIB receive the rate of pay for that classification for all hours they work. It argues they should be paid the wage rate for the higher classification for which they had to qualify because they provide added flexibility by being able to work in different capacities as needed. The Union also seeks to allow an employee currently working in a Mixed Skill capacity and receiving the differential (\$1.35/hour) to withdraw from the pool in order to work only in the lower classification, not being required to perform the duties of Water Plant Operator IIB.

The WW notes that the mixed skill differential offers a significant benefit for all affected employees by increasing their pay rate on all hours worked, regardless of whether they are performing higher-level work. Employees receive the differential on all hours without having to take a civil service examination. The WW Manager testified that WW could require affected employees to perform functions, for which they now receive the differential, as part of their existing jobs. WW noted that the Union did not show why the mixed skills differential was insufficient. Regardless, they would not object to workers in the mixed skill pool opting out.

Fact Finder Recommendation - Mixed Skills Maintenance Worker

Mixed Skills Maintenance Workers should have the ability to opt out of the pool. Those who opt out will not receive the differential. The Union proposal to reclassify Water Maintenance Worker Grade II employees to Water Plant Operator IIB for all hours they work is basically a pay increase for higher level work, whether it is being performed or not and whether a plant operator is needed or not. It is recommended that employees in the mixed worker pool continue to receive \$1.35/hour for all hours they are in the pool not serving as plant operators. For those hours they actually serve as plant operators, they should receive the hourly rate they would be entitled to if they had been promoted to a plant operation position.

PREMIUM RATES – NIGHTS AND WEEKENDS

The Union position it is that premiums should be paid for work on “midnight” shifts at 5% above the normal wage rate for that job classification, and for work on Saturdays or Sundays at 1.5 times the normal hourly wage rate. The Union argues that these kinds of differentials are common in many comparable community CBA’s. The Water Works submits that their high wage rates were specifically constructed to include those differentials in a 24/7 water operation and they object to them.

Fact Finder Recommendation - Premium Rates - Nights and Weekends

As the Water Works has noted, its employees tend to be well paid. However as the Union has noted, some comparables provide premium rates. It is recognized today that regular night shifts have a long-term impact on the health of employees, especially those who work daily on the midnight shift. This should be recognized by implementing a premium rate of \$.40/hour* for each hour an employee works on the midnight shift. In a 24/7 water operation the regular base pay rates are sufficient to cover work on weekends.

Fact Finder Recommendation - All Other Proposals

The term of this collective bargaining agreement shall be from January 1, 2016 to December 31, 2019. The Fact Finder recognizes that less than one year remains during the term of these recommendations and that the parties will be negotiating again on the items touched on in this report and others. The Fact Finder notes that, at this time, evidence and reasons offered do not support any further changes in the terms and conditions of the CBA.

ABILITY TO PAY – UNIQUE FINANCIAL CHALLENGES

The Water Works properly raises the issue of its ability to fund the Union proposals. It notes that it derives revenues solely from the sale of water, which can fluctuate significantly based on weather, that after covering its operating costs it distributes anything additional to member municipalities to cover their water system expenses and it has no power to bond. It also confronts two large and unknown future expenses: (1) New York City's water rate increases and (2) significant fines and/or the cost of building a water filtration system at its Rye Lake supply or an alternative project.

Suffice to say that the issues of revenues from the sale of water and distributions back to member municipalities, along with New York City water rate increases are matters of

*Same as the cited White Plains midnight differential

long standing. The Water Works has coped with these issues and should continue to do so. While water rates have increased in the served communities, they have increased almost everywhere and homeowner bills have gone up significantly. The need for construction of a water filtration facility is one of 20-years standing and the lack of resolution cannot be laid at the feet of the Union or its members. With a State court order in hand, the failure to confront or challenge the requirements of the Harrison Planning Board can only be answered by the governing board. When the project proceeds, it will have a significant impact on the WW budget. If the fines are waived, the liability will be removed from the balance sheet and debt payable will replace it. Of course, if the plant had been constructed 20-years ago, it would have been a lot less costly than today.

Although not clear from reading the balance sheet, one would hope that the WW business office would have been accumulating reserves over the past three years to cover much of the cost of a labor settlement. It is something which everyone knew about and should have anticipated.

CONCLUDING STATEMENT

The wage increase recommendation will maintain the relative position of the bargaining unit members with nearby towns and villages. Coupled with the Fact Finder recommendation that the 25% health insurance contribution remain, it will not impose extraordinary burdens on the WW and will allow workers fair pay adjustments.

These recommendations may not be the perfect resolution to this matter. However, they do represent a reasonable solution to resolving these negotiations in this very longstanding dispute. The parties are encouraged to adopt them as written. Were an effort made to select a favorable item, rejecting the other, this dispute is likely to continue. Therefore, their adoption is urged as soon as practicable.

SUMMARY OF RECOMMENDATIONS

The following are the Fact Finder recommendations for resolution of the impasse between the Westchester Joint Water Works and the Utilities Workers Union of America Local 1-2.

Term of Agreement: This agreement shall be in effect from January 1, 2016 to December 31, 2019.

Fact Finder Recommendation – Health Insurance

Health Insurance contributions for bargaining unit members should remain at 25%. There is no comparable or historical basis for reducing the negotiated health insurance contribution percentage, especially within the area of comparables and the sponsor municipalities.

Fact Finder Recommendation – Base Salary Schedule Adjustments, Promotions, Retroactivity

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Any proposals set forth in bargaining and which were not presented to the Fact Finder are left to the resolution of the parties.

Peter A. Korn, Fact Finder

January 14, 2019

STATE OF NEW YORK)
) ss:
COUNTY OF WESTCHESTER)

I, Peter A. Korn, do hereby affirm that I am the individual described herein and who executed this instrument, which is my Findings of Fact and Recommendations for Resolution.

Peter A. Korn, Fact Finder