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I. Leonard Seiler

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Yonkers, City of and International Brotherhood of Teamsters

Abstract

In the Matter of the Impasse between City of Yonkers and International Brotherhood of Teamsters. Case No. M2008-065. I. Leonard Seiler, Fact Finder. Issued in Hackensack, New Jersey.

Keywords

New York State, PERB, fact finding

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Impasse between
CITY OF YONKERS) FACT-FINDING REPORT
and
AND) RECOMMENDATIONS

INTERNATIONAL BROTHERHOOD OF TEAMSTERS) Case No. M2008-065

I. Leonard Seiler
Fact Finder
Issued in Hackensack, New Jersey

1. Procedure

On October 8, 2008, the New York State Public Employment Relations Board, having determined that an impasse continued to exist in negotiations between the City of Yonkers Board of Education, hereinafter referred to as the "Employer", and Local 456 of the International Brotherhood of Teamsters, hereinafter referred to as the "Union", appointed the undersigned to inquire into the causes and circumstances of this dispute involving the aforementioned parties pursuant to Sections 209 and 205.5(k) of the New York Civil Service Law with authority to proceed under the applicable statutes, rules and regulations to carry out the purpose of the Fact-Finding Procedure.

The Parties have been unsuccessful in concluding a contract though they met in nine (9) or ten (10) negotiating sessions, the last being held on April 2, 2008. They were, however, successful in narrowing their open issues to two (2): a) the level of employee Health Insurance contributions and b) the Employer's proposal of instituting a merit pay system. The Parties on June 5, 2008, declared an impasse and the Union filed a Declaration of Impasse with P.E.R.B.. On July 8, 2008, the parties participated in an unsuccessful mediation session. They felt that any additional mediation meetings would be fruitless and so requested from P.E.R.B. the appointment of a fact finder.

A Fact-Finding Hearing was held on December 3, 2008, at the conclusion of which the parties agreed to submit to the fact finder their fact-finding post-hearing briefs in support of their respective positions, postmarked by February 6, 2009. Subsequently, by agreement of the parties, the date for submission of their fact-finding post-hearing briefs was extended first to March 6, then to March 20, 2009.

Mr. Seiler, the fact finder acknowledged their receipt in writing on March 24, 2009, and asked if he should proceed with his report or would reply briefs be submitted. On April 2, 2009, the fact finder received a fax from the attorney for the union which stated: "The parties will have decision by Friday whether or not they will submit additional briefs." Not hearing anything

further from the parties by April 11, 2009, the fact finder proceeded with the writing of the Fact-Finding Report in this impasse.

2. In General

a) This impasse arises from the negotiations of a collective bargaining agreement between the parties to succeed their last Memorandum of Agreement which expired on June 30, 2003.

b) The Fact Finder having carefully considered the entire record before him consisting of the parties' fact-finding and reply briefs, encompasses his recommendations in the Fact-Finding Report which follows.

c) The requests were evaluated in accordance with the arguments and data submitted, and weight was given, in addition to other criteria, to other Yonkers Board of Education settlements.

d) The "position" of the parties and the Fact Finder's "discussion" reflect a summary and are not intended to be all-inclusive.

e) The Union represents a very diverse group of approximately 22 members in the central offices of the Yonkers Board of Education. They include both certified and non-certified personnel, employees who are subject to different disciplinary and other regulations and who are in different retirement systems, supervisory and non-supervisory employees, and the part-time psychiatrist.

f) The parties had participated in some nine(9) or ten(10) negotiating sessions and one (1) mediation session during 2006-8, prior to engaging in Fact-Finding.

g) The parties have reached tentative agreement on all proposed contract issues but the two (2) which they submitted to fact-finding. They are: 1) health insurance and 2) merit pay.

Background

The District is a public school district located in Westchester County, New York.

The District has at least two(2) other bargaining units - the Teachers Assn. and the CSEA.

3. Issues

1. Health Insurance
2. Merit Pay

Both of these issues are management demands.

Analysis of the exhibits and arguments submitted, research and study of the foregoing items in impasse having been concluded, the Fact Finder has made his recommendations on all of the said issues presented to him.

1. Health Insurance

Currently, the Board pays all of the health insurance premiums and Union members contribute nothing. However, the Union, after extensive negotiations, has agreed to contribute toward their members' health insurance premiums but disagrees with the amount of contribution the Board seeks and the absence of a cap on contributions. It seeks to be treated similarly to the Yonkers Teachers Assn. members and the CSEA members, whereas, the Board maintains they are more comparable to the non-represented Central Office Group.

Management Position:

The Board feels that the non-represented central office employees are the more appropriate group for determining health insurance premiums inasmuch as their high and low salaries are far more similar to those of the IBT members than the groups the union cites. It contended that central office employees contribute 10% without cap and this is what the IBT members should do.

Union Position

Though its members are not currently contributing to their health insurance costs, they are willing to do so, if an acceptable formula can be agreed to.

The Board's proposal, however, of 10% starting immediately with no cap is unacceptable for several reasons.

The Union could not understand why it should be treated differently than the Teachers or CSEA unions as regards to health care contributions.

It noted that in recently concluded negotiations, the Board has agreed on health care contributions for the Yonkers Federation of Teachers of 5% with a cap of \$500 for individual coverage and \$1,000 for family coverage and flat rates of \$250 for singles and \$500 for family contribution for members of the Civil Service Employees Association.

The Union also pointed out that the newly negotiated teacher contract Paragraph 2 provides that effective July 1, 2009 (the same date that current employees would begin paying health care contributions), all teachers will be bumped up a lane of the salary schedule, thus in effect, the Board will be at least reimbursing the employee's insurance costs.

To resolve the matter, the Teamsters proposed a yearly contribution of \$375 for singles and \$750 for family coverage, a middle ground between the Teachers and CSEA contract provisions.

Management Response:

For comparison purposes, it maintains that the appropriate group is central office employees as shown in Board Exhibit 5 which shows the High, Low and Average for the Board's employees

by group. It claimed that comparison with central office employees is readily apparent.

Recommendation:

One could argue from the Board's exhibits 5 & 6 that the IBT unit is as comparable to the YFT Teachers as to the Non-Represented Central Office employees. Though exhibit 5 shows a high of \$175,680 for the Teamsters and only \$123,746 for the teachers, exhibit A-4 indicates the only real high Teamster unit salary is for the Medical Inspector.

Therefore, it is recommended that all IBT members other than the Medical Inspector contribute the same as the Yonkers Federation of Teachers, i.e. 5% of the health insurance premium with a cap of \$500 for individual coverage and \$1,000 for family coverage. As to the Medical Inspector, he should contribute the same 10%, without a cap, as required of Central Office Employees.

2. Merit Pay

Management's last proposal in reference to merit pay was that it be directed to those nine (9) employees who are in supervisory positions such as the Chief Medical Officer who supervises approximately sixty (60) nurses and medical staff, the Purchasing Agent and the assistant supervisors of Maintenance, Custodians and School Facilities. It sought to apply the same merit system that the Board adopted in 2003 (Board exhibit 1) for central office administrators which was updated effective July 1, 2007 (Yonkers' Public Schools letter dated July 18, 2008).

Management Position:

A merit system is needed to increase responsibility and accountability for those employees who are most responsible for the supervision and operations of the Yonkers Board of Education. It is only fair that those IBT members in supervisory positions be subject to the same accountability and merit system as their central office peers, as their titles listed in management's Exhibit 7 are very similar to those of central office personnel listed in management's Exhibit 6.

Union Position:

The Union noted that it wasn't until the final of numerous negotiating sessions on wages, that management proposed a merit system instead of the wage increase informally agreed to at the prior session. In that informal agreement the parties agreed that the Teamster bargaining unit would receive the same percentage wage increases as the other unionized Yonkers Board of Education bargaining units, as was the Board's past practice.

The Union flatly opposes a merit system for the following reasons:

1. The determination of wages is a fundamental Union function in collective bargaining.

2. None of the Board's other unionized bargaining units have such a system.

3. The sketchy plan offered relies on subjective criteria of the Board in determining the amount of increase an employee should be granted. Such a system allows the employer unrivaled discretion where favoritism and politics could become involved in the evaluation process which is particularly disturbing in a public employment environment where favoritism and politics is supposed to be avoided.

4. Merit pay is not the optimal method to control and manage employees. It is the disciplinary procedure that deals with less than satisfactory performance of an employee.

5. The Board cannot point to any other Westchester School District union contract that includes a merit pay provision.

Management Response:

The Union's contention that if its members do not perform properly, they can be terminated in conformance with applicable laws is an all or nothing approach that can only guarantee a lack of accountability and undermine the authority of the Superintendent to operate the School District.

Recommendation:

Supervision is the act of monitoring and directing the work or tasks of those for whom they are responsible. Additionally, the supervisor should motivate and train those he is supervising.

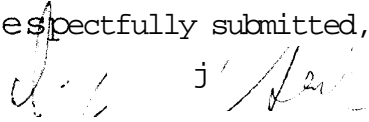
Merit Pay, also known as pay for performance, is pay based on a "set of criteria" set by the employer and union in collective bargaining. It generally involves the employer conducting a review meeting with the employee to discuss how the employee has performed during a certain time period in relation to the established "set of criteria". Generally, it provides bonuses for those employees who are considered to have performed their job better than others according to the measurable criteria agreed to.

Wages are the compensation given to an employee for services rendered, whereas salary is a fixed compensation paid for services rendered of a particular kind, more or less definitely prescribed. If the employee fails to perform the prescribed services he should receive discipline for it - a warning the first time.

Therefore, the salary increases agreed to in the next to last negotiating session, i.e. the same percentage wage increases granted to other unionized Yonkers Board of Education bargaining units, as was done in the past, should be done in this instance.

To encourage superior performance of unit employees with supervisory responsibilities, a merit system should be negotiated by the parties.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "I. Leonard Seiler". The signature is written in a cursive style with a large initial "I" and a long horizontal stroke at the end.

I. Leonard Seiler
Fact Finder

April 21, 2009