

STATE OF NEW YORK
PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of the Impasse

-between-

Local 237,
International Brotherhood of Teamsters

Case No. M2007-283

-and-

Town of Islip, New York

Before: Robert L. Douglas
Fact Finder

Appearances: Bond, Schoeneck & King, PLLC
by Ernest Stolzer, Esquire
for the Employer

Meyer, Suozzi, English & Klein, P.C.
by Barry J. Peek, Esquire
for the Union

FACT FINDER'S
REPORT AND RECOMMENDATIONS

July 27, 2009

INTRODUCTION

On July 16, 2008, the State of New York Public Employment Relations Board appointed the Undersigned as the Fact Finder in the impasse between the Town of Islip (the Employer) and Local 237 of the International Brotherhood of Teamsters (the Union), which represents approximately 370 White Collar employees who work at various locations within the Town of Islip. The Fact Finder is responsible for inquiring into the causes and circumstances of the dispute and for developing recommendations to the parties for resolution of the dispute.

BACKGROUND

The Employer operates a municipality in the County of Suffolk. The parties entered into a collective bargaining agreement for the period from January 1, 2005 to December 31, 2007. The parties met approximately seven times to negotiate a successor agreement, but initially failed to do so. The parties submitted a joint "Declaration of Impasse" in early February 2008 to the Public Employment Relations Board. In response to this declaration, the New York State Public Employment Relations Board appointed a mediator to assist the parties to resolve their differences. This effort was unsuccessful and led to the appointment of the Fact Finder on July 16, 2008. The parties subsequently negotiated a tentative successor agreement on or about November 12, 2008, however, the members of the bargaining unit failed to ratify the tentative successor agreement.

The tentative agreement contained the following key terms:

1. Duration--January 1, 2008 to December 31, 2009.
2. Compensation--
 - a. January 1, 2008: 1.25% wage increase
 - b. August 1, 2008: 1.5% wage increase
 - c. April 1, 2008 2.5% wage increase
 - d. Employees to continue receiving step increases
 - e. New employees to contribute to health insurance
3. Employer to withhold welfare fund payments until welfare fund reserve reduced to one year.

As a result of the failure of the ratification of the tentative agreement, the dispute therefore proceeded to the present formal fact-finding proceeding. With the agreement and active participation of the parties, the Undersigned conducted a Fact Finding hearing on March 18, 2009 at the offices of the Union. The representatives of the parties appeared and were afforded a full opportunity to offer oral testimony, written documentation, evidence, and argument in support of their respective positions. As agreed by the parties during the fact-finding hearing, the representatives of the parties subsequently submitted post-hearing briefs.

CONTENTIONS OF THE UNION

The Union proposes a contract for four years from January 1, 2008 to December 31, 2012 with a raise of 4% on every January 1 and no givebacks from the existing agreement. The Union considers the statutory criteria that govern interest arbitration decisions to be appropriate benchmarks to consider in the present proceeding. The Union therefore cites wage comparison information, the public interest, the nature of the work performed by the members of the bargaining unit, the history of

collective bargaining between the parties, and the ability of the Employer to pay as key evidence for formulating an appropriate fact-finding report and recommendation.

It is the position of the Union that the Employer has the ability to pay the amounts proposed by the Union. The Union stresses that a fact-finder has the authority to recommend that the Employer re-order its priorities to generate sufficient means to fund a resolution of the impasse. Citing certain precedent, the Union points out that employers frequently proclaim an inability to pay to mask an unwillingness by employers to fund an appropriate resolution of a dispute. The Union emphasizes that the Employer has a high burden to prove an inability to pay. The Union underscores that its expert witness, Allen B. Brawer, analyzed the Employer's fiscal condition and concluded that the Employer has the ability to pay for the cost of the Union's proposals. In particular, the Union notes the condition of the Employer's fund balance, the tax rate in the Town of Islip, the real estate values in the Town of Islip, and the general policy of the Employer to keep taxes low at the expense of the employees as factors that support the Union's demands. The Union highlights that the decision of the Employer to keep taxes artificially low does not furnish a basis to deprive the employees of a fair wage increase. The Union portrays the residents of the Town of Islip as retaining a sufficient rate of employment to continue the stability of the tax base in the future.

According to the Union, the absence of conditions that would cause a municipality to seek bankruptcy protection warrants a flexible interpretation of the ability to pay standard. The Union discerns that the Employer therefore retains the discretion to adjust the decision-making process and the Employer's priorities to fund the Union's proposals. The Union finds the Employer's approach to be tantamount to having the employees experience a wage decrease by freezing the wages of the employees while having the employees contribute to the cost of health insurance premiums. The Union questions the Employer's position because the Employer has given raises to certain exempt employees.

The Union requests that the fact-finding report and recommendations adopt the proposals sought by the Union. Specifically, the Union seeks an annual increase of 4% during each year of a four-year contract beginning on January 1, 2008 to enable the employees to offset increases in inflation and to remain even with the increases obtained by employees in comparable surrounding municipalities, who have received increases between 2.78% and 3.5%. The Union adds that none of the employees in the surrounding comparable municipalities have experienced wage freezes. The Union opposes the Employer's effort to secure a wage freeze and to obtain relief from contributing to the health and welfare fund. Although the Union acknowledges that the tentative agreement included certain relief for the Employer from contributing to the health and welfare

fund, the Union reasons that the members of the bargaining unit rejected such an approach to fund a wage increase. The Union comments that the 4% annual wage increases constitute an appropriate way for the employees to recapture the relative losses that the employees have sustained in the past. The Union reiterates that the other terms and conditions of the collective bargaining agreement should be continued.

CONTENTIONS OF THE EMPLOYER

The Employer maintains that the precipitous decline in the economy since 2007 supports the position of the Employer. The Employer highlights that a huge decline in the mortgage taxes and interest income have occurred. The Employer refers to the tentative settlement as having provided for some wages increases while holding the present employees harmless from the cost of health insurance contributions and while preserving the step schedule for eligible employees.

Under the present circumstances, the Employer seeks a two year contract from January 1, 2008 to December 31, 2009, a wage freeze for two years, and a 15% contribution to health insurance for current and future employees. The Employer elaborates that the cumulative increase in the cost of step increases and of health insurance premiums coupled with the loss of revenue and the tax increases that the Employer instituted for 2009 support the Employer's position.

The Employer submits that the refusal by the members of the bargaining unit to approve the suspension of contributions by the

Employer to the welfare fund precludes the Employer from making a better offer to the Union. The Employer underscores that the welfare fund has accumulated excess assets so that the benefits and administrative costs of the welfare fund would not be compromised by suspending the Employer's contributions to the welfare fund and would enable the Employer to fund improvements in the wages for the members of the bargaining unit. As the employees failed to ratify the tentative agreement, the Employer clarifies that the Employer has resumed contributing to the welfare fund and therefore no longer has the funds available to pay for the increases sought by the Union.

The Employer insists that the increasing cost of furnishing health insurance to the employees and their families warrants contributions by all employees to health insurance. The Employer cites the dramatic increases in the cost of health insurance as further evidence that employee contributions to health insurance are appropriate. The Employer argues that the employees take health insurance for granted without realizing the substantial increases that the Employer must pay for health insurance each year. The Employer faults the State of New York and the City of New York for deciding to grant wage increases of 3% to 4% per year while having huge budget shortages. The Employer explains that the Employer refuses to operate in such an irresponsible manner. The Employer perceives that any annual increases in wages would be compounded in future years and would place an intolerable burden on the Employer and on the taxpayers. The

Employer calculates that the Union's proposed wage increases far exceed the projected increase in inflation during the same period of time. The Employer therefore urges that the Employer's demands be recommended.

COMPENSATION

DISCUSSION AND RECOMMENDATION

Ordinarily, great weight should be given to a tentative settlement such as the one entered into between the Union and the Employer. In the present dispute, however, circumstances continue to change on a daily basis as the extraordinarily poor condition of the economy continues to have a grave and deleterious effect on the economic realities confronting the Employer and many taxpayers. In particular, the federal government, the state government, the county government, the school districts, and the special districts continue to confront the same challenges that the record confirms the Employer in the present dispute must confront.

A careful review of the record indicates that the economic concerns of the parties reflect the current tensions in the collective bargaining process in the public sector. More specifically, significant pressures exist for municipalities to exercise the utmost fiscal prudence so that the taxpayers within a municipality are able to gain relief from the pattern of continually increasing the total of property taxes that undermines the continued viability for many property owners to continue to reside on Long Island or to operate commercial

properties on Long Island. Nevertheless, the reality of certain periodic increases in operating a municipality precludes permanently freezing expenditures and permanently freezing the tax rate.

One legitimate reason for increasing the cost of operating a municipality reflects the pressures that exist for employees to obtain suitable compensation that accurately reflects the value of their job performance and the increasing cost of living. As a result, the collective bargaining agreement must achieve this delicate balance for the municipality (on behalf of the taxpayers) and the Union (on behalf of the members of the bargaining unit).

A careful review of the record indicates that dramatic financial changes have occurred that affect the financial condition of the Employer. In particular, the Employer's earnings from interest have declined from \$4,900,00 in 2007 to \$2,400,000 in 2008, and are projected to decline further to \$1,200,000 in 2009. The Employer's realization of mortgage tax receipts have declined from over \$20,000,000 in 2007 to approximately \$8,500,000 in 2009. The Employer's general fund balance has declined from slightly over \$50,000,000 in 2007 to slightly over \$40,000,000 in 2008. The Employer's general unrestricted fund balance has declined from slightly under \$10,000,000 in 2007 to under \$3,000,000 in 2008. The record also demonstrates that a 1% percent wage increase initially will cost the Employer approximately \$150,000 based on the August 2008

payroll. Although inflation increased by approximately 3.9% in 2008, the projected rate of inflation for 2009 will decline by approximately 1% during 2009. In reviewing the prior wage increases and the rate of inflation for the same periods for the members of the bargaining unit, the record reflects that the wage increases compared to the rate of inflation have mirrored each other to a large extent since 2001. Although the record contains data that indicates the employees have suffered a loss of real income in 2008 to inflation based on the wages of the employees, such data omits the value of the continuing health insurance coverage provided solely by the Employer.

The factual record developed by the parties confirms that the current collective bargaining agreement does not reflect an appropriate relative salary structure for the members of the bargaining unit. A comparison of other comparable jurisdictions such as the Town of Brookhaven, the Town of Huntington, the Town of Babylon, and the County of Suffolk confirms that a measured, moderate, and modest increase for the members of the bargaining unit is appropriate at this juncture. The documentary evidence contained in the record supports this conclusion because other jurisdictions have provided increases to their employees.

For all of these reasons, the agreement should provide a retroactive wage increase of 2.5% for 2008 and of 2.35% for 2009. Such wage increases shall be instituted upon ratification of the agreement so long as the ratification occurs no later than on August 31, 2009. The Employer, however, shall not make any of

the retroactive payments to the affected employees until December 1, 2009, which will enable the Employer to obtain some cash flow benefits of the suspension of the Employer's contributions to the welfare funds as discussed below. Employees already eligible to receive step increases should continue to receive such step increases.

HEALTH INSURANCE

DISCUSSION AND RECOMMENDATION

The problem of funding health insurance premiums continues as a critical issue for Employers, Unions, and employees. Employees need to be protected in part from the unending annual increases in the cost of health insurance. The allocation of the burden of annual increases in health care insurance premiums solely on the Employer is impractical, unreasonable, and unfair. Totally insulating employees from the problem perpetuates an unrealistic insensitivity by the employees of the dimensions of the problem that the Employer annually confronts to offer health insurance to the members of the bargaining unit and their families. At the same time, increasing the role of current employees to fund health insurance at the present time will cause an erosion in the real earnings of the employees because of the concomitant reduction in the disposable income of the current employees.

No solution to the health insurance problem is a good solution. Nevertheless, the current artificial arrangement of only the Employer absorbing the cost of health insurance is

untenable in the long run. For the time being, the most appropriate solution requires that new employees (hired on or after January 1, 2008) must begin making a prospective 15% contribution toward health insurance premiums for single coverage and for family coverage. This change is appropriate because such employees obtained their positions without a collective bargaining agreement in place at the time. The current employees should know, however, that the time for avoiding contributing to health insurance is rapidly expiring and future contributions are appropriate, inevitable, and justified. Furthermore, the same changes that appeared in the tentative settlement concerning health insurance (avoiding duplication of coverage, incentives for opting out of health insurance coverage, and eligibility for health insurance benefits at retirement) should be included in a new agreement.

WELFARE FUND

DISCUSSION AND RECOMMENDATION

The suspension of the Employer's contributions to the welfare fund remains quite controversial. This controversy is understandable as an initial reaction by employees because suspending contributions by the Employer to the welfare fund creates an impression that the members of the bargaining unit are somehow forfeiting benefits to fund their own wage increase. Such a reaction is misguided, misplaced, and misunderstood. The Employer retains at all times the responsibility to fund the wages and benefits provided for in the agreement. No rational

reason exists, however, to have the Employer make unnecessary contributions to a welfare fund purely to have such scarce funds remain unused in a welfare fund account. The financial statement for the "Health and Welfare Trust Fund" reflects that the annual benefit and administrative expenses are approximately \$700,000 whereas the fund's total assets are over \$2,500,000. So long as the Employer makes periodic payments to guarantee that the welfare fund maintains at least a reserve to fund benefits for one year, the benefits for the employees are not in jeopardy in any manner. As a critical and prudent part of the effort to find the delicate balance to improve the agreement for the employees, the Employer's contribution to the welfare fund shall be suspended. This will save the Employer for the time being approximately \$685,000 on an annual basis. As in the tentative settlement, a quarterly reevaluation shall occur to guarantee that a one year reserve for such benefits shall be present. At any time that a one year reserve is not maintained, the Employer shall forthwith resume making contributions to the welfare fund.

DURATION OF THE AGREEMENT

DISCUSSION AND RECOMMENDATION

The prior collective bargaining agreement covered the period from January 1, 2005 to December 31, 2007. From a practical standpoint the present impasse has lasted for more than one and one-half years. Due to the passage of such a significant amount of time without having a successor agreement, a successor agreement should provide an opportunity for the parties to

resolve their pending disagreements and provide a chance to renew their important relationship in a productive manner.

The new collective bargaining agreement should cover the two-year period from January 1, 2008 until December 31, 2009. This will enable the parties to resolve their past and present differences and to direct their efforts toward the future. In addition, a collective bargaining agreement for this period will enable the Employer to develop a financial plan for the coming year with a firm grasp of the costs of the appropriate compensation for the members of the bargaining unit.

CONCLUSION

The Fact Finder believes that these concrete recommendations constitute an appropriate and equitable framework for resolving the longstanding impasse, which arises during a difficult economic and political environment. All items not discussed or specifically recommended are deemed to be dropped. These recommendations should be acceptable to the parties after undergoing a careful and realistic evaluation of the long term interests and needs of both parties. In this way the parties can redirect their energies and efforts to provide for the delivery of services to the residents of the Town of Islip in an efficient and cost effective manner during the coming years.

Robert L. Douglas
Fact Finder

DATED: July 27, 2009