

New York State Public
Employment Relations Board

In the matter of Fact Finding
Between
Town of Jewett
And
Laborers International Union of
North America, Local 17

PERB Case M2008-168

Before: Thomas B. Quimby, PERB-Appointed Fact Finder

Appearances

For the Employer:

Dionne A Wheatley, Counsel
Michael Flaherty, Supervisor
Michael McCrary, Town Board Member

For the Union:

Richard S. Corenthal, Counsel
Richard Messina – Field Representative, Local 17
Wayne Mackey – Director of Training, Local 17
Shawn Jaeger – Foreman, Negotiating Committee Member
Waylon McCuller – Equipment Operator
Jason Tompkins – Truck Driver, Negotiating Committee Member

BACKGROUND

The Town of Jewett is located in Greene County. In August, 2007, Laborers Local No. 17 requested voluntary recognition as the bargaining agent to represent full time and part-time employees, currently numbering four, of the Town Highway Department excluding the Highway Superintendent and clerical staff. The Town declined the request and PERB issued a Certification of Representative and Order to Negotiate in March 2008. The parties held negotiating sessions during 2008 on April 29, May 21, June 19, July 17, and August 28. On September 2, 2008, Local 17 filed a Declaration of Impasse, citing the Town's insistence on employee contributions to health insurance premiums as the major impediment to an agreement. Prior to this time, health insurance premiums for employees in the proposed bargaining unit, were fully paid by the Town. A mediation conducted

during December 2008 did not resolve the impasse. On January 30, 2009, PERB appointed the undersigned Fact Finder. The undersigned Fact Finder conducted a hearing at the Town of Jewett offices on March 20, 2009. Representatives of both parties were present, had all procedures explained to them and had full opportunity to present evidence, testimony and witnesses on the outstanding issues submitted for fact finding. During the hearing, the parties presented briefs in support of their positions. At the conclusion of the hearing, the parties indicated that they wanted to reserve the right to submit post hearing briefs. The Town did submit a brief to both the Fact Finder and the Union. The Union submitted a rebuttal brief to both the Town and the Fact Finder.

ISSUES

At the hearing the parties identified the following as open issues they wished to submit to the Fact Finder:

- Employee contributions to health insurance and if so on what basis and at what level
- Ability of the Town to unilaterally change health insurance plans
- Health insurance coverage for retirees
- Longevity pay schedule and cap
- Wage increases for 2009, 2010

Town Position

Health Insurance

The Town, like many other public employers, is concerned about the ever increasing burden of health insurance costs. The Town argues that its cost concerns preceded the advent of unionization of its highway department. In support of this assertion, the Town cites language from the March 1, 2003 revision of the Town Employee Handbook. The language states that all employees hired after that date are expected to contribute to family health insurance coverage. Moreover, it points to other Town employees such as the Highway Superintendent who contribute to their health insurance coverage. The Town explains that it pays the full cost of health insurance premiums for the Town Assessor and the confidential secretary to the Town Supervisor because of their low salaries and individual employment agreements at their time of hire.

The Town's position submitted to the Fact Finder on the amount of employee premium contributions is 10% for all employees for 2009 and 15% for all employees for 2010. The Town's last proposal, submitted during the December 9, 2009 mediation called for employee contributions of 10% for individual coverage and 5% for family coverage. For

2009, the Highway Superintendent has been paying 10% of the cost difference between the family coverage he carries and individual coverage. In its post hearing brief, the Town asserts its belief that flat percentage contributions from all employees regardless of the type of plan they carry is fairer than differentiation based on coverage type. The Town argues further that since only one of the four bargaining unit employees currently carries family coverage, flat percentage contributions are the only method by which the Town can avoid potential disparate or unequal treatment among employees. As to the percentage size of the contribution it proposes, the Town points to other similar jurisdictions requiring similarly sized contributions.

In response to the Union's proposal to "grandfather" current bargaining unit employees into retiree health insurance coverage based on past practice, the Town rejects the proposal. The Town argues that the two retirees on which the Union bases its claim, were covered by a specific resolution passed by the Town Board, based on specific needs and circumstances of the individuals, and that the Union never represented these individuals, nor did it have the right to do so.

The Town proposes that it be given the right to change health insurance plans to enable it to seek out plans that offer the lowest rates while maintaining the same level of coverage. In support of its proposal, the Town cites cost savings that could be realized from switching from NYSHIP to the MVP PPO plan. The Town asserts that MVP rates are currently lower, have had smaller increases and are announced to subscribers earlier in the Town's budget cycle than those of NYSHIP. During the hearing, the Town Supervisor testified that the late rate announcements by NYSHIP created substantial problems for the Town budgeting process. The Town points out that although the Union asserts that MVP plan coverage is inferior to the current NYSHIP coverage, the Union had not actually reviewed the MVP plan that the Town had submitted for its consideration.

Longevity Payments

The Town's current position on longevity payments is that they start at an employee's fourth year and build at a rate of \$100/year up to \$2500 at which point they would be capped. The Town contends that, with the exception of the cap, this is very close to the current practice of \$100/year with no cap and very competitive with other comparable jurisdictions. The imposition of a cap, the Town argues, will not immediately disadvantage any existing employee since no employee has 25 years of service with the Town .

Wages

The Town's last offer for wages called for 3% in 2008, 4% in 2009 and 4% in 2010. The Town made this proposal as part of a package that called for employee health insurance contributions. The Town argues that this increase is in line with other increases offered by similar jurisdictions. It dismisses the Union's assertion that compared with the 6-9.75% increases given non bargaining unit personnel, the Town's proposed increases are

unfair. The Town points out that bargaining unit personnel receive longevity and non contributory health insurance. In addition, the Town contends that when fringe benefits are factored in, bargaining unit employees receive total compensation of greater value than that given most Town officials.

Union Position

Health Insurance

The Union's primary contention with contributory health insurance is that it did not become an issue for the Town until after the Union became the bargaining agent. The Union argues that while the Town had provision in its handbook for contributory health insurance for employees hired after 2003, the provision was never put into practice. The Town, the Union points out, has several different arrangements with several individuals, and has, in fact, changed its position on health insurance alleging a concern for fairness that drives its latest proposal for flat percentage contributions to health insurance. The Union argues that this range of practices and proposals does not support the Town's assertion that health insurance contributions are a matter of economic necessity but rather that they have the appearance of anti-union animus. Further, the Union asserts that a flat percentage contribution has a disparately severe impact on bargaining unit members as compared with non bargaining unit Town employees and officials.

On the issue of retiree health coverage, the Union argues that a past practice exists because the Town passed a resolution covering two retirees who formerly worked for the Highway Department. The Union points out that not only did these retirees receive partially paid premiums through the initial resolution, but that premiums subsequently became fully paid by the Town until the two retirees passed away.

Regarding the Town's proposal to change health carriers, the Union argues that if the Town were motivated by potential cost savings, the Town would have required non bargaining unit employees to shift their coverage to MVP. Because the Town has not done this, argues the Union, the Town has not acted on what it alleges is a compelling need to save money.

Longevity Payments

The Union's last proposal on longevity was an acceptance of the Town's proposal during mediation, of longevity to start in the fourth year with a cap of \$2700. This acceptance was conditioned on the Town's acceptance of the Union's proposal on health insurance. Since the Town has not accepted the Union's proposal, and because the Town now proposes a cap of longevity at \$2500, this item is still open.

Wages

The Union's final wage offer made during mediation was 3% for 2008, 3.5% for 2009 and 4% for 2010. Like the longevity proposal, this offer was conditioned on the Town's acceptance of the Union's proposals on health insurance. This item is open as well.

Discussion and Recommendations

Health Care

During the hearing, testimony by Town Supervisor Michael Flaherty suggested that the primary motivation for the Town's proposal on health insurance was mitigation of the impact of future premium increases on the Town. Given the trends in health insurance costs and the tax burden on political subdivisions, this concern is reasonable. However, the data submitted to the Fact Finder by each party show a broad mix of jurisdictions with an even broader mix of methods by which they fund their health insurance costs. The Fact Finder cannot thus conclude that the measures proposed by the Town are the only method by which the Town can address its concerns.

Data and argument offered by the parties, and the testimony offered by the Town, do not suggest that the Town is in fiscal crisis. Its salary increases to non bargaining unit personnel are in line with compensation practices designed to promote both equity and continued ability to attract and retain qualified expertise necessary to discharge Town functions.

Because the Fact Finder believes the Town has a legitimate interest in mitigating the impact of future increases in health insurance premiums, the Fact Finder will propose a mechanism whereby bargaining unit employees will pick up a percentage of the increase in the cost of their health insurance premiums starting in 2010. This mechanism should serve to somewhat mitigate future cost increases without putting an immediate and onerous burden on bargaining unit employees. The mechanism or process will use the monthly individual and family rates, paid by the Town in 2009, to set a base rate. Bargaining unit employees will contribute 15% of any increase in excess of the base rate. For employees opting into health insurance coverage, their contribution, if any, will be based upon any rate increases in excess of the 2009 monthly premium for the type of coverage they have selected. Similarly, contributions for employees switching between individual and family coverage, will be based on 15% of premiums in excess of those paid by the Town for 2009.

Recommendation: Starting in 2010, employees contribute 15% of premium increases in excess of the 2009 premium paid by the Town for the type of plan the employee selects. Contributions for employees switching to individual or family coverage will be based on 15% of the amount by which the premium then in effect exceeds that paid by the Town for the year 2009 for the type of policy for which the employee is opting. Employees

opting out of coverage will receive the same buyout the Town currently offers Highway Department employees who opt out of coverage.

On the issue of retiree health coverage, the Fact Finder notes that this represents a potentially significant cost burden for the Town. The Union did not present argument citing the imminent retirements of bargaining unit members. The Fact Finder agrees with the Town that past practice is not persuasive on this issue.

Recommendation: The Town will not pay premiums for retiree health insurance.

On the issue of ability of the Town to unilaterally change policies and or carriers, the Fact Finder notes that MVP currently is less costly than NYSHIP. The Fact Finder believes that both parties benefit when alternative health plans are investigated and considered, particularly where both parties share premium cost. However, since plan coverage is a consequential and often complex issue, the Fact Finder believes that both parties should have access to a binding third party judgment as to whether coverage offered under a proposed plan is substantially equivalent to that of an existing plan.

Recommendation: The Town and the Union shall both have the right to suggest alternative health plans that offer either better benefits at comparable cost, substantially equivalent benefits at less cost, or better benefits at less cost. In the event that the parties cannot agree to changes in health insurance, either party shall have the right to submit the matter to binding arbitration pursuant to the collective bargaining agreement if the agreement contains such clause, or pursuant to the rules and procedures of the NYS Public Employment Relations Board if the collective bargaining agreement does not contain such clause.

Longevity Payments

Both the Town and the Union appear to have agreed in principle that the Town's proposal is appropriate. The data submitted suggest that the longevity schedule as proposed by the Town during mediation, is highly competitive with other jurisdictions. It has proved workable prior to 2007. Both parties have agreed to it conditionally. The Fact Finder believes the Town's proposal is still workable.

Recommendation: Longevity payments to commence in the fourth year of an individual's employment starting at \$400 and to increase by \$100/year up to \$2700.

Wages

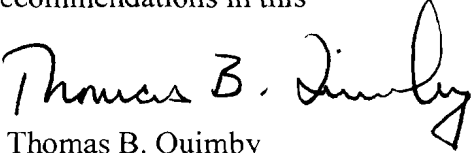
The proposals on wages offered by the parties during mediation, although offered as part of their respective packages, are very similar. The only difference is that the Town's

offer is higher than the Union's proposal for 2009 by 0.5%. Presumably this is because the Town's offer was predicated on the Union's acceptance of a contributory health insurance plan. Proposals of both parties are well within range of reasonable when compared with wage levels and raises of other jurisdictions. The Fact Finder is mindful of the fact that Greene County is not noted for the high income levels of its residents, that current economic conditions have resulted in increased unemployment rates, and that a settlement that is perceived as excessive by residents of the Town would probably do more long term damage to both parties than a settlement that the residents believe is reasonable. The proposals offered by both parties are sufficiently equivalent to enable the Fact Finder to conclude that the parties share a similar opinion of what the public would accept. Given the current economic conditions, the Fact Finder believes that the Union's proposal of 3% for 2008, 3.5% for 2009 and 4% for 2010 is more likely to be accepted by the public.

Recommendation: 3% for 2008, 3.5% for 2009 and 4% for 2010

Affirmation

I affirm that the foregoing is my Fact Finding Report and Recommendations in this matter.


Thomas B. Quimby
PERB Appointed Fact Finder

Dated: May 15, 2009