

STATE OF NEW YORK – COUNTY OF ALBANY
NEW YORK STATE PUBLIC EMPLOYMENT RELATIONS BOARD

In The Matter of the Fact Finding Between

THE ALBANY POLICE OFFICERS UNION, LOCAL 2841, DISTRICT
COUNCIL 82, AFSCME, AFL-CIO (o/b/o Communications and Civilians
Units)

PERB CASES M2011-205 & M2011-204

-and-

THE CITY OF ALBANY

Appearances:

Gordon R. Mayo, Esq., Fact Finder

Matthew P. Ryan, Esq., Associate General Counsel, Council 82, Union Attorney

Elayne G. Gold, Esq., Roemer, Wallens, Gold & Mineaux, Attorney for City

On July 17, 2012, I was appointed as the fact finder in the above contractual dispute between the Albany Police Officers Union, Local 2841 of the New York State Law Enforcement Officers Union, District Council 82, AFSCME, AFL-CIO o/b/o the Civilans and Communications Units (hereinafter Union or Council 82) and the City of Albany (hereinafter City). The predecessor collective bargaining agreements (hereinafter CBA) for both units expired on December 31, 2009, and the parties were unable to reach consensus on a successor agreement. Subsequently, the parties met with a mediator on three occasions, again with no successful conclusion being reached. The Union filed for fact finding on June 18, 2012, precipitating my

appointment. There was a delay in convening the fact finding hearing, as the parties were attempting to resolve the matter following an interest arbitration award involving the firefighters unit (and subsequent piggy-backing by the police officers unit); those efforts were unavailing, and a fact finding hearing was held on April 11, 2013 in Albany, New York, at which all parties were present and represented; both parties have filed briefs.

Minimal testimony was taken, and the parties have both submitted voluminous exhibits, in addition to their briefs. The Union listed four open matters for each of its units:

OPEN UNIT MATTERS - CIVILIANS

1. Compensation – Appendix A
2. Longevity – Article 22.1
3. Vacation – Article 17.2.1
4. Personal Leave – Article 18.3

OPEN CITY MATTERS - CIVILIANS

1. Grievance Procedure – Article 5
2. Overtime – Article 15
3. Court Time – Article 16.1
4. Sick leave- Article 18
5. Health Insurance – Article 24

OPEN UNIT MATTERS – COMMUNICATIONS UNIT

1. Salary – Appendix A
2. Longevity – Article 17.3.1

3. Uniform Cleaning Allowance Article 17.4.1
4. Enhanced Medical Dispatching Pay – Article 17.1.

OPEN EMPLOYER MATTERS – COMMUNICATIONS UNIT

1. Grievance and Arbitration – Article 3
2. Command Discipline Article 4.6
3. Overtime – Compensatory Time –Article 10.3
4. Court Time – Article 11
5. Sick Leave – Article 16
6. Salaries and Other Emoluments – Article 17.1.2
7. Health Insurance – Article 9
8. Drug and Alcohol Testing – Article 22

The two most pressing issues dividing the parties are compensation and health insurance. Not only is the Union seeking a salary increase for both units, but also increases in longevity payments, enhanced medical dispatching stipends (communications only), uniform cleaning allowances (communications only) and enhanced personal leave and additional vacation days (civilians only). Additionally, its proposals for a continuation of its existing health insurance plan has fiscal implications.

As is typical in fact finding, the Union and City use entirely different comparable jurisdictions to support their respective positions. The City posits that there are no comparables that can be utilized, inasmuch as Albany, as the capital city of New York, is unique. Because of overwhelming percentage of tax-exempt property, including

real property owned by the State, educational institutions (including public and private elementary and secondary schools as well as colleges), health care institutions and churches, there is a limited tax base upon which to finance the operation of City government. No other local city or town has the same fiscal situation, and other upstate cities (Rochester and Schenectady) have little in common with the City. Conversely, the union claims that local towns Colonie, Guilderland and East Greenbush, as well as the cities of Schenectady and Rochester, should be utilized to determine what should be fair comparables for its unit members.

The Union seeks the following increases in salary over a proposed four year agreement:

2010 – 2%

2011 – 2%

2012 – 3%

2013 – 2.5%

Historically, the communications and civilian units' salary increases have mirrored those raises received by the police officers unit (hereinafter APOU). Based upon an interest arbitration award received by the firefighters unit for the years 2010 -2011, the APOU agreed to a similar adjustment for the same period, with health insurance concessions for newly hired employees. The City counters that it cannot afford any increases for the years 2010 – 2011, and points to the zeros received in those years by its DGS unit and all non-union employees. Interestingly, it does not discuss those raises sought for 2012 – 2013, nor is there any mention of length of contract.

I am mindful of the fiscal difficulties facing municipalities in today's "tax cap" environment. The City is indeed unique as our capital city, and is probably not compensated properly for serving as the seat of government. Nonetheless, the City has done an admirable job in cost containment, and has an extremely healthy reserve fund. It has solid AA- credit rating, and is far below its constitutional tax limit. Although the City has made a cogent "gloom and doom" financial analysis, I believe that it has the ability to pay a modest salary increase for employees who have not received a raise since 2009. Moreover, there is a long-standing practice of parity in salary adjustments between these two units and the APOU. The union estimates that its proposals for both enhanced longevity payments and its proposed salary increases would cost approximately \$256 thousand for the civilian unit and \$375 thousand for communications.

I find that the most equitable salary adjustment (which is obviously much less than the above Union estimates) is as follows:

1/2/2010 – 1%

7/1/2010 – 1%

1/1/2011 – 1%

7/1/2011 – 1%

1/1/2012 – 1%

7/1/2012 – 1%

1/1/2013 – 1%

7/1/2013 – 1.5%

In light of these proposed increases, there is no need for additional longevity enhancements at this time.

In exchange for these salary adjustments, the Union need be mindful of the exploding costs of health insurance coverage. The City has proposed less costly (but allegedly comparable) insurance plans that are already in place for major City bargaining units. The Union agrees that health insurance is an issue, but claims that the City has provided no evidence that the change from the current Empire Blue Cross Extended Plan and Empire Blue Cross Wrap Plan (designated as "Cadillac Plans" by the City) to the City's PPO and/or CDPHP option would be comparable in coverage. I have examined the data, and it appears that the Union will indeed get comparable coverage while saving the City money in the process. I therefore find that these two units shall transition to the City's PPO and/or CDPHP option effective November 1, 2013. Unit members' contribution percentage shall remain the same.

As to other Union proposals having financial implications, the civilian unit's requests for additional vacation and personal days are denied, given the salary enhancements discussed previously. Similarly, the communications units' requests for additional cleaning expenses, as well as enhanced medical dispatch pay, are also denied for the same rationale. All other issues presented as open will not be dealt with at this time, but should be resolved in the course of upcoming negotiations for a successor agreement (this proposed agreement will expire in approximately four months, and I would assume that negotiations will commence shortly).

RECOMMENDATIONS

After having reviewed the submissions and proposals by both parties, I hereby make the following recommendations:

1. Wages for both units shall be increased 1% on January 1, 2010, 1% on July 1, 2010, 1% on January 1, 2011, 1% on July 1, 2011, 1% on January 1, 2012, 1% on July 1, 2012, 1% on January 1, 2013 and 1.5% on July 1, 2013.
2. Effective November 1, 2013, both units shall transition to the City's PPO and/or CDPHP health insurance plans, with the employee contribution percentage (be it individual or family plan) to remain unchanged with the new carrier.
3. All other Union and City demands are deemed withdrawn, as many (if not most) may be more effectively dealt with in the upcoming negotiations between the parties. Consensus between parties is preferable to an ordered settlement. The above report addresses all issues presented to me during the fact finding process, and my recommendations for the manner in which the instant impasse may be resolved.

Dated: August 20, 2013

GORDON R. MAYO, Fact Finder

STATE OF NEW YORK)
COUNTY OF RENSSELAER) ss.

I, GORDON R. MAYO, an attorney licensed to practice in New York State, do hereby affirm on my oath as Fact Finder that I am the individual described herein and who executed the subject Fact Finding Report on August 20, 2013.

GORDON R. MAYO

