

CITY OF ATLANTIC BEACH

SPECIAL MEETING TO HEAR APPEAL OF SPECIAL MAGISTRATE'S
RECOMMENDATIONS RELATING TO LIUNA CONTRACT AND TO CONSIDER
BENEFITS FOR NON-UNION GENERAL EMPLOYEES

April 8, 2013- 5:30 p.m.

1. Call to order
2. LIUNA Appeal
 - A. Opening statement by City Attorney
 - B. Extension of time for LIUNA to file rejection of Special Magistrate's Recommendation
 - C. (if 2B approved) LIUNA input on Article 20 Pensions (10 minutes)
 - D. (if 2B approved) City position (10 minutes)
 - E. Public input on LIUNA Contract, Article 20 Pensions
 - F. Commission discussion and vote
3. Non-Union General Employees Benefits
 - A. Summary of City positions on benefit issues
 - B. Public input on benefits for general, non-union employees
 - C. Commission discussion and vote
4. Adjourn

March 26, 2013

VIA HAND DELIVERY

Honorable Mike Borno, Mayor; and
Maria Mark, Carolyn Woods,
Mark Beckenbach,
Jonathan Daughtery, City Commissioners

**Re: Recommendation for Resolving Impasse
City of Atlantic Beach and Laborers International Union of North America,
Local 630
PERC No.: SM-2012-68**

Dear Mayor and Commissioners:

Please find enclosed, pursuant to Section 447.403, Florida Statutes, a copy of the Report and Recommendation of Special Magistrate, Adrienne Trott, dated February 25, 2013. Although the City has not rejected any aspect of Magistrate Trott's Recommendation, the Union notified the City on March 12, 2013, that it rejected most aspects of the Recommendation. However, the Union has since notified the City that it has agreed to all items in the Magistrate's recommendation except Article 20-Pension. With respect to issues, Article 8 – Grievance Procedure, Article 13 – Personal Leave, Article 16 – Bereavement Leave, Article 17 – Hours of Work and Overtime, Article 23 – Uniforms, Article 25 – Career Development, and Article 26 – Wages, both parties have agreed to accept the Magistrate's recommendations regarding these issues. Therefore, these issues are no longer at impasse.

Florida law requires the Union to notify the Public Employees Relations Commission ("PERC") of its rejection (in whole or in part) of the Special Magistrate's Recommendation within 20 calendar days from receipt of the Recommendation. It appears that the union failed to so advise PERC in a timely manner. Per the statute, failure to advise PERC within the 20 day period results in the Recommendation being accepted, unless the City agrees to allow the Union to be late in filing its rejection. The City Commission should make a decision on this point before considering any other matters.

Pursuant to Florida law, I have set forth below my recommendation for settling the impasse dispute with the Union. The recommendation is based upon a careful review of instructions provided by the Commission during several Shade meetings held over the last 15 months, the City's financial position, both parties' positions, as presented during negotiations, during the impasse hearing, and in post-hearing briefs, as well as Magistrate Trott's Recommendation.

Article 20 – Pension. The City has proposed two groups of changes to the pension plan applicable to Union employees. One set of changes would impact vested employees and one set of changes would impact non-vested employees. With respect to vested employees, the City is proposing a 1% increase in the required employee contribution. Under the City’s proposal, employees would be required to contribute at least 6% of their salary to the plan. This is the only proposed change for vested employees – which constitute the majority of employees covered by the plan.

With respect to non-vested employees, the City has proposed that those employees be converted to a newly created defined contribution plan. The City would transfer to that new plan employee contributions made to date, including interest credited, and would match the full amount dollar for dollar. In addition, the City would match employee contributions up to 6% for the first ten (10) years of employment. After ten (10) years of employment, the City would contribute an additional 4% into the employee’s plan, with no matching required in order to receive this 4%. Also, the vesting period for the newly created defined contribution plan would be five (5) years and not ten (10) years as previously provided under the defined benefit plan.

These changes were proposed in order to address the significant increased costs of the plan, including the growing unfunded liability. As the Magistrate recognized on page three of her Recommendation, like many cities in Florida, the City of Atlantic Beach has experienced declining revenues and increasing costs. As summarized by Magistrate Trott on pages three (3) and four (4) of her Recommendation, since 2007, the City’s contribution has risen from 13.99% of the payroll to 26.34% of the payroll. While the City contributed \$1,044,392 to the plan in fiscal year 2012, more than half was attributable to the unfunded liability. Magistrate Trott noted that the Union has not disputed these factors. In assessing the City’s proposals, as described above, the Magistrate concluded on page 18 of the Recommendation that they were “consistent with the interest and welfare of the public as well as the employees.” Magistrate Trott recommended that the City’s pension proposal be adopted in totality. Likewise, I recommend that the City’s proposal be implemented.

You should soon be receiving the Union’s submission of its recommendation for settling the impasse dispute. Section 447.403, Florida Statutes, provides that a public hearing shall be held to give the parties an opportunity to explain their positions to the Commission, and that the Commission shall then take action to resolve the impasse dispute, provided the City agrees to allow the Union to proceed with any untimely rejection of the Magistrate’s Recommendation.

Sincerely,

Jim Hanson

Enclosure

cc: Mr. Andy Bemis (w/enclosure)

Introduction

These proceedings arise from an impasse in the collective bargaining negotiations between the City of Atlantic Beach ("City" or "Employer") and the Northeast Florida Public Employees' Local 630, LIUNA, AFL-CIO ("LIUNA" or "Union") for a successor to the collective bargaining agreement that expired on September 30, 2012. The City is represented by Mr. John Dickinson and Ms. Lori Mans of the law firm Constangy, Brooks & Smith, LLP. Local 630 is represented by its Business Manager, Mr. Andrew Bemis.

The City of Atlantic Beach is a jurisdiction of 3.5 square miles on the Atlantic coast of northeast Florida in Duval County. Its current population is approximately 12,750 people. It has a city commission form of government. Along with the mayor, the city commission provides policy direction to the City Executive who is the CEO.

The City employs approximately 108 employees of whom 34 are in the bargaining unit represented by Northeast Florida Public Employees Local 630, Laborers International Union of North America (LIUNA), AFL-CIO, currently a party to this impasse. LIUNA has been certified to represent this unit of blue collar employees since 1990. There is one other bargaining unit of police personnel who are represented for purposes of collective bargaining. The remaining employees are unrepresented. These two groups are not parties to these impasse proceedings.

The parties have had a long and cooperative collective bargaining relationship. This is evident, not only by their testimony, but also by their demeanor during the hearing and, perhaps most importantly, by the nature of their proposals. Both parties attest to good communications, and this is borne out by proposals that reflect consideration of the other party's position, and the effect on the other party of the changes each seeks to achieve. Nonetheless, they have now reached the point where each side believes that it has made as much movement toward the other's position as its constituents will accept.

In accordance with Section 447.403(1) F.S., the parties submitted the unresolved issues to a Special Magistrate on October 31, 2012. On January 8, 2013, a hearing was held and both parties were provided a full and fair opportunity to examine and cross-examine witnesses and offer documentary evidence in support of their positions. The

City presented three witnesses who testified under oath, and also offered a notebook filled with exhibits, none of which was challenged by the Union. The Union Business Manager made an unsworn statement in support of the Union's proposals, and responses to the City's proposals. No sworn witnesses were called. The Union also offered a notebook filled with exhibits, many of which duplicated the City's, e.g., the collective bargaining agreement, and the parties' proposals. None of the Union's exhibits was challenged by the City. The parties further agreed to submit post-hearing briefs which were provided to the Magistrate at close of business on February 4, 2013, upon which the hearing was declared closed. The unresolved issues are now before this Magistrate to recommend, for each issue, terms to be included in the collective bargaining agreement for the current fiscal year with the objective of achieving a prompt, peaceful, and just settlement between the parties.

In reviewing and considering the parties respective proposals, and their positions on each disputed provision, I have taken into account the statutorily required factors set forth in Chapter 447.405.

City's Financial Position

A summary of the City's financial position is essential because the City based the majority of its proposals on financial considerations, and because of its significant effect on the statutory criteria to be given weight by the Magistrate. Information was provided by the City, and was not disputed by the Union.

The City offered considerable testimony and introduced evidence concerning how its financial status has been affected by declining revenues and increasing costs. The City expressed its intention to respond to these challenges by balancing the allocation of its resources between current and future needs of residents and taxpayers, with its obligation of fundamental fairness to its employees.

The Union acknowledges the difficulties facing the City, and employees have been willing to do their part to respond to them. Not unexpectedly, part of what brings them to this point is a difference in opinion about what constitutes "their part."

Revenues

The City of Atlantic Beach is primarily a residential community with *ad valorem* taxes being its major revenue source, comprising more than a third of general fund revenues. The recession has caused the City's taxable property rolls to decrease from a high of approximately \$1,500,000,000 in 2006 to just under \$1,200,000,000 in 2012. *Ad valorem* tax revenues declined accordingly. In response, the City has raised the millage rate in three out of the past four years.

Expenses

Because of these revenue challenges, the Mayor and City Commission have tasked the City Manager with reducing expenses by 15-16% on a long term basis. A variety of changes have been implemented including elimination of vacant positions (but not employee layoffs), curtailment of certain city services, reductions in travel, training, and overtime authorization. Capital projects have been reduced or eliminated.

Among expenses regarded as problematic by the City is the increasing contribution required by the City's pension plan. Since 2007, the City's contribution has risen from

13.99% of payroll to 26.34%. In dollar terms, City contributions more than doubled from \$482,363 (actual) in 2007 to \$1,044,392 (budgeted) in 2013. Between FY 2008 and FY 2013, the City's contribution to the pension plan rose from 2.71% to 6.07% of the General Fund budget.

A significant factor inflating the city contribution is the unfunded liability of the pension plan. In layman's terms, that is the monetary value of the future benefits already earned by participants, less the value of the assets in the plan available to pay those benefits. The City's contribution to the plan is actuarially calculated each year to determine the amount necessary to amortize liability for such previously earned benefits, in addition to the amount necessary to pay for benefits earned in the current year. Of the \$1,044,392 contribution for FY 2012, \$559,924 was attributable to the amortization of the unfunded liability.

In addition, due to the overall recession, investment returns for the pension plan fell far short of assumed rates of return (2.1 to 5.0% compared with 8.00%). The City has expressed concern about the sustainability of the pension plan as currently constituted, fearing that the financial health both of the pension plan, and the general government may be threatened.

Union Position

The Union acknowledges the financial difficulties faced by the City, and has cooperated in making adjustments over the past several years to meet the fiscal challenges. It is the Union's position that changes already agreed to in prior years' negotiations have not yet had sufficient time to yield anticipated savings. The Union has expressed concern that too many cuts will handicap the City's efforts to attract and retain a qualified workforce to carry out the City's mission.

Issues

The parties are at impasse over the following eight issues:

I	Article 8	Grievance Procedure
II	Article 13	Personal Leave
III	Article 16	Bereavement Leave
IV	Article 17	Hours of Work & Overtime
V	Article 20	Pension
VI	Article 23	Uniforms
VII	Article 25	Career Development
VIII	Article 26	Wages

I. Article 8 -Grievance Procedure

Disputed Provision

Current language¹ provides 10 working days for appealing a grievance to arbitration. The Union proposes increasing the time from 10 working days to 30 calendar days. The City proposes no change.

Union's Position

The Union proposes increasing the time period from 10 working days to 30 calendar days (roughly 20 working days) on the basis that the Union's internal rules require Executive Board approval for a fourth step grievance to be advanced to arbitration. The Union's Executive Board meets monthly.

City's Position

The City states that the current language allows the Union's objective to be met inasmuch as Article 10.6 authorizes the parties to mutually agree to extend the filing deadlines at any step of the grievance process. The City provided un-rebutted testimony by the City Manager and the Human Resources Director that there has never been a situation where either party's request for an extension was rejected. The City thus maintains that the new language is not needed.

Discussion

Absent a significant change in circumstances, or a problem that one or both parties wish to solve, the presumption will be in favor of current language. In this case, current language was negotiated by the parties and, according to testimony provided by City witnesses and un-rebutted by the Union, the existing provision has worked well for the parties. I am therefore unwilling to substitute new language for that mutually agreed upon by the parties.

Recommendation

I recommend retention of current language.

¹ All references to "current agreement" are to the Agreement between the parties that expired on September 30, 2012, and which constitutes the "status quo" in the absence of a successor agreement.

II. Article 13 - Personal Leave

Disputed Provision

Article 13.1((h) of the existing Agreement provides for each employee to have a single leave bank ("Personal Leave") which can be used for vacation, sick leave, etc. Leave is accrued at a rate determined by length of service, and ranges from 5.81 to 10.47 hours per pay period (151 to 272 hours annually). [Article 13.1 (h)] Employees also have self-determined accrual limits ("caps"), above which excess accrued but unused Personal Leave will be paid out in cash. The maximum amount an employee may accrue (cap) is 960 hours. Employees have three choices for the timing of the Personal Leave payout. [Article 13.1e] The Article contains other provisions related to Personal Leave that are not in dispute.

The City proposes three changes to the existing Personal Leave system to be effective on the date of ratification of this Agreement by both parties, or the date of legislative action taken pursuant to Section 447.403:

- o Accrual rate: The City proposes to lower the per-pay-period accrual rate to a range of 4.62 to 9.54 hours, (120 to 248 hours annually) based on length of service. However the proposal adds intermediate service milestones at which the accrual rate increases such that employees will earn more leave sooner than under the existing plan.
- o Carry-over cap: The City proposes to lower the maximum number of accrued Personal Leave hours an employee may carry over to the next fiscal year from 960 hours to 480 hours.
- o Pay Out: The City proposes to eliminate all payout of Personal Leave following a final transitional payment upon implementation of this Agreement which would pay out all accrued leave in excess of 480 hours, plus a one-time buyout of employees' current accrued leave in accordance with employees' December 2011 elections under current contract language.

Under the City's proposal, accrued but unused leave may be sold at termination at the rate of 50%.

The Union counter-proposes changes effective for new hires (on or after October 1, 2012) only. These include

- Reducing the maximum annual accrual from 960 to 720 hours, and
- Limiting pay-out timing from three choices (June, December, or June and December) to one choice (June or December) resulting in a single pay-out date.

City's Position

All of the City's proposals relating to Personal Leave are driven by fiscal concerns. The City provided extensive information about its financial condition since the start of the current recession, as well as predictions of future trends. Labor costs are a significant portion of the City's budget and the City Manager has been given direction by the Mayor and the City Commission to seek cost reductions of 15 -16% over the long term.

The cost of employees' selling back unused leave time to the City is sizeable and the City seeks to reduce it as part of its overall cost-reduction efforts.

Union's Position

The Union has responded to the City's financial difficulties by making a counter-offer on Personal Leave which would apply prospectively only to new employees. The Union's proposal has two parts:

- Reducing the maximum accrual from its current level of 960 hours to 720 hours, and
- Reducing the frequency that an employee can sell back accrued leave from twice each year to once each year.

The Union claims that the City has not provided sufficient information to support its position that its proposed leave plan is competitive with similar plans in surrounding communities. The Union stated its belief that the current Personal Leave provisions were

in line with other northeast Florida jurisdictions, but fails to provide comparative data to support that assertion.

The Union further contends that reducing the payout for leave at termination at only 50% is unjust inasmuch as the leave has already been earned.

Discussion

The City has provided a wealth of documentation to demonstrate both its fiscal challenges and the actions it is taking to address these challenges. Many, but not all these efforts affect employees, and City leaders appear to be mindful of not seeking to meet its reduction needs on the backs of its workers. Thoughtful consideration of the effect on employees appears to underpin the City proposals. Indeed several, including the instant proposal, incur higher short-term costs in order to achieve a long-term objective without decimating employees financially.

At one time, generous leave benefits were generally viewed in the public sector as a low-cost alternative to higher wages. Paying for unused leave was a way of encouraging people not to take time off. In the current economic environment, this calculus is no longer the win-win trade off it once appeared to be.

Undoubtedly, some employees have come to view leave banks as a form of "deferred compensation" providing supplemental income to those who were frugal in their leave usage. While the City has been generous in providing paid time off in the form of leave, paying a premium on employees' salaries in the form of cash-for-leave has become unfeasible in the current economic environment.

Changing established leave plans, especially where elimination of anticipated income is concerned, is not an easy thing to do. I recognize that some employees may have to make lifestyle adjustments to this change. In this recession economy, many people face similar belt-tightening. Leave plans that go above and beyond their original objective of providing pay for reasonable time away from work, are fair targets for cost savings. The City has proposed reductions such as this as alternatives to more drastic

cuts which could cost actual employee jobs as well as service cuts to residents and taxpayers.

The City proposes a transitional plan whereby all employees who currently have accrued leave in excess of 480 hours will be compensated for that leave. Five employees are affected. In addition, employees who would be due payment for leave in accordance with their personal elections in 2011 will receive a one-time final payment for that time.

The Union proposes a two-tier leave plan with the old plan diminishing as existing employees attrit out of the system to be replaced by new employees on the new plan. The Union claims that the City's data does not sufficiently support its claim that the City's proposed plan is competitive. However, the Union did not cite specific shortcomings, nor did it submit its own data to contradict the City's survey information.

Recommendation

I recommend adoption of the City's proposed changes to the Personal Leave Plan as set forth in Article 13 in their entirety to be effective prospectively.

II. Article 16 - Bereavement Leave

Disputed Provision

The current allotment of three days for Bereavement Leave is unchanged, however the Union proposes new language to guarantee that, upon request, an employee may use 40 hours of Personal Leave time to supplement the approved three days of Bereavement Leave.

Union's Position

The Union does not request additional days of Bereavement Leave (not chargeable to the employee's "Personal Leave" designated for sickness, vacation, or other personal matters), but asks that 40 hours of the employee's Personal Leave, be approved upon request to extend the bereavement period.

The Union maintains that three days are often insufficient for a bereaved employee to travel, if the death occurred away from Jacksonville. If the bereaved employee has significant responsibilities related to the affairs of the deceased, three days may not be sufficient time to discharge those responsibilities.

City's Position

The City makes two arguments in support of its proposal that no changes be made to the Bereavement Leave practice as codified in the current Agreement. First, the City maintains that employees can already request to take available Personal Leave in conjunction with Bereavement Leave, and therefore no special provision is necessary. Two City witnesses testified that they had no recollection of an employee being denied Personal Leave when requested to extend the bereavement period. The Union does not contest this testimony. The City also argues that the current Bereavement Leave of three days is comparable to Bereavement Leave provisions in other area contracts.

Discussion

I find the City's argument related to comparability with other jurisdiction's Bereavement Leave policies to lack relevance here, since the Union is not requesting to increase the amount of Bereavement Leave.

In an earlier article, I referenced the presumption in favor of current language if there were not a material change in circumstances or a problem to be solved by the proposed change. In this case, the change involves significant modifications to the Personal Leave Plan in Article 13.

In Article 13, also in dispute, the City seeks to materially reduce the amount of Personal Leave time that employees earn, as well as imposing a lower cap on carry-over of accrued leave, and eliminating cash payments for some unused leave. The City makes clear that it intends Personal Leave to be a form of paid time off rather than an additional source of income for employees. In that context, the Union's objective to ensure that Personal Leave will be granted, without discretion, for the serious purpose of attending to a family death is consistent with the City's objective for using Personal Leave, rather than accumulating it. The fact that such leave will come from the employee's (now reduced) Personal Leave bank should discourage potential abuse. Since the City seeks to encourage Personal Leave usage, it will simply have Personal Leave that might have been taken at a different time during the year, used at the time of bereavement. Inasmuch as such requests have not been denied in the past, the City should not experience any material negative effect on current practice. I believe that the Union's proposed change is a reasonable corollary to the changes sought by the City in Article 13.

Recommendation

Addressing this provision in the context of the entire existing Agreement, and the changes proposed by the City in Article 13, I recommend adoption of the Union's proposal to add the following sentence at the end of Article 16:

Note: Employees will be allowed to utilize forty (40) hours of personal leave to extend bereavement leave.

Article 17 - Hours of Work and Overtime

Disputed Provision

Article 17.3 states that "the City shall have the discretion to compensate for overtime hours in the form of cash or compensatory time." The Union proposes to change current language regarding overtime compensation by making cash payment the default, and requiring the employee's concurrence in order for compensatory time to be taken.

Union's Position

The Union states its belief that the employee "*has the right* to choose whether or not he/she should receive cash payment or compensatory time off for overtime worked with the week." (Emphasis added) The Union also maintains that overtime work may sometimes increase an employee's costs, e.g., for day care, transportation, etc. as well as causing conflicts with other obligations, resulting in some employees' preference for cash payment.

City's Position

The City proposes current language for Article 17.3 which provides that the City "shall have the discretion to compensate for overtime hours worked in the form of cash or compensatory time." The City states that there has never been a grievance challenging the application of the current provision. The City also maintains that giving each employee a choice of payment method in each overtime situation would be administratively and operationally burdensome. Finally, the City would potentially incur additional overtime costs which would be unpredictable and outside of its control.

Discussion

First it should be noted that both parties' proposals contemplate that compensation for time worked in excess of 40 hours in the work week, whether in cash or compensatory time off, shall be at the rate of time-and-one-half.

Despite the Union's assertion, employees have no "right" to choose between cash payment and compensatory time except as may be provided in this contract. Such a "right" does not exist independently and the Union's claim provides a weak foundation for its proposal. While there may be many instances such as this where an employee would prefer to have a choice, the Union simply has not made a compelling case for instituting such choice.

The parties' current language squarely rests discretion with the City and the Union has showed no change in circumstances that would compel the change the Union seeks. The Union's claim that overtime work can result in added expenses or inconvenience may be true, but it is often the case that employees must make adjustments to accommodate the demands of their jobs.

Recommendation

I recommend no change to current language.

III. Article 20 – Pension

The City of Atlantic Beach currently sponsors a defined benefit pension plan² which is codified in its municipal ordinance code. The plan, which covers City employees other than police³, has existed since 1975.

According the Section 2-299 (a) and (b) of the ordinance code, the pension plan shall be funded by contributions from employees, and contributions from the city and other income sources provided by law. City contributions shall be made to the plan ... in an amount which, together with the member contributions ... is sufficient to meet the normal cost of the plan and to fund the actuarial deficiency ...as determined by the state-required actuarial valuation. (Emphasis added). Since 2006, the employee contribution rate has been five percent (5.0%) of base salary. According to the most recent plan valuation provided by the City, the City's contribution has risen from 13.99% of payroll in 2007 to 26.34% in 2013.

For employees hired prior to September 1, 2008, the vesting requirement is five years of plan participation; for employees hired on or after September 1, 2008, the vesting requirement is ten years of plan participation. (Sec. 2-298).

According to undated information provided by the City, there are 92 employees in the pension plan, 34 of whom are in the LIUNA bargaining unit. Twenty-eight, (76%) of

² There are two major types of pension plans: Defined Benefit (DB) plans and Defined Contribution (DC) plans. Their names derive from the drivers of their funding.

- DB plans are more complex because of their structure and funding mechanisms. Retirement benefits derive from a formula using salary and length of service. An actuarial calculation then projects the amount of money, i.e., the contribution necessary to ensure that sufficient funds are available when each employee retires (and for the projected length of that retirement). What is defined is the retirement benefit, and the contributions are a construct designed to produce that benefit. Contributions can be made by employees, the employer, or both.
- DC plans are simpler in design and administration. The amount of money set aside is determined up front. This "defined contribution" may be made by the employee and/or the employer. At the time the employee retires, his/her benefit will be determined by the amount contributed, the length of time the contributions are invested, and investment returns. Unlike a DB plan, the retirement benefit cannot be precisely predicted in a DC plan.

³ Police are covered by a separate defined benefit pension plan, which is not the subject of these negotiations or impasse.

LIUNA-represented pension plan members are vested, compared with 70% of non-bargaining unit employees, and 72% of all pension plan members.

Disputed Provision

The City proposes several significant changes to the existing pension plan:

- Create a new Defined Contribution (DC) Plan with five year vesting.
 - Place unvested current employees and new employees in the DC plan. (Eight current bargaining unit employees are unvested and would be affected by this move.)
 - During the first ten years of service, the City will contribute up to 6.0% of an employee's salary as a match to the employee's contribution. After the first ten years, the City will contribute an additional 4.0% of the employee's salary without a match.
- Defined Benefit Plan
 - Close the existing DB plan to new entrants.
 - Current vested employees remain in the DB plan.
 - Increase the employee contribution from 5.0% to 6.0%.

As a transitional measure, the City proposes the following for those current, unvested, employees it would transfer to the DC plan:

- Moving employees' life-to-date contributions from the DB to the DC plan;
- Matching dollar-for-dollar the employees' contributions that are moved to the DC plan.

The Union counter-proposes the prospective creation of a Defined Contribution Plan, with a five-year vesting schedule, into which new employees would be entered. All current employees, whether vested or not, would remain in the current DB plan. The Union's proposal calls for the City to contribute 3.0% without a matching employee

contribution, to be increased to 7.0% after ten years, in addition to matching employee contributions up to 6.0%

City's Position

The City has documented its dual financial challenges – declining revenues from *ad valorem* taxes resulting from diminished property values, and escalating pension contribution requirements for its current defined benefit plan.

City administrators have an objective to reduce expenses by 15-16% over the long term. Sustainability of the existing pension plan has become a strategic issue because of the inability to accurately predict or control the City's pension contributions to a defined benefit plan. Contributions have increased from 13.99% of payroll in 2007 to 26.34% of payroll in 2013.

Union's Position

The Union would prefer to have all employees remain in the current defined benefit plan, but reluctantly offers to accept a defined contribution prospectively only for newly-hired employees. Like the City, the Union proposes a five-year vesting schedule for this plan.

Additionally, the Union proposes higher City contributions (3.0% unmatched for the first ten years); an additional 7.0% unmatched after ten years (sub-total 10.0%) with an additional contribution matching the employee's contribution up to 6.0% for a (total of 16% maximum). Under the Union's proposal, employees would not be required to make any contributions although it appears that they could do so voluntarily.

The Union maintains that employees have made other concessions to help the City address the fiscal crisis. Specifically the Union points to 2008 changes in the current pension plan made in 2008 to lengthen the vesting period from five to ten years, and increases in the employee contribution rate from 2.0% to 3.0% in 2004, and to 5.0% in 2005. Finally, the Union claims that the concessions and changes that have already been made have not had sufficient time to show a positive effect on the pension fund's

performance, along with general improvement in the economy and investments overall.

Discussion

The major disagreement is whether existing employees, i.e., the eight unvested members of the LIUNA bargaining unit, will be required to move from the DB to a DC plan. The unvested LIUNA participants all have less than five years of service, meaning that, even under the pre-2008 five-year vesting schedule, they would not qualify for vesting.

Secondary disagreements concern contribution rates both by employees and the City. The Union basically seeks to make the DC plan non-contributory, i.e., all contributions made by the City. I cannot support this approach. In the existing DB plan, employees share responsibility for funding the plan, albeit at a lower level than the City. I believe that the City has attempted to be fair to the DC participants who will vest in the City's contribution on their behalf in five years, only half the time that current participants in the DB plan hired after September 1, 2008, would require to vest.

It is very difficult to tell an employee that a long-term benefit that he or she anticipated upon employment will be discontinued. However, before they are earned, such benefits are not guaranteed, and cannot be relied upon. The City does not propose eliminating retirement benefits entirely, but offers to provide a similar benefit in a different form. Unvested employees still have time before retirement to adjust their lifestyles accordingly by increasing or changing their personal savings plans. The objective is to maintain a viable retirement plan for employees without sacrificing other financial obligations of the government. A radical change to the retirement system is difficult, but in this case, it is the choice most consistent with the interest and welfare of the public as well as the employees.

Recommendation

I recommend adoption of the City's proposal in its entirety to be effective prospectively.

Article 23 - Uniforms

Disputed Provision

Current language provides that the City will provide 11 sets of uniform pants and shirts to employees who are required to wear uniforms in the performance of their duties. Eleven uniform sets allows an employee five sets for the current five-day work week, five sets to be at the laundry, and an extra set for the turnaround day at the laundry, i.e., one set going in to the laundry and one set coming out. The City replaces issued uniforms as necessary, and also provides for their cleaning at the City's expense.

The City proposed two main changes to this Article:

- In Article 23.2, the City seeks to eliminate the guaranteed number of uniform garments provided to non-Public Works and Public Utilities employees, i.e., Meter Readers in the Finance Department.
- In Article 23.4, the City expands the existing standards for wearing the uniforms. This proposal does not appear to be disputed by the Union.

City's Position

The City maintains that the nature of the work performed by Meter Readers is not as hard on uniform clothing as that performed by Public Works and Public Utilities employees with the result that fewer uniform changes and replacements are needed. The City states that its proposal does not preclude issuance of 11 uniform sets to Meter Readers.

Union's Position

The Union asserts that all employees, including Meter Readers, require clean uniforms daily in order to comply with the City's dress and hygiene standards and urges rejection of the City's proposed change.

Discussion

The City's argument is not persuasive that the differences in duties of these two positions in the bargaining unit are sufficient to justify treating them differently with respect to issuance of uniforms. Nor has the City demonstrated any material change in Meter Reader work, e.g., change from a five-day to a four-day schedule, that would justify reduction in the number of uniforms issued. By its own admission, the City may decide not to exercise its requested discretion to issue a fewer number of uniforms to Meter Readers. As before, the presumption will be in favor of retaining the current language.

No indication arose at the hearing, or in the post-hearing briefs, to suggest that the Union does not agree with the City's second proposal for Article 23.4 expanding the standards for wearing uniforms.

Recommendations

- Article 23.2 I recommend that current language of Article 23.2 be retained with all bargaining unit employees treated the same with respect to issuance of uniforms.
- Article 23.4 No evidence or argument was made by either side on Article 23.4, and so it appears that the Union has accepted the City's proposal and this provision is not part of the impasse. However, in the event that it is included, I recommend implementation of the City's proposal to revise the contents of Article 23.4 as follows since the Union's challenge does not appear to extend to this part of the City's proposal. :

~~The employee shall wear the articles of the uniform listed in Section 23.1 only for official City business.~~ Uniforms provided by the City shall be worn without modification and only for official City business. Only City issued hats are allowed.

IV. Career Development Article 25

Disputed Provisions

A. Education Incentive

Article 25.1-25.3 in the current Agreement provides monthly monetary incentives to employees who earn associate or bachelor degrees in the amounts of \$50 and \$100 respectively. According to testimony from City witnesses, these provisions mirror those available to non-bargaining unit employees.

City's Position

The City proposes to eliminate these incentives in their entirety as a cost-avoidance measure. According to testimony from City witnesses, no bargaining unit member currently receives education incentive, and none has received it for at least the past 13 years. The City argues that the proposed elimination of the incentives will avoid potential future costs, without adversely affecting a population of employees who have not historically used this benefit.

Union's Position

The Union opposes removing the education incentives because to do so may discourage employees from obtaining education or training which would help advance their careers. The Union further argues that the education incentives benefit the City in the form of a more educated and capable workforce, and also helps the City to identify leaders within the bargaining unit workforce.

Discussion

The City's argument regarding future cost avoidance is not persuasive. For one thing, the City's own testimony demonstrates that that since there are currently no costs, there are no savings to be had. Absent a sea change in participation among members of this bargaining unit, potential savings or cost avoidances are small. However, as labor costs continue to be a major component of any operating budget, it behooves employers to maximize the efficiency and effectiveness of all its employees. Incenting

improved education is a time-honored means of doing this. In addition, the world of work is changing at an unprecedented rate. Technological changes impact jobs at every level, in some cases making them obsolete. Employees should be encouraged to prepare both for changes in today's jobs, and the jobs of the future. Educational incentives are an effective way of demonstrating such encouragement. Given that there is no material change that would compel removal of this provision, the presumption in favor of current language will prevail.

Recommendation

I recommend no change to current language.

B. Licensure Incentive

Currently, the Agreement has no provision for licensure incentives for Utility Collection/Distribution Operators (hereinafter "Operators"). The Union has proposed a new provision to Article 24.5 that would provide an annual lump sum bonus of \$500 for each aforementioned Operator who obtains a Water Distribution Level III license. The City has countered with an annual incentive amount of \$250. The parties' proposals are substantially similar except for the dollar amounts, except that the City's proposal does not provide proration for new employees.

Union's Position

The Union bases its \$500 proposal on the amount paid for other water-related licenses. It further maintains that this license is difficult to obtain, and valued by other utilities. No documentary or testimonial evidence was presented in support of this statement.

City's Position

The City provided testimony to the fact that Operators who lack the Level III license are classified as Utility Collection/Distribution Trainees (hereinafter, "Trainees") in Pay Grade 15. Once they receive the license, required within 18 months of employment, they are

promoted to Operators (Pay Grade16) with a concomitant promotional pay increase as set forth in Article 26.5(b). The City pays for expenses associated with obtaining and maintaining the license, including application, licensing and coursework fees. The City's witness testified that costs totaled approximately \$224 for the initial license, and approximately \$150 or each subsequent year.

The City proposed a lower incentive amount, \$250/year, because, as their witness testified, the requirements for the Level III license are less than those for other licenses that are incented at the \$500 level as summarized in the City's Chart of the Florida Department of Environmental Protection Licensing Requirements for Water & Wastewater Treatment Plant Operators and Distribution System Operators (undated).

Discussion

The Union has proposed a new incentive for Operators at an annual rate of \$500 paid in lump sum. It appears from reviewing the City-provided data on DEP licensure requirements (unchallenged by the Union), that the requirements for the Level III license are less rigorous than the other water, wastewater, and distribution licenses offered for comparison. Employees without the license are hired as Trainees, and upon successfully completing the licensure requirements, are advanced to the position of Operator at a higher pay grade and a higher rate of pay. The City also pays the out-of-pocket costs associated with both obtaining and maintaining the license. No evidence was provided to suggest that there were difficulties in recruiting or retention that would be ameliorated by incentives. The City counter-proposed an incentive for employees who obtain the Level III license. The difference between the parties is the amount of the incentive to be offered. The Union has not presented any testimony or evidence to persuade this magistrate that the \$500 incentive it proposes will provide any substantial benefit not achieved by the \$250 proposed by the City.

Recommendation

I recommend that the City's proposal for a \$250 incentive be incorporated in the Agreement effective prospectively.

Article 26 - Wages

Disputed Provisions

Three provisions of Article 26 are in dispute:

1) Wages

Across-the-board wage increase for the current fiscal year:

- The Union proposes a 3.0% wage increase effective retroactively to October 1, 2012, as well as a 3.0% increase in the pay ranges for bargaining unit positions.
- The City's proposal is for a 1.0% wage increase effective prospectively from adoption of the new Agreement; no increase is proposed for pay ranges.

2) Longevity Pay:

- The City proposes eliminating longevity pay as currently provided by Article 26.1(c) for new employees, while retaining a modification of the existing longevity schedule for employees who currently receive such pay. The modified schedule, when fully implemented, will result in a five-dollar (\$5.00) per month (\$0.03 per hour) adjustment for every year of service.
- The Union opposes the City's proposed changes.

3) Pay Grade Adjustment for Collection and Distribution Operators:

- The Union proposes increasing the Pay Grade for Collection and Distribution Operators from PG 16 to PG 17 based on recent licensure requirements introduced by the City.
- The City opposes the Union's proposed change.

Note: Both of the City's changes are proposed to be effective prospectively from the date of ratification or legislative action effectuating the new Agreement. The Union proposes its changes to be effective October 1, 2012.

Wages

City's Position

The City's one percent across-the-board pay proposal complements its Article 20.4 proposal for a one percent increase in employees' pension contribution. The objective in pairing these two proposals is to maintain current "take-home pay" such that employee's net pay after pension deduction not be reduced because of the (proposed) increase in that deduction. Concerns for the City's financial health limit the magnitude of the City's offer which is consistent with the amount the City granted to its non-bargaining unit employees.

The City provided comparative data on local beach communities showing that City of Atlantic Beach pay is comparable and competitive.

Union's Position

The Union points out that employees' last wage increase was four years ago, and that the Consumer Price Index (CPI) has increased by more than three percent since then.

Discussion

It is understandable that employees might hope for a wage adjustment after four years of flat pay rates. However, nothing in the pay plan suggests that City employees are disadvantaged with respect to employees performing similar work in other local jurisdictions. The City provided documentation from nearby beach communities to show that City of Atlantic Beach pay ranges are competitive. The Union did not provide any contradictory data, nor did they challenge the appropriateness of the beach communities selected, the jobs compared, or the accuracy of the comparative salary information submitted. In fact, though pay rates did not increase, employees did receive additional income in FY 2011-2012 in the form of a one-time "appreciation bonus."

Comparative data provided by the City for four local beach communities similar to Atlantic Beach show that salary ranges for bargaining unit positions are in line with those of the comparators with no significant disparities. No testimony was provided to

demonstrate recruitment or retention difficulties related to these nearby jurisdictions. It should be noted though, that the comparative data did not identify either effective dates for the included pay rates, e.g., collective bargaining agreement durations, or the date(s) that the data were compiled. That additional information would have been helpful.

The Union neither claimed, nor produced any documentation to show any history of the parties' utilizing CPI (Consumer Price Index) data to determine wages at the table. In fact, the Union only alluded to "CPI" without specifying which of the many indices was referenced, or what specific changes occurred over what time period, and how the Union believed those changes affected bargaining unit employees. The CPI is not itself a cost-of-living index and its applicability to wage discussions should be very narrow and specific.

Recommendation

I recommend that the City's November 30, 2012 proposal on Article 26.1(a) for a one-percent across-the-board pay increase be included in the collective bargaining agreement, to be effective prospectively.

I further recommend that there be no changes to the Salary Ranges incorporated in Exhibit A of the current Agreement, City of Atlantic Beach Job Classification/Pay Grade Salary Range.

Longevity Pay City's Position

The City seeks to phase out its current longevity pay system by freezing longevity pay amounts for current employees. Frozen amounts will be at a rate greater than or equal to what employees currently receive. Shortly after initial implementation, employees who are between current longevity "milestones" will have their longevity pay adjusted to include \$0.03 per hour per year of employment for any years of service not currently reflected in "milestone" longevity pay amounts.

Employees hired after the effective date of this change will not be eligible to receive longevity pay. Current employees will not lose their existing benefit, and may receive additional benefits at a reduced level, but on an earlier effective date. The City proposes that this change be effective on the date of ratification of this Agreement by both parties, or the date of legislative action to implement it. The City maintains that its proposal is fair and competitive.

Union's Position

The Union objects to the elimination of longevity pay on the basis that it is the only mechanism for employees to obtain increased pay based on length of service. Without longevity pay, the Union claims that long service employees may earn the same rate of pay as new hires.

Discussion

Longevity-based adjustments have long been components of public sector pay plans. They are designed to incent employee retention in a competitive labor market. There are different perspectives on them as employee compensation tools, including whether longer service equates to added value, and whether such added value, if any, justifies the increased cost. While the parties have incorporated longevity provisions in their past agreements, the City seeks to move its compensation policy in a different direction, as part of its cost-reduction efforts. The Union does not agree with the proposed change, despite the fact that individual current employees may benefit from it in the short run. While no current employee will lose existing pay, beyond the one-time adjustment, employees currently receiving longevity pay will not increase the amount they receive (though they will keep what they have). New employees will not be able to look forward to receiving longevity pay in the future.

Recommendation

I recommend that the City's November 30, 2012 proposal on Article 26.1 (c) for ending longevity pay for new employees, and incorporating longevity pay in base salaries of

current employees as proposed, be included in the collective bargaining agreement, to be effective prospectively.

Pay Grade Adjustment

Union's Position

The Union's proposal for a one pay grade increase is based on the fact that the Level III license is not required by law, but has been made a job requirement by the City for all employees in the classification of Utilities Distribution/Collection Operator. Because the license is required for operational convenience rather than legal compliance, the Union argues that it should command an upgrade to a higher pay grade and associated pay range.

City's Position

The City points out that it requires an employee to have a Level III license to qualify for a Utilities Distribution/Collection Operator position in Pay Grade 16. Unlicensed employees are hired into a Utilities Distribution/Collection Operator Trainee position, pay Grade 15 and, upon licensure, are promoted to the Operator position. There is no difference in the work performed by the two positions (Operator and Trainee), only in the licensure. In addition both parties have proposed lump-sum incentive payments to employees who obtain the license. The City argues that in effect another pay grade increase will triply reward employees for the same credential.

Discussion

Assignment of classifications to pay grades is typically done through a "pay and classification study" whereby a common yardstick is applied to all jobs to measure them using common criteria, and then. These rankings are then associated with pay ranges, typically surveying to include both internal (comparing with jobs within the system) and external (using market survey data) equity. While there was no testimony from either side on this matter, in response to a question from the magistrate during the hearing, the City's Human Resources Director stated that the City does use a job

evaluation methodology. It appears as if these factors have been considered in the City's agreement to advance employees by title and pay grade (from Operator Trainee – PG 15 to Operator – PG 16) upon licensure. Additionally, the City has proposed pay a lump sum incentive to employees upon attainment of licensure. To advance the position by yet another grade to Pay Grade 17 seems gratuitous. No documentation was submitted to justify the placement of the Operator position at the higher pay grade along with other positions which, presumably, were evaluated at the higher level.

Recommendation

I recommend that no adjustment be made to the Pay Grade of the Utilities Collection/Distribution Operator (Pay Grade 16).

CONCLUSION

I wish the parties the best in their ongoing collective bargaining relationship and the successful conclusion of the 2012-13 Agreement and hope that my contributions will prove helpful to them. I would like to thank the Commission and the parties for the opportunity to serve in this matter.

Respectfully submitted,

Adrienne Davis Trott

Adrienne Davis Trott
Special Magistrate

**CITY OF ATLANTIC BEACH
CITY COMMISSIONER MEETING
STAFF REPORT**

AGENDA ITEM: Non bargaining employees' benefits

SUBMITTED BY: Jim Hanson

DATE: March 26, 2013

STRATEGIC PLAN OBJ: Goal # 1 Union Negotiations From 2012-13 Strategic Plan

BACKGROUND: The agenda for the special meeting on April 8th includes two subjects; resolving the impasse with the LIUNA Union and making a decision on the pension and benefits for non-union employees. Benefits for the third group, the Police Union, have already been resolved by the approval of the contract with the PBA. This staff report is to address the non-union employees.

One of the Strategic Plan Objectives for 2012/2013 is to provide a balance of pension plans and other employee benefits that are fair to existing employees, and enable the City to recruit highly qualified applicants to provide the necessary services, and that are sustainable from a cost standpoint in the long term. Like many cities in Florida, the City of Atlantic Beach has experienced declining revenues and increasing costs. Ad valorem tax revenues have declined over many years while pension costs and the unfunded liability have risen.

Keeping in mind the City's financial positions and the commission's directions as established through several SHADE meetings, these are the recommended changes to the non bargaining employees' benefits.

Personal Leave:

The maximum number of personal leave hours which may be accrued and carried forward to the following fiscal year should be set at 680 hours. Within thirty (30) calendar days from the effective date of the commission decision, any employee who has exceeded the limit of 680 hours will receive a buyout of accrued personal leave for all hours that exceed the new maximum accrued limit of 680 hours. Thereafter, the maximum number of personal leave hours which may be accrued and carried forward to the following fiscal year should be 680 hours. Employees should make every attempt to schedule and use their personal leave prior to the end of each fiscal year. Failure to use their personal leave time will result in forfeiture on October 1 of each fiscal year of any time that exceeds the 680 hour limit. The City Manager should have the authority to waive this limit when it was not possible for employees to take their leave due to scheduling constraints imposed by the City. For example, an employee who was denied approval to take some time off near the end of the year because of other vacancies that they had to cover for should not be penalized.

Bi-annual leave sell back will be eliminated. Eligible employees who resign with at least two (2) weeks' prior written notice of resignation to the City Manager, are laid off, or who retire should be paid for up to 680 unused personal leave hours as follows:

- Employees hired by the City before April 8, 2013, with ten (10) or more years of completed service on the date their employment ends shall be paid out 100% of the personal leave hours accrued (up to a maximum of 680 hours).
- Employees hired by the City before April 8, 2013, with less than ten (10) years of completed service on the date their employment ends should be paid out 50% of personal leave hours accrued (up to a maximum of 680 hours).
- Employees hired by the City on or after April 8, 2013, should be paid out 50% of personal leave hours accrued (up to a maximum of 680 hours).

A proposed amended personal leave accrual schedule is attached.

Longevity:

Eliminate Longevity Pay. Effective 04/27/2013 longevity pay should be eliminated as a benefit; however, employees receiving longevity pay on such date should have their base pay enhanced by a prorated amount of \$5.00 per month per each year of completed service up to a maximum amount of \$100 per month for twenty (20) or more completed years of service.

Pension:

Increase contribution rates to defined benefit retirement ("DBR") plan to 6% for those employees hired before September 1, 2008.

Move all employees hired on or after September 1, 2008, and all new employees to a defined contribution ("DC") plan with the City putting an amount equaling twice their employee contribution to date, with interest, into the new DC plan in their name. In the future, provide that the City match up to 6% during the first 10 years of service, and thereafter the City provide an additional 4% contribution (non-matching); and further provide that the employees covered by the defined contribution plan shall be vested at 5 years of service.

BUDGET:

If approved, funding for this action will be included in a future budget modification as necessary. Cost estimates for these benefit levels for all general employees, both union and non-union, have been provided to the commission in recent months.

RECOMMENDATION:

That the City Commission approve the above recommended changes to the non bargaining employees' benefits and authorize the City Manager to make the related necessary changes to the Personnel Manual.

PROPOSED PERSONAL LEAVE ACCRUAL SCHEDULE

Years of Service	Hrs. Per Pay Period	Total Annual Hours
1 st Year	4.62	120.00
1 yr. 1 day thru 3 rd year	5.54	144.00
4 yrs. 1 day thru 5 th year	6.15	160.00
6 yrs. 1 day thru 7 th year	6.77	176.00
8 yrs. 1 day thru 10 th year	7.69	200.00
11 yrs. 1 day thru 12 th year	8.31	216.00
13 yrs. 1 day thru 14 th year	8.92	232.00
15 years or more	9.54	248.00