County of Orange and International Union of Operating Engineers Local 501 (IUOE) – Report and Recommendations of the Fact finding Panel (PERB Case No. LA-IM-136-M)

September 24, 2014

This Fact-Finding involves an impasse over the terms of a successor agreement between the County of Orange and IUOE Local 501, generally referred to as Stationary Engineers Local 501. Steve Danley was designated Panel member for the County, Michael Placencia was designated Panel member for Local 501, and Tony Butka was agreed to as the Panel Chair.

A hearing was held at the Orange County Hall of Administration on Wednesday, September 10, 2014, where all parties were represented by counsel and afforded an opportunity to introduce evidence, testimony, and argument as to their respective positions.

Background: The County of Orange is a 1937 Act Charter County, and is a full service county. It is also the third largest County in the State of California, with about 18,000 employees, and some 14 existing bargaining units.

Local 501 is the certified bargaining agent for a Craft and Plant Engineer Unit, consisting of what would be generically referred to as building trades blue collar classifications, and as of the date of hearing there were approximately 140 positions in the unit.

The last collective bargaining agreement between the parties was a 2009-2012 contract which expired on June 14, 2012. Since that time, the parties have been engaged in negotiations for a successor agreement, to no avail.

In May 2013, after an unsuccessful mediation, Local 501 requested fact finding, but that request was held in abeyance pending attempted legislative resolution of a legal dispute over the fate of some $73 million in vehicle license fees between the County of Orange and the State of California.

Ultimately, negotiations resumed in October 2013, with the County presenting a last, best and final offer to Local 501 in late January 2014. Thereafter, there was a declaration of impasse by the union, an unsuccessful mediation session, and a contested filing by IUOE Local 501 with PERB for fact finding. On August 11, 2014 PERB certified the matter for fact finding, resulting in this proceeding.

The Dispute:

As of the date of hearing, there were six issues in dispute:

Term
Workers Compensation Supplemental Benefits
Health Insurance
Retirement
Salaries
Performance Incentive Plan (PIP)

Of these issues, clearly the most pressing are modifications proposed by the County in the areas of retirement and health insurance, and salaries.

PERB Criteria:

PERB Regulations lay out a set of 8 criteria to be used by a fact finding panel:

"(d) In arriving at their findings and recommendations, the fact finders shall consider, weigh, and be guided by all the following Criteria:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations."

Analysis

Term - The County's position at hearing was for a term from the date of implementation forward through June 11, 2015. Inasmuch as the Union provided no real objection to this proposal, the recommendation is for a term ending June 11, 2015. From a collective bargaining perspective, this makes sense in that there is no reasonable path here to a negotiated agreement, and this allows the parties to commence bargaining for a 2015/16 agreement with enough time to ensure a normal collective bargaining cycle.

Workers Compensation Supplemental Pay - Under the terms of the expired agreement, the County has agreed to pay the difference between workers compensation temporary disability benefits and 80% of an employee's base salary for up to one year. The County proposes to eliminate this supplemental benefit.

For employees in this unit, the issue is a real one. Generally, blue collar craft employees have the type of jobs which result in a much higher 'wear and tear' factor than more sedentary office workers, and tend to also have a higher likelihood of workers compensation injuries which take a while to heal and result in ever increasing percentages of permanent disability.

The County offered no empirical evidence of abuse by bargaining unit members, but did provide evidence that their proposal is in line with that of what they believe to be comparable agencies under the provisions of the fact finding criteria listed above.

Were this only issue separating the parties, it might be possible to find in favor of the Union's position. Unfortunately it is not, and the implications of making an exception for this bargaining unit would likely find their way into other agreements.

The recommendation is to adopt the County's position, with a caveat that the parties should look at the workers compensation experience for this unit separately from that of the County as a whole, and consider adjustments as experience dictates.

Health Insurance - Along with retirement costs, health insurance benefit cost increases continue to be a major issue in all negotiations. In the case of Orange County, the employer hired a benefit consultant, Mercer, to make recommendations for modifications to the County's current health insurance plans. They did so, and a summary of their recommendations are contained in County Exhibit 12.

The most significant change proposed in the area of health insurance is to implement a preventative Wellness Program designed to promote a healthier lifestyle. It would benefit the employee (healthier, live longer) and the employer (healthier employee equals reduced costs over time to the employer). The Report projects initial General Fund savings of these modifications in the area of $2.1 million.

The manner in which the employer proposes to implement this plan is by providing what amounts to a five percent (5%) incentive for employees to participate in the Wellness Program.

Under this proposal, the County contribution would be 90% of the single rate and 75% of the family rate for employees who participate in the Wellness Program and provide proof. For those employees who choose not to participate in the Wellness Program, the County contribution rate would be reduced to 85% of the single rate and 70% of the family rate.

There are other design changes in the County's multiple health plans (PPO, HMO, and Premier Sharewell) which are too voluminous to go into here - they are contained in County Exhibits 13A-F), and are not in dispute here.

In terms of PERB criteria, the most salient point is that all of the County's 14 bargaining units, with the exception of Local 501, have accepted these proposed changes to the health insurance programs.

While the Chair recognizes that each bargaining unit is an entity unto itself, it is equally clear that health insurance programs are system wide, and there is a very high burden placed on the Union to recommend something different. Here there is no evidence which would cause the Board of Supervisors to continue the old system for this bargaining unit alone.

Therefore, the Panel Recommendation is to adopt the County's position on health insurance changes.

Pension Contributions - The County's position is to have employees pay their full member contribution (i.e., end the County's pickup of the member contribution). By the end of this fiscal year, all but a handful of Counties will have all of their employees paying the full employee contribution rate into their retirement plan. It is a public phenomenon which is ongoing, and has also produced the State mandated PEPRA pension plans for all new hires, which are substantially less generous than those of vested incumbents.

The County of Orange is no exception to his idea. Unfortunately, Orange County has one of the most complicated set of pension and other deferred compensation plans in the entire State of California. This was really generated by the County's bankruptcy some years ago, and the ensuing variety of measures taken in the area of retirement plans to adjust to that fact. This complexity has also generated significant litigation, the bulk of which is beyond the scope of this fact finding process.

In terms of implementing changes to most public pension plans, there seem to be two common threads - first, that all employees should pay the full amount of the employee contribution rate for whatever plan they are in. Second, that there are now two fundamental groupings of employees - those hired prior to the PEPRA legislation, and those hired after the adoption of that legislation.

Generally this fundamental divide means that employees hired after January 1, 2013 will pay more and receive less retirement benefits than those hired prior to January 1, 2013. CALPERS itself refers to these two groups as "Classic" and "New Member" employees (See the *CalPERS Summary of Public Employees' Pension Reform Act of 2013 and Related Changes to Public Employee Retirement Law*). Of course in the County of Orange there are a number of Plans and Tiers depending on when you were hired and what choices you have elected over the years.

The Chair only mentions all of this because there was some confusion at the hearing as to whether the County was trying to implement a provision of AB 340 (PEPRA) relating to 1937 Act counties which prohibits an employer from unilaterally imposing a requirement that employees pay 50% of the normal cost of benefits (i.e., one-half of the combined total of the employer's normal rate and the employees normal rate) until January 2, 2018. Subsequent to hearing, it was confirmed that the County is not proposing employees pay 50% of the normal cost of benefits nor is it attempting in any way to abrogate any of the provisions of AB 340.

More to the point, the current bargaining pattern for this fiscal year in the County of Orange would seem to be that employees hired prior to January 1, 2013, are expected to pay the full cost of the employees share of their retirement, while employees hired after January 1, 2013, are covered by the provisions of PEPRA.

Salaries - The real issue in the current round of bargaining seems to have centered around the proposition that employees are trying to obtain salary increases equivalent to the increased retirement contributions which the County is seeking.

These proposed tradeoffs have been common throughout this fiscal year's set of contract negotiations up and down the State, with varying degrees of Union success.

The County of Orange in comparison to many other counties in the state is facing some fiscal challenges unlike other jurisdictions. Key amongst those differences would be the litigation loss suffered by the County in its battle with the State of California over some $73 million in Vehicle License Fees. A final resolution by way of AB 701 has the impact of the County no longer being able to include property tax in lieu of the vehicle fee revenue (some $70 million plus impact each year), and in addition they must pay back some $150 million to the State over a five year period. These are not trivial numbers.

Within this context, evidence presented at hearing would indicate that different employee groups have had varying success in trying to obtain salary offsets to increased pension contributions.

In the instant case, it seems to the Chair that there is virtually no chance that the County would implement any salary increase absent a ratified agreement on the whole contract, and since Local 501 is resisting an agreement along the lines of the employers last, best & final offer, recommending any salary increases for the term ending June 11, 2015 would be counterproductive.

However, there is one area on a go forward basis which I believe could be helpful to the parties in trying to reach a prospective agreement. It centers around what constitutes comparability under PERB fact finding criteria 5 and 7 listed above.

For most classifications, cities and counties choose a market basket of jurisdictions that they consider 'comparable' and use those to benchmark rates. In the case of building trades craft workers, the history is quite different. Going all the way back to the 60's, these trades historically pegged their rates to the Associated General Contractors (AGC) master agreement with the BCTC. In the public sector they typically negotiated an offset for the fact that their public employee members were employed full-time as opposed to the project employment afforded under the AGC agreement. Thus you heard such phrases as "AGC less 15%" in negotiations.

I point this out not as a history lesson, rather to emphasize the difference between craft workers, who represent a very small percentage of a public agency (and how they look at their labor market) as compared to the bulk of other public employees. Craft workers tend to still look at 'union scale' as their labor market, as opposed to various public sector jurisdictions.

You see this fundamental difference in the Union's fact finding presentation. They focus clearly on the fact that they have not received a salary increase since 2008, while their numbers have decreased from 178 FTE to 140 FTE, and they have absorbed other economic concessions.

The suggestion is that between the date of this report and any further negotiations, the parties take a look at trying to determine appropriate wage and compensation surveys based on these craft employees private sector orientation.

Performance Incentive Program (PIP) - Here the basis for the Union's position is clear, if unhelpful. Evidently a number of years ago, the County implemented a Performance Incentive Program , to provide a monetary reward for individuals based on merit. So-called 'merit pay' was a popular buzz word at the time. Over time, that program evidently morphed into a standard salary amount for everyone.

Back in either 2008 or 2009, Local 501 agreed, as a part of their negotiations, to eliminate this plan from their contract, based on representations from the County that the program was being eliminated and was going away for everyone. Unfortunately for Local 501, such turned out not to be the case, and some other bargaining units kept the PIP program.

Bargaining practice is clear on this issue. Absent a 'me too' clause or other equivalent contract language, what you negotiate out of an agreement is gone. Other than some potentially hard feelings of being duped, there is no rational basis for reinstitution of the program.

Recommendations

1) Term - Date of implementation through June 11, 2015
2) Workers Compensation Supplemental Pay - County's last best & final offer, with a caveat to track this unit's experience separately from the overall County
3) Health Insurance - County's last, best & final offer
4) Retirement Contributions - The Panel recommends that the County be allowed to have bargaining unit employees pay the full employee share towards retirement with the understanding that any action taken by the County does not violate the provision in AB 340 prohibiting unilateral implementation of a requirement that employees pay 50% of the normal cost of benefits.
5) Wages - No Change, but the parties to look at agreement on what constitutes 'comparable' in setting unit pay
6) Performance Incentive Program - None

Dated: September 24, 2014

Respectfully submitted,

Tony Butka

Tony Butka
Chair

Panel Member Danley, Concurring
Panel Member Placencia, Abstaining