

IN THE MATTER OF FACT FINDING BETWEEN:

TOWN OF LONDONDERRY
AND
LONDONDERRY ADMINISTRATIVE
EMPLOYEE ASSOCIATION

FACT FINDER'S REPORT AND RECOMMENDATIONS

Introduction

The Town of Londonderry, ("Town" or "Employer") and the Londonderry Administrative Employee Association ("Union") have been negotiating over the terms of a successor collective bargaining agreement. The most recent Agreement is for the period of July 1, 2002 through June 30, 2006. The parties have been engaged in lengthy negotiations and involved in the dispute resolution process since the expiration of their prior Agreement. In particular, they engaged in mediation and fact finding in 2006, and a Fact Finding Report was first issued in May 2006. The recommendations were rejected by the Town, and accepted by the Union, but the Agreement was voted down before the Town Meeting. In 2007, the parties resumed negotiations, and reached a Tentative Agreement, this Tentative Agreement was rejected by the Town Meeting on March 15, 2008. A third round of negotiations ensued. The parties again went to mediation and fact-finding, and a fact-finding report was issued in December of 2008. The fact-finding report was rejected by the Town Council and ultimately by the Town Meeting.

A fourth round of negotiations began in June 2009, and again the parties pursued mediation, but were unable to

reach a full Agreement. By agreement of the parties, the undersigned was appointed to serve as the Fact Finder for this fourth round of negotiations. A Fact Finding hearing was conducted on November 16, 2009. The Town was represented by William Wardwell, and the Union by Richard Molan, Esq. At the Fact Finding hearing the parties presented arguments and provided substantial documentation in support of their respective positions.

Analysis and Recommendations

Initially, it must be noted that the fact-finding process is a continuation of the collective bargaining process. It is not meant to supplant direct negotiations between the parties. Nevertheless, at times parties cannot reach a successor agreement and it is necessary for a neutral to offer recommendations, hopefully, to settle the unresolved issues, and bring a measure of finality to the present impasse. Fact-finding is a conservative process. Specifically, fact finders are interested in such concepts as prevailing standards, that is, what benefits, and conditions of employment exist in other comparable communities, and the historical relationship between the parties. Seldom will novel and untried solutions be part of a fact finder's recommendations. Finally, it must be stated that significant changes are generally not achieved through the fact-finding process.

Background and Issues

The Town of Londonderry is in Southern New Hampshire. The population according to the 2007 census was approximately 25,000. It is the ninth largest incorporated community in New Hampshire. The bargaining unit represented by the Union consists of professional employees and

employees in middle and senior management positions in various Town departments. There are approximately thirty-two positions in the bargaining unit. The parties reached tentative agreements on a number of issues prior to fact finding, and these subjects should be included in the parties' successor Agreement. The unresolved issues presented at fact finding are as follows:

1. Article 12 - Scheduled Work Week and Hours p. 3
2. Fire Captain - Battalion Chief p. 4
3. Article 14 - Compensation and Performance Pay p. 7
4. Article 16 - Vacations p. 13
5. Article 17 - Sick Leave p. 14

1. Article 12 - Scheduled Work Week and Hours

Article 12 is a comprehensive provision that describes the hours of work pay and practices for unit positions. Paragraphs 9 and 10 are the two sections that are unresolved.

Paragraph 9 provides that the Deputy Fire Chief, Fire Captains, and Fire Marshals, who work shift details, are paid a flat dollar amount for each hour of work. The current amount is \$42.00, which was last increased in July 2005.

Paragraph 10 provides that Police Lieutenants and Police Captains, who work shift details, are paid a flat dollar amount for each hour of work. The current amount is \$42.00, which was last increased in July 2005.

POSITION OF THE UNION

The Union proposes that the rate be modified for all positions (Paragraph 9 and 10) from the current flat dollar amount that is now set in the Agreement to the rate of time and one-half the employee's regular rate of pay. The Union

maintains that the rates have not been changed since 2005, although the employees who are supervised by members of this bargaining unit have received increases in the detail rates. The Union states that instead of having to negotiate these rates each and every time, the rate should be changed to the overtime rate, which is time and one-half.

POSITION OF THE TOWN

The Town proposes to increase the rate for Fire officials to \$47.00 an hour and the Police officials to \$51.00. The Town maintains that there is insufficient justification to change the rate from flat dollar to time and one-half, since overtime rates are not required by the FLSA.

Discussion

The Union's proposal is reasonable. The rates have not been increased since 2005. Having the rates set at time and one-half would prevent compression of the rates when negotiations are protracted. At the present time fire fighters and police officers under their agreements are paid time and one half for outside work details.

Recommendation - Shift Details

The Union's proposal is recommended.

2. Fire Captain - Battalion Chief

At the present time, the positions of Fire Deputy Chief and Fire Captain are included within the recognition clause. The position of Fire Deputy Chief, however, no longer exists as the position was eliminated. The position of Battalion Chief does not now exist in the Londonderry Fire Department.

POSITION OF THE UNION

The Union states that in the past there had been the position of Deputy Fire Chief in the Department. The Union states that when the incumbent Deputy Fire Chief left the Department a number of years ago, the position was not filled. The Union states that instead the duties and responsibilities once performed by the Deputy Chief were divided among the four Captains in the Department. The Union further asserts that a new position description was created that reflected the added duties assigned to the Fire Captains. More specifically, the Union states that the Fire Captains now have greater responsibilities and additional administrative duties. The Union contends that with the changes in the Londonderry Fire Department the Captains' duties and responsibilities are analogous to the duties and responsibilities performed by Battalion Chiefs in Departments that have multiple fire stations. As a result the Union contends that the position of Fire Captain should be re-titled as Battalion Chiefs, and the position should be reclassified to receive a higher salary than set forth for the current Fire Captain position. The Union contends that a higher salary would reflect the added duties and responsibilities performed by those now holding the rank of Captain.

TOWN POSITION

The Town opposes the Union's position. The Town states that the change occurred in 2004, but that not all of the Deputy's former duties went to the Fire Captains; some of the duties performed by the Deputy were taken over by the Chief, some duties were assumed by the Town Manager, and

other duties were clerical duties, now performed by clerical employees. Moreover, the Town states that the Union did not object to the elimination of the Deputy Chief's position when it occurred in 2004. The Town maintains that the Union's proposal to reclassify the position from Captains to Battalion Chiefs is a managerial prerogative, and should not be addressed in this Fact Finding proceeding.

Discussion

It is difficult for a fact finder to recommend that specific positions be upgraded or the extent of any such upgrades. This is a matter that requires additional study. At this time, the parties should agree to a joint-labor management committee composed of two Union Representatives and two Town representatives to conduct a survey to review the job duties and salary levels for positions of Battalion Chief in other communities and to review whether the Fire Captains in Londonderry should be upgraded based on their duties and responsibilities. The report of this committee should be prepared in advance of the next round of contract negotiations.

Recommendation - Captains/Battalion Chiefs

The parties should agree to establish a joint labor management committee to review whether the Fire Captains in Londonderry should be upgraded based on their duties and responsibilities. The report and recommendations of this committee should be prepared in advance of the next round of contract negotiations.

3. Article 14 - Compensation and Performance Pay

Appendix A of the current Agreement sets forth a minimum and maximum salary range for bargaining unit positions. Under the most recent Agreement, employees received cost of living adjustments for the three-year period. In addition, under the existing Agreement there is also a performance pay plan. More specifically, employees are annually evaluated on their date of hire, based upon an established evaluation system. Employees may then receive a merit pay increase; if the employee's rating is outstanding the employee can receive 5%; exceeds expectations 4%; meets expectations 3%; does not meet expectations or is evaluated as unsatisfactory the employee receives no adjustment. Under the existing merit pay plan, if the employee is below the maximum rate the amount of the performance pay is included in the employees' base pay rate; if the employee is already above the maximum rate set forth in the schedule, the employee is then paid the merit pay in a lump sum payment.

TOWN POSITION

The Town proposes to adjust the salary bands for all positions to reflect the cost of living since the last agreement. More specifically, under the Town's proposal the salary bands would be increased in the following manner:

1.1 Effective July 1, 2010, the salary and wage schedule base shall be increased by 3.3%, 3.1%, 3.0% and 3.5% to accommodate the cost-of-living increases effective 7/1/06, 7/1/07, 7/1/08 and 7/1/09.

1.2 Effective July 1, 2010 the LAEA Wage and Salary Schedule shall be adjusted based upon the Boston Regional Office Consumer Price Index referred to as CPI-U as published by the U.S. Department of Labor,

for the twelve (12) month average for the period ending December 31, 2009.

1.3 Effective July 1, 2011 the LAEA Wage and Salary Schedule shall be adjusted based upon the Boston Regional Office Consumer Price Index referred to as CPI-U as published by the U.S. Department of Labor, for the twelve (12) month average for the period ending December 31, 2010.

1.4 Effective July 1, 2012 the LAEA Wage and Salary Schedule shall be adjusted based upon the Boston Regional Office Consumer Price Index referred to as CPI-U as published by the U.S. Department of Labor, for the twelve (12) month average for the period ending December 31, 2011.

These increases would only be for the salary ranges. In other words, the Town has not proposed any actual cost of living adjustment to bargaining unit employees either retroactively or prospectively during the period of this successor agreement.

In addition, the Town proposes to modify the current merit pay system. The Town proposes to modify the date of evaluation so that evaluation would be done on September 1, and no longer on the employee's anniversary date. In addition, the Town proposes that the merit increases could go as high as 6% for outstanding performance. The Town also proposes that the total pool of money for merit pay would be limited to 4% of the sum of base wages for the bargaining unit.

The Town maintains that the current system of providing cost of living adjustments and annual performance payment cannot continue. In particular, the Town states that under the current contract employees receive cost of living adjustments and merit pay increases; two pay

increases during the year. Moreover, the Town states that under other Town agreements, when employees reach maximum step, they only receive the cost of living adjustment, and no further increase. The Town asserts that it would prefer to pay employees based on performance, which it maintains is more appropriate for professional and administrative employees than across the board increases.

UNION POSITION

The Union proposes a new wage schedule that would provide for three ranges, minimum, middle, and maximum. Effective July 1, 2010, all employees would move to the middle range on the new salary schedule. If the movement does not provide at least a 6% increase then employees would receive a 6% increase for the year. Effective July 1, 2011 all employees would move to the maximum rate (step 3) for their position. The Union states that its wage proposal would amount to a 20% cost increase for the first year, and approximately 8% for the second year. For the third year, commencing July 1, 2012 the Union proposes that all members receive cost of living adjustments with a range of between 3% and 4 1/2%.

The Union proposes to eliminate the merit pay system and move to a new salary schedule. The Union states that the Town's proposal of capping the total amount of performance pay is an effort to eliminate merit pay and that employees would be better off having a salary schedule with steps. The Union states that employees have not had cost of living adjustments since 2006, and as a result, the wage rates of bargaining unit employees have lagged behind those of other Town employees, many of whom are supervised by employees in the Administrative Unit. In addition, the

Union states that the wage rates for bargaining unit employees lag considerably behind the salary rates provided to similar positions in surrounding communities.

Discussion

The history of wage increases for this bargaining unit has been based on COLA adjustments and also merit pay. In these negotiations, the Town seeks to eliminate any COLA adjustments for bargaining unit employees, to have pay increases based only on merit performance, and to limit the pool of money from which to provide merit pay increases. The Union, on the other hand, seeks to eliminate the merit performance pay, and create a three-step salary schedule, to move employees to maximum step in the second year, and then provide bargaining unit employees across the board increases in the final year.

It must first be remembered that the method of providing for annual cost of living adjustments and also merit pay increases was put in place by agreement of both parties. Second, it is not unusual for mid-level managers and professional employees, like the employees in this bargaining unit, to receive some form of merit pay as part of their annual compensation. It must also be remembered that most other bargaining unit employees in the Town receive step increments; there are no step increases for members of the LAEA bargaining unit. In other words, any increase above the COLA is based on standards of performance. There can be no doubt that totally eliminating the merit pay, as proposed by the Union, would alter the status quo. Similarly, the Town's proposal to pay employees just on merit evaluations with no across the board increase

would also drastically alter the parties' long term pay practices.

I believe that it is important to preserve the integrity of the performance pay plan that has been in place for many years. Instead of wholesale changes, there should be limited modifications to the current payment method. In other words, there should be a compensation plan that provides for modest guaranteed COLA adjustments, and modest merit pay adjustments, which are more in line with the overall costs of other Town-wide collective bargaining agreements.

It must be recognized that the members of the bargaining unit have not had cost of living adjustments since the end of the last Agreement, which expired in June of 2006 and during this time period, other Town employees received cost of living increases. This has caused salary compression between the salaries of LAEA employees and the salary rates of employees they supervise; this occurred each and every time employees in other Town bargaining units received pay increases when, at the same time, no increases were provided to LAEA employees. It is therefore important to provide wage adjustments so that the salary rates of bargaining unit employees do not fall further behind the salary levels of other Town employees, and, in particular, Town employees who Administrators now supervise. There is ample justification to provide wage increases over the period of a new two-year agreement for members of the Administrators bargaining unit in an attempt to "catch-up" to wage increases that have been provided to other Town employees. Indeed, the record reflects that other Town bargaining units have agreed to cost of living

adjustments and step increments for the next fiscal year. On the other hand, the fact finder cannot ignore the current economic recession that has affected the nation and the State of New Hampshire.

Recommendation - Wage Increases and Merit Pay

Based on all the facts, I recommend that there be an across the board increase of 3% effective July 1, 2010, and an additional 3% increase effective January 1, 2011 for all bargaining unit members. By providing wage increases on these two dates will cost considerably less than providing a full 6% increase on July 1, but will have the effect of increasing the base salary of bargaining unit employees, which is warranted. The same rationale should apply for the second year of the Agreement. Specifically, I recommend that there be an across the board increase of 3% effective July 1, 2011, and an additional 3% increase effective January 1, 2012.

In addition, the parties should modify the current merit pay system, which now provides merit increases that range from 0-5%, to a new merit range that provides for 0-3.5% merit increases; 3.5% for outstanding, 3% for exceeds expectations, 2% for meets expectations, and 0% for those who do not meet minimum requirements or have an unsatisfactory evaluation. Providing for more modest cost of living adjustments and more modest merit increases, would ensure the integrity of the merit pay program negotiated by the parties, and provide for total annual wage increases that are reflective of the costs of total wage increases provided to other Town bargaining units, and more in line with the current economy. In addition, the parties should agree to increase the ranges of the current

salary schedule, as proposed by the Board. Finally, the current evaluation process should continue to be performed on each employee's anniversary.

4. Article 16 - Vacations

Article 16 of the current Agreement sets forth the vacation benefits for members of the bargaining unit. The one issue that remains open is the Town's proposal for payment of unused vacation time.

TOWN POSITION

The Town proposes to add the following provision:

Any employee eligible to carry over vacation days may opt for payment of up to five (5) vacation days on his/her anniversary date. In lieu of said payment, the employee may opt to have their base wage increased by 1.9% during the first year of this Agreement, to become effective with the next pay period after the employee opts to cash in vacation days as stipulated above.

The Town states that its proposal addresses the concerns raised by the Union, that the salaries of bargaining unit employees are being compressed compared to the salaries of their subordinates. The Town states that this proposal would allow bargaining unit members to increase their base wages.

UNION POSITION

The Union was not opposed to the Town's proposal.

Discussion

The Town's proposal is reasonable, and would assist in alleviating the wage compression that has occurred over the past three years.

Recommendation - Vacations

The Town's proposal should be adopted.

5. Article 17 - Sick Leave

Section 1 and 1.a set forth the accrual and maximum accumulation of sick leave for members of the bargaining unit. Section 1, provides that members will receive 1 sick day per month with a maximum accumulation of 90 days. The provision further provides that employees who had more than ninety sick days on the effective date of the agreement will be grandfathered at the higher rate. Section 1.b provides that fire captains accrue sick leave at 100.8 hours per year. The maximum accumulation for fire captains is 756 hours. Again, there is a grandfather provision for those captains who had more than 756 hours on the effective date of the agreement.

Section 4 sets forth a schedule by which employees are paid for their unused sick leave upon voluntary termination or layoff from Town employment. The Schedule is as follows:

<u>Years of Service</u>	<u>Compensation</u>
1-5	10 days (-hours)
6-10	20 days (-hours)
11-15	25 days (-hours)
16-20	30 days (-hours)
21-25	50 days (-hours)
25+	60 days (-hours)

TOWN POSITION

The Town proposes to modify the current sick leave article. First, the Town would lower the maximum accumulation from ninety days to fifty days and for the fire captain from 756 hours to 420 hours. Under the Town's proposal, employees would be grandfathered at their higher

accumulation, but the accumulated days would then be lowered based on days used during the year. In addition, the Town proposes that the sick leave buy-out upon voluntary termination of employment or a layoff would be reduced by half the amount that is now available.

The Town maintains that the current amount of annual sick leave is excessive, and not necessary in view of the current short and long-term disability coverage that is available to bargaining unit employees. The Town maintains that its proposal would provide adequate protection for members should they need to access sick leave until disability coverage becomes effective. Moreover, the Town states that the payment of unused sick days is excessive. Sick time, the Town states, should be used when an employee is sick and unable to work and not a severance payment to be paid to employees when they leave employment.

UNION POSITION

The Union states that it would agree to limit accrual and lower total accumulation for new employees, but current employees should retain their current level of sick leave benefits. The Union maintains that the Town is seeking too large a concession, and that it should not be required to agree to this giveback when bargaining unit employees have not had an agreement for the past three years. The Union states that the Town's proposal would lower the amount of money that employees would receive upon their separation from Town employment. Moreover, the Union states that it should not be compelled to agree to this concession when other Town employees have not agreed to reduce their sick leave benefits, and have still received across the board pay increases.

Discussion

The Town seeks to lower the maximum accumulation for employees, and to lower the amount of sick-days that an employee can "buy-back" upon voluntary separation of employment or through a reduction in force. At the fact-finding hearing, the Town stressed the importance of this issue, and the necessity to reduce the current sick leave benefits.

What is most interesting is that the Town initially proposed to increase the amount of days bargaining unit employees could buy-back when they left the employment of the Town. Specifically, the Town proposed that employees at the 25-year level, would be paid for 70 days of unused sick days, an increase from the current 60 days. (See May 2006 Fact Finding Report). The Town did not seek any other concessions in sick leave at that time, and this higher amount then became part of the parties' tentative agreement. Although this tentative agreement was not accepted it is unusual, to say the least, for the Town to change directions in the same round of contract negotiations and now seek a significant concession in a benefit that it only recently sought to increase. This issue was also presented in the most recent fact-finding issued in December 2008, and the Fact Finder concluded that there was insufficient justification to reduce the level of sick leave accrual nor justification to lower the sick leave buy-back. The passage of a one-year period of time, from December 2008 until December 2009, does not compel any different conclusion.

It is significant that the Union has proposed that it would agree to reduce the sick leave benefits for employees

hired after the effective date of the new agreement. This is a reasonable compromise, and would assure that the lower rates would become effective over time. It would be one thing if this were the only bargaining unit that continued to be paid for their unused sick days at the current levels, but it cannot be said that all Town bargaining unit have now agreed to reduce the current sick leave buy-out, as now proposed by the Town. A number of bargaining units have negotiated pay increases effective July 1, 2010 with no concessions on sick leave benefits. Moreover, it must also be remembered that in these contract negotiations the Union has agreed to increase employee health insurance co-share levels from 15% to 20%, and also agreed to reduce the health insurance buy-out payments for those employees who elect not to receive health insurance coverage.

In view of the above factors, there is insufficient justification to recommend the Town's proposal at this time. If the Town is successful in convincing the other bargaining unit to concede on its proposed reductions of sick leave benefits, the issue can be addressed in the next round of contract negotiations. Indeed, this is a reason why I have recommended only a two-year agreement.

Recommendation - Sick Leave

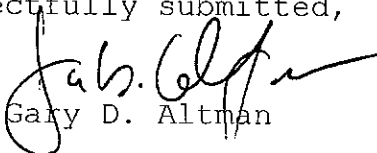
The Town's proposal is not recommended. The parties should adopt the Union's counter-proposal that the reduction of sick leave benefits would be effective for new employees.

CONCLUSION

I have no illusions that the preceding recommendations are perfect. Nevertheless, I have attempted to balance the interests of the employees, the Town and the citizens of

Londonderry. I hope that these recommendations are helpful to the parties in reaching a successor agreement.

Respectfully submitted,


Gary D. Altman

December 16, 2009