

PENNSYLVANIA LABOR RELATIONS BOARD

Case No. PERA-F-13-325-E  
Ralph H. Colflesh, Jr., Esq.  
Fact-Finder

CITY OF YORK

and

TEAMSTERS LOCAL 776

**Appearances**

For the City:

*Michael McAuliffe Miller, Esq.*

*Eckert Seamans*

*Harrisburg, Pennsylvania*

For the Union:

*Ira Weinstock, Esq.*

*Ira Weinstock Law Firm*

*Harrisburg, Pennsylvania*

**FACT-FINDER'S REPORT WITH RECOMMENDATIONS  
FOR SETTLEMENT**

Pursuant to the provisions of Act 195 (PS 1101.101, *et seq.*) ("the Act") and a decision by the Pennsylvania Labor Relations Board ("the PLRB"), the undersigned was appointed fact-finder in the above referenced case. Upon due notice to the parties, a Fact-Finding evidentiary hearing was convened on January 24, 2014 in the City's administrative offices in York, Pennsylvania. At that time and place both parties had an opportunity to produce witnesses and present all forms of non-testimonial evidence and arguments in support of their respective positions. At the conclusion of the hearing, the record closed. This matter is now ready for the within Report with Recommendations for Settlement.

**Preface**

The parties to this matter, City of York ("the City") and Teamsters Local 776 ("the Union"), are a City of the Third Class of Pennsylvania and a majority certified bargaining representative, respectively. For the term January 1, 2006 through December 31, 2012, the parties had a labor contract covering terms and conditions of employment for a bargaining unit of blue and grey collar employees working for the City. After the expiration of that contract the parties were unsuccessful in reaching a successor agreement. Consequently, impasse was declared and mediation invoked, pursuant to the Act. Sometime thereafter in 2013 the Union sent the PLRB a request for fact finding.

That request notwithstanding, by the spring of 2013, negotiators for the parties had agreed to recommend to their respective sides a contract for the term January 1, 2013 through December 31, 2015.<sup>1</sup> (UX 1)<sup>2</sup>. Unfortunately, on May 20, 2013 the recommended document, referred to herein as the Tentative Agreement or TA (UX 1A), failed to secure ratification by the Union membership. For that reason it was not considered by the City.

Despite its rejection by the Union rank-and-file, the TA—not the nominally expired contract—is the central document from which the parties' current proposals spring. Further, for reasons disclosed below the TA is recommended by the undersigned as the basis for settlement. It is attached hereto as Fact Finder's Exhibit A.

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<sup>1</sup> The record does not disclose if the document resulted from mediation efforts or was reached by the parties without assistance.

<sup>2</sup> References to exhibits submitted at hearing are designated herein as ("UX \_\_\_\_\_") for Union exhibits, and ("CX \_\_\_\_\_") for City exhibits.

## Current Proposals of the Parties

### Union

1. **Term of Agreement:** The Union proposes amending the TA by extending it to five years (2013-2017), effective for all purposes, with retroactive salary increases and increases in employee monthly contributions to health and life insurance effective January 1, 2013.
2. **Wages:** Consistent with the TA, the Union proposes across-the board increases in wages for all bargaining unit classifications as follows: Effective Jan. 1, 2013 and retroactive thereto, 2.3%; effective January 1, 2014, and retroactive thereto, 2.5%; effective January 1, 2015, 2.75%. In addition, the Union proposes wage rate increases effective January 1, 2016 of 3%; and, effective January 1, 2017, another, 3%.\*

The Union further proposes increasing the shift differentials contained in the TA from \$.50 per hour for the second shift and \$.75 per hour for the third shift for the entirety of the new contract to \$.60 per hour for both shifts for the five year the Union proposes.

Currently there are five bargaining unit members regularly scheduled on each of the two shifts.

3. **Monthly Health and Life Insurance Contributions:** The Union proposes the same monthly contributions for health and life insurance as are set forth in the TA. For 2013 the respective coverages would require monthly employee contributions of \$65, \$108, and \$163, for single, two-party, and family coverage respectively. For 2014 the respective coverages would require monthly employee contributions of \$71, \$118, and \$178. For 2015 the respective coverages would require monthly employee contributions of \$77, \$130, and \$195. For 2016 and 2017 the Union would amend the TA so that the respective coverages would require monthly employee contributions of \$84, \$142, and \$213 in 2016 and \$91, \$154, and \$232 for 2017.\*\*

4. **Overtime:** The Union would amend the TA regarding overtime scheduling procedures by the addition of the following provisions:

Should the City fail to schedule overtime according to the above referenced procedures then the Department Director or designee shall schedule the employee who should have been given the overtime assignment to work a non-overtime shift, but be paid at his or her overtime rate, *i.e.*, two times the employee's regular rate of pay.

The Department [director] or designee shall schedule the non-overtime shift set forth...above, within thirty (30) days of the missed overtime assignment.

5. **Holidays:** The Union proposes amending the TA by adding two arbitration outcomes. Those additions would be an arbitration award rendered by Arbitrator Margret Brogan and a Settlement Agreement covering Grievances #30809, #30847, #132177, and #36241. \*\*\*
6. **Shoe Allowance:** The Union is proposing that a yearly shoe allowance that is included in the TA be carried over into the two additional years proposed by the Union.
7. **Discipline and Discharge:** The Union is proposing amending the TA by adding a requirement that the City bring charges that result in discipline or discharge against an employee within 10 calendar days of the event giving rise to the discipline or discharge.

\*As explained below the City agrees with the wage and shift differential increases proposed by the Union for 2014 and 2015; however, the City proposes no wage increase for 2013 and further proposes that any wage increase become effective only after the Mayor and City Council have approved the new contract.

\*\*The City agrees that if the new contract goes beyond 2015, the monthly employee health and life insurance contributions proposed by the Union will apply. The City further agrees that the rates proposed by the Union above for years 2013-2015 should apply, except that the City would not deduct contributions for 2013 if its proposal for no wage retroactivity for that year is adopted.

\*\*\*The City agrees the Brogan award and the settlement agreement should be added to the new contract.

## City

**1. Term of Agreement:** The City proposes the term of the TA which was for years 2013-2015.

**1a. Monthly Health and Life Insurance Contributions:** The City proposes amending the TA by denying any increase for 2013, followed by and the same increases included in the TA for 2014 and 2015. Further, if the new contract includes 2016 and 2016—which the City opposes—the City will accept the increases proposed by the Union for those years.

**2. Health Benefits et al:** The City proposes amending the TA to correct inaccurate references and anachronisms and further proposes adding to the TA the plan descriptions of the health insurance, dental coverage, and vision benefits. Assuming no retroactive wage changes are made for 2013—as the City now proposes—monthly employee contributions toward health and life insurance premiums would not increase in that year. Contributions for all subsequent years would be the same as the Union has proposed.

**3. Hours of Work:** The City proposes amending the TA by adding “electronic media” as a method of noticing employees of their shifts, work days, and work hours. The City further proposes amending the TA by not permitting employees to leave their work premises during meal periods.

**4. Posting & Vacancies:** The City proposes an number of changes to the TA including requiring employees to bid on jobs with supporting documents required by the City; denying employees with “active discipline” or who are in a probationary status from bidding on vacant positions; considering qualified candidates for a position who are current City employees if the City deems there are no qualified bargaining unit members; allowing the City to judge qualifications for transfer from one bureau to another within the bargaining unit; eliminating the option to return an employee from a new position to his/her old position after the employee has already been returned from a new position to a former once before during his/her career with the City.

**5. Seasonal Employees:** The City proposes adding to the TA a City right to develop position classification descriptions and revise current ones, subject to bargaining over pay in connection with such changes.

**6. Grievances:** The City proposes adding to the TA a provision requiring use of a City authorized grievance form which would require substantial specificity regarding the alleged grievance, including but not limited to the names of witnesses with relevant knowledge about the occurrence giving rise to the grievance.

**7. Working Attire:** The City proposes amending the TA language by giving the City the right to determine which classifications are required to use protective footwear and by imposing on the City the obligation to replace an employee’s footwear when the employee demonstrates a need. The City would further amend the TA by eliminating references to certain standards for protective footwear and by eliminating prorated payments for foot wear for new employees who are hired after June 30 of each year.

**8. Overtime:** The City proposes amending the TA by, among other ways, requiring that overtime be paid only for hours actually worked beyond those regularly scheduled in a work week; developing a system of overtime “credit” under which overtime would be rotated so that employees with the least “credit” (defined as hours of overtime either worked or offered for work to the employee) are called first; mandating overtime when necessary by seniority; using an electronic notice known as “Telestaff” to communicate overtime opportunities; counting a non-response to a City attempt to notice an employee of an overtime opportunity as an immediate and irrevocable refusal; eliminating respective minimum pay and travel time provisions for overtime work that requires less than one and less than four hours, respectively; and, eliminating an employee’s right to turn down overtime within two-hours of the start of the work once he/she has accepted it.

**9. Wages:** The City adopts the TA’s wage increases with the important proviso that it would not pay any increases in wages or shift differential for 2013. In addition to the foregoing provisions agreed upon and proposed by the City regarding wages, the City proposes amending the TA by requiring employees hired on or after January 1, 2014 to receive their pay by electronic direct deposit and by eliminating certain existing classifications within the contractual wage scale after incumbents in those positions vacate them, after which the positions would be filled by employees in the Wastewater Treatment Plant Operator II classification. Moreover, the City would further amend the TA by disallowing shift differential if an employee works less than four hours on the affected shift.

## Evidence

### Union

The Union presented testimony from Kevin Bloom, its Business Agent, who explained the Union's proposed changes to the TA. In pertinent part, Mr. Bloom testified that after the Union membership voted not to accept the TA, the Union proposed adding two years to the new contract with increases for each of those years of 3% across-the board and computed proposed increases in the health and life insurance premium contributions that would be proportional with both the increases already proposed by both sides for the years 2013-2015 and with the Union's wage proposals for years 2016 and 2017.

Mr. Bloom was most adamant about the application of retroactivity for 2013 year, arguing that because the employees had provided services for that year, they should be paid for it, just as every other bargaining unit in the City other than the firefighters (who may still be pending mandatory interest arbitration) had gotten increases for 2013. He said the Union was willing to have the insurance increases applied retroactively for that year as well.

Union member James Hollinghead, a waste water treatment plant operator on the second shift and a steward for the Union testified that the Union wanted a "statute of limitations" on discipline and discharge actions because the City had recently brought discipline on a member 25 days after the event for which the discipline was imposed. Mr. Hollinghead said the City knew or should have known of the alleged infraction when or soon after it occurred. He compared a lack of any such proposed time limit on discipline and discharge to the strict ten day limit for the Union to bring a grievance. When it was brought to his attention by counsel for the City, Mr. Hollinghead acknowledged that the grievance procedure does have a "discovery" rule, allowing the Union to bring a grievance within ten days after the grievance could reasonably have been known.

Mr. Hollinghead also presented data that he said were compiled by bargaining unit member Tim Weaver comparing annual rates of pay for eight positions in the City of Harrisburg that he said were equivalent to positions in the Union's bargaining unit in York. (UX 4C, 4D) Those data showed Harrisburg paid equivalent positions consistently higher than York. However, Mr. Hollinghead acknowledged that two of the eight York positions—Highway Operator III and Highway Crew Leader—may no longer exist. Job descriptions for the positions in both cities were not provided, and Mr. Weaver was not present to testify.

In addition to the Harrisburg data, the Union presented the wage scale from the contract between it and the Borough of Red Lion Municipal Authority. (UX 4E). That contract apparently only covers water/waste water treatment operators and is for 2014 through 2018. Across-the board percentage wage rate increases for the Red Rose bargaining unit were 2.5% in 2014; 2.5% for 2015; 2.75% for 2016; 2.75% for 2017; and, 2.75% for 2018.

Union data for the City (UX 4F) showed that the City's police bargaining unit had received wage rate increases on average of 2.61% from 2001 through 2013, and the firefighter bargaining unit had received wage rate increases averaging 2.62% for years 2001 through 2012. Both units have recourse to mandatory interest arbitration under Act 111 (43 PS 217.1).

Data for the clerical and white collar bargaining unit represented by the York Public Employees Association showed an average percentage increases in wage rates of 2.78% between 2001 and 2015—notwithstanding a 0% increase in 2006.

The same exhibit showed the City's five-member bargaining unit represented by the IBEW got average percentage wage increases of 2.67% between 2001 and 2015 and that non-represented employees received average annual percentage wage increases of 2.24% between 2005 and 2013.

Bargaining Unit member and steward Scott Millar testified in opposition to the City's proposal to limit shift differential pay to those who work a minimum number of hours on the affected shift. Mr. Millar explained some employees only work partial shifts for which the differential is applied and they would lose the entire premium under the City's proposal. He further said the bargaining unit had never actually received a zero wage increase for any year he knew of, and that when the actual wage rate was not increased in a given year, employees were paid off-rate bonuses. He recalled that during the current contract, there was a zero percent increase in the wage rates in 2006.

Bargaining unit member Mike Wynegar testified that the unit had always received retroactive increases or bonuses.

## City

The City's Business Administrator, Mike O'Rourke, testified about the City's economic condition. Evidence he provided (CX 1, *passim*) showed that the City had a low bond rating of Baa3, having been downgraded from Baa1 by Moody's due to its general fund deficit, increased need to borrow to meet cash demands, lack of financial structural balance, and below average resident wealth and income levels. Indeed, among cities of the Third Class in the eastern half Commonwealth, York ranks next to last in per capita income, and median household income and second to last in median home value.

Moreover, Mr. O'Rourke introduced data showing that four of the ten eastern Pennsylvania Third Class cities cited by York are in what is known as Act 47 (53 PS 11707.101) distressed municipality status. Mr. O'Rourke explained that the City tax base is about \$1B but has no real chance for growth. As a consequence of increasing expenses and an under-funded pension obligations<sup>3</sup>, he said, the City's millage rate is at 20.37.<sup>4</sup> This means that a home valued at \$158,000 pays \$10,000 in property taxes annually. During the 7 year period ending in 2007, he testified, the City has seen an increase of 14.1 mills or 32% and its tax rate has increased 55%. Mr. O'Rourke contended without contradiction that York's combined millage (municipal, school and county) is the highest in York County by far, exceeding the next highest municipality by more than 27 mills or nearly double. In terms of municipal millage only, the City's millage rate is five times higher than the next highest community in York County.

Mr. O'Rourke further testified that the City's cumulative fund balance deficit is projected to increase to \$51.2M and its operating deficit to \$17.3M by 2016, with deficits in both numbers for 2012 forward. He said the City has reached its statutory cap on earned income tax, emergency municipal services/local tax and mercantile/business tax.

Mr. O'Rourke presented data showing the average annual percentage wage rate increase for the Union's bargaining unit. Assuming a zero percent increase in 2013 and the agreed upon increases for 2014-2016, the average from 2001 forward would be 2.66%. (CX 2). During the last seven years, the bargaining unit has seen average wage rate increases of 0%, 2%, 3%, 3.5%. 3.25%. 3.25% and 3%. (CX 2).

### Fact Finder's Recommendations for Settlement

Having served as the neutral member and chair of the most recent mandatory interest arbitration between the City and firefighters and having been long acquainted with the City's history as its one-time labor counsel, I am well aware of the City's financial precariousness. The present administration, like its predecessors, have done remarkable job of trying to be fair to its civil servants in the context of a stagnant real estate and tax base and the continued deterioration of its residents' economic status. In that sense, York is no different than most other Third Class municipalities in the Commonwealth, where elected officials and appointed managers have to cope with the cost of labor, rising benefit prices, and pension fund short-falls compounded by poor investment performance.

The City's astute and highly educated business administrator has clearly explained its current plight. Given those circumstances the City has made a heroic effort in offering the TA to the Union. That offer included wage increases that would offset the anticipated cost-of-living as well as part of a necessary increase in employee insurance contributions required by ever-increasing premiums. The offered wage increases of 2.3% for 2013, 2.5% for 2014, and 2.75% for 2015 are very reasonable, even in light of the proposed changes in health and life insurance premium contributions. Full family coverage for an annual cost to employees of \$1,956, as proposed in the TA for 2013 is an enormous benefit and boost to an employee's family finances. Even by 2015 under the TA full family coverage would amount to \$2,340—a sizeable amount to be sure but for coverage that would be the envy of many across the United States.

These are the features of the TA, and on balance, I see it as very reasonable package for both sides.

Unfortunately, that view was not shared by the majority of the bargaining unit, and the TA was not ratified. The response of both sides has been an unfortunate stridency. The Union has now proposed a statute of limitations on discipline and discharge actions, which is virtually unheard of in both private and public sector labor relations. Additionally, it has proposed wage rate increases of 3% for two additional years that it would append to the TA. Although the Union points out that more than one year of a three-year contract has already expired, the Union would have the City commit to these increases nearly three and four years in advance when the City is struggling to get through the current year.

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<sup>3</sup> The City has not met its minimum municipal pension contribution obligation since December 2007.

<sup>4</sup> The maximum real estate millage permitted for a Third Class City is 25 mills.

On its side the City has now proposed no increase for 2013, claiming that it cannot now afford to pay in lump sum retroactivity what it would have paid over time starting about 13 months ago. The City has also proposed a severe limitation on shift differential pay, a substantial restructuring to the way overtime is scheduled, limiting meal breaks to the City's premises, and restricting bidding and promotion procedures, among others.

Both parties were represented at bargaining by highly experienced and trained professionals, including on the City's side its business administrator and on the Union's side by its business agent and local officers. They better than any fact finder knew what was a fair basis for settlement, and they reached a TA that reflected their understanding and dedication to protecting and promoting their parties' interests.

As I said at the outset of this report, the TA—not the current and nominally expired contract—is the central document in this matter. Nothing in the last eight or nine months since the TA was propounded have significantly impacted either side. Consumer prices have not dramatically increased. The value of investment portfolios has not dipped but somewhat increased. The economy in the nation and central Pennsylvania is only slightly changed and for the better at that. These circumstances since the TA's failure in late May 2013 do not call for a contract any different than the one the negotiators would have had their parties' accept. This conviction is affirmed by the lack of evidence of significant internal changes in the parties' relationship between last May and the present.

Given all that and mindful of the negotiators' special insights, I make the following:

#### **Recommendation for Settlement**

**The TA should be now adopted by both sides with one modification: given the City's finances, the 2013 increases adopted by the parties for both wages and insurance should be simultaneously phased in during 2014 on a quarterly basis so they are completely effectuated by December 31, 2014. That is, 1/4<sup>th</sup> of the entire 2013 wage and insurance contribution increases should be paid by the City and employees by the end of each calendar quarter, with the final payment made by the end of this year. Wage rates and monthly insurance contribution increases for 2014 should be retroactive to January 1, 2014, with the wage rate increase for 2014 applied to the full wage rate increase for 2013.**

1/27/13

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Ralph H. Colflesh, Jr., Esq., Fact Finder