

IN THE MATTER OF AN IMPASSE

– between –

THE CITY OF PHOENIX

– and –

**PHOENIX FIREFIGHTERS (Unit V) and
PHOENIX LAW ENFORCEMENT
ASSOCIATION (Unit IV)**

MOU Impasse

**FACT-FINDING REPORT and
RECOMMENDATIONS TO
THE PHOENIX CITY COUNCIL**

REPORT ISSUED

April 12, 2016

BEFORE: Kathy Fragnoli, Esq. – Arbitrator
San Diego, CA

ADVOCATES

For the City:

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BACKGROUND AND PROCEDURAL HISTORY

The City of Phoenix grants employee units the right to meet and confer with Management regarding wages, hours and working conditions. This process occurs every two years and results in the City Council either approving a two-year Memorandum of Understanding or imposing a two-year “Terms and Conditions of Employment.”

The City code provides that if negotiations over these issues result in an impasse, a private hearing may be held before a neutral fact finder. The fact finder is required to issue a report and recommendation for settlement of all unresolved proposals. There are no provisions in the Meet and Confer ordinance that set forth a standard of review for the fact finder.

Despite good faith negotiations over several months, the meetings with Units IV and V resulted in impasse over economic issues.

A fact-finding hearing was held on April 8 and 9, 2016 by the undersigned arbitrator. The City provided five staff members as witnesses who testified about the general state of the City’s finances. This included the City Manager. The Unions provided four witnesses, including two expert witnesses who testified as to their analysis of the City’s budget and upcoming pension obligations.

The parties stipulated to the fact that police and fire employees took 3.2% in economic concessions during the 2010 contract. While the 1.6% was later restored, they took an additional 2.5% in concessions in 2014. The resulting give-backs over this period total 4.2%.

Union leadership cooperated with the City in arriving at these concessionary amounts, which both parties agree were driven by the Great Recession, the continuing fall-out of lower property values, elimination of the local food tax and lower sales tax/shared revenues.

PROPOSALS RESULTING IN IMPASSE

The City offered:

- A two year contract.
- A 2.6% increase over two years at the rate of 1.6% in 2016/2017 and 1% in 2017/2018.
- A revised sick-leave plan for employees hired after December 31, 2016. This plan calls for accumulation of 8 hours of sick leave per month with a cap of 1,200 hours per year and 40 hours of personal time restored. A new city-paid, Short-Term Disability Insurance program is proposed for this group of employees.

The Union is asking for:

- A three year contract
- Increases totaling 5.2% as follows:
 - 1.3% restoration of concessions in Year 1
 - 1.3% restoration of concessions in Year 2
 - 1.6% restoration of concessions with a 1% compensation increase in Year 3

As an alternative, the Union asks that if the fact finder deems a two-year contract appropriate, that the 4.2% in concessions be restored over two years

- No change to the sick leave policy.

(Just prior to the hearing the union negotiators learned that an employee on the proposed Short-Term Disability Insurance plan would not accrue time towards the member's pension.)

POSITIONS OF THE PARTIES

The City's Position

- The City has not entered into three-year contracts in the past and, due to economic uncertainties, it would not be prudent now.
- The Union's proposal to increase compensation by 2.6% in excess of the City's proposal would result in an increase of \$27 million across all employee units per year, since the City traditionally matches these increases across the board.
- The City has already drawn on its reserve fund to pay its general obligation debt for several years, reducing that fund by two-thirds. This puts their high bond rating at risk.
- Pension obligations, which are set by the Arizona Public Safety Retirement System, are expected to increase \$71 million over the next two years.
- The General Fund is expected to experience a deficit of between \$9 million to \$30 million in the second year of the two-year contract.
- Management's proposal of a 2.6% increase over two years for police and fire is only possible because of the one-time surplus of \$60 million in the 2016-2017 budget. (This surplus is due to a one-time refund from the city's Workers' Compensation fund, the sale of helicopters, vacancy eliminations and reduction of other administrative costs.) The City has proposed to set aside \$44 million this to pay for the two year partial restoration compensation increases it has proposed. The City is also enhancing public safety by using approximately \$15 million of the set-aside for three years worth of body cameras costs, electronic patient records and other related improvements. Thus 98.5% of the surplus is slated to benefit the Police and Fire Departments.
- There is no defined revenue source to fund the ongoing costs of the Union's proposal.
- Phoenix police officers average 7% above the comparable average of other cities.

- Eligible Unit IV police employees have received merit/step or longevity increases since 2010.

The Position of Police and Fire

- A three-year contract is proposed to help provide the City more time to find sources of revenue for the restoration of wages (and a 1% increase), as well as to provide financial predictability.
- Six years of concessions were made possible because the unions negotiated with the City in good faith. Despite a recommendation in the 2015 fact-finding that police receive a 3.6% increase in their base pay, the city instead took away an additional 2.5%.
- Phoenix is leading the nation in recovery. Shared revenues have increased by 42% since the 2010 concessions were made. Forbes has predicted that Arizona will have the highest job growth in the country. General fund growth is at 16%. BBVA economists declared Arizona to be the only state in the country that has a zero chance of going into a recession.
- Since 2010, Phoenix has added \$16 million to the rainy day fund, by saving 15% of all new revenues over the last five years. Since 2011, final budget variances have been positive and ranged from \$32 million to \$70 million. The variance was \$46 million in 2015.
- Over the last several years, City employees have come up with cost saving ideas. The City has saved over \$110 million in efficiency and position elimination.
- The police force is 550 officers below its peak in 2009 resulting in mandatory overtime and an increased workload. Meanwhile, the population of Maricopa County grew by over 80,000 people in 2015. The accumulated savings from the reduction of police officers and firefighters since 2009 is \$379 million. Union leadership saved the City \$11 million in healthcare costs in 2016.
- Other cities in the nation, in less robust areas, are averaging a 2.5% increase in compensation according to Bloomberg research.

- Other cities in Arizona have given raises to their public safety personnel (e.g. Glendale a 5% raise and Mesa a 7% raise over three years). They are covered by the same pension system as Phoenix employees. Phoenix police officers and fire captains are 4% to 5% below the average pay scale in the valley.
- Effective take-home pay for the rank and file in Units IV and V has decreased by 20% over the last five years due to concessions, inflation and increased pension costs. Even with the proposed restoration and 1% increase, the total increase asked for equates to 1% over nine years.
- Using wage concessions to pay for \$15 million worth of equipment instead of raises in the current year is demoralizing.
- Merit pay only applies to the first nine years of service and only 37 of 2,308 officers received merit pay in the police ranks and 289 out of 1,529 in the fire ranks. Senior employees receive longevity pay which is about \$80 per year.
- The City of Phoenix makes up over one-third of the public safety pension system. Union leadership for police officers and firefighters has taken the unprecedented step of approaching the legislature to make substantial changes in pension benefits.
- The actuary hired by the Union posits that there will be an \$83 million savings to pension costs in the next five years over City estimates.
- Even with a loss of over 500 sworn officers, crime is down; however, violence is up. Similarly firefighters have dealt with an increase of 40,000 calls in the last eight years. Employee morale is at an all time low.
- The unions have just learned that the proposed Short-Term Disability policy has unexpected consequences in regards to the application of sick time toward time earned in the pension plan. Thus, the plan should be immediately revisited in committee rather than be subject to this fact-finding.

DISCUSSION

At the onset, it must be noted that every witness in this case was professional and credible. This impasse has arisen due to the City's interpretation of its financial condition and the Unions' belief that the City has underestimated revenue and overestimated costs for the next several years.

City budget expert witness Ronald York testified that the City is very well run but that a contingency reserve is typically two months in most cities, not the three months that the city has budgeted. He pointed out that the "rainy day" fund is historically overfunded. Nationally recognized pension actuary William Fornia (who testifies for both cities and unions in pension matters) testified that the City has been in "catch up" mode due to pension shortfall contributions and that this mandate would soon end. In addition, he pointed out that the state made a one-time adjustment for mortality rates, and that the resulting spike in costs created by that change would not recur for at least five years.

While the City witnesses competently presented evidence to support their belief that full restoration of concession salaries is unaffordable, this evidence was less persuasive than that gleaned from the testimony of the above mentioned experts and rank-and-file witnesses.

Seemingly not calculated into the City's analysis is the "human capital" side of the equation. The record indicates that in the past several years, while financial issues took front and center, the well being of employees was put on the back burner. Based on very persuasive testimony, public safety employees appear to be at a breaking point. Mandatory overtime, officer cutbacks (with accompanying population growth) and wage and pension concessions have affected morale...potentially jeopardizing the safety and security of the citizens of Phoenix.

The record is clear that employees are mentally and physically exhausted from the increased workload and financial issues, yet they have come to the table at least three times to help the City save money and pension costs. (As an example, the evidence shows that the salaries of approximately 2,000 officers have essentially decreased since 2009 since they do not qualify for merit increases.) Impressively, both unions have recently lobbied the legislature to reduce their own pension benefits.

As the Unions' witnesses concluded, the City's conservative budget policy was impressive and prudent during recessionary times. However, the evidence presented at this hearing shows that recent financial rewards have been gained at the expense of employee morale and well being. The evidence is persuasive that the City can and should restore lost wages.

RECOMMENDATIONS

For the above reasons and based on the preponderance of the evidence in this hearing, the fact finder respectfully recommends the following to the City Council:

- **The Union's plan for wage increases over three years should be accepted. This proposal allows for full restoration of concessions by Year 3, plus a 1% increase in the last year.**
- **The City's sick time proposal for new employees should be accepted with the exception of the Short-Term Disability plan.**

Because the unions did not realize that the new plan would affect credited pension time, they should be given **one week** to explore more fully the plan's provisions and complete negotiations based on that new information. The fact finder is willing to accept briefs on final positions if an impasse results and make a recommendation within one day as to the Short-Term Disability plan. (This review would be provided at no additional charge to either party.)

Respectfully submitted,



Kathy Fragnoli, Esq.
Dated: April 12, 2016