To: Mayor and Members, Committee of the Whole

From: Chris Murray, City Manager
       Lora Fontana, Director, Employee & Labour Relations

Telephone: (905)546-2424 ext. 4091
Facsimile: (905)546-2650
E-mail: lora.fontana@hamilton.ca

Date: November 16, 2009

Re: Interest Arbitration Award – City of Hamilton and CUPE Local 5167 (HUR09022)

Council Direction:

Further to Council ratification of the agreement reached between the City of Hamilton and the Canadian Union of Public Employees (CUPE), Local 5167, and Council's approval to refer four (4) outstanding issues to mediation, and if necessary, interest arbitration, the following will provide a summary of the interest arbitration award resolving these matters.

Information:

On February 5th, 2008, a tentative agreement was reached between the City and CUPE, Local 5167. Notwithstanding ratification by both parties, four (4) outstanding issues remained which were referred to mediation, and eventually, interest arbitration. On October 21st, 2009, the arbitration board released their award as follows:

1. Annual Vacation Scheduling

   The collective agreement provides for vacation scheduling strictly based on seniority without any limitation on the number of weeks an employee can schedule at any time throughout the year, provided that “the efficiency of operations of the Employer is not unduly interrupted thereby.” These provisions essentially allow senior employees who are entitled to six or more weeks of vacation a year to schedule all their vacation in consecutive weeks over the summer months and as a result, prevent junior employees from scheduling any summer vacation time. The City argued that this
situation has created recruitment and retention problems that have interfered with the operation of certain departments. It further argued that such conditions do not provide the City with the ability to maintain an expert workforce throughout the summer months. The City further requested discretion to limit vacation to blocks of three weeks during the period from June 1st to the end of September each year. Finally, the City requested that the deadlines for making vacation requests for the year and for the posting of vacation schedules be moved forward one month, in order to provide more time to process vacation requests.

The union argued that the Employer has not demonstrated the need for any change and that no change should be made.

With respect to this matter, the Arbitration Board ruled that the City did not sufficiently demonstrate a need for change and therefore declined to place the requested limits upon the scheduling of vacation by seniority. The Board did, however, amend the vacation request deadline by one month earlier in the year.

2. **Bumping Up**

Both inside and outside employees who are to be laid off are entitled to bump employees with lesser seniority that occupy an equivalent or lesser classification provided they are qualified to do the work. Outside workers only are also entitled to “bump up” and replace an employee with lesser seniority in a higher classification in the outside group provided qualified to do the work. In the spirit of consistency and fairness, the City proposed the elimination of the right to bump up for outside workers so that both inside and outside workers could only bump an employee in an equivalent or lesser classification. Alternatively, the City requested that outside employees, as of December 31st, 2007, be grandparented, so that only those employed as of that date, continue to enjoy this right.

The union maintained that the right of outside workers to bump up was freely negotiated and the Employer did not present evidence that demonstrated any need to eliminate this right.

This differential treatment for inside and outside employees has existed since the pre-merger of the collective agreements between inside and outside workers. This “disparity” has continued even though both outside and inside workers are now in the same bargaining unit and are covered by the same collective agreement. Currently, there are approximately 500 outside employees and 2500 inside employees in the bargaining unit.

The Board concluded that it made more sense to “harmonize” the bumping rights of both inside and outside workers rather than to grandparent this harmonization over time. The Board further ruled that both inside and outside workers should eventually only have the right to bump equivalent or lesser classifications, but given the importance of the right and the lack of evidence demonstrating particular problems to date caused by the exercise of bumping up rights, outside workers should continue to be able to bump up through the term of the collective agreement and for the following three (3) years. Therefore, this harmonization will be effective after December 31, 2013.
3. **Temporary Positions outside the Bargaining Unit**

   The provision of allowing employees to transfer to positions outside the scope of the collective agreement (without loss of seniority) on one occasion within a twenty-four (24) month period for a period of up to one (1) year, provided the employee continues to pay union dues to the union, was negotiated into the predecessor collective agreement. In the face of the recent agreement to this clause, the Board ruled that the Employer has not provided sufficient evidence or reason to justify any change. As a result, the provisions within this article remain unchanged.

4. **Boot Allowance**

   The City provides safety footwear of a standard approved by the Canadian Standards Association to all employees required to wear such footwear as part of their jobs. The current arrangement of having a “boot truck” visit the work locations for safety footwear distribution was initially viewed as an inefficient process. As a result, a boot allowance was proposed through the collective bargaining process to replace the “boot truck” arrangement. Since ratification, a closer analysis of the potential efficiencies and cost savings did not confirm such realizations. Some concerns were subsequently raised regarding the potential for unsafe footwear use resulting from poor employee diligence. Consequently, this item was not vigorously defended at interest arbitration. Not surprisingly, the Board ruled that the Employer did not provide sufficient evidence or reason to justify a change in the current arrangement.

Generally speaking, this interest arbitration award has rendered satisfactory results for the City with no financial implications. For the City, the “bumping up” provision was the most significant of the four (4) issues referred to interest arbitration. This change was awarded by the Board, albeit not until the end of 2013.

_________________________
Chris Murray,
City Manager