

STATE EMPLOYMENT RELATIONS BOARD 2009 JUL 13 A 11: 03

STATE OF OHIO

IN THE MATTER OF FACT-FINDING BETWEEN

CITY OF OLMSTED FALLS

AND

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
OLMSTED FALLS PATROL OFFICERS

FINDINGS AND RECOMMENDATIONS

CASE NO: 08-MED-11-1322

JUNE 24, 2009

WILLIAM C. BINNING PH.D. FACTFINDER

For the City of Olmsted Falls:

Frederick Englehart, Esq.
Littler Mendelson
1100 Superior Avenue 20th Floor
Cleveland, Ohio 44114

For the Ohio Patrolmen's Benevolent Association

Atty. Daniel J. Leffler
Ohio Patrolmen's Association
10147 Royalton Road, Suite J
PO Box 338003
North Royalton, Ohio 44133

The undersigned was appointed Fact-finder for this dispute by the State Employment Relations Board (SERB) on April 21, 2009 pursuant to Section 4117.14 (C) (3) of the Ohio Revised Code. By agreement of the parties, this Fact-finder was required to submit a report to the parties on or before July 9, 2009.

The hearing date was set by the Fact-finder for June 24 at 10:00 a.m. The Fact-finder asked the parties, as he is required to do, if the parties wished to engage in mediation prior to the opening of the hearing. The parties agreed to mediation by this Fact-finder. The parties met together with the Fact-finder and then caucused separately and met with the fact-finder serving as mediator. None of the outstanding issues were resolved by mediation.

HEARING

A formal hearing was opened at approximately 11:00 a.m. and closed at approximately 4:15 p.m. The following issues remained unresolved:

1. Salary
2. Longevity Pay
3. Deductibles for Health Insurance

CRITERIA

In compliance with the Ohio Revised Code, Section 4117.14 (C) (4) (3) and Ohio Administrative Code Rule 4117-9-05 (J) and 4117-9-05 (K), the Fact-finder considered the following criteria in making the findings and recommendations contained in this report:

1. Past Collective Bargaining agreements between the parties;
2. Comparison of the unresolved issues, relative to the employees in the bargaining Unit, with those issues related to other public and private employers doing comparable work, giving consideration to factors peculiar to the area and classification involved;

3. The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

ISSUES AND RECOMMENDATIONS

ISSUE 1: BASE SALARY

The parties hold very similar positions on the base salary rate. However, the City has not signed off on this issue without resolution and assessment of the financial impact of the other two outstanding issues: longevity pay and health insurance deductibles presented at the hearing. This fact-finder is recommending the base salary language offered below as part of this report:

Section 3:

The Base Salary Rate for full-time employees is as follows:

2% General	Conditional	2% General	Conditional
Increase	1% Lump Sum	Increase	1% Lump Sum
1-1-2009	2009*	1-1-2010	2010**

*A 1% lump sum payment will be paid to each employee on August 15, 2009, provided the gross Municipal Income Tax receipts received by the City of Olmsted Falls between January 1, 2009 and July 31, 2009 are equal to or exceed the gross Municipal Income Tax received by the City of Olmsted Falls between January 1, 2008 and July 31, 2008.

** A 1% lump payment will be paid to each employee on August 15, 2010, provided the gross Municipal Income Tax receipts received by the City of Olmsted Falls between January 1, 2010 and July 31, 2010, are equal to or exceed the gross Municipal Income Tax receipts received by the City of Olmsted Falls between January 1, 2008 and July 31, 2008.

In the event the employees qualify for the additional 1% payment in either year the 1% shall be added to the employees' base pay schedule effective December 31, 2010.

DISCUSSION AND RECOMMENDATION

The parties have not agreed to the above salary recommendation until the Employer has assessed how the resolution of the other two outstanding issues has impacted the City's budget.

Recommendation: The increase in the Base Salary Rate offered above is recommended.

ISSUE 2: LONGEVITY PAY

UNION POSITION

The Union is proposing to eliminate the cap on the longevity pay. The cap is currently at \$1,100. The union argues in its comparables that Olmsted Falls police officers with ten years experience are at \$56,789, while the average in Cuyahoga County is \$62,849. Even with the possible 2% pay raise the Olmstead Falls patrol officers would still rank 31 of the 32 departments.

CITY POSITION

The City proposes to maintain the status quo and keep the maximum longevity pay at \$1,100. The City argues that it is fiscally irresponsible to accept the Union's position to lift the cap. The City argued it would cost the City a great deal of money in a very difficult period. The City also assumes that it will impact other contracts if the City agrees to this particular Union's longevity proposal.

DISCUSSION

This Fact-finder recognizes the fiscal challenges faced by local municipalities in Northeast Ohio and is impressed by the careful case laid out by the able Finance Director on the fiscal challenges faced by Olmsted Falls. On the other hand, this contract does not adequately recognize the years of dedicated service of its Police Officers.

Recommendation: The following language is recommended.

Section 4: Once an employee has completed five (5) years of service with the City, they shall receive Longevity Pay. Longevity Pay will be paid to each employee on the last scheduled payday in November of each year. An employee's Longevity Pay will be equal to .002 multiplied by the number of years of service that they will have completed by December 31st of the current year multiplied by the employee's Annual Base Salary. **Longevity Pay will not exceed \$1,500 per year.**

ISSUE 3: HEALTH INSURANCE

UNION POSITION

The Union maintains that the amount of the current deductible in their health insurance is excessive and could potentially consume a large percentage of a union family's total annual income. The current deductibles are \$2,000/single and \$6,000 for a family. The evidence they provide from offered comparables is that Olmsted Falls' deductibles are exceedingly high. There has also been a change in policy by the City, which at one time shared the cost of the deductible with the employees; a change the City implemented which was counter to the recommendation of the City's Health Advisory Committee. The Union is also very concerned that without any cap in the contract on deductibles and with the significant authority granted to the City in the Contract to set health care benefits and deductibles that the Union members' health care costs will be raised even higher by the City. In order to protect their members from excessive deductible costs, the Union proposes the following: (their new language is presented in bold)

Section 1: The City will provide each employee and their family with coverage under a group health insurance policy, under a group health insurance policy, underwritten by an insurance carrier as determined by Council. Said insurance shall include hospital, surgical, prescription, optical and dental coverage.

Each bargaining unit will appoint one (1) representative by January 15th of each year and the City will appoint two (2) Council members to serve on an Advisory Committee which will be chaired by the Mayor. The objective of the Advisory Committee shall be to review the City's health care program and make recommendations for health care specifications prior to the time the City advertises for bids, and after bids are received, to review the bids and make a recommendation as to the plan that should be selected by council at least sixty (60) days prior to the expiration of the existing health care contract(s) and before Council makes a final decision. The goals of the Advisory Committee's recommendation to Council shall be two-fold, both being given equal consideration. The first goal is to minimize the expense to the City of the plan that is to be adopted and second is to maintain the level of benefits to the employee's when comparing the plan that is to be adopted with the existing plan.

Starting January 1, 2006, each employee shall contribute ten percent (10%) per month of the actual cost of their monthly premium charged to the City by its insuring agency, with a maximum employee contribution of \$95.00 a month. **The maximum employee contribution to such plan for**

deductible contribution shall be one-thousand dollars (\$1,000) for single coverage and three-thousand (\$3,000) for family coverage. In the event the City selects an HAS-type plan, the above deductibles shall be the employees' share; however the employee shall not be required as a condition of remaining in the HAS-type plan , to make monthly contributions but shall be required to comply with the all plan requirements as defined by law. The City will provide the actual cost to each employee in a private manner.

The Union presented a number of comparables showing what employees in similar municipalities are paying for health care premiums and deductibles.

CITY POSITION

The most compelling argument made by the City was data presented by the Finance Director on the City's budget. The decline in revenue and the increase in costs results in a drain on the declining City reserves. (City Evidence Tab 2) The City simply cannot afford to absorb increased costs for Health Care. The City also makes a pattern bargaining argument. Olmsted Falls offers the same benefit package for all of its bargaining units. An increased benefit to the Police would set off a similar demand for the same benefit by all of the other bargaining units.

The Mayor, who provided testimony for the City made the moral hazard argument, which means that if a purchaser is required to pay little or nothing for a benefit, the purchaser will overuse the benefit and show no regard for the cost of the benefit. Hence co-pays and deductibles are not simply used to offset the City's cost but also to create consumer behavior by the insured parties.

The City also cited a Fact-finding Award for The City of Olmstead Falls and the International Association of Firefighters by Fact Finder Christopher E. Miles, Esquire. The City claims the award supports their position. (City, Evidence Tab 14) The merits of that award will be discussed below.

DISCUSSION

The comparables offered, which may or may not be cherry picked, are not readily comparable for fact-finding. When it comes to health benefits, there are so many variables including: different benefits (Olmsted Falls appear quite generous with optical & dental) co-pays, premium share, deductibles, experience rating, size of unit, etc. It is very difficult to compare the health care benefits of multiple jurisdictions. The one thing that is known about all health insurance is that costs are rising faster than the consumer price index and health care is often the central issue in labor negotiations.

The Mayor's argument that if there is no payment by the consumer there is going to be unnecessary and excessive use of benefits is persuasive to this Fact-finder. However, deductibles that are too high can deter the use of medically necessary services and Olmsted Falls' deductibles are on the verge of being too high, especially in the case of a family, given the modest salary of the police officers in this unit. Although this Fact-finder is sympathetic to the Union's concerns, to recommend the language the Union requests would set off the need to renegotiate a number of other parts of the current insurance package.

The City, in its brief and at the hearing, gave a great deal of attention to a Fact-Finding award between the City of Olmsted Falls and the International Association of Fire Fighters issued by Christopher E. Miles Esq. on October 12, 2007.

In the pre-hearing brief, offered to this Fact-finder by the City titled "Brief in Support of the Employer, City of Olmsted Falls", the City argues on page 15 "In rejecting the Fire Fighter's proposal to cap employee contributions and deductibles, Fact-finder Miles specifically declared that the concerns raised by the Fire Fighters should be addressed to the Healthcare Advisory Committee."

Although there is no principle of *stare decisis* in fact-finding. This fact-finder gives respect and attention to past fact-finding opinions on similar issues. However, Mile's award does not fully support the City's position on health care deductible language in this Contract, since in his opinion on this issue Fact-finder Miles wrote:

After considerable review of the information and positions by the parties in this regard, the Fact-Finder recommends that the current language in Article 34 be retained for the new agreement; except for the proviso that the employee contribution be capped at the 2005 level (10% per month of the actual cost of their monthly premium with a maximum contribution of \$ 95.00 per month. (See Miles Award page 6 in Employer exhibits.)

In the above, Fact-finder Miles recommends retaining existing language on the employee contribution cap.

Furthermore, with regard to the Mile's fact-finding, his opinion was rendered in October 2007, and it was after that date that the City rejected the Health Care Advisory Committee's recommendation that the City pay 50% of the deductible charges on the employees. (Union exhibit Tab 0). The City rejection of that recommendation appears to have weakened the role of Health Care Advisory Committee's influence on the City's health insurance policy and occurred after Fact-finder Miles rendered the cited fact-finding report.

Miles does applaud the Union and the City for their effort at cooperation through the Advisory Committee for Health Insurance and this Fact-finder supports his sentiments.

There was an issue raised by the Union's proposed language that was brought up at the hearing and was not clarified. There is in Olmsted Falls' current health insurance program higher deductibles for out of network health care services. Non-network deductibles for the current plan are \$4,000 for an employee and \$12,000 for a family. (Union evidence Tab N) This Fact-finder assumes that the Union does not assume its proposed language will impact on the Non-Network deductibles. Olmsted Falls is in a particular Medical Mutual Super Med Plus plan, and the benefits, premiums, deductibles and co-pays are all interconnected.

The Olmsted OPBA is rightly concerned about the role of the Health Care Advisory Council, the City Council and the issue of deductibles. In the past, the City paid 50% of the employee deductible costs. However, in 2008, when the Health Care Advisory Committee recommended to "continue with the existing Medical Mutual Plan and also to fund 50% of the deductible expense", (Union evidence Tab O) the City Council did not adopt that Health Care Advisory's recommendation. That left the Union with the concern that the City will continue to raise the deductible, the City will not make any contribution towards the deductible, and the Contract offers them no protection for that issue.

There is a problem with the Union language on the HSA language which they offer as **"In the event the City selects an HAS-type plan, the above deductibles shall be the employees' share; however, the employee shall not be required, as a condition of remaining in the HSA-type plan, to make monthly contributions but shall be required to comply with all plan requirements as defined by law."** The City will provide the actual cost to each employee in a private manner.

The difficulty of addressing Health Savings Accounts with language on deductibles for more traditional insurance would, in this Fact-finder's opinion, lead to further confusion. For HSAs, it is this Fact-finder's understanding that employees are required to make pre-tax contributions that are prescribed by federal law to qualify for a Health Saving Account Plan. There are federally specified minimum and maximum annual deductibles for individuals and families and those deductibles are exempt from federal tax, which, in effect, make them less burdensome than the deductibles in traditional plans that generally do not enjoy any particular tax benefit unless some health care expenditure threshold is met. For HSAs "In 2008, annual deductibles offered to beneficiaries in standard HSAs ranged from \$2,500 to \$5,100 per person. The minimum deductible would be adjusted annually in line with the growth of health care spending."¹ (It appears from the HSA language on minimum deductible, cited above that they would exceed the current policy's deductibles as well as the deductible language proposed by the Union for a single and family.) This Fact-finder thinks it would be folly for him to recommend contract language directed at deductible language for Health Savings Accounts. The parties need to reopen the deductible language, if the parties move towards an HSA.

¹ Henry J. Aaron and Jeanne M. Lambrew, *Reforming Medicare* (Washington D.C.: Brookings Institution, 2008) p.97.

The Union needs to be aware that with so many small bargaining units and if health benefits vary between the units, the City's costs will rise for the same or fewer benefits because of health insurance administrative costs. This bargaining unit, like all the members of the bargaining units is advised to continue to cooperate with the Advisory Committee, which has a record of achievement. The City should appreciate the cooperation they have been receiving on this issue from all the Olmstead Falls' unions and not take unfair advantage of the discretion granted to them by this Contract.

RECOMMENDATION

The following language is recommended:

Section 1: The City will provide each employee and their family with coverage under a group health insurance policy, underwritten by an insurance carrier as determined by Council. Said insurance shall include hospital, surgical, prescription, optical and dental coverage.

Each bargaining unit will appoint one (1) representative by January 15th of each year and the City will appoint two (2) Council members to serve on an Advisory Committee which will be chaired by the Mayor. The objectives of the Advisory Committee shall be to review the City's health care program and make recommendations for health care specifications prior to the time the City advertises for bids, and after bids are received, to review the bids and make a recommendation as to the plan that should be selected by Council at least sixty (60) days prior to the expiration of the existing health care contract (s) and before Council makes a final decision. The goals of the Advisory Committee's recommendations to Council shall be two-fold, both being given equal consideration. The first goal is to minimize the expense to the City of the plan that is to be adopted, and the second is to maintain the level of benefits to the employee's when comparing the plan that is to be adopted with the existing plan.

Section 2: Starting January 1, 2006, each employee shall contribute ten percent (10%) per month of the actual cost of their monthly premium charged to the City by its insuring agency, with a maximum employee contribution of \$95.00 per month.

Section 3: The maximum employee contribution to such plan for deductible contribution shall be two-thousand dollars (\$2,000) for single coverage and six-thousand dollars (\$6,000) for family coverage. These deductible caps are for Network Benefits.²

Section 4: In the event the Health Care Advisory Committee recommends adoption of a Health Savings Account type plan, Section 3 above should be reopened for necessary changes, however, both the City and the OPBA of Olmsted Falls must agree to reopen this language in the Contract.

The Fact-finder respectfully submits the above recommendations to the parties this 9th day of July 2009 in Mahoning County Ohio.

William C, Binning Ph.D.
Fact-finder

² See Union Evidence Tab N --Medical Mutual

STATE EMPLOYMENT
RELATIONS BOARD

BINNING ARBITRATION SERVICES 2009 JUL 13 A 11: 04
2893 Algonquin Dr.
Poland, Ohio 44514

July 9, 2009

To: Frederick W. Englehart, City of Olmsted Falls
Daniel J. Leffler, OPBA City of Olmsted Falls (Full-time Patrol)

From: William C. Binning, SERB Fact-finder

Re: Case 08-MED-11-1322

Enclosed are two copies of my Findings and Recommendations on the above matter. There are also 2 copies of my invoice.

If there is any need for clarification of this award, it is my practice to take questions only from the two parties identified above.

Thank You.

 cc: SERB