

**STATE EMPLOYMENT RELATIONS BOARD
State of Ohio**

In the matter of Fact Finding between:

THE CITY OF FOREST PARK, OHIO,)	Case No(s) 2013-MED-09-0993
)	and 2013-09-MED-09-0994
Public Employer,)	
)	
and)	
)	Hearing: March 28, 2014
FRATERNAL ORDER OF POLICE,)	at Forest Park, Ohio
OHIO LABOR COUNCIL, INC.,)	
)	
Employee Organization.)	Date of Report:
)	April 23, 2014

FACT FINDING REPORT

Before Mitchell B. Goldberg, Appointed Fact Finder

Appearances:

For the Council:

Mark A. Scranton,	Representative
Jeff Larsh,	Lieutenant
Jackie Dreyer,	Police Officer
Patrick Anderson,	Sergeant
Greg Huber,	Police Officer

For the City:

Edward S. Dorsey,	Attorney
Tye Smith,	Human Resources Director
Phil Cannon,	Police Chief

I. Introduction and Background.

The State Employment Relations Board (“SERB”) appointed the undersigned as the Fact Finder of this public employment labor dispute for purposes of resolving the parties' impasse over the single remaining issue for resolution of their negotiations for two collective bargaining agreements (“CBAs”). One CBA covers the employment terms and conditions for the patrol officers, and the other CBA

covers the employment terms and conditions for the Lieutenants and Sergeants. The same unresolved issue applies to both CBAs, which when resolved will succeed the CBAs that expired on December 31, 2013. The parties submitted timely pre-hearing statements in accordance with SERB rules and guidelines. The sole disputed issue involves the disagreement over the language set forth in Article 18, Insurance.

The following recommendation on the unresolved issue in this Report incorporates all unchanged articles and provisions in the expired CBA, all tentative agreements reached during bargaining and/or through mediation. The following recommendation is made in accordance with the existing statutory factors and standards incorporated in Chapter 4117 of the Ohio Revised Code and in SERB Rules and Guidelines. They are: (A) past collectively bargained agreements between the parties; (B) consideration of issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved; (C) the interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service; (D) the lawful authority of the public employer; (E) the stipulations of the parties; (F) and such other factors, not confined to those listed in this section, which are normally, or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution procedures in the public or in private employment.

II. Unresolved Issue.

Article 18 – Insurance

The language of the expired CBA states;

The City shall provide medical, dental, and term life insurance for permanent full-time employees as follows:

Section 1.

Bargaining unit employees will contribute 15% of the total cost of the healthcare insurance plan.

In the event that health insurance premiums are reduced, the City and the bargaining unit will negotiate the application of any savings reductions or rebates that would be received by the health insurance carrier.

If any group of City Employees pays less than the percentages of the cost set forth above for healthcare insurance during the term of this Agreement, bargaining unit employees shall pay that same amount toward the cost of healthcare insurance. Bargaining unit employees shall never pay more toward the cost of healthcare insurance than the lowest amount paid by any other group of employees.

For purposes of this section, "group" means non-represented employees or organized employees of the Fire Department or organized employees of the Public Works Department.

Section 2.

For the purpose of this section, "permanent full-time employees" is defined as including all employees who perform prescribed duties on an established schedule of 40 hours or more per week. Part-time employees working less than 40 hours per week and casual and seasonal employees working less than fifty-two (52) weeks per year are excluded from the insurance coverage provided in this article.

The city shall have the right to change insurance carriers provided the benefits of the existing insurance remain substantially equivalent under any new plan.

The City proposes to modify the language in Section 2 and to otherwise conform the language to that contained in the Firefighters CBA. That precise language was recommended by Fact Finder Russell and otherwise was incorporated into the Firefighters' final binding language through conciliation. The proposed language would incorporate into the CBA the historical process that has been in effect between the administration and its employees for obtaining health insurance. Premiums, deductibles, co-insurance and benefits would ultimately be approved and decided upon by a committee that has representatives from all of the groups and departments including representatives from each of

the five collective bargaining units. Non-represented employees have a representative from each of the eleven administrative departments.

The City starts with a budget range for its insurance costs based upon data it receives showing what the average range in increases are in the area. It then obtains a quote from its carrier to renew the existing coverage. If the quote is within the budget percentage increase range obtained from the data, the policy will be renewed. If the quote is higher than what is budgeted, and cannot be reduced to a cost within the range, the City will obtain quotes from other carriers to obtain a policy that is within the budget range. The committee reviews the proposals for the new plan year and votes to decide which proposal to accept. Each department and bargaining unit has one vote. Under the City's proposal, the City could change benefit levels, deductibles and other health insurance terms provided it follows the historical procedure described above. The City may deviate from the historical process, but if it does so, the benefits must remain substantially the same.

The City's proposal requires the City to comply with the ACA, but upon request it must bargain over any amendments or changes that are required by the ACA over the contract term. The City believes its proposal is fair, reasonable and more importantly, permits flexibility in the developments that will likely occur in the ever changing landscape of health care and health insurance. All employees have input in what is ultimately decided upon and all employees have "skin in the game." The proposed language would apply to nearly all of the employees, with the exception of the small Teamster unit where the language remains unchanged and is identical with the language in the FOP's expired CBA.

The FOP proposes to retain the language of the prior CBA, the same as the Teamsters, through 2015, and a reopener on health insurance for the final contract year. The language that the FOP wants to retain has existed since 1993. It provides for the City's right to change insurance carriers provided the benefits of the existing plan "remain substantially equivalent under any new plan." This was the

language contained in the 1986 CBA that was changed in 1993 and carried forward until this latest expired CBA. The FOP contends that this language requires benefits to remain substantially equivalent throughout the term of the CBA. It believes that its members are better protected from losing existing benefits with its proposal of no change to the existing language of “substantially equivalent” coverage. The City disputes this interpretation. The City contends that this language requires that benefits remain substantially equivalent if there is a change in carriers. But if the City does not change carriers, benefits may change without restriction.

The FOP acknowledges that the process of selecting insurance contained in the City's proposal has existed, but it contends that the process has not actually been used over the last several years. The City agrees that this is the case, but explains its non-usage by the fact that Mr. Smith, the H.R. Director has been able to negotiate for rate decreases for existing coverages with the carrier or broker, or increases that were below average. He assumed that his work would be universally accepted by all the employees such that a committee meeting for approval was not necessary. He notified all the employees of his efforts in writing, and, as expected, all were pleased that their premium contributions did not increase, or increased at favorable levels, and that benefits remained relatively unchanged.

The heart of this dispute in the final analysis concerns what happens if premium increases during the term of the CBA are beyond the City's budgeted amount for insurance costs, i.e., above the average increases in the area. The City's proposal would allow it to change benefits and deductibles through the historical process to bring the increase in costs within the average in the area. The FOP's proposal would retain the language it believes requires that benefits will remain substantially equivalent. The parties disagree over the meaning of the prior language in the CBA. The FOP argues that the existing language has served the parties well. Substantially equivalent levels of coverage have been guaranteed whenever the City decides to make necessary changes, regardless of whether it keeps the same carrier or changes carriers. The parties have always operated under this system, evidenced by

the fact that only one grievance has ever been filed over an insurance issue, and this was in 1997.

The City contends that the language that the FOP wants to retain does not really mean what the FOP is proposing. It contends that the substantially equivalent requirement only exists if the City changes insurance carriers; it does not apply to changes that might occur under its existing policy with the same carrier.

This Report does not attempt to resolve the parties' language dispute over the meaning of the current contract language of "substantially equivalent". It is a dispute that is hypothetical at this point in time. There is no attempt to change carriers. There is no dispute over coverage changes that are forthcoming where the parties are specifically arguing about whether replacement coverages, or lower coverages or benefits are substantially the same or substantially equivalent. The parties have not had this issue in the past, and it would be too speculative to find that a dispute over this language will occur during the term of this succeeding CBA, notwithstanding changes that might occur in the implementation of the ACA.

Accordingly, I find that the parties should have the same insurance coverage as the rest of the employees in order to secure the benefits of a larger group. Language should be added to the CBA that would allow the City to transition to modest deductibles in order to give is some leeway against cost increases. The benefits committee shall remain in place and should be used when needed. I believe that at least for the duration of this CBA, the parties will not find themselves in a dispute over changes in coverage or benefits that would place them at odds over whether the changes are substantially equivalent in the event that coverage is kept or not kept with the same carrier or under the same plans. I believe that the best way to reconcile the positions is to retain the current language in Section 2 as the FOP proposes regarding "substantially equivalent," but to include the City's proposed additional language that memorializes the accepted process for selecting insurance coverage within the range of existing average premium increases. I do not believe it is necessary to have a re-opener for insurance

as the FOP proposes for a time period before December 15, 2015 to the end of the CBA.

RECOMMENDATION: The beginning sentence through Section 1 shall remain unchanged, along with Sections 3, 4, and 5.

Section 2 shall be revised to read in its entirety as follows:

Section 2.

For the purposes of health insurance only, in order to comply with the Affordable Care Act, "permanent full-time employees" is defined as including all employees who perform prescribed duties on an established schedule of 30 or more hours per week. Part-time employees working less than 30 hours per week and casual and seasonal employees working less than fifty-two (52) weeks per year are excluded from the insurance coverage provided in this article.

The City shall have the right to change insurance carriers provided the benefits of the existing insurance remain substantially equivalent under any new plan.

The City shall maintain the current health insurance plan through the current plan year, i.e., through 11/30/14. Thereafter, the following shall apply.

Should the City continue to offer a traditional HMO/PPO designed insurance plan, bargaining unit members will pay a maximum of 15% of the applicable health insurance premiums of the plan chosen. Deductibles will not exceed \$1,500 single and \$3,000 family/all other. Bargaining unit employees shall never pay more toward the cost of healthcare insurance than the lowest amount paid by any other group of employees.

The City has a long-standing process for managing the health insurance of City employees. This process is democratic, interdepartmental, and includes both management and non-management employees. Provided the City substantially continues to follow this process, the City may after 11/30/14 change: carriers, coverages, deductibles, co-pays, or other terms and conditions of the health insurance plan at any time. The City shall at all applicable times comply with the Affordable Care Act and relevant regulations promulgated thereunder. In the event the Affordable Care Act is repealed or substantially amended, either party to this agreement may require collective bargaining to negotiate with regard to the impact of such repeal or amendment on the City's health insurance plan. If the City fails to adhere to

the longstanding democratic process described above, then health insurance benefits shall remain substantially equivalent after 11/30/14.

The City shall give notice to the Union of any such changes to the insurance as soon as possible when the City learns of them. The employees in this bargaining unit shall remain in the group participating in the health insurance decisions for the term of this agreement and be represented in this process by persons selected by the Union. The Union may elect to withdraw from participation in the aforementioned process by serving notice on the City 90 days, or sooner, from the end of the term of this contract.

Date of Report: April 23, 2014

/s/ Mitchell B. Goldberg, Fact Finder

CERTIFICATE OF SERVICE

This Report was served upon the following SERB and the parties by electronic mail on the 23rd day of April, 2014: SERB: MED@serb.state.oh.us; Edward S. Dorsey, esd@woodlamping.com; and Mark Scranton, markscranton.fopolci@yahoo.com.

/s/ Mitchell B. Goldberg

