

IN THE MATTER OF FACT FINDING: SERB CASE 2016-MED-09-0866

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL 2017 MAR 22 P 1: 21
AND
CITY OF WHITEHALL POLICE DEPARTMENT

FACT FINDING REPORT & RECOMMENDATIONS

APPEARANCES

FOR THE CITY

MARC FISHEL, ATTORNEY
KIM MAGGARD, MAYOR
STEPHANIE SCHOOLCRAFT, ATTORNEY
ANN LUND, DIRECTOR, HUMAN RESOURCES
DAN KELSO, DEPUTY CHIEF
MIKE CASPON, CHIEF OF POLICE
APRIL RICCAND, HUMAN RESOURCES

FOR THE FRATERNAL ORDER OF POLICE

JOEL GLASSER, STAFF REPRESENTATIVE
JASON HEDNECK, STAFF REPRESENTATIVE
GWEN CALLENDER, ASSISTANT CHIEF COUNSEL
SARA HOLLEY, UNIT MEMBER
AARON HOLMER, UNIT MEMBER

JERRY HETRICK, FACT FINDER

DATE OF HEARING: MARCH 8, 2017

DATE OF RECOMMENDATIONS; MARCH 17, 2017

BACKGROUND

This matter came up for fact finding hearing on March 8, 2017 before Jerry Hetrick appointed as Fact Finder pursuant to Ohio Rev. Code Section 4117.14. The hearing was conducted with the City of Whitehall and the Fraternal Order of Police, Ohio Labor Council, (FOP). The bargaining unit is the full time Dispatchers (8). The City and the FOP are parties to a collective bargaining unit governing the terms and conditions of employment for the term January 1, 2014-December 31, 2016. The parties bargaining sessions resulted reaching tentative agreement on a successor agreement that was subsequently rejected by the membership. The Union requested resumption of negotiations regarding the City's insurance proposal with the City recommended the matter be referred to fact finding. In the determination of facts and recommendations, the fact finder is required to consider the criteria required by the Ohio Rev. Code Section 4117.14@4 (e) as follows:

- (1) Past Collective Bargaining agreements if any between the parties
- (2) Comparisons of the unresolved issues relative to the employees in the bargaining agreement with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved.
- (3) The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed and the effects of the adjustments on the normal standard of public service.
- (4) 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 issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

Both parties were given full opportunity to present their respective proposals, present evidence and positions on the following proposals.

- A. Pay Plan-Article 17.1
- B. Paid Status-Article 20.2
- C. Overtime-Article 20.3
- D. Compensatory Time-Article20.4

E. Holidays-Article 22

F. Medical Insurance-Article 28

Joint discussions with the City and FOP as well as the FOP's position statement make it clear that the Union's rejection of the tentative successor agreement and impasse stems almost exclusively from the employer's medical insurance proposal. The Fact Finder concluded that resolution of this issue was key to obtaining a tentative agreement. Accordingly the focus of discussions was on Article 28.

UNION POSITION-.MEDICAL INSURANCE

The Union's primary objection is the employer proposal requires this unit to adopt the same insurance plan as other City employees and allows the City to change its health insurance plan unilaterally with notice given to the Union. That objection arises from concern the Union lost the ability to predict and control health care cost and believes the City would raise employee contribution rates weekly. The primary concern stems from changing contribution rates with little notice. To address that concern while granting the City flexibility in making health care changes the Union proposes:

Section 28.1

The City shall provide all bargaining unit employees with health insurance benefits (including comprehensive hospitalization, surgical, major medical, physician service coverage, prescription drug and vision and dental) under the group insurance and benefit plans generally provided to the employees of the City and on the same terms and conditions on which those benefits on which those benefits are generally provided to employees of the City other than those covered by other labor contracts.

The City, in its sole discretion, may modify such benefits, the City and employees' share of the cost of such benefits, the terms and conditions on which such benefits are provided, and/or means by which such benefits are provided, so long as any such modifications are also applicable generally to employees of the City other than those covered by other labor contracts and so long as any modification made does not result in any change in the employee premiums, deductibles, prescription drug prices, co-payments, max out of pocket expenses, or any other economic benefit or requirement affecting the Employee's insurance coverage by more than total of five percent (5%) in any given calendar year.

Section 28.2 Changes to Insurance Plans.

If the City determines there is a financial need to modify the economic impact of the Health Insurance Plan on Employees by more than the annual five percent (5%) maximum allowed under 28.2, the City and Union agree to reopen Article 28 to negotiate a new health insurance benefits package, the results of which will come in the form of a Memorandum of Understanding between the parties to address and memorialize the modification.¹

CITY PROPOSAL-MEDICAL INSURANCE

Section 28.1 The health insurance benefits provided under this Article are a fringe benefit under this Agreement. The City shall provide all Bargaining Unit employees with health insurance benefit (including comprehensive hospitalization, surgical, major medical, physician service coverage, prescription drug and vision and dental) under the group insurance and benefit plans generally provided to the employees of the City and on the same terms and conditions on which those benefits are generally provided to employees of the City other than those covered by other labor contracts.

The City, in its sole discretion, may modify such benefits, the City's and employees' share of the cost of such benefits, the terms and conditions on which such benefits are provided and/or the means by which such benefits are provided, so long as any such modifications are also applicable generally to employees of the City other than those covered by other labor contracts.

Section 28.2 Changes to Insurance Plans

If the City decides to change the insurance benefits consistent with Section 28.1 above, they will inform the Union at least 30 days prior to the effective date of the new benefits or change(s).

RECOMMENDATION & RATIONAL

The employer seeks uniformity with medical insurance plans provided to City employees including its bargaining unit employees. Uniformity has advantages for the City and its non union employees as well as bargaining units. Frequently there is an advantage to small units to be placed in the

¹ Currently there is very little difference between the non bargaining unit health insurance plan and the insurance plan for this bargaining unit. See Union Brief, Page 11

same medical pool with other City employee and other bargaining units, in this case, the Communications Workers, a substantially larger unit. As Fact Finder Howard Silver noted:” The true protection that may be relied upon by bargaining unit members in their health care coverage is that they are treated in the same manner as all other members of the coverage pool. What ever the strengths or weaknesses of the health care benefits package, they are shared and apportioned equally among all coverage pool participants.”²

The Union urges the Fact Finder to grant changes to the Medical Insurance Plan that is not supported by either internal comparables or the majority of external comparables (Exhibit 20). The objectionable feature of the City’s proposal, “If the City decides to change the insurance consistent with Section 28.1 above, they will inform the Union at least 30 days prior to the effective date of the new benefits or change(s) is contained in the collective bargaining agreement with the City’s major labor union, the CWA. Ohio Rev. Code Section 4117.14 @4(e) requires the Fact Finder to give, in what this Fact Finder considers major consideration to this fact. The Union has not met the burden of demonstrating why the Fact Finder should accept its proposal.

There can be no disagreement that tentative agreements must be considered and weight given by Fact Finders under Ohio Statute as “Such other factors which are normally or traditionally taken into consideration in the dispute resolution process because of the Impact on the collective bargaining process and the relationship of the parties.”

In the Fact Finder’s opinion, implementation of the tentative agreement of those items on which tentative agreement was reached at the table, with the exception of the Medical Insurance Plan, furthers the collective bargaining relationship and are to be incorporated into the successor agreement with an effective date of January 1, 2017.

An exception to incorporating the Employer’s Medical Insurance Plan proposal which was part of that tentative agreement has been made by the Fact Finder for the simple reason that the Employer has not raised any objection with the Fact Finder if his recommendation were to include addressing the Medical Insurance Plan.

² SERB Case No. 2013-MED- 07-0831 cited by City Exhibit 24

In making following recommendation, the Fact Finder reviewed the collective bargaining agreement between the City and the Communications Workers, the City's largest bargaining unit and internal benefit comparison (Exhibit 15).

RECOMMENDATION

The Employer's collective bargaining agreement with the Communications Workers, Exhibit 23 contains the following Insurance Provision Effective January 1, 2017 through December 31, 2018:

Section 28.1

Effective January 1, 2017 through December 21, 2017, the City will maintain the following levels of comprehensive hospitalization, surgical, major medical, physician services coverage and prescription drug coverage for all employees as listed in the booklet of coverage distributed to employees.

- A. Premiums
- B. Network Costs
- C. Co-Payments

Effective January 1, 2018, the City shall provide all Bargaining Unit Employees with health insurance benefits (including comprehensive hospitalization, surgical, major medical, physician service coverage, prescription drug and vision and dental) under the group insurance and benefit generally provided to the employees of the City and on the same conditions on which those benefits are generally provided to employees of the City other than those covered by other labor contracts.

The city, in its sole discretion, may modify such benefits, the City's and employees share of the cost of such benefits, the terms and conditions on which such benefits are provided , so long as any such modifications are also applicable generally to employees of the City other than those covered by other labor contracts.

Section 28.2 Vision Care Plan

The City will maintain a vision care plan for all employees.

Section 28.3 Changes to Insurance Plans

If the City decides to change the Insurance benefits consistent with Section 28.1 above, it will inform the Union at least 30 days prior to the expiration of the Insurance year (calendar year).

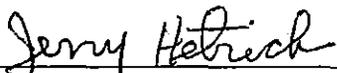
Recommendation:

In the opinion of the Fact Finder the objective of both the City and Union can be accomplished by modification of Section 28.3 as follows: If the City decides to change the insurance benefits consistent with Section 28.1 above, it will inform the Union at least 30 days prior to the expiration of the insurance year (calendar year).

SUMMARY OF RECOMMENDATIONS

- A. All tentative agreements reached prior to impasse are to be incorporated into the successor agreement to be effective January 1, 2017 and shall remain in effect until midnight on December 31, 2019 with the exception of Section 28.3.
- B. Based on the reasons set forth in the Fact Finder's report, Section 28.3 is modified to provide: If City decides to change insurance benefits consistent with Section 28.1 above, it will inform the Union at least 30 days prior to the expiration of the insurance year (calendar year).

Respectfully:



Jerry Hetrick, Fact Finder

The Fact Finder certifies that the Report was served by email on March 17, 2017 to Marc Fishel, mfishel@fishelhass.com and Joel Glasser, jglasser@fopohio.org

MARCH 17, 2017

Mr. Marc A. Fishel
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Mr. Joel D. Glasser
Staff Representative
Fraternal Order of Police
222 E. Town Street
Columbus, OH 43215-4611

Re: City of Whitehall OH

Dear Mr. Fishel and Mr. Glasser:

Enclosed is the Fact Finder Report and Recommendations for the City of Whitehall and Dispatchers represented by the Fraternal Order of Police.

I trust this recommendation will meet rather than disappoint the parties.

I enjoyed working with the parties and hope that my recommendations will help you reach the agreement both of you would have reached without my involvement. More importantly, I trust my involvement did no damage to the relationship the parties enjoy.

One of these days the economic climate on the health care issue will turn and bargaining process will return to a more normal process.

Sincerely:


Jerry Hetrick
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Cc: Mary Laurent