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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In the matter of conciliation between:	)	Case No. 10-MED-09-1232
	)	
CITY OF GREEN, OHIO	)	Hearings: October 18, 2011
	)	and October 21, 2011 at
and	)	Green, Ohio
	)	
GREEN FIREFIGHTERS ASSOCIATION,	)	Date of Award:
IAFF LOCAL 2964	)	November 7, 2011

CONCILIATOR'S FINAL OFFER SETTLEMENT AWARD

Appearances:

Mitchell B. Goldberg, SERB Appointed Conciliator

For the Union:

Ryan J. Lemmerbrock,	Counsel
Jeff Funai,	Vice President
Matt Craddock,	President
Mary Schultz,	Consultant

For the City:

Michael D. Esposito,	Clemens Nelson & Associates
Jeanne Greco,	Human Resources Manager
Howard Heffelfinger,	Clemens Nelson & Associates
Robert Calderone,	Fire Chief
Laurence Rush,	Finance Director

I. Introduction and Background.

The Ohio State Employment Relations Board ("SERB") appointed the undersigned as the Conciliator of this unresolved labor dispute between the parties. This was in accordance with Ohio Revised Code Section 4117.14 (D)(1). Hearings were held on

October 18, 2011 and October 21, 2011 after the parties submitted timely pre-hearing position statements on all of the unresolved issues in their pending negotiations for a successor collective bargaining agreement ("CBA") to replace the CBA that expired on December 31, 2010.

There were 11 unresolved issues at impasse that proceeded to Fact Finding before Fact Finder William C. Binning on June 30, 2011. He issued his Fact Finding Report on these issues on August 4, 2011. The same 11 issues were addressed in the pre-hearing statements filed with the Conciliator for the hearing scheduled for October 18, 2011, after the Fact Finder's recommendations were not accepted. The parties requested that the Conciliator attempt to mediate these issues on October 18 and that day was utilized for mediation. Through the efforts of the Conciliator and the parties, all issues were resolved through mediation with tentative agreements except for the issue pertaining to requested changes in Article 20, Health Care.[1] The hearing on the remaining unresolved issue took place on October 21, 2011 in accordance with Section 4117.14 (G). The parties presented testimony from those present and submitted documentary exhibits. Each party gave closing arguments in support of their respective positions after all of the evidence was received.

The following decision incorporates all unchanged articles and language in the expired CBA, and all tentative agreements reached between the parties in their negotiations and through the mediation. The decision resolves the remaining unresolved

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[1] Two issues, Wages-Article 22 and Hours of Work-Article 21 were agreed upon at the outset or during the beginning discussions.

issue from between each party's final settlement offer taking into consideration the factors outlined in Section 4117.14 (G)(7). This final offer settlement award constitutes a binding mandate to the City and the Union to take whatever actions are necessary to implement the award.

II. Factual Background.

The City of Green is a thriving suburban community between Akron and Canton. It enjoys a combination of a growing residential area with a supporting commercial sector. The tax base has large key employers and facilities including the businesses that benefit from the growing Akron-Canton regional airport. As opposed to other suffering Ohio communities that once enjoyed economic growth and prosperity, but are now in decline, Green still has a high median household income level and stable property values. The City financial condition is a reflection of the growth and prosperity of the region. It maintains high fund balances and high reserves from substantial income tax revenues and the careful management of its expenditures.

Nevertheless, the City, like all other Ohio municipalities and entities, is concerned about the erosion of its principal revenue sources that include reductions in the State's local government fund and the elimination of the Ohio Inheritance tax. The tangible personal property tax reimbursements will be entirely phased out by 2013. Property taxes will continue to decline from the devaluation of homes caused by foreclosures and the results of high unemployment. The poor economy has produced a stagnant commercial real estate market, particularly in the retail sector. The present low interest rates have

decimated the City's interest and investment revenue. Accordingly, the City is addressing this uncertainty about the future by operating conservatively so as to keep its expenditures in line with its projected revenues.

III. Article 20, Section 1, Health Coverage.

The rising cost of health care is an expenditure item that has substantially increased over the years, and continues to increase at levels much higher than the CPI. A recent Cleveland Plain Dealer article reported that the average family plan cost in the U.S. is over $15,000 per year, or $1,800 per month. This represents a 113% increase over the last 10 years, or an average over 11% per year. Wages, however, rose only about 34% over the same period, or an average of only 2.8% per year. Accordingly, the issues of employee health insurance costs and insurance premium contributions are compensation items that are inexorably connected to wage negotiations in collective bargaining.

The rising health insurance costs present a serious budgetary challenge for the City and other public employers, since personnel costs represent by far the largest expenditures in public sector budgets. The language of the expired CBA provided that the City would continue in effect the existing group hospitalization, life, dental, vision, prescription, and accidental death and dismemberment insurance benefits, or "substantially similar" benefits for the duration of the CBA. Employees in this bargaining unit contributed 5% toward the total monthly premium, with a maximum monthly employee contribution of $30-single coverage, and $75-family coverage. The City agreed to first meet with the Union before any insurance changes were made to

discuss the impact of the changes prior to implementation. Another provision provided that if there was an increase in individual or family premiums or costs that exceeded 15% per year in any year of the CBA, the City and the Union would meet to discuss whether to (1) revise the benefit coverage to reduce the cost of coverage, and/or (2) increase the deductibles and/or cost sharing between employees and the City. If the City and Union could not agree, the City was permitted to implement such changes to recoup the cost increase over 15%.

The parties further agreed to establish a joint committee on health care benefits, which includes representatives from this bargaining unit, the AFSCME units, and its unrepresented employees. The committee periodically evaluates the benefits, costs and insurance proposals and makes recommendations to the City for cost containment measures.

The City, proposed to eliminate the "substantially similar" requirement necessary for any changes. It believes that this language unreasonably restricts its ability and the committee's ability to be flexible and responsive to insurance options that could maintain high levels of insurance benefits, but simultaneously lower the City's costs. It believes that the existing language that caps any increases in employee premium contributions unless increases are beyond 15% annually combined with the low contribution levels are unrealistic in today's insurance environment with double digit percentage increases for similar benefits each year. It is necessary for the City to remove the limitation of requiring "substantially similar" benefits before any change can be made in order for the

employees to continue to receive the available high level of benefits at a manageable cost to the City.

The City's proposal adds the following specific language to Section 5:

> It is the intent of the City to maintain levels of benefits comparable to those that exist at the effective date of this agreement. However, should the City find it necessary to change the levels of benefits during the term of this agreement, the Employer will present any proposed changes to the Health Insurance Committee and the Union at least thirty (30) days prior to the effective date of any such changes. Upon the request of the Union, the Employer will meet with the Union to discuss the proposed changes and any alternatives. If the parties are unable to reach agreement, the Employer may implement the changes.

The AFSCME units have agreed to the City's proposed language changes. Permitting this unit to enjoy separate insurance language that is different from the language applicable to all other City employees would compromise the mission and purpose of the joint committee. The City contends that it is preferable that all City employees share the same benefits and burdens of the same health insurance plans.

The Union objects to the removal of the "substantially similar" language that would provide the City with unilateral discretion to determine the breath and scope of its obligation to provide health insurance benefits. It believes that granting the City unilateral discretion over mid-term changes would effectively remove the subject of bargaining over health care benefits and its relationship to overall compensation from the bargaining table. The issue is not merely whether the City is proposing to increase the premium costs for employees, or that it specifically wants to lower benefit levels. The proposal to remove the substantially similar language as a condition before any mid-term

change may be implemented below 15%, and to provide unilateral City changes with only a notice and prior discussion with the Union, effectively eliminates the Union's ability to grieve over what it might consider to be unjustified substantial benefit reductions or increased costs. Moreover, the granting to the City of unilateral discretion and power to change benefits mid-term, merely after notice and discussion with the Union effectively eliminates the Union's right to engage in collective bargaining over the effect of the unilateral changes upon the total compensation that was negotiated and bargained for in the CBA. These are mandatory subjects of bargaining that must remain in tact.

The City presently has protections over its bargaining interests. It has the ability to make total unilateral changes by increasing employee health care costs or by reducing benefits when its total health care costs exceed 15% in any given contract year. This right was exercised in 2011 when its costs were increased to 19%. Thereafter, the City instituted unilateral cost increases to deductibles, maximum out-of-pocket costs, well baby care costs, mammogram costs, prescription co-payments, reduced infertility coverage, and spousal coverage when spouses are eligible for alternative coverage. The City saved more than 10.18% from its 2010 costs. The cost increases incurred by unit members were not recovered through other increases in compensation or economic benefits.

In terms of external comparables, no other comparable fire unit permits the employer to exercise unilateral or unfettered control over mid-term changes to employee

health care benefits. Many units prohibit any mid-term changes in benefits. Others such as presently exists here permit changes only under certain conditions. The City has protected its interests by revising benefit levels and costs when the unexpected cost increases rise above the 15% level in any contract year. This is a reasonable approach that has worked in practice between the parties.

While internal comparables are a statutory factor for consideration, the Fire unit should not be forced to relinquish its right to bargain over health care benefits and costs together with its wages and other compensation bargaining. They are all interrelated such that bargaining over health care benefits should not be removed from the equation.

Fact Finder Binning, after being presented with substantially the same positions and arguments as above, found that the City's case for its proposed language changes was not a "strong" one. He found that the limitation of "substantially similar" changes was "not very exact," but nonetheless provided some assurance that past benefits would be continued. This is something more concrete than the City's proposed language that expresses only the City's "intent" to maintain benefit levels. He also concluded that providing the City with unilateral discretion to make changes when there was no agreement with the Union was very close to removing the subject of health care as a subject of bargaining between the parties. He found that the existing ability to permit unilateral City changes when costs exceed 15% per contract year was a reasonable grant of discretion for City budgetary and management purposes and for the containment of excessive increases in health insurance costs.

IV. Discussion and Finding.

There is no dispute over the need for the City to reign in unplanned and uncontrolled rising health insurance costs. It is a major budgetary expense. Restrictions on its ability to address costs that rise in double-digit percentages, but below the threshold under which it can make unilateral changes may be needed if revenue sources continue to dry up over the term of this contract. However, providing the City with complete discretion to make changes without any obligation to bargain with the Union over the effect of any such change during the contract term is an unreasonable remedy when other more reasonable approaches are available to the parties to deal with the issue.

There were several ideas and proposals that were entertained and considered by the parties during mediation to deal with the issue of unexpected insurance cost increases that may occur during the contract term. These proposals would permit the City to reexamine its entire insurance cost package and impose changes that would bring the costs down to manageable levels until the contract expires, while at the same time maintain the Union's ability to protect the employees' economic interests through required bargaining over the impact of such changes. Some proposals included the reorganization of the joint committee and empowering it by providing more than just recommendations under certain circumstances. However, I may not consider any of these proposals for the purpose of fashioning a solution that would take into consideration the respective interests of the parties. I may only decide which of the two opposing positions are to be implemented to conclude this CBA. I find that maintaining

the current language is the most reasonable decision for the reasons articulated by the Union. I believe that any proposed substantial reduction in insurance benefits, or increase in employee costs during the contract term should trigger the re-opening of negotiations over the economic effects of the proposed changes, notwithstanding the fact that unrepresented employees and the other bargaining units have agreed to be bound by the City's unilateral decisions under these circumstances.

V. Decision.

The current language in Article 20 shall remain unchanged in accordance with the Union's position.

Date of Award: November 7, 2011 /s/________________________________
Mitchell B. Goldberg, Conciliator

CERTIFICATE OF SERVICE

The above Award was electronically served upon the following persons on November 7, 2011:

1. J. Russell Keith, General Counsel & Assistant Executive Director, SERB
MED@serb.state.oh.us

2. Ryan J. Lemmerbrock, Esq., Attorney for the Union,
lemmerbrock@millabor.com

3. Michael D. Esposito, Esq., Attorney for the City,
mesposito@clemansnelson.com

/s/________________________________
Mitchell B. Goldberg