
In the Matter of Arbitration

Between

City of Erie

And

IAFF Local 293

AAA Case No. 55 390 00285 09

Change in Retiree Medical Benefits

Before: Michael E. Zobrak, Arbitrator

Appearances:

For the City: Gerald J. Vilella, Esquire

For the Union: John R. Bieski, Esquire

Place of Hearing: Erie, PA

Date of Hearing: March 18, 2010

Exchange of Briefs: May 17, 2010

Date of Award: May 30, 2010

Type of Grievance: Retiree Medical Benefits

Award: The grievance is sustained.

ADMINISTRATION

By letter dated October 22, 2009, from the American Arbitration Association, Philadelphia, Pennsylvania Office, the undersigned was notified of his selection by the parties to hear and decide a matter then in dispute between the parties. A hearing went forward on March 14, 2010 in Erie, Pennsylvania, where the parties presented testimony, written evidence and arguments in support of their respective positions. The record was closed with the exchange of briefs on May 17, 2010. The matter is now ready for final determination.

GRIEVANCE AND QUESTION TO BE RESOLVED

On July 13, 2009, the following grievance (Joint Exhibit 1, Tab 1) was filed:

Retiree's retiring after 1-1-2009 are being required to pay a portion of their health insurance coverage. This is a violation of Article XI, Section 3 of the Agreement between Local #293 and the City of Erie

The issue to be resolved is did the City violate the Agreement when it began to require those fire employees retiring on or after January 1, 2009, to pay a portion of their health insurance premium and if so, what is the remedy?

CITED PORTIONS OF THE AGREEMENT

The following provision of the parties' 2008-2011 Collective Bargaining Agreement (Joint Exhibit 1) was cited:

ARTICLE XI

FIREMEN'S PENSION FUND

.....

SECTION 3

.....

Post-Retirement Medical Coverage

.....

It is also agreed that fire employees who retire on or after January 1, 1993 shall be entitled to the full benefit as set forth above without contribution to premium. However, there shall be no retroactivity with regard to premiums paid before January 1, 1996.

FACTUAL BACKGROUND

The City of Erie, Pennsylvania and the International Association of Fire Fighters, Local 293 entered into interest arbitration to replace a collective bargaining agreement that expired December 31, 2008. The interest arbitration award, effective January 1, 2008, provided that as of January 1, 2009, active Erie fire employees would be required to make a contribution toward their medical insurance. The contribution ranged from \$20 per pay period for those employees selecting individual coverage to \$30 per pay period for those selecting family coverage. The award did not contain any mention of a contribution from retired fire employees.

The Union offered an historical perspective on medical benefits and retired Fire Fighters. In 1991 fire employees who retired after January 1, 1990, were granted access to individual medical coverage if they paid for that coverage. Active fire employees at that time had their medical coverage provided by the City at no cost to the employee. In the successor agreement provided that retired fire employees could add their spouse under the City's medical insurance, provided that the retired employee paid for the entire coverage. With the 1995-97 Agreement the City agreed to pay for the entire amount of the medical insurance. The City would then pay for the cost of the insurance premium except for those premiums that exceed the amount at retirement. In essence, the retired fire employees were required to assume the cost of any increase in premium.

In the 1998-2001 contract those fire employees who retired after January 1, 1993, were no longer required to make a contribution toward their medical insurance. According to the Union, the City paid for any increases in the cost of the insurance premiums. Retired fire employees were required to join Medicare when eligible. In the 2002-04 contract all employees retiring after January 1, 2002, were eligible to receive medical coverage for spouse and dependents at no cost to the employee. Active employees were given the option to enroll in a Point of Service (POS) plan with the employee paying one-half the cost difference between the indemnity coverage and the POS coverage. Under the 2005-07 contract all employees were moved to Preferred Provider (PPO) insurance. The currently employed and the retired fire employees made no contribution toward the cost of medical insurance.

The City determined to have those employees who retire after January 1, 2009,

make the same contribution toward medical insurance premiums as is required of active employees. At the time of this hearing, two fire employees had retired after January 1, 2009. The instant grievance was filed to protest the requirement that those employees retiring after January 1, 2009, make the same contribution towards their medical insurance as active employees.

CONTENTIONS OF THE PARTIES

The Union contends that the current collective bargaining agreement does not allow the City to require fire employees who retired after January 1, 2009, to make contributions toward their retiree health care. The facts in this case are not in dispute. Under the terms of the most recent interest arbitration award only current active employees are required to make such contributions. This interest arbitration award modified prior contracts inasmuch as active employees had not been required to make contributions toward their medical insurance. The language of the agreement makes no mention of retirees making contributions toward the cost of their medical insurance premiums. The City did not make any proposal concerning retiree medical contributions before the most recent interest arbitration panel. It did make such a proposal related to current employees. While in the early 1990's retired fire employees paid the entire amount of their medical insurance premium, that requirement was subsequently changed to the City's paying the full amount of the retiree's medical insurance premium, including coverage for spouse and dependents. Lacking any change made by the interest arbitration panel, the City is obligated to continue making full payments for retirees, their spouses and dependents. The Union requests that the grievance be sustained and that the City cease and desist from collecting contributions from retirees for their medical insurance premiums. It also requests that any contributions already collected be refunded to the retirees.

CITY CONTENTIONS

The City takes the position that when active employees were required to make contributions toward their medical insurance premiums, it was proper for the City to seek the same contributions from those fire employees who retired on or after January 1, 2009. The history of retiree medical insurance coverage reveals that retirees received the same type of medical insurance coverage as existed at the time of their retirement. At no time

have retired fire employees received better benefits than those received as an active employee. The City submits that since an interest arbitration award is not negotiated, neither party can be held for failure to address any issue. The arbitration panel retains the jurisdiction to interpret disputed provisions of the award and impose understandings that are central to the award. The practice of holding new retirees to the conditions of medical insurance premiums at the time of their retirement must be continued. Only those fire employees who retired on or after January 1, 2009, are being required to contribute to the cost of their health care insurance premium. They are being treated in the same manner as active employees. The City seeks denial of the grievance.

DISCUSSION AND FINDINGS

The determination to require active fire employees to make a contribution toward their medical insurance premium was made during the interest arbitration that led to the ~~current Agreement. The City sought contributions by the active employees and the~~ arbitration panel saw fit to require active fire employees to make contributions based upon their level of coverage. At no point did the City request that fire employees retiring on or after January 1, 2009, be required to make similar contributions toward their medical insurance.

There is a history of retirees medical insurance provisions. Those provisions range the retiree paying for the entire medical insurance, to being able to cover a spouse by making full payment, to being permitted to also pay for dependent coverage, to the City making contributions toward the retiree's coverage, and finally to the City providing full medical insurance coverage at no cost to the retiree. The 2005 – 2007 Agreement, at Article XI, Fireman's Pension Fund, provides that effective January 1, 2002, all fire employees retiring after that date would be covered with medical insurance for spouse and dependent at no cost to the retiree. The retiree must join Medicare when eligible.

There is no evidence that the City attempted to modify Article XI by raising the issue of retiree medical coverage contributions during the recent interest arbitration. The undersigned, who chaired the interest arbitration panel, also has no recollection of such an issue being raised during the interest arbitration hearings. As such, the interest arbitration panel did not make any changes to the Article XI related to retiree medical insurance contributions.

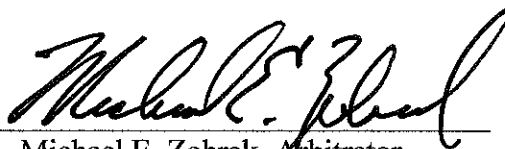
The City's argument that retirees should make the same contribution toward medical insurance premiums, while appealing, cannot be contractually supported. The controlling Agreement did not contain amendments to Article XI. Article XI must be read as it was set forth in the immediately prior Agreement. In that case retirees after January 1, 2002, are not required to make any contribution toward their medical insurance premium.

By deducting medical insurance contributions from those fire employees who retired after January 1, 2009, the City is unilaterally amending the Agreement. It is seeking to modify the Agreement by adding a provision that was not granted during the interest arbitration procedure. Lacking a request from the City to make such a modification during the interest arbitration procedure, there is no justification for the city's requirement that those fire employees retiring after January 1, 2009, make contributions toward their medical insurance premium in the same amount as active employees.

The City is directed to cease and desist from requiring medical insurance premium contributions from fire employees retiring on or after January 1, 2009. The City is to refund to the retirees any such contributions withheld since the retirement date of those employees who retired on or after January 1, 2009.

AWARD

The grievance is sustained



Michael E. Zobrak, Arbitrator
May 29, 2010
Aliquippa, PA