

BEFORE THE ARBITRATOR

In the Matter of the Arbitration of a Dispute Between

CITY OF ST. FRANCIS

and

ST. FRANCIS PROFESSIONAL POLICE ASSOCIATION

Case ID: 299.0000

Case Type: MA

(Jeff Obst Health Insurance Grievance)

AWARD NO. 7911

Appearances:

Nancy Pirkey, Buelow Vetter Buikema Olson & Vliet LLC, 20855 Watertown Road, Suite 200, Waukesha, Wisconsin, appeared on behalf of the City.

Benjamin Barth, Labor Consultant, The Labor Association of Wisconsin, Inc., N116 W16033 Main Street, Germantown, Wisconsin, appeared on behalf of the Association.

ARBITRATION AWARD

On December 11, 2014, the St. Francis Professional Police Association and the City of St. Francis filed a request with the Wisconsin Employment Relations Commission, seeking to have the Commission appoint William C. Houlihan, a member of its staff, to hear and decide a dispute pending between the parties. A hearing was conducted on March 20, 2015, in St. Francis, Wisconsin. No formal record was taken. Post hearing briefs were submitted and exchanged by April 24, 2015.

ISSUE

The parties stipulated to the following issue:

Is the City of St. Francis violating the expressed or implied terms and conditions of the collective bargaining agreement by only contributing eighty percent (80%) of \$1,300 towards the health insurance of Jeff Obst?

If so, what is the appropriate remedy?

BACKGROUND AND FACTS

Jeff Obst was a 34-year veteran of the St. Francis Police Department. On or about October 28, 2014, Obst retired from the City. As his retirement was being processed, there arose a disagreement as to the appropriate level of contribution the City was obligated to pay toward his post-retirement health insurance premium. The City believed that it was obligated to pay 80 percent of \$1,300, or \$1,040 per month. Obst believed that the City was obligated to pay 80 percent of the actual premium, which was \$1,460, as of the date of his retirement, or \$1,168 per month.

Ultimately, the matter was not resolved, and on November 10, 2014, a grievance was filed. The grievance was denied and the matter has been appealed to this Arbitration proceeding. The relevant contract provision, Article XII, is set forth below.

Prior to 2008, the City paid 80 percent of the health insurance premium rate in effect at the time of retirement. The dollar figure generated was then frozen and paid from the date of retirement through age 65.

In the negotiations leading to the 2008-2009 collective bargaining agreement, a number of health insurance changes were made. Obst, who was a member of the Association's bargaining team, testified that the City was in the process of modifying the health insurance plan design in order to lower the premium. Obst indicated that the monthly premium ultimately went from \$1,660 to \$1,086. According to Obst, Officer Russell Ratkowski was anticipating retirement as the negotiations proceeded. Obst testified that the parties identified \$1,300 as a compromise figure to provide a benefit to the soon to retire Ratkowski.

At hearing the Association introduced a bargaining proposal, made by the City in 2008, which provided as follows:

Add to Retiree Insurance:

- 1) Minimum insurance payment calculated at \$1,300 / month x percentage in contract / ordinance frozen at fixed dollar amount for health insurance retirements payments.

Ratkowski retired on April 18, 2008. As of the date of his retirement, the health insurance premium was \$1,467. The City paid \$1,040, or 80 percent of \$1,300 for the seven years it contributed to Ratkowski's post-retirement health insurance premium contributions. No grievance was filed. No other similarly situated bargaining unit member has retired since 2008, until Obst.

City Council member Debbie Fliss testified. Fliss has been on the bargaining team since 2008, but did not participate in the negotiations that produced the 2008-2009 collective bargaining agreement with the described changes. She testified that she has voted on a number of contract ratifications and has always understood that the City contribution would be based on \$1,300.

RELEVANT PROVISIONS OF THE COLLECTIVE BARGAINING AGREEMENT

ARTICLE III – MANAGEMENT RIGHTS

Section 3.01: The Association recognizes the prerogatives of the City to operate and manage its affairs in all respects in accordance with its responsibility and powers or authority which the City has not officially abridged, delegated, or modified by the Agreement and such powers or authority are retained by the City. These management rights include but are not limited to the following: the right to plan, direct and control the operation of the work force, determine the size and composition of the work force, to hire, to lay off, to make job assignments within the normally scheduled shift, to discipline or discharge for just cause, to establish and enforce reasonable rules of conduct, to introduce new or improved methods of operation, to determine and uniformly enforce minimum standards of performance, all of which shall be in compliance with and subject to the provisions of this Agreement

* * *

Section 12.04 – Retirees Insurance: The City agrees that employees with fifteen (15) or more years of service who retire under the Wisconsin Retirement System after age fifty (50) but before their fifty-third (53) birthday and who participate in a health insurance plan offered by the City, as specified in Article 12.01, shall have fifty percent (50%) of their health insurance contribution paid by the City until Medicare which shall be frozen, at a fixed dollar amount, at the time of

retirement. Additionally, the City agrees that employees with fifteen (15) or more years of service who retire under the Wisconsin Retirement System at age fifty-three (53) or become disabled shall be entitled to the following:

- a) For normal retirement, the City will pay the equivalent of eighty percent (80%), frozen at the time of retirement, of \$1,300.00. For future retirees, when the insurance premiums exceed \$1,300.00, the City will pay the equivalent of eighty (80%), frozen at the time of retirement at a fixed dollar amount to Medicare, of the retirees health insurance premium as agreed upon in Section 12.01. ...
- b) The coverage will be for retired employees and “family”. Family as defined in the health plan in effect at the time of retirement. ...

* * *

- e) Should the retiree decide not to enroll in the City’s Health Plan, or leaves the area that the City’s Health Plan covers the City will pay the equivalent of eighty percent (80%), frozen at the time of retirement, of \$1,300.00 until the insurance premiums exceed \$1,300.00. When the insurance premiums exceed \$1,300.00, the City will pay the equivalent of eighty (80%), frozen at the time of retirement at a fixed dollar amount to Medicare, of the retirees health insurance premium as agreed upon in Section 12.01. ...

DISCUSSION

On its face, the language of Section 12 supports the position of the Association. The first sentence of Section 12.4(a) sets the standard for health insurance contribution at 80 percent of \$1,300 per month. However, the first sentence does not stand in isolation. The second sentence addresses future retirees and the circumstance where premiums exceed \$1,300.

The Association's interpretation of the section gives both sentences meaning. A threshold premium amount for the calculation of the City contribution has been identified as \$1,300. In context, the sentence appears to address then current retirees. The second sentence refers to "future retirees," and maintains the 80 percent contribution "when the insurance premiums exceed \$1,300." The language of the agreement is consistent with the testimony of Obst. The monthly health insurance premium was never precisely \$1,300. The contract language was not drawn from the actual premium. The premium did slide down in 2008. If \$1,300 was identified as a compromise figure for calculating Ratkowski's premium contribution, it explains how the number came to be and why no grievance was filed.

The City asks that I ignore the second sentence. The City relies on the treatment of Ratkowski as the sole application of the language in dispute. However, the single application cannot be regarded as a practice and is explained by Obst's testimony. The plain meaning of the second sentence of Section 12.04(a) is that if premiums rise the City will maintain its 80 percent contribution of the increased premium. I am unwilling to read the sentence out of the agreement. This is particularly the case where the parties have essentially repeated the provision in Section 12.04(e), as applied to a retiree who does not enroll in the City's health plan.

I believe the language of Section 12.04(e) reinforces the interpretation advanced by the Association. In paragraph (e), the \$1,300 figure is applicable "... until the insurance premiums exceed \$1,300." When the premiums exceed \$1,300, the City pays 80 percent of the new premium. This provision uses slightly different terms to achieve the same result. Read together, the two provisions reinforce the conclusion that the parties intended the City to continue to pay 80 percent of an increased premium.

I do not believe that Fliss' testimony alters the above conclusion. She was not a part of the team that negotiated the words in dispute. She reflects the sentiment of the City Council. However, the words of the agreement are a more accurate reflection of the intent of the parties.

AWARD

The grievance is sustained.

REMEDY

The City is directed to pay 80 percent of \$1,460 (\$1,168) frozen to Medicare toward Obst's post-retirement health insurance premiums. The City is further directed to reimburse Obst for the out-of-pocket expense he has incurred as a result of his having paid premium contributions in excess of his obligation under the contract.

Dated at Madison, Wisconsin, this 2nd day of July 2015.

WISCONSIN EMPLOYMENT RELATIONS COMMISSION

William C. Houlihan, Arbitrator