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In the Matter of the Interest Arbitration
Between
ILLINOIS FRATERNAL ORDER OF POLICE
LABOR COUNCIL and FOP LODGE #16
and
CITY OF PARK RIDGE
* * * * *

O P I N I O N
ISLRB #S-MA-93-179

Prior to the expiration of the Contract effective May 1, 1991, through April 30, 1993, the parties entered into negotiations for a new collective bargaining agreement. Because of their inability to reach agreement, they selected Patrick J. Fisher as Arbitrator of their dispute. On March 15, 1994, his appointment as interest arbitrator and as chairman of an interest arbitration panel was confirmed by Brian E. Reynolds, Executive Director of the Illinois State Labor Relations Board. Thereafter, in a letter dated May 2, 1994, the Arbitrator was notified that the parties had reached tentative agreement on the impasse issues and that the hearing date of May 23 should be cancelled. Subsequently, he was informed that the Union and the City had been unable to resolve one issue. Thereupon, pursuant to notice, a hearing was held at City Hall in Park Ridge, Illinois, on August 16, 1994. Prior to the commencement of the hearing the parties waived the statutory requirement for a decision by a three-person board and submitted the issue to Mr. Fisher as sole impartial Arbitrator. At the hearing the parties were then given the opportunity to present oral and written evidence, to examine and

cross-examine witnesses and to make arguments. After a transcript of the testimony was prepared, both the Union and the City submitted post-hearing briefs on September 16, 1994.

Contentions of the Parties

The Fraternal Order of Police contends that the evidence and the record compels an award of the Union's final offer. It points out that the insurance savings clause has been in the Contract since 1987 and that the City has not established why it should be removed. The FOP claims that the Employer lured the Union into agreeing to pay increased health insurance premiums in the 1987-1988 Contract with the promise that if dependent costs would ever go down the parties would share the savings 50/50. It adds that the employees paid to get the savings clause in the contract and have continued to pay over the years, and it argues that if the City wants the clause removed it should have "to pay" to get it out through responsible, good faith bargaining. The Union asserts that even the tentative agreement that was reached on April 28 was premised, on the Union's part, on the assumption that the employees would share in the savings. It emphasizes that the employees had been seeking two 4% increases but settled for 4% and 3% because they would be sharing in the savings on the insurance premiums. In addition, the Union argues that the comparables selected by the City amply justify sharing the savings.

The City of Park Ridge contends that employee contribution for dependent coverage should continue at the present level of \$60 per month. It claims that the parties reached a written, express, signed Settlement Agreement on that exact amount, and that the

Union's attempt to eliminate the employee contribution is not only misplaced, but contrary to the parties' own Settlement Agreement. The City insists that the Settlement Agreement which was dated and signed on April 28, 1994, controls this case. It maintains that, in addition to agreeing on a two-year term, the Union agreed that the employee contribution to group medical insurance under the basic plan would be "\$60.00 per month for employee and dependents during term of agreement." The City argues that the "status quo" language which the Union is using in this arbitration refers to miscellaneous items in the insurance article of the collective bargaining agreement not specifically addressed in the Settlement Agreement. In addition to citing rules of contract construction, it asserts that the negotiating history supports its argument. The Employer takes the position that the developments in the first several weeks of May after the signing of the Settlement Agreement are not particularly relevant to this case. It claims that its actions during the post-settlement time period was not waffling, but merely an indication of what good faith collective bargaining is all about. The City concludes that if the Arbitrator should accept the Union argument that there was no meeting of the minds on employee contributions to group medical insurance and apply the statutory factors for determining what should be in the contract, he would be adopting and putting into his decision a result which borders on the preposterous and outlandish.

The Evidence

Article VI of the Agreement which expired on April 30, 1993, contained the following provision:

E. Comprehensive Medical Plan

1. Plan. The Comprehensive Medical Plan (\$1 million major medical maximum with \$150 single/\$300 family deductible applicable to both out-patient coverages and hospital confinement) which was in effect on the date of this Agreement will continue in effect. Except as set forth in the previous sentence, there shall be no medical insurance plan changes for the term of this Agreement, unless mutually agreed between the City and the Lodge.

2. Administration. It is understood that the master documents between the carrier, CNA (or any replacement carrier selected by the City), and the City are the controlling documents as to coverage, benefits, eligibility, and all other aspects of the plan.

3. Premium Costs. Premium costs under the comprehensive medical plan are controlled by the concept that both the City and the employee shall share in payment of the premium cost for both employee and dependent coverage. Employee contribution figures under this concept are:

EMPLOYEE CONTRIBUTION

May 1, 1991 Through Sept. 30, 1991

<u>Employee Only</u>	Family - <u>Employee and Dependents</u>
None	\$35 per month

October 1, 1991 Through April 30, 1992

<u>Employee Only</u>	Family - <u>Employee and Dependents</u>
\$15 per month	\$55 per month

May 1, 1992 Through April 30, 1993

<u>Employee Only</u>	Family - <u>Employee and Dependents</u>
\$18 per month	\$60 per month

All medical costs over and above the employee contributions listed above, including any increased premium costs during the term of this Agreement,

shall be paid by the City.

In the event there is a premium decrease in the dependent insurance premium between May 1, 1991 and April 30, 1993, the City and employee shall share in this premium decrease on a 50/50 basis. In the event there is a premium increase in said period, the City will pay the full amount of the increase.

Both parties made proposals to change language in the foregoing Article. During the course of negotiations the FOP and the City exchanged documents and had two meetings at which a mediator was present. The City proposed a two-year contract with a re-opener on wages and medical coverage. Among the Union proposals on insurance was one for an optional plan which would permit employees to have coverage with a higher deductible at a lower premium. Eventually that plan was agreed to, but there was no discussion about the 50/50 sharing of any decrease in premiums. Nevertheless, on April 28, 1994, the parties signed a tentative Settlement Agreement. Subsequently, the City prepared a draft of the 1993-1995 Collective Bargaining Agreement and forwarded it to the Union on May 9. When the Union negotiators reviewed that draft, they noted that the language regarding a decrease in the cost for dependent coverage had not been included. Thereupon, Ralph Nikischer, Assistant Director of the Union, called John T. Weise, the attorney who had prepared the draft for the City, to discuss the omission of that language and three other items. Mr. Nikischer explained that he needed immediate, written clarification because he was going to present the tentative agreement to the members at a ratification meeting. Thereupon, on

May 11, 1994, Mr. Weise sent a letter by facsimile to Mr. Nikischer which summarized their conversation of that date. That letter listed four items, among which was the following: "Insurance premium - put back in 50-50 basic insurance premium increase language." Mr. Nikischer then took the faxed letter to the membership meeting and explained the settlement as the Union understood it. Thereupon, the agreement was ratified. Subsequently the City provided a new draft of the Contract which stated:

In the event of an insurance premium decrease from the date of signing this Agreement and April 30, 1995, the City and employee shall share in this premium decrease on a 50/50 basis.
. . .

The Union was not satisfied because of the reference to insurance premiums and the effective dates. In the meantime, the negotiators learned that the City's insurance costs had gone down. That proved to be less than helpful in arriving at a resolution of the parties' differences. Thereupon, on July 15, 1994, Mr. Weise wrote to Gary Bailey, Director of Field Services for the Union, and confirmed that there was no agreement on employee contributions to group medical insurance. Mr. Weise's letter stated that the City's position was that the parties had agreed on a definite contribution figure of \$18.00 for single coverage and \$60.00 for employee and dependent coverage for the duration of the contract. In that letter the attorney for the City also confirmed the parties' agreement to submit that single issue to the interest Arbitrator.

Discussion

The Union's final offer on Article VI E of the Collective Bargaining Agreement reads as follows:

E. Comprehensive Medical Plan

1. Plan: The Comprehensive Medical Plan (\$1 million major medical maximum with \$150 single/\$300 family deductible applicable to both out-patient coverages and hospital confinement) which was in effect on the date of this Agreement will continue in effect. Except as set forth in the previous sentence, there shall be no medical insurance plan changes for the term of this Agreement, unless mutually agreed between the City and the Lodge.

2. Optional Medical Plan: Effective on or about May 1, 1994, the City shall place an Optional Medical Plan into effect with essentially the same benefits as the Comprehensive Medical Plan, except that there shall be a higher deductible of \$500 single/\$1,000 family. Employees who desire the Optional Medical Plan shall have the option of converting from the Comprehensive Medical Plan on or after May 1, 1994, at dates announced by the City.

3. HMO Medical Plan: There shall also be an HMO Medical Plan with benefits as determined by the City and the HMO carrier. Enrollment in the HMO Medical Plan shall be set by the carrier so that employees who wish to convert from the Comprehensive Medical Plan or the Optional Medical Plan are able to convert to the HMO Medical Plan. Effective on or about May 1, 1994, the HMO Medical Plan shall add a co-payment feature requiring an employee co-payment of \$10 for any doctor visit or hospital emergency room treatment.

4. Administration: It is understood that the master documents between the carrier, CNA (or any replacement carrier selected by the City), and the City are the controlling documents as to coverage, benefits, eligibility, and all other aspects of the plan.

5. Premium Costs: Premium costs under the comprehensive medical plan are controlled by the concept that both the City and the employee shall share in payment of the premium cost for both employee and dependent coverage. Employee contribution figures under this concept are:

COMPREHENSIVE MEDICAL PLAN
EMPLOYEE CONTRIBUTION

May 1, 1993 Through April 30, 1995

<u>Employee Only</u>	<u>Family - Employee and Dependents</u>
\$18 per month	\$60 per month

OPTION MEDICAL PLAN
EMPLOYEE CONTRIBUTION

May 1, 1993 Through April 30, 1995

<u>Employee Only</u>	<u>Family - Employee and Dependents</u>
\$9 per month	\$30 per month

HMO MEDICAL PLAN
EMPLOYEE CONTRIBUTION

May 1, 1993 Through April 30, 1995

<u>Employee Only</u>	<u>Family - Employee and Dependents</u>
\$6 per month	\$20 per month

All medical costs over and above the employee contributions listed above, including any increased premium costs during the term of this Agreement, shall be paid by the City.

In the event there is a premium decrease in the dependent insurance premium between May 1, 1993, and April 30, 1995, the City and employee shall share in this premium decrease on a 50/50 basis. In the event there is a premium increase in said period, the City will pay the full amount of the increase.

6. Within three months after the execution of this Agreement, the City shall establish and place into effect a plan under Internal Revenue Code Section 125 applicable to employee contributions to the group medical insurance plans set forth in this Paragraph E.

The City's final offer, which was presented during the course of

the arbitration hearing, is substantially the same, except for the last paragraph of numerical paragraph 5. That final offer reads as follows:

In the event of an insurance premium decrease in the dependent insurance premium from the date of signing this Agreement and April 30, 1995, the City and employee shall share in this premium decrease on a 50/50 basis. In the event there is a premium increase in said period, the City will pay the full amount of the increase.

The pre-hearing stipulation which was signed by the Union and the City states in part:

(2) Impasse Issue: That the impasse issue to be presented to the Arbitrator for decision is: What language shall be included in the parties' successor labor agreement regarding the costs of health insurance benefits?

(3) Issue is Economic: That the issue of the language concerning health insurance premiums is economic in nature, and that the Arbitrator shall select and adopt either the final offer of the Union or that of the Employer as his award.

In commenting on the foregoing, counsel for the City made the following statement:

The next issue is on item two, impasse issue. We don't have a problem with the statement of issue by Mr. Sonneborn, but at the same time we state it differently because the issue here says what language shall be included in the parties' agreement concerning costs of health insurance benefits. And at the conclusion of our opening statement, we'll give you a precise issue. But what we are saying is that the issue is particularly what have the parties already agreed upon concerning employee contributions to group medical insurance. Now, my issue is covered by Mr. Sonneborn's issue, but we are making the point and will make the point that this is not, as it were, a wide open interest arbitration from our standpoint where the arbitrator can make this determination but indeed must determine what the parties have already agreed upon on this subject.

Obviously, the parties have a different interpretation of what was intended when reference was made during the negotiations to "All remaining language in Article VI, Section E, to remain status quo in contract." Although there was no meeting of the minds at that time, both final offers now include the words "the City and employee shall share in this premium decrease on a 50/50 basis." The difference is in reference to the time period.

The matter which has been submitted to arbitration is an interest dispute. The Arbitrator was notified by both parties that he had been selected to serve in an interest arbitration. As has been pointed out, the Illinois State Labor Relations Board confirmed his appointment as interest arbitrator. Consequently, it is not his function to construe an existing contract. Therefore, the Arbitrator will not accede to the City's request for an interpretation of the tentative agreement.

The contractual language regarding the sharing of any premium decrease was first adopted in 1987. It appeared again in the 2-year contract which became effective on May 1, 1989. After the conclusion of the negotiations of the succeeding contract, the Union received a draft of the new agreement which did not include the subject language. When the Union negotiators complained, the City replied that there had been a word processing error. That was corrected and the language on sharing 50/50 in any premium decrease was reinstated in the contract which became effective on May 1, 1991. During that six-year period, there was no decrease in the insurance premiums. The employees were obligated to pay increased costs during the terms of those contracts. In 1991 the

indemnity premium for employee coverage was \$205.21 per month and the premium for dependent coverage was \$530.49. During the term of the 1992-93 contract the premium for employee coverage went up \$33.62, an increase of 16.4%, and the premium for dependent coverage went up \$86.59, a 16.3% increase. During the term of the succeeding two-year contract the indemnity premium for employee coverage went up \$4.71, a 2% increase. There was an identical percentage increase for dependent coverage for the same period which amounted to \$12.12.

During the contract negotiations the City made proposals to increase the employee and family contributions for group medical insurance. It also had a proposal to double the amount of the deductible for both individuals and families. However, the City made no proposal to delete the language on sharing any decrease in premiums on a 50/50 basis. Throughout the bargaining the Union had been seeking a 4% wage increase in each year of the 2-year contract. When it became apparent that there was going to be a decrease in the cost of insurance coverage, the Union modified its proposal on wages. In the belief that the employees would benefit from that reduction, the Union made a second proposal on April 28 which changed its wage demand to 4% in the first year of the contract and 3% in the second year.

The tentative agreement included language under the heading "HMO Medical Insurance" which reads as follows:

The parties agree that all bargaining unit employees who paid higher contributions for the period of May 1, 1993 to the date when the above contributions take effect will be reimbursed, by separate check, within thirty (30) days of

implementation of the new contribution amounts.

However, in view of the fact that the foregoing is not included in either of the final offers, it will not be considered in this decision.

The record establishes that the employees have had to pay increases in the premium cost ever since the adoption of the language providing for sharing a decrease in costs on a 50/50 basis. However, they have never received the benefit of any decrease. It is apparent that in 1994 there will be a substantial reduction in the premium costs. The extent of the savings did not become known until shortly before the arbitration hearing.

This is an economic issue. In view of the fact that the principal difference between the offers of the Union and the City is the date when a premium decrease will be shared on a 50/50 basis, it is necessary to consider the factors set out in the statute. Despite the City's contention that external comparisons are not particularly important in this case, it is necessary to compare the conditions of employment of other employees performing similar services. The Union and the City have traditionally relied upon comparisons with suburban municipalities north and west of Chicago. In a letter to the Union dated April 22, 1994, the City stated that for many years it had used a fixed listing of comparable municipalities in the north and west suburban area in discussions with its labor organizations on wage and benefit issues. It is apparent that the communities on the list which was submitted as an exhibit are a representative cross-section of the larger suburban municipalities in the north and west suburban

area. A survey of employer contributions to indemnity and HMO insurance costs discloses that in 12 of the 17 comparable municipalities, the employer pays 100% of the cost for single coverage and that one of them pays 100% of only the HMO cost. Two others pay 95% and 96%. On family coverage, eight of the municipalities pay 100%. Seven others pay a higher percentage than Park Ridge.

A comparison of the cost of providing services in the 18 municipalities shows that the Park Ridge's cost per capita is the second lowest. Its cost of \$674.00 is well below the \$915.00 average of the 18 municipalities. Therefore, the argument about Park Ridge's inability to pay is rejected.

There is evidence that acceptance of the Union's final offer may distort internal equity. However, due to the long inclusion of the 50/50 sharing language, and the absence of any proposal to remove it, equity is on the side of inclusion. The City asserts that police have historically contributed to the insurance coverage and the Union's final offer would reduce that contribution to zero. However, that is an after-the-fact argument which could not have been advanced if the arbitration hearing had been held on May 23 as originally scheduled. Under the statute, the Arbitrator has no latitude. He is required to adopt the last offer of settlement which more nearly complies with the applicable factors prescribed in the Act. Therefore, in view of all of the evidence, it is found that the Union's final offer should be included in the new contract because it more nearly complies with the applicable factors prescribed in Section 14(h) of the Illinois

Public Labor Relations Act.

In compliance with the requirements of the pre-hearing stipulation, the Award incorporates the tentative agreements which were reached during the course of the negotiations. The Award shall be retroactive to May 1, 1993.



Patrick J. Fisher
Interest Arbitrator

October 14, 1994

A W A R D

1) Term of Agreement: Two years, from May 1, 1993 through April 30, 1995.

2) Wage Increase:

Effective May 1, 1993: 4% across the board

Effective May 1, 1994: 3% across the board

All wage increases to be fully retroactive on all hours paid or paid as if worked. Separate retroactive checks will be issued to bargaining unit members within thirty days after ratification of the agreement by the Union and the City.

3) Longevity Pay:

Effective May 1, 1994:

Step G: Upon completion of 10 years of service a total of \$600 per year in addition to the F step.

Step H: Upon completion of 15 years of service a total of \$750 per year in addition to the F step.

Step I: Upon completion of 20 years of service a total of \$850 per year in addition to the F step.

4) Comprehensive Medical Plan:

1. Plan: The Comprehensive Medical Plan (\$1 million major medical maximum with \$150 single/\$300 family deductible applicable to both out-patient coverages and hospital confinement) which was in effect on the date of this Agreement will continue in effect. Except as set forth in the previous sentence, there shall be no medical insurance plan changes for the term of this Agreement, unless mutually agreed between the City and the Lodge.

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EMPLOYEE CONTRIBUTION

May 1, 1993 Through April 30, 1995

Employee
Only

Family -
Employee and Dependents

\$6 per month

\$20 per month

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6. Within three months after the execution of this Agreement, the City shall establish and place into effect a plan under Internal Revenue Code Section 125 applicable to employee contributions to the group medical insurance plans set forth in this Paragraph E.

5) Dental Insurance: The contract shall remain status quo regarding Dental Insurance.

All language regarding insurance, other than modified herein, shall be included in the parties' successor agreement.

6) Uniforms: The uniform allowance shall be increased to \$550 effective May 1, 1994.

The Union agrees to City proposal regarding issuance of bullet proof vests for new hires, with replacement of vests for all unit employees to be resolved in a labor-management conference.

7) Uniforms - One Time Payment: The Union agrees to accept the Employer's proposal of \$200.

8) Holidays: The Union drops its proposal for one additional holiday.

9) Light Duty: Employer dropped proposal.

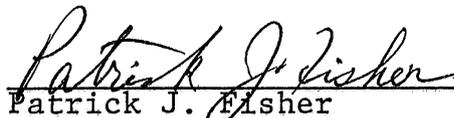
10) Training: Employer dropped proposal.

11) Police Memorial Day: Employer dropped proposal.

- 12) Entire Agreement Clause: Employer dropped proposal.
- 13) Physical Fitness Standards: Employer dropped proposal.
- 14) Compensatory Time: Union accepts the Employer proposal.
- 15) Acting Sergeant: The Union accepts the Employer's proposal that effective six months after the execution of the agreement, patrol officers will no longer be used as acting supervisors; provided, the parties agree that the Union has the right to bargain over any employer proposed means of effectuating the proposal regarding acting supervisors. Any impasse in such bargaining may be referred by the Union to interest arbitration, and the arbitrator shall have full authority and jurisdiction over the parties and subject matter. Pending the resolution of the impasse, the employer shall continue the current system.
- 16) Grievance Form: Previously agreed to the Union's proposed grievance form be attached to and part of the parties' collective bargaining agreement.
- 17) Dues Deduction Form: The Union accepts the Employer proposal of April 28, 1994, and agrees that the attached Dues Deduction Form be attached to the parties' collective bargaining agreement.
- 18) Addresses: The Union and Employer have reached an agreement on this issue, as is set forth in Employer's written April 28, 1994 proposal.
- 19) Statutory References: The Union and Employer have reached an agreement on this issue as is set forth in Employer's written April 28, 1994 proposal.
- 20) Discipline and Grievance Procedure: The Union drops its demand regarding discipline and the grievance procedure.
- 21) Jury Duty: The Union previously accepted the employer's proposal, provided that "a day" shall constitute 4 or more hours. Employees who are on jury duty for "a day" shall be excused from any remainder of their work shift without loss of pay.
- 22) Court Pay: The Union previously dropped its demand for additional court pay benefits and agrees that court pay remains as is.
- 23) Unscheduled Holiday: The parties previously reached agreement to delete the words "and does not work on said date" from this provision.

24) Signing Bonus: \$250 signing bonus for each bargaining unit member, payable by separate check within 30 days of execution of agreement.

All other tentative agreements reached during negotiations, and all other terms and conditions of the current collective bargaining agreement will be included in the successor agreement between the parties.



Patrick J. Fisher
Interest Arbitrator

October 14, 1994