

COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA LABOR RELATIONS BOARD

Fact Finding Between:		Findings and Recommendations
International Brotherhood of Teamsters, Local Union No.249)))	
-and-)	PERA-F-13-133-W
Franklin Park Borough)	July 29, 2013

Appearances:

For the Union:
Robert A Eberle, Esquire
Jubelirer, Pass & Intrieri,P.C.

For the Borough:
Robert Max Junker, Esquire
The Law Offices of Ira Weiss

Mediator

Michael J. Yagercik

Fact Finder

Lewis R. Amis

BACKGROUND

The International Brotherhood of Teamsters, Local 249 ("Union"), represents a bargaining unit of approximately fifteen full-time public works employees who are employed by Franklin Park Borough ("Borough"). The most recent collective bargaining agreement between the Union and the Borough was effective from March 21, 2007 until June 30, 2011.

The parties commenced negotiations in February 2011, meeting twice in that month and twice in March 2011. The parties met again on April 5, 2011. Following that bargaining session the Union filed two separate charges with the Pennsylvania Labor Relations Board ("PLRB"). The parties thereupon suspended bargaining pending resolution of the Union's complaints.

On January 11, 2012, the scheduled PLRB hearing date on the pending charges, the parties reached a settlement agreement with respect to the ULP issues and resumed negotiations. Subsequently, the parties met to negotiate the contract on the following dates:

January 30, 2012
February 27, 2012
March 26, 2012
April 23, 2012
May 31, 2012
July 20, 2012
August 16, 2012

In the Borough's view, tentative agreements were reached on some issues during these negotiations, all such agreements being conditional upon approval by the Borough Council and the parties reaching a complete and final agreement. The Borough, therefore, made a counter proposal on August 16, 2013. The Union considered the previous understandings between the parties to have been final, not tentative; therefore, following the negotiating session on August 16, 2012, the Union filed a new ULP charge with the PLRB. On May 1, 2013, the scheduled PLRB hearing date on the pending charge, the

hearing officer postponed the hearing and ordered the parties back to the bargaining table. The parties met again, assisted by the mediator, but were unable to reach accord on a new agreement. The parties, however, did agree on certain issues.

I - ISSUES RESOLVED IN NEGOTIATIONS

A. Term of the Agreement:

The parties agree that the term of the agreement shall be four years, from July 1, 2011, to June 30, 2015.

*See recommendation changing the term of the Agreement to January 1, 2012, to December 31, 2016. ¶II-A.

B. Wages:

The parties agree that there shall be a 2.75% increase in wages based on a four year Agreement.

C. New Hire Insurance Contribution:

The parties agree that employees hired since January 1, 2005, shall continue to contribute 15% of their total healthcare insurance premiums.

D. Golf Course Position:

The Union agrees to relinquish the golf course position. The parties understand that the position will no longer be included in the bargaining unit covered by the Agreement.

E. Modified Wage Provision:

The parties agree that newly hired employees will be paid a starting wage of 60% of the hourly rate for their job classification. It is understood that the Borough may, at its discretion, increase this rate to no more than 100% of the relevant classified rate.

F. Pension Enhancement:

The parties agree to add the May 9, 2008, Memorandum of Agreement referring to pensions to the Agreement.

G. Clothing Allowance:

The parties agree that the employee annual clothing allowance will be increased \$25.00 effective January 1, 2012.

H. Deposit of Deductible:

The parties agree that the Borough will deposit annual HSA funds in employee accounts in January of each year of the Agreement beginning January 1, 2014.

I. Rounding Vacation Time:

The parties agree that the minimum increment for taking vacation time off shall be one hour.

J. Unused HSA Funds:

The parties agree that when an employee must return unused HSA Funds to the Borough, those funds will be used solely to pay for healthcare premiums.

Recommendation:

The agreements and understandings listed above that have been reached by the parties shall be incorporated in the collective bargaining agreement.

II-MATTERS THAT REMAIN IN DISPUTE

A. Current Employee Contribution to Health Insurance Premium:

The Union has proposed a schedule of 0%, 6%, 6% and 6% for employee contributions to health care premiums in each year of a four-year agreement. The Borough has proposed a schedule of 0%, 6%, 8% and 10% for the same period.

Recommendation:

Given current increases in health insurance costs, it is not unreasonable for the Borough to seek greater participation from its employees in paying premium costs. The Union does not disagree, only the amount is at issue. The Borough's immediate goal is to reach 10% participation, which is currently the amount required of administrative employees in the Borough. Over time, of course, if the parties pursue the practice of requiring new hires to pay 15% of their health insurance premiums, all employees will contribute at that level. In the meantime, the parties' incremental approaches in this matter suggest a reasonable solution.

The parties have already agreed on a four-year Agreement with a 2.75% wage increase in each year. I recommend that the term of the Agreement be extended to five years with a 2.75% wage increase in each year over the term of the Agreement, which shall be effective January 1, 2012 through December 31, 2016. That change is to be coupled with the following schedule of premium contributions: 0%, 6%, 6%, 6% and 10%, distributed as follows:

Premium Contributions:	Wages:
July 1, 2011--June 30, 2012 _ 0%	
January 1, 2012	+2.75%
July 1, 2012--December 31, 2012 _ 3%	
January 1, 2013--December 31, 2013 _ 6%	+2.75%
January 1, 2014--December 31, 2014 _ 6%	+2.75%
January 1, 2015--December 31, 2015 _ 6%	+2.75%
January 1, 2016--December 31, 2016 _ 10%	+2.75%
The Union Wage Scale is Attachment !.	

B. Retroactive Compensation:

The Union proposes that the negotiated pay increases be fully retroactive to January 1, 2012.

The Borough is not in agreement with wage retroactivity going back to January 1, 2012, particularly if it does not include corresponding healthcare premium retroactivity. The Borough proposes a lump-sum payment of \$400 to all Union employees upon execution of the CBA.

Recommendation:

The parties bargained annual pay increases of 2.75% in each year of the Agreement. The Borough's proposal abrogates its original agreement by eliminating employee incremental annual pay increases, which would have been part of the bargain had a settlement been reached early in negotiations, and by reducing the total amount of pay accruing to the affected employees by offering a minimal lump sum payment in the form of a bonus rather than an actual wage increase. These conditions effectively nullify the understanding the parties reached regarding wages and place an unreasonable burden on the affected employees. This same rationale applies to the retroactive payment of healthcare premiums described above in Paragraph II-A. I recommend that the Borough pay the negotiated annual wage increases in full for each year of the Agreement, retroactive to January 1, 2012.

C. Health Insurance:

The Union proposes to retain the current provision that any change in a health care plan be to an alternative plan that is "equal to or better than the current plan."

The Borough proposes a change in the current contract language to recognize that the Borough is not a guarantor of a health insurance plan or any components of such plans, and that the Borough has not agreed to self-insure any aspect of those plans or components of plans. The Borough also proposes that it be permitted to change the current health care plan or provider to a "comparable" plan or provider. The Borough proposes to allow employees to choose between two healthcare plans, a PPOBlue plan and a HDHP plan with HSA.

Recommendation:

The Union has already in principle accepted the Borough's proposal to offer two healthcare plans, the PPOBlue and a HDHP with HSA and has chosen the HDHP plan it prefers; thus, this matter is no longer at issue. The Borough, however, must allow employees to review and alter their choices when the carriers issue revised plans.

The healthcare language the Borough proposes is unnecessarily cumbersome and detailed and can be read to contradict the obligation the Borough assumes to provide a comparable replacement plan should it replace an existing plan. The Borough's proposed language should not be included in the Agreement at this time. With respect to this matter, the Borough's obligations under the September 30, 2005, Miller Arbitration Award will be superseded by the healthcare provisions of the new Agreement.

The only dispute remaining is whether any replacement plan should be "equal to or better than" or "comparable to" the current plan being replaced? The principle of comparability is preferable, as explained below, and is contained in the collective bargaining agreements of several surrounding municipalities, namely, the Borough of Sewickley, the Township of Ross, the Township of Cranberry, and the Township of Shaler.

Employers change healthcare plans because providers cancel existing plans or increase the cost of their plans to levels that employers find intolerable. The employer then must either voluntarily accept the higher costs imposed by the provider or find another carrier willing to provide coverage at a cost reasonably close to that of the original plan negotiated with the Union. Healthcare plans tend to be similar, but seldom if ever are they identical in detail; thus, it is not reasonable to require an employer to meet the "equal to or better" standard when replacing one plan with another. Comparability is the only reasonable standard, especially given the cost variations in different plans and coverages--and cost is an issue. An employer replacing a healthcare plan should be responsible for making a good faith effort to provide a plan comparable in benefits to the plan being replaced. In addition, the cost of such a replacement plan should be reasonably related to the cost of the original plan. Thus, all the terms and conditions of the original contract between the employer and the Union for the provision of healthcare coverage are preserved.

I recommend that the Borough's proposed healthcare language not be adopted in its present form and that I recommend that if the Borough changes a healthcare plan, the replacement plan should be "comparable" to the plan being replaced. I further recommend that the parties pursue the adoption of alternative healthcare plans with reasonable provision for employees to change their selections should a provider alter its plan offerings.

I further recommend that in anticipation of significant alterations in the parties' healthcare agreements imposed by the carrier or the implementation of The Patient Protection and Affordable Care Act (ACA), the parties adopt the following revisions to the Health Insurance Section, page 21, of the current (March 21, 2007) Agreement:

- A. Change to reflect the revision noted in Section I-C of this Fact-Finder's Report.

Replace existing paragraph B with the following:

- B. All full-time employees shall be provided with health insurance benefits by the Borough under the terms of this Agreement. The Borough may change healthcare plans and providers as long as the change is comparable to or better than the current plan. The Borough agrees to provide healthcare insurance under no less than the same terms as are applicable to Borough employees excluded from the bargaining unit(s).

In the event the provider unilaterally imposes changes in an existing plan, or if the parties are required to adopt changes pursuant to the ACA, or if the Borough seeks to change a plan or provider, the parties agree to the following procedure:

1. The Borough will notify the Union of the proposed change(s), and the parties shall meet and discuss the matter.
2. If it is not in agreement with the proposed change(s), the Union may submit the matter to arbitration.
3. The arbitration shall be expedited. The entire process must be concluded within sixty days of the appointment of the arbitrator and prior to the implementation of any proposed changes.
4. The arbitration proceedings shall be conducted in the form of an interest arbitration in which the arbitrator shall have the authority, limited to the scope of the dispute presented, to interpret and apply the terms of the collective bargaining agreement, the authority to modify existing terms of the Agreement, and the authority to add terms and conditions to the Agreement in order to resolve the parties' dispute.

D. Personal Days:

The Union proposes that employees receive five personal days each year. The Company offers four personal days.

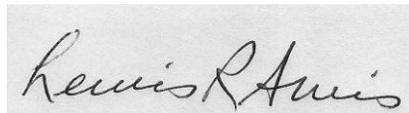
Recommendation:

That employees be provided with five personal days annually, effective January 1, 2014.

CONCLUSION

All collective bargaining proposals or issues not addressed in this Fact-Finding Report, except a signed Tentative Agreement, if any, are considered unchanged from the previous Agreement. There shall be no other changes, additions or modifications to this Labor Agreement and all unchanged language contained in the previous Agreement shall continue in effect and will be incorporated into any new Agreement.

The parties are directed to review the Fact-Finding report and within ten (10) calendar days from the date of the issuance of this report to inform the PLRB and each other if they accept or reject this report. Confidentiality of the report should be maintained during the ten-day consideration period and until officially released for publication by the Board in the event of a rejection. The Findings and Recommendations set forth herein represent the full and final Report of the Fact-Finder. Distribution of this Report in accordance with the relevant rules and regulations of the Pennsylvania Labor Relations Board is ordered this 29th day July, 2013.



Lewis R. Amis
Fact Finder
July 29, 2013

For IBT Local Union 249:

Accept: ___

Reject: ___

Gary R. Alward

Date _____

For Franklin Park Borough:

Accept: ___

Reject: ___

Ambrose Rocca

Date _____

Attachment 1 - Union Wage Scale

Title	2011	2012	2013	2014	2015	2016
Laborer	\$21.90	\$22.50	\$23.12	\$23.76	\$24.41	\$25.08
Skilled Laborer	\$23.48	\$24.13	\$24.79	\$25.47	\$26.17	\$26.89
Operator	\$24.66	\$25.34	\$26.03	\$26.75	\$27.49	\$28.24
Mechanic	\$24.66	\$25.34	\$26.03	\$26.75	\$27.49	\$28.24
Foreman	\$26.08	\$26.80	\$27.53	\$28.29	\$29.07	\$29.87
Maintenance Foreman	\$26.46	\$27.19	\$27.94	\$28.70	\$29.49	\$30.30
Groundskeeper	\$17.46	\$17.94	\$18.43	\$18.94	\$19.46	\$20.00
Greenskeeper	\$17.11	X	X	X	X	X

Employees working for twelve or more consecutive hours shall be entitled to \$%.00 \$5.00 dinner money.