

**STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD**

In the Matter of

State Employment Relations Board,

Complainant,

v.

City of Sheffield Lake,

Employer.

Case No. 2002-ULP-11-0751

**ORDER
(OPINION ATTACHED)**

Before Chairman Drake, Vice Chairman Gillmor, and Board Member Verich:
October 16, 2003.

On November 15, 2002, the Ohio Patrolmen's Benevolent Association ("OPBA") filed an unfair labor practice charge with the State Employment Relations Board ("Board" or "Complainant") alleging that the City of Sheffield Lake ("Respondent") violated Ohio Revised Code Sections 4117.11(A)(1) and (5). On February 27, 2003, the Board found probable cause to believe an unfair labor practice had been committed and directed the unfair labor practice case to hearing.

On April 23, 2003, a Complaint was issued. A hearing was held on May 20, 2003. The parties filed post-hearing briefs on July 9, 2003. On August 18, 2003, a Proposed Order was issued by the Administrative Law Judge, recommending that the Board find that the Respondent violated Ohio Revised Code Sections 4117.11(A)(1) and (A)(5) by failing to execute a successor collective bargaining agreement under the terms to which it has agreed and under which it has already accepted a benefit. No exceptions were filed to the Proposed Order.

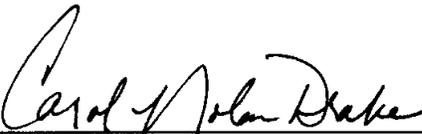
After reviewing the record, the Proposed Order, and all other filings in this case, the Board amends Finding of Fact No. 7 to read, "so long as the City paid the full cost of any premiums" instead of "the premiums"; adopts the Findings of Fact, as amended, Analysis and Discussion, and Conclusions of Law in the Proposed Order, incorporated by reference; and issues an Order, with a Notice to Employees, to the City of Sheffield Lake to: cease and desist from interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Ohio Revised Code Chapter 4117, refusing to bargain collectively with the exclusive representative of its employees, and otherwise violating Ohio Revised Code Sections 4117.11(A)(1) and (A)(5) by failing to execute a successor collective bargaining

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agreement under the terms to which it has agreed and under which it has already accepted a benefit; promptly sign a copy of the collective bargaining agreement that requires the Respondent to pay the total health insurance premiums for the life of the agreement; post for sixty days, in all the usual and normal posting locations where bargaining-unit employees represented by the Ohio Patrolmen's Benevolent Association work, the Notice to Employees furnished by SERB stating that the Respondent shall cease and desist from the actions set forth in paragraph (A), and shall take the affirmative actions set forth in paragraph (B), of the Notice to Employees; and notify SERB in writing within twenty calendar days from the date the Order becomes final of the steps that have been taken to comply therewith.

It is so ordered.

DRAKE, Chairman; GILLMOR, Vice Chairman; and VERICH, Board Member, concur.



CAROL NOLAN DRAKE, CHAIRMAN

You are hereby notified that an appeal may be perfected, pursuant to Ohio Revised Code Section 4117.13(D) by filing a notice of appeal with the State Employment Relations Board at 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213, and with the court of common pleas in the county where the unfair labor practice in question was alleged to have been engaged in, or where the person resides or transacts business, within fifteen days after the mailing of the State Employment Relations Board's order.

I certify that a copy of this document was served upon each party by certified mail, return receipt requested, this 28th day of October, 2003.



SANDRA A.M. IVERSEN, ADMINISTRATIVE ASSISTANT

III. FINDINGS OF FACT²

1. The City of Sheffield Lake is a “public employer” as defined by § 4117.01(B). (S.)
2. The Ohio Patrolmen’s Benevolent Association is an “employee organization” as defined by § 4117.01(D) and is the exclusive representative for three bargaining units consisting of all full-time police officers, sergeants, and full-time dispatchers within the City’s Police Department. (S.)
3. The City and the OPBA were parties to a collective bargaining agreement effective from January 1, 1999 to December 31, 2001 (“CBA”), containing a grievance procedure that culminated in final and binding arbitration. Negotiations for a successor collective bargaining agreement began in late October 2001, and were resolved through a conciliation award dated July 15, 2002. (S.; T. 11)
4. The initial proposal presented by the OPBA at the first negotiating session with regard to health insurance read as follows:

The union proposes that the current health plans be maintained for the life of the agreement and that the employer pays the full premium.

(T.11; U. Exh. 3)

5. In the fall of 2001, the City received notice that the medical insurance premiums under its current plan would increase for all of its employees. The family plan would now cost the City \$1,277.64 per month. Through Lorain County (“County”), the City received a proposal for health insurance for all of its employees. Under the County proposal, the monthly family plan premium would cost the City \$632.41 per month. In order to benefit from the savings contained the new proposal, the City needed to contact the County before December 1, 2001, to enroll. (S.)
6. Under the Insurance article, the previous CBA provided as follows:

²All references to the transcript of the hearing are indicated parenthetically by “T.,” followed by the page number(s). All references to the Stipulations of Fact are indicated parenthetically by “S.” All references to the OPBA exhibits in the record are indicated parenthetically by “U. Exh.,” followed by the exhibit number(s). All references to the City Exhibits in the record are indicated parenthetically by “Cty.Exh.” followed by the exhibit number(s.) References to the transcript and exhibits in the Findings of Fact are intended for convenience only and are not intended to suggest that such references are the sole support in the record for the related Finding of Fact.

Section1. The employer shall pay the entire cost of the medical insurance health plan that the employer provides for the employee. In the event the employee chooses family coverage, the employee shall pay the lesser of one-half (1/2) of the difference between single and family member cost, or the sum of Ninety and 00/100 Dollars (\$90.00) per month. Should the City exercise its right to change the medical insurance health plan, the method of paying for the coverage shall be subject to reopening for resolution by negotiations.

(S; T. 85-87)

7. In November 2001, the parties' second negotiation session, the OPBA agreed to allow the City to switch to the new health plan before the negotiations for the successor CBA were completed, so long as the City paid the full cost of any premiums for the life of the successor agreement. (T. 17-18, 67-68, 191-192)
8. The City did not present any written contract proposals to the OPBA until the City submitted its pre fact-finding brief and pre-hearing brief before conciliation. In this submission, the City listed health insurance as one of the items upon which the City and the Union had reached tentative agreement. Therefore, neither the fact-finder's report nor the conciliator's award addressed health insurance. (T. 19-23; U. Exhs. 6, 7)
9. In early September 2002, OPBA bargaining committee member Sgt. Jerry Paysor received a draft of the successor CBA from City Law Director Daniel Wightman. The draft contained the following health insurance provision:

Article XXIX

Section 1. The City shall provide employee hospitalization coverage on all employees. The employer shall pay the entire cost on the medical insurance plan the employer provides the employee. In the event the employee chooses family coverage, the employee shall pay the lesser of one-half (1/2) of the amount the cost of the family membership exceeds \$700.00, but not to exceed \$90.00 per month.

(T. 22; Cty. Exh. 2)

10. Upon receipt of the draft CBA, Sgt. Paysor called OPBA in-house legal counsel Kevin Powers to inform him that the insurance provision was incorrect. (T. 22, 44)
11. At approximately the same time, Mr. Wightman called Mr. Powers and asked him what his recollection of the health insurance provision was. Mr. Powers agreed to

- check his notes regarding the health insurance provision and get back to Mr. Wightman. Mr. Powers sent a letter dated September 12, 2002, confirming Mr. Powers' and Sgt. Paysor's recollections that there would be no cost sharing by OPBA during the term of the successor CBA. (T. 25, 26; U. Exh. 8)
12. Mr. Powers, receiving no response from Mr. Wightman, wrote him another letter on October 29, 2002, to remind him they needed to get the CBA signed and that he had not yet received a first draft. (T. 26, 27 U. Exh 9)
 13. Mr. Powers then received a letter from Mr. Wightman dated October 31, 2002, which made no reference to health insurance, but stated that City Council had "passed" the enclosed police and dispatch contracts. (U. Exh. 10)
 14. After reviewing the enclosed contracts, Mr. Powers struck the health insurance language that the OPBA had not agreed to, initialed and dated his changes, and sent the contracts back to Mr. Wightman via letter dated November 11, 2002. (T. 26-28, U. Exh 11)
 15. On November 15, 2002, Mr. Powers filed the unfair labor practice charge herein regarding the City's failure to execute the CBA. (T. 29-30)
 16. To date the City has not collected any health insurance premiums from OPBA bargaining-unit members. The members have received pay increases, longevity, and other cash payments under the terms of the successor CBA. (T. 45, 59, 61, 115-116, 119)
 17. Then-OPBA representative Shawn Corr's notes on the OPBA contract proposal reflect a handwritten "agreement" next to Article XXIX, Insurance, which called for the employer to pay the entire health insurance premium. (T. 74-77; U. Exh. 4)
 18. At the November 2001 negotiations session, when the OPBA agreed to allow the City to contract with the new carrier, Sgt. Paysor told Mr. Wightman that their agreement was based upon the Union making no co-payments. Mr. Wightman disagreed, saying they'd have to work on the co-payment issue. (T. 101, 166-167)
 19. The Law Director's report, contained in the minutes from the September 10, 2002 Sheffield Lake City Council meeting, reflects a dispute with the police regarding the health insurance provisions in the CBA and that Mr. Wightman would be getting together with an OPBA representative to discuss the issue further. (U. Exh. 13)
 20. Despite the differences regarding the health-insurance provisions, City Council passed ordinances on September 10, 2002, adopting the full-time police dispatcher's CBA and authorizing the City to enter into an agreement with the Sheffield Lake full-time patrol officers and sergeants. (T. 129-130; Cty. Exhs. 1, 2)

IV. ANALYSIS AND DISCUSSION

A. Refusal to Bargain

The Complaint in this case alleges that by refusing to execute the agreement reached between the parties, the City has refused to bargain collectively with the OPBA, in violation of §§ 4117.11(A)(1) and (A)(5). Sections 4117.11(A) (1) and (A)(5) state in relevant part as follows:

- (A) It is an unfair labor practice for a public employer, its agents, or representatives, to:
 - (1) Interfere with, restrain, or coerce employees in the exercise of rights guaranteed in Chapter 4117. of the Revised Code[.];
 - * * *
 - (5) Refuse to bargain collectively with the representative of his employees recognized as the exclusive representative or certified pursuant to Chapter 4117. of the Revised Code[.]

It is not disputed that the OPBA is recognized as the exclusive representative of three bargaining units consisting of all full-time police officers, sergeants, and full-time dispatchers within the City's police department. Included in the definition of "to bargain collectively" in § 4117.01(G) is "executing a written contract incorporating the terms of any agreement reached." Section 4117.09(A) provides that "the parties to any collective bargaining agreement shall reduce the agreement to writing and both execute it." SERB has held that failure to sign a collective bargaining agreement, once reached, may constitute the foundation for a refusal-to-bargain unfair labor practice charge against either the employer, § 4117.11(A)(5), or the employee organization, § 4117.11(B)(3). In re New Lexington Ed Assn/Ohio Federation of Teachers, SERB 95-009 (6-26-95) ("New Lexington"), citing In re Fort Jennings Bd of Ed, SERB 86-014, p. 256 at n.3 (4-11-86). In New Lexington, SERB held that acceptance of an employer's contract offer is present when no evidence of fraud on the employer's part exists, the employee organization has voted to ratify the employer's offer, and the employee organization has accepted the benefits of the contract.

In New Lexington, the employee organization refused to sign a CBA on the grounds that no meeting of the minds occurred on a first year "me-too" clause or on some alleged discrepancies in the salary schedule. The employee organization argued that the school board's "final offer" was accepted by the membership contingent only on working out discrepancies in the salary schedules. The members received raises under the same agreement that they failed to sign. SERB held: "NLEA cannot have it both ways, it cannot

accept all the benefits of the CBA while refusing to sign a contract ***. Having accepted the benefits, NLEA has accepted the school district's 'final offer'." Id at 3-66.

In the instant case, the testimony reflects that the Union understood, in return for its agreement to allow the City to enter into the new health insurance contract in advance of the completion of negotiations, that the City would pay the entire health insurance premium for the life of the CBA. The testimony also reflects that the City's only comments, after much silence, regarding the Union's understanding came at the first negotiation session wherein the City stated it would have to work on the no co-payment issue, and again at the second negotiation session in late November 2002, wherein the City indicated that it could not go along with the premium payment as it expected to offer the same deal to all three unions. Rather than stop, acknowledge the lack of an agreement, and continue to negotiate, the City accepted the benefits of the deal by contracting with the county for the less costly plan. The City then presented an unsigned CBA that included a premium-sharing provision to City Council for approval.

The City has failed to bargain in good faith by refusing to execute a successor agreement. Under circumstances in which it has accepted the benefits of the agreement, it is now estopped from alleging the non-existence of the same agreement. The City's agreement to the terms of the CBA must be inferred from its actions.

B. The Remedy

The City should be ordered to cease and desist from refusing to bargain collectively with the Union. Additionally, the City should be ordered to execute immediately the successor collective bargaining agreement to which it agreed, including the provision requiring the City to pay the total health insurance premium for the life of the contract.

V. CONCLUSIONS OF LAW

Based upon the entire record herein, this Administrative Law Judge recommends the following Conclusions of Law:

1. The City of Sheffield Lake is a "public employer" as defined by § 4117.01(B).
2. The Ohio Patrolman's Benevolent Association is an "employee organization" as defined by § 4117.01(D).
3. The City has violated §§ 4117.11(A)(1) and (A)(5) by failing to execute a successor collective bargaining agreement under the terms to which it has agreed and under which it has already accepted a benefit.