

STATE EMPLOYMENT RELATIONS BOARD
COLUMBUS, OHIO

STATE EMPLOYMENT
RELATIONS BOARD

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IN THE MATTER OF FACT FINDING :

BETWEEN :

CITY OF KETTERING, OHIO :

-AND- :

FRATERNAL ORDER OF POLICE, :
LODGE NO. 92 :

REPORT OF THE FACT FINDER

SERB CASE NUMBER:

00-MED-02-0161

BARGAINING UNIT:

The Bargaining Units represented by the Fraternal Order of Police consists of "all sworn Patrol Officers and those Officers of equivalent rank."

**MEDIATION/FACT FINDING
PROCEEDING:**

June 17, 2000; Kettering, Ohio

FACT FINDER:

David W. Stanton, Esq.

APPEARANCES:

FOR THE EMPLOYER

Daniel G. Rosenthal, Attorney
Jim O'Dell, Police Chief
Rick Strader, Director, Human Resources
Thomas Weghorst, HR Analyst
Karen A. Sejas, HR Analyst
Stephen L. Hopf, Insurance Consultant

FOR THE UNION

Susan D. Jansen, Attorney
Mickael W. Franklin, President
Jim Knickole, Commander Unit Rep.
James C. Bodner, Treasurer
Rick Renner, Secretary
Kelly S. Gebhart, Committee Mbr.

ADMINISTRATION

By correspondence dated March 24, 2000, from the State Employment Relations Board, the Undersigned was notified of his mutual selection to serve as Fact Finder to hear arguments and issue recommendations relative thereto pursuant to Ohio Administrative Code Rule 4117-9-05(j); and, (k), in an effort to facilitate resolution of those issues that remain at impasse between these Parties. The impasse resulted after numerous attempts to negotiate a Successor Collective Bargaining Agreement proved unsuccessful.

The Parties indicated the impasse involved nine (9) issues - seven(7) Economic and two(2) non-economic. Prior to the commencement of the Saturday, June 17, 2000 Fact Finding Proceeding, the Undersigned proposed that the Parties engage in Mediation to identify the unresolved issues and to hopefully resolve them. Mediation efforts ensued, and with the Parties efforts, the following issues were resolved:

Article 4, Lodge Business, Section 2

Article 5, Wages, Section 1, Rates

Article 5, Wages, Section 3, Shift Differential

Article 5, Wages, Section 4, Weekend Differential

Article 5, Wages, Section 12, Uniform Allowance

Article 6, Holidays, Section 1

Article 7, Vacations, Section 8 - Conversion to Vacation

Article 17, Duration

The remaining issue subject to this impasse concerns Health Insurance, which as the Record indicates, involves two(2) considerations - cost-sharing; and, the Employer's ability to

obtain “comparable” coverage mid-term.

The Record of this Proceeding was closed at the conclusion of the evidentiary Hearing, and the Health Insurance issue, as previously referenced, is the subject for the issuance of this Report.

The following Findings and Recommendations are hereby offered for consideration by these Parties; were arrived at based on their mutual interests and concerns; and, are made in accordance with the Statutorily Mandated Guidelines set forth in Ohio Administrative Code Rule 4117.9 which recognizes certain criteria for consideration in the Fact Finding Process as follows:

1. Past collectively-bargained Agreements, if any, between the Parties;
2. Comparison of unresolved issues relative to the employees in the Bargaining Unit with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
3. The interest and welfare of the public and the ability of the public employer to finance and administer the issues proposed and the effect of the adjustment on a normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the Parties; and,
6. Such other factors not confined in those listed above which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in public service or in private employment.

**THE BARGAINING UNIT DEFINED; ITS DUTIES AND
RESPONSIBILITIES TO THE COMMUNITY; AND, GENERAL
BACKGROUND CONSIDERATIONS**

The Collective Bargaining Agreement between the Fraternal Order of Police, Kettering Lodge No. 92, (hereinafter "Union" and/or "FOP"), and the City of Kettering (hereinafter "Employer") contains Article II, titled "Recognition, No Lockout, Dues Deduction", which in Section 1 thereof, recognizes the FOP as the sole and exclusive bargaining agent for those employees within the following Bargaining Unit as follows:

SECTION 1.

The City recognizes the Lodge as the exclusive bargaining agent for the purpose of negotiating wages, hours, fringe benefits and other terms and conditions of employment for all sworn Patrol Officers and those sworn Officers of equivalent rank. The coverage of this contract shall be limited to the employees included within the bargaining unit described above.

The Bargaining Unit consists of approximately 63 members. The Record indicates that these Parties agreed to extend the statutory process. The Parties have indicated that, and as the Bargaining Unit name suggests, the Bargaining Unit members perform the duties of patrol, response to calls for service, and any other assigned duties that may arise within the realm of Law Enforcement.

Each Party requested, and the Undersigned agreed, that this Report include the Fact Finder's recommendation that those Articles agreed to during Mediation prior to the Factfinding Proceeding be identified as "Stipulations" as follows:

Duration - Three Years - expiration date - February 23, 2003

Wages - 3.75% increase - Year one, effective February 28, 2000
3.75% increase - Year two, effective February 26, 2001
3.75% increase - Year three, effective February 25, 2002

Holiday - Add Martin Luther King, Jr. Day, effective Year two

Vacation Days - Beginning the Pay Period Following the Execution of this Agreement, the accrual of two(2) additional Vacation Days for Officers with 25 or more years of service.

Retain current language on all other unresolved issues, except Health Insurance, the subject matter of which is addressed in this Report.

Moreover, it is recommended that all other Articles not opened during these negotiations be transferred to the successor Collective Bargaining Agreement containing current contract language.

As is obvious based on the type of Unit identified herein, these employees provide emergency and safety services for the City of Kettering, Ohio and are considered under the Statutory scheme as “Strike-prohibited employees” (see, ORC, 4117.14(d)). The Fact Finder is required to consider comparable employee units with regard to their overall makeup and services provided to the members of their respective communities. Both Parties have relied upon comparables of other municipalities and jurisdictions concerning “comparable work” provided by this Bargaining Unit. And as is typically apparent, there are no “on point comparisons” relative to this Bargaining Unit concerning the unresolved issue that remains at impasse herein.

Whatever similarities exist must be taken into consideration by the Fact Finder based on the above-noted Statutory Criteria. It is now, and has been, the position of this Fact Finder that the Party proposing any deviation, deletion, or modification of the current language or of the *status quo* bears the burden of proof and persuasion to compel the change proposed. Failure to meet that burden will result in a recommendation that the Parties maintain the *status quo* practice or current language.

The following recommendation is based on the data provided; the positions taken by the respective Party; and, those factors peculiar to police personnel in the realm of Law Enforcement. The Fact Finder recommends the following relative to the unresolved issue subject to this proceeding.

HEALTH INSURANCE

EMPLOYER POSITION

As the evidentiary record demonstrates the Employer is seeking a minor cost contribution to current health insurance plan premiums or in the alternative a fully paid, but less expensive plan that it contends is consistent with the trends in the public and private sectors for increasing employee contributions, deductibles and co-pays. The Dayton private sector area has moved with near uniformity to employee cost sharing. It notes that 65 percent of the employer's responding to the most recent SERB survey require employees to pay a portion of the cost of a family medical plan. The Kettering public school system moved to employee cost sharing through collective bargaining. The comparable data it provided labeled as "local" and "state" comparables, identified herein as Employer exhibit 1 and 2 respectively, demonstrate that of 17 Local comparable's noted 11 require some form of employee contribution relative to premiums, and 7 out of 14 comparable's on a statewide basis have some form of cost sharing. These employees currently enjoy 100 percent of health insurance premium being paid by the Employer.

The employer provided testimony through Insurance industry analyst, Stephen Hopf, who indicated it was increasingly difficult to "tailor" a plan to meet the exact need of any employee group. His "book of business" is the southwestern Ohio area. He testified that the private sector, in 95 percent of the employer's, require some form of employee contribution. He also

noted that 80 percent of public sector groups require some form of employee contribution. He noted that the SERB report indicates that 72 percent of the public sector employers require some level of employee contribution. In this regard, as he indicated, it is increasingly more difficult to replicate the benefit levels and coverage when the time comes to rewrite the plans.

The Employer also seeks alternative language that would clarify, as it contends, its right to obtain comparable insurance coverage mid-term. It contends that this language is necessary to insure the appropriate flexibility midterm to address insurance costs. Without this flexibility its ongoing obligation to maintain and renew health insurance coverage would become unachievable and/or unaffordable. It notes that the Police Command Officers; Fire Dispatchers; and, AFSCME agreed to this very language its seeks in this proceeding and avoided premium cost sharing.

For these reasons, it requests that its proposal be recommended.

UNION POSITION

Summarily stated the Union opposes the Employer's proposal that would effectively replace current contract language that provides the bargaining unit with fully paid health insurance coverage . Additionally the Union proposes language that would contractually enable it to challenge, through the grievance procedure, the comparability aspect of the health insurance coverage.

The Union emphasizes that the current agreement provides that the City shall maintain medical coverage for the term of the agreement and that it pay the cost thereof. The level of benefits shall remain substantially equivalent to the benefits existing at the expiration of the predecessor agreement and that the City has a right to insure or self-insure; to choose the

insurance carrier; third party administrator; network of physicians; or, any other operational components of the plan except that the plan and the benefits will be comparable. The current language provides for basic components of a managed-care medical plan including deductibles and maximum out-of-pocket expenses; amounts payable for routine and preventive care and prescription drugs.

Under the City's proposal, it would pay premiums for insurance package substantially less than that which the employee's currently enjoy. If the employees want to continue to participate in a plan which offers the closest level of benefits to that which they presently enjoy, they would be required to pay the difference between the two(2) plans. For the first time in the history of the collective bargaining relationship with the City, the employees would have to contribute toward the premiums of insurance coverage in the amount of \$13.55 per month for a Single plan and \$35.34 per month for a Family plan . In response to the City's proposal the Union proposed language, which the City had agreed to with the Supervisor's unit, which would relax the restrictions on plan design providing that the City would maintain comparable coverage for the duration of Contract and defines comparable coverage to mean that which is similar to the extent that the City shall be able to consider and choose from up to three(3) Carriers at the time the City requests quotes for coverage. Its proposal also provides that the Carriers would be asked to quote on their standard products for the most current plan design; however, custom plan designs need not be requested and exact matches of the plan design need not be sought. Its proposal would also provide that the City's choice among the three(3) would be final. The Lodge proposal also would add language that would allow it to grieve and arbitrate the issue regarding whether the City's choice of the plans provides coverage that is comparable to that

which currently exists.

Simply stated the Union requests that the current contractual mandates be maintained relative to the comparability aspects the insurance plan designs and its components thereof and that it be afforded the ability to grieve and arbitrate whether indeed the plan chosen by the City is comparable to that which existed prior to its replacement.

RECOMMENDATION & RATIONALE

It is hereby recommended that the Parties adopt the following recommendation concerning Article VII, titled "Sick Leave," section 14, titled, "Medical Insurance Coverage," that would replicate the Employer's proposal relative to the flexibility it is seeking with regard to ability to seek new or revised medical plans midterm; that would not provide for premium cost sharing; and, without the language the Union seeks to add concerning its ability to grieve and arbitrate the City's "final" decision relative to the "replacement plan."

The data relied upon by the Parties clearly demonstrates that the growing trend, that has been evident for a number of years, is that the Employees engage in some form of premium cost sharing relative to medical and other types of insurance coverages. Indeed had the Employer not provided an alternative position relative to the cost sharing proposal, the data presented based on factors "customarily and normally" taken into consideration in this forum, would provide a compelling basis to recommend that the Parties adopt a proposal that would support the inclusion of language that would compel the employees to engage in some level of cost sharing of premiums. It is important to note that the other bargaining units with the City- the Commanders Unit; the Fire Dispatchers; and, AFSCME , had agreed to language that will afford the Employer the flexibility to engage in a process midterm to seek new coverage plans if the need

arises. These units effectively avoided compelled premium cost sharing by agreeing to the flexibility language that the Employer seeks herein. Indeed the comparable data provided on a Local and Statewide basis, as previously addressed, indicates that a large majority, locally, provide that the employees engage in some form of cost sharing. The State comparables relied upon indicate that nearly half of those jurisdictions recognize some form of employee cost sharing relative to metal medical insurance coverage.

The Union takes exception to the flexibility aspect of the Employer's proposal as it relates to maintaining comparability and its ability to challenge more than just the "procedure" the City must follow. The Union proposes to add language that would allow it to grieve and arbitrate the City's "final decision" concerning medical insurance plan it chooses to ensure that the plan fairly replicates that which it would replace. It is indeed important to recognize the testimony of the Insurance Industry Analyst, who indicated, without contradiction, it is becoming increasingly more difficult to replicate the types of plans that an employee group is seeking based on many factors including cost. He indicated that plan coverage levels are obviously impacted by cost and recent trends show an increase in premiums. In fact, SERB data relied upon clearly demonstrates that the growing trend is to compel some form of employee contributions relative to premium sharing to assist in maintaining a certain coverage level. These Employees have never had to share in premium costs; however, they certainly are the exception to the rule given the data presented. Moreover, the evidence of record indicates that this unit would not benefit cost-wise to separate itself from the City-wide plan and it would be administratively problematic to maintain additional plans.

The problematic aspect of the City's proposed language relative to this article concerns

the Union's inability to grieve and arbitrate the comparability aspect of coverage. It seeks language that would enable it to challenge more than just the procedure followed by the City. It would indeed be inappropriate for the Fact Finder to engage in a "declaratory" consideration of this proposed language relative to whether the Union can grieve and arbitrate its intended objective; however, the Union's reluctance relative thereto may be misplaced. "Comparable" coverage seemingly suggests that the replacement plan shall be similar to the extent that the City shall be able to consider and choose from up to three(3) Carriers at the time the City requests quotes for coverage of "...standard products which most closely match current plan design..." This contractual language seemingly suggests that indeed the Union would have the ability to challenge, in the arbitration forum, through the Grievance Procedure, the City's efforts to obtain coverage that is indeed "comparable" based on that found in Section 14. Moreover, given the likelihood that City Officials will "be part of the group," it would indeed behoove the Administration to select a plan closely "comparable" to that it replaces.

As the record demonstrates, the Police Command Officers , AFSCME, and the Civilian Fire Dispatchers units had all agreed to the inclusion of this language to avoid premium cost sharing. These internal comparables regarding other City units agreeing to this language is indeed compelling. And there appears to be language that will afford the Union the ability to grieve and arbitrate that which it deems problematic with regard to maintaining comparability of coverage.

CONCLUSION

In the opinion of the Fact Finder, the Recommendation contained herein is reasonable and takes into consideration the concerns of both Parties. In light of the data presented;

representations made by the Parties; and, the stipulations entered by and between the Parties during the course of the Fact Finding Proceeding and based on the common interests of both entities, it is hereby recommended that the Parties adopt this recommendation so that the impasse that currently exists can be brought to closure and this Collective Bargaining relationship can continue without interruption.


DAVID W. STANTON, ESQ.
Fact Finder

Dated: July 27, 2000
Cincinnati, Ohio

CERTIFICATE OF SERVICE

The Undersigned certifies that a true copy of the foregoing Fact Finding Report and Recommendations has been faxed and delivered by overnight U.S. Mail Service to: Susan D. Jansen, Esq., Logothetis, Pence & Doll, 111 West First Street, Suite 1100, Dayton, Ohio 45402-1156; Daniel G. Rosenthal, Esq., Denlinger, Rosenthal & Greenberg, 2310 Star Bank Center, 425 Walnut Street, Cincinnati, Ohio 45202; and, George M. Albu, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213, on this 27th day of July, 2000.


DAVID W. STANTON, ESQ. (0042532)
Fact Finder

MEDICAL INSURANCE PREMIUM COST SHARING

| CITY | EMPLOYEE SHARES IN THE COST OF MEDICAL INS. PREMIUM | NOTES |
|-------------------------|---|--|
| Beavercreek | No | |
| Bellbrook | No | |
| Centerville | No | |
| Dayton | Yes | Employee pays \$20 for Family and \$10 Single. |
| Englewood | Yes | Employee pays 10% of the total premium. |
| Fairborn | Yes | Employee pays 10% of the total premium; effective 7/1/01 = 15%. |
| Franklin | Yes | Employee pays \$5.76 for Family and \$4 Single; employee to share in premium at 50/50 over cap. |
| Huber Heights | Yes | Employee pays 10% of the total premi- um, except those hired before 8/15/94 make no contribution. Future % Caps. |
| Miamisburg | Yes | Employee pays 5% of the total premi- um; no cost to the employee for HMO plan. |
| Moraine | No | |
| Oakwood | No | If non-organized required to share in future premium costs, Union will also be required to con- tribute up to 15% of monthly premium increase. |
| Riverside | Yes | Employee pays 10% of the total premium. |
| Springboro | Yes | Employee pays \$10.80 for Family and \$4.80 Single. |
| Trotwood | No | |
| Vandalia | Yes | Employee pays \$20 for Family and \$9 Single. |
| West Carrollton | Yes | Employee pays 10% of the total premium. |
| Xenia | Yes | Employee pays 15% of the total premium. |
| SUMMARY (N = 17) | Yes = 11; No = 6 | |

MEDICAL INSURANCE PREMIUM COST SHARING

| CITY | EMPLOYEE SHARES IN THE COST OF MEDICAL INS. PREMIUM | NOTES |
|-------------------------|---|--|
| Cleveland Heights | No | |
| Cuyahoga Falls | Yes | Employee pays \$2.50 for Family and \$1.00 Single. |
| Elyria | Yes | Currently, employee pays 50% of the total premium in excess of a \$430/mo. Cap; employee now pays \$37.50 for Family and \$22.50 Single. |
| Euclid | Yes | Employee pays \$20 for Family and \$10 Single. |
| Hamilton | No | |
| Lakewood | No | |
| Lima | No | |
| Lorain | No | |
| Mansfield | Yes | Employee pays \$26.80 for Family and \$11.08 Single. |
| Mentor | No | |
| Middletown | Yes | Employee pays \$16.73 for Family and \$13.74 Single. |
| Newark | Yes | Employee pays 10% of the total premium. |
| Springfield | Yes | Employee pays \$33.25 for Family and \$11.10 Single. |
| Warren | No | |
| SUMMARY (N = 14) | | Yes = 7; No = 7 |