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STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2003 JUN -3 A 10: 07

IN THE MATTER OF:

OHIO PATROLMEN'S BENEVOLENT
ASSOCIATION

"Employee Organization"

and

POLAND TOWNSHIP TRUSTEES

"Employer"

CASE NOS. 02-MED-10-1001 ✓
(Full-Time Patrol)

02-MED-10-1002
(Sergeants)

**REPORT OF FACT-FINDER
AND RECOMMENDATION**

DATE OF REPORT AND DATE OF MAILING: JUNE 2, 2003

APPEARANCES:

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I. INTRODUCTION

This matter comes before the Fact-Finder as a result of a referral on November 29, 2002 by the State Employment Relations Board ("SERB") pertaining to fact-finding protocol between the Ohio Patrolmen's Benevolent Association (hereinafter referred to as "Union" or "Employee Organization") and Poland Township (hereinafter referred to as "Township" or "Employer").

There are two cases presented to the Fact-Finder, one being Case No. 02-MED-10-1001 regarding full-time patrol personnel and Case No. 02-MED-10-1002 regarding sergeants. The two cases present the same issue and have been consolidated both for purposes of the fact-finding hearing and for purposes of the instant Report and Recommendation.

The fact-finding hearing was conducted for the taking of evidence, submission of issues and presentation of the parties' respective positions on Monday, May 19, 2003, with the hearing being conducted at the Poland Township Government Center, Poland, Ohio. No post-hearing briefs were submitted, and the hearing was considered closed as of May 19, 2003.

The Notice of Fact-Finding dated November 29, 2002 from SERB to the parties indicated, in part, that a hearing was to be held and the Fact-Finder was to serve the parties with a written report and recommendation no later than December 13, 2002, unless the parties mutually agreed to extend fact-finding pursuant to Ohio Administrative Code 4117-9-05(G). Initially, the parties had agreed to commence the fact-finding hearing on April 23, 2003, but same was continued to May 19, 2003.

The Fact-Finder received and has taken into consideration exhibits and material presented by both parties. In addition to the material presented and the arguments of the parties, the Fact-Finder has taken into consideration the statutory guidelines enunciated in Revised Code

§§4117.14(C)(4)(a) through (f), the guidelines set forth in Revised Code §§4117.14(G)(7)(a) through (f), and SERB Regulations, Ohio Administrative Code 4117-9-05(J) and (K)(1) through (6).

II. BACKGROUND

Poland Township is situated in Mahoning County, approximately 10 miles south of Youngstown. The Bargaining Units consists of approximately 27 members, sergeants and patrol officers. The Union is the present exclusive bargaining representative of the two Bargaining Units.

The Fact-Finder commends the representatives of both the Union and the Township for presenting their particular positions in an articulate and highly professional manner. In preparing this Report and Recommendation, the Fact-Finder has attempted to summarize the salient aspects involved, however, any brevity should not be construed as an attempt to diminish the significance of the report nor the nature of the issue and material presented in support. Additionally, the Fact-Finder is cognizant of the caveat expressed by Justice Douglas in *Johnson v. University Hosp. of Cleveland* (1989), 44 Ohio St.3d 49, 58, wherein he stated: “Our occupational duty continuously requires us to balance rights and responsibilities of persons regardless of their color, sex, position or station in life. We accomplish that balancing in this case while recognizing that our decision will be something less than universally accepted.”

III. RECOMMENDATION

Preliminarily, the Fact-Finder notes that the parties have already executed a Collective Bargaining Agreement covering the period January 1, 2003 to December 31, 2005. The sole issue presented in fact-finding pertains to Article 29, Section 1 of each of the parties’ Collective Bargaining Agreement.¹ The language of the two contracts are exactly the same and read as follows:

¹The police officers’ Collective Bargaining Agreement is set forth at Page 29 (lines 1322-1333) while the sergeants’ Collective Bargaining Agreement is set forth at Page 28 (lines 860-868).

Patrol Officers' Collective Bargaining Agreement:

"Section 1: The Employer will continue to provide healthcare coverage for each full-time Patrol Officer for the first two (2) years of the current labor agreement. The healthcare options offered by the Employer shall have benefits and coverage's equivalent to or better than the healthcare plan, which the Employer provided in calendar year 2002. The Employer shall pay the full cost for healthcare coverage provided to each full-time Patrol Officer. The parties agree that the terms for healthcare coverage for the third (3rd) year of the agreement shall be determined through statutory bargain in process in Case No. 02-MED-10-1001. When such terms are decided they will be incorporated herein."

Sergeants' Collective Bargaining Agreement:

"Section 1: The Employer will continue to provide healthcare coverage for each Sergeant for the first two (2) years of the current labor agreement. The healthcare options offered by the Employer shall have benefits and coverage's equivalent to or better than the healthcare plan, which the Employer provided in calendar year 2002. The Employer shall pay the full cost for healthcare coverage provided to each Sergeant. The parties agree that the terms for healthcare coverage for the third (3rd) year of the agreement shall be determined through statutory bargain in process in Case No. 02-MED-10-1001. When such terms are decided they will be incorporated herein." ²

The Township had contended that for a period of time, it, along with other governmental authorities, had participated in the Mahoning County Plan, which was a self-insured program administered by the Mahoning County Commissioners. In 2002, the Township was notified that the County Plan was no longer available to Poland Township, as well as other municipalities, as the Plan was facing fiscal distress.

The Township then proceeded to implement its own health insurance plan and, ultimately, contracted with Anthem Blue Cross/Blue Shield of Ohio as its carrier. Under the present plan, the Township pays the full healthcare premium and the plan provides for a PPO network system with

²The patrol officers' Agreement cites Case No. 02-MED-10-1001, which is likewise repeated in the sergeants' Agreement. This is clearly an inadvertent oversight as the Fact-Finder concludes that the sergeants' Agreement was intended to read Case No. 02-MED-10-1002. This does not change the substantive nature of the provision.

\$10 co-pay on office visits, prescription co-pay of \$10/\$20/\$30, pending on whether the drug is generic, name brand or specially excluded, major medical, vision, dental, life insurance and orthodontia care.

The present health contract commenced February 1, 2003, and is to run until January 31, 2004, it being indicated that one year contracts is the standard length of time which the insurer carrier is willing to provide. It was also indicated that prior to the expiration of the current contract, the carrier does provide the Township with a 60 day notice regarding renewal and the projected renewal premiums.

The evidence further indicated that there is one other union organization within the Township, being office, service and zoning employees represented by the Teamsters Union. They also operate under a collective bargaining agreement which will expire on December 31, 2004.

The Township has proposed that the Fact-Finder recommend one of three different options as follows:

OPTION 1:

Modified deductible plan

Employees to pay a 25% co-pay in year three of the contract.

Prescription benefits to remain as currently set.

OPTION 2:

Deductible and co-pay plan.

Increase employee paid medical deductible to \$250.00 per year with 80/20 co-pay on all covered services.

Prescription benefits to remain as currently set.

OPTION 3:

Modified deductible and co-pay plan.

Increase employee paid medical deductible to \$500.00 per year with 90/10 co-pay on all covered services.

Prescription benefits to remain as currently set.

The Union, however, has essentially proposed the status quo, that is, that the parties continue to operate under the present language of Article 29, Section 1. As to the third year of the contract (January 1, 2005 - December 31, 2005), the Union has proposed that either party be given the right to re-open negotiations on the issue of health insurance for essentially two reasons. First, since the Township has just recently become its own health insurance group without the benefit of full experience under the new group and the uncertainty of exactly what the premium would be for the third year since the health insurance contracts are only issued on a year by year basis, the parties would have a better, more realistic and understandable grasp of the premium charges for that third year if the parties were to wait until that time actually arose, at which time the matter could be reviewed, having the benefit of the then current data. Second, the Teamsters Union contract will expire on December 31, 2004, and the Township had indicated its preference that all employees, no matter the union affiliation or the particular collective bargaining agreement, have the same health care provisions. Since the Teamsters Union contract would expire on December 31, 2004, that would create an opportune time for the Teamsters Union and the Township to negotiate the healthcare provisions which would coincide with the third year of the police officer and sergeant contracts. Thus, in terms of identity of interests and similarity of plans (and, thus, premium costs, co-pay, deductible, etc.), the appropriate action at the present time would be to defer until just before the third year of the present contract.

The Fact-Finder appreciates both the Township's position in seeking to implement some type of deductible and/or co-pay program because of the anticipated increase of premium costs. The insurance representative for the Township testified that a projected annual cost increase could be anywhere from 12% to 17%. However, in light of the relatively new status of the present contract and the other factors set forth above, the Fact-Finder does not believe that it would be incorrect or inappropriate, at the present time, to defer any immediate decisions pertaining to implementing any one or more of the options proposed by the Township.

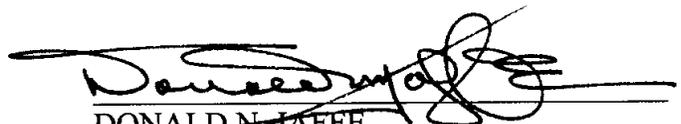
The Fact-Finder therefore recommends that Article 29, Section 1 of the patrol officers' Agreement be retained in its present contract language, however, the present paragraph shall be re-designated as Section 1(A) and that a new Section 1(B) be inserted as follows:

“In accordance with the decision rendered in Case No. 02-MED-10-1001, beginning October 1, 2004, either party may re-open negotiations on the subject of health insurance only by filing a notice to negotiate in conformity with the rules and regulations of the State Employment Relations Board (“SERB”). Said negotiation shall be governed by the procedure specified in Revised Code §4117.14.”

The Fact-Finder further recommends that, as to the sergeants' Agreement, Article 29, Section 1 be retained in its current language except for the typographical correction to refer to Case No. 02-MED-10-1002 and that the existing Section 1 be re-designated as Section 1(A) and that a new Section 1(B) be inserted as follows:

“In accordance with the decision rendered in Case No. 02-MED-10-1002, beginning October 1, 2004, either party may re-open negotiations on the subject of health insurance only by filing a notice to negotiate in conformity with the rules and regulations of the State Employment Relations Board (“SERB”). Said negotiation shall be governed by the procedure specified in Revised Code §4117.14.”

Respectfully submitted,


DONALD N. JAFFE
Fact-Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Report of Fact-Finder and Recommendation has been forwarded to the Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213; Kevin Powers, Esq., Ohio Patrolmen's Benevolent Association, P.O. Box 338003, 10147 Royalton Road, North Royalton, Ohio 44133; and David A. Shepherd, Esq., Turner, May & Shepherd, 185 High Street, N.E., Warren, Ohio 44481-1219, U.S. overnight (Express) mail, postage prepaid, this 2nd day of June, 2003.


DONALD N. JAFFE
Fact-Finder



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