

**FACT-FINDING TRIBUNAL OF THE STATE EMPLOYMENT RELATIONS BOARD**      **STATE EMPLOYMENT RELATIONS BOARD**

2003 JUN 19 A 10: 31

**IN THE MATTER OF:**

**OHIO COUNCIL 8,  
AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL  
EMPLOYEES, AFL-CIO  
Employee Organization,**

**and**

**CITY OF PORTSMOUTH,  
Employer.**

**REPORT OF FACT FINDER**

**CASE NUMBER:  
03-MED-01-0069**

**DATES OF HEARING: May 22, 2003**

**PLACE OF HEARING: Portsmouth, Ohio**

**FACT FINDER: Charles W. Kohler**

**APPEARANCES:**

**FOR THE EMPLOYEE ORGANIZATION:**

**Sandra Shonborn, Staff Representative**

**FOR THE EMPLOYER:**

**Lyn Risby,  
Administrative Assistant to the Mayor**

## **PROCEDURAL BACKGROUND**

On March 31, 2003, the State Employment Relations Board ("SERB") appointed the undersigned as fact finder for case number 03-MED-01-0069. The appointment was made pursuant to Ohio Revised Code Section 4117.14(C)(3). A fact-finding hearing was held on May 22, 2003, in the offices of the City of Portsmouth, Ohio. The report and recommendations of the fact finder are to be served upon the parties no later than June 18, 2003, pursuant to the mutual agreement of the parties.

This matter involves the negotiation of a successor collective bargaining agreement between the City of Portsmouth ("City") and AFSCME Ohio Council 8, AFL-CIO ("Union"). The previous agreement between the parties expired on April 30, 2003.

The bargaining unit consists of approximately 110 employees in various departments of the City. The bargaining unit includes laborers, equipment operators, utility personnel, technical personnel, and clerical personnel. The parties engaged in five negotiating sessions and one mediation session, but were unable to resolve all of the issues.

## **MEDIATION**

During the fact-finding session, the parties engaged in mediation with the fact finder, but no issues were resolved.

## **STATUTORY CRITERIA**

The following findings and recommendations are offered for consideration by the parties; were arrived at pursuant to their mutual interests and concerns; are made in accordance with the data submitted; and in consideration of the following statutory criteria as set forth in Rule 4117-9-05 of the Ohio Administrative Code:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of the 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, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties;
6. Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

#### **FINDINGS OF FACT AND RECOMMENDATIONS**

The tentative agreements of the parties are hereby incorporated by reference into this report as recommendations. In addition, unless the fact finder has recommended a change in the language of the expired agreement, or the parties have tentatively agreed to a change, the fact finder recommends that the language of the expired agreement be retained.

#### **ARTICLE 21 - RETIREMENT BENEFITS**

Prior to July 1, 1981, retiring employees were allowed to receive a cash payment equal to 100 percent of their unused accumulated sick leave. Beginning on July 1, 1981, the rate of payment to retiring employees was changed to a payment of 33 1/3 percent of unused accumulated sick leave.

Section 1 of Article 21 of the current collective bargaining agreement provides that retiring employees will be paid for 100 percent of any sick leave which was accumulated before July 1, 1981.

Section 3 of Article 21 sets forth that employees who use sick leave which was accumulated prior to July 1, 1981, may replenish the sick leave from future sick leave as earned. The amount of sick leave which can be replenished is limited to the amount of sick leave which the employee had recorded as of July 1, 1981.

#### Position of the City

The City proposes to change the replenishment rate for the pre-July 1, 1981, sick leave so as to require employees to use three days of sick leave for each day that the employee wants to replenish. The City states that all of the other bargaining units in the City are required to use three days of sick leave to replenish one day of pre-July 1, 1981, sick leave.

The City contends that, since wage rates have risen substantially since 1981, the amount of the payout for unused sick leave will be at a much higher rate than the rate which the employee was earning when the leave was accumulated. The City asserts that only about seventeen current employees have pre-July 1, 1981, sick leave accumulated, and only five or six are in a situation in which they may want to replenish the leave.

#### Position of the Union

The Union proposes that the current contract language be retained. The Union notes that the language has been in place since 1981. It agrees that the other bargaining units are required to use three days of sick leave to replenish pre-July 1, 1981 leave, but they previously had the same provision as this unit. The Union argues that these other units probably agreed to remove this benefit from their collective bargaining agreements in exchange for a concession by the City on

some other issue. Here, the Union states that they are not willing to lose this benefit since the City has not offered anything in exchange.

### Discussion

The City desires to reduce the expense which it incurs upon the retirement of an employee with pre-July 1, 1981, sick leave. The City is correct in its statement that the rate used for the payout at retirement is much higher than the rate in place when the sick leave was accrued. While a desire to reduce expenses is understandable, the provision which the City proposes to change affects only a small number of employees. It only affects current employees who use sick leave which was accrued prior to July 1, 1981. The proposal of the City does not change the contractual provision which requires a 100 percent payout upon retirement of pre-July 1, 1981, sick leave. Obviously, the number of employees with service prior to July 1, 1981, is declining, so that eventually, the City will no longer incur the cost of paying sick leave benefits to retirees at the rate of 100 percent.

While it is true that the other bargaining units have a provision in place similar to the one proposed by the City, the Union makes a valid point that these other units most likely received something in return for agreeing to the change. The provision has been in place for over twenty years, and the City's reasons for making a change are not compelling enough to warrant a change in the language.

### Recommendation

The fact finder recommends that the current language be retained in Article 21, Section 3 of the collective bargaining agreement.

## ARTICLE 23 - HOSPITALIZATION

The current collective bargaining agreement provides that the City is required to pay 100 percent of the health insurance premium for all non-probationary employees in the bargaining unit. The current annual premiums are \$3700 for single coverage, and \$10,800 for family coverage.

### Position of the City

The City proposes to delete the language which requires it to pay the entire premium. The City's current premium is fixed until March 31, 2004, and the City has agreed to continue to pay 100 percent of the premium through March of 2004. The City asserts that, after March 2004, it will continue to pay as much as possible toward health insurance. The City points out that the firefighters' bargaining unit has agreed to the removal of the language requiring the City to pay 100 percent of the premium. The City presented evidence from collective bargaining agreements in other cities in Ohio which require employees to pay a portion of the health insurance premium.

The City is concerned that the premium will increase to an amount which will make it difficult for the City to meet the obligation to pay 100 percent of the premium. The City notes that premiums have increased 80 percent in the last five years. The total cost for all employees is approximately \$2,000,000. The City asserts that it recently had to ask the county for a \$200,000 advance payment from the estate tax in order to meet its financial obligations. The City points out that it is willing to establish an insurance committee to study ways to provide adequate coverage at a reasonable cost. The City proposes to include management and bargaining unit employees on the committee.

### Position of the Union

The Union proposes that the current language be retained. It states that it wishes to be treated in the same manner as other bargaining units in the City. It asserts that the other units have

language in their collective bargaining agreements which requires the City to pay 100 percent of the health insurance premium during the term of the agreement.

The Union contends that the current insurance plan requires employees to pay substantially more out-of-pocket expenses than under the prior plan. Thus, employees are already paying more for health care, even without paying part of the premium.

### Discussion

The City is properly concerned about the possibility of a substantial increase in the cost of health insurance during the term of the collective bargaining agreement. The City obviously is searching for strategies to control this cost. Health insurance is a complex issue as there are so many variables in terms of coverage. In general, there is a trend toward requiring employees to shoulder part of the cost of health insurance. The City presented evidence from many various cities in Ohio which have agreements requiring employees pay a percentage of the premium, typically 15 to 20 percent. Employees in other cities pay a fixed amount toward the premium. Another variation used in some cities is to cap the amount of the premium paid by the employer.

The City has not presented any proposal to the fact finder which would limit the payment made by the employees. Its proposal merely removes the obligation of the City to pay 100 percent of the premium. Under the proposal, the City would be able to unilaterally determine the amount to be paid by bargaining unit employees.

The fact finder has the authority to recommend a modification of the current language to require employees to pay a specified share of the premium. However, such a modification is best left to the parties, due to the number of variables involved in determining the method that best suits the particular situation. In addition, it is likely that any employee contribution plan would have to apply to other bargaining units, and to non-represented employees. Thus, the fact finder will not recommend a modified form of employee contribution for health insurance.

Based on the presentations of the parties, the fact finder will recommend that the current language be retained. There is insufficient evidence to show that a change is justified at this time. However, this is clearly a long term problem which must be addressed. The parties are encouraged to develop a solution which gives the City some financial relief, but also controls the amount which employees will be required to pay. The fact finder also encourages the establishment of an insurance committee, made up of representatives of management and labor, to study the issue.

Recommendation

The fact finder recommends that the current language be retained in Article 23, Section 1.

**ARTICLE 24 - VACATIONS**

A disagreement exists between the parties concerning the right of an employee to carry over unused vacation time from one calendar year to the next. The controversy is over whether an employee is required to obtain approval from the Mayor in order to carry over vacation.

Position of the City

The City proposes a change in the current language to clarify that the Mayor's approval is required in order for an employee to carry over vacation from one year to the next. The City argues that members of all of the other bargaining units are required to have the approval of the Mayor in order to carry over unused vacation. The City contends that the current language in this agreement requires that employees in the bargaining unit need the approval of the Mayor, but the language needs to be clarified.

### Position of the Union

The Union proposes that the current language be retained. It asserts that the current language allows employees to carry over up to 40 hours of vacation from one year to the next. The Union maintains that it is common practice in the public sector to allow employees to carry over vacation time from one year to the next, with a limitation on the amount which can be carried over.

### Discussion

The evidence shows that the City has been inconsistent in acting on requests to carry over vacation. In some cases, employees have requested that they be permitted to carry over vacation, and the City has failed to respond to the request in a timely manner, making it difficult for employees to make plans. On the other hand, the evidence shows that Service Department employees are routinely permitted to carry over 40 hours of vacation.

The current language is ambiguous and confusing. It states that employees have the option of carrying over up to 40 hours of vacation, but also states that there can be no carry over without the approval of the Mayor. It is not clear whether or not an emergency must be established by an employee in order to carry over vacation.

The prevailing practice in the Ohio public sector is for employees to be able to carry over a limited amount of unused vacation. The City has not shown that allowing bargaining unit employees to automatically carry over one week of vacation would have an adverse impact on its ability to provide services to the public. Elimination of the current ambiguity would allow employees to carry over one week of vacation without being concerned that permission would be unfairly withheld.

The current language in Article 24, Section 5, appears to combine two separate concepts without clearly differentiating between them. One concept is the right of an employee to carry over up to 40 hours of vacation. The other concept relates to an employee who cannot use all of his or vacation in a particular year because of an emergency. These concepts should be dealt with separately.

The fact finder recommends that employees be permitted the option of carrying over up to 40 hours of vacation from one year to the next, without the necessity of obtaining approval from the City. In addition, the fact finder recommends that an employee may be permitted to carry over more than 40 hours of vacation in the event that an emergency prevents him or her from using vacation time. A carry over of more than 40 hours would have to be approved by the Mayor.

#### Recommendation

The fact finder recommends that Article 24, Section 5, provide as follows:

A. An employee who does not use his/her accumulated vacation in a calendar year shall be granted the option of carrying over a maximum of forty (40) hours of the accumulated vacation to the next calendar year upon notification to the payroll clerk.

B. If, due to an emergency, a bargaining unit member has more than forty (40) hours of unused vacation at the end of a calendar year, the member may make a request to the Mayor that the unused leave be carried over to the next calendar year. If the Mayor determines that an emergency prevented the member from using all of his/her vacation, the member may carry over the unused vacation to the next calendar year. In no event, however, may the amount of vacation leave carried over exceed that which the employee has earned in the preceding year.

#### **ARTICLE 34 - AFSCME CARE/LEGAL PLAN**

The current agreement requires the City to pay \$55.25 per month to the AFSCME Ohio Council 8 Health Care Fund for each bargaining unit employee. The fund provides employees

with eye care, dental care, hearing care, legal services, and life insurance. It also includes a prescription drug benefit which pays the deductible required by the health insurance plan. The amount paid by the City is fixed for the term of the agreement.

#### Position of the Union

The Union proposes that the contribution be increased by \$13.00 per month. The Union explains that this represents an increase of \$5.00 per month for the prescription plan and \$8.00 per month for the dental plan. It contends that employees are prohibited by law from making a contribution to the fund, so that the only way to pay the increased premium is for the City to increase its contribution.

The Union argues that the City currently pays \$66.44 per month for most other City employees for dental, life and vision insurance. It states that the AFSCME plan provides a variety of services to employees for a competitive price.

#### Position of the City

The City proposes that the current language be retained, as it is not in a suitable financial position to absorb the increase. It states that the Union should consider reducing the coverage provided, rather than having the City pay the additional premium. The City argues that employees already have prescription coverage under their medical insurance, and they could easily drop this coverage. The City contends that legal services are not necessary in a health care plan. The City also states that the Union did not negotiate the same benefit for members in another bargaining unit.

#### Discussion

The Union is requesting an increase in the contribution made by the City. The current language obligates the City to pay only a fixed amount, and, unlike health insurance, does not provide for payment of 100 percent of the premium by the City. The coverage provided under this

plan is certainly a useful benefit, but is far less important than health insurance coverage.

The fact that the language does not require the City to pay the entire premium means that the payment must be negotiated in each collective bargaining agreement. The Union has not made a compelling argument that a monthly increase of \$13.00 per employee, or 23½ percent, is justified. The City is correct in its reluctance to contribute an additional premium for prescription drugs, when coverage is provided under the health insurance plan. Most of the other employee groups in the City do not have additional prescription drug coverage.

#### Recommendation

The fact finder recommends that the current language be retained in Article 34.

### **APPENDIX B - RECOGNITION OF THE CURRENT AFSCME UNIT**

This appendix contains a list of the positions which are included in the bargaining unit. At the beginning of 2003, the City transferred the Animal Control Person position from the Health Department to the Service Department. When the position was in the Health Department, the Animal Control Person was not in a bargaining unit.

#### Position of the Union

The Union contends that the Animal Control Person should be added to the bargaining unit. It states that the unit is a “deemed certified bargaining unit” which has organized prior to the enactment of the Ohio Collective Bargaining Law. The Union asserts that the unit needs to be changed to reflect changes in positions. The Union states that, since the Animal Control Person is not in an administrative or confidential position, the position should be placed in the bargaining unit.

Position of the Employer

The Employer asserts that the Animal Control Person works closely with the Sanitation Division of the Service Department, and the move was made to improve efficiency. The City argues that the position of Animal Control Person was not in a bargaining unit before the transfer, and therefore the position should not be included in this bargaining unit. The City also maintains that the position requires special training which sets it apart from most of the other positions in the bargaining unit.

Discussion

The parties have tentatively agreed to numerous changes in the description of the bargaining unit. Positions have been added and deleted. The parties are usually in the best position to determine whether or not a particular position should be included in the bargaining unit. The fact finder does not believe that he should interfere in the process unless a preponderance of the evidence shows that a position should be included or excluded. In this case, the evidence available to the fact finder is not sufficient to allow the conclusion that the Animal Control Person position belongs in this bargaining unit.

Recommendation

The fact finder recommends that the Animal Control Person position not be included in the description of the bargaining unit.

**APPENDIX C - ATTENDANCE POLICY**

Position of the Union

The Union proposes that the Attendance Policy be deleted. It contends that enforcement of the policy has been uneven. It states that the reporting off requirements are burdensome to

employees, and some employees have been subject to punitive action when they have been too ill to personally report off.

#### Position of the City

The City proposes that the Attendance Policy remain in place. It notes that the policy is the same one applied to all employees of the City. The City concedes that the policy is not perfect, but states that it is working to correct the problems. The City asserts that the policy is fair to all employees.

#### Discussion

The Attendance Policy was added to all of the City's collective bargaining agreements during the last set of negotiations. The policy also applies to non-represented employees. There is no solid evidence that its enforcement has been uneven. Absenteeism is a problem which can diminish the quality of services rendered to the public. The City has the right to try and control absenteeism through the Attendance Policy. The fact finder will recommend that the policy remain in the collective bargaining agreement.

#### Recommendation

The fact finder recommends that the Attendance Policy be retained as Appendix C to the collective bargaining agreement.

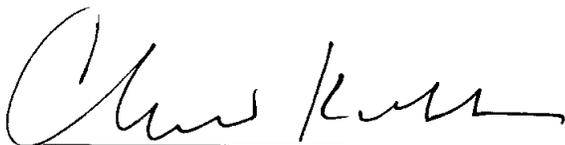
The above recommendations are respectfully submitted to the parties for their consideration.

A handwritten signature in black ink, appearing to read "Charles W. Kohler". The signature is fluid and cursive, with a large initial "C" and "K".

Charles W. Kohler, Fact Finder

## CERTIFICATE OF SERVICE

I do hereby certify that on this 18<sup>th</sup> day of June 2003, a copy of the foregoing Report and Recommendations of the Fact Finder was served upon Sandra Shonborn, AFSCME Ohio Council 8, 36 South Plains Road, The Plains, Ohio 45780; and Lyn Risby, City of Portsmouth, 728 Second Street, Room 1, Portsmouth, Ohio 45662; each by Federal Express overnight delivery; and upon Dale A. Zimmer, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by regular U.S. Mail, postage prepaid.

A handwritten signature in black ink, appearing to read "Charles Kohler", written in a cursive style.

Charles W. Kohler, Fact Finder

**First Class Mail**

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