

HAND DELIVERED

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2007 JUL 12 P 12: 58

In the Matter of Fact-finding Between:

Fraternal Order of Police : Case No. 06-MED-08-0813,
Ohio Labor Council, Inc. : 06-MED-08-0814
06-MED-08-0815

And : Recommendations

City of Bucyrus : Margaret Nancy Johnson
Crawford Country, Ohio : Fact-finder

Appearances

For the FOP:
Andrea Johan, Staff Representative
FOP/Ohio Labor Council, Inc.
222 East Town Street
Columbus, Ohio 43215

For the City:
Rufus B. Hurst, Esq.
Downes, Hurst & Fishel
400 South Fifth Street, Suite 200
Columbus, Ohio 43215

Statement of the Case

This matter came on for hearing on June 27, 2007, in Council Chambers at the Administration Building of the City of Bucyrus, Ohio in compliance with Ohio Revised Code Sections relative to public employee collective bargaining. Pursuant to Section 4117(C) (3) of the Ohio Revised Code, the State Employment Relations Board appointed Margaret Nancy Johnson to serve as fact-finder in the bargaining impasse between the City of Bucyrus, hereinafter "City," and the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter "FOP" or "Union." Position statements were submitted in advance of the hearing, setting forth the issues in dispute and the contentions of the parties relative thereto. This Report and Recommendation is now issued in accordance with the statute and the agreement of the parties.

The three bargaining units which engage in multi-unit bargaining with the City involved in this proceeding include 1) sworn full time police officers below the rank of Sergeant; 2) sworn full time police officers in the rank of Sergeant and above; and, 3) full time civilian employees. Approximately twenty-seven (27) members of the referenced bargaining units render law enforcement services for the residents and businesses within the jurisdiction of the City. These services include crime prevention, detection, and investigation as well as other duties related thereto, such as dispatching and communications with the public.

As the result of negotiations the parties have reached agreement on all Articles to the successor Agreement with the exception of health insurance, which is the matter now pending. All tentative prior agreements are incorporated herein as if fully rewritten.

Issues

The sole issues pending resolution in this matter pertain to co-payments and premium contributions included within the Article 31, Health Insurance provisions of the Agreement between the parties.

Position of the Parties

A. City

When the FOP determined to join the labor/management Health Insurance Committee, it became obligated to accept the health insurance provisions agreed upon by that body for the participating bargaining units within the City. Language proposed by the City is identical to that adopted by the Committee and subsequently agreed upon by the other bargaining units having representatives on the Committee, including AFSCME and the IAFF. The FOP can not elect to participate in joint negotiations and then present proposals that are inconsistent with the consensus agreements reached by the Committee. (See Appendix A)

B. FOP

Prior Collective Bargaining Agreements between the parties included language setting forth co-payments and premium contributions. Language pertaining to these payments is necessary for those employees who subscribe to the HRA plans offered by the City and such language needs to be retained. While the FOP agreed to the concept of the health insurance committee, its intent was to supplement what had always been in the Agreement and not to remove existing provisions. The Union seeks to retain re-opener language on premium contributions as well as the co-payment provisions. (See Appendix B)

Criteria

Criteria set forth in Ohio Revised Code Section 4117(G)(7) (a) through (f), have been considered in making the recommendation which follows.

Discussion

Analysis and discussion of the pending contract dispute must begin with a review of developments concerning health insurance coverage for employees of the City. Like most political entities in the State of Ohio-- indeed, across the nation-- the City of Bucyrus has struggled with providing reasonable health benefits for employees at a manageable cost. To address these insurance concerns, in negotiations for the 2003-2005 contract years, the City initiated the concept of a partnership with bargaining representatives from different unions.

Prior thereto the City had engaged in separate negotiations with the three unions with which it bargained: the IAFF, AFSCME, and FOP. While AFSCME and the IAFF agreed to participate in this progressive and innovative approach to health insurance issues, the FOP elected not to do so at that time. Accordingly, the City, AFSCME and IAFF created a joint labor/management Health Insurance Committee consisting of two members from each participating group. As established by the parties, the committee has the authority to review health insurance options and to determine insurance issues by

consensus agreements which then bind the participating bargaining unit for the specified terms.

In 2005, the FOP decided to join the Committee. Because of financial hardships being experienced by the City at that time, the unions with which it bargains agreed to a one year extension of existing agreements and, additionally, made some insurance revisions suggested by the Committee, including HSA and HRA options. Consequently, the parties experienced improved coverage with cost savings.

For negotiations for the 2007-2009 contract years, the Health Insurance Committee again met and agreed upon health insurance provisions to be included in the labor contracts for the participating parties. These agreements have been ratified by the IAFF and AFSCME. While accepting the concept of the joint health insurance committee, the FOP seeks to retain current language preserving co-payment terms and a re-opener for premium payments exceeding a 12.5% increase. The City has taken the position that the agreements reached by the labor/management committee are binding upon the participating parties and the FOP, as a member, is precluded from securing insurance provisions inconsistent with those of the Committee.

In presenting its case to the fact-finder the City has argued that the proposal of the FOP is "(1) obsolete, (2) lacks any support from the committee, or (3) is inconsistent with the specific provision of the agreements that all consensus agreements are binding" (City Pre Hearing Statement, p. 6). Although the observations by the City may be correct, still, in rendering recommendations, the fact-finder must be guided by specific *statutory* criteria. In considering the propriety of the respective positions of the parties, reference is to be given to those factors enumerated in Ohio Revised Code Section 4117.14 (G)(7) and identified in the Ohio Administrative Code Rules.

In considering these legislated guidelines, the fact-finder recommends the position of the City. First, although the FOP seeks retention of language found in prior agreements, still Collective Bargaining history between the parties sustains the position of the City and justifies its reliance upon the consensus agreement reached by the joint labor/management committee. Creation of the health insurance committee grew from a mutual need to confront insurance issues progressively and pragmatically. Prior agreements had not satisfactorily addressed the issue of health insurance.

Participation on this committee and providing two representatives to serve thereon is completely optional. When a bargaining unit determines to join, however, then, it must be required to adhere to the agreements of the Committee until such time as it severs its membership. A bargaining unit cannot join the process but continue to hold out for additional benefits.

The decision of the FOP to become a part of the Health Insurance Committee was made only after the initial efforts by the Committee had produced significant results in terms of coverage and cost savings. If the FOP wishes to continue to benefit from the work of the Committee, then it must commit itself to the concept of consensual participation. It cannot agree to participate and at the same time carve out exceptions to its participation. Since the FOP has chosen to engage in resolution of health insurance issues through consensus and has agreed to be bound by the terms set forth by the committee, it must abide by those commitments. Consistency is key to the success of the committee and this creative approach to problem solving must be sustained. Having agreed to join the committee the FOP cannot subsequently renege on the terms of that

commitment. Thus, relying upon bargaining history giving rise to the creation of the joint labor/management insurance committee, the fact-finder recommends the position of the City.

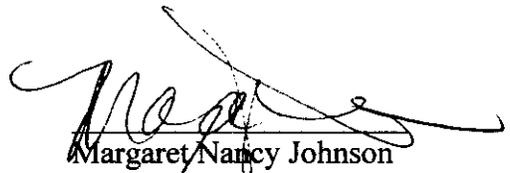
Second, the statutory criterion of comparability sustains the position of the City. Through the process of fact-finding within the State of Ohio, comparability has been determined to include a consistency with other units with which a public employer may bargain. In the case at hand, the two other units with which the City bargains have accepted and incorporated the proposals of the joint labor management insurance committee into their Collective Bargaining Agreement. Like the FOP, one of these other units is a safety-force, whose members provide prevention and protection to the City citizens in life-threatening situations. Thus, there can be no contention that the FOP is entitled to something additional.

Finally, the fact-finder is to review the fiscal impact of the proposals and how the same may affect the interest and welfare of the public as well as effect service. While neither party presented extensive financial documentation or data on these proposals, nonetheless, the long-term consequence of this proceeding is quite apparent. Health insurance issues continue to be a major component in collective bargaining. For decades health care costs have been rising in significant percentages, having a substantial impact upon the treasuries of public entities. Solutions to these problems are not readily ascertainable. Yet, in this case, in co-operation with its bargaining units, the City is endeavouring to seek a solution to health care issues with an innovative approach. Unanimity and uniformity are essential for the success of this plan. While participation is optional with bargaining units, it does require a total commitment. Enabling one party to opt out of certain provisions undermines the entire process, thereby having an effect beyond the interest of the immediate bargaining unit.

Conclusion

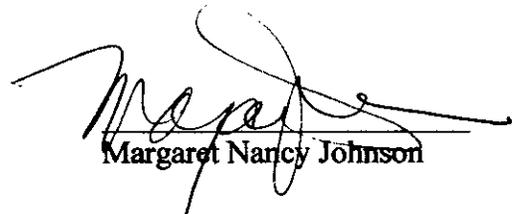
Having analyzed the proposals with reference to statutory criteria for resolving a bargaining impasse, the fact-finder recommends the position of the City in this matter. All previously negotiated tentative agreements are incorporated herein as if fully rewritten.

Respectfully submitted,


Margaret Nancy Johnson
Fact-finder

Certification

A copy of the foregoing recommendation has been personally served this 12th day of July upon Rufus Hurst, Downes, Hurst, & Fishel, 400 South Fifth Street, Columbus, Ohio 43215, and upon Andrea Johan, Staff Representative, FOP/Ohio Labor Council, Inc., 222 East Town Street, Columbus, Ohio 43215, and by regular mail upon Edward Turner, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215.



Margaret Nancy Johnson

ARTICLE 31 HEALTH INSURANCE

Section 31.1 Premium Contribution

~~During the term of this Agreement, the Employer shall pay ninety percent (90%) of the premiums for the employee health insurance and employees shall pay ten percent (10%) of the premiums through automatic payroll deduction.~~

The Employer shall pay ninety percent (90%) of the necessary premiums for the employee health insurance in effect. Employees shall pay ten percent (10%) of the premium amounts through automatic payroll deduction. **The Employer shall, in 2007, pay ninety-four percent (94%) of the HSA contribution amounts established by the City for employee health insurance and the employee shall pay six percent (6%) of the HSA contribution amounts. In 2008, the Employer shall pay ninety-two percent (92%) of the HSA contribution amounts for employee health insurance and the employee shall pay eight percent (8%) of the HSA contribution amounts. In 2009, the Employer shall pay ninety percent (90%) of the HSA contribution amounts for employee health insurance and the employee shall pay ten percent (10%) of the HAS contribution amounts. Employees electing HRA coverage shall not be required to participate in the costs of such coverage beyond the normal premium costs associated with the HRA option.** The Employer shall have the right to change insurance carriers or coverage, as necessary, so long as any changes result in comparable coverage. The City shall provide at least thirty (30) days notice to the union prior to implementing any changes in insurance.

~~**Section 31.2 Co-Payments**~~

~~**A. Doctor Office Visits**~~

~~During the term of this Agreement, the maximum co-payment for doctor office visits shall not exceed twenty five dollars (\$25.00). [In calendar year 2003, not to exceed twenty dollars (\$20.00)]~~

~~**B. Prescription Drugs**~~

~~During the term of this Agreement, the maximum co-payment for prescription drugs shall not exceed fifteen dollars (\$15.00), where applicable. [In calendar year 2003, not to exceed ten dollars (\$10.00).]~~

Section 31.2

The parties agree that a joint labor/management Health Insurance Committee shall be established and will be authorized to review and recommend changes to the City's health insurance plan or plans. Any recommendations of the committee must be consensus. All consensus agreements reached by the committee shall be binding on each participating bargaining unit for the agreed term. The committee shall consist of two (2) members from each participating bargaining unit and two (2) members from management.

~~**Section 31.3 Change of Insurance Carriers**~~

~~The Employer shall have the right to change insurance carriers or coverage so long as the Employees retain coverage that is comparable to or better than that existing on November 1,~~

~~2002. The City shall provide thirty (30) days notice to the Union prior to implementing any change in insurance.~~

~~In the event that the monthly health insurance premiums increase by twelve and one half percent (12.5%) or more in any calendar year, the parties agree to reopen negotiations for the purpose of negotiating health insurance changes. The procedures of Chapter 4117 shall apply to these reopened negotiations.~~

Section 31.4 3 Both Spouses Employed by the City

In those cases where both spouses are employed by the City, only one will be eligible for health insurance coverage, which will be the family plan.

ARTICLE 31 HEALTH INSURANCE

Section 31.1 Premium Contribution

The Employer shall pay ninety percent (90%) of the necessary premiums for the employee health insurance in effect. Employees shall pay ten percent (10%) of the premium amounts through automatic payroll deduction.

The Employer shall, in 2007, pay ninety-four percent (94%) of the HSA contribution amounts established by the City for employee health insurance. **The employee may be responsible for the balance** of the HSA contribution amounts.
~~and the employee shall pay six percent (6%) of the HSA contribution amounts.~~

In 2008, the Employer shall pay ninety-two percent (92%) of the HSA contribution amounts for employee health insurance. **The employee may be responsible for the balance** of the HSA contribution amounts.
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In 2009, the Employer shall pay ninety percent (90%) of the HSA contribution amounts for employee health insurance. **The employee may be responsible for the balance** of the HSA contribution amounts.
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Employees electing HRA coverage shall not be required to participate in the costs of such coverage beyond the normal premium costs associated with the HRA option.

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Section 31.2 Co-Payments

A. Doctor Office Visits

During the term of this Agreement, the maximum co-payment for doctor office visits, **for those who have doctor office visit co-payments** shall not exceed twenty-five dollars (\$25.00). ~~{In calendar year 2003, not to exceed twenty dollars (\$20.00)}~~

B. Prescription Drugs

During the term of this Agreement, the maximum co-payment for prescription drugs, **for those who have prescription co-payments** shall not exceed fifteen dollars (\$15.00) for generic, 25.00 for formulary or where there is no generic drug existing, 35.00 for brand name, where applicable. ~~{In calendar year 2003, not to exceed ten dollars (\$10.00)}~~

(membership felt that since there will be people who elect the HRA and for whom there will still be co-pays, that these sub-sections should remain in the contract; but since the co-pays are not applicable to everyone, new language added to clarify that.)

Section 31.3 Change of Insurance Carriers

The Employer shall have the right to change insurance carriers or coverage so long as the Employees retain coverage that is comparable to or better than that existing on November 1, 2002. The City shall provide thirty (30) days notice to the Union prior to implementing any change in insurance.

As long as the health insurance committee as referenced in section 31.3 below exists and is functioning, this paragraph will have no force and effect. In the event that the monthly health insurance premiums increase by twelve and one-half percent (12.5%) or more in any calendar year, the parties agree to reopen negotiations for the purpose of negotiating health insurance changes. The procedures of Chapter 4117 shall apply to these reopened negotiations.

(membership felt that since we really didn't change the health insurance, just added the HSA and HRA components, that this section should remain in the contract.)

Section 31.~~2~~-3 Health Insurance Committee to be Established

The parties agree that a joint labor/management Health Insurance Committee shall be established and will be authorized to review and recommend changes to the City's health insurance plan or plans. Any recommendations of the committee must be consensus. All consensus agreements reached by the committee shall be binding on each participating bargaining unit for the agreed term. The committee shall consist of two **(2)** members from each participating bargaining unit and two **(2)** members from management.

Section 31. ~~3~~ - 4 Both Spouses Employed by the City

In those cases where both spouses are employed by the City, only one will be eligible for health insurance coverage, which will be the family plan.