

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

PORTSMOUTH CITY SCHOOL DISTRICT
BOARD OF EDUCATION,

Employer,

-and-

Case No. 07-MED-04-0408

AFSCME, OHIO COUNCIL 8, AFL-CIO
AND AFSCME LOCAL 2684

Employee Organization.

FACT-FINDING

Philip H. Sheridan, Jr., Fact-finder

Issued: December 20, 2007

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STATE EMPLOYMENT
RELATIONS BOARD

STATEMENT OF THE CASE

The parties, the Portsmouth City School District Board of Education (The Board), represented by Donald C. Scriven, Esq., and the bargaining unit, AFSCME Local 2684, 86 regular classified employees of the Portsmouth City School District, including Paraprofessionals, Cooks, Maintenance employees, Custodians, Secretaries, Bus Drivers, Receptionists, and Attendance Office employees, represented by Sandra S. Shonborn, Staff Representative for AFSCME, Ohio Council 8, AFL-CIO, have entered into negotiations for a successor contract to the contract that expired August 31, 2007.

The parties met and bargained in good faith with a number of meetings between the parties as well as mediated discussions. The parties without dispute, or through negotiation, reached tentative agreement on current language or changes in the collective bargaining agreement. Issues remain in four articles of the agreement.

Pursuant to R.C. §4117.14 and Admin. R. 4117-9-05, the State Employment Relations Board appointed Philip H. Sheridan, Jr., 915 South High Street, Columbus, Ohio, as fact-finder.

The parties agreed to a fact-finding hearing on December 6, 2007, and the meeting was convened at 10:00 a.m. at the Board's Administration Building. In addition to their representative, Jan Broughton, Superintendent, Paula Butler, Treasurer, Ralph E. Applegate, Facilities Coordinator, and Randall Schneider, HVAC Coordinator, appeared at the hearing on behalf of the Board. In addition to their representative, Gloria Vice, Paraprofessional and President of the Local, Michael D. Sowards, Maintenance, Jeff Knauff, Bus Driver, Linda Rigsby, Secretary of Student Services-PES, and Tylitha Sith, Custodian, appeared on behalf

of the bargaining unit. The parties and the fact-finder discussed the procedure to be followed by the parties.

The parties agreed that the remaining issues were not amenable to additional mediation. The parties submitted the matter upon statements, documents, and arguments presented to the fact-finder.

In accordance with the provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues that have been resolved, the unresolved issues, and each party's proposal on the unresolved issues.

In issuing this fact-finding report, I have given consideration to the provisions of R.C. Chapter 4117 and, in particular, the criteria contained within Admin. R. 4117-9-05(I).

THE POSITION OF THE PARTIES AND RECOMMENDATIONS

Article 28, Insurance

The Board's Position: The Board proposes a continuation of the health, prescription, dental and life insurance fringe benefits coverage. The proposed changes concern only the health insurance fringe benefit. The Board will pay 96.5% of the premium costs and full time bargaining unit members (6-8 hrs. per day) will pay 3.5% of the monthly premium costs for single or family coverage. The teachers' bargaining unit agreed to pay 7% of the premium. Part-time employees who are scheduled for at least 4 but less than 6 hours per day would pay 50% of the monthly premium costs for single or family coverage. Employees scheduled for less than 4 hours per day would not be eligible to participate.

The Board proposes a "spousal coordination of benefits provision" that requires spouses of Board employees to obtain health insurance through that spouse's employer or

retirement system, if coverage is available at a cost to the spouse of no more than 50% of the premium. The Board argues that a similar provision has been negotiated in the new teacher contract the Board and the teachers recently concluded, and it is contained in all of the other 9 Scioto County kindergarten through grade 12 public school districts.

There is also opting out language available for certain employees who have had City coverage for at least one year, who are not married to another City employee, and who have proof of other coverage.

Finally, the Board proposes changes in the annual deductible and increases in the various co-pays to the same amounts that the teachers accepted. All Board employees have the same plans available, although the percentages and caps are separately negotiated in each bargaining unit's contract. The Board presents this article as a part of an economic package along with the wages.

The bargaining unit's concerns about the Insurance Committee were not brought to the Board's attention until after it had entered into the collective bargaining agreement with the teachers that contained the same language as in the previous contract. This was not a change requested by the Board; it was not an issue in its negotiations with the teachers. The committee is an advisory committee only, and the Board also has fewer members of the committee than the teachers do. There does not appear to be a problem in need of correction.

The bargaining unit's Position: The bargaining unit proposes current contract language on health insurance fringe benefits. Bargaining unit employees would agree to the premium payment proposed if the plan provides that all bargaining unit employees are eligible for coverage, the spousal coordination of benefits provision is not adopted, the

premium payment is made constant for the life of the contract, and no changes are made in the deductibles and co-pays.

The bargaining unit points out that its employees are by far the lowest paid employees of the Board. Their health insurance fringe benefit is correspondingly more valuable to them. While the teachers enjoy wages that enable them to absorb the new 7% premium share and the increased deductibles and co-pays, such changes have a much more severe impact on those on the bottom. Currently, 16 members pay 10% of the premium, the others who participate pay nothing, and 9 employees work less than 5 hours a day. None of them would be able to participate by paying 50% of the premium. Nineteen employees currently do not participate. The bargaining unit argues that the spousal coordination of benefits proposal is a discriminatory carving out that is not in the standard contract offered by Medical Mutual, the insurance provider.

Bargaining unit members will delay needed treatment if the proposed increases paid by the members in deductibles, co-pays, testing, and supplies are all implemented. The Board has not been willing to change its position on any of these proposals.

The bargaining unit also seeks equal representation on the Insurance Committee. The unions believe that the Board is illegally trying to bind it by agreeing to an article in the teachers' collective bargaining agreement that continues the current membership in the committee, which gives the teachers' bargaining unit a majority of the members of that committee.

Discussion and Recommendation: The health insurance fringe benefit has been the subject of much study and commentary, and it is clear that the Portsmouth City School District has not escaped the increases in cost that often amount to more than 20% per year.

The insurance companies are not willing to enter into multi-year contracts, so intelligent prediction of what next year will bring is uncertain at best. With that background, the Board freely admits that its goal is to have all of its employees sharing at least 10% of the monthly premium cost. Currently, the Board incurs the entire premium cost for all full-time employees except for 16 employees who contribute 10%. The Board seeks to have all full-time participating employees contribute 3.5% of the monthly premium cost; part-time employees who work over 4 hours per day but less than 6 hours may participate by paying 50% of the monthly premium cost. Employees working less than 4 hours per day are not eligible.

I recommend that all participating full-time employees contribute 3.5% toward the monthly premium cost effective upon ratification of the agreement; and that would include employees who work 6 to 8 hours per day. There are no employees working less than 4 hours per day currently, and the proposed lack of eligibility conforms to the Medical Mutual Contract provided to me by the bargaining unit, which also excludes employees who work less than 4 hours per day and 20 hours per week. Although it effectively prevents such employees from participating in the health insurance benefit, employees working less than 6 hours per day would have to pay 45 or 50% of the monthly premium cost under the expired contract. I reluctantly recommend the continuation of that policy of payment of 50% of the monthly insurance premium by employees who work from 4 to 6 hours per day.

The bargaining unit has asked for a premium freeze or cap in order to budget their limited funds. The bargaining unit members are less able than the Board to adjust to the significant increases that are certainly possible. I recommend that the Board's proposal contain the added provision that: "Bargaining unit members' premium contributions may be

increased no more than 110% of the previous year's premium if the monthly health insurance premium cost increases at least 10%."

I recommend the Board's spousal coordination of benefits provision with one change, which is a significant one. I would require the spouse to apply for coverage with the spouse's employer if "coverage is available at a cost to the spouse of no more than 10% of the premium." It is hard for me to imagine many employees in Scioto County who would be able to set aside even \$400 per month for health insurance, which would be a little less than half of the premium for single coverage under the Board's contract with Medical Mutual. I am not willing to recommend a change in the agreement that has the likely effect of causing the spouse of a member to opt to be uninsured. Neither side provided any information on the likely number of members who would be affected, which contributes to my reticence.

Finally, the Board proposes increasing the annual single/family deductible to 300/600; excluding office visit co-pays from applying toward the deductible, and making "adjustments" to certain co-pays. Increases include from \$50 to \$100 for non-emergency visits to the emergency room, and from \$15 to \$25 for all of the other co-pays. The sad fact of the matter is that such adjustments have become the rule as employers are forced to accept such increases in order to come close to holding the line on insurance benefit costs. I recommend acceptance of the Board's proposal except that I recommend that the office visit co-pay amounts continue to be included in the calculation of the annual deductible.

I recommend no change in the make-up of the Insurance Committee.

Article 29, Longevity Pay

The Board's position: The Board is surprised that a longevity pay issue is being

presented by the bargaining unit members. The bargaining unit had withdrawn its proposal on longevity pay during bargaining. The Board favors current contract language. Its proposal on wages is sufficient, and a change in the longevity pay article as proposed by the bargaining unit would result in increased costs not supported by comparables or equity.

The bargaining unit's position: The bargaining unit proposes a 2% pay step after 15 years service. Currently, bargaining unit members enjoy a 2% pay step after 10, 20, and 25 years service. The bargaining unit argues that the teachers receive a much higher lump sum for tenure.

Discussion and recommendation: I recommend no change in the longevity article. This sort of change should result from bargaining between the parties. There does not appear to be a particular issue that requires immediate action. The benefits received by the teachers relate to increased education as well as time in service and do not directly compare to the longevity article in this agreement. A comparison to State Civil Service employees also seems remote to be persuasive.

Article 31: Clothing

The Board's position: The Board proposes to incorporate a dress code that mirrors the dress code the teachers' bargaining unit agreed to. The Board believes that its dress code is an appropriate reflection of the appearance of professionalism consistent with its educational mission. The new facilities, coupled with appropriate attire, will encourage the students to show respect to the staff, and staff members who are provided with uniforms will be easily identified as Board employees by both students and visitors to the schools. By providing readily identifiable clothing and cleaning the clothing the Board will mitigate

those employees' personal clothing expenses. Currently the Board only provides appropriate clothing for food service personnel and the snow crew. The Board's proposal expands this obligation to include custodial and maintenance employees, the groundskeeper, health aides, and bus drivers.

The bargaining unit's position: The bargaining unit seeks to retain current contract language, which contains no standards for appropriate apparel. The bargaining unit argues that the parties have done without a dress code for forty years and there is no specific appearance or identification problem now. Rather than building "image" the bargaining unit argues that the Board should use the funds such clothing and cleaning of it will cost, and use it to further fund the health care fringe benefit on behalf of more of the bargaining unit members.

Discussion and recommendation: I recommend current contract language. The Board has expressed aspirations that appeal to the Cub and Boy Scout leader in me. Scouts and the Army convinced me that sharp, orderly appearance improves morale and sense of teamwork. However, aside from some discussion of whether denim jeans are appropriate attire for bus drivers, there was not much evidence of a specific problem in need of immediate attention. The cost involved in providing a number of sets of clothing and in regularly cleaning the issued apparel is not clear, and it could be substantial. Under such conditions, I believe the parties can revisit this issue in future negotiations.

Article 34: Wages

The Board's Position: The Board proposes a first-year "equity" increase for certain classifications that it has identified as below the norm within the county in terms of wages in the amounts per hour indicated below.

Attendance Officer	\$0.10
Bus Driver	0.50 + 0.42 to 0.57 (depending on years of service)
Cook	0.50
Custodian	0.30
Paraprofessional	0.40
Maintenance	0.10
Secretary (Bldg.)	0.30
Secretary (CO)	0.10

The Board then proposes a general wage increase of 4%, effective upon the adoption and ratification of the collective bargaining agreement, through June 30, 2008; a general wage increase of 3%, effective July 1, 2008, through June 30, 2009; and a general wage increase of 2%, effective July 1, 2009, through August 31, 2010.

The Board is not willing to agree to a general wage increase retroactive to July 1, 2007, as demanded by the bargaining unit. The Board argues that its health insurance costs have remained unchanged at a substantial cost to the Board, and the calculation of retroactive pay becomes more and more difficult as time passes. The Board argues that the negotiations and proceedings have been delayed by "foot dragging" by the bargaining unit in "dogged resistance to mainstream positions," and that the bargaining unit should not be rewarded or the Board punished by such delay.

The Board supports its position with comparisons to wages paid in the surrounding Scioto County schools. The status of Scioto County and Portsmouth, and the City School District's designation as a school district in a state of "fiscal caution," all demonstrate that the District has financial issues that must be dealt with in a reasonable manner. The Board believes its proposal, when coupled with its proposal on health care fringe benefits, is as

good as or better than that enjoyed by employees of the surrounding school districts. Where many County residents have experienced decreases in their income, the Board has managed to provide increases. The Board argues that its proposal exceeds the cost-of-living increases measured by the various consumer price indexes.

The bargaining unit's Position: The bargaining unit accepts the Board's proposal of the equity increase as stated above, and the annual increases as proposed. However, the bargaining unit's proposal includes equity increases in the second and third years of the contract similar to the equity increase proposed by the Board for the first year. The bargaining unit also insists that the increases should be retroactive to July1, 2007, the beginning date of the new agreement, as has been the past practice of the Board in previous agreements.

The bargaining unit argues that the comparables presented by the Board of the surrounding school districts in Scioto County reveal "substantial wage discrepancies" that need to be addressed through the equity increases. If the Board's proposal on health insurance is adopted it will increase the members' out-of-pocket expenses "astronomically." The classified employees, being the lowest paid of the school district employees, are the hardest hit by such increases.

Discussion and recommendation: Initially, it appears to me that the parties are in agreement about changes in pay step for bus drivers and two receptionists, as stated in the bargaining unit's proposal. There was no discussion of the receptionists, and the Board's proposal also has the change noted for the bus drivers.

I recommend the Board's proposal on equity increases in the first year of the agreement and its proposal on annual across the board salary increases in each of the years of the contract. The information provided by the Board convinced me that the increases are reasonable under the total circumstances. The Board has been conserving resources and cutting its total number of employees in order to balance its budget and comply with its fiscal caution plan.

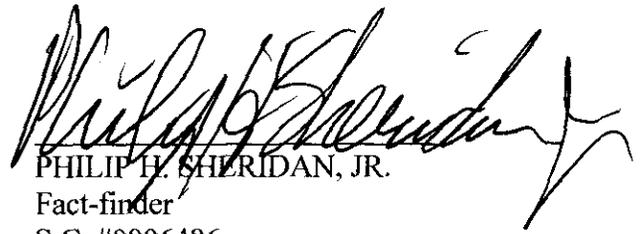
The bargaining unit did not convince me that additional equity increases were appropriate in the second and third year of the contract. The Board's proposal is "front-loaded" so that the increases are enjoyed immediately. The equity increases amount to between .5% and more than 2.5%, depending on the classification (using the highest pay in the classifications from the expired contract appendix), and the equity increases appear to apply to a substantial number of the bargaining unit members.

However, I do not recommend the Board's position on retroactivity. I recommend a compromise and would have the increases be retroactive to August 31, 2007, the expiration date of the last agreement. It is clear from the previous agreement that retroactivity to July 1 has been the past practice of the parties, but the Board has proposed a significant and substantial increase to the bargaining unit. This compromise recommendation should not be interpreted as "reward" or "punishment." I have not been involved in the negotiations and am unable to determine whether there was foot-dragging or stubbornness exhibited by either party. Parties do come to impasse. An inability to reach agreement or complete the process before the expiration date is a fact to be considered, but it appears to be the norm in these matters. No blame should attach to either party, and it appears to me that the parties have a mature, professional and cordial relationship.

CONCLUSION

I recommend that the parties adopt the tentative agreements reached by them. The parties cooperated in presenting their positions to me and in dealing with one another. The courtesy and professional behavior was evidence of the good relations between the parties. Good faith bargaining does not necessarily lead to agreement, but I encourage the parties to continue to bargain in good faith even if they are unable to agree on my recommendations.

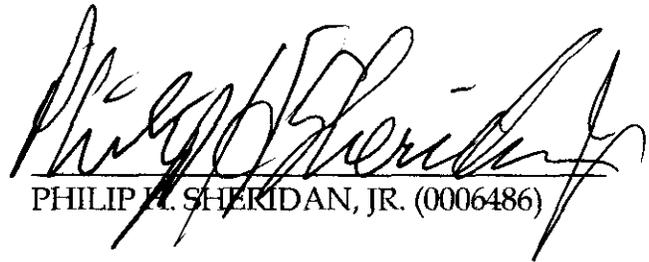
Respectfully submitted,



PHILIP H. SHERIDAN, JR.
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CERTIFICATE OF SERVICE

A copy of the foregoing Fact-Finder Report was served by email and Ordinary U.S. Mail, postage prepaid, this 20th day of December, 2007, to the principal representatives of the parties, and by Ordinary U.S. Mail, postage prepaid, to State Employment Relations Board, 65 E. State St., 12th Floor, Columbus, OH 43215-4213.



PHILIP H. SHERIDAN, JR. (0006486)