

STATE EMPLOYMENT
RELATIONS BOARD

2009 SEC -1 A 11: 25

IN THE MATTER OF IMPASSE X
X
BETWEEN X
X
WARREN COUNTY COMMISSIONERS X
X
AND X
X
WARREN COUNTY X
DISPATCH ASSOCIATION X

**REPORT OF
THE FACT FINDER**

SERB FILE NO.: 2009-MED-03-0366

HEARING: October 16, 2009; Lebanon, Ohio

FACT FINDER: William C. Heekin

APPEARANCES

For the Employer

Kelly E. Babcock, Clemans/Nelson & Associates
John J. Krock, Clemans/Nelson & Associates

For the Union

Stephen S. Lazarus, Attorney
R. Jessup Gage, Attorney

ADMINISTRATION

By way of a letter dated August 20, 2009, from the State Employment Relations Board (SERB), the undersigned was informed of his designation to serve as fact finder regarding an initial labor contract, negotiations impasse. On October 16, 2009, and following receipt of pre-hearing submissions, a fact finding hearing went forward. There, testimony as well as document evidence was presented. The record was closed at the conclusion of the hearing and the matter is now ready for the issuance of a fact finding report.

FINDINGS AND RECOMMENDATIONS

This impasse involves a new bargaining unit made up of approximately 32 Emergency Communications Officers or "Dispatchers", who are represented by the Warren County Dispatch Association ("the Union"), and the Warren County Commissioners ("the Employer"). These Dispatchers work at the Warren County Communications Center; a facility where the main activity concerns the performance of 911 call, emergency dispatch services. Warren County ("the County") employs approximately 980 employees and encompasses a suburban/rural geographic area located in southwestern Ohio. In 2008, it had a population of 207,353. As to the total County workforce, one other group, the sworn deputies employed by the Warren County Sheriff, is likewise represented in collective bargaining. Prior to the fact finding hearing, the Employer and the Union ("the Parties") met quite a number of times in an effort to finalize their first collective bargaining agreement ("the Agreement" or "The Labor Contract"). Accordingly, the remaining unresolved issues are the subject of this fact finding report, where the recommendations contained herein are made in light of the following ORC 4117.14 criteria:

* * *

- Past collectively bargained agreements between the parties;
- 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;
- 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 adjustments on the normal standard of public service,
- The lawful authority of the public employer.
- Any stipulations of the parties.
- Such other factors, not confined to 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 the public service or in private employment.

* * *

Finally and in addition to the following, it is recommended that all tentatively agreed upon contract provisions be adopted.

1.
WAGES

Employer position: The same percentage increase as has been approved for all County non-bargaining unit employees regarding 2009, a 2% lump sum payment on top of the employee's base hourly rate, retroactive to January 1, 2009; as to 2010, a 0% wage increase; and as to 2011, a reopener provision. In addition and as is the case presently, that there be no "steps" regarding longevity pay

Union Position: As to 2009, a 3% increase, effective January 1, 2009; as to 2010, a 3% increase, effective December 31, 2009; and as to 2011, a 3% increase, effective December 30, 2010. Also, that there be two "steps" included regarding longevity pay.

It is recommended regarding the first year of the Agreement that there be a 2% increase in wages – not as a lump sum payment – retroactive to January 1, 2009. Regarding the second year, 2010, it is recommended that there be a 1% increase in wages. As to the third year, 2011, it is recommended that there be a “reopener” provision. It is not recommended that any longevity steps be included.

This is felt to properly balance the interest of the Employer in being fiscally responsible in the face of the current sharp decline in tax revenues, which has mostly been the result of the current severe economic recession that has befallen much of the World, the United States, and the State of Ohio. Accordingly, this recommendation is made in light of what is now starting to be referred to as “the Great Recession”, which is widely seen as the worst since the 1930’s and which began a little more than a year ago in the late summer and early fall of 2008. Here, it appears that the recovery process has only recently begun, where the length and extent of the recovery is the subject of much debate amongst economists; thereby lending strong support to the aforementioned recommendation that the wage level for the third year of the Agreement be subject to a “reopener” provision. While Warren County is quite prosperous with a growing population as well as the second highest per capita annual income in comparison to all other Ohio counties, and seems to have weathered the sharp economic downturn better than most; it has not escaped being greatly impacted by the severity of this recession. Indeed it had a 9.2% unemployment rate as of August of 2009 (compared to 5.6% in August, 2008) and in light of the decline in real estate values and property sales has experienced a substantial reduction in local tax revenues as compared to the previous year, 2008. Thus, County expenses currently exceed County revenues, thereby requiring its cash reserve to be tapped in order to balance the budget.

What also has been considered, as came to light in 2007 after the Employer had looked into the matter, is the fact that this particular group of employees had fallen to the bottom; as compared to other 911 call, dispatchers who are employed by other counties and cities in southwestern Ohio. Accordingly, despite the Employer having responded with a substantial wage increase for that year, 2007, and in 2008, the evidence indicates that these employees would still remain below the average salary as compared to the other jurisdictions.

In the end, a 2% wage increase as to 2009 is felt appropriate in light of the financial constraints which the Employer now faces, as well as the aforementioned external "comparable work" position of these particular employees. At the same time and to reiterate, it is not recommended that either the 2% wage increase for 2009 or the 1% increase for 2010 be in the form of a lump sum payment. As the Union correctly points out, this approach has long term adverse consequences regarding an employee's future rate of pay and benefits. Accordingly, it is felt that a specific reason is needed in order for such a payment approach to be taken. As to 2010, there is little basis upon which to project a significant increase in tax revenues as compared to 2009 so as to justify anything more than a 1% increase. Finally, mainly due to the aforementioned economic picture, now is not felt to be the time to introduce seniority step, pay increases.

2.
INSURANCES

Employer position: The following language be adopted which essentially maintains current practice:

* * *

Section 17.1. The Employer shall make available to bargaining unit employees general insurance and hospitalization plans as provided to all other non-bargaining unit General Fund County employees.

Section 17.2. The Employer may provide a comprehensive plan, flexible benefits plan, a Health Savings Account Plan, or a preferred provider plan, etc. on the same basis as these plans are provided to non-bargaining unit General Fund County employees.

Section 17.3. If the Employer determines that it is necessary to implement a partial co-payment of insurance premiums by non-bargaining unit General Fund County employees, the same partial co-payment shall also apply to employees in this bargaining unit.

* * *

Union position: Include the Employer's insurance plan in the Agreement, as well as proposed language which requires the Employer to retain current levels of funding regarding the Health Savings Account (HSA) feature of the HSA Plan:

* * *

Section 17.2. The Employer may provide a comprehensive plan, a flexible benefits plan, a Health Savings Account Plan, or a preferred provider plan, etc. on the same basis these plans are provided to non-bargaining unit County general fund County employees.

Section 17.3. If the Employer determines that it is necessary to ~~assess~~ implement a partial co-payment of insurance premiums by non-bargaining unit County general fund County employees, the same partial co-payment shall also apply to employees in this bargaining unit. ~~The partial co-payment shall not exceed fifteen percent (15%) of the in category premium, up to a maximum of \$45.00 per period in 2008, \$50.00 per pay period in 2009, and \$55.00 per pay period in 2010.~~

The Employer shall provide the option for Employees to participate in a Health Savings Account (HSA) Insurance Plan as included in this Agreement as Attachment 1.

The Employer shall provide an annual deductible of no more than \$1500 for an individual HSA insurance plan and \$2300 for a family HSA insurance plan.

The Employer shall provide at least \$600 annually into the health savings account of employees electing single insurance coverage under the Employer's HSA plan and at least \$1200 annually into the health savings account of employees electing family insurance coverage under the Employer's HSA plan. These amounts shall be available on the first day of the deductible period.

It is recommended that the position of the Union be adopted as to the first and second year of the Agreement, only as to the following language being included:

* * *

The Employer shall provide at least \$600 annually into the health savings account of employees electing single insurance coverage under the Employer's HSA plan and at least \$1200 annually into the health savings account of employees electing family insurance coverage under the Employer's HSA plan. These amounts shall be available on the first day of the deductible period.

* * *

Otherwise, it is recommended that the language proposed by the Employer be adopted. As to the third year, it is recommended that the issue of employee health insurance be made subject to a reopener provision as has been recommended concerning wages.

Since it is at least in part impacted by the same economic uncertainty which surrounds the issue of wages, the undersigned finds that the cost of health insurance in 2011 – and the ability of both the Employer and the employees to afford such cost – would be better dealt with from the vantage point of 2011. In other words, in light of the current economic uncertainty, the Parties would by then likely have substantially better information regarding what is appropriate for that year. As to the recommendation regarding 2009 and 2010, this is felt to appropriately balance the interest of the Employer in introducing a HSA – a relatively new health insurance concept (a high deductible tied to a certain amount of pre-tax dollars being made available to employees, either for saving or to pay towards the deductible if needed) – as the central feature of its employee health insurance benefit regarding all County employees; with the employee interest in being able to better plan for his/her health care cost needs at least through the end of next year, 2010. Accordingly, this is in light of there not being a “cap” on the deductible as well

as a guarantee of certain benefit levels, thereby allowing the Employer greater flexibility as it considers its insurance plan alternatives. With respect to the Employer's emphasis on the fact that a guarantee as to the level of health savings account contribution is not available to the non-bargaining employees, this touches upon what collective bargaining is largely about; i.e., having a vitally important employment matter such as health insurance be made subject to a contractual agreement concerning a group of employees who have incurred a considerable amount of time and cost in order to avail themselves of this process.

3. DURATION

Employer position: A three year Agreement that ends on December 31, 2011. In addition, it seeks to include a "zipper clause".

Union position: A three year Agreement with an ending date that is the last day of a pay period. In addition, it opposes the inclusion of a "zipper clause".

It is recommended that the position of the Employer be adopted so that the Labor Contract expires on December 31, 2011. As the Employers points out, this is much more in keeping with how this termination date issue is normally handled. At the same time and in light of this being a first time contract, it is not recommended that the Agreement contain a "zipper clause" which would serve to broadly eliminate all past practices and verbal understandings. This follows in light of this pertaining to a subject that uniquely involves the collective bargaining relationship of the Parties, which in this case has only recently begun. Importantly, the record indicates that a review of possible existing verbal understandings or practices has yet to be undertaken.



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November 30, 2009
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November 30, 2009

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RE: SERB Case No: 09-MED-03-0366; Warren County Commissioners – Warren
County Dispatch Association; impasse/factfinding

To Each:

Enclosed, please find two (2) copies of the **REPORT OF THE FACT FINDER**. Also,
enclosed is a copy of the INVOICE.

It has been a privilege to have served as fact finder.

Cordially yours,



William C. Heekin

WCH:bwh

cc: Mary Laurent (w/enclosure) ✓