

STATE EMPLOYMENT
RELATIONS BOARD

FACTFINDING REPORT 2010 SEP 17 P 1:56

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD

September 15, 2010

In the Matter of:

Chester Township Trustees

and

Teamsters Local Union 436

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Case No. 09-MED-09-1009

APPEARANCES

For the Township:

Thomas M. Hanculak, Attorney
Judith Caputo, Trustee
Karen M. N. Austin, Fiscal Officer
Charles Mascella, Road Superintendent

For the Union:

John M. Fortesque, Business Representative
Roger Johnson, Union Steward
Michael Galbraith, Assistant Steward

Factfinder:

Nels E. Nelson

BACKGROUND

The instant case involves Chester Township and Teamsters Local Union 436. The township is located in Geauga County; has a population of 11,000; and is governed by three trustees and an elected fiscal officer. The union represents the nine employees in the Road Department. The parties' first collective bargaining agreement was effective January 1, 2005.

On November 12, 2009, the parties began negotiations for a successor agreement to the one due to expire on December 31, 2009. At subsequent bargaining sessions, the parties reached agreement on a number of issues but were unable to reach an overall agreement. As a result, on February 3, 2010, the union declared impasse and the parties subsequently agreed to fact finding pursuant to a mutually agreed-upon dispute resolution procedure.

The Fact Finder was notified of his appointment on March 31, 2010. A mediation session was held on July 12, 2010. When no settlement was reached, a fact-finding hearing was conducted on August 17, 2010.

The recommendations of the Fact Finder are based upon the criteria set forth in Section 4117-9-05(k) of the Ohio Administrative Rules. They are:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) 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;
- (c) 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;
- (d) The lawful authority of the public employer;

(e) The stipulations of the parties;

(f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute procedures in the public service or in private employment.

ISSUES

The parties submitted two issues to the Fact Finder. For each issue, he will set forth the positions of the parties and summarize the arguments and evidence they presented in support of their positions. The Fact Finder will then offer his analysis for each issue, followed by his recommendation.

1) Article 17 - Insurance, Section 17.2 – Premium Contributions - The current contract requires the township to provide the “life, hospitalization and medical insurance programs” that were in effect as of the execution of the agreement. Pursuant to this language, the township has had a high deductible health plan with health reimbursement accounts (HRA) of \$2,850 for single coverage and \$5,600 for family coverage. Employees have been required to pay 10% of the premiums for dental, health, life, and vision insurance plus 10% of the amount of their HRAs. However, on May 1, 2010, the township assumed responsibility for the entire amount of employees’ HRAs. The township seeks to require employees to pay 12% of the premiums for dental, life, health, and vision insurance effective January 1, 2011. The union wishes to keep employee share of the premiums at 10%.

Township Position - The township argues that employees have an excellent health insurance plan. It points out that it sets aside \$2,850 in a health reimbursement

account for employees who opt for single coverage and \$5,600 for employees who opt for family coverage, which employees are able to use for health care expenses, including prescription drugs. The township notes that when the HRA amounts are exhausted, additional expenses are fully covered by United Health Care.

The township contends that its demand for an increase in the employee premium contribution is justified. It states that “a clear message being given to the Trustees comes from its constituents and that there is a demand that the employees of the Township take on more responsibility with regard to health care premium contributions.” (Township Pre-Hearing Statement, page 6) The township indicates that it expects premiums to increase 10% to 16% at its next renewal and suggests that the 2% increase in employee premium contributions will assist it in remaining fiscally conservative.

The township maintains that the increase in employee premium contributions will have no financial impact on employees. It reports that until May 1, 2010, employees were required to pay 10% of their HRAs but that since then, it has been paying the entire amount. The township indicates that “even if the premium contribution amount is raised to 12%, the net result will not have any financial impact on the employees because of the change in the payment procedure. (Ibid.)

Union Position - The union argues that its position ought to be recommended. It states that the current 10% premium contribution is consistent with comparable townships. The union indicates that employees in Bainbridge pay 10% of the health insurance premium while those in Concord and Painesville Townships are not required to pay any of the premiums.

The union contends that the comments of Fact Finder Jonathan Klein in the police dispute support its position. It states that he “made it very clear that the Trustees’ proposed increase in the employee premium contribution [was] not warranted ... and [was based] primarily on speculation by them as to events that might happen three (3) years from now.” (Union Pre-Hearing Statement, page 3)

Analysis - The Fact Finder must recommend that the employee share of the health insurance premiums remain at 10%. One of the criteria governing the Fact Finder’s recommendation is comparisons. In the instant case, comparisons to other townships support the union’s position. While the utility of comparisons between townships is reduced by the differences in plan designs, the union properly noted that Bainbridge requires a 10% employee contribution and Concord and Painesville require no employee contributions. Furthermore, the data supplied by the township indicate that in Geauga County seven townships require no employee contributions and two require 10% contributions. Only Middlefield, which requires a 15% contribution, makes employees pay more than 10% of health insurance premiums.

The Fact Finder notes that internal comparisons also support the union’s proposal. In the dispute between the township and the Ohio Patrolmen’s Benevolent Association, Fact Finder Klein rejected the township’s demand to increase the police officers’ premium contribution to 12% and recommended that the contribution remain at 10%. The Fact Finder’s recommendations were accepted by the trustees. This Fact Finder sees no rationale to require street department employees to pay more than the higher-paid police officers for the same health insurance plan.

The ability to pay is another important criterion. The health insurance plans put in place by the trustees, with the concurrence of the unions, has allowed the township to control its health insurance costs. As discussed below, the Fact Finder believes that the township has the ability to pay potential increases in health insurance costs. In addition, he believes that the union would be amenable to discussing changes in plan design in order to avoid significant increases in health care costs.

The Fact Finder's conclusion that the premium contribution for road department employees should remain at 10% is not changed by the fact that as of May 1, 2010, the township no longer required employees to pay 10% of the HRA amounts. First, employers are generally responsible for the full amount of HRA contributions. Second, the new procedure with respect to HRA contributions applied to all township employees, including the police officers whose premium contributions were not increased.

Recommendation - The Fact Finder recommends the following contract language:

Employees shall pay ten percent (10%) of the appropriate monthly premium through payroll deduction, bi-weekly, including any changes in the premiums as they occur. The Employer shall pay the entire amount of each employee's HRA.

2) Article 28 - Wages, Section 28.2 - Wage Increases - The current contract provides for wages ranging from \$16.06 for Road Workers to \$23.28 for the Mechanic II. The union demands 3% wage increases effective January 1 of 2010, 2011, and 2012. The township offers a wage freeze for 2010, a 1% increase effective January 1, 2011, and a 2% increase effective January 1, 2012.

Union Position – The union argues that its wage demand is justified. It indicates that road workers in the township are underpaid compared to surrounding communities. The union states that wages in nearby townships are as follows:

Concord	\$23.57
Bainbridge	22.89
Russell	23.03
Painesville	21.20

The union stresses that road workers in the township are paid only \$19.75.

The union contends that its comparable townships are more appropriate than those offered by the township. It complains that some of the comparisons provided by the township involve communities with significantly fewer miles of roads and fewer employees and in some cases, no full-time road workers. The union adds that some of the other road departments do not require employees to operate as much equipment as township employees

The union maintains that the wage increases granted to township officials support its demands. It claims that the fire chief received a \$55,000 wage increase; the trustees gave themselves a 28.5% increase; and the trustees approved a 15.7% increase for the fiscal officer.

The union argues that the Fact Finder's recommendation three years ago is consistent with its wage demand. It points out that he made it clear in his report that Road Department employees were underpaid but recommended only a 3.5% increase because he felt that the existing wage gap could not be made-up all at once. The union notes that the Fact Finder warned the township that it should be prepared to pay a big wage increase in the next round of bargaining.

The union contends that the township can afford to pay its wage demand. It claims that the township has \$10 million “floating around.” The union rejects the township’s attempt to claim a hardship based on the money stolen by Michael Spellman, the former township fiscal officer, because it took place seven years ago.

The union cites the recommendation of Fact Finder Klein in the police dispute. It observes that he recommended wage increases of 2% in 2010 and 2011 and a 2.5% increase in 2012 with no increase in employees’ health insurance premium contributions. The union states that if the Fact Finder were to recommend the same wage increase for the road department employees as for the police officers, it would urge its members to accept the recommendation.

Township Position - The township argues that it faces a challenging financial situation. It projects that even with its wage proposal the Road Department’s carryover will decline from \$351,254 in 2009 to \$227,164 in 2010 and \$100,622 in 2011 and to a negative balance of \$108,220 in 2012. (Township Exhibit 11) The township indicates that this is based on expenditures of \$2,266,169 in 2010; \$2,213,670 in 2012; and \$2,295,970 in 2012 and assumes a 16-year paving cycle. (Ibid.)

The township indicates that the union’s proposal involves substantial costs. It states that the cost of the union’s wage demand, including PERS, health care, and other benefits, exceeds the corresponding 2009 costs by \$41,370 in 2010; \$72,345 in 2011; and \$106,160 in 2012. (Township Exhibit 7) The township reports that the result is an average cost per employee of \$79,410 in 2012. (Ibid.)

The township contends that the Road Department should be viewed as separate from the rest of the township. It points out that the fire and police departments are

supported by their own tax levies and are fully self-sufficient. The township notes that in contrast to this, for several years the township devoted two of its three inside mills to the Road Department and that since July of 2008, it has given all three mills to the department. It claims that unless this subsidy is adjusted, it will not have sufficient funds to conduct its administrative affairs.

The township maintains that it would be futile to turn to the voters. It observes that in 2009 the voters rejected a new .75 mill road levy by a two to one margin. The township indicates that despite the poor outlook, it will have to try to pass levies in 2011 and 2012 in order to have the \$250,000 carryover it states that it needs to purchase salt and to pay wages and benefits at the beginning of each year .

The township claims that it is “still reeling” from the theft committed by Spellman. It points out that the former fiscal officer, who stole over \$4 million, was indicted on September 11, 2003. The township notes that while he has made partial restitution, “that theft has set the tone for every fiscal move made by the Trustees since that time.” (Township Pre-Hearing Statement, page 1)

The township states that a comparison to other townships in the county shows that its wages are “in the middle of the pack.” It suggests that the wage rates it provided for the various job classifications in Bainbridge, Russell, Munson, Burton, Thompson, Newbury, Chardon, Montville, Hambden, Auburn, Huntsburg, Parkman, Middlefield, and Claridon support this assertion. (Township Exhibit 1) The township adds that employees in Geauga County road department accepted a wage freeze for 2010.

The township argues that the Fact Finder cannot “photocopy” the recommendations of Fact Finder Klein in the police dispute. It acknowledges that

employers frequently rely on pattern bargaining in negotiations but notes that Section 4117.14(G)(7) of the Ohio Revised Code requires the Fact Finder to consider the wages of other employees “doing comparable work.” The township observes that “there is a world of difference between the work performed by the Police Department and the Road Department.” (Township Pre-Hearing Statement, page 4) It adds that Fact Finder Klein relied on the fact that the police department’s operating fund had a carryover balance of \$1.5 million in 2009.

The township contends that the compensation of the trustees and the fiscal officer is irrelevant. It acknowledges that the fire chief received a \$55,000 salary increase but states that it was the result of combining three different positions and resulted in the fire department saving money. The township explains that the salaries of the trustees and fiscal officer are set by Sections 505.24 and 507.09 of the ORC, which generated increases when the township’s certificate of estimated resources exceeded \$10 million.

The township concludes that its offer should be recommended. It claims that its position is “more than reasonable, given the uncertainty in the economy, the fragile state of affairs within the Township and especially the Road Department, and the clear mandate being given to it by its constituents that it be fiscally conservative.” (Township Pre-Hearing Statement, page 5)

Analysis - The Fact Finder’s recommendation must be based on the statutory criteria. One of the criteria requires him to compare the wages of the township’s employees to ones doing comparable work. The data offered by the township and union indicate that the township’s Road Department employees are paid less than employees in nearby townships. The township’s claim that its employees are in “the middle of the

pack” is based on comparisons to significantly smaller departments in the eastern part of the county.

The Fact Finder believes that it is important to recognize the impact of the township’s wage proposal over the term of the agreement. Data from the State Employment Relations Board’s 2009 Annual Wage Settlement Report indicates that in 2009 the average settlement for townships was 2.82% and average settlements in multi-year agreements was 2.09% for the first year, 2.46% for the second year, and 2.65% for the third year. The township’s offer of 3% over three years would result in Road Department employees falling even further behind comparable employees.

Another important statutory criterion is the employer’s ability to pay. The township’s claim that it cannot responsibly pay more than its offer is based on the status of the Road and Bridge Fund. It projects that the year end balance of the fund will shrink in 2010 and 2011 and be negative in 2012.

The Fact Finder must challenge the township’s analysis. He believes that the township must continue to subsidize the Road and Bridge Fund from the General Fund in order to meet its obligation to maintain its roads and bridges until it is able to convince voters that additional money is needed to finance the Road Department. It cannot sustain the department by paying substandard wages.

The statute also directs the Fact Finder to consider “other factors ... normally or traditionally taken into account in the determination of issues submitted to mutually agreed upon dispute procedures.” One of the factors routinely considered by Fact Finders and Conciliators is internal comparisons, i.e., settlements the employer has reached with

other bargaining units. In fact, as the township acknowledged, this is a factor that is frequently relied upon by employers in bargaining.

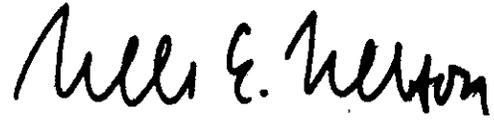
In the instant case, this factor conflicts with the township's wage offer. Fact Finder Klein conducted a careful analysis and recommended wage increases of 2% effective January 1 of 2010 and 2011 and 2.5% effective January 1, 2012, for the police officers. Given that the township accepted his recommendation, the Fact Finder cannot find any justification to recommend the significantly lower offer it has made to employees in the Road Department, especially when they are already paid less than comparable employees.

The Fact Finder, however, cannot recommend the 9% over three years demanded by the union. First, while he believes that the township's financial situation is sound, most public employers face economic uncertainties dictating caution. Second, although the union may be able to make a case for a larger wage increase to reduce the gap between the township and its neighbors, caution needs to be taken in granting one group of employees a greater increase than other employees.

Based on the above analysis, the Fact Finder concludes that the statutory criteria require him to recommend that wages be increased by 2% effective January 1 of 2010 and 2011 and by 2.5% effective January 1, 2012.

Recommendation - The Fact Finder recommends the following contract language:

Section 28.2. Wages shall be increased by 2% effective January 1 of 2010 and 2011 and 2.5% effective January 1, 2012.



Nels E. Nelson
Fact Finder

September 15, 2010
Russell Township
Geauga County, Ohio