

STATE EMPLOYMENT
RELATIONS BOARD

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**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

REPORT AND RECOMMENDATIONS

CASES: 09-MED-10-1216;09-MED-10-1217;09-MED-10-1218;09-MED-10-1219

IN THE MATTER OF A FACT-FINDING BETWEEN

The Fraternal Order of Police, Ohio Labor Council, Inc.

and

The Highland County Sheriff

March 19, 2010

Before Richard J. Colvin, Fact-Finder

Representing The Fraternal Order of Police, Ohio Labor Council, Inc.:

Mark A. Scranton, Staff Representative
Keith E. Brown, Sergeant
Michael Gaines, Communications Representative
Christopher Lengofeld, Road Representative, HCSO

Representing The Highland County Sheriff:

Robert W. Cross, Consultant, Highland County
Shane Wilkin, County Commissioner
Ron Ward, Highland County Sheriff
Christopher Hildenbrandt, Highland County Deputy Sheriff

A. Background:

The State Employment Relations Board appointed the Fact-Finder on November 23, 2009, in compliance with Ohio Revised Code Section 4117.14 (C) (3).

The Parties, The Highland County Sheriff, hereinafter referred to as the "Employer" and the Fraternal Order of Police, Ohio Labor Council, Inc. hereinafter referred to as the "Labor Council" are parties to an Agreement, hereinafter referred to as the "Agreement" dated January 1, 2009 - December 31, 2011.

Article 2 of that Agreement designates the following classifications within the bargaining unit:

Unit A:	Sergeants
Unit B:	Road Patrol Deputies, Detective
Unit C:	Dispatchers
Unit D;	Corrections Officers (Jailers)

The Parties opened Articles 29: Wages and Appendix A; Wage Rates and were able to reach tentative agreement. Article 25: Insurance, *Article 25, is the only issue before the Fact-Finder.*

On November 11, 2009, the Parties entered into an Extension Agreement wherein they agreed to extend the date for the Fact-Finding Report to April 30, 2010. The Parties waived the provisions of 4117.14(G)(11) in regard to all matters of compensation or with cost implications which may be awarded by a Conciliator in accordance with Chapter 4117 O.R.C. and agreed that the Conciliator may award wage increases or other matters with cost implications to be retroactive to January 1, 2010.

B. Position of the Parties as to the unresolved issue:

The Labor Council:

1. Since the signing of the current Agreement in December 2008, the Employer has made significant changes to Article 25, Insurance. For example, until 2009 the health care plan had no deductibles. In mid 2009, a new plan was introduced that had a *\$1,000.00 single and a \$2,000.00 family deductible*. As bargaining unit members had foregone any wage increase in 2009, this new deductible is not acceptable.
2. The contribution levels employee's pay towards the premiums for their respective plans should be lowered from **20% to 10%** of the premium for the insurance plan that is selected. The Labor Council believes that 20% is high when compared to similar counties in Ohio. Highland County also realized a cost savings for each employee covered by this insurance. A reduction in the monthly contribution to ten percent (10%) would allow the County to share the increased cost of insurance that an employee now faces.
3. New language should be added to the Agreement describing *who is, in fact, eligible for insurance benefits*. The Labor Council believes this to be reasonable in light of the bargaining units agreement to forgo a wage increase in 2010.
4. *New language should be added to protect the level of insurance that is currently in place*. This could be accomplished by adding that ...any change in coverage and benefits is permitted so long as the new plan remains *substantially similar* to the traditional insurance that predated the current Agreement. This proposal would

give the County the ability to “shop around” for coverage so long as the level of benefit is not reduced. The County also has the ability to offer other plans should they choose to do so as long as a *substantially similar* plan is offered.

5. Language is also proposed protecting the County from uncontrollable insurance disputes by *mandating certain disputes be addressed through the insurance company, not the arbitration process.*

The Employer:

1. The Parties have agreed to maintain the current wage rates for all classifications with a re-opener for January 1, 2011.
2. The open issue is *Article 25 – Insurance*. The Labor Council proposes to modify the language of Article 25 while the Employer proposes to maintain the current language of the Agreement in Article 25.

The County Commissioners have complete authority under Ohio Revised Code, Chapter 305.171 to determine the type of hospitalization plan, what the plan benefits are to be, and the amount to be paid by the County towards the health insurance premiums.

The Sheriff lacks any authority to procure and obtain health insurance different than the County’s plan for the Sheriff’s employees. The Labor Council’s proposed new language in Article 25-A is totally unacceptable to the County. All the employees of the Sheriff’s office are treated the same as other employees of the County General Fund from which the Sheriff’s funds are budgeted and appropriated

by the Board of Commissioners. Highland County has seen its General Fund dollars drop from \$11,516,045.00 in 2008 to approximately \$7,946,685.00 in 2010. There have been layoffs and changes to deductibles in the health insurance plan, among the many cost containment measures made by the Board of Commissioners to attempt to balance the budget.

The employees of the Sheriff's Department receive the same health insurance benefits as other County General Fund employees. The Commissioners instituted a change of insurance carriers in 2009. Medical Mutual became the new insurer. The change was made to reduce costs. The new plan provided for an annual up front deductible of \$1,000/\$2,000, single/family. The plan it replaced had no annual deductible. There are some 31 bargaining unit employees in the plan, 19 with family coverage and 12 with single coverage. This change produced a rate of \$458.73 single and \$1,233.25 family. The County now pays \$366.99 for a single employee while the employee pays \$91.74. The County now pays \$986.61 for a family plan and the employee pays \$246.64.

The Employer further notes that the budgetary crisis caused reductions in force in the Sheriffs' Department in 2009 with no projected recalls anticipated in 2010. The Counties' unemployment rate was 19% as of January 2010, the third highest rate in the State of Ohio behind Ottawa and Clinton County.

C.

CRITERIA

When making his analysis and recommendations upon the unresolved issue(s), the Fact-Finder has been mindful of and has been guided by the criteria set forth in Ohio Revised Code Section § 4117.14 (C) (4) (e) and Ohio Administrative Code § 4117-9-05 (K).

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved 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) The stipulation of the parties;
- (6) Such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment.

D. **Analysis of the Positions of the Parties on the Unresolved Issue:**

1. The **Labor Council** has proposed substantial modifications to ARTICLE 25 INSURANCES. There are two (2) parts to their proposal:

Part 1 is the demand that the Highland County Board of Commissioners delete certain language in Section A and “pay a minimum of 90% of the premium toward the monthly cost of a family plan and/or the cost of a single plan as chosen from the hospitalization, surgical, major medical plans or HMO plans available through the Highland County Sheriff’s Office starting January 1, 2010.

In no event will the bargaining unit employees pay more toward the monthly cost of insurance than other general fund employees.” In addition it has been proposed that:

1. “An employee who is on the active payroll (receives pay) for a period of five (5) days in any month is entitled to this benefit.
2. An employee who does not receive pay for at least five (5) days in any month will be responsible for payment of the total premium due or continued hospitalization coverage.”

Sections **E**, **F** and **G**. constitute Part 2 and have been proposed so as to be added to ARTICLE 25 as language *clarifications* only. They read as follows:

E. “The Employer shall continue to make available to bargaining unit members and their eligible dependants substantially similar group health and hospitalization insurance coverage and benefits as existed in the Employer’s traditional insurance plan immediately prior to the signing of this Agreement. The Employer reserves the right to change or provide alternate insurance carriers, health maintenance organizations, or benefit levels or to self-insure as it deems appropriate for any form or portion of insurance coverage referred to in this Article, so long as the new coverage and benefits are substantially similar to the traditional insurance which predated this Agreement. The Employer will not be responsible for changes unilaterally imposed by an insurance provider in benefits or co-payment provisions so long as the Employer uses its best efforts to minimize changes by incumbent insurance providers from one plan year to another.”

F. "The Employer reserves the right to institute cost containment measures relative to insurance coverage so long as the basic level of insurance benefits remains substantially similar to the traditional insurance coverage in effect immediately prior to this Agreement. Such changes may include but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, preferred provider provisions, prohibition on weekend admissions except in emergency situations, and mandatory out-patient elective surgery for certain designated surgical procedures."

G. "The extent of coverage under the insurance policies referred to in this Agreement shall be governed by the terms and conditions set forth in said policies or plans. Any questions or disputes concerning said insurance policies or plans or benefits thereunder shall be resolved in accordance with the terms and conditions set forth in said policies or plans and shall not be subject to the grievance and arbitration procedure set forth in this Agreement. The failure of any insurance carrier(s) or plan administrator(s) to provide any benefit for which it has contracted or is obligated shall result in no liability to the Employer, nor shall such failure be considered a breach by the Employer of any obligation undertaken under this or any other Agreement. However, nothing in this Agreement shall be considered to relieve any insurance carrier(s) or plan administrator(s) from any liability it may have to the Employer, bargaining unit member or beneficiary of any bargaining unit member."

The position of the **Employer** is that Part 1 of the Labor Council's proposal is totally unacceptable. Part 2, however, would now be acceptable. The Fact-Finder had recommended that the party's reconsider these two (2) proposals. Each party did so. The Labor Council's Committee rejected the counter-proposal by the Employer to resolve this outstanding issue by this compromise.

Recommendation of the Fact-Finder

Rationale: Reading the current Agreement between the parties at ARTICLE 25: INSURANCES A. reads as follows:

"The Highland County Board of Commissioners shall have the sole determination of what health insurance plan(s) the Bargaining Unit Members have available. The Commissioners shall make this determination in compliance with ORC 305.17.1 The County shall pay the same premium for the Sheriff's Department employees as for other general fund employees, starting on January 1, 2009 with the County paying 80% of the premium and the bargaining unit member paying 20% of the premium of their health insurance plan. The County will continue efforts at implementing cost containment measures to help maintain the co-pay and deductibles of the benefits offered."

D. Reads as follows:

"The parties agree to re-open this Article 25 as part of any re-opener for Article 29 - Wages. The parties will meet on or prior to November 1, 2009 and November 1, 2010 for the years 2010 and 2011."

Thus in approximately seven (7) months time the parties will discuss insurance and wages once again.

The Labor Council in its pre-hearing statistical data, at Tab 13, Cost Comparisons between SERB Data and Highland County, presented what it considers to be relevant material in support of its position.

The statistics the Fact-Finder would consider the more relevant are those are the SERB Statewide Averages of Counties as opposed to the Regional Comparisons.

For example:

Highland County

<u>Coverage</u>	<u>Monthly Cost</u>	<u>County Contribution</u>	<u>Employee Contribution</u>
Single	\$ 458.73	\$ 366.99	\$ 91.74
Family	\$1,233.25	\$ 986.61	\$ 246.64

**SERB
Statewide
Average
of Counties**

Single	\$ 457.11	\$ 389.54	\$ 67.57
Family	\$1,262.64	\$1,044.20	\$ 218.44

Regional Comparisons represent, as I understand it, the Cincinnati Area and do show a lower employee contribution but, in this instance, produces a less relevant employee contribution statistic.

Tab 10 sets forth the Current 20 Percent Contribution. The Cost Comparison for 2008-2009 to 2009-2010 differentiates between the savings accrued to the County and cost increase incurred by the employee.

	<u>Savings to the County</u>	<u>Cost to the Employee</u>
Single	\$ 476.76	\$ 881.20
Family	\$1,198.92	\$1,700.24

The argument in this presentation is not that the Employer has done something, the change in the contribution level for the employees, that is in violation of the Agreement but rather it is, intrinsically, unfair.

Your Fact-Finder has reviewed and evaluated the relevant statistical data, the evidence submitted and the highlights of the testimony received. I have also received and noted the Highland County's Budget Report and the Amended Official Certificate of Estimated Resources dated April 1, 2010.

These are difficult economic times. Normal comparisons must be viewed with candor: What is relevant in this climate is the actual economic status of this County. From what I have received, Highland County is under stress. Admittedly, the Employer is not insolvent, but all available monies have been allocated. To recommend the Labor Council's position would necessitate a reallocation of funds available. As the County's representative stated, to sustain the Labor Council's position could most probably produce immediate layoffs within the Sheriff's Department. It would not be a rational solution but it would be a logical, expedient solution. In the time frame before the parties meet again to discuss Health Insurance and Wages, the economy might rally: Anything is possible.

It is the Recommendation of the Fact-Finder:

1. The County does not have the ability to finance the issue as proposed by the Labor Council and the effect of the adjustment on the normal standard of public service would be not be in the interest or welfare of the public.
2. The parties, to resolve this dispute, accept the following proposed modifications made by the Labor Council and tentatively accepted by the Employer at this hearing amending Article 25 Insurances in the present labor Agreement dated January 1, 2009 – December 31, 2011. The resolution of this open issue will represent a significant step in the parties' confidence in their coming negotiations.

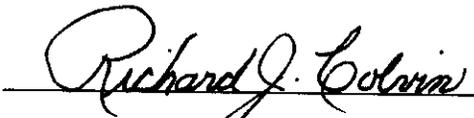
E. *“The Employer shall continue to make available to bargaining unit members and their eligible dependants substantially similar group health and hospitalization insurance coverage and benefits as existed in the Employer’s traditional insurance plan immediately prior to the signing of this Agreement. The Employer reserves the right to change or provide alternate insurance carriers, health maintenance organizations, or benefit levels or to self-insure as it deems appropriate for any form or portion of insurance coverage referred to in this Article, so long as the new coverage and benefits are substantially similar to the traditional insurance which predated this Agreement. The Employer will not be responsible for changes unilaterally imposed by an insurance provider in benefits or co-payment provisions so long as the Employer uses its best efforts to minimize changes by incumbent insurance providers from one plan year to another.”*

F. *“The Employer reserves the right to institute cost containment measures relative to insurance coverage so long as the basic level of insurance benefits remains substantially similar to the traditional insurance coverage in effect immediately prior to this Agreement. Such changes may include, but are not limited to, mandatory second opinions for elective surgery, pre-admission and continuing admission review, preferred provider provisions, prohibition on weekend admissions except in emergency situations, and mandatory out-patient elective surgery for certain designated surgical procedures.”*

G. *“The extent of coverage under the insurance policies referred to in this Agreement shall be governed by the terms and conditions set forth in said policies or plans. Any questions or disputes concerning said insurance policies or plans or benefits*

thereunder shall be resolved in accordance with the terms and conditions set forth in said policies or plans and shall not be subject to the grievance and arbitration procedure set forth in this Agreement. The failure of any insurance carrier(s) or plan administrator(s) to provide any benefit for which it has contracted or is obligated shall result in no liability to the Employer, nor shall such failure be considered a breach by the Employer of any obligation undertaken under this or any other Agreement. However, nothing in this Agreement shall be construed to relieve any insurance carrier(s) or plan administrator(s) from any liability it may have to the Employer, bargaining unit member or beneficiary of any bargaining unit member."

Respectfully submitted in the City of Mason, County of Warren and State of Ohio this 19th day of April 2010.



Richard J. Colvin
Fact-Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing Report was forwarded to the State Employment Relations Board, Edward E. Turner, Administrator, 65 East State Street, 12th Floor, Columbus, Ohio 43215-4213 by Regular U.S. Mail and was also forwarded to the parties listed below, by Overnight Mail on April 19, 2010.

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