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STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN
CASE NO. 11-MED-08-1046

FRATERNAL ORDER OF POLICE, OHIO LABOR COUNCIL, INC.
(Full-time Sergeants and Lieutenants)

and

THE CITY OF KETTERING, OHIO

FACT FINDING REPORT

Submitted by John F. Lenehan
March 23, 2012

TO: **VIA E-MAIL**

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FINDINGS AND RECOMMENDATIONS

I BACKGROUND

On November 29, 2011, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of Fraternal Order of Police, Ohio Labor Council, Inc. (Full-time Sergeants and Lieutenants) and the City of Kettering, Ohio. The parties mutually agreed to extend the filing of the fact finding report until, March 23, 2012, as provided under the Ohio Administrative Code, Section 4117-9-05 (G). A Fact Finding Hearing was held on February 24, 2012 9:00 A.M., at the Kettering City Government Administrative Offices, 3600 Shroyer Road, Kettering, Ohio 45429-2799. Present for and on behalf of the Employer were: Daniel G. Rosenthal, Attorney; Sara Mills, HR Director; James M. O'Dell, Police Chief; and, Mark Schwieterman, City Manager. Present for and on behalf of the Union were: Brenda Goheen, Staff Representative, and Daniel Gangwer, Michael Gabrielson and Roger Smart.

During the Fact Finding Hearing an unsuccessful effort was made to mediate the outstanding issues. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue his report on March 21, 2012. Subsequently, at the request of the Fact Finder, the parties agreed to extend the time for issuing the Fact Finding Report to March 23, 2012.

A. Description of the Bargaining Unit

The parties are the Fraternal Order of Police, Ohio Labor Council, Inc. (Union) and the City of Kettering (Employer)**.** The Bargaining Unit consists of sixteen (16) employees ten (10 sergeants and six (6) lieutenants. The non-bargaining unit command officers are two (2) captains and the Police Chief.

The City of Kettering is located in Montgomery County, Ohio, five miles south of Dayton. According to the 2010 census, it has a population of 56,163 and covers an area of approximately 18.4 square miles. It has four hundred (400) full time employees; eighty-two (82) employees are full time sworn police including the sixteen (16) employees in this bargaining unit.

B. History of Bargaining

The parties have a Collective Bargaining Agreement in effect through December 18, 2011. The unresolved issues submitted to this Fact Finder for findings and recommendations are: 1) Holidays, Article 8, Section 2 and Section 3; 2) Insurance, Article 10, Section 14; 3) Wages, Article 7, Section 3; 4) Direct Deposit, Article 7, Section 11; and, 5) Duration, Article 20, Section 1.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

1) Past collectively bargained agreements between the parties;
2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees in comparable work, given consideration to factors peculiar to the area and the classifications 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 on the normal standards of public service;
4) Lawful authority of the public employer;
5) Stipulations of the parties; and,
6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUES

Issue 1

ARTICLE 8

Holidays

UNION'S POSITION

The Union has proposed converting two personal leave days to two floating holidays. Currently, employees receive five (5) Personal Leave Days and ten (10) Holidays. According to the Union this is a no- cost change to the contract. It proposes this change because there is the chance that a legislative change may be proposed to restrict public employees to three personal leave days. This change the Union believes will keep the five personal leave days currently provided in the contract from becoming an example to support such legislation and avoid future negotiations of the parties on this issue if such legislation is passed.

EMPLOYER'S POSITION

The Employer's response to the foregoing Union proposal is that it is based upon a fanciful concern that defeated Senate Bill 5's limit of three (3) personal days will be resurrected. Thus, according to the Employer the Union's proposal should be rejected.

FINDING AND OPINION

"No man's life, liberty, or property is safe while the Legislature is in session". (The Yale Book of Quotations) This is a popular political phrase that began with a New York court decision in 1866. While the foregoing quote may accurately express the Union's concern, its proposal would not necessarily provide protection against future legislative action. It is possible that the Ohio Assembly would choose not only to limit the number of personal leave days, but also the number of holidays. Thus, it is the opinion of the Fact Finder that the Union's proposal is speculative as to what action, if any, the Ohio Assembly may take regarding personal leave and holidays.

The Union maintains that its proposal is cost neutral. In the absence of any evidence or data to the contrary this may be true. However, these leaves are not the same. All employees in the unit are automatically entitled to ten (10) paid holidays. Whereas, personal leave entitlement requires advanced approval, and if not used during the year, unlike holidays, it is not paid. Under the Union's proposal there would be a mandatory payment for two additional floating holidays, whether used or not.

Another issue could involve overtime pay. According to Article 7, Section 6, holidays and Easter Sunday are paid at a double time rate for work performed on these days. Would this also apply to the Floating holidays? It is not clear how this would work.

Based upon the Union's proposal being speculative as to the future action by the legislature, the difference in the leaves, and possible additional costs and overtime issues, it is the opinion of the Fact Finder that the Union's request for converting two (2) personal leave days to floating holidays should be denied at this time. Should the legislature take action to limit personal leave days, the parties can deal with that at the time of contract negotiations.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that the Union's proposal to convert two (2) personal leave days to floating holidays be denied and that there be no change in the provisions of Article 8 of the Collective Bargaining Agreement.

Issue 2

ARTICLE 10

Insurance

EMPLOYER'S POSITION

The City of Kettering provides medical coverage through a Health Savings Account ("HSA"). The HSA covers the plan's high deductible, with any remaining balance available to cover the employees' additional qualified medical needs, and past age 65 unrestricted use without penalty.

The Employer states that according to the Kaiser 2011 annual survey of 2,088 private and public employers nationwide, 23% of employers now offer a high deductible health plan. This is a significant increase over the past several years. SERB's 2011 survey indicates that high deductible plans make up 17% of Health Plans, an increase of 5% from 2010. Of the cities surveyed by SERB, 22% had high deductible plans.

As originally implemented, Kettering's Plan provided for a fully funded HSA's deductible, i.e., $2,000.00 a year single and $4,000.00 a year family. Employees paid 17% of the premium. In the police units, employees would pay no premium, but the Employer's contribution to the HSA would be decreased by the amount the 17% premium would have been. The effect, however, was the same i.e. 100% coverage of the deductible.

The Employer proposes to continue the funding from the previous contract for 2012. In 2013 and 2014, the Employer proposes to reduce its funding of the HSA to 75% of the deductible, require employees to contribute 25% to the deductible and pay 17% of the premium. It also proposes the following place of service and prescription co-pays in 2013 and 2014.

<u>Place of Service Co-Pays (Not to Exceeds)</u>

Effective January 1, 2013 and for the remainder of the contract term place of service co-pays shall apply as follows:

Primary Care Physician	$30
Specialty Physician	$50
Urgent Care	$75
ER	$125

-Co-pays apply after the deductible has been met by the employee.

-The price points above are "not to exceeds" and actual price points could be lower once implemented.

<u>Prescription Co-Pays (Not to Exceeds)</u>

In addition to the Place of Service Co-pays set forth above, effective January 1, 2014 and for the remainder of the contract term prescription co-pays shall apply as follows:

Tier 1	$20
Tier 2	$40
Tier 3	$60 ($50 if tier 4 implemented to create differential between the tiers)
*Tier 4	$60

*If Tier 4 is not implemented, drugs typically in the Tier 4 would be considered in Tier 3 for co-pays purposes.

-Co-pays apply after the deductible has been met by the employee.

-The price points above are "not to exceeds" and actual price points could be lower once implemented.

According to the Employer the impact of the employees having "no skin" in the HSA game has been significant. The cost of the current plan has increased significantly since its inception and grew from $4,242,865 in 2010 to $5,125,563 in 2011, or 21%. The insurers insist that, unless employees participate in funding the HSA, the premium cost could be punitive. Insurers are reluctant to underwrite employer-funded HSAs because there is no cost control incentive. Full Employer funding of HSAs is unique among Ohio's public employers and private sector employers. In the private sector, typically employees fund the majority of the HSAs.

According to the Employer the average U.S. employee deductible for single coverage under an HSA as set forth in the Kaiser survey is $1,908. In contrast the Employer is proposing contributions of $500.00 per year for a single plan and $1,000.00 for a family plan, with the remaining $1,500.00 or $3,000.00 being paid by the Employer.

In support of its position concerning the necessity of increasing an employee's contribution to the HSA to 25%, the Employer submitted the testimony of Steve Hopf, Vice President/Partner at McGowan Brabender, and the insurance broker for the Employer. Mr. Hopf's testimony confirmed the Employer's position that the premiums were higher because the employees are not currently contributing to the HSA and that an employee contribution would help keep the Health Insurance costs under control. Mr. Hopf also testified that premium costs would be higher in the future, unless the Employer changed the plan to require an employee contribution to the HSA, and that providers would be reluctant to insure the Employer's Plan.

In addition, the Employer submitted a note book containing the following exhibits: 1) the 2009-2011 Collective Bargaining Agreement; 2) the Employer's Fact Finding proposal; 3) BNA survey of wages settlements for 2012; 4) FOP Fact Finding Proposal; 5) the history of income tax revenue from 2009 through 2012 (projected revenue for 2012 shows an increase of over a $1,000,000); 6) survey of the impact of the Ohio State Budget; 7) wage surveys of cities included within a ten mile radius with a population of more than 5,000; 8) Kaiser Foundation survey of Health Benefits; 9) Kaiser Foundation survey and Study of High Deductible Health Plans with A Savings Option; 10) SERB 2011 Report on Cost of Health Insurance in Ohio's Public Sector; 11) comparison of total insurance costs from 2010 to 2011; 12) a survey of employers with HSA, the deductibles and contributions to the HSAs; 13) the proposed Employer's Wellness Program; and, 14) copy of the City's proposed language changes. In addition to the aforementioned exhibits, two others were submitted at the hearing, viz., City of Kettering Medical Insurance Funding/Premium Rate History and Health Insurance Cost Chart.

The Employer argues that there is little doubt that the command officers can afford the City's proposal. The Employer is now requiring all non-bargaining unit employees who received a 1.75% increase in 2012, to contribute 25% to their HSAs. According to the Employer the bargaining unit officers are among the highest paid in Ohio. The Employer states that its proposed wage increase will more than cover the increased expense. In addition, the Employer's proposal provides a wellness incentive that will allow employees to earn back up to one-half of the employee HSA contributions. The Employer does not believe the premium contributions of 17% excessive. According to the Kaiser survey, the average employee contribution to family HSA premiums is 26%.

Therefore, the Employer believes its proposal for a 25%, contribution to the HSA, 17% co-pay of premium, and place of service and prescription drug co-pays are reasonable and necessary to contain costs.

UNION'S POSITION

The Union proposes that the current language requiring the Employer to pay 100% of HSA deductible not funded by the employees' 17% premium equivalent should be continued. According to the Union including both the Employer's deductible contribution and the premium, the employees pay approximately 13.3% of the total cost of family insurance and 12.12 % of the total cost of the single plan. These percentages the Union states are in line with the state averages.

The Union objects to the Employer's proposal to reduce its obligation to pay 100% of the deductible and instead provide only 75% of the deductible of $2,000/$4,000. Allowing the Employer to reduce their requirement to pay 100% of the deductible would increase the employee costs for family to $3,525.64 and $1, 478.96 for single in 2012. According to the Union, the total percentage of cost to the employee will rise from 13.3% to 18.7% for family coverage and from 12.12% to 19.06% for single coverage. Currently, the Employer picks up 86.97% of family coverage and 87.88% of total single coverage. The effect of the Employer's proposal would be to reduce its percentage to 81.3% for family and 80.94% for single. According to the Union, employees would realize increases that are 62% and 75.24% over the 2011 cost to employees.

The Union proposes a yearly cap of $2,670 for family plan and $1020 for single plan coverage be incorporated in the Collective Bargaining Agreement. The cap would guarantee that if increased premiums occur during the life of the agreement the premiums costs will not rise above the proposed amount and wipe out any gains on salary. According to the Union, under the cap an employee with a family plan could see an increase of $490.17 through the life of the agreement and an employee with a single plan could realize an increase of $176.00 through the life of the contract with the adoption of the Union proposal.

The Union also proposes the following place of service and prescription co-pays for 2013 and 2014.

Effective January 1, 2013 and for the remainder of the contract term place of service co-pays shall apply as follows:

Place of Service Co-pays

Physician	$15.00
Specialist	$25.00
Urgent Care	$30.00
ER	$50.00

Effective January 1, 2014 and for the remainder of the contract prescription con-pays shall apply as follows:

Prescription Co-pays

Generic	$ 5.00
Non-generic	$10.00

The Union maintains that the foregoing co-pays are more in line with State averages than the City's proposal.

In support of its position on Health Insurance and Wages, the Union submitted a note book containing the following exhibits: 1) Union's Pre-hearing statement; 2) SERB Documents; 3)Agreement to Extend Fact Finding Report; 4) Union Proposals; 5) Budget Analysis; 6) Insurance Analysis; 7) SERB Insurance Analysis; 8) Insurance Comparable; 9) Wage Comparable; 10) 2012 Kettering Budget; 11) 2010 CAFR; 12) Premium Comparison for Medical Insurance; and, 13) 2009-2010 Collective Bargaining Agreement.

FINDING AND OPINION

Based upon a review of the exhibits relating to HSA and Medical Plans in the public and private sectors, the Pre-Hearing and Hearing Statements, and the testimony of witnesses, the following findings are made as to the proposed HSA Plan changes.

1. The evidence is clear and convincing that in order to control costs and keep premiums at reasonable rates, the employees must make some contribution in funding the HSA.
2. Even though the Employer argues that the employees in this unit can afford the 25% contribution to the HSA, the increase that would result in the employees' share of costs would be excessive when imposed at one time.
3. Employee contributions to the HSA need to be phased in by requiring a 12.5% contribution effective January 1, 2013, and another 12.5 % effective January 1, 2014.
4. Commencing January 1, 2013, the employees' co-pay for premiums should be 17% and the current system of deducting the equivalent of 17% from Employer's contribution to the HSA should be eliminated.
5. The Union's proposal establishing dollar caps on premium contributions should be rejected because it would not be cost effective.
6. The Union's proposal for Place of Service Co-pays and Prescription Co-pays are reasonable and should be adopted and incorporated into the agreement.

1. **The evidence is clear and convincing that in order to control costs and keep premiums at reasonable rates, the employees must make some contribution in funding the HSA.**

The testimony of the Employer's Insurance Broker Steve Hopf established that where employees do not contribute to the HSA, premium cost will be more than where employees participate in the funding of the HSA. Also, underwriters are unwilling to write insurance, and providers are unwilling to insure where employees do not have an investment in funding the HSA, or "skin in the game". This would result in increased premiums at the expense of both the Employer and employees.

The external and internal comparables submitted by the Employer into evidence clearly establish that most employees in plans having HSAs make contributions to their Health Savings Accounts. The Employer's plan in this case is unique in that there is no requirement for the employee to make a contribution. When this plan was put into place, it should have been anticipated by the parties that some contribution would be required of the employee at a future date in order for the plan to remain viable and cost effective.

2. **Even though the Employer argues that the employees in this unit can afford the 25% contribution to the HSA, the increase that would result in the employees' share of costs would be excessive when imposed at one time.**

The Union's argument that employees would realize increases that are 62% and 75.24% over the 2011 cost to the employees has merit. The Fact Finder estimates the increase in costs for single plan to be approximately 62% and for a family plan to be approximately 57%, not 75.24% as claimed in the Union's Pre-Hearing statement. Even at 62% and 57% these increases are excessive for one year. This is especially true in the absence of evidence of imminent economic necessity.

3. **Employee contributions to the HSA need to be phased in by requiring a 12.5% contribution effective January 1, 2013, and another 12.5 % effective January 1, 2014.**

The Employer's proposal for an employee contribution of 25% to the HSA is not unreasonable when spread over a two year period. If the wage increases being proposed are made effective, the employees would be in a better position to pick up the contribution to the HSA.

4. Commencing January 1, 2013, the employees' co-pay for premiums should be 17% and the current system of deducting the equivalent of 17% from Employer's contribution to the HSA should be eliminated.

The Fact Finder agrees with the Employer's position on this matter. For 2012 there should be no change in the manner in which the HSA is administered. The current system of the equivalent of 17% for premium being deducted from the Employer's contribution to the HSA would remain in place. Also, there would be no additional requirement for the employees to contribute to the HSA for that year.

Commencing January 1, 2013, all employees in the bargaining unit would pay a premium of 17% and contribute 12.5% to their HSA ($250.00 single, $500.00 family). Commencing January 1, 2014 all employees in the bargaining unit would pay a premium of 17% and contribute an additional 12.5% to their HSA or a total 25% ($500.00 single, $1,000.00 family)

5. The Union's proposal establishing dollar caps on premium contributions should be rejected because it would not be cost effective.

The Union's proposal must be rejected. While the concept would be great if both parties could cap their cost of health insurance, that is not the case here. The Union is asking the Employer to assume total liability for all increases above the cap. If the insurance providers would give a firm quote on premiums through 2014, a cap may be something to consider. However, that is not the reality of the market in the Miami Valley. The Employer could be in the untenable position of bearing all cost above the cap without recourse to negotiations as to premiums or benefits during the term of the agreement.

The Union's proposal is unrealistic. It is contrary to the long established trend of employees sharing in the cost of health care as a means of controlling costs.

6. The Union's proposal for Place of Service Co-pays and Prescription Co-pays are reasonable and should be adopted and incorporated into the agreement.

An examination of the SERB reports on co-pays indicates that the Union's proposals for Place of Service and Prescription Drug co-pays are reasonable and should be adopted and incorporated into the agreement.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that the following changes be implemented regarding the HSA and Place of Service and Prescription co-pays.

1. For 2012 there will be no change in the administration of the HSA.
2. For 2012 there will be no change in the Employer's contribution to the HSA.
3. For 2012 there will be no change in benefits under Health Plan.
4. Commencing January 1, 2013, an employee's contribution to the Health Savings Account shall be 12.5% of the deductible and the Employer's contribution to the Health Savings Account shall be 87.5% of the deductible.
5. Commencing January 1, 2014, an employee's contribution to the Health Savings Account shall be 25% of the deductible and the Employer's contribution shall be 75% of the deductible.
6. Commencing January 1, 2013, all employees in the bargaining unit shall pay 17% co-pay toward the health insurance premium.
7. Effective January 1, 2013 and for the remainder of the contract term place of service co-pays shall apply as follows:

   Place of Service Co-pays

Physician	$15.00
Specialist	$25.00
Urgent Care	$30.00
ER	$50.00

8. Effective January 1, 2014 and for the remainder of the contract prescription co-pays shall apply as follows:

   Prescription Co-pays

Generic	$ 5.00
Non-generic	$10.00

Issue 3

ARTICLE 7, Section 3

Wages

UNION'S POSITION

The Union proposes the following wage increases: 2.5% effective December 18, 2011; 2.25% effective December 17, 2012; and, 2.0% effective December 16, 2013. The Union maintains that the Employer despite the hard economic times has the ability to pay the proposed wage increases.

EMPLOYER'S POSITION

The Employer proposes the following wage increases: 2.0% effective upon signing; 2.25% effective December 17, 2012; and, 2.5% effective December 16, 2013. The Employer has not claimed an inability to pay either the Union's or its own wage proposal.

The Employer expects the 2012 income tax revenue to optimistically equal the 2008 revenue, after three years of lower receipts. However, its loss of revenue from the State of Ohio (local government fund, estate tax and tangible personal property tax) will average $2.75 million per year over the next six years for a total of more than $16,500,000. In addition Kettering property values declined 9% and this is estimated to reduce property tax revenue by $600,000.00 a year. Also, several Kettering employers, Kodak, Northrop Grumman and LJB Engineering Consultants, have recently announced layoffs or transfers of a significant number of employees.

Finally, the Employer argues that given the command officers are among the highest paid of their comparables, the Employer's proposal is more reasonable and should be recommended.

FINDING AND OPINION

Both parties have presented reasonable wage proposals. There is no evidence that the Employer would not be able to pay either proposal. It is the opinion of this Fact Finder that the Employer's proposal should be recommended, especially in consideration of the recommendation on the Health Savings Account and co-pays on the insurance benefits.

However, it is recommended that the effective date for the first year increase should be as proposed by the Union, i.e., December 18, 2011, if permitted by law. Should that date not be legally permitted, then the effective date should be January 1, 2012.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that the following increases be added to current pay schedules:

Year 1- 2.0% effective December 18, 2011.

Year 2 - 2.25% effective December 17, 2012

Year 3 – 2.5% effective December 16, 2013

Issue 4

ARTICLE 7, Section 11

Direct Deposit

FINDING AND OPINION

The parties agree to the language proposed by the Employer as set forth in the following recommendation.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that the following language should be incorporated into the Collective Bargaining Agreement as Article 7- Wages, Section 11.

> If required by the City all payroll will be direct deposited in an account of the employee's choice in compliance with the guidelines established by the City of Kettering Finance Department. Paystubs will be distributed electronically.

Issue 5

ARTICLE 20, Section 1

Duration

FINDING AND OPINION

The parties agree to the language proposed by the Employer as set forth in the following recommendation.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that Article 20, Section 1 should read as follows:

> Section 1. Agreement Duration. This Agreement shall be in full force and effect through December 14, 2014. All provisions shall be effective from and after the date of signing, unless otherwise specified, or as soon after that as benefit coverage can be obtained in the normal course of business or as provided by law.

IV

CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted February 24, 2012. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan____
John F. Lenehan
Fact Finder

March 23, 2012

V

PROOF OF SERVICE

This fact-finding report was electronically transmitted this 23rd day of March, 2012, to the persons named below.

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