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**STATE EMPLOYMENT RELTIONS BOARD
STATE OF OHIO**

In the Matter of Fact-finding between:

Canfield Local School District : Case No. 2014-MED-04-0544
Board of Education

And : Recommendations

Canfield School Bus Drivers : Margaret Nancy Johnson
Ohio Education Association/NEA Fact-finder

Appearances

For the Board of Education
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Statement of the Case

In accordance with Ohio Revised Code Section 4117.14(C)(3), the State Employment Relations Board, hereinafter "SERB," appointed Margaret Nancy Johnson to serve as fact-finder in the bargaining impasse between the Canfield Local School District Board of Education, "BOE," and the Canfield School Bus Drivers Association, "Association." A fact-finding hearing was convened on December 15, 2014, in a conference room at the School Administration Building in Canfield, Ohio. Prior thereto, the fact-finder received timely position statements setting forth contract language in dispute. Following an effort to mediate a resolution, both parties had the opportunity to present testimony and evidence on the issues in contention.

There are approximately sixteen (16) bus drivers in the bargaining unit represented by the Association. The current three year contract between the parties expired on June 28, 2014. In bargaining for a successor contract, the Association proposed new provisions for Article II, Salary, and Article XI, Fringe Benefits, with which the BOE did not concur. Contract language considered by the fact-finder in these recommendations addresses the modifications sought by the Association as well as a deletion proposed by the BOE.

Issues

Prior to proceeding to fact-finding, the parties negotiated and agreed upon contract modifications. All such tentative agreements are incorporated into and included in these recommendations. Remaining issues addressed herein are contractual provisions pertaining to "Add time" included in Article II, Salary, and insurance coverage set forth in Article XI, Fringe Benefits.

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Positions of the Parties

Canfield School Bus Drivers Association

a. Add Time

While the parties have agreed to raise the minimum route time from three and one-half (3.5) hours to four (4) hours, they have not reached agreement as to overages beyond the designated add time. In contention is contract language pertaining to "Add Time," defined as when bus drivers are required to work beyond the four (4) hours for which they are contracted. Agreed upon contract language will provide that "add time is established within the first month of the school year and paid up to date by the following pay period."

The Association seeks additional language further clarifying "add time." In its proposal the Association excludes the Cardinal Mooney route from the defined four hour route and provides that any route extending beyond the four hours will be compensated at the hourly rate for the overage. Additional language proposed by the Union is that drivers working beyond the designated add time will submit a time sheet for all overages and be paid accordingly.

Concerns regarding add time for the Association arise from extensive road work which is anticipated to occur during the terms of the Agreement and will have a significant impact upon the Cardinal Mooney route time. Unless the parties address the issue during these negotiations, the drivers will incur uncompensated overages.

b. Insurance

The Union proposes returning dental coverage to the insurance plan provided for bus drivers. Citing bargaining history, the Union points out that dental coverage had previously been included in the labor contract, but the Union agreed to temporarily forego dental, as the District was in the process of passing a school levy. Although assurances had been made that the dental would be returned after passage of the levy, the District has declined to do so. Currently, the District has more than adequate funds to pay for the dental coverage sought by the Association, in part due to the assistance rendered by this Local at the time of campaigning for passage of the operating levy.

Contending that a request for dental coverage is not unusual, the Union cites the Streetsboro BOE Agreement with school bus drivers which includes dental coverage. The Association notes that after a lower start pay, Streetsboro school bus drivers out distance Canfield drivers in terms of pay from step 5 through step 25 of the pay scale. Additionally, comparing the five year forecasts of the two school districts, the Association argues a similarity in the revenue/operating costs but points out that Canfield forecasts a larger carryover in its operating funds.

Internal equity justifies the insurance proposal of the Association. Every other unit with which the BOE bargains has dental insurance, and this unit should have the same insurance coverage as other BOE employees.

Additionally, for the purposes of internal equity, the Association seeks an increase from \$1,200 to \$1,700 as an insurance "opt-out." Other units with which the BOE negotiates receive a \$1,700 "bonus" if electing not to have medical coverage for each twelve (12) month period. There is no justification for this unit not to receive the same benefit.

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To settle the insurance issue the Association is willing to agree to single dental coverage with the ability of drivers to pay the premium difference should they choose to insure family members. Cost of this benefit to the district for the life of the contract is less than \$35,000. Given bargaining history and comparable data, the proposal of the Association for dental coverage is reasonable.

The Union further proposes that the Board shall continue to provide health insurance coverage for employees who were working the requisite number of hours (20 hours per week) as of the beginning of the 2014-2015 school year.

Canfield School District Board of Education

a. Add Time

Having already agreed to significant changes in the contract language including an increase in minimum hours for bus routes, the BOE is opposed to additional modification of contract language pertaining to "Add time." Proposing the contract change, the Association has the burden of establishing a reason for the new language. In the absence of any evidentiary basis for modification of Article II, 2.03, current contract language should be retained.

b. Insurance

Because school bus drivers work less than 30 hours per week, insurance provisions for that unit differ from those of other employees. There is no justification for employees working twenty (20) hours per week or less to receive the same insurance as employees working more hours. The BOE argues that it is not appropriate to add an insurance benefit for employees working twenty hours per week or less. The annual "opt-out" stipend offered to other bargaining units is based upon the insurance received by employees in those units, and, therefore, the costs incurred by the BOE and the savings assumed when an employee elects to forego insurance benefits.

Nor do external comparables justify the insurance proposal of the Association. Consistent with the requirements of the Affordable Care Act, the trend in negotiating insurance benefits has been to limit access to coverage to employees working thirty (30) hours or more. Review of insurance provisions for local school districts indicates that consistently insurance benefits are related to hours worked and school boards restrict insurance coverage to those employees working more than twenty hours. For insurance eligibility, the following comparables are offered: Poland Local Schools require employees to work forty hours; Boardman Local Schools require twenty-five hours; South Range requires thirty-five hours; Struthers City Schools require seven hours per day; Sebring Local Schools require 30 hours.

As to the coverage provided, this BOE provides a generous benefit package. Thus, although Boardman does provide dental coverage for employees working twenty-five hours per week, the premium contribution of employees is 25%, compared with 10% required of employees at Canfield Local Schools. Western Reserve Local Schools provide dental for employees working twenty hours or more per week, but that district requires a 20% premium contribution. Lowell Local School employees wishing dental must pay 52% of the cost of the premium.

Analysis of comparable school districts sustains the position of the Board on the issue of modification to the insurance language of the Agreement. In this instance, bargaining unit employees working only twenty hours have access to a generous insurance package. Even

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though it does not include dental, employees may purchase that benefit at a cost significantly reduced from the cost if purchased individually.

While the Association argues ability to pay, the issue should be what is an appropriate Board expenditure? Carry-overs in the operating fund do not require those funds to be spent. On the contrary, carry-overs are a fiscal safeguard which every public entity is required to maintain. The position of the Board on the matters in dispute is reasonable and should be adapted.

Criteria

In making the recommendations which follow the fact-finder has taken into account criteria specifically set forth in Ohio Revised Code Section 4117.14(G)(7). Additionally the fact-finder has considered factors traditionally relied upon by neutrals in resolving a bargaining impasse as well as established negotiating principles which have evolved with usage.

Discussion

A. Article 2 – Section 2.03

The parties herein have agreed upon extensive modifications to contract language regarding regular as well as pre-school and parochial routes. Changes include increasing the minimum hours per day from three and one-half (3.5) hours to four (4) hours per day. In addition to these changes, the Association seeks a contractual exclusion for the Cardinal Mooney route. Considerable testimony was elicited as to route delays anticipated due to road construction scheduled for within the school district, as well as to prior discussions regarding time sheets and time clocks for bus drivers.

Times on school bus routes are normally determined by actual runs. In the case of the Cardinal Mooney route, as the Fact-finder understands the position of the Association, overages are anticipated due to road construction. Yet, the construction has not yet commenced and the route is not at this time affected by the road work.

As a general principle, changes to contract language should be based upon actual occurrences, and it is the responsibility of the proposing party to justify its demands with factual data. In this instance, the justification is based upon potential and as yet undetermined delays. Moreover, contract modifications should not normally be based upon temporary conditions. While changes in language will, of course, occur, a stable bargaining relationship is built upon continuity and consistency rather than ad hoc adjustments having short-term application.

Rather than a change to contract language, the fact-finder proposes that for the duration of this Agreement the parties execute a Memorandum of Understanding. Language in the MOU should indicate that due to road construction bus drivers may experience overages in their routes beyond add time. In the event of delays due to construction drivers shall maintain a time sheet documenting the overage and the Board agrees to compensate a driver for overages caused by such construction delays. Although the fact-finder recognizes that delays may occur without advance notice, there simply is no way to address this issue prior to its occurrence. As proposed herein, a MOU should have the effect of satisfying concerns of bus drivers without unnecessarily incorporating into the Agreement language having limited duration.

The fact-finder recommends a MOU to address concerns arising from route delays attributed to road construction.

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B. Article XI. Fringe Benefit

In addition to modifications agreed upon by the Board, the Association proposes additional changes to language pertaining to health insurance. These include resuming coverage for dental care and increasing the opt-out "bonus." The Board proposes deletion of Section 11.01 B which presently requires continued benefits for bus drivers who "on June 1, 2011 were in full time bus driving status and were eligible." Citing applicable statutory criterion, the fact-finder discusses the differing proposals put forth by the parties.

1. Dental Insurance

The Association seeks to return dental care as part of the insurance benefits provided by the District for bus drivers. Pertaining to dental insurance, the argument of the Association is two-fold: 1) the Board of Education assured the bargaining unit when negotiating the current contract, that if it relinquished dental care then in its contract, after passage of the operating fund levy, the benefit would be restored; 2) internal and external comparables justify the inclusion of dental care.

As to the first contention, the fact-finder must conclude that uncorroborated assurances made in the course of bargaining have limited probative value. Although bargaining history and past collective bargaining agreements are, indeed, statutory criteria, once change in prior language occurs, it is presumed that a contract modification is justified by a change in conditions and circumstances. Moreover, the presumption is that the modification is intended to be long-term rather than for the duration of a single contract.

As noted when discussing route changes, collective bargaining establishes a stability which is undermined by short-term bargaining. In cases of extreme financial uncertainty, the parties may negotiate a reopener, but the preference is for finality. Nothing in contract language or documented bargaining history between these parties suggests that the removal of dental care was meant to be temporary.

While contractual provisions bind a successor administration, side bar agreements or understandings which have not been memorialized, do not have the same force and effect. In order for promises made by one administration in the course of contract negotiations to bind a subsequent administration, the promises would require some notation and mutual acknowledgement. In the absence of evidence of either, verbal assurances that the deletion of dental care was meant to be short-term do not justify its restoration in this round of collective bargaining.

In an effort to compromise, the Association has suggested language to the effect that single dental coverage be provided with employee ability to purchase additional coverage at premium cost. Again, removal of the benefit was negotiated in the last round of collective bargaining, without retention of single coverage. Parties bargain with the intent of moving forward, not back. Considering bargaining history, inclusion of single dental coverage would not contribute to a stable bargaining relationship.

While persuasively presented, comparability arguments made by the Association do not justify the dental benefits now proposed. While it is true that other bargaining units with which the Board negotiates have dental insurance (See Bus Drivers Exhibits 6 and 7), employees in those units for whom dental insurance is provided are working more hours than bus drivers

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(See Board Exhibit 1). As pointed out by the Board, consistent with the Affordable Care Act, employer provided health insurance benefits are generally tied in to the number of hours worked by the employee. Testimony and documentation submitted by the Board establishes conclusively that district employees having a dental care benefit work thirty (30) hours or more.

Fact-finders in the past have been fairly consistent in the observation that health care benefits for employees of a public sector employer should be similar, and that for the issue of health care benefits, internal comparability is a persuasive argument. Nonetheless, upon review, this fact-finder notes a trend that increasingly eligibility for health care benefits for classified school district employees is conditioned upon hours worked. Moreover, the internal comparability argument does not mandate exact uniformity.

While Streetsboro bus drivers, whose work day is defined as four hours, apparently receive dental insurance, careful perusal of their labor contract establishes the parties have negotiated the issue of insurance entitlement for employees working under thirty (30) hours per week. Importantly, insurance language in the Streetsboro contract provides that new employees “who work less than thirty (30) hours per week shall be eligible to participate in the insurance plans by paying thirty percent (30%) of insurance premiums.” Eligible, full-time Streetsboro employees pay twelve percent (12%) of the insurance premium and do not receive vision care. All Canfield school bus drivers, regardless of date of hire, who work twenty (20) hours per week, have the option of receiving an insurance package including vision care while paying ten percent (10%) in a premium contribution.

Analysis of comparables submitted by the Board further confirms that insurance benefits for school bus drivers are contingent upon the number of hours worked. While that number is twenty (20) hours in the case of Western Reserve Local Schools, those employees pay a 20% premium contribution. Similarly, in Boardman Local Schools, eligibility for dental insurance for “new hires” is twenty-five (25) hours per week, with a premium contribution of 25%, while in West Branch Local Schools, employees working twenty-five hours pay 20% of the cost of the insurance. In Lowell Local Schools, bus drivers pay 52% of the cost of the premium.

What is clear from the comparable data is that school districts and classified employees have negotiated a range of insurance benefits with differing eligibility requirements, coverage, and premium contributions. Based on insurance benefits for comparable units, the fact-finder cannot conclude that the insurance package for the Association is out of synchronization with current trends. On the contrary, entitlement of drivers working twenty hours to a comprehensive insurance package excluding dental for a ten percent (10%) premium contribution is neither deficient nor less than that provided school bus drivers in northeast Ohio. Certainly, differing terms can be negotiated or mediated, but such a modification would involve the entire insurance package and not simply the dental insurance which the unit herein seeks to include.

Finally, on the issue of dental care, the fact-finder addresses the argument of the Association that the District has the ability to pay for the proposed benefit. Citing an improved financial forecast for the District, the Association argues dental care should be provided as the District can readily afford the same. Ability to pay for a particular benefit, however, does not necessarily mean it should be provided. As discussed above, whether or not a proposal should be incorporated into an Agreement depends upon a number of factors, including financial

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ability. In the instance of dental coverage, applicable criteria weigh against inclusion of dental care as part of the insurance package for this unit.

Nonetheless, a review of comparable labor agreements indicates that when employees are not eligible for insurance coverage, parties have negotiated provisions which assist in purchasing coverage. For example, the Struthers agreement, more fully discussed in the opt-out discussion, provides a credit towards coverage. Poland City Schools previously provided forty-hour employees with a monetary payment “in lieu of” dental benefits. To achieve greater parity among employees, the fact-finder recommends that should a bargaining unit member choose to purchase dental coverage through the School District, such employee shall be credited with \$200.00, annually, towards the premium for dental care.

Accordingly, the fact-finder does not recommend inclusion of dental care proposed by the Association but recommends a credit of \$200.00 should an employee purchase coverage through the Mahoning County Schools Employee Insurance Consortium.

2. Maintenance of Insurance Eligibility

Discussion of Section 11.01 B. was minimal, but it remains an issue, with the Board seeking its removal and the Association proposing retention with some modification. The language involves continuing insurance coverage for employees who were eligible as of on June 1, 2011 (referencing the current contract). Negotiation principles would mandate that the Board, seeking removal of the language, bears the burden of justifying its position. Other than Board unwillingness to continue to pay insurance premiums for an employee who loses eligibility by reason of hours worked, no other justification was provided. Although ability to pay is a statutory criterion, unwillingness to pay is not and should not be a criterion for removing or changing contract language.

As provided in current contract language, the Board should continue insurance coverage for “current bus drivers in full time bus driving status and eligible for insurance at the time of annual enrollment.” **The fact-finder recommends continuation of insurance coverage for an employee who losses eligibility for the duration of the term but not for the remainder of the Agreement between the parties.**

3. Opt-Out Language

Current contract language includes a \$1,200 bonus for eligible employees who elect not to enroll in a medical plan. Arguing, again, internal comparability, the Association proposes increasing the bonus to \$1,700, the amount paid to other district employees who opt-out of insurance coverage. Noting that the payment relates to insurance costs saved by the Board when an employee declines coverage, the Board argues that since dental care is not provided, there is no Board “savings” to pass on to the employee.

Quite different from the coverage issue previously addressed, there is little justification for treating this unit differently from other units in terms of the opt-out language. Unlike the dental coverage language, rather than being bargained out of the Agreement, “Optional Health Care Election” was simply reduced, not eliminated. Thus, negotiating an increase in the benefit is entirely consistent with bargaining principles.

The Board maintains that the amount of the bonus corresponds to the benefits waived and since it does not receive dental coverage, the bonus for this bargaining unit is less. Absent in

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the evidence presented, however, is any financial data costing out the insurance benefits received by employees. There is nothing in the evidence upon which the fact-finder can conclude that the difference is due to dental care premiums.

A review of the OAPSE and the Teamsters contracts establish employees in those units receive \$1,700 for waiving “medical, dental, prescription drug, and vision coverage.” Admittedly, in the absence of cost analysis, comparisons are challenging. Even so, all employees who opt out have to secure and pay for insurance from another source, and any incentive paid to employees to do so should be somewhat similar. In this instance, not only does the bargaining unit receive less in benefits, but they have less in a bonus to secure alternative coverage.

In an effort to find a reasonable figure for the disputed “bonus,” the fact-finder has looked at comparable contracts in area schools. Again, because of variables in coverage and eligibility, comparability is somewhat elusive. South Range Local Schools provide dental for drivers having twenty-five (25) hours per week at a 10% premium. Opt-out language in that contract includes a \$1,600 bonus. Sebring Local Schools has a \$1,000 opt-out for eligible (30 hours per week) employees and Beaver Local Schools pays twice that amount-- \$2,000, as does Streetsboro City Schools, both of which provide dental. Opt-out language for Struthers City Schools is \$1,500 but employees must work 1261 hours per year for single coverage which does not include dental. Interestingly, ineligible employees may access Struthers District coverage and receive a credit, ranging from \$1,125 to \$2,025 towards coverage, or a lesser amount as an opt-out. Based on these figures the fact-finder can determine that the disputed opt-out provision should be adjusted as it is low by comparison. Accordingly, the fact-finder recommends that the opt-out be increased to \$1,400, taking into account that the unit does not receive dental care.

While recognizing differences in the units, the above adjustments are intended to create greater internal parity. In submitting these recommendations the fact-finder acknowledges the impact of hours worked on insurance eligibility. She also notes, however, that hours worked are not indicative of the value of service provided. School bus drivers are often the first—and last—school employee with whom children interact on a daily basis. As such, they set a tone for both the beginning and end of the school day for a child.

Recommendations

1. Salary- Article II

For the duration of the Agreement, the fact finder recommends a Memorandum of Understanding to address concerns arising from route delays due to road construction. The MOU should include provision that drivers shall maintain a log or time sheet documenting overages beyond “add time” caused by road delays and that the Board agrees to compensate drivers for such overages.

2. Fringe Benefits- Article XI

- A. Inclusion of dental insurance for the bargaining unit is not recommended. However, a \$200 “credit” should a bargaining unit member purchase dental coverage through the Mahoning County Schools Employee Insurance Consortium is recommended.
- B. Should an employee eligible at the time of enrollment lose eligibility due to reduced hours, insurance coverage for that employee should be maintained for the duration of the insurance term.

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C. An increase to \$1,400 in the waiver language is recommended.

Respectfully submitted,

s/s Margaret Nancy Johnson

Service

A copy of the foregoing recommendations has been issued this 6th day of February, 2015, to: jbritton@ohioedlaw.com; carlileg@ohea.org; MED@SERB.state.oh.us.

s/s Margaret Nancy Johnson