

In the Matter of Factfinding

Between SERB Case No. 2017-MED-01-0007

FOP-OLC Before: Harry Graham

and

Lorain County Sheriff's Office

APPEARANCES: For FOP-OLC:

Jackie Wegman
FOP-OLC
3500 Stillwater Rd.
Maumee, OH. 43537

For Lorain County Sheriff's Office:

Robin Bell
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2351 South Arlington Rd., Suite A
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INTRODUCTION: Pursuant to the procedures of the Ohio State Employment Relations Board a hearing was held in this matter before Harry Graham. At that hearing the parties were provided complete opportunity to present testimony and evidence. At the conclusion of the hearing the parties waived the time requirement for receipt of this report. The record in this matter was closed on August 25, 2017 in Elyria OH.

ISSUES: There are two issues in dispute in this proceeding. These are:

1 Healthcare

2 Wages

ISSUE 1, HEALTHCARE

POSITION OF THE UNION: The Union is well-aware the Employer is proposing changes in the current health insurance plan. That plan covers members of this bargaining unit as well as other employees of the County, represented and non-represented alike. That situation has existed for many years. In this round of negotiations the Union views the position of the County as being unwilling to negotiate on health insurance. Such a stance is improper in the view of the Union, notwithstanding the decision of the Court in *Allen Cty. Sheriff's Office v. Fraternal Order of Police, Ohio Labor Council, Inc.* 2012-Ohio-3122. In general *Allen Cty.* stands for the proposition that public employers in Ohio are not required to negotiate over health care. Not so according to the Union. Presuming that negotiation will occur over the issue of health insurance the Union proposes that there be the possibility for employees to waive insurance coverage. When that occurs those who waive coverage should receive a monthly payment of \$125.00 per month. Further, the Union proposes the Employer provide 30 days notice of any changes to the health insurance plan and that the present ten percent (10%) premium payment be maintained for the duration of the Agreement.

The Union is aware a significant issue for the Employer is the concept of a spousal carve-out. This entails elimination of health insurance coverage provided by the County to spouses of employees who have health insurance provided by their employer. (If any). At the hearing the Union pointed to a situation involving the spouse of an employee who works at Wal-Mart. Health insurance through Wal-Mart is available to this employee on terms that are prohibitive. The cost is high and the benefits are low. It is unconscionable to require people in this situation to opt-out of County-provided

health insurance the Union insists. Nonetheless, the Union is accepting of the concept of a spousal carve-out. It proposes that if the spouse of an employee has insurance available from their own employer they must enroll in that plan. However, if the spouse earns \$25,000 or less annually and the health insurance provided by their employer would cost more than \$25.00 per month they may be on the plan of the Employer. This arrangement has the virtue of equity and fairness to both employer and employees in the view of the Union.

A final element of the proposal of the Union is establishment of a Health Care Committee. To be composed of a representative of the Union, one from another bargaining unit, a non-union employee and two representatives of County administration. The Committee would study the issue of health care in the County and make recommendations to the County Commissioners. The Union points out that such committees are now commonplace and have proven valuable. No reason exists not to have such a committee in Lorain County according to the Union.

POSITION OF THE EMPLOYER: There are three elements to the healthcare proposal of the Employer. Initially, it proposes language change to “clarify”¹ current practice with respect to healthcare. The County presently provides what it terms as a “base” healthcare plan. It can offer additional plans. Employees presently pay ten percent (10%) of the premium for single and family coverage. The County is proposing that as of April, 2018 that will increase to twelve percent (12%). It points out that even at twelve percent (12%) the situation in Lorain County will be more favorable to employees than is the case throughout the State according to the health insurance data supplied by SERB.

¹ Employer Exhibit 1, p. 1

There are two sections of the proposal of the Employer with respect to spousal coverage health insurance. Initially it seeks a spousal carve-out. That is, if the spouse of an employee has access to health insurance through his/her employer the spouse would be required to utilize that insurance in lieu of County-provided insurance. Should the spousal carve-out not be in the Agreement the Employer proposes a surcharge on employees. That is, an employee desiring to keep his/her spouse on their health insurance would be required to make payment towards such coverage.

On the one hand the Lorain County health insurance plan is very good. It has low single and family deductibles, \$100/\$200, and low out-of-pocket maximum costs of \$500 single and \$1000 family. The high quality features of this plan result in costs that are above the statewide average according to the SERB data.

The Employer points out that there is a history of pattern bargaining in Lorain County. That is the case in the current round of negotiations. There is nothing to warrant treating this group of employees differently than others in County service. In fact, one group of County employees represented by the United Auto Workers has had recourse to Factfinding in the present round of negotiations. (SERB Case No. 2016-MED-06-0650, Novak, Factfinder, June 9, 2017). Factfinder Novak recommended a deviation from the County health insurance pattern for the represented employees of the Department of Job and Family Service. His report was rejected by the Employer. As seen by the County, a pattern is a pattern and must be strictly observed. As that is the case it urges adoption of its proposal in its entirety.

DISCUSSION: It is the case that pattern bargaining is a very significant feature of the industrial relations landscape. It serves both the Employer and the Union. Neither

desires to fall prey to the phenomenon of “whipsawing.” That is when one group secures a benefit not present in the agreement of another group. The second group feels slighted and aggrieved. The stage is set for the second group to seek the terms granted the first group and more. This can lead to instability. That pattern bargaining serves the interests of unions and employers alike explains its widespread acceptance.

That said, the concept of “the pattern” in negotiations involving multiple bargaining units is not monolithic. Oftentimes one group secures a benefit not seen in the agreement of other groups. For instance, service employees may have a tool purchase and/or maintenance allowance. Law enforcement personnel may have a payment for weapons proficiency. Payments for uniform purchase and maintenance normally differ across different groups. Notwithstanding, it is the case that with respect to such issues as health insurance the concept of pattern bargaining is given great weight by the parties and neutrals alike.

To recall, another group of employees of Lorain County has been to Factfinding. The Factfinder recommended a deviation from the pattern in County service. His Report was rejected by the Employer. At this juncture we do not know the outcome of negotiations between the County and the United Auto Workers represented bargaining unit. An element of uncertainty exists.

It was not indicated at the hearing that the health insurance plan in Lorain County is in fiscal difficulty. Nor was it demonstrated that the spousal carve-out was required to ensure the fiscal integrity of the County health insurance plan. Per the rationale for this item provided at Factfinding the carve-out is desirable from the standpoint of the

Employer. Necessity was not shown.² Offsetting that is the fact that some sort of spousal restrictions are commonplace and becoming more so.³ Further, Employer Exhibit 4 shows that a spousal carve-out has become generalized in County service. The language of various collective bargaining agreements covering County employees e.g. Employer Exhibit 4-3, p. 42. is silent on the economic circumstances that would trigger the spousal exclusion. No income limitation is shown. Thus, it may be the case that the Employer would and/or could determine that any health insurance plan offered to the spouse of any County employee triggers the spousal exclusion. This would be the case no matter how costly the plan, how meager the benefits and whatever the income level of the spouse. This leaves much room for uncertainty. It is recommended that there be included a spousal carve-out provision in the forthcoming Agreement. That language should read as follows:

Article 27, Section 6, Spousal Coverage/Spousal Surcharge: In the event the Board of Commissioners determines that a spousal carve out/spousal surcharge is appropriate, such term/conditions shall not be effective until on or after January 1, 2018. At the discretion of the Board of Commissioners spousal coverage may be made available only upon proof that the employee's spouse does not have other medical coverage available to him/her through the spouse's employer. If the spouse earns less than \$30,000 per year and health insurance from the spouses' employer would cost more than \$30.00 per month for single coverage the spouse will be covered on the County health insurance plan. Additionally, in lieu of imposing a spousal carve out, the Board of Commissioners may establish a spousal surcharge rate (applied in addition to the base contribution share for family coverage) that would allow for a spouse who would otherwise be ineligible for coverage based on having access to insurance through a spouse's employer to remain on the plan by paying the separate spousal surcharge, in addition to the base contribution share. The spousal surcharge is not subject to the premium cost sharing provisions of this article and is paid entirely by the participating employee.

² Employer "Rationale," Employer Ex. 10.

³ Er. Ex. 9

All other elements of the Employer proposal on health care are recommended to the parties including initiation of an 88% employer, 12% employee premium payment sharing effective April 1, 2018.

ISSUE 2, WAGES

POSITION OF THE UNION: The Union proposes there be a three percent (3.0%) wage increase each year of the Agreement. Its proposal makes the wage increase retroactive to April 1, 2017.

The Union proposal is related to the structure of compensation in the Sheriff's Office. The Agreement specifies rank differentials between various classifications in the Sheriff's Office. As related by the Union at the hearing over the years effective wage differentials have narrowed. Furthermore, comparison data supports its offer according to the Union. Wage differentials in Cuyahoga County are 18% for Sergeants and 16% for Lieutenants. In Lucas County the differentials are 20%. In Lorain County the wage differential is 16% for Sergeants and Lieutenants. This supports its proposal.

Accordingly, a recommendation of the 3.0% is justified the Union urges.

POSITION OF THE EMPLOYER: The County is proposing three wage increases over the term of the Agreement. These are: 2.3%, 1.7% and 2.0%. Examination of comparison data, Employer Exhibits 15-17 shows members of this bargaining unit are well situated compared to their counterparts elsewhere in Northeast Ohio. Further, that favorable comparison is bolstered by the fact that County employees have had good health insurance at modest cost. There can be no assertion that bargaining unit members are under compensated. In addition there is a pattern for wage increases in Lorain County. That pattern is the increase proposed by the Employer above. Nothing is

on the record that would justify alteration of the pattern in the opinion of the Sheriff. As that is the case it seeks a recommendation that its proposal be adopted without alteration.

DISCUSSION: The Employer is correct to point to the comparison data supporting its proposal. Those data support its proposal unreservedly. So too does the pattern of settlements within the County. The wage proposal of the Employer largely comports with settlements in like jurisdictions in Northeast Ohio. It is recommended to the parties. Further, the recommended wage increase should be made retroactive to April 1, 2017.

All tentative agreements are made part of this award by reference and recommended to the parties.

Electronically signed and dated this 20th day of September 2017 at Solon, OH.

Harry Graham
Factfinder