

**STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

**In the Matter of** )  
**Fact-Finding Between:** )  
 )  
**AFSCME OHIO COUNCIL 8,** ) **Case No: 2018-MED-01-0062**  
**LOCAL 101** )  
**Employee Organization,** )  
 )  
 )  
**-and-** )  
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 )  
**MONTGOMERY COUNTY BOARD** ) **Pete B. Lowe**  
**OF COUNTY COMMISSIONERS** ) **FactFinder**  
**Employer** )  
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**FACT-FINDING REPORT  
and  
RECOMMENDATIONS**

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Appearances

For the Employer:

Stephanie R. Echols, Human Resources Director  
David S. Holbrook, Assistant Human Resources Director

For the Union:

Stacey Benson-Taylor, Regional Director (Lead Negotiator)  
Scott Thomasson, Staff Representative  
Kelly Bennett, Chapter Chairperson  
Raymond Blevins, Vice Chapter Chairperson  
Tia Cox, Vice Chapter Chairperson  
Jeff Hasty, Chapter Chairperson  
Keith Lander, Chapter Chairperson

Date of Issuance: July 26, 2018

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## **I. PROCEDURAL BACKGROUND**

The State Employment Relations Board (SERB), pursuant to Ohio Revised Code Section 4117.14(C) (3) and at the request of both parties, appointed Pete B. Lowe as the Factfinder in this matter on April 19, 2018. Following the parties mutual agreement to extend the time for the Factfinder to conduct a hearing and issue a report, a hearing was scheduled for May 15, 2018. On May 9, 2018, the AFSCME Regional Director notified the Factfinder that she needed to cancel the May 15<sup>th</sup> hearing and schedule a different date. The Employer agreed to reschedule the hearing. The parties subsequently agreed to schedule a hearing to occur on June 22, 2018. On that date, a hearing was held at the AFSCME Regional Office located at 15 Gates Street, Dayton, Ohio.

The Union is the sole and exclusive bargaining agent for approximately 853 of the County's full-time employees in a variety of classifications, excluding employees in management, supervisory, nursing, and security positions.

The parties are currently operating under a labor contract which does not expire until December 31, 2018. However, Article 28, Section 3 of the current contract provides that either party may re-open the contract "for the purpose of negotiating the contributions contained in the Insurance Program for 2018, if agreed between the parties." The parties have been engaged in negotiations under this reopener provision since February 2018 and have met on five separate occasions including two sessions with a SERB appointed mediator. The parties have been unsuccessful in resolving their differences.

Both parties timely submitted their required submission statements which the Factfinder reviewed prior to the hearing. The factfinder surmised and both parties agreed at the hearing that the only issues before the factfinder are:

ISSUE I: Can Montgomery County discontinue the Buy-Up insurance plan? The Buy-up plan is a traditional PPO plan offered as an option under the County's group health insurance program which provides for a co-payment for doctor's office visits, deductibles and co-insurance for other medical services.

ISSUE II: How much will employees pay in monthly contributions to the health plan they choose?

ISSUE III: Should the County establish a health insurance committee?

Both parties agreed that there were no other articles of the contract in dispute.

Prior to beginning the hearing the Factfinder asked the parties if they desired to attempt to mediate a settlement. Both parties agreed to mediation. The Factfinder met separately with each bargaining committee and listened to their respective arguments regarding the unresolved issues. During the mediation process the Factfinder was able to obtain a thorough understanding of each party's respective position on each of the unresolved issues.

The Factfinder learned during the mediation process that the County had already eliminated the Buy-up plan from the list of plans available to all County employees under its health insurance program and did not desire to reinstitute this option. The Union bargaining committee also revealed that they were unable to agree to any settlement that did not include the Buy-up plan due to directions from the union members. After approximately two hours of mediation, the principal representatives of each party advised the Factfinder that they thought it would take a recommendation from the Factfinder to settle their differences. Both parties agreed to waive the remainder of the hearing and requested that the Factfinder issue a report and recommendation based on the information already obtained during the mediation process and the evidence submitted by both parties through their submission statements and fact-finding notebooks. The parties further agreed to extend the period for the Factfinder to issue his report and recommendation and requested that it not be issued until July 26, 2018.

## **II. FACT-FINDING CRITERIA**

In determination of the facts and recommendations contained in this report, the Factfinder considered the following criteria as enumerated in Ohio Administrative Code Section 4117-9-05(K):

- (1) Past collectively bargained agreements, if any, between the parties;
- (2) Comparison of the unresolved issues relative to the 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;
- (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 normal standard of public service;
- (4) The lawful authority of the public employer;
- (5) Any stipulations of the parties;
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

### **III. FINDINGS OF FACT AND FINAL RECOMMENDATION**

#### **ISSUE 1**

##### **Can Montgomery County discontinue the Buy-Up insurance plan?**

**Employer Position and Rationale:** The Employer points out that when the high deductible health insurance plans were introduced in 2011/2012, employees were notified that the Buy-up Plan would eventually be eliminated. During previous negotiations, the elimination of the Buy-up Plan was still being contemplated and the parties mutually agreed to prohibit new enrollment in the Buy-up Plan for employees hired after June 30, 2013. The parties also subsequently agreed that once an employee moves from the Buy-up Plan into one of the high deductible plans, they would not be permitted to re-enroll in the Buy-up Plan. Employees were also notified during the open enrollment period through the Montgomery County Benefits Guide and in presentations regarding health insurance coverage that the Buy-up Plan would be discontinued on July 1, 2018.

The Employer contends that the current labor contract provides the County with the authority to determine plan offerings and that previous contract negotiations and reopeners have been limited to negotiating only the employees' level of contributions for health insurance benefits. The Employer believes that the current contract language provides employees the right to participate in the plans which the County elects to offer but does not require the County to negotiate the types of plans offered.

**Union Position and Rationale:** The Union asserts that the levels of coverage have been and are subject to negotiations. The Union points to the fact that the current labor agreement lists the three separate plans and provides the employees' contribution rates for each including the Buy-up Plan. The Union contends that this is evidence that the County can not eliminate any of the three plans listed in the labor agreement without the consent of the Union.

The Union also argues that many of its members cannot afford the high deductibles under the other plans and therefore need to remain on the Buy-up Plan. The Union contends that this is especially true since the Employer's contribution to the health savings account is not provided at the beginning of the year but is paid in two installments.

The Union proposes maintaining the current level of coverage including the Buy-up Plan.

**Decision:** Health insurance has been a very contentious issue in many negotiations for the past several years as the Employer struggles with the ever increasing cost and the Union attempts to maintain an adequate level of coverage and a reasonable contribution levels for its members. The health insurance companies have also struggled with the ever increasing cost of healthcare by modifying the types of plans offered in order to remain cost competitive. Health insurance is truly an issue that remains in flux making it difficult for employers and employees to negotiate this benefit. It is evident by the current contract language that the parties have struggled with this issue by instituting optional plans, establishing a Section 125 plan, eliminating double coverage for spouses working for the County, implementing a wellness incentive program, a flexible

spending account, a healthcare account, and a dependent care account. Both the Union and the Employer are to be commended on their innovative approach to this problem and low level of employee contributions they have been able to maintain on all the plans offered.

However, in regards to Issue 1, the Factfinder does not see where the current labor contract language locks the Employer into providing specific types of plans. While the Union certainly has the right to propose minimum levels of coverage or a specific type of plan during their next negotiation of the agreement, Section 1 in Article 28 of the current agreement states that “employees shall be entitled to participate in the County’s group health programs in accordance with the County’s Section 125 Plan. Section 7 of the current agreement also states that “benefits provided herein shall be provided through plans, programs, or group coverage selected by the County.” While the current agreement does list the contribution rates employees must pay for the Buy-up Plan, the Factfinder is not convinced that this forces the County to continue to offer such plan. The employees’ contribution rates for whatever plans the County elects to offer would have to be specified in the agreement, since employee contribution rates are definitely a bargaining issue.

At the time of fact-finding hearing, the Buy-up plan had effectively been eliminated and all County employees had already moved to another plan offered by the County starting on July 1, 2018. The Factfinder does not see where the reopener language in Article 28, Section 3 of the current agreement provides him authority to require the County to reinstitute an insurance plan that has already been eliminated from the list of plans offered to all County employees. Section 3 provides for the reopening of the contract for the express purpose of “negotiating the contributions contained in the Insurance Program for 2018.”

For the above reasons, the Factfinder finds that the Montgomery County can eliminate the Buy-up Plan. However, negotiations are a give and take process in which both parties expect to achieve some benefit. Since the bargaining unit employees are being required to forfeit a health insurance option previously available and the Employer is able to eliminate the Buy-up plan and realize a savings on their health insurance cost, the Factfinder recommends that all employees enrolled in a Montgomery County health insurance plan on July 1, 2018 shall receive from the County a lump sum payment of \$750.00 to assist them with transitioning to the higher deductible plans that now remain as their only option.

The recommended language in regard to Issue 1, including the one-time lump sum payment is contained in the recommended Article 28 found following discussion of the other two issues.

**ISSUE 2****How much will employees pay in monthly contributions to the health plan they choose?**

Both parties have proposed a maximum percentage cap on employees' contribution rates and actual rates for the current year based on employees' level of compensation. Employees earning a higher level of compensation would be expected to pay more for their health insurance coverage. However, the parties' proposals for fact-finding do differ in regards to the maximum salaries for each tier and their proposed level of employee contributions.

**Employer Position and Rationale:** The Employer presented information showing that under its self-insured insurance system it has experienced approximately a 10% per year increase in its medical claims costs over the past four years. The Employer states that these increases have been borne exclusively by the County since employees' contributions have not changed since 2014 and remain artificially low. The County argues that Montgomery County employees pay an average of 3.33% for health insurance coverage while employee contribution rates in most public sector organizations are 13%. The County also indicates that 100% of the bargaining unit employees fall within the lowest two tiers of its proposed contribution rate schedule and that all County employees have the opportunity to reduce their out of pocket costs by participating in the County's wellness incentive program and by taking advantage of the County's matching contribution to their health savings account.

**Union Position and Rationale:** The Union expressed its agreement to a salary tier system for establishing employee health insurance contribution rates but believes the maximum salaries in each tier should be adjusted so there is less spread between the minimum and maximum in each tier. The Union also argues that the increase in employee contributions proposed by the County is unnecessary and excessive.

**Decision:** The budget data submitted at the hearing indicates that the County has experienced a \$1,167,247.00 or 10.5% increase in its expenditures for health insurance over the last three years. In examining the SERB health insurance report for 2017, it appears that Montgomery County employees health insurance contributions are substantially less than the statewide average paid by other public employees and substantially less than the amount paid by other County employees in similar size counties. The Factfinder believes this is reflective of the efforts discussed earlier in this report that the parties have made to help control health insurance costs. The current agreement also contains incentive programs that employees can utilize to reduce the impact of the proposed increases in employee health insurance contributions.

During the mediation process the employer offered a counter-proposal which reduced the amount of increase in employee contributions from what was contained in the Employer's earlier proposal. The Factfinder finds that the increases proposed by the Employer in their last counter-proposal are reasonable and in line with the averages reflected in the latest SERB health insurance report. Furthermore, the lump sum increase previously granted in regard to Issue 1 will also help alleviate the impact of any increase in the employees' contributions.

For the above reasons, the Factfinder recommends adoption of the Employer's last proposed rates for employees' health insurance contributions. These rates are contained in the recommended Article 28 found following discussion of Issue 3.

**ISSUE 3**

**Should the County establish a health insurance committee?**

The Union has proposed that the County create a health insurance committee to review the usage, cost and designs of current healthcare plans and proposed plans. The committee would meet bi-monthly and would have the authority to recommend cost cutting measures for the following healthcare plan year.

**Employer Position and Rationale:** The Employer is opposed to establishing a health insurance committee that includes only management and AFSCME Union representatives since the Union represents only about 25% of the County employees eligible to participate in the County's health insurance program. The County claims that it already shares health insurance information with the Union when requested and as issues arise or if significant changes in the plan are anticipated. The County also points out the fact that the Union already participates in a Benefits Taskforce that meets semi-annually and annually to update all County employees and receive their input. The Benefits Taskforce has representatives from all the unions representing Montgomery County employees, elected officials, and other offices and agencies that have employees eligible to participate in the County healthcare plans. The Employer has indicated to the Factfinder that the County is willing to share information and consider suggestions from the Union at any time. The County believes that a health insurance committee which includes only one of the many groups of eligible employees would be ineffective and repetitious of other communication tools already in place.

**Union Position and Rationale:** The Union contends that the existing taskforce does not provide the Union adequate input into the decision making process regarding health insurance benefits. The Union claims that the taskforce meetings are used primarily to communicate to employees what management has already decided to do or anticipates doing in the near future. The Union believes an insurance committee which includes only Union and Employer representatives would provide a more direct line to discuss health insurance issues.

**Decision:** The Factfinder believes that two-way communications are essential in helping employees understand and accept changes in health insurance benefits. Input from employees can be helpful even in those cases where management has the ultimate authority to make the final decision. However, in the present case a taskforce already exists to provide a means for communications between all the parties involved in the County's health insurance plans. Furthermore, the County's representatives have indicated their willingness to share information and consider suggestions from the Union regarding health insurance issues. Article 13, Labor Management Committee, provides the Union with a mechanism to initiate such discussions.

For the above reasons and because the Factfinder believes the reopener language contained in Article 28, Section 3 does not give him sufficient authority to rule on this issue, the Factfinder does not recommend the establishment of an insurance committee as proposed by the Union.

**CONTRACT LANGUAGE AWARDED**

The Factfinder recommends that Article 28 of the current contract be amended to read as follows:

**ARTICLE 28**  
**HEALTH BENEFITS**

Section 1. Eligibility and Coverage

All employees, excepting part-time (working twenty (20) hours or less per week), temporary, seasonal, and intermittent employees shall be entitled to participate in the County's group health programs in accordance with the County's Section 125 Plan.

Employees whose spouse also works for the County and is eligible for medical benefits under the County's plan, are not eligible to obtain double coverage under the plan. Both employee and spouse can select Employee only, or one can select Employee plus one or Family Coverage with the other declining. In all cases any employee covered under any County health plan, either as an employee or a dependent, will not be eligible to receive the monthly waiver.

The County will contribute the following amounts to employees eligible for the waiver who choose to waive medical coverage.

Employee only: \$57.50 monthly for an annual total of \$690.00

Employee + Child(ren): \$90.00 monthly for an annual total of \$1080.00

Employee + Spouse: \$100.00 monthly for an annual total of \$1200.00

Employee + Family: \$120.00 monthly for an annual total of \$1440.00

Employees may contribute to the Flexible Spending Account, either the Health Care Account or the Dependent Care Account or both, by redirecting a portion of their pre-tax income. Such salary redirection will be subject to all provisions of IRS Chapter 125.

Employees hired after June 30, 2013 may participate in the County's group health programs however, their enrollment in the medical coverage is limited to the Basic or Enhanced (HDHP) Plans.

Section 2: Effective September 1, 2018 through June 30, 2019, employees will contribute no more than 30% of the monthly premium costs towards the County's group health program. Premium costs will be established by salary tiers with a capped maximum employee contribution:

Under \$50K	No more than 15%	Maximum Contribution (at the Employee + Family level) \$200.00
\$50K – \$100K	No more than 20%	Maximum Contribution (at the Employee + Family level) \$300.00
\$100K - \$150K	No more than 25%	Maximum Contribution (at the Employee + Family level) \$375.00
Over \$150K	No more than 30%	Maximum Contribution (at the Employee + Family level) \$450.00

<b>Under \$50K</b>		<b>Monthly Cost</b>
<b>Enhanced</b>	EE Only	\$59
	EE + Child(ren)	\$106
	EE + Spouse	\$150
	EE + Family	\$150
<b>Basic</b>	EE Only	\$40
	EE + Child(ren)	\$50
	EE + Spouse	\$78
	EE + Family	\$78
<b>\$50K = \$100K</b>		<b>Monthly Cost</b>
<b>Enhanced</b>	EE Only	\$88
	EE + Child(ren)	\$159
	EE + Spouse	\$249
	EE + Family	\$249
<b>Basic</b>	EE Only	\$56
	EE + Child(ren)	\$101
	EE + Spouse	\$160
	EE + Family	\$160

All employees enrolled in a Montgomery County health plan effective 7/1/18 will receive a one-time lump sum payment of \$750.00. The lump sum payment is not PERS eligible, and is not available for employees who waive coverage or who are covered by another Employer-sponsored health plan, a plan purchased on the health insurance marketplace, or a government-sponsored plan.

Section 3: Employees may participate in the County’s wellness incentive program or a similar program offered through the County to increase contributions to the Health Savings Account for participants in the Basic or Enhanced (HDHP) Plans.

Section 4: The County will provide \$50,000 of group term life insurance to all employees, excepting part-time (working twenty (20) hours or less per week), temporary, seasonal, and intermittent employees, for the duration of this Agreement in accordance with the Plan. Management will pay the entire cost of the group basic life insurance. Additionally, the County may provide optional supplemental term insurance which employees may choose to purchase and have the cost thereof be deducted from their normal wages through payroll deduction.

Section 5: Employee deductions and contributions will occur on a schedule of deductions established by Montgomery County.

Section 6: The benefits provided for herein shall be provided through plans, programs or group coverage selected by the County.

Section 7: The County will continue to provide health insurance under the terms of this Agreement for a period of six (6) months (180) days when an employee is on an unpaid leave of absence.

**REMAINDER OF CONTRACT**

The remainder of the contract shall remain unchanged.

/s/ Pete B. Lowe  
Factfinder

**CERTIFICATE OF SERVICE**

A copy of this Fact-finding Report and Recommendation was served on Stacey Benson-Taylor, Regional Director, AFSCME Ohio Council 8, Local 101, at 15 Gates Street, Dayton, Ohio 45402 [dayoc8@ameritech.net](mailto:dayoc8@ameritech.net); Stephanie R. Echols, Human Resources Director, Montgomery County Board of County Commissioners, 451 West Third Street, Dayton, Ohio 45422, [echoless@mcohio.org](mailto:echoless@mcohio.org); and upon Donald Collins, General Counsel and Assistant Executive Director, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Suite 1200, Columbus, Ohio 43215-4213, [donald.collins@serb.state.oh.us](mailto:donald.collins@serb.state.oh.us); each by electronic mail this 24<sup>th</sup> day of July, 2018.

/s/ Pete B. Lowe  
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