

BACKGROUND

This is an initial agreement between the parties and comes after eight bargaining sessions dating back to April, 1997, which included three meditations. The parties have stipulated that there remain two issues for the fact-finder to consider: 1) fair share language and, 2) health insurance. The bargaining unit is contained within the Fairfield County Department of Human Services Division of Children Services and is made up of a combined unit of professional and non-professional positions, including twenty-two employees in classifications of Social Service Worker 1 through 3, and Social Service Aide and Secretary 1.

STIPULATIONS

The parties have stipulated that the proposals of the respective parties do not have an immediate fiscal impact on the Employer and, therefore, no cost analysis was provided to the fact-finder. The parties have further stipulated that fair share is a permissive matter for bargaining.

FAIR SHARE

The Employer proposes to include a provision in the Agreement that requires it to deduct Union dues from employees' paychecks.

Such deductions would be voluntary and could be revoked by employees during the term of the Agreement.

The Union proposes to include a fair share provision in the Agreement, along with dues deduction. In support of its position the Union points out through exhibits that various population groups throughout the state currently have fair share agreements in their current contracts. In further support of its position, the Union asserts that it is unfair for the employees in the bargaining unit who do not pay Union dues to reap the benefits that they may realize as a result of the Union's contract with the Employer.

The Union also points out that it has drafted language that would save harmless and indemnify the Employer from any actions by employees challenging the deduction of dues from their paycheck and that such language is consistent with numerous other agreements it has negotiated throughout the state.

Finally the Union asserts that it has a proportional deduction plan that would reduce non-members Union dues by \$4.00 per month, representing political activities of the Union which may not be supported by non-Union members.

The Employer objects to the fair share language proposed by the Union on several grounds. First, the Employer points out that the fair share agreement is, by law, only a permissive subject for bargaining and asserts that accordingly this fact-finder cannot impose an agreement in his report.

Secondly, the Employer asserts that the save harmless and indemnification language proposed by the Union has been ruled as

unconstitutional by federal courts in this state and submits copies of several decisions in support of that position. Accordingly, the Employer believes that providing fair share language in the agreement will impose an undue burden on the Employer in having to defend litigation that would be brought by non-Union members, in spite of the save harmless and indemnification language.

The Employer also objects to the Union's calculation of a \$4.00 "rebate" to non-Union members in that the Union has provided no rationale for such an amount and, therefore, is subject to challenge by a non-Union member.

Upon questioning by the fact-finder, the Union asserts that the impact of the fact-finder not to recommend such a provision in the contract would be the economic non-viability of this local Union. On the other hand, the Employer states that the inclusion of fair share language would have a minimal economic impact limited to the bookkeeping necessary for such dues deductions, but states that it could have a potential of large financial impact should it be forced to defend the dues deduction in court.

DISCUSSION

First the fact-finder will deal with the parties' respective arguments.

While the fact-finder finds it interesting that other jurisdictions have included fair share agreements in their collective bargaining negotiations, he does not find that

particularly persuasive. What is more persuasive is the argument that bargaining unit members who are to enjoy the fruits of the Union's contract should be made to contribute financially to those efforts. As to the save harmless indemnification language, the fact-finder will discuss this in more detail below.

As to the Employer's argument that the fact-finder may not include a fair share agreement in his fact-finding report, this fact-finder could not disagree more. While it is true the Employer cannot be forced to negotiate fair share, it is not true that once it has agreed to do so that a fair share provision cannot be included in the fact-finding report. The Employer has stipulated that fair share was to be a subject of this fact-finding, but now inexplicably asserts that the fact-finder cannot make a recommendation. In fact the fact-finder is required, by law, to make a finding on all matters submitted to it. Having agreed to negotiate fair share the Employer must agree that such a provision may be considered and, if appropriate, included in a fact-finder's report and recommendation. Furthermore, the fact-finder is not persuaded that the save harmless and indemnification language contained in the Union's proposal has a great potential for litigation on the part of the Employer. The fact-finder has carefully read the cases attached to the brief of the Employer and other analogous cases and notes that the problems in those cases related not necessarily to the save harmless and indemnification language per se, but rather that the pre-collection and/or rebate procedures in those cases were somehow deficient under Tierney v.

City of Toledo, 824 F.2d 1497 (6th Cir. 1987) and, Chicago Teachers' Union v. Hudson, 475 U.S. 292, 106 S.Ct. 1066, (1986). In the case of Keith Jordan et al. v. City of Bucyrus, Ohio, 754 F. Supp. 554 (1991), which was cited by the Employer, the Court specifically found at page 1341 that the indemnity clause was not on its face a violation of public policy by encouraging unconstitutional conduct, also see Reese v. City of Columbus, (S.D. Ohio 1993) F. Supp. 1115.

The Employer objects to the Union's proposal because it fears that such a proposal is lacking in the constitutional requirements set forth in Hudson, supra, as well as Jordan, supra, and Weaver v. University of Cincinnati, 758 F. Supp. 446 (1991). This is highly speculative on the part of the Employer and somewhat disingenuous. As the Union's representative pointed out during negotiations on this matter when the Union proposed to give the Employer the details of its rebate plan, the Employer stated, "We don't want to see the details, we don't care, we are simply philosophically opposed." Now the Employer wants to object to the provisions on the grounds that the Union has failed to provide a plan which would meet constitutional muster, a plan which the Employer has in the past refused to review.

The fact-finder must take the Employer at its word, i.e., its real objection is philosophical. Accordingly, the Employer's argument falls under own weight.

This does not make this question any less close. The fact-finder is not persuaded by the fact that this is an initial

agreement between the parties, nor that the fair share clause is necessary to maintain the economic viability of the Local.

The fact-finder has conducted extensive research in an attempt to determine what, if any, factors should be considered by the fact-finder on this issue. Unfortunately, neither the legislature nor the State Employment Relations Board are particularly instructive in this area. Furthermore, a cursory review of other fact-findings is similarly not helpful.

Accordingly, this fact-finder is forced to make his own track through this jungle. Apparently unions believe that fair share agreements are important matters. It is also just as clear that the General Assembly did not wish to impose fair share agreements on employers, but did see them as a legitimate matter for collective bargaining. It is equally clear that the inclusion of a fair share agreement will cost the Employer nothing. Furthermore, the fact-finder understands that there were thirty eligible voters in this local certification, with twenty-six votes cast, twenty in favor and six against. In other words, due to the efforts of two-thirds of the bargaining unit the other third will benefit. (The fact-finder concedes that he is not aware of the make-up of the present twenty-two members of the bargaining unit as to whether or not they were voters or non-voters, or how they may have voted, but presumably if there has been a substantial change a request for a decertification vote could be made by the present members of the bargaining unit.)

Accordingly, with all things being equal, the fact-finder recommends that the language concerning fair share proposed by the Union be adopted in the contract. This is a matter of some importance to the Union and has no consequence, or at the very worst, a very remote consequence to the Employer.

HEALTH INSURANCE

The second issue to be decided by the fact-finder was the parties' differing positions on the bargaining unit's health insurance.

The Employer proposes that bargaining unit employees receive the same health insurance benefits as other employees of the Department of Human Services. Under this proposal, health insurance benefits and costs will only be modified if the same changes were made to all the Department of Human Services' employees.

Fairfield County has been self-insured since 1989. Employees in the Division of Children Services have participated in this self-insurance fund since 1996. Prior to this participation bargaining unit employees did not have vision or dental coverage and the PPO was not available to them. All Department of Human Services' employees may select either an indemnity plan or PPO. The Employer pays the full premium for both plans, both single and family coverage. Employees of the Department of Human Services also have dental and vision coverage at no cost. These benefits are not available to other county employees. Currently Fairfield County has

117 employees on the single plan and 288 employees on the family plan. It asserts (without supporting data) that it cannot afford a different level of benefits for twenty-two employees in the Division of Children Services.

The Union proposes Article 21 of the contract which provides that the Employer agree to provide health insurance coverage to bargaining unit employees and pay the full cost of that coverage. In other words, the Union proposal would mean maintaining the status quo for the life of the contract.

DISCUSSION

It is important to note that while the parties' positions vary the variable is only a potential. The Employer is proposing that the bargaining unit members be provided health insurance equal to coverage provided other employees of the Department of Human Services. That is the current situation. The Union, on the other hand, is proposing that the language state that the Employer pay 100% of the bargaining unit employee's health insurance premiums, which is also the current situation. The difference in the positions of the parties is that under the Employer's language should there be an increase in insurance premiums which cause cost shifting from the Employer to the employees within the next three years, the bargaining unit employees could, as all other employees of the Division of Children Services, be forced to contribute. While under the Union proposal the employees would continue to have

their premiums paid for by the Employer notwithstanding any changes that might occur during the contract period. Neither parties' position has a present fiscal impact.

The Employer points out that the insurance benefits provided to the employees of the Department of Human Services are very generous costing the Employer \$321.30 for a single plan and \$692.04 for a family plan, with the PPO costing \$336.67 and the family plan costing \$553.42. The Employer argues that in light of the generosity of this plan and the vagaries of insurance premium costs it should have the ability to pass on, if necessary, such premium increase costs to the employees of the Department of Human Services. In that vein, the Employer argues that the bargaining unit members, i.e., those in the Department of Children Services, should not be treated any differently than those employees in the rest of the Department. An exhibit was introduced indicating that since 1993 the single indemnity plan cost have increased 4.6% and the family indemnity has increased 4.5%. This increase over four years has not been passed on to the employees of the Department of Human Services by the Employer.

The Union for its part argues that it should receive the full benefit of the health insurance throughout the contract period that existed at the time of the contract. Further, the Union points out that the increase in the Employer's health insurance premium costs over the last four years have not been significant.

As a matter of fact, the fact-finder can find no evidence in the Employer's materials indicating any potential for a dramatic

increase in insurance premiums over the three year contract period. The Employer's own documents argue to the contrary. Accordingly the fact-finder finds the Employer's argument that it needs to have the ability to pass on potential health insurance premium increase costs during the life of this contract period not to be supported by credible evidence.

Next is the issue as to the whether or not the Union's language has the potential for causing the members of the bargaining unit to be treated differently than other employees in the Department of Human Services. The fact-finder will concede that the Employer's health insurance benefit programs for all of its employees are indeed quite generous. However, the Employer's refusal to agree to guaranteeing these benefits to the members of the bargaining unit over the life of this contract because it has a potential for causing them to be treated differently than other employees of the Department of Human Services is wholly untenable. First, because as stated above, the Employer has no evidence that such an event will occur. Secondly, even if it does occur, such a differentiation between bargaining unit members and non-bargaining unit members is a fundamental consequence of the Collective Bargaining Law. Indeed the fact-finder is personally aware of many counties units of government that have differing levels of compensation within that same department. In fact, because of multiple employee representation within a particular department there may be several tiers of benefits. For instance, a sheriff's department may have its dispatchers represented by AFSCME, its road

deputies represented by the FOP, and its fiduciary employees unrepresented, resulting in three different wage and benefit packages.

In making the argument that bargaining unit employees must be treated the same as non-bargaining unit employees, the Employer misses the point of the Collective Bargaining Law. In 1983 the General Assembly, for better or worse, made it lawful for public employees to organize and bargain for certain matters including health insurance benefits. Accordingly, for those governmental employees who followed the procedures under the Collective Bargaining Law and were deemed certified, have the right, within the parameters of the Law, to seek to be treated differently from those employees who have chosen not to join an employee organization. If this were not so there would be no point in organizing and seeking recognition of an employee organization. That is not to say that fact-finders should not take into account wages and benefits being provided to other employees in a similar or the same organization, clearly the statute mandates such consideration. However, neither this fact-finder nor his colleagues have ever considered that to be language of restriction. If it were so there would be no need for fact-finders, mediators, or arbitrators in this state. Employers would simply come to the bargaining table, provide the wage benefits, etc. package given to current non-bargaining unit employees and ipso facto the matter would be over. One may have disagreements with the General Assembly's actions in 1983, however, that is not what the

Collective Bargaining Law provides. The law encourages, employers and employee organizations, after certain requirements have been met, to freely engage in wide ranging and energetic collective bargaining. This more often than not results in bargaining unit members being treated differently than other members of a particular governmental agency. In addition to the example cited above, the fact-finder, as a former head of a state agency, recalls that a collective bargaining contract provided a formal grievance procedure to some employees of his agency who were members of a bargaining unit while no such provision was available for identical employees who were not members of the employee organization.

Accordingly, the Employer's arguments that there is some "potential" over the next three years that an increase in health insurance premiums might possibly result in employees of the bargaining unit having different insurance benefits than non-members of the bargaining unit is not only speculative, but irrelevant.

Employers may not like the consequences of the Collective Bargaining Law, but it is a fact of life. Members of a deemed certified bargaining unit have the right, within the parameters of the Collective Bargaining Law, to seek to be treated differently than non-members.

RECOMMENDATIONS

Pursuant to the above, the fact-finder hereby recommends that the language proposed by Teamsters Local 284 to the contract between itself and the Fairfield County Department of Human Services, specifically Article 5, sections 1 through 9, and Article 21 (attached) be made part of the contract between the parties herein. The fact-finder certifies that this recommendation has no fiscal impact on the governmental unit.



Jack E. McCormick
SSN 279-38-0453
Fact-Finder

September 29, 1997
Columbus, Ohio

Teamsters Local Union No. 284
Proposal
Date: April 3, 1997

ARTICLE 5

DUES DEDUCTION

Section 1. Member Availability

The Employer and the Union agree that membership in the Union is available to all employees occupying classifications as has been determined by this Agreement appropriately within the bargaining unit upon the successful completion of their probationary period.

Section 2. Dues Deduction

The Employer agrees to deduct regular membership dues, initiation fees, or assessments, once a month from the pay of any employee in the bargaining unit upon successful completion of their probationary period and upon receiving written authorization signed voluntarily by the employee. Upon receipt of the proper authorization, the Employer will deduct union dues from the payroll check for the next pay period in which the union dues are regularly deducted. Dues deduction under this Section shall be remitted to the Union within ten (10) days from the date of making said deductions.

It is agreed that all employees who do not join the Union or remain members in good standing shall be required to pay a fair share fee to the Union as a condition of employment. This obligation shall commence upon the successful completion of the probationary period. This provision shall not require any employee to become or remain a member of the Union nor shall the fair share fee exceed the dues paid by Union members in the same bargaining unit or exceed the percentage of the normal dues used by the Union in the administration of the collective bargaining agreement. The deduction of a fair share fee by the Employer from the payroll check of the employee and its payment to the Union is automatic and does not require the written authorization of the employee. The fee deduction shall be made on the same payroll day that union dues are deducted.

Section 3. Disclaimer of Responsibility - Check-Off

It is specifically agreed that the Employer assume no obligation, financial or otherwise, arising out of the provisions of this Article, and the Union hereby agrees that it will indemnify and hold the Employer harmless from any claims, actions or proceedings by any employee arising from the deductions made by the Employer hereunder. Once the funds are remitted to the Union, their

disposition thereafter shall be the sole and exclusive obligation and responsibility of the Union.

Section 4. Termination of "Check-Off"

The Employer shall be relieved from making such "check-off" deduction upon (a) termination of employment, or (b) transfer to a job other than one covered by the bargaining unit, or (c) revocation of the check-off authorization in accordance with its term or with applicable law.

Section 5. Limitation of Dues Deductions

The Employer shall not be obligated to make dues deductions from any employee who, during any dues payment period involved, shall fail to receive sufficient wages to make all legally required deductions in addition to the deduction of union dues.

Section 6. Errors in Dues Deductions

It is agreed that neither the employees nor the Union shall have a claim against the Employer for errors in the processing of deductions unless a claim of error is made to the Employer in writing within sixty (60) days after the date such an error is claimed to have occurred. If it is found an error was made, it will be corrected at the next pay period that the union dues will normally be made. Payroll collection of dues shall be authorized for the exclusive bargaining agent only, and no other organization attempting to represent the employees within the bargaining unit as herein determined.

Section 7. Annual Certification by Union Treasurer

The names of employees and the rate at which dues are to be deducted shall be certified to the payroll clerk by the Treasurer of the Union during January of each year. One (1) month's advance notice must be given to the payroll clerk prior to making any changes in an individual's dues deduction. The Employer agrees to request the Fairfield County Auditor to furnish the Treasurer of the Union a warrant in the aggregate amount of the deduction.

Section 8. Correction of Deduction

Deductions provided for in this Article shall be made during one (1) pay period each month. In the event a deduction is not made for any Union member during any particular month, the Employer, upon written verification of the Union, will make the appropriate deduction from the following pay period in which union dues are regularly deducted if the total deduction does not exceed the total of two (2) month's regular dues from the pay of any Union member, nor will the Employer deduct more than one (1) month's regular dues for more than one (1) consecutive month.

Section 9. Duration of Authorization

Each eligible employee's written authorization for dues shall be honored by the Employer for the duration of this Agreement, unless an eligible employee certifies in writing that the dues deduction authorization has been revoked, at which point the dues deduction will cease effective the pay period following the pay period in which the written dues deduction revocation was received by the Employer and a copy of the written revocation shall be forwarded to the Union.

Such revocation may only occur during the thirty (30) calendar days prior to the written expiration date of the Agreement or after the expiration of the Agreement, if not extended by mutual consent of the parties.

Section 10. New Hires

The Employer shall notify the Union of all new hires and agrees to permit the Union to provide information about the Union to new employees during their first two (2) weeks of employment.

FOR THE EMPLOYER:

FOR THE UNION:

Teamsters Local Union No. 284
Counterproposal
Date: April 29, 1997

ARTICLE 21

INSURANCE

The Employer agrees to provide health insurance coverage for bargaining unit employees. The Employer shall pay the full cost of the insurance coverage. The level of benefits shall remain substantially equivalent during the life of the agreement to the current benefits.

The Employer agrees to provide the Union thirty (30) days advance notice of any change in health insurance coverage. Upon request, the Employer shall meet with the Union to discuss the changes.

FOR THE EMPLOYER:

FOR THE UNION:

