

STATE OF OHIO

STATE EMPLOYMENT RELATIONS BOARD STATE EMPLOYMENT RELATIONS BOARD

2005 SEP 26 A 11: 47.

In the matter of * Case Nos. 04-MED-10-1103
Conciliation between: *
Delaware County Sheriff's Office * Conciliator:
and * Martin R. Fitts
Ohio Patrolmen's Benevolent Association *
September 22, 2005

AWARD OF THE CONCILIATOR

APPEARANCES

For the Delaware County Sheriff's Office (the Employer):

Christopher C. Russell, Labor Counsel for the Sheriff
Jonathan J. Downes, Labor Counsel for Delaware County Commissioners
Gil Borchers, Chief Deputy
Kevin Williams, Director of Administrative Services, Delaware County Commissioners

For OPBA (the Union):

Joseph M. Hegedus, Labor Counsel
Tim Schamps, Local Representative
Rob Curren, Local Representative
Jon Burke, Local Representative

PRELIMINARY COMMENTS

The bargaining unit consists of all full-time regular Deputy Sheriffs. There are approximately 66 employees in the bargaining unit. The undersigned was appointed to serve as Conciliator on June 30, 2005. Two issues are in dispute: Article 27 – Health Insurance; and Article 28 – Wages and Pay Steps. A conciliation hearing was held on August 24, 2005 in the Delaware County administrative offices in Delaware, Ohio. Both parties provided written Pre-hearing Position Statements, and presented evidence and testimony in support of those positions at the hearing.

In rendering the recommendations in this Conciliation Award, the Conciliator has given full consideration to all testimony and exhibits presented by the parties. In compliance with Ohio Revised Code, Section 4117.14 (G) (7) and Ohio Administrative Code Rule 4117-9-06 (H), the Conciliator considered the following criteria in making the findings and recommendations contained in this Report:

1. Past collectively bargained agreements, if any, between the parties;
2. Comparison of issues submitted to final offer settlement relative 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, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
4. The lawful authority of the public employer;
5. Any stipulations of the parties; and
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 final offer settlement through voluntary collective bargaining mediation, fact-finding or other impasse resolution procedures in the public service or in private employment.

ISSUE AND AWARD

Issue: Article 27 – Health Insurance

Positions of the Parties

The Employer's position is that current contract language should be retained. The present language mandates that the Employer provide a group health benefits plan equal or better than the plan in effect for all other County employees. The current health insurance plan that is in place was implemented in late 2004, and is the same plan for all other Delaware County employees. The current language also provides that the Employer may make reasonable changes to the plan, as long as the changes are made for all County employees, and so long as the Employer contributes at least the same amount toward the monthly premiums as it previously did. It also provides that the Union may grieve the reasonableness of any changes that are made.

The Union's position is to amend Article 27 to specifically state that the group health benefits plan shall be equal to or better than the plan in effect during the 2004 plan year, and to provide that the Employer would pay 100% of the premium. It would also amend the current provisions to explicitly limit any changes in the plan to these restrictions.

Discussion

The Employer proposal mirrors the recommendation of Fact-finder Charles Z. Adamson. It calls for the current contract language to be retained, and will result in the Employer continuing to contribute as much toward the monthly health insurance premiums as it did in 2004. It retains language that mandates that the benefits of the plan be equal to or better than benefits extended to other Delaware County employees. It also retains the provision that provides the Union the right to grieve the reasonableness of any changes made by the Employer, and that before making any changes the Employer must meet and confer with the Union.

As noted above, the retention of the current language has the effect of retaining the health insurance plan that was put in place by the Employer in November 2004. That change included providing employees with two choices of coverage, and required that employees contribute toward the cost of the monthly premium if they choose the plan with greater coverage. The Employer argued that the trend is away from employers paying for 100% of the cost of health insurance, and that it is fair and reasonable to expect these

employees to contribute toward monthly premiums just as all other Delaware County employees are now doing.

The Employer noted that the new plan affords employees a choice in plans, with one of those choices resulting in a contribution toward the monthly premium and one not. Plan 1, which requires a monthly employee contribution of \$22 for single coverage and \$55 for family coverage, offers better coverage than the previous health plan. Plan 2, which requires no employee contribution to the monthly premium, is a slightly lesser plan than was previously enjoyed by the County employees. Plan 1 provides better coverage than most of the comparables offered, while Plan 2 offers equal or marginally less coverage. The Employer argued that since the plan provides options for employees desiring greater or lesser coverage, employees can still choose to pay nothing for health insurance.

The Union's position calls for the health insurance benefits to be 100% funded by the Employer, and makes the 2004 benefit level the benchmark for benefit levels during the life of the new agreement. While the Employer did pay for 100% of the benefit cost prior to November 2004, the previous agreement did not explicitly state that it had to. Rather the current language states that "the plan and its benefits shall be equal to or better than the plan in effect for the employees of the County generally" and that the Employer must continue "to fund the plan with at least its immediately preceding monthly contribution to the costs of the health benefits."

The 100% payment of the premium in the past was a consequence of the Employer contributing to premiums at a level that exceeded the actual mandate of the contract. There was no guarantee in the old agreement that the employees would not have to contribute to the cost of the plan should the costs exceed the previous monthly premiums paid for by the Employer should the Employer decide not to bear the entire additional cost increase itself.

This weakens the Union's argument that since the employees have been provided with 100% paid-for health insurance in the past, they should be provided with 100% paid-for health insurance during the life of the next agreement as the Union position would provide. There simply was no express provision for 100%-paid health benefits for the employees in the previous agreement.

The Union argument for its position essentially rests on the premise that the Employer has unilaterally made changes in health care without negotiating with the Union. It maintains that if the County has the ability to change the health care plan and employee payment, then the Union needs to have the ability to mitigate those changes by providing that the entire cost shall be borne by the Employer.

The issue of whether or not the Employer violated the provisions of Article 27 when it changed the plan in late 2004 is properly being addressed in other venues, and is not a part of this conciliation process. How the present plan was placed into effect is therefore not a part of this dispute. At issue here is simply which of the parties' respective positions is compelling. Regardless, the current contract language expressly states that

before implementing any health care plan changes, the Employer “shall meet and confer” with the Union. There is no provision requiring that the Union must agree to the changes.

Fact-finder Adamson, in his Report dated June 1, 2005, stated that the parties did not make a detailed presentation regarding health care. He concluded that in the Fact-finding proceeding “neither party substantiated its health care position.” On that basis he recommended the retention of the current contract language.

In the instant proceedings, there was no lack of evidence and comparables provided by either party. This Conciliator was given an ample record to support each of the parties’ respective arguments and positions. Therefore in arriving at this Award considerably more weight was placed upon the evidence presented by the parties at the hearing than was placed upon the Fact-finder’s recommendations for this issue.

Unfortunately in this instance, the parties’ respective positions are quite a bit apart. The Union’s explicitly provides that all costs of the health insurance premiums must be borne by the Employer. The Employer’s position for current contract language does not obligate the Employer to pay for any premium costs above the level that it contributed toward the plan in 2004.

This Conciliator does not believe that a compelling argument has been presented that the retention of current language is detrimental to the members of the bargaining unit, even considering the costs that the employees will now bear with respect to health insurance premiums. Those costs, currently \$22 for single coverage and \$55 for family coverage, are not excessive, especially in light of the wage increases awarded below. Further, the Employer has shown a willingness to bear cost increases in the past. While there is no contractual protection against future increases for these bargaining unit employees, the Union’s proposal for the Employer to bear 100% of the health insurance costs simply places too much risk solely on the Employer and places none on the employees.

Lastly, the Employer’s proposal for current language provides a certain flexibility regarding how health insurance will be paid for by the Employer and the employees, and what coverage the employees can choose to have. The Union’s proposal provides no such flexibility. In the ever-changing arena of health insurance, this flexibility is a desirable provision in a labor agreement.

Award

The Conciliator believes that the Employer’s position for the retention of current contract language provides for a quality health insurance benefit for these employees, with reasonable cost participation on the part of the employees.

Therefore, the Conciliator awards the Employer’s position for the retention of current contract language in Article 27 – Health Insurance.

Issue: Article 28 – Wages and Pay Steps

Positions of the Parties

The Employer proposal is for an across-the-board 3% wage increase effective January 1st in each of the three years of the contract.

The Union proposal is for an across-the-board 3.5% wage increase effective January 1st in each of the three years of the contract.

Discussion

The Union position mirrors the recommendation of Fact-finder Adamson. There is no question that the issue of wages was tied directly to the issue of health insurance issue by the Fact-finder, and is also tied directly to that issue by this Conciliator. The Fact-finder stated that considerable evidence was presented by both parties in support of their respective positions regarding wages. There is no reason to believe that any new or much additional information was presented to the Conciliator on this issue, as the record at the Conciliation Hearing was substantial. Certainly no compelling reason not to award the Fact-finder's recommendation was offered.

Just as Fact-finder Adamson found a 3.5% wage increase in each of the three years to be fair, so does this Conciliator. A major consideration of this Conciliator is that the additional half-percent over the Employer's proposal will help off-set the employees participation in the costs of health insurance.

Award

The Conciliator believes that the Union's proposal for wages is fair and compelling.

Therefore, the Conciliator awards the Union's proposal for an across-the-board 3.5% wage increase effective January 1st in each of the three years of the contract.

Additional Awards

Subsequent to the fact-finding process, the parties reached tentative agreements on Article 28, Section B regarding longevity pay and Article 28, Section C regarding field training and/or orientation officer pay.

In addition to the awards outlined above, the Conciliator awards the tentative agreements reached by the parties on Article 28, Section B and C as well.

The above represents in total my Award in this matter.

A handwritten signature in black ink, appearing to read 'Martin R. Fitts', written in a cursive style.

Martin R. Fitts
Conciliator
September 22, 2005