



**IN THE MATTER
OF
CONCILIATION**

OHIO STATE EMPLOYMENT
RELATIONS BOARD
2006 DEC 26 A 9:14

FINDINGS & AWARD

BETWEEN	)	CASE NO: 05-MED-11-1379
THE)	
FRATERNAL ORDER OF POLICE	)	CONCILIATOR: E. William Lewis
Capital City Lodge No. 9)	
	)	DATE OF HEARING:
and the	)	November 30, 2006
FRANKLIN COUNTY, OHIO	)	DATE OF REPORT:
SHERIFF	)	December 21, 2006
)	

**REPRESENTATION
BY**

Employer Representatives	)	Union Representatives
Aaron Granger, Attorney	)	Russel Carnahan, Attorney
Robert Wiesman, Attorney	)	Hunter, Carnahan, Shoub & Byard
Shotenstein, Zox & Dunn L. P. A.	)	Jeremey Copas, Wage Team Member
Patrick F. Garrity-Dir. Of Mgm't	)	Anthony Graves, " " "
Services(Sheriff)	)	Benjamin J. Jones " " "
Eureka Hampton-Ass't HR Dir.(Sheriff)	)	Stephanie Klumpp " " "
Christy Russell-Ass't Dir. Mgm't. &	)	Jason Ronk " " "
Budget(Commissioners))	)	Zachary Scott " " "
Scott Solsman-Acting Benefits	)	Geoff Stobart " " "
Administrator)	
(Commissioners))	

AUTHORITY

This matter was brought before Conciliator E. William Lewis, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Conciliator is for consideration and directive based on merit and fact according to the provisions of ORC 4117, in particular those that apply to Safety forces and mutual directives of the parties.

E. William Lewis was duly appointed by the State Employment Relations Board to serve as Conciliator in this matter, in compliance with Ohio Revised Code, Section 4117.14 (D)(1) by letter dated October 26, 2006.

The Hearing was held on November 30, 2006 at the Franklin County Annex, 41 South High Street, Columbus, Ohio. The parties timely filed the required pre-hearing statements.

In the pre-hearing filings the parties identified the following issue, as being unresolved:

ARTICLE 24 INSURANCE

The Union was represented by Russell Carnahan. The County was represented by Aaron Granger and Bob Weisman.

BACKGROUND:

The Franklin County Sheriff's Office, represented by the County Commissioners, hereinafter known as the County or Employer, and the Fraternal Order of Police, Capital City Lodge # 9, hereinafter known as the Union or FOP, are in the process of bargaining on a re-opener, in accordance with the statutory dispute resolution procedure (ORC 4117). The bargaining units are composed of approximately five hundred sixty (560) non-supervising deputies, below the rank of corporal, and approximately eighty eight (88) supervisory deputies of the rank of corporal, sergeant and lieutenant (Supervisor Unit). These two units engage in multi-unit bargaining, resulting in a single collective bargaining agreement.

The Sheriff's Office is funded out of the General Fund, which comes under the auspices of the Franklin County Commissioners, which accounts for the direct involvement of the Commissioner's representatives. The current Agreement became effective February 14, 2005 and runs through April 15, 2007. During the bargaining for the current Agreement a "conditional re-opener" was recommended by fact finder Brundige. The fact finder's recommendation on health care, as well as all other provisions, were accepted by both parties. The health care issue, which is before this conciliator, is ARTICLE 24, INSURANCE, and the provisional re-opener is as follows:

Section 24.1 Health, Hospitalization, Surgical, and Major Medical. Except as noted below, for the duration of this Agreement, the Employer shall maintain for all bargaining unit members health, hospitalization, surgical, major medical coverage, and prescription card plans. **Current coverages shall remain in effect until the County determines the need to modify that plan for all County employees. If the County determines the need to modify the plan, the Lodge will be consulted. The Lodge recognizes the desirability of providing one insurance plan for all County employees. If the Lodge and the County are unable to agree upon the proposed changes, the parties will meet to negotiate such changes subject to the statutory resolution procedure.**

According to pre-submittal evidence, the County, during 2005, determined a need to modify the Health Care Plan, for all County employees. Through a Joint Benefits Committee a single modified plan for all County employees was developed, and to become effective April 1, 2006. According to evidence and testimony, as of the date of this report all County bargaining unit and non-bargaining unit employees, with the exception of these units, are covered by the newly modified single plan.

The County and the FOP began bargaining on the Health Care re-opener in January 2006, and had several sessions, some of which, included mediation assistance, without agreement. The parties did reach agreement on the plan design, mirroring all the other County employees' plan design. However, they did not reach agreement on the issue of employees' premium contributions, nor the effective date of April 1, 2006, for co-pays and premium contributions, as proposed by the County.

The unresolved issues were appealed to fact finding, and a hearing was held before Fact Finder Gardner. The hearing was held on September 28, 2006, and his recommendation was issued on October 2, 2006.

The fact finding report was accepted by the County and rejected by the FOP. The parties proceeded to conciliation and the hearing was held on November 30, 2006. At the conciliation hearing the parties were extended the opportunity to present such information each considered relevant. After each party acknowledged that they had no additional information to present, the hearing was closed.

In determination of the Conciliation award and in compliance with ORC 4117.14 (G)(7) and related rules and regulations of the State Employment Relations Board, the following were taken into consideration in making this Award:

- (a) Past collectively bargained agreements, if any, between the parties;
- (b) Comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved;
- (c) The interests 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 the normal standard of public service;
- (d) The lawful authority of the employer;
- (e) The stipulations of the parties;
- (f) Such other factors, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the 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 AT IMPASSE:

EMPLOYER PROPOSAL:

ARTICLE 24. INSURANCE

Section 24.1 Health, Hospitalization, and Surgical, and Major Medical
Except as noted below, for the duration of this Agreement, the Employer shall maintain for all bargaining unit members health, hospitalization, surgical, major medical coverage, and prescription card plans. Current

coverages shall remain in effect until the County determines the need to modify that plan for all County employees. If the County determines the need to modify that plan, the Lodge will be consulted. The Lodge recognizes the desirability of providing one insurance plan for all County employees. If the Lodge and the County are unable to agree upon the proposed changes, the parties will meet to negotiate such changes subject to the statutory dispute resolution procedure. **Further, any changes implemented in the overall County plan design will be discussed prior to implementation with the Joint Benefits Committee of which the FOP is a member.**

Effective January 1, 2007, employees will pay \$20 a month towards the health insurance premium to cover themselves and any children they may have. Effective January 1, 2007, employees who choose to cover their spouse will pay \$60 a month towards the health insurance premium. This \$60 is not in addition to the \$20, that is to say, in the event that an employee chooses to cover him/herself, any children and his/her spouse, he/she will pay \$60 to cover all of them. All employee contributions paid by the employee will be paid for under IRS Chapter 125 on a pre-tax basis in accordance with the rules set forth by the IRS. The prescription co-pay formula adopted by the Board of Commissioners on November 22, 2005, and becoming effective January 1, 2006, will apply to the bargaining unit members, except that the County may propose changes as indicated in this section.

Section 24.2 Personal Liability Insurance (current language)

Section 24.3 Dental Care Plan For the duration of this Agreement, the Employer shall maintain for all bargaining unit members the dental coverage **becoming effective on April 1, 2006**, except that the County may propose changes as indicated in Section 24.1

(balance of this Article 24—current language)

UNION PROPOSAL:

ARTICLE 24 INSURANCE

SECTION 24.1 Health, Hospitalization, Surgical, and Major Medical
Except as noted below, for the duration of this Agreement, the Employer

shall maintain for all bargaining unit members health, hospitalization, surgical, major medical coverage, and prescription card plans. Current coverages shall remain in effect until the County determines the need to modify that plan for all County employees. If the County determines the need to modify that plan, the Lodge will be consulted. The Lodge recognizes the desirability of providing one insurance plan for all County employees. If the Lodge and the County are unable to agree upon the proposed changes, the parties will meet to negotiate such changes subject to the statutory dispute resolution procedure.

Effective July 1, 2006, all members shall receive the health, hospitalization, surgical, major medical, and prescription card coverage that is in effect for all other County employees on that date. Members shall not be required to pay any share of the premium for such coverage for themselves, their spouses, or their dependents.

Section 24.2 Personal Liability Insurance (current language)

Section 24.3 Dental Care Plan For the duration of this Agreement, the Employer shall maintain for all bargaining unit members the dental coverage **effective on April 1, 2006**, except that the County may propose changes as indicated in Section 24.1.

(balance of this Article 24--- current language)

EMPLOYER POSITION:

The County modified its proposal at the commencement of the hearing, and by phone to the Union prior to the hearing. The County heretofore, proposed that the bargaining unit members' premium contributions (Section 24.1) were to be retroactive to April 1, 2006. The County withdrew their retroactivity position and made the effective date January 1, 2007, for co-pays and premium contributions.

The County argues that the conciliator should adopt the fact finder's recommendation (County proposal), because there is no compelling reason to deviate.

This unit (FOP) is the only County bargaining unit that is not in the plan, and contributing to premiums, states the Employer. According to the

County, they are not asking the FOP members to contribute any more than what all other County employees are contributing. These bargaining unit members are among the highest paid within the County, and when you couple the modest requested contribution amount, their ability to pay should not be a consideration, argues the Employer.

Other bargaining units wage increases were held at two percent (2%) per year over the last five years, and this was due to the County's declining financial condition, declares the Employer. However, this bargaining unit received the highest wage increases, of three percent (3%) and four percent (4%) over the same period, states the Employer.

Health care costs nearly doubled in the last five years, for County employees, to an annual blended rate cost of \$9924/ employee. Therefore, the County is proposing a very modest contribution, declares the Employer. In order to help deal with the "spiraling" health care costs, and the County's declining reserves, a Joint Benefits Committee (JBC) was established in 2005, by the County. The County invited all Unions to participate, however, the FOP declined, per evidence and testimony. The JBC designed the modified plan and contribution levels through a consensus process, claims the Employer.

The County states that they had projected a fifty-five million dollar deficit for 2006, and the General Fund's cash reserves were dropping dramatically, from eighty-two million in 2001 to a projected twenty-eight million, in 2006. Therefore, the County Commissioners passed a ½ cent temporary sales tax, to rebuild their cash reserves (rainy day fund). Tab 6, and testimony, showed that cash reserves and declining investment earnings are recovering.

Furthermore, according to the County, they instituted departmental budget cuts of three percent (3%) in 2005 and six percent (6%) in 2006, to further offset increased costs, primarily due to labor expenses.

Considering the aforementioned, and the Employer submitted comparables, the County requests the conciliator to sustain their position.

UNION POSITION:

The FOP states that they are aware of the increased costs of health care and the “winds of change”. However, they have made “no contributions”, a priority over the last ten contracts. Other bargaining units, according to the FOP, have bargained it away for something else, and they did not.

This issue is not a matter of money, claims the Union, the County would collect only \$175,000 over the next three months of this contract. The issue is bargaining leverage, states the Union, by granting the Employer’s position, the County would have eliminated one of the two major bargaining issues for the upcoming negotiations.

The FOP did not participate in the JBC because they had a re-opener clause in the contract (24.1), and participation might have jeopardized their right to bargain, claims the Union. Furthermore, the Union claimed that the Employer has not bargained on this issue, since their position has not changed from “day one”.

The County, according to the Union, is rapidly replenishing its “rainy day” fund, and since fact finding they have had a \$468,000 reduction in their administrative health care costs. Additionally, the County’s investment earnings, once of concern, have increased by \$9,000,000 since the beginning of 2006, states the Union.

This is a leverage issue, implores the Union, and it can wait until bargaining, giving this Union the same bargaining opportunity as the Teamsters. Thus, the FOP requests the conciliator to grant their proposal.

DISCUSSION & DETERMINATION:

There is one issue remaining, that of employee health care premium contributions. The Employer modified its position at the commencement of the hearing. They withdrew their proposal to make the co-payments and premium contributions retroactive to April 1, 2006. The Union, in their fact finding and conciliation proposal, agreed to participate in the County’s single health care plan. The single modified plan was developed by the County, and their other Unions, through the Joint Benefits Committee. In addition, evidence and testimony, also showed that the Dental Care Plan

(Section 24.3), became effective April 1, 2006, and is already being participated in by these bargaining unit members.

Evidence and testimony verified that the Employer's yearly employee health care costs had nearly doubled in the last five years. The annual employee costs increased from \$5325 to \$9924 (EE-tab-6). For this bargaining unit alone, the nearly \$4600/ employee increase, equals an increase of approximately \$3,00,000/ year. The County-wide annual increased cost for health care is nearing \$27,600,000. Health care costs have become a monumental problem for employers and their employees. Wisely, this Employer and its Unions have taken aggressive steps to address what they can of the problem. Although this may not now be an immediate money issue, it was, and will continue to be a major economic concern. In the conciliator's opinion, spiraling health care costs have been the most difficult issue in collective bargaining in the last twenty-plus years.

Fact Finder Brundige recognized the parties' dilemma of spiraling health care costs, and recommended the re-opener on health care (Article 24, Section 24.1). Section 24.1 restricted the County from reopening this Agreement unless the modification was to be effective for "all County employees", then the Union and County were to meet and negotiate such changes.

The Union argues that the Employer did not negotiate because the County made only one proposal. In the conciliator's opinion, negotiations are not always "give and take", but is contingent on the circumstances in which the parties are bargaining. An Employer's health care proposal that was not equal to the other County Unions' language would have been disingenuous and detrimental to the labor-management relationship. Furthermore, no evidence or testimony was submitted that the Union was willing to compromise on the amount of premium contributions.

The conciliator recognizes that the increased sales tax revenue generated by the "temporary" tax increase had a promissory attachment. Consequently, in the conciliator's opinion, to continually deny access to revenue funds to employee unions by such promises, could have a disastrous impact on labor-management relations. Public institutions have a number of restricted revenue funds available to them.

The conciliator recognizes that, historically, it has been this bargaining unit's priority not to make premium contributions, and they are to be commended for going this long without contributing. However, "the winds of change"(Union), have arrived. The comparables, both internally and externally, show nearly all employees contributing something towards their health care premiums. The monthly contribution amounts of: \$20 for a single parent plus children, and \$60 for a family including two parents, is minimal in today's health care costs world. The \$20 and \$60 represent only 2.4% and 7.2% respectively, of the blended premium rate.

When the Union accepted Fact Finder Brundige's report, and if the Employer met the criteria of the restrictive re-opener, they would be in midterm bargaining. Does this health care change give the Employer unfair bargaining leverage as alleged by the Union? Maybe, maybe not, but the conciliator knows that the Union will not let the Employer discount the recent changes in the health care plan and premium contributions. For the conciliator to award the Union's proposal, based on leverage, he would have to ignore the preponderance of evidence that is in compliance with the criteria outlined in ORC 4117.14 (G)(7).

After giving due consideration to the positions and arguments of the parties, the fact finder's recommendation, and the previously enumerated criteria in ORC 4117.17 (G)(7), the conciliator awards the Employer's modified position, in ARTICLE 24 INSURANCE. In addition, all tentative agreements reached between the parties, if any, are hereby incorporated by reference into this Conciliation Report, and shall be include into the resulting Collective Bargaining Agreement.

This concludes the Conciliation Report.

Respectfully submitted and issued at Columbus, Ohio this 21st day of December, 2006.

A handwritten signature in cursive script that reads "E. William Lewis". The signature is written in black ink and is positioned above the printed name of the conciliator.

E. William Lewis
Conciliator

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing
Conciliator's Report was sent by regular U. S. mail to.

Edward Turner, Administrator
Bureau of Mediation
State Employment Relations Board
65 East State Street, 12th floor
Columbus, Ohio 43215-4213

And

Russel Carnahan, Attorney and FOP Advocate
Hunter, Caranhan, Shoub & Byard
3360 Tremont Road, 2nd floor
Columbus, Ohio 43221

And

Aaron Granger, Attorney and County Advocate
Shotenstein, Zox & Dunn L. P. A.
250 West Street
P.O. Box 165020
Columbus, Ohio 43216-5020

This 21st day of December, 2006.



E. William Lewis
Conciliator