

STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

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In the Matter of:

Fraternal Order of Police
Ohio Labor Council, Inc.,

Conciliator: Jerry B. Sellman
Dated: February 11, 2010

Employee Organization

Case No. 09-MED-0412
09-MED-0413
09-MED-0414

And

City of Streetsboro,

Employer

REPORT AND AWARD OF CONCILIATOR

APPEARANCES

For Union

Chuck Wilson – Senior Staff Representative, Representing the FOP
Chuck Choate – Senior Staff Representative, Representing the FOP

For the Employer:

David J. Matty, Esq. – Rademaker, Matty, McClelland & Creve, Representing the City of Streetsboro
Shana A. Samson, Esq. - Rademaker, Matty, McClelland & Creve, Representing the City of Streetsboro
Maggie Romutis – Healthcare Consultant for the City of Streetsboro, Witness
Ted Gordon – Director of Finance for the City of Streetsboro, Witness
Arthur Scott – Mayor, City of Streetsboro, Witness

BACKGROUND

The instant case involves an examination of the unresolved issues between the City of Streetsboro, Ohio (hereinafter the “City”) and the Fraternal Order of Police, Ohio Labor Council, Inc. (hereinafter the “Union”). In this conciliation hearing, the Union represents thirty-one (31) employees in the classification of Dispatcher, Patrol Officer, and Sergeant.

The City of Streetsboro is located in Portage County with a population of approximately 13,000. Streetsboro is located approximately 30 miles southeast of Cleveland and 16 miles northeast of Akron. It is 24.4 square miles in area with its center located at the intersection of three state routes – SR 303, SR 43, and SR 14.

The Employer and the Union began multi-unit negotiations on September 9, 2009 for a successor contract due to expire June 30, 2009. The parties participated in further bargaining sessions on September 23, 2009, October 12, 2009, and November 6, 2009. Unable to reach an agreement on a number of issues, a fact-finding hearing was held before Mr. John T. Meredith on November 16, 2009. At the Fact-Finding hearing several issues were settled or withdrawn and eight (8) issues were placed before the Fact-Finder for consideration. On December 1, 2009 the Fact-Finder issued his report. The Fact-Finder’s Recommendations were accepted by the Employer and were rejected by the Union.

The Conciliator was appointed on December 22, 2009. The Parties mutually agreed to a postponement of an initial hearing date. Pre-hearing statements were submitted five (5) calendar days prior to the Conciliation hearing by the parties. A Conciliation Hearing took place on February 1, 2010.

The Conciliator is required to select the offer of one party or the other without modification. The selection between the final offers is based upon the criteria set forth in Section

4117.14(G)(7) of the Ohio Revised Code. They are:

- (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 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 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;
- (e) The lawful authority of the public employer;
- (f) The stipulations of the parties;
- (g) Such other factors, not confined to those listed in this section, 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.

Issues

Prior to the Conciliation hearing, the parties agreed to adopt the Findings and Recommendations of the Fact-Finder on six of eight issues. The Employer and the Union agreed on the recommended language contained in Article 3, Management Rights; Article 11, Section 11.4, Compensation Time; Article 11, Section 11.8, Scheduling and Overtime Assignment; Article 26, Clothing Allowance; Article 29, Section 29.6, Other Pay; and Article 31, Sick Leave. The parties were unable to agree on two issues: Article 28, dealing with Compensation, and Article 36, dealing with Health Care. These two issues were presented to the Conciliator.

Statistics reflecting the current and immediate future financial status of the City, as well as internal and external comparable wage and healthcare plans, were used by both parties to support their final proposals. These statistics were also considered by the Fact-Finder in his

Report and Recommendation.

Throughout the 1990's and continuing through 2007, Streetsboro experienced steady population growth, and it continues to expect growth for another decade, assuming the current economic downturn ends and is followed by economic recovery. Growth resulted in both increased income as well as additional expenses. It also required increased services from safety units, such as the police and fire departments. Both have increased their forces.

This growth significantly slowed in 2008 and 2009 due to a local, as well as a nationwide, economic downturn. Local, State and National economic problems began in the second half of 2008 changing the economic landscape for all public and private sector employers. Those problems had a significant impact on the workforce. Ohio's unemployment rates rose to 10.9 percent in December 2009 and as of November 2009, the unemployment rate for Portage County, where the City of Streetsboro is situated, was 9.8 percent.

The City created a Master Plan in 2009 to address the impact of their growth issues. It determined it had to address problems with flooding, roadway maintenance and storm drainage as a result of rapid development and the lack of funding for maintenance. Funds to address all of these issues come out of the City's General Fund, for there is no millage or other tax sources to pay for any of these purposes. In order to address these maintenance issues and maintain a safe and attractive community, the City needed to adopt a sound fiscal policy and generate additional revenue.

In 2007 Streetsboro had an unencumbered General Fund Surplus of \$1,479,287. Over the last couple of years, due to a decrease in income and rising expenses, it has been spending down the General Fund Surplus. In 2008 it was \$956,645 and at year-end 2009 it was \$586,108. Actual year end surplus for 2009 would have been \$386,108, but for a one time grant from First Energy

in the amount of \$200,000.

In order to address the increased expenses referenced above, as well as anticipated reductions in income, the City proposed and Streetsboro voters approved a one percent (1%) increase in the income tax rate to two percent (2%), partially offset by an increase in the credit offered residents for tax paid to other communities where they work. The new rate became effective May 28, 2009. It was initially expected to bring in an additional \$2 million income tax revenue each year. However, due apparently to the recession, the tax increase did not produce the expected additional income because of unemployment in the area; fewer people had income to be taxed. Collections through year-end 2009 and projected revenue in 2010 reflect no net gains. Through sound fiscal management, the City hopes to maintain its current unencumbered surplus in 2010, but it is expected that maintenance and repairs in the service department will erode this further.

From evidence provided, the Fact-Finder determined that the Streetsboro police officers currently receive salaries that are in the mid pay range for their counterparts in comparable areas. In 2006, 2007 and 2008, average wage settlements for Ohio public employee contracts generally hovered in the vicinity of 3%. Wage increases in Streetsboro's neighboring communities reflect these patterns. While recognizing this, the Fact-Finder recommended a wage increase lower than these patterns due to a deteriorating economy in 2008 and 2009. In proposing 2% increases he acknowledged the following:

“While the comparability data might be compelling under normal circumstances, the current situation is different due to the onset of a national and regional economic decline in the second half of 2008. This decline has caused financial shortfalls for many state and local governments. While some are still able to agree to wage increases, other public employers have suddenly and unexpectedly been forced to start operating in a cutback mode. As a result, it is clear that wage settlements are trending lower, though it is premature to attempt to predict an average for the current negotiations.”

The following summarizes the positions of the parties, the evidence and arguments offered in support of their positions, the Conciliator's analysis and the Conciliator's Award on the issues presented.

Article 36 – Healthcare

The Union's final Healthcare proposal is to retain the current contract language that calls for a high option plan with a 10% contribution in 2010, 2011 and 2012, which contribution is capped at \$100 per month.

The City's final Healthcare proposal is a package offering two health insurance plans: Plan "A," which is a no deductible high option plan, with an 11% employee contribution in 2010, 2011 and 2012, with no cap; and Optional Plan "B," which is a lower option plan with a \$1000/\$2000 in-network annual deductible, with a 5% employee contribution for 2010, 2011, and 2012, with no cap. It also is offering an optional 125 plan implementation, which will reduce employee taxes by affording pre-tax deductions for the employee contributions. The City's Healthcare proposal was recommended by the Fact-Finder.

Union's Position

The Union argues that awarding the Employer's position will result in an approximately 73% increase in employee premium contribution or approximately \$876 in additional employee premium contributions per family plan participating member. As previously stated, this coupled with the 2% wage increase offered by the City, will result in a net negative package if awarded to the Union.

Additionally the Union contends that awarding the healthcare proposal of the City would be exceeding both historical comparable contribution rates as outlined in the annual SERB Healthcare and Benefits Report.

The State Employment Relations Board reported in its *2009-09 Report on the Cost of Health Insurance in Ohio's Public Sector* that the average monthly employee contribution is \$48.87 for single and \$138.44 for family coverage in those jurisdictions where employees contribute to a medical premium. In the Akron/Canton area, employees are paying 7.5% of the medical premium and thus, the bargaining unit is already paying a high percentage of its share of the medical premium.¹

Employer's Position

Under the current economic situation, the City is unable to continue offering the Union its current healthcare at 10% contribution with a cap of \$100.00. It is the City's objective that all employees receive a benefit rich plan and participate in these plans at the same contribution amount with no cap. The City is struggling to reign in its rising health insurance costs, which account for a significant portion of its operating expenses. The City's dual-option healthcare proposal will limit the escalating costs of health insurance premiums and at the same time give the bargaining unit members a choice in their plan selection. The City is offering the same plan choices and premium contribution levels with no caps to the Police bargaining unit members as those implemented citywide and agreed to by the Fire Union. Internal parity regarding health care is one of the primary goals of the City during these labor negotiations.

While the City's contribution level exceeds the 2008 state average, it is because the plan is richer and more expensive than the average state plan. The City's proposed Plans "A" and "B" are plan options that provide employees with meaningful choices. Plan "A" is the current, more comprehensive plan, while Plan "B" provides excellent coverage, but is also less costly. Both Plans "A" and "B" offer wellness treatment and prevention. The current proposal will reduce the

¹ The Conciliator would note that this percentage for the region included plans where employees contribute \$0 to the medical premium. This factor would predictably result in a lower percentage than a calculation based upon plans

City's health care expenditures significantly while providing employees meaningful health care options with internal parity.

Analysis

The Conciliator must award the City's final proposal, which is the recommendation of the Fact-Finder.

As recognized by the Fact-Finder, maintaining a uniform, city-wide insurance program for all employees has the advantage of affording the employer an opportunity of more effective competitive bidding resulting in overall savings in total costs to the City and the employees. Since other groups have settled on the offered insurance package, there is no compelling reason for any deviation.

The Union does not reject either Plan A or Plan B as an unfair or inadequate insurance program. It is agreeable to the coverage and the benefits, but argues that under Plan A the additional costs will erode any wage increase and Plan B could ultimately cost more than Plan A if an employee was required to use it at all. It also cites statistics from SERB which show that they presumably are already paying a higher premium share than others in the region.²

It is clear from the evidence that both Plans offer comprehensive coverage. The Conciliator sympathizes with the Union, for health care premium contribution costs have eroded employee take-home pay. At the same time, however, the City is also faced with higher premium costs, even if a minimum coverage plan is offered. In the case of the City of Streetsboro, it offers a plan that is a more comprehensive and expensive plan than most others offered public employers. This is clearly why the monthly premium cost under the City of Streetsboro's plan is above the average of not only cities in the region, but also larger cities in the State. While an

where all employees contributed.

² See footnote 1 above.

increase in contribution is required of the bargaining unit, the City is still paying 89% of a higher cost premium. As noted by the Fact-Finder, some increase in the employee premium contribution is warranted. It would appear that the City's 1% increase (overall 11%) places the bargaining unit at higher contribution percentages and higher monthly contributions than the 2008 state averages for cities its size according to the SERB Report submitted by the Union, but it is difficult to determine if that is accurate since the report did not exclude those cities that have plans where employees have zero contributions. The report also does not differentiate between levels of benefits in each plan. It does, however, provide a beginning point for an analysis. The SERB Report reveals that an average monthly premium for medical coverage per employee for family coverage is \$1,148.88 and, when employees pay a portion of the premium, the average monthly contribution is \$138.44. Following those statistics, the premium share is 12%. It is difficult to track regional differences without knowing plan details, such as benefits provided and resulting cost of plans. On a statewide average basis, considering those plans where employees contribute to the cost of the premium, the proposed plan of the City is not out of line with average sharing. Employees cannot expect to pay contributions at par with other jurisdictions with less comprehensive plans.

While the Union does not believe that many employees will opt for Plan B because of the higher deductibles, it is at least an option provided by the City to reduce out-of-pocket costs for those that believe they are healthier and do not want to pay the higher monthly contribution. As stated by the Fact-Finder, "that is a meaningful option to avoid increased insurance costs." With this option in place, the Conciliator can find no basis on which to deviate from the finding of the Fact-Finder.

The implementation of the Section 125 Plan is a worthwhile component of the healthcare

plan. Permitting qualified employees to pay qualified medical expenses with pretax dollars reduces the overall cost of the plans themselves.

Based upon the above factors, considered in light of the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code, the Conciliator can find no reason to deviate from the Recommendation of the Fact-Finder.

Award

The Conciliator selects the City's final offer which is as follows:

Section 1. The Employer shall continue to provide group insurance and pay eighty-nine percent (89%) of the premiums for insurance for Program A and ninety-five percent (95%) for Program B. Effective January 1, 2010, the Employer will provide two insurance program options (Program A and Program B) and employees have the right to choose which insurance program they wish to enroll in during any open enrollment event. Switching between programs is not available during any other time of the contract. Additions to and/or subtractions from an insurance program is permitted throughout the year within thirty (30) days of a qualifying event (as defined by the insurance carrier).

Section 2. The employer retains the right to change health care and life insurance providers during the term of the contract in as much that bargaining unit employees shall receive comparable coverage that existed at the time of the modification.

Section 3. Employee contributions: Employees are responsible for paying their specified percentage of the premium for health insurance, dental insurance, vision and life insurance and said percentage will not change for the duration of this agreement. Employee contributions will be automatically deducted from employee paychecks through the Finance Department. Employee contributions will be split between the first two paychecks of each month. Specific contributions are as follows:

Effective January 1, 2010
Program A – 11%
Program B – 5%

Effective January 1, 2011
Program A – 11%
Program B – 5%

Effective January 1, 2012
Program A – 11%
Program B – 5%

Section 4. Where both spouses are employed by the City of Streetsboro, only one will be eligible for health insurance coverage that being the family plan.

Section 5. A full-time employee eligible for health insurance coverage may elect not to be covered under the City provided health insurance plan and receive a payment of fifty (50%) of the premium that the City would have paid for that employee. This payment is made only on the single plan premium rate for Program A regardless whether the employee is on the single or family plan. An employee electing such payments in lieu of coverage must notify the Finance Department thirty (30) days before the first of the month in which they do not want coverage. The employee will be allowed two (2) changes during a two (2) year period that begins with the policy term (currently May 1st) where an election not to be covered or an election to return coverage is considered a change. A return to coverage will also require a thirty (30) day advance notice. Payments to employees not electing coverage shall be made quarterly in accordance with the policy period. Employees who have a spouse employed by the City shall not be eligible for this provision. An employee who drops City provided coverage and subsequently wishes to re-enroll for City provided coverage shall be subject to the pre-existing condition policy and the physical exam policy of the City's health insurance carrier at no cost or liability to the City. If an employee elects not to be covered under the City provided health insurance plan, the employee may elect to be covered under the City provided dental and/or vision insurance plan(s).

Section 5. The City will make available a Section 125 premium only plan effective June 1, 2010. This plan will offer payment of qualified premiums at pre-taxed dollars.

Article 23 - Compensation

The Union's final wage proposal is for all three police units to receive a 3.5% wage

increase effective July 1, 2009, 2010, and 2011.

The Employer's final wage proposal is for all three police units to receive an increase of 2%, 2% and 2.5% over three (3) years, retroactive to July 1, 2009, as recommended by the Fact-Finder.

Union Position

The Union contends that the increase is consistent with increases as outlined for all police contracts in 2008 as reported by SERB's most recent annual wage settlement report. The employer's wage increase of 2% would be offset entirely by the increased employee premium contributions of 11% and, if uncapped, would put the units even further behind.

The Union contends that it is on the low end of wages for its historical comparable employers. The Fact-Finder broke from the historical comparables in a somewhat unorthodox way by comparing the city of Streetsboro police forces to a County police force, the Portage County Sheriff's Office. This made the comparisons look better for the City, but it was not a fair comparison. Awarding both the City's wage increase and uncapping the employee premium contribution results in a net negative wage settlement.

Throughout the negotiations the Employer has not raised the issue of ability to pay. In fact, the Employer has granted generous wage increases to other public safety forces in the City, including the 7% increase to the Firefighters.

Employer Position

The City argues that its wage proposal is more reasonable considering the current economic climate as evidenced by current statistics. With the proposed wage increase, the City of Streetsboro Police division pay will remain on par with its contiguous cities and the Streetsboro Fire Department (external and internal comparisons). A Fact-Finder recently awarded the Fire Department 2%-2%-2% with an equity adjustment of 7% in the first year of the

contract. While the Streetsboro Fire Department did receive a one-time 7% equity adjustment, there is no need for an equity adjustment for the Police Department, because the Police Department compensation is on par with surrounding communities. The compensation for the Streetsboro Fire Department was significantly lower than any of the surrounding communities and an equity adjustment was necessary. The Fact-Finder for the recent Fire Department negotiations realized this compensation difference and awarded an equity adjustment to the Fire Department.

The City adopts the reasoning set forth by the Fact-Finder in his report with regard to compensation. Specifically, according to the Fact-Finder, the current economic situation is causing the wage settlements across the state to trend lower and this contract “must be evaluated in light of this changing overall picture”. The Fact-Finder found that the patrol officers rank in the middle for compensation when compared to more affluent neighboring departments. The City’s Finance Director testified that the eroding unencumbered surplus of the City is a clear sign that wages need to be restrained.

Analysis

The Conciliator must award the City’s final proposal, which is the recommendation of the Fact-Finder. While a “total economic package” is often considered as an outcome in the bargaining process, wages should be considered independent of other factors and considered in light of the criteria set forth in Section 4117.14(G)(7) of the Ohio Revised Code. While I would agree with the Union that the bargaining unit deserves more than the 2% increases recommended by the Fact-Finder in order to offset increases due to healthcare contributions, I find that the Fact-Finder properly considered and applied the statutory criteria set forth above.

The police bargaining unit members are not at the bottom, nor are they at the top of the

wage scale with other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classification involved. If the city continues to grow as it did before the current economic downturn occurred, income will be up, more services will be needed and an upward movement in wages can be demonstrated. Under current circumstances, however, the Conciliator cannot find that the Fact-Finder's consideration of 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 the normal standard of public service under the City's decreasing unencumbered reserves is misplaced. With a 2% increase, the bargaining unit retains its relative position relative to other jurisdictions for 2009 and 2010. A number of contracts have not been negotiated for 2011 and no comparison can be made with those cities. In times of uncertain financial condition and faced with a two year history of declines, modestly increasing salaries to maintain status quo with comparable communities is in the public interest. Adopting the Union proposal would result in percentage increases above those reflected in comparable jurisdictions for years 2010 and 2011, including the more affluent cities in list of comparable cities.³

Award

The Conciliator selects the Employer's final offer that the wages be increased 2%, 2% and 2.5% over the three (3) years, beginning July 1, 2009.

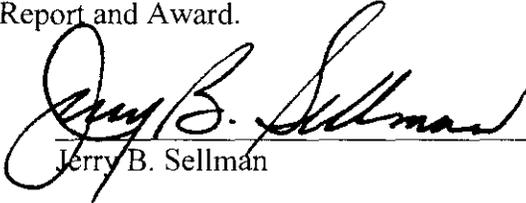
Conclusion

After due consideration to the positions and arguments of the parties and the criteria enumerated in ORC 4117.14(G)(7), the Conciliator awards the last best offer of the City in each

³ As an example, the police in the city of Aurora will receive a 3% increase in 2010, but that will be the last year of their Agreement. The police officers in the city of Kent, who currently receive lower salaries than police officers in the City of Streetsboro, will receive a 2.5% increase in 2010 and a 2.5% increase in 2011. Many have not completed contracts for 2011.

of the open issues. In addition, all agreements previously reached by and between the parties and tentatively agreed to, are hereby incorporated by reference into this Conciliation Report, and shall be included in the resulting Collective Bargaining Agreement.

This concludes the Conciliator's Report and Award.



Jerry B. Sellman

February 11, 2010
Columbus, Ohio