

**Before the State Employment Relations Board
State of Ohio**

STATE EMPLOYMENT
RELATIONS BOARD

2010 OCT 18 A 9:52

In the matter of

Athens County Board of County Commissioners

Employer

Case No-09-MED-10-1140

And

Sandra Mendel Furman,
Conciliator

Ohio Patrolmen's Benevolent Association

Union

Conciliation Award

Procedural Matters

The parties had engaged in several bargaining sessions for a successor agreement.¹ These occurred from late 2009 until March 2010. Many articles were resolved or unchanged. The parties had several issues that were unresolved. A fact finder was appointed under SERB processes. Fact finder Richard J. Colvin conducted a hearing on issues remaining after in session mediation resolved others. Fact finder Colvin issued his recommendations on June 15, 2010. The Union timely rejected the report.

SERB appointed the conciliator by email dated July 7, 2010. The matter was scheduled for hearing on September 22, 2010 by agreement of the parties. Pre hearing statements were received by the conciliator and served by each party upon the opposing party prior to the hearing. There was substantial compliance with OAC 4117-9-05 (F).

¹ The current three year contract expired 12-31-09. Both parties presented a copy of the current contract as an exhibit.

The hearing was held as agreed on September 22, 2010 at the County Building in Athens Ohio. The County was represented by Edward Kim, partner at Downes Fishel Hass Kim. LLP. Douglas Bentley 911 Chief Operations manager was the County's representative. The Union was represented by Mark Volchek, OPBA counsel. Union members Elizabeth Smith and Teresa Savage were present.

The pre hearing statements indicated that there were two issues remaining: the amount of employee and employer contribution for health insurance premiums and wages. Upon exchange and receipt of the pre hearing statements it was clear that the parties had separately arrived at the decision to adopt the fact finder's recommendation on wages as its "final offer." The conciliator asked on the record if the parties did agree to the wage schedule proposed by the fact finder. The parties agreed, language disputes were quickly resolved and a tentative agreement incorporating the wage language was signed at the conciliation hearing. Wage increases will be retroactive to January 1, 2010; the parties waived in writing the proviso in RC 4117.14(G) (11). The amount of the increases are 2.25% effective the first full pay period following December 31, 2009; 2.5% effective the first pay period following December 31, 2010 and 3% effective the first pay period following December 31, 2011.

The conciliator offered to mediate the remaining issue relating to health insurance premium contribution rates. The parties declined mediation and proceeded with their proofs. A full hearing was had. The parties presented multiple exhibits in support of their respective positions.

The parties stipulated in writing that no transcript needed to be prepared and the notes of the conciliator and parties' exhibits would constitute the record.

The report is submitted within statutory guidelines.

Discussion

The bargaining unit consists of ten (10) Full Time Dispatchers. The parties present at hearing have a close working relationship. The Dispatcher bargaining unit is housed in the same building as the Sheriff's department but is not a section of the Sheriff's department. The 911 Center appointing authority is the Board of County

Commissioners. The County Commissioners are the legislative body which has the approval authority under Chapter 4117.

The 911 Center performs dispatch functions for the entire Athens County area with the exception of the City of Athens.

Duties currently performed by the 911 center are as follows:

- Handle all 911 calls county wide
- Provide dispatch and emergency communication for thirteen (13) fire departments
- Handle all non emergency fire calls for thirteen (13) fire departments
- Provides dispatch and emergency communication for the Athens County Sheriff department
- Provides dispatch and emergency /non emergency communication for police departments in Glouster, Coolville, Nelsonville, Albany, Buchtel and Chauncey
- Provide record keeping for the Sheriff's Department (e.g. warrant entries, LEADS entries, missing persons entries)

Under discussion for the future is increased responsibility for EMS calls. The current EMS related responsibility of the 911 Center is to filter the EMS calls. (Union Ex. 4)

Prior to 2007 the 911 Dispatchers unit was covered under its own health insurance plan. In 2010 it abandoned that plan and its plan now covers all other county employees (but not the Sheriff's department).

The 911 unit has three (3) non bargaining unit employees including the Director. The majority of employees in the unit are in the family plan.

Premium costs for prescription and medical coverage for 2010 is \$1350 /month for family coverage and \$512.25 for single coverage. If the percentage were to remain at 15% the employee premium coverage expense is \$202.50; it would increase to \$270 if it went to 20% reimbursement rate.

HEALTH INSURANCE

County final offer

The County seeks to follow the recommendation of fact finder Colvin.

The Sheriff's Department has two bargaining units also represented by the Union under separate bargaining agreements. The Sheriff's Department collective bargaining agreements have been recently renegotiated,

There is parity between the Sheriff's Department contract and the 911 employees. The Sheriff's deputies recently settled its contract for the same reimbursement rate proposed by the Commissioners.² The sergeants and lieutenants unit also accepted the reimbursement rates of 90%-single and 80%-family.

The dispatchers' reimbursement amounts are far less than those paid by the Sheriff's deputies.

Although Union Ex.8 illustrates that there is an excess balance in the 911 Government Assistance Funds it is a fund established by state legislative action. There is no guaranty of continued funding. Funding is earmarked by the Legislature for specific purposes. The amounts received recently were for implementing Phase 2 training.

The amount of revenue increases have declined since 2007 from 3.7% to 1.8% in 2008 to 1.7% in 2009. Expenditures exceeded revenues in 2009 by \$136,135.

The County points out that it must be fiscally responsible. Merely because it has a positive balance in its reserves is no basis for expending the balance. The County cites to increasing expenditures. It is fiscally prudent to maintain a balance as it is anticipated that costs will continue to rise.

Union final offer

The Union currently makes no contribution at all for its health insurance for its members electing single coverage. It proposed in fact finding to decrease the current amount of 15% for family coverage to 10%. It also sought to keep the level of benefits received at levels comparable to the current levels by language requiring that the plans be substantially equivalent to current (2010) benefits. Regarding

² Between the date of the fact finding hearing and the conciliation hearing it was discovered that by error the deputies were in fact paying only 12% of the difference between the 90-10 and 80-20 spread instead of 20%. This appeared to be an error in the Auditor's Office. Counsel for the County represented that this error will be corrected.

dental and vision care insurance premiums single payers do not pay for the premiums but those employees with family coverage currently pay 50% of the cost of the premium difference between family and single plan.

After receipt of the fact finder's report the Union modified its position considerably. It now seeks language protecting its members' current maximum reimbursement at 15% for family plans for major medical, vision and dental. The Union points out it has made several concessions that acknowledge the County's fiscal concerns. It dropped its "substantially equivalent" proposed language. It agreed to the County's proposal on the single payer paying 10% of the premium cost.

Union Ex. 1 sets forth comparisons between the prior medical insurance plan in place in 2009 (Medical Mutual) and the insurance plan implemented in 2010. (now CEBCO-Anthem and Caremark RX):³ see also tab 7 County Ex.

1. Deductibles increased from 0 to \$200 (single) and \$400 (family)
2. Out of pocket limits increased from \$500 to \$700 for single and from \$1000 to \$1400 for families
3. emergency room costs jumped from \$25 co pay to \$150 co pay
4. urgent care costs increased by \$5
5. office visits costs increased by \$5
6. specialist office visits costs increased by \$20
7. prescription drug costs decreased \$6 for generic and increased \$15 for preferred and non preferred brand; mail order costs decreased \$5 for generic drugs and increased \$15 for preferred and by \$35 for non preferred brand drugs

The County proposal of employee reimbursement for family plans at 15% is at a higher level than the average of 10.4% for counties in Athens County population size range. The statewide average is 9.4%; the southeast Ohio average is 8.7%. Thus the 20% urged by the County is clearly excessive. Union Ex.2.

³ The insurance contract changes each year on January 1. The Union has no place at the table with the insurer.

The wage increases do not pay for the health insurance premium price increases. The question of health insurance stands alone and should not be used to determine the appropriateness of the percentage increase for premiums.

The County has not argued inability to pay. There are clearly sufficient funds to pay for the continuation of the employer pick up at the 85% rate. The County has \$733,267 in its end of year balance in the 911 emergency fund. The 911 sales tax has brought in increasing revenues every year since 2006. Union Ex. 7. The 911 government assistance fund had an end of year balance of \$430,019.

The parity arguments with the Sheriff's department are misplaced.

The Sheriff does not employ dispatchers. More appropriate comparisons are as presented by the Union. The Sheriff is a separate appointing authority. The Dispatchers are not employees of the Sheriff. The 911 Center has a separate budget. Revenue sources are different- sales taxes and a contract with Nelsonville provide income for the 911 Center that isn't shared by the Sheriff. Funds come from cell phone fees that are not available to the Sheriff. There is no reliance at the Center for discretionary allocations from the Commissioners.

The deputies' language includes "substantially equivalent" language. Therefore the Sheriff's employees may have a larger percentage premium increase but will not have the risk of a concurrent diminution of benefits.

As a matter of fact the deputies did not pay 20% for family premiums in 2009. The deputies paid 12%- less than the 15% paid by the 911 dispatchers. Even though the Union wants to have the family deduction remain static, it did agree to a concession for the percentage to be paid by single payers.

Analysis

The conciliator has taken into consideration relevant factors set forth in R.C. 4117.14 (G) (7) (a-f), and has followed the guidelines set forth in OAC 4117-9-05(K). Some of the listed factors were not relevant. Other factors had no evidence presented as to their applicability.

Past collective bargaining agreements

Both parties proposed in the final offer process changed language for the successor agreement. Past cbas did not require employee participation for single

coverage. The expired cba required 15% participation of the employees for family plan coverage in the last year of a three year agreement, having built up from 10% and 12% in cba years one and two.

Both parties eliminated any reference to a dollar amount of major medical coverage as was listed in the predecessor cba.

The conciliator considered the evolution of changes for the health insurance reimbursement provision and found that it was reasonable and equitable to begin cost reimbursement at an increased level for single persons so that they too may absorb some of the expense of insurance. Both parties accepted this change proposed by the County and recommended by Colvin There were no compelling considerations to increase the allotted share of the family plan users as their costs were already disproportionate in the conciliator's opinion.

In the predecessor cba the single payer had no contribution for vision or dental coverage. The family payer had responsibility to pay 50% of the difference in amount between the family and single plans for dental and vision care.

Both parties final offers propose a pro rata share of reimbursement equivalent to the amount paid for medical insurance. Since both agree that the pro rate share ought to be the same for medical as well as the supplemental policies the conciliator adopts that position as well. However the amount of the pro-rata share for the Union is deemed more appropriate in the Union's final offer.

Comparables:

Athens City dispatchers contribute \$17/month for a single plan and twice that for a family plan. This is far less than the Dispatchers' proposed share. It also offers a plan with \$0 employee contribution. (Percentages of total costs of either were not presented)

Employee costs at Ohio University for its dispatchers are \$29.25/month for single coverage and \$75.83 for family. (Percentages of total premium costs were not presented) Union Ex.5.

Neither Athens County Engineer employees nor employees of the Athens-Hocking County Solid Waste District pay anything for health insurance coverage in their respective current collective bargaining agreements. Union Ex.6.

Athens County Sheriff's deputies pay 20% of family premium costs for major medical insurance/prescriptions as do the Sergeants and Lieutenants. The same classifications pay 10% of single premiums for medical/prescription drugs.

Although the County argues that the amount of premiums paid by the Dispatchers is less than the Sheriff's employees there is no mention of the wage differentials that may make the comparison less tilted. There is no information in the record about level of benefits distinctions between the two plans: the Sheriff and 911 are under different insurers. The different plans renew on different dates except both vision plans are parallel. Thus there may be changes occurring during the cba's terms that would affect the numbers. (County Tab 8)

Other distinctions include the fact that the Sheriff's two OPBA agreements contain the "substantially equivalent" language; the dental and vision care reimbursement levels are frozen at 2009 levels for the deputies and at 2007 levels for the Sgt and Lts, Neither of these provisions exist for the 911 bargaining unit.

The conciliator finds that the better comparables are like to like classifications in the absence of internal comparables. The Sheriff's department employees are not like to like. The sole basis urged for the pro rata share proposed by the County is the Sheriff's department contracts. Weighing a variety of factors the conciliator is not persuaded that this is a compelling argument.

There was no evidence as to the scope of duties for the Athens City Dispatchers or the Ohio University Dispatchers. It is clear that their duties are contained within the particular political entity: the City for Athens and Ohio University campus for the University. It makes better sense to look at the same classifications than other employees even if all other factors (service area, responsibilities, and training requirements) are not identical. It would have been useful to know the percentage amount of premiums paid for the City and OU group. These were not of record. Since two other dispatcher groups within the county pay amounts roughly less than those to be paid by the 911 center the Union's offer seems compatible with the geographic area.

The conciliator has a different perspective than the fact finder. As this writer has rejected the comparability of the Sheriff's employees situation to that of

the 911 center dispatchers, the basis upon which Colvin's recommendation was made is not persuasive. He is in error that the contracts are identical as the Sheriff's language contains the provision "substantially equivalent"- and the 911 proposed language does not contain this qualifier. He simply states as fiat the comparisons to OU and the City are not relevant. He states that the Athens County Engineer is not under the jurisdiction of the County Commissioners. But the Sheriff employees like the Engineer's employees are under a separate elected official. The Solid Waste District employees are under a different political subdivision and have separate funding and grants-but the Sheriff's office also has different grants and funding than the 911 center.

All in all the comparables presented by both sides do not compel a result in either side's favor as a solitary factor. The conciliator believes that the comparisons are best had with OU and the City- for both geographic and similar duties reasons- but even if the missing information on percentages of reimbursement was identical to that of the 911 center this is only one of a list of considerations to be had. .

Interest and Welfare of the Public

No evidence was presented on this factor. The conciliator having heard no testimony on this cannot make any findings.

Ability of the County to finance and administer the issues

There was no testimony presented on the County's ability to administer this health insurance reimbursement issue. (except to the extent it was pointed out that the sheriff's reimbursement formula had not been properly followed to date of hearing).

The County must be mindful of accounting principles, fixed and more likely ever increasing expenses, the public trust and the "rainy day". It is not an inability to pay scenario argued by the County. It is an unwillingness to pay. But balancing all of the statutory factors the conciliator agrees that the Union's proposal is reasonable, fair, equitable, and consistent with the market. SERB's health insurance report for 2010 showed the average percentage paid by employees for

single plans is and for family plans. Keeping the percentage to 15% for the family plan employee share contribution does not skew so dramatically against the norm.

Effects of the adjustment on the normal standard of public service

No evidence was presented on this factor. It is not relevant on this determination.

Lawful authority of the Public Employer

No evidence was presented on this factor. It is not relevant on this determination.

Stipulation of the Parties

The parties entered into a stipulation that changes if any to the health insurance reimbursement formulae would take effect upon contract execution.

Other traditional collective bargaining considerations

911 unit employees have agreed to begin sharing the cost of health insurance premiums. Their responsibility increases from 0-10% for single plan coverage. The Union requests that the employee share for family plan reimbursement remain unchanged from the current language at 15%. Its justifications resonate with the conciliator.

The plan in place already results in higher health care costs for the unit. In some instances costs increased more than \$200 (the deductible) The trend has been increased costs each year for premiums. No one can indicate with certainty what will happen in the remaining two years of the collective bargaining agreement. Because the Union does not bargain for nor with the carrier it will necessarily absorb any increases in years to come. These increases may come either in the form of premium increases and/or in diluted benefits.

It is inequitable absent any evidence to the contrary to further increase the costs per employee for a commodity that is volatile anyway. There is a likely argument that the single payers are taking a 10% hit and the family payers should also take a hit; the County seeks a 5% increase. But the conciliator considers the fact that family payers already pay more and have higher deductibles even if more people benefit in their households. Thus the burden is already heavier for the family plan payer.

Although neither party provided the conciliator with costs of their respective positions the conciliator can safely conclude the Union's proposal will cost slightly more than the County proposal. This factor alone does not defeat the required considerations under statute.

Another aspect of adopting the Union's last offer is a change in the reimbursement rate for vision and dental coverage from 50% of the cost paid by single plan participants to 15%. The conciliator has no discretion under statute to modify the proposal absent mediated agreement. There was no mediation. Therefore the Union will now have a lesser reimbursement rate for the supplemental coverage.

The prospects for the 911 Center's financial health and growth are not pessimistic or dire. The 911 center receives revenue from fees imposed upon shared users (e.g. the City of Nelsonville). Unknown developments may provide for more of an income base. The parties will meet again in three years to assess the situation and bargain again. The equities and facts will undoubtedly be different.

AWARD

The parties shall have all terms set forth in their tentative agreements reached through bargaining **and** through mediation at fact finding (**including the stipulated wage increases of 2.25%-2.5%-3% reached post fact finding through final offer settlement**) as part of the collective bargaining agreement made retroactive to January 1, 2010. The provisions of RC 2117.14(G) (11) were eliminated as a bar to retroactivity at hearing by a signed waiver.

All pre existing terms of the collective bargaining agreement not changed by tentative agreements shall be incorporated into the 2010-2012 agreement.

The Union's last offer regarding health insurance shall be included in the parties' successor agreement. However the **language shall not become effective until execution of the agreement.**

Therefore Article 26 Insurance shall read as follows:

Section 26.1

The Employer shall contribute ninety (90%) percent and the Employee shall contribute ten (10%) percent of the total insurance premium for major medical, prescription, dental and vision for a single plan.

The Employer shall contribute eighty-five (85%) percent and the Employee shall contribute fifteen (15%) percent of the total insurance premium for major medical, prescription, dental and vision for a family plan. The County shall choose the carrier.⁴

Section 26.2

The Employer agrees to provide and pay for a \$20,000 Life policy.⁵

It is so hereby ordered.



Sandra Mendel Furman, Esq.

Issued in Columbus, Ohio this 15th day of October, 2010

Certificate of Service

An original and true copy of the Conciliation Award were sent by ordinary US mail on the State Employment Relations Board, 65 East State Street, 12th floor, Columbus, Ohio 43215; on Edward Kim, 400 S. Fifth Street, Columbus, Ohio 43215 and Mark Volchek, 92 Northwoods Blvd. Ste. B2 Columbus, Oh 43235 on October 15, 2010. An electronic copy was also sent to the parties' representatives and SERB. The parties waived overnight transmission of the Award at the hearing.



Sandra Mendel Furman, Esq.

⁴ The parties current practice of requiring family plan payers reimburse the cost of 50% of the difference between the single and family premium for vision and dental insurance is to be discontinued. Employee share will now be 15% of the premium costs without reference to the spread between costs paid by single plan payers.

⁵ Although not stated it is clear that the parties are referring to a life *insurance* policy.



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