

**STATE EMPLOYMENT RELATIONS BOARD
STATE OF OHIO**

In the Matter of the Conciliation Between:

The City of Kettering, Ohio : Case No. 11-MED-08-1046
and : Conciliation Award
Fraternal Order of Police, : Margaret Nancy Johnson
Ohio Labor Council, Inc. : Conciliator
(Sergeants and Lieutenants)

Statement of the Case

This matter came on for hearing on June 18, 2012 in a conference room at the Kettering Government Center in Kettering, Ohio, before Margaret Nancy Johnson, appointed by the State Employment Relations Board, hereinafter "SERB," to serve as Conciliator. Prior to convening, both parties submitted timely position statements for review by the Conciliator. At the hearing the parties had the opportunity to make opening statements, to examine and cross-examine witnesses under oath, and to introduce into the record documentary evidence demonstrative of their respective positions.

The case for the City of Kettering, hereinafter "City," was argued by Daniel G. Rosenthal, Attorney with the law offices of Denlinger, Rosenthal & Greenberg. He was assisted by Sara Mills, Human Resource Director, and Mark Schwieterman, City Manager. Also in attendance were Tom Weghorst, and James M. O'Dell, Chief of Police. The City called Stephen I. Hopf, Insurance Consultant with McGohan Brabender, to testify on its behalf.

Brenda J. Goheen, Staff Representative with the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter "FOP," or "Union," presented the case on behalf of the bargaining unit consisting of Command Officers within the Police Department of the City. Negotiation Committee members present at the hearing were Daniel Gangwer and Roger Smart.

The City of Kettering is a suburb of Dayton, Ohio, located in Montgomery County, having a population of approximately 56,163. Ten (10) sergeants and six (6) lieutenants comprise the bargaining unit. Terms and conditions of employment for the Command Unit are set forth in a Collective Bargaining Agreement with an expiration date of December 18, 2011. Unable to reach agreement on the terms of a successor contract, the parties engaged in Fact-finding before John F. Lenehan who issued his Report and Recommendations on March 23, 2012. The Union rejected the Report of the Fact-finder giving rise to this conciliation proceeding.

As the parties reached agreement upon a 2%, 2.25% and 2.5% wage increase, co-pays, and holidays, the only issues now in dispute pertain to the Health Savings Account provisions and payment of the employee share of the insurance premium. Medical coverage for City employees is provided through a program having a high-deductible Health Savings Account ("HSA"). Initially, the City fully funded the high-deductible and employees contributed 17% of the premium cost. As a result of negotiations with the police units for the preceding agreement, rather than the employee paying the 17% premium share,

the City's contribution to the deductible was decreased by the 17%. This arrangement did not change the monetary value of the employer/employee costs or contributions. In these contract negotiations, the City seeks to change the method of premium payment, termed an “untwisting,” and to have employees contribute towards the HSA deductible, gradually increasing the employee share to 25%.

Issues

Two (2) issues arising from the Health Insurance provisions set forth in Article 10 of the Agreement are now in contention: a) how the Insurance Premium is paid by employees; b) employee contributions to the deductible.

Criteria

In making the award on the two issues referenced above, the Conciliator has taken into account the statutory criteria as set forth in Ohio Revised Code Section 4117.14(G)(7):

1. Past collectively bargained agreements, if any, between the parties;
2. 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;
3. 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;
4. The lawful authority of the public employer;
5. The stipulations of the parties;
6. 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 the private employment.

Positions of the Parties

Union

A. Insurance Premiums

The Union contends that the manner in which the employee pays its share of the premium should remain unchanged. As this issue has no financial value to the City and the City has not demonstrated a need to modify the contract language, the previously negotiated provision should remain as current contract language. Although the fact-finder included the issue in his report and recommendations, in fact, at the fact-finding hearing the City had withdrawn its proposal on this provision.

B. Health Savings Account Deductibles

On this issue, too, the Union proposes current contract language. Any changes in the insurance provisions must be justified by the City. Since it has ample funds with which to pay the Health Savings Account deductible, the City ought to continue to do so. Moreover, while the insurance changes implemented by the City have resulted in significant savings to the City, the administration seeks to impose greater financial responsibility on the employee. Having cost out the deductible to the City, the Union argues the additional cost is insignificant (See Union Exhibit 3)

The City is not in any financial distress and can well afford to continue to pick up the deductibles as in the current contract. Carry-over in the General Fund balance is the equivalent of ten (10) months of expenses. While the City has experienced revenue decreases, these have been offset by the 2007 income tax increase. Indeed, total revenues over the past five years have exceeded expenditures (See Union Exhibit 7).

Similarly, industry relocations and job losses cited by the City are balanced by business growth within the City. There is no justification for passing additional health insurance costs on to the employee. As calculated by the Union, by 2014, the unit members will be paying over \$4,000 for their insurance, an extraordinary expense for an employee (See Union 2).

Indeed, in comparable jurisdictions employees are not required to contribute to such an extent. Costs which the City seeks to impose on the employee are far greater than insurance costs paid by other public sector employees in Ohio (See Union Exhibit 6).

The Union contends there is no justification for the significant change sought by the City and that current contract language should be retained.

City

A. Insurance Premiums

The employee 17% contribution to the insurance premium as negotiated by the Union in the preceding contract creates undue administrative complexity. All employee groups should be administered in the same manner. Accordingly, beginning in January 2013 and for the remainder of the contract, the command officers should pay a 17% premium share rather than having the same deducted from the City's contribution to the HSA. The fact-finder recommended this proposal and the City seeks its implementation at conciliation.

B. Health Savings Account Deductibles

Because of several factors, the City seeks employee participation in funding the HSA. First, unless employees participate in funding the HSA, considered a cost control incentive, insurance carriers can insist on imposing higher premium rates. Second, the cost of the City's insurance plan has increased dramatically since its inception. From 2010 to 2011 the increase in cost was 21%. Employees ought to share in this increased cost. Third, while the cost to the City of the deductibles for employees in this one unit may be affordable, when all City employees are included, then, the impact on City finances is more severe. The City is requiring its non-union employees, who received a 1.75% pay increase in 2012, to pay 25% of the deductible. This unit should be required to do the same.

Even though the City has weathered the national financial crisis, it still feels the effect of reductions and eliminations in revenue. Property values and property taxes have declined; income from state funding is being eliminated; for the past three years income tax revenues have been less than in 2008. Major employers in the City are reducing jobs or relocating, changes which greatly affect City revenue.

When making his recommendations, the fact-finder recognized the financial difficulties confronting the City. Although his report includes elements which the City opposed, such as prescription co-pays as proposed by the Union, overall the Report is a fair compromise. It should be given the deference which is typically afforded to recommendations which are well reasoned and based on fact.

The wage increase recommended by the fact-finder and agreed upon by the parties more than covers the increased costs to the employee. Even with the additional expense, employees in this unit are among the highest paid in the geographic region. The average gross wage for a sergeant in 2011 was \$99,986 and for a lieutenant, it was \$110,333 (See Employer Exhibit 12).

The City seeks to implement the recommendations of the fact-finder and require command officers to contribute 12.5% to the HSA deductible in 2013 and another 12.5% in 2014 for a total of 25%, the

same as the non-bargaining unit employees currently contribute.

Discussion

Although the only matter now in dispute pertains to Insurance provisions, the respective proposals of the parties on insurance should not be considered in a vacuum, but ought to be analyzed in the context of the Agreement as a whole. The Report of the fact-finder, accepted by the City and rejected by the Union, addressed wages in addition to language on insurance. His recommendations were an endeavor to balance the economic issues and forge a compromise between the interests of the City and the Union. In his Report he specifically states that his insurance recommendations were made based upon the 2%, 2.25% and 2.5% wage increase he was also proposing.

Yet, the function of this conciliation proceeding is not to implement the March 23, 2012 Report and Recommendations, but to select issue by issue which of the last final offers on insurance best complies with statutory criteria as outlined above. Accordingly, the Conciliator now reviews the evidence elicited by the parties in support of their proposals while analyzing specific statutory guidelines.

Ability to Pay

Ability to pay along with public interest and welfare is one of several criteria established by the state legislature to enable neutrals in impasse proceedings to seek an appropriate and reasonable resolution to interest disputes between public sector employers and their bargaining units. Based on its substantial General Fund carry-over, the Union contends the City can well afford to continue to pay the 100% deductible it has paid under the prior Agreement (See Union Exhibit 3 and Union Tab7). Having funds available in the General Fund, however, does not necessarily indicate that a particular expenditure ought to be undertaken, assumed, or continued by the City. Ability to pay requires more analysis than year-end balances.

General Fund carry-overs are considered “reserves” or “savings” which are available for unexpected expenditures, exigencies, or for capital improvements which contribute to the quality of life in the community. Yet, trends in the General Fund are an indicator of the financial stability of a municipality as the General Fund is built upon the excess of revenue over expenditures. Although the Union has argued that in the past five years revenues have exceeded expenditures (See Union Tab 7), that calculation requires close scrutiny. A review of the financial data submitted by the Union establishes that since 2008, the Fund reserves have diminished (Union Tab 7), with expenditures exceeding revenue in three of the last five years. The five-year excess cited by the Union is not due to sustained growth, but rather to the fact that in 2008, revenue exceeded expenditures, resulting in a surplus not repeated since then. In fact, in 2012, expenditures are estimated to exceed revenue by \$2,491,190.

Rather than reliance upon the General Fund carry-over, ability to pay must take into consideration revenue streams and sources of income. Indeed, the CAFR Report excerpted by the Union asserts revenues, not year-end balances, “drive the 'pie' for the amount of expenditures” (Union Tab 7).

Examination of Union Tab 7, General Fund Revenue Analysis, indicates that through 2011 income to the City has declined in all four areas: real estate taxes, income tax, local government fund, and interest revenue. Although income tax receipts for 2012 are estimated to increase, the anticipated 1.95% increase from 2011 to 2012 pales in comparison to the 29.05% decline in local government funding and the 10.18% loss in real estate taxes for that same period of time. The impact of interest at an all time low, with rate increases not anticipated until late 2014, has resulted in interest revenue declining from \$1,670,651 in 2008 to \$782,000 estimated for 2012. While the 2012 improvement in income tax receipts is significant, the estimated revenue is only slightly (\$356) greater than 2008 receipts. With declining income, it is imperative for the City to curtail costs.

The Union argues that the total cost to the City of the insurance deductible for this unit now in

contention would only be \$24,000 for 2012 and 2013 (Union Exhibit 3). This argument fails to take into consideration that as a general principle public employers try to provide comparable insurance benefits to all employees, ensuring internal equity and maintaining employee morale. An increase in insurance costs to the City for this unit translates into far greater increases than the \$24,000 cited by the Union were its proposal to be implemented for all City employees.

The Union contends that the insurance plan negotiated by the parties in the predecessor contract has resulted in significant savings to the City (See Union Tab 5). In fact, increasing insurance costs have been a major factor in the imbalance between revenues and expenditures. Total insurance cost for the City in 2011 was \$5,125,563 whereas in 2010 the total cost was \$4,242,865 (City Exhibit 11). Endeavoring to find ways to reduce or contain insurance costs has become an objective in public sector collective bargaining. The Health Savings Account Plan with high-deductibles as negotiated by the parties herein is designed to provide employees with insurance benefits while controlling cost for the Employer.

As explained to both the Fact-finder and to the Conciliator in unchallenged testimony, a principle behind the HSA is “cost control incentives” requiring that employees “participate” in the funding of the HSA deductible. Absent employee participation, carriers may charge higher premium rates or refuse to underwrite employer funded plans. Although the Union contends employees do have “skin in the game” pursuant to their premium contribution, their argument is with the insurance market, not with the City. Evidence convincingly establishes that having the employee share in the deductible maintains the coverage for employees and their families while stabilizing costs.

Arguing that no one pays \$4000 for insurance, the Union has estimated 2014 employee costs for insurance under the City's proposal at \$4340.19 for family coverage and \$1794.64 for single coverage (Union Exhibit 2). The Conciliator is not persuaded by this contention. First, with the high deductible HSA, the employee cost is not for health insurance *coverage* but for the health care *account*. It is not paid to the underwriter but into an account belonging to the employee. If not used, the funds remain in the account for either future medical needs or for unrestricted usage upon retirement. Second, the Union argument fails to take into account the \$500 credit earned by employees through the Wellness Program (City Exhibit 15). The newly implemented Wellness Program reduces actual contributions by the employee to less than the \$4,000 suggested by the Union.

Having reviewed the financial implications of the differing proposals concerning deductibles, the Conciliator finds that maintaining current contract language as argued by the Union is neither economically reasonable nor in the public interest. The City has a responsibility to manage its finances with proper consideration for its constituents. As to the statutory criteria of “the interests and welfare of the public” and the “ability of the public employer to finance and administer the issues proposed,” the Conciliator finds the proposal of the City to require employee participation towards the HSA deductible an appropriate proposal. She next considers the criterion of comparability.

Comparability

The Conciliator finds that the evidence on comparability also sustains the position of the City as to employee contributions to the deductibles. A review of national employers as well as public employers in Ohio indicates a growing number of high deductible health insurance plans (See Union Tab 10; City Exhibits 7, 8, and 9). A component of the high deductible plan is employee participation in the deductible. Yet, the issue as posed by the parties to the Conciliator in this proceeding is not how much the employee should contribute, but rather, whether the employee should contribute at all. Evidence on comparability clearly indicates the affirmative.

Indeed, reviewing Union evidence on comparables confirms that in those jurisdictions having an HSA with a high deductible, employees are required to make some contribution to the deductible, differences being only in how much the employee contributes. There does not appear to be any other

jurisdiction in which the employer pays 100% funding of the deductible, as proposed by the Union.

Documentation submitted by the City (See City Exhibit 11) indicates a range of participation, but the proposal of the City for a 12.5% contribution in 2013 and a 25% contribution in 2014 is not unusual. On the contrary, some jurisdictions require more while others require less of employees. Consistently, however, employees contribute. Fairborn requires exactly what the City is proposing herein.

Moreover, in considering comparability, reviewing employee contributions without regard to other components of the wage package provides only a partial picture. Comparing deductible contributions of employees in Centerville or Chillicothe without looking at wages or other benefits is not a complete comparison.

While wages are not in issue in this matter, the insurance proposals should be viewed in the context of the wage increases. Indeed, the fact-finder specifically balanced the insurance proposal with the wage increase he was recommending. Among comparable jurisdictions, this bargaining unit has fared quite well with its 2% increase for 2012. In those jurisdictions in which the Employer assumes a greater share of the HSA deductible, the unit has received less in wages. While the cities of Dayton, Huber Heights and West Carrollton may provide more towards the deductible, police units in those jurisdictions have negotiated a wage freeze for 2012; Centerville has a 1.75% wage increase. Indeed, considering base wages for Police Lieutenants and Police Sergeants in the City, the bargaining unit compares favorably with other cities, and even better when looking at gross wages for the two classifications (City Exhibit 12). As noted by the Fact-finder, the wage increases for this unit compensate for the change in the insurance deductible.

As the City has the resources, the Union argues it should provide the benefits that will attract quality candidates for law enforcement services in this vibrant community (See Union Exhibit 4). Considering comparable jurisdictions, the conciliator finds that neither the benefits nor the wages paid to this unit will deter highly qualified candidates from seeking employment with the City. "Ohio's Finest" police force (See Union Exhibit 4) is well remunerated for its services and receives competitive benefits.

Traditionally Considered Factors

The statutory criterion of other factors which are normally or traditionally taken into consideration includes deference to the recommendations of the fact-finder and internal comparability. While the fact-finding recommendations are not binding and the weight they are given may vary, in an instance in which the economic issues in contention have been carefully balanced, similar evidence has been scrutinized, and the report is well-reasoned based upon the documentation and data submitted, then, absent some reason for a differing result, the Report of the Fact-finder is a persuasive element in conciliation. In this case, the compromise reached by the fact-finder on both wages and insurance warrants due consideration. The higher wage recommendation along with the insurance co-pays and the HSA deductible are a reasonable and appropriate resolution to this bargaining impasse. As the reasoning is based upon the same evidence presented to the conciliator, there is no justification for deviating from the recommendations.

Internal comparability, too, sustains the position of the City and the recommendations issued by the fact-finder. The HSA deductible is the same as the City is requiring of its non-union employees, whose wage increase is less than that granted to the bargaining unit. To grant a higher wage increase and a lower HSA deductible to this bargaining unit would not be consistent with the concept of internal comparability. Certainly, differing job characteristics may justify distinctions in wage packages for City employees, but percentage increases and insurance benefits should be somewhat similar and differences should have some rationale. In the absence of some explanation for treating the bargaining unit differently, the conciliator finds internal comparability sustains the position of the City on the

deductible contribution.

Past Collectively Bargained Agreements

Finally, the Conciliator considers the criterion of past collectively bargained Agreements. As a general rule, current contract language will be sustained unless there is a demonstrated need for adjustment. While it is true that the parties previously negotiated both the issue of the Employer paying the HSA deductible and the manner in which the employee share of the premium was paid, the “twisting” issue, in the case of the HSA deductible, the City has presented a justification consistent with statutory criteria for the modification it seeks herein. The reasoning has been discussed above.

As to the “twisting” issue, however, little justification other than administrative convenience was cited by the City. Having agreed to a different method for this unit to pay its share of the insurance premium, the City has the burden of justifying a modification in these proceedings. In the absence of a need for change or amendment, current contract language is presumed to be appropriate. Convenience or “complexity” is not a proper rationale for change. While the fact-finder recommended the modification, the Conciliator is of the opinion that the criterion of past collective bargaining agreements requires some evidence of need for amending current provisions.

Conclusions

Based upon analysis of the evidence presented and adherence to the statutory criteria, the Conciliator finds the proposal of the City as to the HSA deductible an appropriate and justifiable contract modification. For contract year 2012, insurance language pertaining to the HSA deductible shall be unchanged. Effective January 1, 2013 employees will share 12.5% in the funding of the HSA deductible. Effective January 1, 2014 employees will share 25% in the funding of the HSA deductible. Union members are eligible for the City wellness program as administered by the City Manager and the Director of Human Resources. The police unit 17% share of the premium shall continue to be deducted from the City's funding of the HSA deductible as under current contract language.

The only issues for which argument and evidence were presented at Conciliation are the deductible participation and the payment of the employee premium share of 17%. Any issues not addressed in this Award shall be either current contract language or modifications as agreed to by the parties.

Award

The Conciliator awards the position of the City on the employee contribution towards the HSA.

The Conciliator awards the position of the Union on the employee premium share deduction from the City HSA contribution.

/s/ Margaret Nancy Johnson

Dated and made effective at the City of Kettering, Montgomery County, Ohio, this 11th day of July, 2012.

Service

A copy of the foregoing award has been served this 11th day of July, 2012, on the City at rosenthal@drgfirm.com; sara.mills@ketteringoh.org; on the Union at bbbgh@live.com; tcrawford@fopohio.org; and upon SERB at med@serb.state.oh.us.