

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF	:
THE FACT FINDING BETWEEN	: CASE NOS.
	: 2018-MED-10-1048 and 1049
OHIO PATROLMEN'S BENEVOLENT	:
ASSOC.	:
FULL - TIME PATROLMEN AND	:
FULL - TIME SERGEANTS UNITS	:
	:
UNION,	:
	:
AND	:
	: FACT FINDING REPORT
HINCKLEY TOWNSHIP, OHIO	: Submitted by John F. Lenehan,
	: Fact Finder, March 11, 2019
EMPLOYER.	: (Via Email)
	:
	:

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FINDING AND RECOMMENDATION

I BACKGROUND

On January 15, 2019, the State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the cases of the Ohio Patrolmen's Benevolent Association (Full-Time Sergeants, Case No. 2018-MED-10-1048) and Ohio Patrolmen's Benevolent Association (Full-Time Patrolmen, Case No. 2018-10-1049), and Hinckley Township, Medina County, Ohio. A Fact Finding Hearing was held on February 4, 2019, at 11:00 A.M., at the Hinckley Town Hall located at 1410 Ridge Road, Hinckley, Ohio 44233. The Ohio Patrolmen's Benevolent Association ("Association", "OPBA" or "Union") was represented by Adam M. Chaloupka, Esquire, Staff Attorney Ohio Patrolmen's Benevolent Association. The Hinckley Township ("Employer", or "Township") was represented by William Blackie, Esquire, Fisher and Phillips, LLC. Also, in attendance on behalf of the Union were: Mike Schroll, Hinckley P.D., Patrol Union President; David Stepka, Hinckley P.D., Union Representative; and, Jeff Kinney, Hinckley P.D., Patrol Union Representative. Additional attendees on behalf of the Employer were: Raymond Schulte, Hinckley Township Trustee; David Centner, Chief of Police; Martha Catherwood, Fiscal Officer; and Becky Chattin Lutzko, Hinckley Township Trustee.

At the conclusion of the hearing, the parties agreed that the Fact Finding Report would be issued via email to the parties' representatives and SERB on March 11, 2019. The following report is the Finding and Recommendation of the Fact Finder.

A. Description of the Bargaining Units

The bargaining units include ten (10) full-time sworn police officers. The full-time patrolmen unit consists of eight (8) armed patrolmen, and the full-time sergeant unit consists of two (2) armed sergeants. These units provide a multitude of police services for the Township, including: road patrol, detective and various specialized task forces. Non-bargaining unit

employees in the Police Department include the Police Chief, two (2) part-time Patrol Officers, one (1) part-time Detective and an Administrative Assistant.

B. The Employer

Hinckley Township, Medina County, Ohio is a body corporate and politic established under the constitution and the laws of the State of Ohio. A publicly elected three (3) member Board of Trustees directs or governs the Township. The Township provides road and bridge maintenance, cemetery maintenance, fire protection, emergency medical services and police services for the residents of the township.

C. History of Bargaining

The Township and the OPBA are parties to two (2) Collective Bargaining Agreements (“CBAs”) – one covering the Patrol Unit and the other covering the Sergeant Unit. Except for differences in wage rates, the CBAs are essentially identical. Both CBAs are effective for the period from January 1, 2017 through December 31, 2019. Each agreement has a provision for the limited reopening of two articles, Insurance and Wages, for the period beginning January 1, 2019. The reopeners under the terms of Article 37 in each CBA read as follows:

ARTICLE 37
DURATION

Section 1 This Agreement shall be effective for a period of three (3) years, beginning January 1, 2017 and expiring at midnight, December 31, 2019. Notwithstanding the foregoing, the parties agree that either party may reopen the Agreement on Insurance (Article 29) and Wages (Article 33) only, for the period beginning January 1, 2019, except that wages will not be less than the amounts specified in Article 33 above regardless of whether the Agreement is reopened. Should a party elect to reopen the Agreement, notice shall be served upon the other party and within the time and manner as [prescribed by Chapter 4117 of the Revised Code.

Timely Notice to Negotiate the reopeners as described above for both units was served by the OPBA on the Township. The parties met for negotiations on November 21 and November 29, 2018. During negotiations, the Union chose to focus on lessening the employees’ financial burden of the CBAs’ health care provisions and indicated that it was willing to forego an

additional increase in wages for 2019. Unfortunately, no agreement was reached by the parties during the negotiations.

Subsequently, fact-finding was requested by OPBA, and SERB appointed this Fact-Finder for both units. After the fact finding hearing and prior to the issuance of any Findings and Recommendation, by the Fact Finder, the parties amended their fact finding proposals to include a modification of the duration article (Article 37) in both CBAs to read as follows:

Section 1. This Agreement shall be effective until midnight September 30, 2019. Should any party desire to terminate, modify, or negotiate a successor collective bargaining agreement, that party shall serve written notice upon the other party of the proposed termination, modification, or successor agreement. Notice shall be served not less than 60 days prior to the expiration of the existing agreement and no more than 120 days prior to expiration of the existing agreement.

D. Incorporation of foregoing amendment to the current CBAs.

The foregoing amendment as set forth above and in the email correspondence from William Blackie sent on February 26, 2019, is hereby incorporated into the existing CBAs, and changes the termination date for both agreements from December 31, 2019 to September 30, 2019.

E. Incorporation of Articles of the current CBAs not in Dispute and/or subject to reopeners

All Articles of the Collective Bargaining Agreements that expired December 31, 2019 not in dispute and/or subject to reopeners remain in effect through December 31, 2019.

F. Unresolved Issues

The Union and Employer, in their prehearing statements state that there are two (2) issues or articles that remain outstanding. They are:

1. Article 29 - Insurance
2. Article 33- Wages

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 1) Past collectively bargained agreements between the parties;
- 2) Comparison of unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private

employers in comparable work, given consideration to factors peculiar to the area and the classifications involved;

- 3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect on the normal standards of public service;
- 4) Lawful authority of the public employer;
- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUE(S)

ARTICLE 29

INSURANCE

Union's Position

The Union proposes to amend Section 3 of Article 29 to read as follows:

Section 3. The Township shall pay the cost of all deductibles incurred for employees enrolled in the Hinckley Township Health Plan ~~up to \$2,500 per year for single coverage and \$5200 per year for all other coverages.~~ In addition, **the employees** Township shall **not** contribute **more than 16.5%** of the ~~following monthly amounts toward the combined total premium cost of medical and hospitalization, prescription, dental and vision coverage.~~

~~Employee only~~ _____ ~~\$400/per month~~

~~Employee and Child(red)~~ _____ ~~\$750/per month~~

~~Employee and Spouse~~ _____ ~~\$888/per month~~

~~Family~~ _____ ~~\$1200/per month~~

The Union argues that it is asking for the relief set forth in its foregoing proposal, that the employee's total premium contribution be capped at 16.5% and that the Employer contribute to covering the entire deductible for each plan, because significant economic relief must be provided to the employees during this reopener and for the final year of the current contract. It

further argues that the evidence presented at the fact finding will establish that the relief it is requesting is more than the Employer's offer to pay the full insurance premiums of vision and dental. In addition, the evidence will establish that comparable township police departments cover premium costs on a fixed percentage payment by employees and the employer rather than a fixed dollar contribution by the employer with the employee paying the balance as exists for the Hinckley Township Police Department.

In support of its position, the Union submitted numerous exhibits of comparables of health insurance provisions from other township police departments and SERB's report on Health Insurance for 2018. Also, it submitted evidence on individual employees to establish that while their hourly wages may have increase, their take home pay is less because on increasing contributions required for insurance premiums.

Employer's Position

The Township has proposed to assume the full cost of the premiums for dental and vision coverage, on a prospective basis, and would amend Section 3, of Article 29 to read as follows:

Section 3. The Township shall pay the cost of all deductibles incurred for employees enrolled in the Hinckley Township Health Plan up to \$2,500 per year for single coverage and \$5200 per year for all other coverages. **The township will pay the full cost of the dental and vision insurance premiums.** In addition, the Township shall contribute the following monthly amounts toward the premium cost **for medical, hospitalization and prescription coverage.**

Employee only	\$400/per month
Employee and Child(red)	\$750/per month
Employee and Spouse	\$888/per month
Family	\$1200/per month

The Township states that although the OPBA initiated the reopener, it never made a proposal at the table. Instead, in addition to expressing concerns regarding its misunderstanding in connection with dental and vision coverage, it argued that its members were paying "too much" and that the insurance structure in which caps were in place for the employer premium contributions rather than caps on employee contributions is "unfair". It was only after the parties concluded negotiations at the table that the Union offered via email the following proposal.

“16.5% of the TOTAL premium(s) and the Township covers the full deductible in 2019.”

According to the Employer, the Union’s proposal contemplates a completely new health insurance structure whereby employee contributions to premium cost would be capped and where the employer would pay all the deductibles, even those in excess of long-agreed upon \$2,600/\$5,200 HRA amounts. As a result there never would be any employee cost whatsoever with participant usage. The Township rejected the Union’s proposal for the following reasons.

1. The parties’ history of collective bargaining recommends acceptance of the Township’s proposal and rejection of the Union’s proposal.

The Township argues that the first and perhaps the most important criterion is the consideration of the history of collective bargaining as set forth in the Ohio Administrative Code. The history, in this case is clear, according to the Employer. The parties have always agreed that premiums would be paid by the Employer contributions capped at mutually agreed levels. In addition, the parties have always agreed that in exchange for this arrangement, the Township would provide an HRA.

2. The Township does not have the lawful authority to implement the Union’s proposal.

The Employer argues that an equally compelling criterion for Fact-Finders to consider is the lawful authority of the public employer. The Union proposal, according to the Employer, cannot be implemented absent the agreement of a third party, which would be Medical Mutual of Ohio (MMO). The Township cannot change the agreement with MMO in mid-renewal year to assume the full deductibles of all the plans.

Additionally, the union’s proposal cannot be implemented for the entire year within the parameters of the law. Even if it were possible to make the changes advocated by the union, Federal Law provides that such changes cannot be effective until after a 60-day notice (45CFR 147.200(b)).

3. The external comparables relied on by the Union are inapplicable whereas the internal comparables recommend adoption of the Township’ proposal.

To summarize the Employer’s argument as to external comparables, the Employer makes the following statements

“Stated differently, comparisons of plans with different contribution structures is inextricably linked with the actual costs of the coverage- a factor almost entirely out of

Township's control. Additionally, even if the costs were identical, comparison still is misleading because of the differences in the plans themselves. For example, Montville has a self-funded plan whereas Hinckley's is fully insured. Montville's uses an Anthem PPO whereas Hinckley uses MMO. Montville's plan has co-pays, Hinckley's does not. Montville's HRS covers only in-network costs whereas Hinckley's can be used for either.

Finally, even if all of those variables could be equalized –which they cannot- the actual cost of the coverage is deeply dependent on the insured group's claims history, which obviously will vary dramatically from group to group. The variations are even that much more dramatic in small groups such as Hinckley. In fact, it is the recent adverse claims history that Hinckley has experienced because of a few tragic, high dollar cases that has given rise to the increase in the actual costs for the participants.

As to internal comparables, the Employer argues that it would be patently unfair to adjust the CBA for just one group using the plan while the others maintain the existing structure. Instead, major plan changes, as proposed here, should be considered at renewal and for all groups so that all affected employees have input.

In support of its position, the Township submitted numerous exhibits of comparables from other township police departments. The last exhibit was sent to the Fact finder and the Union Representative via email. That exhibit set forth a comparison of the each employee's cost under the prior year plan compared to what it would be under the Township's proposal.

Finding and Opinion

The Employer's position is more persuasive. The evidence does not support making the changes proposed by the Union in the middle of a benefit year. As set forth in the Employer's Position Statement, the history of bargaining, the Employer's ability to implement the Union's proposal and legal impairments could or would dictate against making the changes of the nature proposed by the Union during a reopener.

The recent agreement of the parties to modify the termination date of the agreement to September 30, 2019, acknowledges that significant changes to Article 29 need to be made prior to the commencement of the benefit year, which is October 1st. Negotiations for a new agreement could start prior to August 1, 2019, including the provisions of Article 29.

The Township proposal to assume the full cost of the premiums for dental and vision coverage effective on a prospective basis is reasonable and within the parameters of the reopener language, and should be adopted. It would result in a savings for employees in the bargaining unit.

Recommendation

Therefore, it is recommended that Union's proposal be rejected and that the Township proposal be adopted. Effective upon acceptance by the parties, or deemed acceptance by SERB, Article 29, Section 3 shall read as follows:

Section 3. The Township shall pay the cost of all deductibles incurred for employees enrolled in the Hinckley Township Health Plan up to \$2,500 per year for single coverage and \$5200 per year for all other coverages. **The township will pay the full cost of the dental and vision insurance premiums.** In addition, the Township shall contribute the following monthly amounts toward the premium cost **for medical, hospitalization and prescription coverage.**

ARTICLE 30

WAGES

Union's Position

The Union takes the position that it would forgo any increase in base wages beyond what the current contract already provides for in 2019 (approximately 2%). However, it would not oppose the Fact-Finder tailoring a recommendation in which an increase in wages for 2019 offsets a recommendation regarding the insurance article that does not fully adopt the Union's recommendation.

Employer's Position

According to the Employer, neither party made a proposal to alter the wages provided for in Article 33. Indeed all bargaining unit employees have already received a two percent (2%) increase effective January 1, 2019. Moreover, states the Employer, the Patrol Officers and Sergeants enjoy one of the highest wages among township police departments in Medina County. Although Article 33 was included in the reopener language, this is not an unresolved issue for fact finding according to the Employer.

Finding and Opinion

Based upon the position statements submitted by the parties, the exhibits and recent pay increase granted to both bargaining units, it is apparent the wages paid to the employees in both bargaining units are competitive. Therefore, no further wage increase is warranted at this time.

Recommendation

Therefore, no further wage increase should be granted.

IV

CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted on February 4, 2019. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder
March 11, 2019

V
PROOF OF SERVICE

This fact-finding report was electronically transmitted this 11th day of March 2019 to the persons named below.

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/s/ John F. Lenehan_____
John F. Lenehan
Fact Finder

March 11, 2019