[Cite as *Licking Cty. Sheriff's Office v. Teamsters Local Union No. 637*, 2009-Ohio-4765.]

COURT OF APPEALS
LICKING COUNTY, OHIO
FIFTH APPELLATE DISTRICT

LICKING COUNTY SHERIFF'S OFFICE Plaintiff-Appellee -vs- TEAMSTERS LOCAL UNION NO. 637 Defendant-Appellant	JUDGES: Hon. Sheila G. Farmer, P.J. Hon. John W. Wise, J. Hon. Julie A. Edwards, J. Case No. 2008CA00152 O P I N I O N

CHARACTER OF PROCEEDING:	Appeal from the Court of Common Pleas, Case No. 08CV01461
JUDGMENT:	Affirmed
DATE OF JUDGMENT ENTRY:	September 10, 2009

APPEARANCES:

For Plaintiff-Appellee	For Defendant-Appellant
BENJAMIN S. ALBRECHT 400 South Fifth Street Suite 200 Columbus, OH 43215	SUSAN D. JANSEN 111 West First Street Suite 1100 Dayton, OH 45402

Farmer, P.J.

{¶1} Appellant, Teamsters Local Union No. 637, and appellee, the Licking County Sheriff's Office, entered into five collective bargaining agreements with an effective date of January 1, 2005 through December 31, 2007. Prior to the contracts expiring, the parties were unable to reach an agreement on successor contracts. The parties submitted their issues to a fact finder appointed by the State Employment Relations Board. Central to this case is the parties' disagreement over health insurance plans. Appellant wanted to replace the standard and enhanced health insurance plans with a plan known as the Michigan Conference of Teamsters Welfare Fund. A hearing was held on December 17, 2007. By report dated January 25, 2008, the fact finder declined to adopt appellant's proposal, but recommended that the parties continue to explore the Michigan plan.

{¶2} Three of the five bargaining units rejected the report. These three units proceeded to conciliation. A hearing was held on April 10, 2008. Appellant modified its position and proposed providing employees with the option to enroll in the county health insurance plans or enroll in the Michigan plan. By report dated May 12, 2008, the conciliator recommended appellant's proposal.

{¶3} On July 22, 2008, appellee filed a motion and application to vacate arbitration award. Appellee claimed the conciliator exceeded his authority in violation of R.C. 2711.10. On August 29, 2008, appellant filed an application for order confirming arbitration award. By judgment entry filed November 17, 2008, the trial court granted appellee's motion to vacate the award and denied appellant's application to confirm the award, finding the conciliator exceeded his authority by requiring appellee to provide a

health insurance plan not procured by the Licking County Board of County Commissioners (hereinafter "LCBCC").

{¶4} Appellant filed an appeal and this matter is now before this court for consideration. Assignments of error are as follows:

I

{¶5} "THE COURT OF COMMON PLEAS ERRED AS A MATTER OF LAW IN DETERMINING THE ARBITRATOR EXCEEDED HIS POWERS, OR SO IMPERFECTLY EXECUTED THEM THAT A MUTUAL, FINAL, AND DEFINITE AWARD UPON THE SUBJECT MATTER SUBMITTED WAS NOT MADE."

II

{¶6} "THE COURT OF COMMON PLEAS ERRED AS A MATTER OF LAW IN DETERMINING THE ARBITRATION AWARD WAS CONTRARY TO R.C. 305.171(A) AND THEREFORE THE ARBITRATOR EXCEEDED HIS AUTHORITY."

III

{¶7} "THE COURT OF COMMON PLEAS ERRED AS A MATTER OF LAW IN FAILING TO APPLY R.C. 4117.10(A) TO RENDER THE ARBITRATOR'S AWARD LAWFUL AND NOT IN CONTRAVENTION OF R.C. 305.171(A)."

IV

{¶8} "THE COURT OF COMMON PLEAS ERRED AS A MATTER OF LAW IN DENYING TEAMSTERS LOCAL UNION NO. 637'S APPLICATION FOR AN ORDER CONFIRMING THE ARBITRATION AWARD."

I, II, III, IV

{¶9} Although there are four separate assignments of error, we will address them collectively as they center on the same general issue.

{¶10} Appellant claims the trial court erred in vacating the arbitration award, as the conciliator's decision was not arbitrary, capricious or unlawful, and the award was lawful pursuant to R.C. 4117.10(A). We disagree.

{¶11} "All final offer settlement awards and orders of the conciliator made pursuant to Chapter 4117. of the Revised Code are subject to review by the court of common pleas having jurisdiction over the public employer as provided in Chapter 2711. of the Revised Code." R.C. 4117.14(H). Pursuant to R.C. 2711.10(D), "the court of common pleas shall make an order vacating the award" if "[t]he arbitrators exceeded their powers, or so imperfectly executed them that a mutual, final, and definite award upon the subject matter submitted was not made." Our standard of review on appeal is whether the trial court erred as a matter of law. *McFaul v. UAW Region 2* (1998), 130 Ohio App.3d 111, 115.

{¶12} The conciliator's award granted appellant's proposal, and ruled that appellee was required to offer the Michigan plan in addition to the county health insurance plans to the members of three of the bargaining units.

{¶13} In support of its motion to vacate, appellee successfully argued to the trial court that because the contracting authority for health insurance plans is solely the LCBCC, the conciliator's award was unlawful and he exceeded his powers. In particular, appellee argued the conciliator's award usurped the statutory authority vested in the county commissioners and bound a third party who was not privy to the contracts.

{¶14} Appellant's position is that pursuant to R.C. 4117.10(A), the conciliator was empowered to choose any one of the two options offered in arbitration. In support of this proposition, appellant cites to *Huffman v. Valletto* (1984), 15 Ohio App.3d 61, 63, wherein our brethren from the Eighth District stated the following:

{¶15} "When disputing parties agree to submit their controversy to binding arbitration, they agree to accept the result, even if it is legally or factually wrong.***If the parties could challenge an arbitration decision on the ground that the arbitrators erroneously decided legal or factual issues, no arbitration would be binding. Binding arbitration precludes judicial review unless the arbitrators were corrupt or committed gross procedural improprieties. R.C. 2711.10." (Citations omitted.)

{¶16} Appellant also cites a decision from the Seventh District, *Jefferson County Sheriff v. Ohio Patrolmen's Benevolent Association,* Jefferson App. No. 05 JE 36, 2006-Ohio-1055. Appellant argues this decision is on all fours with the facts in this case, and urges it is binding authority in this court. We note it is an unpublished opinion and is not binding on matters pending in the Fifth District, although it may be used as persuasive authority in our independent analysis.

{¶17} The genesis of the issue presented sub judice is R.C. 4117.14(C) which governs disputes between parties to a collective bargaining agreement. During the December 17, 2007 fact finding hearing, appellant proposed replacing the standard and enhanced health insurance plans with the Michigan plan. Appellee proposed maintaining the current contract language regarding the health insurance plans. Appellee argued pursuant to R.C. 305.171, it was prohibited from contracting for health insurance plans.

{¶18} The fact finder deemed appellant's proposal "interesting and provocative," but concluded "I cannot recommend inclusion of this plan***." The fact finder's final recommendation was as follows:

{¶19} "The language of Article 25 shall remain the same as the current Agreement except that the following statement should be added to the end of Section 25.1:

{¶20} "*During the term of the Agreement the parties shall continue to discuss and explore participation in the medical insurance plan offered by the Michigan Conference of Teamsters Benefit Plant. If the parties mutually agree, coverage may be switched to the Michigan Plan at any time during the life of this Agreement.*" See, January 25, 2008 Fact Finder's Report, attached to Defendant's August 29, 2008 Application for Order Confirming Arbitration Award and Memorandum in Opposition to Plaintiff's Motion and Application to Vacate Arbitration Award.

{¶21} The matter then proceeded to conciliation wherein the conciliator modified the fact finder's recommendation. As it now stands, union members have the option to stay with the current county health insurance plans or enroll in the Michigan plan. The conciliator based his findings on the cost benefit to the union members. He theorized the county's plans as well as the Michigan plan provided satisfactory health benefit packages however, the Michigan plan provided significant savings that would benefit the taxpayers. The conciliator concluded, “[i]f the bargaining unit and its members desire to purchase health care services elsewhere, they should be able to do so. One cannot predict the future, however, competition between providers should result in better services and lower prices."

{¶22} Presumably, under the conciliator's order, the sheriff via the county commissioners would have to enter into a contract for health care coverage with the Michigan plan.

{¶23} R.C. 305.171 vests in the board of county commissioners the right to provide "group" insurance policies for county employees. It is undisputed that the members of the collective bargaining units in this case are county employees. The county sheriff is a county elected official and is governed by the statutory dictates imposed upon him by R.C. 312.01, et seq. No where in the statutes is the sheriff given the power to contract for health care coverage. The right to contract for county employees resides exclusively with the board of county commissioners.

{¶24} The collective bargaining agreements at issue provide the following health care coverage:

{¶25} "The Employer shall provide group medical, dental and life insurance coverage for each employee available for County employees as are enrolled in the County Plan. It is further agreed and understood that the schedule of benefits for the employees shall be as set forth for all other County employees on the Licking County Health Plan, including all conditions and payments specified or required by individual carriers/providers of the health insurance plan."

{¶26} It is this provision appellant seeks to have modified to include a union designated plan. In other words, appellant seeks to rewrite the contract and have its subjective choice for a health insurance plan be provided along with the general county plan.

{¶27} The finding as it now stands places the subjective finding of taxpayer cost benefit over the statutory mandate of competitive bidding.

{¶28} Appellant argues under *Huffman,* supra, the conciliator's award can be legally wrong but still be binding on the parties. Using this argument, appellant claims what is legally wrong (a violation of R.C. 305.171) is still enforceable. Appellant also points to the conciliator's finding that there is an exception under R.C. 305.171(C) which states the following:

{¶29} "Section 307.86 of the Revised Code does not apply to the purchase of benefits for county officers or employees under divisions (A) and (B) of this section when those benefits are provided through a jointly administered health and welfare trust fund in which the county or contracting authority and a collective bargaining representative of the county employees or contracting authority agree to participate."

{¶30} Under R.C. 4117.10(B), the board of county commissioners is the legislative body to which the request for funds necessary to implement an agreement must be made. As such, the county commissioners are not the sheriff's representative agent, but are the funding source. *State of Ohio ex rel. Ohio Patrolmen's Benevolent Association v. State Employment Relations Board,* Franklin App. No. 05AP-526, 2006-Ohio-3263. The legislative body may accept or reject the agreements.

{¶31} Is R.C. 305.171(C) applicable sub judice? The issue is whether the benefits in this case are "provided through a jointly administered health and welfare trust fund in which the county or the contracting authority [appellee] and the collective bargaining representative of the county employees or contracting authority agree to

participate." The record does not establish that the facts in this case are in conformance with R.C. 305.171(C).

{¶32} Employing R.C. 4117.10(A), appellant argues the sheriff has consistently negotiated the health care benefits under contract and therefore historically the LCBCC have abrogated their authority under R.C. 305.171(C) to the sheriff. A similar issue was raised in *Schaney v. The Butler Board of County Commissioners* (1977), Butler App. No. CA76-07-0079, and was rejected. In *Schaney,* our brethren from the First District reaffirmed the exclusive right of a board of county commissioners to enter into a group health policy.

{¶33} Clearly R.C. 4117.10(A) provides for appellee's right to negotiate health care benefit costs and employee contributions. Read with the clear mandate of R.C. 305.171(C), the board of county commissioners is the one to provide the health care coverage. This was clearly accepted by our brethren from the Seventh District in *Jefferson County,* supra. We concur with their reasoning.

{¶34} However, we find it is too far of a leap to apply the principles of *Jefferson County* to this case. The issues raised by the conciliator's award sub judice are beyond those raised in the *Jefferson County* case. Appellant wants more than the type of plan, benefits, and contributions. Appellant seeks to add another health care insurance carrier apart from the ones provided by the board of county commissioners.

{¶35} If appellee had negotiated specific benefits and costs to members different from the general plan provided by the county commissioners, we would concur with appellant's arguments. The conciliator's decision provides for that which is contrary to law. Not only is this a usurpation of the power of the county commissioners, it is

contrary to the practices and requirements of good government that requires all contracts to be competitively bid (R.C. 307.86).

{¶36} The conciliator's decision in fact empowered appellee with the ability to add an additional health insurance carrier which exceeded his power, abrogated the authority of the county commissioners, and was contrary to the well being of the General Assembly as demonstrated in Chapter 3 of the Ohio Revised Code.

{¶37} Upon review, we find the trial court did not err or abuse its discretion in refusing to affirm the conciliator's award. We find R.C. 305.171 has been violated by the conciliator's award, thereby making it unlawful. We further find R.C. 4117.10 does not preempt the general powers to contract statute, R.C. 307.86, nor does it permit collective bargaining parties to do that which is contrary to law.

{¶38} Assignments of Error I, II, III and IV are denied.

{¶39} The judgment of the Court of Common Pleas of Licking County, Ohio is hereby affirmed.

By Farmer, P.J.

Wise, J. and

Edwards J. concur.

s/ Sheila G. Farmer

s/ John W. Wise

s/ Julie A. Edwards

JUDGES

SGF/jp 0728

IN THE COURT OF APPEALS FOR LICKING COUNTY, OHIO

FIFTH APPELLATE DISTRICT

LICKING COUNTY SHERIFF'S OFFICE	:	
Plaintiff-Appellee	:	
-vs-	:	JUDGMENT ENTRY
TEAMSTERS LOCAL UNION NO. 637	:	
Defendant-Appellant	:	CASE NO. 2008CA00152

For the reasons stated in our accompanying Memorandum-Opinion, the judgment of the Court of Common Pleas of Licking County, Ohio is affirmed. Costs to appellant.

s/ Sheila G. Farmer

s/ John W. Wise

s/ Julie A. Edwards

JUDGES