

Tuesday, October 2, 2018

MINUTES OF THE SPECIAL MEETING OF THE
BRIDGEPORT BOARD OF EDUCATION, held October 2,
2018, at Bridgeport City Hall, 45 Lyon Terrace, Bridgeport,
Connecticut

The meeting was called to order at 6:25 p.m.

Present were Chair John Weldon, Vice President Hernan Illingworth, Joe Sokolovic, Sybil Allen, and Maria Pereira.

Supt. Aresta L. Johnson, Ed.D, was present.

Mr. Weldon said the purpose of the meeting was to hear Grievance 2766, health insurance.

Attorney Chris Hodgson of Berchem Moses said his advice was that the union and the board present in public, and then the board has the right to go into executive session based on collective bargaining.

Atty. Eric Marshall distributed Article 5.1 of the collective bargaining agreement. He said the question in this case is similar to the last grievance the board heard on health insurance, but distinct. This grievance was initiated by the district's failure to make a payment into BEA members' HSA accounts on the first pay date after September 1.

Atty. Marshall said the union's position is the high-deductible health plan(HDHP) and the health savings account(HSA) are separate and distinct benefits. He said under the law one

cannot contribute to an HSA without participating in an HDHP, however the reverse is not true.

Atty. Marshall said the first time the HDHP and HSA went into the contract was the 2008-2011 agreement. That agreement included a point of service health plan available to everyone with an option of an HDHP with an HSA account. He said there was a change in the 2014 contract.

Ms. Pereira noted the board did not vote on that contract because it was arbitrated.

Atty. Marshall said the 2014 contract provision changed to the HDHP with an HSA and the current funding model.

Atty. Marshall said the union's position is this was negotiated in and is clearly subject to bargaining because it deals with benefits and the only way it can come out is through negotiation. He said the estimate from the union's health insurance person is that the board's annual contribution to the HSA accounts is somewhere in the range of \$2.3 million to \$2.5 million. He added to sustain the grievance the board needs to make retroactive payments to September 7th approximately of one quarter of this amount, with subsequent similar payments due after December 1, March 1 and June 1.

Atty. Marshall said the union asserts the failure to make the payment was a violation of Article 5.1 of the contract.

Atty. Hodgson said in rebuttal that the issue was negotiated in Section 5.6 and the union has bargained away its right to bargain over having a change in carriers or to self-insure in whole or in part provided the benefits remain substantially equivalent. He said all the employees are in the state

partnership plan because this issue has been negotiated. He said when the HDHP was eliminated there is no need to have an HSA.

Atty. Hodgson said there is no deductible to fund any more once the HDHP goes away.

Atty. Hodgson said under IRS regulations HSAs are limited to qualified individuals. He said the definition of being a qualifying individual requires a high-deductible health plan. He said the grievance has no merit.

Ms. Pereira asked for a copy of Section 5.6.

Atty. Marshall said the union disagreed with the underlying principle that the move from HDHP to the state plan is a change in carrier.

Ms. Pereira said if the contract has language indicating the board “shall offer a high-deductible with a health reimbursement account, not “may.”

She said the Supreme Court in the case involving the illegal takeover of the board kept stressing to the defendants the importance of phraseology “shall.”

Atty. Hodgson said an arbitrator is bound to give effect to all words in the contract and 5.6 says the board retains the right to change carriers provided the benefits remaining substantially equivalent. He said the board was exercising the contractual right to change carriers.

In response to a question, Atty. Hodgson said the state partnership plan would pay all medical claims between now and when there's a decision. He said he did not see a lot of

exposure in terms of unpaid medical claims. He said the exposure would be to fund the HSA if the HDHP was reinstituted.

Atty. Marshall said the funding of the HSA at about \$2.5 million was certain in the event of a decision favorable to the union. He said if the board had gone from its HDHP to an Oxford HDHP, the board would be correct. However, if the arbitrator agrees with the union the board will have to negotiate an exit from the state plan. He said he could not estimate that cost to the board.

Ms. Pereira read Section 5.6 to the board. She said we didn't just change carrier or self-insurance, we substantially changed the offering. Atty. Marshall said he agreed.

Mr. Illingworth said he struggles with the fact that he would die for his employer to provide a plan that didn't force him to shell out \$7,000. He said the teachers would be up in arms if the arbitrator said they had to go back to the high-deductible plan.

Dr. Johnson said there were negotiations, but one sticking point was the BEA president. Atty. Hodgson said that was not to say a deal won't be struck at some point.

Ms. Pereira said she believed the cost of the sticking point would be exceeded by legal costs.

Atty. Marshall said it was tempting to focus on which plan is better, but that just isn't the question.

Mr. Weldon said if the arbitrator decided for the union it would not require us to change back to the way it was, but it would require negotiations with the union.

Atty. Marshall said that was a possible option, but an arbitrator could suggest the parties discuss an agreement before he would issue an decision in favor of the union.

Dr. Johnson said she believed it was in the best interest of the BEA's membership to stay with the current plan.

Atty. Marshall said the reality is that the state plan will be better for some, and probably most, and not better for all. He said it would depend on how people use their health insurance. He said this was not relevant to the grievance. He said the BEA has never been interested in harming the district or its members.

Ms. Pereira said she did not know how anyone could argue that the health benefits are substantially equivalent when an entire component of the health benefit is no longer offered.

In response to a question, Atty. Hodgson estimated his counsel fees were about \$500 for the two grievances. He said the approximate cost of arbitration to the board would be about ten to fifteen thousand dollars in legal fees and another five thousand dollars for the arbitrator.

Ms. Pereira said the issue was over \$45,000. Atty. Marshall said the issue at the time was \$45,000 a year for two years covering half of the BEA's president's salary. Ms. Pereira said that was done by Supt. Rabinowitz without the board's knowledge or permission.

Atty. Hodgson urged the board go into executive session to deliberate.

Ms. Pereira moved the board *"go into executive session to*

discuss Grievance 2766, health insurance.” Invited to participated were board members, Dr. Johnson and Atty. Chris Hodgson.

The motion was seconded by Ms. Allen and unanimously approved.

The executive session began at 7:00 p.m.

The board reconvened in public session at 7:10 p.m.

Mr. Illingworth moved “*to deny Grievance number 2766, health insurance.*” The motion was seconded by Mr. Sokolovic.

The motion was approved by a 4-1 vote. Voting in favor were members Weldon, Sokolovic, Allen and Illingworth. Ms. Pereira was opposed.

Ms. Allen moved the meeting be adjourned. The motion was seconded by Mr. Sokolovic and unanimously approved.

The meeting was adjourned at 7:10 p.m.

Respectfully submitted,

John McLeod