

**FACT-FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD**

**July 21, 2014**

<b>In the Matter of</b>	)	
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	)	
	)	
<b>City of Sharonville</b>	)	
	)	
	)	
<b>And</b>	)	<b>13-MED-09-1061</b>
	)	
	)	
<b>Fraternal Order of Police, Ohio Labor Council, (Patrol Officers)</b>	)	

**APPEARANCES**

**For the City of Sharonville  
Lawrence E. Barbeire, Esquire**

**For the FOP/ OLC  
Mark A. Scranton,  
Staff Representative**

**Fact-Finder, Marc A. Winters**

## **BACKGROUND**

The Fact-Finding involves the City of Sharonville, (hereafter referred to as the “Employer”) and the FOP / OLC, (hereafter referred to as the “Union”). The Union’s bargaining unit is comprised of approximately twenty-five (25) full-time Patrol Officers in accordance with SERB rules.

In a letter, dated May 15, 2014, the State Employment Relations Board duly appointed Marc A. Winters as Fact-Finder for this matter under the Ohio Administrative Code Rule 4117.14(C)(3).

The parties to this fact-finding have had an ongoing bargaining relationship. The most recent collective bargaining agreement between the parties, a three (3) year agreement, expired on December 31, 2013. The parties have met on numerous occasions, November 7 & December 5, 2013, and January 27 & February 26, 2014, to negotiate a successor agreement and have signed approximately thirteen (13) tentative agreements. Although successful in resolving most issues, the parties, unable to reach an Agreement, declared impasse and proceeded to Fact-Finding.

The parties have a signed extension agreement whereby they have agreed to extend the time period for the issuance of the findings of fact and recommendations of this Fact-Finder pursuant to the Ohio Administrative Code Rule 4117-9-05(G).

The Fact-Finding Hearing was conducted on Friday, July 2, 2014, in the offices of the City of Sharonville. The Fact-Finding Hearing began approximately 10:00 A. M., and was adjourned at approximately 12 P. M.

Mediation after the Hearing was discussed and decided by all that any attempts to mediate, at this point, would not be productive.

This Fact-Finder would like to convey his appreciation not only for the courtesy and cooperation given to the Fact-Finder by both parties, but to each other as well.

The Hearing was conducted in accordance with the Ohio Public Employee Bargaining Statue set forth in rule 4117. Rule 4117-9-05 sets forth the criteria this Fact-Finder is to consider in making recommendations. The criteria are:

1. Past collectively bargained agreements, if any.
2. Comparisons of the unresolved issues relative to the employees in the bargaining unit with those issues related to other public and private employees doing comparable work, given consideration to factors peculiar to the area and classification involved.
3. The interest and welfare of the public, and the ability of the public employer to finance and administer the issue proposed and the effect of the adjustments on the normal standards of public service.

4. The lawful authority of the public employer.
5. Any stipulations of the parties.
6. Such other factors, not confined to those listed above which are normally or traditionally taken into consideration in the determining of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

In addition to, the testimony given and the evidence presented, taking into consideration the Ohio Rule 4117 criteria, internal and external parity, this Fact-Finder studies and relies on various Collective Bargaining Agreements, Fact-Finding Reports and Conciliation Awards, as posted online by SERB, in writing this and any Fact-Finding Report.

Any and all items or proposals not previously agreed upon or specifically addressed within this Report are considered to be withdrawn. Any and all items or proposals agreed to and any tentative agreements made prior to the date of this Report that are not specifically addressed in this Report, are recommended to be incorporated into the new Agreement. The Parties have approximately thirteen (13) signed tentative agreements.

The following Articles resulted in tentative agreements.

ARTICLE 9	DISCIPLINE
ARTICLE 11	PROBATIONARY EMPLOYEES
ARTICLE 12	PERSONNEL FILES
ARTICLE 13	SENIORITY
ARTICLE 16	WORK PERIOD AND OVERTIME
ARTICLE 17	DRUG/ALCOHOL TESTING
ARTICLE 18	COURT TIME/CALL-IN TIME
ARTICLE 25	HOLIDAYS
ARTICLE 26	VACATION
ARTICLE 27	SICK LEAVE
ARTICLE 28	MISCELLANEOUS LEAVES
ARTICLE 30	CANINE OFFICER COMPENSATION
ARTICLE 32	RETIREMENT AND RESIGNATION

Except as recommended and/or modified below or mentioned above, the provisions of the predecessor agreement are to be incorporated into the new Agreement without modification.

The following Articles were unopened and will remain current language.

ARTICLE 1	PREAMBLE
ARTICLE 2	RECOGNITION
ARTICLE 3	"POLICE OFFICER" DEFINED
ARTICLE 4	FOP REPRESENTATION
ARTICLE 5	DUES DEDUCTION

ARTICLE 6	DUES DEDUCTION/FAIR SHARE FEE
ARTICLE 7	NON-DISCRIMINATION
ARTICLE 8	MANAGEMENT RIGHTS
ARTICLE 10	GRIEVANCE PROCEDURE
ARTICLE 14	LAYOFF AND RECALL
ARTICLE 15	NO STRIKE/NO LOCKOUT
ARTICLE 19	COMPENSATORY TIME
ARTICLE 21	LONGEVITY
ARTICLE 23	UNIFORMS
ARTICLE 24	TRAVEL AND TRAINING ALLOWANCES
ARTICLE 29	INJURY LEAVE AND INJURED ON -DUTY LEAVE
ARTICLE 31	USE OF FORCE INCIDENTS
ARTICLE 33	PAYMENTS UPON RETIREMENT OR DEATH
ARTICLE 34	LABOR MANAGEMENT MEETINGS
ARTICLE 35	GENERAL CONDITIONS
ARTICLE 36	BULLETIN BOARDS
ARTICLE 37	SEVERABILITY
ARTICLE 38	FIELD TRAINING OFFICERS
ARTICLE 39	MINIMUM STANDARDS FOR PROMOTIONS
ARTICLE 40	POLICY AND PROCEDURE MANUAL

Where this Fact-Finder recommends changes, it may be sufficient to indicate the change only without quoting the exact language of the party's proposals.

The following three (3) issues are the issues that were considered during the Fact-Finding Hearing on July 21, 2104.

- ARTICLE 20 – Wages & Compensation
- ARTICLE 22 – Pension, Insurance, and Deferred Compensation
- ARTICLE 41 – Duration

### **RECOMMENDATIONS**

The following recommendations are a good faith attempt to have both sides accept this Report. The testimony presented and the evidence produced at the Hearing support the conclusions and recommendations below.

ISSUE NO. 1,           ARTICLE 20 – Wages & Compensation

Union Proposal:

The Union is seeking a guaranteed wage increase (3%) for each of the last two years of the

contract in addition to the continuation of the “Me Too” that is currently in the agreement.

Employees, by way of the current “Me Too” have already received a 2% increase as of January 1 of 2014 and are seeking nothing additional to this amount.

The Union argues that it believes its proposal is just and reasonable when looking at comparable agencies throughout the same geographic area. Also, when looking at the settlement with the IAFF, these members (Patrol Officers) receiving the increase requested, does not mean the City has a contractual mandate to give the firefighters the same increase. That agreement, just as our proposal, specifically stated “non-union departments (employees).” The Union understands this as is evident by the fact no grievance has been filed when the City gave certain fire department personnel a wage increase much larger than the increase already granted to these employees by way of the “Me Too” currently in effect.

The City has never once asserted an inability to pay the requested wage increase. Evidence will show this is far from the case. Although the wage increase may not be in the current appropriated budget, the City has the ability to fund it should it choose.

City Proposal:

The City Council of Sharonville has provided the City’s non-union employees and its Firefighters a 2 percent raise in salary for 2014.

The City of Sharonville’s wage and compensation proposal for the Patrol Officers in 2014 is for the same 2% raise given to all other Sharonville employees. In fact, the patrol officers have been paid since January 1, 2014, in accordance with a 2% raise by virtue of the most recent CBA. Other than the 2% raise in 2014, the patrol officers will receive no other specific pay increase during the three year term of the collective bargaining agreement. However, the City’s proposal also includes a “Me Too Clause”, which allows for additional raises in pay to patrol officers if non-union departments in the City receive a wage increase.

Additionally, any wage reduction given to the non-union employees must be recovered prior to any raises in wages being considered a wage increase for the purposes of this Agreement.

Nothing in this article shall prohibit the city from providing merit based raises to individual city employees. These raises will not invoke the “me too” section above as they are merit based and not a cost of living adjustment.

The City argues that is their goal to provide the same wage increases to the union departments as to the non-union departments within the City. The wage proposal agreed to by the union for the Sharonville Firefighters contains a “Me Too Clause” identical with the proposal the City is making to the Police Union.

The City further argues that it is their goal to create a compensation system in which all of the City’s employees are on similar wage schedules. The City’s proposal allows the City to manage the General Fund in the best way possible and continue to compensate the patrol officers at one

of the highest levels in the area.

Moreover, the patrol officers for the City of Sharonville already receive higher compensation than the average pay of almost all other police departments in the area.

Additionally, the City argues that there is no levy to support police expenses which are paid entirely from the General Fund.

The City is making the same offer that has already been accepted by the City's Firefighters.

While it is the City's desire to fairly compensate the patrol officers, the City cannot afford to increase the patrol officer's wages by 3% each year.

Fact-Finder's Discussion and Recommendation:

A Fact-Finder's duty is to balance a fair wage increase, if one can be afforded, for the union members, taking in account other wage items, the amount of the premium contribution and health care costs, along with their needs to remain somewhat competitive within their external comparable market, and with the City's need for fiscal responsibility, the need to operate more efficiently and the Employer's concerns for internal consistencies and parity.

Even though these employees are very comparable with like employees in other private and public sector jobs and rank higher than most of their external comparables, looking at the averages, to be stagnant for two (2) years will certainly have these employees lagging somewhat behind at the end of 2016.

Here, the City, like other areas across the state, suffers from the ups and downs of tax base and collections, declining revenues and the elimination of other funding streams with the state. With that said, and after a thorough review of the City's financials, this City has been fiscally responsible whereby they still need to control cost but are able to give modest increases to their Patrol Officer employees.

While it is the City's insistence that their goals are to provide the same wage increases to the union departments as the non-union departments by creating a compensation system in which all of the City employees are on similar wage schedules is the motivating factor for why they cannot fund a wage increase in the second and third year of this Agreement with the Patrol Officers, the evidence provided does not show or support how the City is to accomplish that task. The mere fact that all employees receive the exact same wage increase does not equate to a compensation system whereby all employees are then on similar wage schedules.

The City also tries to argue that since the Firefighters Union has agreed to the same proposal the Police unit needs to follow suite to accomplish their goals.

It is undisputed when comparing wages for Police to wages for Firefighters you are comparing apples to oranges. Their duties are different, work schedules are different which enable the Firefighters to work for other departments or get a second job. Differences that Patrol Officers

cannot enjoy or accomplish. The salaries of two departments usually don't line up as equal compensation for the positions involved. The evidence does not support the proposal for that type of pay equity in a compensation system.

It is apparent the current "Me Too" provisions have served all involved adequately that this Fact-Finder cannot justify any changes, to that provision, for this new Agreement. Likewise the insertion of any merit base increases has not been justified by the City as to the benefits they will actually receive nor has the City shown this Fact-Finder where the lack of such a clause has hurt the City's ability to pay and/or retain employees.

The recommendation that follows is designed to help the City maintain fiscal responsibility, taking account the Insurance proposal later in this Report, while still being as fair as possible to the needs of the Patrol Officer as well.

This Fact-Finder's recommendation is;

Effective January 1, 2014, wages will increase by 2%. (Which the City has already provided the Patrol Officers.)

Effective January 1, 2015, wages will increase by 2%.

Effective January 1, 2016, wages will increase by 2%.

The current "Me Too" language will remain status quo.

## ISSUE NO. 2,           ARTICLE 22 - Pension, Insurance, and Deferred Compensation

### City Proposal:

The Employer has proposed the following health care options:

Section 22.2, 22.3 and 22.4 are to be deleted and replaced by the following language. All other paragraphs in article 22 remain the same.

The Employer agrees to provide bargaining unit members the same health care options as are provided to all other City employees. Employees covered under this agreement shall pay through payroll deductions the same cost for health care, as other City employees.

The proposed change is to a High Deductible with a Health Savings Account (HSA). Changing to the HSA while lowering the deductible from the previous HRA has many advantages. HSA's are owned by the employee and is completely portable, allowing individuals who do not use all of their HSA money during their work years to use to pay expenses when they retire. HSA funds accumulate and rollover allowing an individual to save for planned expenses and to build a nest

egg for future expenses.

The City argues that by offering a HSA rate increases should stabilize going forward as the City cannot afford the rate increases it has experienced over the last decade.

The City further argues that not only are the non-union employees in this plan but the Firefighter's Union has also accepted this same plan. Keeping all employees on the same plan creates a larger group which can personalize plans for their group as opposed to having smaller groups who have no options because of the size of their groups. Offering multiple plans to different groups creates adverse calculations among plans which results in higher cost to the Employer and employees. It is more beneficial for all City employees to be on the same plan. Having uniform health care coverage throughout the City will let the City be able to negotiate annually for one plan for all employees which results in lower cost and tailored benefits. The City needs that flexibility to provide the best benefits at the lowest cost.

The fact is that the City of Sharonville has always offered the same health care options to all its employees and the City offers extremely generous health insurance benefits.

Union Proposal:

The Union is proposing a completely different type plan from the Employer which has several components.

The Union is requesting that the following language be added to the agreement in Section 22.2:

The City agrees to offer to each bargaining unit employee medical and hospitalization insurance coverage, pursuant to the same terms and conditions as insurance is offered to all other City employees, except where such terms and conditions are expressly modified by this Article. The City shall provide the same or substantially similar level of benefits for medical and hospitalization insurance coverage as the prior years' insurance plan.

A. Traditional HMO/PPO Insurance Plan Design

For the duration of the agreement, should the event the City were to offer a traditional HMO/PPO designed insurance plan, all bargaining unit members will pay a maximum of 10% of their health care premiums. In no event would bargaining unit members pay more for insurance than any other City employee.

B. HRA Insurance Plan Design

For the duration of the agreement, should the City offer a HRA designed insurance plan, all bargaining unit members will pay a maximum of 10% of their health care premiums. In no event would bargaining unit members pay more for insurance than any other City employee.

It is agreed and understood that bargaining unit members will pay no more than ten percent (10%) of applicable deductibles at the time of service. The City will pay the remaining 90% through the existing funding system.

C. High Deductible HSA Insurance Plan Design

2014

In the event the City were to offer a High Deductible HSA designed insurance plan, all bargaining unit members will pay a maximum of 10% of their health care premiums. In no event would bargaining unit members pay more for insurance (including premium contributions and HSA contributions) than any other City employee.

The City of Sharonville shall contribute ninety percent (90%) of the applicable deductible based on the plan chosen to the employees HSA account during the first pay period of each calendar year. Employees who are forced to opt back in to City provided insurance shall have the City's contribution added to their HSA the first pay period following their return.

2015

In the event the City were to offer a High Deductible HSA designed insurance plan, all bargaining unit members will pay a maximum of 10% of their health care premiums. In no event would bargaining unit members pay more for insurance premiums than any other City employee.

The City of Sharonville shall contribute eighty-two percent (82%) of the applicable deductible based on the plan chosen to the employees HSA account during the first pay period of each calendar year. Employees who are forced to opt back in to City provided insurance shall have the City's contribution added to their HSA the first pay period following their return. In no event would bargaining unit members have less contributed to their HSA accounts than any other City employee.

2016

In the event the City were to offer a High Deductible HSA designed insurance plan, all bargaining unit members will pay a maximum of 10% of their health care premiums. In no event would bargaining unit members pay more for insurance premiums than any other City employee.

The City of Sharonville shall contribute seventy-five percent (75%) of the applicable deductible based on the plan chosen to the employees HSA account during the first pay period of each calendar year. Employees who are forced to opt back in to City provided insurance shall have the City's contribution added to

their HSA the first pay period following their return. In no event would bargaining unit members have less contributed to their HSA accounts than any other City employee.

The Union argues that with ever increasing cost of insurance, it is prudent to continue the long practice of a set percentage of the premium that its members area responsible for.

The Union further argues that when looking at the Union's proposal, you will notice that the Union is in no way limiting the City's ability to negotiate plan design with the insurance company they choose. The Union is merely memorializing contribution rates for the different plan designs currently available. In addition, as it pertains to High Deductible HSA accounts, the Union is stepping back the City's required contribution rate over the duration of the agreement, once employees become accustomed to how High Deductible HSA accounts work. The Union believes this is standard when these accounts are first started.

Finally, the Union argues when considering their position regarding Section 22.2, the Union is asking that you put little weight on the City's argument that their plan contribution rates have already been accepted by the IAFF Local 4498. The IAFF and the FOP contracts with the City are different contracts, different negotiations and this Union should not have to accept what another Union negotiates for with the City.

In addition to the dispute over health care options for this negotiations, the Union has filed two grievances over the City instituting the HSA with a contribution rate higher than what the current contract calls for and that the City is charging the Police unit premiums different from what the other groups are being charged under the new HSA plan.

The two grievances are as follows:

1. Did the City violate the Collective Bargaining Agreement by negotiating a HSA that forbids more than a 50% City contribution to the HSA account of a bargaining unit member when it knows there is a contractual mandate of them paying 90% and if so, the remedy?
2. Is the City continuing to violate the Collective Bargaining Agreement by charging bargaining unit members 10% of applicable premiums when the same is not being charge to any other employee and if so, the remedy?

The Union has requested that this Fact-Finder resolve both outstanding grievances as well.

Fact-Finder's Discussion and Recommendation:

Two facts stand out to this Fact-Finder. First, a review of the complete HSA plan, the contribution to the plan by the City, the amount of the employees contribution that is reduced through participation of the wellness programs provided, the benefit grid/design all make the City offered health care options a very good plan. Furthermore the City charged no premium for

2014 for non-union employees to instead invest those dollars into their HSA accounts. This allowed the employee to have no “sunk” costs and instead be solely saving for their health care needs. Second, it is apparent that this bargaining unit, when it comes to wages and benefits differences has no problem with the “Me Too” concept being available to them.

This Fact-Finder can understand why this unit does not want to be in a position to have to accept what another Union has already negotiated. That is clearly evidenced by this Fact-Finder’s recommendation, above, for wages. However, to want to be carved out now for purposes of their health care options may not be the right timing. The City in an attempt to bargain better benefits at lower rates for all employees of the City offers this Police unit the same health care options offered to the non-union employees as well as accepted by the Firefighter’s Union. Having all employees on the same program is much easier to manage and is more cost efficient.

The whole idea is for better benefits, especially ones that are tailored to the employees, at lower cost. Something only larger groups can accomplish.

Here, it’s the old adage in negotiations that the tail does not wag the dog. Or in other words a smaller group has a harder time in negotiating something different from other groups, who then comprise a much larger group, who are in the same health plan.

When it comes to the high cost of health benefits, the City, its Unions and the City’s non-union employees must share the burden, or the solution so that services to the community and employee jobs are not compromised or lost.

After a thorough review of both proposals, the Fact-Finder recommendation is the City offered program. The City offered program will begin after ratification of this Agreement. There will be no retroactivity with regards to this unit by the City for the portion of 2014 prior to the ratification of this Agreement. Included for the remainder of 2014, for this unit, will be the benefit of no premium being charged so this unit can invest those dollars into their HSA.

There were other minor changes discussed with regards to the various sections of Article 22. A review of the changes and non-changes to Article 22 is as follows and shall be this Fact-Finder’s recommendation:

Section 22.1 will be revised to read as follows:

Section 22.1 The Employer shall contribute 19.50% of the annual salary of each employee to the Ohio Police and Firefighters Retirement Fund. Should this amount be increased by the Ohio Police and Fire Retirement System, the Employers contribution rate will raise accordingly.

Section 22.2, is now the City offered plan as discussed above.

Section 22.3, is no longer permitted by the Affordable Care Act and shall be deleted. If in the

future the Affordable Care Act would be changed and the benefit of this Section made available to other City employees, the same will then apply to the Patrol Officers.

Section 22.4, is deleted. Should this section be revised and made available to other City employees, the same will then apply to the Patrol Officers.

Section 22.5 and Section 22.6, will remain status quo.

Section 22.7 will be revised to read as follows:

Section 22.7 All full-time employees in the bargaining unit are entitled to participate in either of the Employer's Deferred Compensation Plans. The plans are authorized by Section 457 of the Internal Revenue Code.

1. A portion of bi-weekly pay is deferred to the plan is invested on behalf of the employees until they retire.
2. Pay is deferred after Employer income tax, OPERS and OP&F are withheld.
3. Deferred pay is exempt from federal and state income tax until it is paid out as retirement.
4. For additional information, contact the Deputy Safety/Service Director.
5. Pension Buyback via PERS and PF&F — Pay is deferred after Employer income tax, OPERS and OP&F where eligible.

The Union has requested that this Fact-Finder, by way of this Report, resolve the two outstanding grievances.

A quick review of those grievances would indicate that should this Report be accepted and ratified by both parties, then both grievances would become moot.

However, if a separate decision were to be rendered, the answer to those grievance would be as follows:

1. Did the City violate the Collective Bargaining Agreement by negotiating a HSA that forbids more than a 50% City contribution to the HSA account of a bargaining unit member when it knows there is a contractual mandate of them paying 90% and if so, the remedy?

The answer would be to deny this grievance since the Union's grievance is premature. Had the Union's members been placed into the HSA at that time, the Union would have been correct. The

fact that the City signed an agreement with their carrier for the HSA prior to the end of the negotiations did not violate the Patrol Officer's Agreement.

2. Is the City continuing to violate the Collective Bargaining Agreement by charging bargaining unit members 10% of applicable premiums when the same is not being charged to any other employee and if so, the remedy?

Here, the grievance would be sustained even though the evidence shows that overall this bargaining unit's cost have been less than the non-union's cost. However, the only remedy, would be to offer this bargaining unit the City offered HSA plan whereby everyone would be receiving and paying the same.

ISSUE NO. 3,           ARTICLE 41 – DURATION

The proposals by both the Employer and the Union are similar with a couple wording issues. The Fact-Finder's recommendation for Duration is as follows:

Section 41.1 This Agreement shall be effective and shall remain in full force and effect through December 31, 2016. Either party may file written notice of intent to modify or amend this Agreement no earlier one hundred and twenty (120) and no later than sixty (60) days prior to the expiration date. Such notice shall be hand-delivered, sent electronically or sent certified mail (return receipt requested) to either the Safety/Service Director or a designated member of the bargaining unit.

Section 41.2 All sections of this Agreement shall remain in full force and effect until a new Agreement is reached.



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Marc A. Winters