

**FACT FINDING REPORT AND RECOMMENDATIONS**

**IN THE MATTER OF**

**FRATERNAL ORDER OF POLICE  
OHIO LABOR COUNCIL, INC.**

**VS.**

**THE CITY OF HILLSBORO, OHIO**

**SERB CASE NUMBERS:**

**15-MED-09-0781**

**15-MED-09-0783**

**15-MED-09-0784**

**C. FOREST GUEST  
FACTFINDER**

**Representing the Union: Mark Scranton, Staff Representative**

**Representing the City: Robert W. Cross, Labor Consultant**

**Date of Hearing: June 16, 2016**

**Report Issued: July 8, 2016**

**Attending the Hearing:**

**City: Robert W. Cross, Todd Wilkin, Gary Lewis, and Todd Whited**

**Union: Mark Stanton, Tonya M. Sapp, Elizabeth Bryan, Aaron Reynolds, and Tim Bell**

#### **FOREWORD**

**This Factfinder was assigned this case via SERB on April 28, 2016. There was an exchange of Emails between all the parties and an agreement was reached to hold the hearing on June 16, 2016. Proper extensions were agreed to between the parties and filed for an extended period to July 29, 2016.**

#### **BACKGROUND**

**The City of Hillsboro, Ohio is the county seat of Highland County in Southwest Ohio, and has approximately 7,000 residents. The City and FOP have had bargaining relationships since 1986 and the current collective bargaining agreement expired December 31, 2015.**

**The parties have been in continued negotiations before and after the expiration of the agreement concluding with the Fact Finding hearing in order to reach resolution and agreement for the new agreement. The effective date of the new contract is not an issue.**

**There are approximately sixteen (16) employees/members in the Hillsboro Police Department covered by this agreement. This number can and probably will vary.**

## ISSUES

### EMPLOYER AND UNION POSITIONS

There are eight (8) primary issues to consider in this Fact Finding hearing. The parties have been able to resolve all other matters in the proposed CBA, but have not been able to come to an agreement on these issues prior to the Fact Finding.

The eight (8) issues are:

Article 13: Training and Working Conditions

Article 15: Hours of Work and Overtime

Article 16: Wages

Article 17: Longevity Pay

Article 18: Holidays (time off vs. payment)

Article 20: Insurance

New Article: Bargaining Unit Work

New Article: Physical Fitness

#### Resolution:

New Article: Bargaining Unit Work: WITHDRAWN: We had extensive conversation regarding what was wanted by the city and what the Union felt needed to be protected within this area. The city wanted to be able to be as efficient as possible and to be able to use reserve officers if needed from time to time and the Union wanted protection from non-union employees being able to do their work and possibly eliminating their jobs. After an extensive conversation the parties rested their concerns and agreed to withdraw this proposal.

New Article: Physical Fitness: WITHDRAWN: We had extensive conversation regarding this proposal by the city and the concerns of the Union that this was a method of trying to

terminate officers as they got older. The city reassured the union that their reasoning was simply to make certain that all officers were in good shape and able to perform to standards. After a lot of conversation and agreement that officers did in fact need to stay in good physical condition the parties withdrew this proposal.

**Article 13 Training and Working Conditions:**

After some back and forth conversation in reference to the party's proposals, an agreement was reached between the parties. New language was added as follows:

**Section 13.3 Proficiency and Training:**

- A. Knowledge of procedures shall be tested at least once per year. If an employee were to fail the proficiency test hereunder, shift supervisors shall provide remedial training and retest the employee until such time as proficiency is demonstrated.*
- B. Training for the Department: Employees are required to attend one training exercise in the spring and one in the fall. The employee will be paid for two hours of work at the rate in Article 16.*

**Section 13.4 Physical Examination:**

*Employees shall take one physical examination once per year covering evaluation of weight, eyesight, hearing and cardiovascular system, to evaluate ability to fulfill duties pursuant to guidelines agreed upon and set forth in writing by the Labor/Management Committee. The employer shall pay for the physical examination before a physician and such results shall be immediately provided to employee and kept strictly confidential. If the employee is found to be unable to perform the essential duties of their position, the employee shall be eligible to apply for disability retirement, retirement or other benefits as set forth by law. The city may, in its discretion, seek a separation under OAC Section 123:1-30.*

**Article 15 Hours of Work and Overtime**

There were multiple items in dispute within Article 15 and agreement was reached as indicated below:

Section 1: Agreed to continue the current language as proposed by the City.

Section 2: Will continue the current language, however effective January 1, 2017 a modification will occur as outlined by the Memorandum of Understanding prepared at the Fact Finding hearing. MOU is noted below:

**Effective January 1, 2017, the parties agree to begin a pilot program involving Section 15.2 (work day and work week) for police officer's schedules. During the pilot program the following shall apply:**

- 1. Shift bedding shall be done November 1 through November 30, 2016 for each of the shift cycles. The 2017 schedule will be posted no later than December 5, 2016.**
- 2. Shift cycles shall be January 1 through February 28, March 1 through April 30, May 1 through June 30, July 1 through August 31, September 1 through October 31, and November 1 through December 31.**
- 3. Shift cycles will be bid starting with the most senior officer making the first selection, followed by each officer, based on seniority.**
- 4. The second shift cycle will start with the second most senior employee having first pick followed by the most senior employee, going down by seniority.**
- 5. The aforementioned procedure will be used allowing first pick to be rotated down the seniority list, followed by the most senior officer, progressing down through the seniority list.**

**At the end of the 18 month pilot program, the parties agree to meet and evaluate the program. Should the parties mutually agree that the program is a success, the parties shall enter into a memorandum of understanding, amending the agreement. If either**

party believes the pilot program was not a success, the parties will revert to the language found in Section 15.2 (Workday and Workweek).

Section 15.5: After discussion the parties agreed to continue the current language

Section 15.8: Overtime Opportunities: After some discussion it was agreed to modify this section as follows:

The Administration shall use reasonable efforts to rotate overtime opportunities among qualified bargaining unit employees. Employees who show up for an overtime assignment shall receive one and one-half (1 ½) times their regular rate of pay for actual hours worked but no less than two (2) hours for each show up. The City may use reserves or Special Officers to accomplish the extra work in a cost effective manner, so long as it does not displace a current full time employee.

## Article 16 Wages

Section 16.1: Wage Steps:

The parties agree to a 2% increase effective January 1, 2016 and for each year thereafter during the term of this agreement. Current language shall continue for 16.1.

Section 16.2. "Me Too" Agreement:

Indeed this issue causes much concern among the union employees as well it should. Previously the challenge to delete a "me too" clause was not upheld and the provision has continued. In fact, the "me too" provision has been a part of the CBA for almost a quarter of a century and the union sees no reason to abandon this clause.

The City on the other hand sees no reason to continue this practice as the reasons and needs have long since vanished and the city feels it must be able to manage both its union and non-

union employees as it deems necessary in these times. The city does not want to be held to a past practice where the practice no longer is applicable for this kind of language.

While I do understand the Union's position on this matter and the overall appearance of a past practice issue being continued, I have to ask myself is this still relevant? In addition it seems that the conditions and reasons for this kind of "protection" no longer is applicable.

Generally, this clause has been included in collective bargaining agreements where there are multiple unions and each union wants protection in case one union gains then all may gain. However, in this situation this is the only union and the "me too" clause extends to the non-union employees that are working under very different conditions, namely they do not have a collective bargaining agreement or the collective rights a Union provides. Additionally, the union has the right to re-open wages each year and other provisions that provide oversight during a contract period that of course the non-union employees do not have. Finally, the union by its very nature has the collective bargaining process to render its terms and conditions. Should some kind of disparity occur that the union feels is unreasonable, they can make this an issue at any time during the contract process and certainly during negotiations.

Therefore, giving consideration to the reasons to have this language plus the provisions agreed to and the recommendations provided in this fact finding process, I recommend that the language in 16.2 should be deleted and not continued in the collective bargaining agreement between the parties.

Section 16.6: Lead Dispatcher:

The city proposal was agreed to and the .50 cent per hour increase agreed to as follows:

The City agrees to recognize one dispatcher as the Lead Dispatcher. The Lead Dispatcher will be selected based on experience and being the most qualified applicant. Among other responsibilities, the Lead Dispatcher shall be the agency TAC. The Lead Dispatcher shall be compensated an additional \$0.50 an hour over his/her regular rate of pay.

**Article 17 Longevity Pay**

After some discussion regarding the amounts paid and those that would qualify, it was agreed to continue to use the current language of the agreement in Article 17 with the following change:

**Section 17.4**

**All bargaining Unit members who were originally hired by the City of Hillsboro after November 26, 2013 shall not be eligible to receive Longevity Pay**

**Article 18 Holidays**

After some conversation the parties agreed to continue the current language in the CBA.

**Article 20 Insurance**

After much discussion and reviewing various submissions from the Union and City regarding many aspects of this article, I make the following recommendation based on those material inputs from both the city and the union.

**Section 20.1 Health Insurance:**

**The City shall continue 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 (including**

employee co-pays) for medical and hospitalization insurance coverage as the prior year's insurance plan.

The Employee will be required to pay 15% of the applicable insurance premium in 2016, regardless of plan type. In no event will bargaining unit employees pay more towards their insurance premium than any other City employee.

Effective January 1, 2016 the City's HSA contribution will be 55% of the applicable deductible. City contributions will be made no later than the first pay period of the year.

In the event the City offers a Health Reimbursement Account (HRA), the City will be responsible for the first 55% of the applicable deductible for 2016.

In no event will bargaining unit employees pay more for health insurance than any other city employee.

Bargaining unit employees who decide not to enroll in the City's medical and hospitalization insurance coverage plan and provide the City with written proof of alternative coverage, shall receive payment in the amount of \$175.00/\$500.00 per month for single/all other coverage, whichever is applicable as declined coverage for 2016. Employees who elect not to enroll or opt out after either the HSA contribution has been made will have the City's January payments made to their health savings account deductible re-designated as their monthly payments. They will reimburse the City the portion of the deductible that the City paid into said bargaining unit employees HSA that has not been used to pay qualifying HSA expenses that otherwise are covered by the City's medical and hospitalization insurance coverage, or a pro-rated portion based upon the months in the plan, whichever is less. Said bargaining unit employees shall provide to the City proof of qualifying expenses in order to determine the amount of medical and hospitalization expenses that have been incurred by the bargaining unit employee. Employees will NOT be required to provide proof for anything protected under the Health Insurance Portability and Accountability Act (HIPPA).

**Section 20.2 Life Insurance:**

*Continue to use current contract language*

**Section 20.3 Vehicle and Liability Insurance**

*Continue to use current contract language*

**Section 20.4 Reopener**

**The parties agree that upon the written request of either party, the terms of Article 16, Section 16.1 Wages, and Article 20 Insurance shall be re-opened for bargaining consistent with Chapter 4117, including statutory impasse proceedings. The parties agree that only Articles 16, Section 16.1 Wages and Article 20 Insurance, are subject to re-opening no earlier than one hundred and twenty (120) calendar days prior, and no later than ninety (90) calendar days prior to December 31, 2016 for calendar year 2017 and December 31, 2017 for calendar year 2018.**

**Section 20.5 Dental Insurance**

*Continue to use current contract language*

**FACT FINDER SUMMARY AND RECOMMENDATION**

**It is my recommendation that each of the articles and sections as noted in the above report be approved by both the city and union members. Furthermore, the noted fact finder recommendation regarding the “me too” clause in the agreement is presented for**

consideration and approval from both parties together with the changes as noted in Article 20, Insurance. The two new language proposals were both withdrawn by the respective parties and are therefore not applicable to this report.

Additionally, it is recommended that all other articles of the collective bargaining agreement already agreed to and tentatively agreed to prior to this fact finding conference be agreed to also. Those articles are as follows:

Articles remained current: Articles 1,2,3,5,6,7,8,9,10,14,23,24,25,27,28,29,32,33,34,35,36

Articles with tentative agreements: Articles 4,11,12,19,21,22,26,30,31,37, New (Canine Officer Compensation)

#### GENERAL OBSERVATIONS

Upon arriving at the meeting site I met privately with each group before we were to start our hearing. With each group it was apparent that reaching a resolution was important and that some understandings might be accomplished. Throughout the day as we continued to meet in joint session and privately, this attitude of trying to mediate and reach some accommodation continued.

Because of this type of effort by all parties, agreements were reached on most issues and so I have suspended the need to address each issue with both the employer and union positions concluding with my recommendation. I have therefore provided a summary for each issue that was resolved. For the two items not resolved, I have provided a more detailed explanation and my recommendation.

I also wish to thank not only Mr. Scranton and Mr. Cross for their professional manner and effort to reach an agreement, but also want to thank each of the participants for both the

Union and City that also provided information and comments that helped me mediate these issues. It was a productive environment that all contributed to.

#### **CERTIFICATION**

The undersigned hereby certifies that this is a true copy of the Factfinder's Report consisting of 12 pages. This report was electronically mailed to the parties on July 8, 2016 and a signed hard copy mailed via the US Post Office on the same day. To the best of my knowledge this report and the included recommendations complies with all applicable provisions established by the State Employment Relations Board.

I therefore affix my signature at the City of Louisville, in the County of Jefferson, in the State of Kentucky, this date of July 8, 2016.

**C. Forest Guest  
Fact Finder**