

STATE OF OHIO STATE EMPLOYMENT RELATIONS BOARD

In the Matter of the Fact-Finding	(Case No:	2016-MED-09-0903
	(
Between	(Heard:	August 28, 2017
	(
City of Sharonville	(Issued:	September 21, 2017
	(
And	(
	(
The Fraternal Order of Police,	(
Ohio Labor Council, Inc.	(

Michelle Miller Kotula
Fact-Finder

For the Employer: Lawrence E. Barbieri, Esq.
Schroeder, Maundrell & Barbieri & Powers
Attorneys and Counselors at Law
5300 Socialville-Foster Road
Suite 200
Mason, OH 45040

For the FOP: Mark A. Scranton
Staff Representative
PO Box 280
Bethel, OH 45106

INTRODUCTION

Michelle Miller-Kotula was appointed to serve as Fact-Finder in Case No. 2016-MED-09-0903 by the State Employment Relations Board on July 13, 2017 in accordance with Ohio Revised Code Section 4117.14 (C) (3). A hearing was conducted on August 28, 2017 in Sharonville, Ohio. The parties to this fact-finding have an ongoing bargaining relationship and are parties to a collective bargaining agreement (hereafter referred to as the “CBA”), effective by its terms through December 31, 2016. The parties to this CBA include the City of Sharonville (hereafter referred to as the “Employer”) and The Fraternal Order of Police, Ohio Labor Council, Inc., which represents a unit of approximately 27 patrol officers, who work for the City of Sharonville, Ohio, (hereafter referred to as the “FOP”). The parties began formal negotiations and met numerous times. A number of tentative agreements were reached by the parties but they were unable to reach agreement on all issues raised during the course of bargaining. As a result, a request for fact-finding was initiated.

The parties were required to pro-offer their respective position statements including a list of unresolved issues prior to the hearing which were timely made by the parties. The parties convened for a hearing on this matter in Sharonville, Ohio on August 28, 2017.

In accordance with the SERB’s order the parties filed written statements of the issues in dispute with the Fact-Finder involving the following:

Article 9	Discipline
Article 16	Work Period and Overtime
Article 19	Compensatory Time
Article 20	Wages and Compensation
Article 21	Longevity
Article 22	Pension, Insurance, and Deferred Compensation
Article 41	Duration
New Article	Certification

At the hearing, before the undersigned, both parties were afforded a full opportunity to present testimony, examine and cross-examine witnesses and introduce oral explanations of documentary evidence in support of their respective positions. Following the hearing, executive session discussions were held between the parties. Through these discussions this Fact-Finder was given a thorough understanding of each party’s position on the outstanding issues. The parties also informed the Fact-Finder of tentative agreements that were reached.

To arrive at the following recommendations this Fact-Finder relied upon, among other things, the following criteria:

- The reliable and credible testimony provided, the evidence presented at the hearing and further clarifications given to the questions of the Fact-

Finder during executive session discussions.

- The expired collective bargaining agreement between the parties.
- Comparisons of unresolved issues relative to the employees in this bargaining unit and how those issues related to other public and private employees doing comparable work, giving consideration to factors peculiar to the area and classifications involved.
- The interest, welfare of taxpayer and the ability of the public Employer to finance and administer the issues proposed and the affect of the adjustments on the normal standard of public service.
- The lawful authority of the public Employer.
- The stipulations of the parties.
- Other factors, not confined to those listed above, which are normally or traditionally taken into consideration in determination of the issue submitted to the Fact-Finder.
- The understanding that each individual issue has been reviewed for its relative individual merit; at the same time, each individual issue has also been reviewed with consideration given to whether or not it appropriately fits into the CBA created through this process.

ISSUES IN DISPUTE AND RECOMMENDATIONS

ARTICLE 9 DISCIPLINE

FOP Position

The FOP is seeking for additional language to be added to this Article as it pertains to how a witness is treated during an official internal/administrative investigation. The FOP is seeking clarification that when a member is questioned he/she be advised as to whether he/she is the focus of the investigation or merely a witness in the investigation leading to the questioning. The FOP is additionally seeking to have the person questioned be advised 1) The nature of the suspected misconduct being investigated and 2) his/her right to representation, if he/she so chooses. The FOP is seeking to have language mandating Garrity rights be read and clear instructions as to the consequences of failing to answer truthfully. The FOP is seeking language mandating such interview be voice recorded in some manner. It is the proposal of the FOP for these meetings to be in close proximity to the employee's shift, when possible, that they be reasonable in length and that there be no sort of threat or abusive language during the session.

The FOP wants the membership to fully cooperate with all investigations so long as rights are protected. The additional language sought accomplishes this issue without harming the ability of the Employer to conduct an investigation. The FOP seeks language guaranteeing all pre-disciplinary hearings be voice recorded in some manner.

Employer Position:

The employer objects to the FOP's proposal to Article 9 because it relates to significant changes. The FOP proposes to add an entirely new section to the Article, requiring the Employer to provide excessive warnings and notices to employees essentially any time the patrol officers are asked a question by a superior officer. The effect is that management will have to provide various warnings, advance notice, and accommodate representatives anytime they want to speak to a patrol officer, inquire as to a particular subject, or "coach up" an employee for minor incidents. The Employer suggests Article 9, Section 9.7 already provides employees who are the focus of an investigation the adequate "protection" sought by the FOP. The Employer contends Article 9 is sufficient as currently written and that the FOP's proposal be rejected.

FACT-FINDER RECOMMENDATION

The Fact – Finder recommends the following Section and Subparagraphs be added to Article 9:

Section 9.4: Whenever the Employer interviews or questions a bargaining unit member who is the focus of the investigation in reference to alleged or suspected misconduct in an official internal/administrative investigation, the following conditions shall apply:

- A. Employees shall be advised if they are being questioned as a witness or the focus of the administrative investigation.
- B. When an employee who is the focus of the investigation or a witness who holds a reasonable belief that he/she will be subject to discipline as a result of the conduct being investigated is interviewed or questioned, he/she shall be apprised of the nature of the suspected misconduct as it is known at the time and his/her right to have a FOP representative of his or her choice present to advise him/her during the questioning, if desired.
- C. Official administrative/internal investigations shall be recorded (either tape or digitally). All meetings provided for in this Section may also be recorded by the charged employee's representative, and by him or her for official use.
- D. Any employee required by the Employer to attend an investigatory interview outside of his scheduled working hours shall be paid for all such time.

With the addition of Section 9.4 as outlined above, Section 9.9 (formally Section 9.8) shall be changed accordingly:

Section 9.98: Pre-disciplinary conference **shall** ~~may~~ be ~~tape~~ recorded (**either tape or digitally**) and a charged employee shall be entitled, upon request, to a copy of the recording no later than forty-eight (48) hours following the close of the pre-disciplinary conference.

**ARTICLE 16
WORK PERIOD AND OVERTIME**

FOP Position

The FOP is seeking the following changes to this Article:

First, a change to Section 16.12 (8) (C) (3) is sought to address an ongoing issue. The FOP proposes changing the language to take into consideration all details worked between the original posting date and the date in which the detail would be assigned. The FOP states it would open the detail for others to have a chance of working the detail in question and there should be no additional burden on the Employer.

Second, the FOP is proposing to contractually establish an off-duty detail minimum rate of pay related to Section 16.12 (8) (D). The FOP is proposing the current rate for the City of Cincinnati's police officers as of 2017. The FOP contends its proposal in no way impacts the Employer's financial state or the Chief's ability to control the details that are worked. The Chief would have the ability to exceed the proposed minimum rate should he believe doing so is justified.

Employer Position

The Employer rejects the FOP's proposed changes to Article 16. Management reserves the right under Article 8: Management Rights to determine whatever time is needed, who shall work it, when and how many supervisors are required, and how to properly staff the detail. The FOP's proposal seeks to usurp those rights, and forces the Employer to make offers to the bargaining unit members before the police officers in the department.

The Employer also rejects the FOP's proposal to change the language in Article 8, Paragraph 9, Subsection C, Subparagraph 3. The Employer contends it may not be possible to assign detail work more than seven days prior to the date to be worked, depending on the workforce and availability of officers. The Employer does not want to be in technical default simply because the detail was assigned five or six days prior to the detail date. The Employer states this provision is completely unnecessary and further inhibits management.

The Employer also states the FOP's proposal increasing the off – duty detail rate from \$35 per hour to \$40 per hour is problematic for several reasons. Setting the rate so high will preclude private organizations and companies from being able to afford the bargaining unit members' rate. The Employer is willing to work with bargaining unit members and negotiate higher rates for services provided when possible, but the requested rate should not be made a mandatory term of the CBA.

FACT-FINDER RECOMMENDATION

The Fact – Finder recommends no changes shall be made to Article 16 as contained in the current CBA.

**ARTICLE 19
COMPENSATORY TIME**

Employer Position

The Employer points out the current CBA language allows an employee to use unlimited compensatory time in a given year, although it restricts the total accumulated hours at any one time to fifty (50) hours and the carryover to the following year to fifty (50) hours. The Employer's proposed changes to this Article are to eliminate runaway overtime costs while allowing employees to acquire more compensatory time per year with a controlled cap in order to limit excessive absences. Under the Employer's proposal, employees can acquire thirty-five (35) additional accumulated hours of compensatory time for a total of eighty-five (85) hours, and use a maximum of 136 hours of compensatory time each calendar year to control costs and provide the department with proper staffing/scheduling. Compensatory time will not be carried over year-to-year. Unused compensatory time will be paid out annually in January at the rate at which it was earned.

The Employer understands compensatory time is a valuable benefit to its employees, and is proposing to increase the limit permitted to be accumulated from 50 hours to 85 hours. The Employer's proposal limits each employee to 136 total hours of compensatory time per year. This proposal allows the Employer and the Chief of Police to control scheduling and make sure all shifts are properly staffed without the need for calling in off-duty officers and incurring overtime costs.

The Employer agrees with the FOP that the Detective Divisions minimum staffing shall be defined as a minimum of one employee instead of two. However, the Employer insists the minimum manpower must be met by an officer assigned to the Detective Division, as employees of other ranks may be needed for other duties.

FOP Position

The FOP proposes to change Section 19.3 in this Article to read:

Minimum manpower for the Detective Division shall be defined as a minimum of ~~two~~ **one officers and/or Detective Sergeant** assigned to the Detective Division, scheduled for the workday. ~~This may include to patrol officers assigned to the Detective Division, or one patrol officer assigned to the Detective Division and the Detective Sergeant.~~

The FOP points out one Detective is established as "on call" outside of the normal hours of work and for weekends. The proposed language is consistent with the time frames outside a detective's normal work schedule. The FOP is not seeking to reduce

management's right to deny compensatory time to officers assigned to the Detective Division if such time will create an undue hardship on the Employer and/or the Police Department as is found in the CBA. The FOP requests the rest of the Article remain unchanged.

The FOP contends the Employer's proposal to change sections of this language would limit the amount of compensatory time bargaining unit members could use annually to 136 hours. The Employer has the right to schedule off compensatory time should it be desired. This number of hours was exceeded by nine members of the bargaining unit in 2014, eight in 2015 and 12 in 2016. The mandatory cash out of compensatory time annually is especially concerning for new employees who may not have any time off on the books or those who earn few hours due to their tenure. The FOP takes a position both of these concepts are inconsistent with the policy of the police department or with several comparable agencies within the area.

The Employer's proposal to add the following sentence "Compensatory time so scheduled may be rescheduled as vacation leave at the sole discretion of the Chief of Police" should be rejected. The FOP alleges it has not been given an adequate explanation to this change and strongly opposes the addition of this sentence.

FACT-FINDER RECOMMENDATION

The Fact – Finder recommends the following change to 19.3, reducing the minimum manpower for the Detective Division and removing the following struck sentence. Section 19.3 shall read as follows:

“ . . . Minimum manpower for the Detective Division shall be defined as a minimum of one officer assigned to the Detective Division, scheduled for the workday. ~~This may include to patrol officers assigned to the Detective Division, or one patrol officer assigned to the Detective Division and the Detective Sgt.~~ This minimum may be waived at the discretion of the Chief of Police or his designee depending upon the circumstances.”

ARTICLE 20 WAGES AND COMPENSATION

Employer Position

The Employer proposes wage increases as follows:

January 1, 2017	2%
January 1, 2018	1.5%
January 1, 2019	1.5%

The Employer proposes increasing the number of steps from five (5) to seven (7) in order to provide more steady and predictable costs to the department. This increase in steps will not affect current employees. The Employer's goal is to create a compensation system in which all of the employees are on similar wage schedules.

The wage increase requested by the FOP would place a huge burden on the Employer's general fund and is not in accordance with comparable agreements in the area. The Employer compensates its employees very well, and is one of the top paid departments in the area.

The Employer's wage proposal is consistent with the practice in the area, near the top of the average percent change, and will ensure the FOP members remain amongst the top paid patrol officers in Southwest Ohio.

FOP Position

The FOP is seeking a guaranteed wage increase of 3.5% for each of the last two years of the CBA in addition to the continuation of the "me too" that is currently in the CBA. Employees, by way of the current "me too" have already received a 2% increase as of January 1 of 2017 and are seeking nothing additional to this amount for 2017.

The bargaining unit membership has found the "me too" language to work and be fair. Since the 2011 to 2013 CBAs the language was followed with no issue.

The FOP believes its proposal is just and reasonable when looking at comparable agencies throughout the same geographic area. The Employer has always in the course of previous negotiations stated its desire to stay within the top five of pay in Hamilton County. As a result of the below average wage increases that have occurred, these officers have fallen to seventh if not eighth within Hamilton County.

The FOP takes a position the Employer never asserted an inability to pay the requested wage increase. The Employer could fund the FOP's proposal.

The FOP points out the Employer is also seeking a change to the five-step wage scale in the current CBA increasing it to seven steps. It is difficult to address the FOP's exact position to this proposal because the Employer has never given a written proposal how this would be accomplished. The FOP takes a position should the Employer seek to increase the steps by one year, the FOP would not be opposed to it so long as it does not become effective for employees except those hired after the ratification date of this current CBA. Any employee hired under the current five-step scale should remain under the five-step scale.

FACT-FINDER RECOMMENDATION

Based on the evidence that has been provided, the Fact - Finder recommends the following wage increases:

- 2% raise in 2017
- 2.5% raise in 2018
- 2.5% raise in 2019

A one-time \$750.00 bonus is to be paid to each bargaining unit member following the execution of the newest CBA.

The Fact – Finder also recommends removing the “me too” clause in consideration of the \$750.00 bonus payment.

The parties are to add two steps, each for one year, to be added after steps three (3) and four (4) for those individuals hired after the effective date of this CBA. Any employees currently hired and in the probationary status at the time this CBA is executed shall be grandfathered into the current step system and not subject to the two additional steps.

**ARTICLE 21
LONGEVITY**

Employer Position

The Employer contends it offers the second-highest longevity pay behind the City of Cincinnati. The Employer notes several municipalities do not offer longevity pay. The Employer’s extremely generous longevity pay further advances the bargaining unit members yearly compensation ahead of other officers in the area and continues to ensure the Employer remains among the best paid police departments.

The Employer states it is funded solely by its General Fund. The Employer faces a significant and growing risk in General Fund revenue volatility. The administration has taken a very responsible methodical approach to retaining a fund balance designed to absorb downturns in an economy while also developing plans to put any surpluses to work. The Employer cannot gamble on providing the huge raises requested by the FOP to already highly compensated patrol officers and risk overstretching the General Fund over the next several years.

The Employer seeks to remove the “me too” clause currently contained in Article 20, Section 20.1. Since that time the “me too” provision has prevented the Employer from giving merit and experience based raises to other employees who have earned them, and is causing great difficulty in retaining qualified long-term employees.

The Employer proposes adding language to the CBA which is the exact same language agreed upon by the Firefighters Union:

Section 21.4 If in the future City Council passes an Ordinance changing this benefit for Employees hired after a specified date, then the change will be in effect for those covered under the agreement hired after that also. This will be an automatic change which will not require further negotiation at the time.

The Employer contends this change will allow it to better manage its General Fund in the future and to make changes to an incentive program generously offered by this Employer, not based on salary. The change will only affect those employees hired after a specific date in the future, and will not affect any member of the bargaining unit currently employed.

FOP Position

The FOP takes the position the language found in this Article has been unchanged in the CBA, since its inception. The language is consistent with current policy for all other employees. The FOP is opposed to any change.

The FOP is willing to discuss the issue further with the Employer. However, the FOP is opposed to adding language. The FOP requests for the Fact-Finder to retain the current language in this Article.

FACT-FINDER RECOMMENDATION

The Fact-Finder proposes to add the following language to Article 21:

Section 21.4

A. If in the future City Council passes an Ordinance changing this benefit for employees hired after a specified date, then the change will be in effect for those covered under the agreement hired after that date also. This will be an automatic change which will not require further negotiation at the time.

B. For employees who commenced full-time employment with the City prior to the date specified by counsel to enact changes to the longevity benefit, the following shall apply. The parties agree that with respect to Section 21.4 (B) only that this section cannot be changed without a majority vote of the membership hired prior to the date specified by counsel to enact changes to the longevity that if it, and Section 21.4 (B) will not be taken for consideration of a Fact-Finder or Conciliator:

1. All full-time employees appointed by the Safety/Service Director shall receive longevity pay, based on the hourly rate as of December 31 of the previous year times 2080 hours. Such amounts are to be paid after the employee's service anniversary date occurring during the calendar year.
2. All prior years of full-time active service with the City, regardless of whether

or not a break in service has occurred, shall be credited toward calculating longevity pay.

Five (5) through Nine (nine) years of service 1-1/2

Ten (10) through Nineteen (19) years of service 2-1/2

Twenty (20) years plus 3-1/2

3. If an employee's anniversary date is January 1 to June 30, longevity pay will be paid in the first half of the month of June. If the employee's anniversary date is July 1 to December 31, longevity pay will be paid in the first half of the month of December.

ARTICLE 22 PENSION, INSURANCE AND DEFERRED COMPENSATION

FOP Position

The FOP is not requesting that the Employer offer to its membership an insurance policy that is different than all other employees. The FOP is not seeking to pay different rates for insurance than all other employees. The FOP is not seeking to have tobacco users pay any less than any other employee.

The FOP is seeking a guarantee from the Employer that employees will not pay more than 13% of the applicable premium for the duration of the CBA. The proposed 13% is more than any employee currently contributes toward the premium.

Employer Position

The Employer submits Police Department employees, including patrol officers, received the exact same health insurance options as all other of its employees. It is the most equitable way to provide health insurance, and is also the most cost-effective for the Employer and the individual employees. Creating separate health insurance plans for the FOP will drive up costs.

The Employer offers extremely generous health insurance benefits under its plan. In the current health insurance climate, it has the flexibility to change its health plan annually to provide the best benefits at the lowest cost. The Employer also offers vision and dental insurance. Patrol officers covered under the current plan will continue paying through payroll deduction the same cost as all of its other non-Union employees.

The Employer's medical plan is currently seen as a "High Gold Level Plan". The deductibles are eased by the Employer through annual contributions to employee HSA accounts. Employees are able to earn additional HSA contributions from the Employer by engaging in the Wellness Program.

The Employer has continued to be aggressive in improving health benefits for employees,

and through negotiations with health insurance providers managed to secure reductions in premium rates for 2016 and 2017. It is clear the health insurance must remain the same for all of the employees, and thus the Employer requests that Article 22 remain as written and the FOP's request be denied.

FACT-FINDER RECOMMENDATION

The Fact-Finder recommends the following changes to Article 22, Section 22.2

Health Insurance: ~~Effective August 13, 2014,~~ For the duration of the Agreement, the Employer agrees to provide bargaining unit members the same health care options as provided to all other City employees. Employees covered under this Agreement shall pay through payroll deduction the same cost for health care as all other City employees. **Any employee covered by this Agreement shall not receive a premium increase of more than 5% in a single year, in each year of the CBA.** ~~There shall be no retroactivity to January 1, 2014, prior to the ratification of the agreement. With the exception of Tobacco users who will still be charged a premium consistent with all other City employees. For the remainder of 2014 all others will receive the benefit of no premium being charged.~~

ARTICLE 41 DURATION

FOP Position

The FOP does not believe this Article is in dispute. The FOP believes the Employer also desires to have a three-year CBA.

Employer Position

The Employer proposes a three-year CBA.

FACT-FINDER RECOMMENDATION

The Fact-Finder recommends a three-year contract, with this CBA remaining in full force and effect through December 31, 2019.

NEW ARTICLE CERTIFICATION

Employer Position

The Employer proposes a new Article regulating the certification requirements of patrol officers. This proposal is substantially similar to Article 13 of the Firefighters Agreement and mandates patrol officers maintain certain required certifications necessary to perform their duties. The Employer submits this Article is necessary to provide structure and steps for handling cases in which a patrol officer may lose a certification required for his or her duty. Should a patrol officer lose a mandatory certification or become uninsurable, the officer will be placed on unpaid leave until he or she can obtain the proper certification or become insurable again. The employee will have twenty-one (21) calendar days. If the employee fails to become recertified or is uninsurable, he or she shall be summarily discharged.

The Employer shall continue to pay for all certifications listed in this Article, or any other additional certifications that may be required in the future. Attendance at the training session shall be compensable in accordance with the CBA.

FOP Position

The FOP rejects the Employer's proposal to add a new Article entitled "Certification". The Employer's only justification for this Article will be that the firefighters agreed to this in their last CBA. The FOP points out no contract language from law enforcement agencies in Southwest Ohio will justify this as a common practice. The Employer did not provide any evidence that the proposed language addresses an issue that is occurring within the police department. The FOP states the Employer acknowledged there is no issue in this department. The FOP is opposed to the addition of this language and requests the Fact-Finder rule accordingly.

FACT-FINDER RECOMMENDATION

The Fact Finder rejects the Employer's proposal to add a "Certification" Article to this CBA.

CONCLUSION

After review of the pre-hearing statements of the parties, all facts presented at the hearing and all exhibits and testimony presented at the hearing the Fact-Finder has developed the award as contained in this report. In addition, the Fact-Finder has given consideration to the positions taken by each party regarding the impact into the criteria regarding the impasse into the criteria innumerate in the Ohio Revised Code.

Respectfully submitted and issued on this 21st day of September, 2017.

Michelle Miller-Kotula

Michelle Miller-Kotula
Fact-Finder

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September, 2017, a copy of the foregoing Award of the Fact-Finder was served by way of electronic mail and regular mail upon Lawrence E. Barbieri, Esq., representing the Employer and Mark Scranton, representing the Fraternal Order of Police, Ohio Labor Council, Inc. and the State Employment Relations Board.

Michelle Miller-Kotula

Michelle Miller-Kotula
Fact-Finder