

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
JUNE 14, 2017**

In the Matter of:

)	Case Nos.:
Ohio Patrolmen's Benevolent Association)	2016-MED-10-1121
)	2016-MED-10-1122
and)	
City of Fairview Park, Ohio)	Carol J. Bader, Esq. Factfinder

APPEARANCES:

For the Employer:

**Mr. William McGinty
Law Director, City of Fairview Park.
20777 Lorain Rd
Fairview Park, Ohio 44426**

Team Members:

**Eileen Patton, Mayor
Gregory Cingle, Finance Director**

For the Union:

**Mr. Randy Weltman
Attorney, OPBA
10147 Royalton Rd. Suite J
North Royalton, Ohio 44133**

Team Members:

**Bruce Mihalak, OPBA Director
Tom Harrington, OPBA
Jeff King, OPBA
Jon Bandi, OPBA
Mary Schultz, Outside Auditor**

INTRODUCTION

The undersigned was duly appointed by SERB letter dated April 21, 2017 to serve as Fact-Finder in the matter of Ohio Patrolmen's Benevolent Association (hereafter referred to as "Union") and the City of Fairview Park (hereinafter referred to as "Employer" or "City") pursuant to OAC 4117-9-5 (D). The hearing was held at the Gemini Center in Fairview Park, Ohio on May 31, 2017, from 10:00 a.m. to 3:00 p.m. The Union was represented by Mr. Randall Weltman, and the Employer was represented by Mr. William McGinty. Both police command and patrol officers are included in one labor agreement. Based on discussions at the hearing, the parties desire to have the Fact finding report issued within the statutory time frame of fourteen (14) days. (June 14, 2017)

All tentative agreements made between the parties are deemed to have been

incorporated herein and are adopted as part of the party's final agreement. The agreed upon sections are listed in Appendix A.

FACTUAL BACKGROUND

Overview

The City of Fairview Park, Ohio, is located in the north east corner of the state near Cleveland, approximately ten (10) miles from downtown, and has a population of 16,000. It is primarily a "bedroom" community (Patton) with little to no industry. The main revenue sources for the General Fund are property and income taxes.

The Union membership currently includes seven (7) full time police command (sergeants and lieutenants) and nineteen patrol officers. They are organized under one labor contract which expired on December 31, 2016.

Bargaining History

The parties have had a generally good relationship so contract discussions were "transparent and open", according to the Union. However, this year the negotiations started out on a "bad foot" because (according to the Union) the City changed health care providers at the beginning of January 2017, which had a negative impact on the employee contribution and other benefit levels. The City said that they had received an increase in the premium from Cuyahoga County for 24% and an offer of a one year contract. The Employer then sought other options to keep health care costs down. The Summit County consortium offered a three (3) year contract and lower costs, so, the City contracted with the new carrier. They notified the employees of the changes and held meetings to educate them as to the new plans.

The Union considers the changes in the new plan a concession that was not bargained, thus straining the parties' normally co-operative relationship. It should be noted that the bargaining unit did not file a grievance or unfair labor practice charge. They instead chose to wait until negotiations to try to work through the issue. Unfortunately, the parties were not able to reach agreement.

The Factfinder reviewed all of the evidence, records, testimony, arguments and information presented by the parties. She recognizes the hard work that goes into a fact-finding hearing and appreciates the well-prepared presentations of both parties.

UNRESOLVED ISSUES

The parties presented four unresolved issues:

- Article 26. "Officers Rate of Pay"
- Article 23. "Hospitalization,
- Article 20. "Holidays"
- Article 13. "Sick Leave"

Based upon considerations enumerated in Ohio Revised Code 4117.14 including past collectively bargained agreements between the parties, comparison of the issues submitted relative to other public employees doing comparable work, the interests and welfare of the public, the ability of the employer to finance and administer the issues proposed, the effect of adjustments on the normal standard of public service, the lawful authority of the Employer, other factors traditionally considered in the determination of issues submitted, the Fact-Finder makes the following recommendations:

Article 26. Rates of Pay

A. Wage Increases

Union Position:

The Union proposes wage rates be increased by 2.25% on January 1, 2017. 2.75% for January 1, 2018 and 3.25% on January 1, 2019. The Union argued that the City is in a healthy financial position and can afford to provide the raises to their employees. A Union witness, Mary Schultz, independent auditor, presented testimony and UX-7, a review of Fairview Park finances. In it, she costed a one percent increase for the unit at:

\$ 21, 288	1% of Department wages paid in 2016
4, 151	(19.5 % OPF contribution)
426	(1.45% Medicare)
309	(2% Workers comp)
<u>26, 174</u>	total cost ¹

The City did not challenge Ms. Schultz' cost calculation of a 1% police wage increase. OPBA also presented wage information from thirty-six suburban area police departments. (UX-1) Ms. Schultz stated that the recommended carryover for a municipality² is about 16% or around two months of expenses. As of December, 2016 Fairview Park had a 15% carryover, not including the Cable TV Franchise Fee Fund.³ The Cable TV Franchise fund is projected to be at \$887,000 at the end of 2017⁴.

Union Proposal:

26.01

All bargaining unit wages will be increased by 2.25% on January 1, 2017, by 2.75% on January 1, 2018; and by 3.25 % on January 1, 2019.

¹ UX-7, Mary Schultz, CPA, Review of City of Fairview Park Financial Condition, p. 3, please note that the numbers for Medicare and Workers Comp are reversed, but shown as reported.

² *Id* at p.2, Government Finance Officers Association,

³ *Id* at p. 3

⁴ *Id* at p.

City Position:

The City response is that it has seen little or no growth in the revenues for the General Fund. The only time there was an infusion of cash into the City coffers was in 2013 when over two (2) million dollars was received from an individual estate tax. That was a onetime occurrence and the Ohio estate tax has since been repealed. Furthermore, the City's property values have remained fairly constant since 2013/ 2014, after having recovered from the housing collapse of 2008. As to relying on the Cable TV money to supplement the general fund and pay for the wage increases that the Union is proposing, that money can only be transferred to the general fund, if City Council approves the move. Per Mr. Cingle, Council is not agreeable to such a transfer.

Wage increases, as proposed by the Union would create a "structural deficit", the general fund having more going out than coming in, creating a need to draw down the reserve over time.(Cingle) The City raises concerns about increases in health care costs, need to repair an aging infrastructure (sewer system), and the rising cost of workers' compensation. Their employees are the beneficiaries of good wages and benefits. They argue that they must be competitive because they have not had anyone leave the unit for another better paying jurisdiction.

City Proposal:

Wages:

<u>2017</u>	<u>2018</u>	<u>2019</u>
1%	1%	1%

Recommendation:

The factfinder understands that the City is responsible for maintaining a healthy financial condition, specifically, to be prepared for any unforeseen emergencies or an economic downturn. This is only prudent financial management. The administration has taken steps to cut costs, shift employees out of the general fund, encourage economic development and plan for capital improvements. A recent Moody's rating remained good at the "Aa" level.(Cingle) In addition, there is a reserve in the Cable TV fund⁵ which is not counted in the 2016 15% carryover noted by Ms. Schultz. The City evidence indicates that the general fund carry over has shown a downward trend, especially since 2013/2014. But, in the factfinder's opinion, this is, in part, due to the one time estate tax windfall.⁶ Other than that it appears to have been pretty consistent over the long term. Revenues look to be stable or growing in the areas of property

⁵ UX-7, \$848,000 at the end of 2017.

⁶ CX-1, "General Fund Balances"

and income taxes.⁷ Overall, the City of Fairview Park looks to be well managed and in a stable financial position.

On the other hand, the Union's proposal of 2.25%, 2.75% and 3.25% is beyond what other comparable jurisdictions have been receiving⁸ and they are not in a position where they need to "catch up". In fact, it appears that they rank in the middle of the local municipalities for wages paid to police officers.⁹ SERB is showing that 2% per year is the current going rate overall and that is supported by the Union presentation for local communities as well. The fact finder recommends pay raises of two percent (2%) for each year of the contract. She further recommends the following language, in relevant part, for Article 26 and Appendix A (in part) as follows:

Recommended Contract Language:

ARTICLE 26 - Rates of Pay

26.01 All bargaining unit wages are provided in the attached Schedule A.

26.02 All employees will be paid bi-weekly. The bi-weekly pay check shall be made Available to employees no later than 4:30 pm on Thursday of pay week, unless unforeseen circumstances occur in the Finance Department.

26.03 The city shall maintain a thirteen percent (13%) differential between the Sergeant's base wage and the base wage of the of the City's highest patrolman's base rate, and a thirteen percent (13%) differential between Sergeant's base wage and the Lieutenant's base wage.

26.04 Base rates of pay are attached hereto and made a part hereof and marked as Exhibit "A".

Appendix A: Wage Scale

All bargaining unit employees basic wage rates shall be increased as follows and more fully described in Schedule A and Schedule B.

- Effective January 1, 20172% wage increase
- Effective January 1, 20182% wage increase
- Effective January 1, 20192% wage increase

Schedule A and Schedule B ¹⁰

⁷ *Id.*, "General Fund Revenues", "General Fund Income Tax Revenues" and "General Fund Property Taxes".

⁸ UX-1, "2016 Comparison of Benefit for a Ten Year Patrol Officer"

⁹ *Id.* at p. 6, "State Employment Relations Board Annual Wage Settlement Report"

¹⁰ The Factfinder defers to the City Finance Department to calculate the actual dollar increase for the Wage Schedules.

Article 23 Hospitalization:

Union Position:

The Union's position is that the new plan is a "concession". The City contracted with a new carrier (Summit County) after the previous provider offered a one year contract with a 24% premium increase. The new three year contract included a deductible for PPO enrollees where there had not been one before. For those in the HSA, the deductibles were lowered, and the City elected to reduce the account funding by half (50%). Since the deductibles in the new plan were lower, the employees received less benefit and the City paid much less for the plan.

Union Proposal:

For calendar years 2018 and 2019, the employee agrees to pay fifteen percent (15%) and the City agrees to pay eighty five percent (85%) of health care costs. The costs to bargaining unit employees will be the same as for the Service Unit and the City's Administration.

City Position:

The Employer's position is that it currently provides a high level of benefits for its employees. They changed their health benefit carrier to Summit County for better pricing and a three year contract. The plan included a lower deductible for the employees who participate in the HSA plan going from \$3000(S)/\$6000 (F) to \$2600(S)/\$5200(F). (UX#3) The City argued that the employees receive that amount as tax free income. If they remained healthy, it remains available to them in the future and they also noted that their employees had accrued \$250,000 (McGinty) in HSA funds. The City suggested that is a generous amount and so they should not have to fully fund the accounts as they had before.

City Proposal:

A.) EPO

Employee pay 14% of Health care Premium.

B.) HSA:

1. Employees pay 14% of Health care Premium
2. City will pay towards Employees HSA account for 2018 and 2019:
 - a.) \$1300 (single)
 - b.) \$ 2600 (family)
3. If the premium rises by more than 5% annually in 2017 or 2018, the City has a right to:
 - a.) reopen this provision and
 - b.) explore other insurance programs within the Summit County portfolio

Discussion:

Healthcare Benefits appear to be the primary sticking point of this contract. As stated above - when the City changed "carriers" at the beginning of 2017, the employer ended up paying less. First, the factfinder recognizes the City's concern for rising benefit costs and its ability to meet those in the future. On the other hand, the parties have taken steps to meet those challenges by introducing a cost containment committee, and employee premium cost sharing. HDHA plans and tax free HSAs are growing because they have lower cost premiums and have some advantages to the employee in the way of taxes.¹¹ They require more education and a more thoughtful approach to the usage of medical care. (McGinty) These actions are evidence of the normal cooperation that this employer and Union have generally experienced. It was the impact of the unilateral change that soured the relationship.

HSA:

The majority of bargaining unit members are in the HSA, though the factfinder is not certain what the precise number of enrollees in each plan is for the bargaining unit. The primary concern was the change in deductible and the percentage reduction of the City's contribution to those accounts. To partially compensate the union membership for the 2017 "concession, the factfinder recommends that for 2018, funding for the HSAs be implemented at \$2600(S)/\$5200 (F). She left the current plan in place for 2017 for ease of administration. It also allows those in the EPO to change to the HSA if they choose through open enrollment at the end of this year.

For 2019, the factfinder recommends that the HSA funding be reduced to 75% of the deductibles. If they remain at the same dollar level, they would be at \$1950(S)/\$ 3900(F). The reasoning behind this reduction is to bring the HSA city contribution more in line with what other employers are doing.¹²

EPO:

Here, the concern was an increase in the percentage of premium paid by the EPO participants. The new monthly premiums were closer to seventeen percent (17%). The Finance director committed to making the adjustments on those premiums after negotiations, and reimbursing the employees. In addition, there is now a deductible for EPO participants where there wasn't one before. Upon review of the previously cited SERB Health Care Cost report, the new deductibles are on the lower end of what other Ohio public employees pay. The fact finder

¹¹ State Employment Relations Board, "The Cost of Health Insurance in Ohio's Public Sector", p.29.

¹² UX-5, State Employee Relations Board," The Cost of Health Insurance In Ohio's Public Sector", "Employer Contributions to Employee Deductibles- Family Coverage" , Chart 15.

does not see a need to compensate for the change.¹³

Re-opener

The City proposed a re-opener if premium costs are more than 5%. A review of the most recent years shows that the highest average increase was 4.3%. It is not unreasonable to hold discussions regarding a higher premium cost. The factfinder agrees that the City may re-open the contract for years 2018 or 2019 should the premium costs come in at more than 5%.

The discussions are to be limited to the employee/employer contributions.

Recommendation:

1. 2017: for the balance of this year to December 31, the Health care plan is to remain as it is. The only exception is the adjustment to be made to the Union members who paid more than the 15% in premium costs. The fact finder understands that there were some employees who may have paid slightly less than 15% (HAS). It is up to the Finance Director's discretion if wants to make the effort to collect those monies from employees who paid less.

2017- Current Plan

2. 2018: Assuming that the HSA deductibles are at the same dollar amount as this year, the City will "fully fund" those accounts up to \$2600(S)/ \$5200(F). If the deductibles are higher than those dollar amounts, the individual employee will be responsible for the balance.¹⁴ The EPO/PPO now have deductibles where they did not have them before. Upon review, the fact finder believes that those deductibles are within the state wide range.¹⁵ Therefore, no adjustment is necessary to the EPO/PPO plan.

3. 2019: In recognition of the high dollar amount the City is contributing to the HSAs and that it is at the top of what employers are paying state wide, she recommends that the City fund the HSAs for 2019 at 75%. If the amounts remain the same, the contribution amounts will be at \$1950(S)/\$3900(F), this is still in the top 30.8% for singles and 17.8% for families.¹⁶

4. Re-opener: If there is an annual increase in premiums for 2018 or 2019, more than 5%, the City has a right to re-open contract discussions, limited to premium cost sharing only.

¹³ *Id* at p. 18, "Deductibles for Managed Care Plans". Table 7.1 and 7.2.

¹⁴ The fact finder does not know the details of the contract with Summit County and whether they can change the level of benefits from year to year. It is understood they could change the monthly premium.

¹⁵ UX-5, State Employee Relations Board, "The Cost of Health Insurance In Ohio's Public Sector", In Network Out of Pocket Maximums", Table 9.1

¹⁶ *Id* at p. 29, Chart 14 and 15.

Recommended Contract Language:

The factfinder recommends the following contract language, in relevant part:

Article 23 Hospitalization:

The City and all employees have cooperated in the creation of the new medical insurance program.

23.01 For calendar years 2017, 2018 and 2019, the employee agrees to pay fifteen percent (15%) and the City agrees to pay eighty-five percent (85%) of health care costs.

If the premium rises by more than 5% for the calendar years, 2018 or 2019, the City has the right to re-open this provision, limited to premium cost sharing only.

For calendar year 2017, the City will contribute to the employee's HSA account at the rate of fifty percent (50%). For the calendar year 2018, the City will contribute to the employee's HSA account in the amount of \$2600(single)/ \$5200(family). Any amount over that will be borne by the employee. For the calendar year, 2019, the City will contribute to the employee's HSAs at the rate of 75%...

Article 20 Holidays

Union Position:

The Union points to surrounding cities and what they pay for holidays. (UX- 10, p. 1) They argue that other cities' police departments receive time and one half for police officers working holidays, more than the three days the Fairview Park police employees receive. They also want internal parity because Fire Department employees are paid premium pay for six holidays.

Union Proposal:

Employees who work on Thanksgiving, Christmas, New Year's Day, Memorial Day, July 4th and Labor Day shall be paid at time and one half for all such hours worked.

City Position:

The City does not propose any change with the "Holidays" for Police officers. There would be an added cost, if officers were paid time and one half for three additional holidays.

City Proposal:

Current Language

Recommendation:

The factfinder reviewed UX-10, "Comparison of Benefits for Holiday Pay-- Cuyahoga County. Since City Exhibit, "Municipal Wage Scale Comparison" listed 7 surrounding cities they surveyed for wages, she limited her review for holidays to those as well. Only one of them, Middleburg Heights, paid all of the holidays at straight time. The other six cities pay at least time

and one half for all of the six major holidays.

The factfinder did not consider the argument that the change was warranted because the firefighters negotiated it in their contract. The firefighters may have given up something else for that additional benefit. The recommendation is based entirely on the surrounding comparable cities.

Recommendation:

The factfinder recommends the City pay time and one half for the additional three holidays beginning January 1, 2018.

Recommended Contract Language:

Article 20.03

Commencing January 1, 2018, employees who work on Thanksgiving, Christmas, New Year's Day, Memorial Day, July 4th, and Labor Day shall be paid at time and one half for all such hours worked.

Article 13- Sick Leave

Union Position:

The Union argued that they had negotiated the initial language in their contract which provided an incentive of two (2.0) comp time hours for every calendar month that an employee did not use sick time. It was then discovered that the Firefighters had similar language but were entitled to two and a half (2.5) hours of comp time for an absence free month. They urged the factfinder to bring them up to the same level as the fire fighters.

Union Proposal:

13.11

For each calendar month in which sick leave is not used by an employee, the employee shall be entitled to 2.5 of compensatory time off.

City Position:

The City stated that they want to maintain the language at two (2.0) hours of comp time. They fear that if they approve of the change here, all of their unions /employees will want the same benefit.

City Proposal:

Current language

Recommendation:

The Union did not provide comparable data for this change. The only argument is based on the fact that the Fire Department has an additional six (6) hours per year available to their members. The factfinder is not persuaded that is adequate reason to increase this benefit.

Recommended Contract Language:

Article 13-Sick Leave

Current Language

Respectfully Submitted,



Factfinder, Toledo, Ohio
This 12th day of June, 2017.

APPENDIX A
TENTATIVE AGREEMENTS BETWEEN THE CITY OF FAIRVIEW PARK AND OPBA

Article 1	Preamble
Article 2	Purpose and Intent
Article 3	Recognition
Article 4	Management Rights
Article 5	Dues and Other Deductions
Article 6	No Strike- No Lockout
Article 7	Non discrimination
Article 8	Bulletin Board
Article 9	Personnel Files and Policy
Article 10	Labor-Management Committee
Article 11	OPBA Representation and Time
Article 12	Probationary Period
Article 14	Injury Leave
Article 15	Funeral Leave
Article 16	Military Leave
Article 17	Traumatic Leave
Article 18	Jury Duty- Witness Duty
Article 19	Vacations
Article 21	Call in Pay
Article 22	Overtime Pay - Premium Pay
Article 24	Longevity
Article 25	Uniform and Equipment Allowance
Article 27	Special Capacity Pay
Article 28	Tuition Reimbursement
Article 29	Pension "Pick Up"
Article 30	Conformity to Law
Article 31	Total Agreement
Article 32	Obligation to Negotiate
Article 33	Gender and Plural
Article 34	Headings
Article 35	Grievance Procedure
Article 36	Officer's Bill of Rights
Article 37	Vacancies and Promotions
Article 38	Miscellaneous
Article 39	Duration
Article 40	Execution
Appendix A	Wage Scale*
	Letter of Understanding
	Memorandum of Understanding 2

* While not mentioned as an open article by the parties, it is actually the contract section where the raise percentages are stated. The factfinder has written proposed language for this section. See Article 26. Wage Rates, above.