ORDINANCE NO. 41-14

AN ORDINANCE ACCEPTING THE REPORT AND RECOMMENDATIONS OF THE FACT FINDER FOR THE OHIO PATROLMEN'S BENEVOLENT ASSOCIATION REPRESENTING THE PATROL OFFICERS AND THE SERGEANTS DIVISION, AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEDINA, OHIO:

SEC. 1: That the Report and Recommendations of the Fact Finder for the Ohio Patrolmen's Benevolent Association representing the Patrol Officers and the Sergeants Division is hereby accepted.

SEC. 2: That a copy of the Report and Recommendations is marked Exhibit A, attached hereto and incorporated herein.

SEC. 3: That it is found and determined that all formal actions of this Council concerning and relating to the passage of this Ordinance were adopted in an open meeting of this Council, and that all deliberations of this Council and any of its committees that resulted in such formal action, were in meetings open to the public, in compliance with the law.

SEC. 4: That this Ordinance shall be considered an emergency measure necessary for the immediate preservation of the public peace, health and safety and for the further reason to act on said Fact Finder Report within the required period of time; wherefore, this Ordinance shall be in full force and effect immediately upon its passage and signature by the Mayor.

PASSED: March 10, 2014

SIGNED: John M. Coyne, III
President of Council

ATTEST: Kathy Patton
Clerk of Council

APPROVED: March 11, 2014

SIGNED: Dennis Hanwell
Mayor

ORD 41-14
Exh. A

STATE OF OHIO

BEFORE THE OHIO STATE EMPLOYMENT BOARD

IN THE MATTER OF FACT FINDING BETWEEN

THE CITY OF MEDINA

And

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION
(Sergeants and Patrol Officers)

SERB Case #'s 2013-MED-09-0967
2013-MED-09-0968
E. William Lewis, Fact Finder

Fact Findings and Recommendations
Date of Mediation session: January 6, 2013
Date of Evidentiary Hearing: February 11, 2014

Appearances:

For the City:
Jon M. Dileno, Esq.
Zashin & Rich Co., LPA
55 Public Square, 4th Floor
Cleveland, Ohio 44113

For the Union:
Daniel J. Leffler, Esq.
Ohio Patrolmen's Benevolent Association
10147 Royalton Road, Suite J
North Royalton, Ohio 44133

AUTHORITY

In the matter brought before Fact Finder E. William Lewis in keeping with applicable provisions of Ohio Revised Code 4117 and related rules and regulations of the Ohio State Employment Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation Based on merit and fact according to the provisions of Ohio Revised Code 4117, particular those that apply to Safety Forces and mutual directives of the parties.

Both sessions were held at Medina City Hall. All witnesses were sworn in accordance with ORC 4117.

In attendance for the City:

Mr. Jon M. Dileno	Advocate for the City
Mr. Patrick J. Berarducci	Chief of Police

For the Union:

Mr. Daniel J. Leffler	Advocate for the OPBA
Mr. George Horton	Sergeant Representative
Mr. Nate Simpson	Sergeant Representative
Mr. Dan Warner	Patrol Officer Representative

BACKGROUND:

The City of Medina, hereinafter known as the Employer/City, provides municipal and Safety services to its 26,000 citizens. The Ohio Patrolmen's Benevolent Association, hereinafter known as the Union/OPBA, represents two bargaining units of City employees. The Sergeants bargaining unit is composed of eight Sergeants. The Patrol Officers bargaining unit has twenty six members.

The parties have a joint bargaining relationship, where the City bargains with both units simultaneously. Although SERB did not assign the Sergeants Bargaining Unit to this Fact Finder, the parties have stipulated that this Fact Finder's recommendations and inclusions will apply to the Sergeants Bargaining Unit as well as the Patrol Officers Bargaining Unit.

The parties began bargaining on successor contracts in November 2013. After three bargaining sessions they were unable to reach an agreement, and they applied to SERB for a Fact Finder appointment. This Fact Finder was appointed on December 13, 2013. Consultation with the respective representatives indicated that a mediation session would be appropriate. Mediation was scheduled for January 6, 2014. At the session the parties identified thirteen unresolved Articles. All unresolved issues were resolved during mediation except for Articles 16, 20, 26, and 27.

EVIDENTIARY HEARING:

An Evidentiary Hearing was scheduled for February 11, 2014. After a two hour attempt at further mediation, without success, the Evidentiary Hearing was commenced at 1:30p.m. According to the parties Pre-submittals, the following Articles and Sections would be addressed during the Hearing:

ARTICLE 16 DUTY HOURS
(Sergeants and Patrol Officers)
Section 1.

ARTICLE 20 SICK LEAVE
(Sergeants and Patrol Officers)
Section 5.

ARTICLE 26 GROUP HOSPITALIZATION
(Sergeants and Patrol Officers)
Section 1.
New Section: Wellness Program

ARTICLE 27 WAGES
(Sergeants and Patrol Officers)
Section 1. Patrol

Section 2. Patrol

Section 3. Patrol

-Sergeants Wage differential

-New Section(Sergeants and Patrol)—Firearm Proficiency Pay

When making recommendations in accordance with ORC 4117.14(C)(4)(e), the Fact Finder takes into consideration the following factors:

(1) Past collective bargaining agreements, if any, between the parties;
(2) Comparison 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, giving consideration to factors peculiar to the area and classification involved;
(3) The interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard 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 determination of issues submitted to mutually agreed upon dispute settlement procedures in the public service or in private employment.

The format when addressing the unresolved issues, will be to list the issue or Article, followed by the positions of the parties, the Fact Finder's discussion and his recommendation. The issues will be addressed in the same order as in the Hearing.

ARTICLE 16 DUTY HOURS

CITY POSITION:

Section 1.—Delete ten (10) hour shifts for Patrol Officers and Sergeants. The work week shall be forty (40) hours with two weeks notice for schedule changes.

Section 2.—Change ten (10) hours to eight hours.

UNION POSITION:

Section 1.—Expand the four ten (10) hour days to all members of both bargaining units.

Section (New)—add provision to provide for shift assignment preference semi-annually (January & July). Those assignments are to be generally made by seniority.

DICUSSION:

Although the Employer argues that hours of work and schedules are an inherent right of management, Ohio Revised Code 4117, makes hours of work and working conditions a mandatory subject of bargaining. The City, through evidence and testimony, believes that the current ten (10) hour shift schedules are less efficient than eight (8) hour shift schedules(ME-2,tb.-9). Their Shift Staffing Analysis shows that it takes 1.72 persons to staff eight (8) hour shifts 24/7. This is contrasted to 2.29 persons to staff ten (10) hour shifts 24/7. Ten(10) hour shifts, per the City, creates too much overlap between shifts. Eight (8) hour shifts, per the City Advocate, divides equally into twenty-four (24) hours. Thus, per the City, they could operate the Department with fewer personnel.

This Police Department has been on ten (10) hour shifts for decades, states the Union. Ten (10) hour shifts were memorialized into the CBA in the 2003 negotiations(UE-2). Employees are happy with ten (10) hours and have established life styles around such a schedule, per OPBA testimony. A study appearing in the Police Chief Magazine depicts a trend towards ten (10) hour shifts. The findings, per the study, identified increased sleep, improved quality of work life, and reduced overtime hours, as compared to eight (8) hour shifts(UE-3). Actually, in the fact finder's opinion, this study does not necessarily show a trend towards ten (10) hour shifts. It shows a decrease in eight (8) hour shifts as

compared to alternative shift schedules.

Testimony did not convince the fact finder that a thorough dialogue has occurred between the parties on this issue. Under the circumstances, to disrupt these employees life style without a clear understanding of how the changes should equitably work for each employee, is not sustainable in the fact finder's opinion. The City has not demonstrated a current economic need to drastically change the Departments work environment, since the General Fund and the Police Department's Special Funds are sound(ME-2, tb.3, UE-5,6).

However, there were discussions with the fact finder, and the parties regarding future employees working eight (8) hour shifts. This concept was rejected by the Union. However, a public employer has a duty to operate as efficiently as possible, without jeopardizing the health and welfare of its employees.

RECOMMENDATION:
Add to Section 1. However, future Patrol Officers, hired into the Patrol Division, exclusive of those new Patrol Officers currently in training or scheduled for training, may be scheduled to work eight (8) hour shifts. This option does not apply to the Sergeant's Agreement unless a future Patrol Officer is promoted to the position of Sergeant.

Based on the evidence and testimony introduced, it would be counter-productive to expand the ten (10) hour shifts to all employees, and disrupt other Divisions now working eight(8) hour shifts, in the Police Department. The fact finder does not recommend incorporating the OPBA's proposal for ten hour shift expansion.

There was no evidence or testimony introduced to show that the current shift selection process is not working. The process is administered by the Sergeants, per unrebutted testimony. The more language introduced into a contract, the more disputes can arise.
Do not include a shift preference provision.

ARTICLE 20 SICK LEAVE

(Sergeants and Patrol Officers)

Section 5.

UNION POSITION:

Change last sentence to read: The maximum payment which may be made under this section shall be four hundred (400) hours.

CITY POSITION:

Current language.

DISCUSSION:

After the Union had modified it original position to their Pre-submittal position, there was little discussion on this issue at the Hearing. During the Hearing the Employer did not introduce any rebuttal evidence or testimony.

RECOMMENDATION:

The above Union Position is recommended.

ARTICLE 26 GROUP HOSPITALIZATION

(Sergeants and Patrol Officers)

CITY POSITION:

--Increase employee monthly premium contribution from 8% to 18% for employees not satisfying the "Wellness" Program requirements.

--Employees satisfying the Wellness Program requirements will pay a reduced premium contribution of 13%(See attached Wellness Program).

--Modify current plan design as follows:

* Institute network deductible of $750/single, $1500/family and increase non-

network deductible to $1500/single, $3000/family.

*Increase network out-of-pocket maximum to $2000/single and $4000/family. Increase non-network out-of-pocket maximum to $3000/single and $6000/family.

*Increase network office visit co-pay for specialists to $40.

*Increase prescription drug co-pays as follows:

Tier 1 - $15(current $10)
Tier 2 - $30(current $20)
Tier 2 - $50(current $40)

*Mail Order (up to 90 day supply)

Tier 1 - $30
Tier 2 - $60
Tier 3 - $100

UNION POSITION:

Section 1. The City shall provide group hospitalization, surgical and dental insurance coverages or options to bargaining unit employees (except short-term temporary employees and those employed less than thirty (30) days per week). A summary of insurance benefits that the City shall provide through December 31, 2014 is set forth in Attachment C. The insurance benefits may be modified on January 1, 2015 and January 1, 2016: however, the Enrollee Copays and Coverages for the preferred provider shall not exceed the following:

Deductible of $500 single plan/ $1000 family plan.
Out-of-pocket maximum of $1000 single plan/ $2000 family plan.
Co-insurance as provided on Attachment C.
Increase network office visits co-pay for specialists to $40.
Increase prescription drug co-pays as follows: ----Tier 1 - $15
Tier 2- $30
Tier 3 - $50

Mail Order (up to 90 days) Tier 1 - $30
Tier 2 - $60
Tier 3 - $100

The premiums for such plan shall be paid as follows:

A. Effective January 1, 2014, the City shall pay nine-two percent (92%) of the premium costs.

Effective January 1, 2014, the bargaining unit member shall pay eight Percent (8%) of the premium costs through payroll deduction.

B. Effective January 1, 2015, the City shall pay ninety percent (90%) of the premium costs.

Effective January 1, 2015, the bargaining unit member shall pay ten percent (10%) of the premium costs through payroll deduction.

C. Effective January 1, 2016, the City shall pay eighty- eight percent (88%) of the premium costs.

Effective January 1, 2016, the bargaining unit member shall pay twelve percent (12%) of the premium costs through payroll deduction.

D. Effective January 1, 2015, Employees who annually voluntarily participate in the Wellness Program, consisting of completing the Health Risk Questionaire, Biometric screening and establishing a 411 Fit System account, will have two percent (2%) reduced from their applicable premium contribution.

Temporary full-time employees expected to be employed by the City for a continuous period greater than three (3) months shall be eligible for said benefit.

Section 2. The City retains the right, in its sole discretion, to change insurance carriers, provided the coverages under the policy with the new carrier do not

exceed the Enrollee coverages above and the benefits are comparable to or better than the benefits provided to bargaining unit employees as of the effective date of this Agreement.

DISCUSSION:

The parties have had extensive discussions on this issue. Both recognize the need to modify the current plan that has a projected increase in costs of twenty-six percent(ME-13). The City has a Health Care Committee in place with all the bargaining units participating. Numerous meetings have been held influencing this bargaining process. Fruitful discussions were held with the fact finder in the mediation session. Therefore, the following recommendation reflects the best assessment of what the parties have indicated would be acceptable.

RECOMMENDATION:

ARTICLE 26 (Sergeants and Patrol Officers)

GROUP HOSPITALIZATION

Section 1. Revise to read as follows: The City shall provide group hospitalization, surgical and dental insurances or options to bargaining unit employees (except short-term temporary employees and those employed less than thirty (30) hours per week). A summary of insurance benefits that the City shall provide through December 31, 2016 is set forth in Attachment C.

Attachment C is to be revised effective April 1, 2014, as follows:

--In network deductibles of $500/single, $1000/family and increase non-network to $1000/single, and $2000/family

--Increase network out-of-pocket maximum to $1000/single, and $2000/family, and increase non-network out-of-pocket maximum to $3000/single, and $6000/family.

--Increase network office visits co-pay for specialists to $40.

--Increase prescription drug co-pays as follows:

Tier 1 - $15
Tier 2 - $30
Tier 3 - $50

--Mail Order (up to 90-day supply):

Tier 1 - $30
Tier 2 - $60
Tier 3 - $100

The premiums for such plan shall be as follows:

A. Effective July 1, 2014, The City shall pay ninety percent (90%) of the premium costs.

Effective July 1, 2014, the bargaining unit member shall pay ten percent (10%) of the premium costs through payroll deduction provided the bargaining unit member participates in the Wellness Program as identified in Section 6 of this Article, and as prescribed in Attachment____. Failure of the bargaining unit member to comply as prescribed in the Wellness Program, when it becomes effective if other than July 1, 2014, will result in the bargaining unit member paying four percent (4%) more of the premium costs as identified above(ie: 14% versus 10%).

B. Effective January 1, 2015—same as A above.

C. Effective January 1, 2016, The City shall pay eighty-eight percent (88%) of the premium costs.

Effective January 1, 2016, the bargaining unit member shall pay twelve percent (12%) of the premium costs through payroll deduction provided the

bargaining unit member participates in the wellness program as identified in Section 6 of this Article, as prescribed in Attachment___. Failure of the bargaining unit member to comply as prescribed in the Wellness Program will result in the bargaining unit member paying four percent (4%) more of the premium costs as identified above(ie: 16% versus 12%).

Section 2. Current language.

Section 6. (New): City of Medina and Ohio Patrolmen's Benevolent Association Wellness Program, per Attachment ___.

ARTICLE 27 WAGES

(Sergeants and Patrol Officers)

UNION POSITION:

Patrol:	Effective January 1, 2014--	2.25%
	Effective January 1, 2015--	2.50%
	Effective January 1, 2016--	2.75%

Sergeants: Increase differential from fourteen percent (14%) to fifteen (15%).
-Increase the probationary differential from six percent (6%) to seven percent (7%).

New Section: (Sergeants & Patrol Officers)—Effective January 1, 2014, any bargaining unit member who has an Ohio State Firearms Certification (OPTA commission), shall receive an additional Forty-Eight cents ($0.48) per hour, for the duration of the contract.

CITY POSITION:

Patrol:	Effective January 1, 2014--	1.0%
	Effective January 1, 2015--	1.0%
	Effective January 1, 2016--	1.5%

Sergeant's Differential: Current language.

DISCUSSION:

Evidence and testimony, has shown that the primary source of revenue for the City is income tax. That source has remained relatively stable throughout the past six years. However, a decline occurred during the years of the "great recession" of 2009 through 2011(ME-2,tb. 1). During the last six year period the City has been able to maintain a substantial cash carry-over balance in both the General Fund and Police Special Fund(ME-2,Tb. 3). This was accomplished by the City initiating numerous cost savings and cutting measures(ME-2,tb. 2).

During the same recent period of history the City has not laid off personnel in this bargaining unit. However, some reductions of personnel may have occurred and cost cutting measures implemented(ME-2,tb.2). Wage increases for both bargaining units were negotiated averaging two-percent (2%) per year in the last CBA(JE-1 & ME-1). The prior CBA, for years 2008 through 2010, provided wage increases averaging over three percent (3%) per year for Patrol Officers, and included an additional one percent (1%) differential increase for Sergeants(ME-1).

Comparison data submitted by the OPBA for surrounding area Police Departments shows Medina's PD employees ranking 30th of 60 departments, in total compensation(UE-12). When compared to other similar sized Cities (20,000 to 30,000), Medina's PD total compensation is slightly above the current average($68,446-vs-$68,176). The average wage increase for 2014 for those 23 of 60 departments reporting is 1.66%. The average Sergeant's differential for the 39

of 60 departments reporting is 12.73%(UE-12,13). However, the average Sergeant's differential for those similar sized cities reporting such, is 13.27%(UE-13).

The State Employment Relations Board's Annual Wage Settlement Report, shows annual State-wide average wage increases for 2012, as one percent (1%). The average increase for Police units for the year of 2012 was one and two-tents percent (1.20%) (ME-2, tb.5). This data, because of its age, is not as reflective as the OPBS's submitted comparables, in the fact finder's opinion.

Considering the submitted evidence and testimony, along with the past CBA's, the fact finder makes the following recommended changes to Article 27 (WAGES), for Patrol Officers and Sergeants.

RECOMMENDATION:

Patrol Officers: Section 1—Retroactive to the first pay in January 1, 2014, members of the bargaining unit shall be compensated in accordance with the following two percent (2%) to pay grades and step increases as appropriate.

Section 2. Effective the first pay following January 1, 2015, members of the bargaining unit shall be compensated in accordance with the following two percent (2%) increase to pay grades and step increases as appropriate.

Section 3. Effective the first pay following January 1, 2016, members of the bargaining unit shall be compensated in accordance with the following two percent (2%) increase to pay grades and step increases as appropriate.

Section 4. Current language.

ARTICLE 27 WAGES (SERGEANTS)

Section 1. Wage differential—current language.

Section 2. Current language.

---Do not incorporate a Firearms Certification provision in either Agreement.

CONCLUSION

The Fact Finding recommendations contained herein, including the Attachment, were arrived at giving consideration to the positions, arguments and submittals of the parties and criteria enumerated in ORC 4117.14 (C)(4)(e). In addition, I also incorporate by reference into this Report, the tentative agreements of the parties reached through negotiations, and the language of the expired agreement which remains unchanged by the parties.

This concludes the Fact Finding Report.

Respectfully submitted this 5th day of March 2014.

/s/ E. William Lewis
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Fact Finding Report was served by e-mail and by regular U.S. mail, upon Jon M. Dileno, Esq., for the City of Medina at Zashin & Rich, 55 Public Square, 4th floor, Cleveland, Ohio 44113, and Daniel J. Leffler,Esq. for the Ohio Patrolmen's Benevolent Association, at 10147 Royalton Road, Suite J, North Royalton, Ohio 44133, and by e-mail upon The State Employment Relations Board, this 5th day of March, 2014.

/s/ E. William Lewis
Fact Finder