

HAND DELIVERED

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STATE OF OHIO
BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

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STATE EMPLOYMENT
RELATIONS BOARD

IN THE MATTER OF FACT-FINDING	:	SERB Case Numbers:
	:	
BETWEEN THE	:	2007-MED-09-0841
	:	2007-MED-09-0842
CITY OF FRANKLIN, OHIO,	:	2007-MED-09-0843
	:	2007-MED-09-0844
EMPLOYER	:	
	:	
AND THE	:	Date of Hearing:
	:	February 26, 2008
FRATERNAL ORDER OF POLICE,	:	
OHIO LABOR COUNCIL, INC.,	:	
	:	Howard D. Silver
UNION	:	Fact Finder

REPORT AND RECOMMENDED LANGUAGE OF THE FACT FINDER

APPEARANCES

For: City of Franklin, Ohio, Employer

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Union

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This matter came on for a fact-finding hearing at 10:00 a.m. on February 26, 2008 at 35 East 4th Street, Franklin, Ohio 45005, Franklin's City Building. At the hearing the parties reached agreement as to the inclusion of four Articles, Articles 16, 18, 40, and 49, in the parties' successor Agreement, along with the Articles tentatively agreed during bargaining prior to February 26, 2008. Both parties were afforded a full and fair opportunity to present evidence and arguments in support of their positions as to the Articles remaining to be resolved. Both parties have performed those obligations necessary, as a matter of law, to moving the bargaining between the parties to fact-finding under Ohio Revised Code section 4117.14 and Ohio Administrative Code section 4117-9-05. This matter is properly before the fact finder for the purpose of preparing a report and recommending to the parties the language remaining to be agreed for inclusion in the parties' successor Agreement, and filing same with the Ohio State Employment Relations Board.

This matter proceeds under the authority of Ohio Revised Code section 4117.14 and in accordance with rules adopted by the Ohio State Employment Relations Board found at Ohio Administrative Code section 4117-9-05

BACKGROUND

The parties to this fact-finding, the Fraternal Order of Police, Ohio Labor Council, Inc., hereinafter the Union, and the

city of Franklin, Ohio, hereinafter the Employer, are parties to a collective bargaining agreement that was effective until December 31, 2007, an Agreement that covered four bargaining units, patrol officers, sergeants, lieutenants, and dispatchers, all employed in the city of Franklin's Division of Police. At the time of the fact-finding hearing, these bargaining units contained eleven patrol officers, five police sergeants, four police lieutenants, and five dispatchers.

Good faith bargaining occurred between the parties and most of the Articles intended to be included in the parties' successor collective bargaining agreement were tentatively agreed by the parties prior to February 26, 2008. What remains to be resolved are Article 22, Hours of Work and Overtime; Article 23, Vacations; Article 24, Sick Leave and Injury Leave/Family and Medical Leave; Article 30, Insurance; Article 36, Wages; Article 45, Physical Standards; and Appendix B relating to the wages of patrol officers hired after January 1, 1999 among six pay steps.

DISCUSSION AND RECOMMENDED LANGUAGE

The fact finder hereby incorporates by reference, as if fully rewritten herein, those Articles tentatively agreed by the parties prior to 10:00 a.m. on February 26, 2008, and recommends their inclusion in the parties' successor Agreement. Because language in three of the four Articles bargained to tentative agreement at the

fact-finding hearing changed prior language, the fact finder includes these four Articles in the discussion below.

Article 16 - Discipline and Hearing Clause

The parties reached tentative agreement on changes to the language of Article 16. The language agreed by the parties to be included in the successor Agreement is set out below. This language is recommended by the fact finder for inclusion in the parties' successor collective bargaining agreement.

RECOMMENDED LANGUAGE - Article 16 - Discipline and Hearing Clause

Section 16.1. Employees may not be suspended, discharged, or otherwise disciplined except for just cause. A written Notice of Charges for alleged misconduct which could lead to a written reprimand, suspension without pay, reduction in classification (demotion) or discharge shall be given to an employee within twenty (20) calendar days after the incident at issue comes to the attention of the Police Chief or the City Manager. If the employee is unavailable to be served, he/she shall be served with said notice upon his/her return to duty.

Terms of disciplinary action are:

- A. Verbal reprimand (time and date recorded);
- B. Written reprimand;
- C. Suspension without pay;
- D. Reduction in classification (demotion); and
- E. Discharge from employment.

Section 16.2. Except in instances where an employee is charged with gross misconduct, discipline will be applied in a progressive and uniform manner. Progressive discipline shall take into account the

nature of the violation, the employee's record of performance, and conduct.

Section 16.3. Predisciplinary Conference

- A. Whenever the Employer or his designee determines that an employee may be disciplined for cause (including only suspensions, reductions or discharge), a pre-disciplinary conference will be scheduled to give the employee an opportunity to offer an explanation of the alleged misconduct. The pre-disciplinary conference will be conducted by the City Manager or his designee. Not less than forty-eight (48) hours prior to the scheduled starting time of the pre-disciplinary conference, the Employer will provide to the employee, a written outline of the charges which may be the basis for disciplinary action, and notice of the date, time, and place of the conference. The employee may choose to:
1. Appear at the conference to present an oral or written statement in his/her defense;
 2. Appear at the conference and have a chosen representative present an oral or written statement in defense of the employee; or
 3. Elect to waive (in writing) the opportunity to have a pre-disciplinary conference.
- B. It is deemed that the employee desires a pre-disciplinary conference, unless the employee elects to exercise his/her right to waive (in writing) the pre-disciplinary conference.
- C. At the pre-disciplinary conference, the City Manager or his designee will ask the employee or his representative to respond to the allegations of misconduct which were outlined to the employee.
- D. At the pre-disciplinary conference, the employee may present any testimony, witnesses, or documents which explain whether or not the alleged misconduct occurred. The employee may be represented by any person(s) he/she chooses. The employee

shall provide a list of witnesses to the City Manager or his designee as far in advance as possible, but no later than one (1) hour prior to the pre-disciplinary conference. The employer shall provide a list of witnesses to the employee or his/her designee as far in advance as possible, but no later than one (1) hour prior to the pre-disciplinary conference. It is the employee's responsibility to notify his witnesses that he desires their attendance at the pre-disciplinary conference. If the employee witnesses are on-duty employees of the City of Franklin, the employer shall make every attempt to allow the witness to attend the conference.

- E. The employee and/or his or her representative will be permitted to cross-examine any witnesses; however, the Employer is under no obligation to present witnesses in a pre-disciplinary conference. A written report will be prepared by the City Manager or designee which will contain a finding of whether or not the alleged misconduct occurred. The employer will decide what discipline, if any, is appropriate. A copy of the City Manager's/Designee's findings will be provided to the employee within ten (10) calendar days following the conference.
- F. Pre-disciplinary conferences shall be tape recorded. A copy of the recording may be furnished to the employee, at the employee's request, within five (5) calendar days of the hearing, or the employee may also record the conference. All disciplinary action except verbal and written reprimands may be appealed through the grievance and arbitration procedures outlined in this Agreement.
- G. An employee who is brought before a disciplinary conference shall be, upon request, provided access to, at no cost, all transcripts, records, written statements, written reports, investigative notes analysis, audio and video tapes pertinent to the case and allowed by law that:

1. contain investigatory information, which the employer should have reasonable knowledge of,
2. are intended to support any disciplinary action,
3. are to be introduced in the disciplinary conference, or
4. any other information requested according the applicable Public Records Law.

Section 16.4. Any employee charged with or under indictment for a felony who is not disciplined or discharged by the Employer, may be placed on a leave of absence without pay until resolution of the court proceedings. An employee may use accrued but unused vacation, holiday, or compensatory time during the leave. (If no disciplinary action is taken by the Employer, the Employer shall reimburse the paid time used by the employee because of the leave of absence without pay.) An employee found guilty by a court of a felony may be summarily discharged. Where felony charges are reduced to a misdemeanor or the employee is found innocent of the charges, the employee may be subject to discipline pursuant to the terms of this Agreement.

Article 18 - Uniform Allowance

The parties agreed to maintain in Article 18 of the parties' successor collective bargaining agreement the language of Article 18 found in the parties' predecessor Agreement. The fact finder recommends bringing forward from the parties' predecessor Agreement the language of Article 18, unchanged, to the parties' successor Agreement.

RECOMMENDED LANGUAGE - Article 18 - Uniform Allowance

Sections 18.1 - 18.4. Maintain current contract language.

Article 22 - Hours of Work and Overtime

Two sections of Article 22 remain unresolved between the parties, section 22.1 that defines when an overtime threshold has been reached, and section 22.3 that guarantees bargaining unit members the right to elect to use compensatory time off in lieu of overtime pay, and establishes a cap of 160 hours upon accrued compensatory time.

The parties' predecessor collective bargaining agreement in Article 22, section 22.1 described achieving an overtime threshold in two ways, required to work more than eight hours in a twenty-four hour period or required to work more than forty hours in a calendar week. The changes proposed by the Union would expand what is required to achieve an overtime eligible status, changing from hours "required to work" to "hours in active pay status." Active pay status would include hours worked, vacation, holidays, compensatory time, personal day leave, and sick leave.

The Employer has proposed changes to Article 22, section 22.1 that incorporate the expanded grounds underlying overtime status proposed by the Union, that is, substituting "active pay status" for hours "required to work," but the Employer's proposal eliminates the overtime status associated with working more than eight hours in a twenty-four hour period. The Union opposes the elimination of the eight-hour time threshold within Article 22, section 22.1.

The fact finder recommends the expansion of the hours that may be used to attain overtime status but cannot recommend the

elimination of the eight hours in twenty-four hours threshold expressed in this overtime Article. Any one of the bargaining unit members among the four bargaining units that are participating in this fact-finding procedure may be called upon to work additional hours at the conclusion of a shift, or to report for duty within sixteen hours of the conclusion of an eight-hour shift. Such extra duty and the physical and psychic toll expected to arise from such lengthened duty hours commend themselves to overtime status and premium pay.

The fact finder recommends, along with the expanded language recommended for Article 22, section 22.1, and the retention of the eight-hour regular pay limit, the language proposed by the Employer for inclusion in Article 22, section 22.3. The Employer's proposed language would allow compensatory time usage in as little as one-quarter hour increments, subject to the scheduling and operational needs of the department. In the event of a request for four or more hours of compensatory time, twenty-four hours of advance notice would be required. The advance notice may be waived by the Employer if the employee is currently on duty and staffing/operations permit the absence of the employee.

The fact finder finds nothing unreasonable about the advance notice demanded for the use of four or more hours of compensatory time as proposed by the Employer and finds such advance notice directly related to the efficient operation of the department.

RECOMMENCED LANGUAGE - Article 22 - Hours of Work and Overtime

Section 22.1. Where employees of the Division of Police, other than the Police Chief and Captain, are required to work more than eight (8) hours in a twenty-four (24) hour period or to be in active pay status more than forty (40) hours in any calendar week, they shall receive compensation at one and one-half (1 1/2) times their stipulated hourly rate for each hour worked in excess of the regular eight (8) hours per day or forty (40) hours per week. For purposes of this article, active pay status shall only include times worked, vacation, holidays, compensatory time, personal day leave, and sick leave.

Section 22.2. Maintain current contract language.

Section 22.3. Members may elect compensatory time off in lieu of overtime pay. Accrued compensatory time shall not exceed one hundred sixty (160) hours (i.e., there is a one hundred sixty [160] hour cap on compensatory time). An employee's earned compensatory time may be taken in one-quarter (1/4) hour increments subject to the scheduling and operational needs of the Department. At least twenty-four (24) hours notice is required for a four (4) hour or more increment request to be granted (this notice may be waived by the Employer if the employee is currently on duty and staffing/operations permit the absence of the employee).

Section 22.4. Maintain current contract language.

Section 22.5. Maintain current contract language.

Section 22.6. Maintain current contract language.

Section 22.7. Maintain current contract language.

Section 22.8. Maintain current contract language.

Article 23 - Vacations

The Union proposes the maintenance of current language within Article 23. The Employer proposes changes to the language of Article 23 that would eliminate a one time opportunity to carry over an additional two weeks of vacation (upon announcing a retirement to occur the following calendar year) and to cap vacation conversion by imposing a limit of one week of accrued leave per annual conversion.

Vacation is a benefit guaranteed to all bargaining unit members by Article 23 and the sections of Article 23 which remain unresolved between the parties are not disputed upon how vacation is to be accrued or how vacation is to be scheduled. The sections of Article 23 that remain in dispute between the parties address what may be done with accrued but unused vacation. Section 23.3 of Article 23 permits a maximum of two weeks of accrued, unused vacation to be carried over to the following calendar year. The Employer proposes a change to the language of section 23.3 that would affect how accrued vacation not carried over is to be paid out. This change is found in language proposed to be added to section 23.4 of Article 23 by the Employer that would cap vacation conversion to one week of accrued leave per year.

The fact finder acknowledges the Employer's legitimate aim to increase certainty in budgetary items within a fiscal year, including being able to determine with greater certainty what funds, if any, will be required to be encumbered for the payment of

vacation conversion among bargaining unit members who have carried over accrued unused vacation. The one week annual cap on accrued vacation conversion proposed by the Employer would allow greater definition among potential vacation conversion costs for a fiscal year, but would do so in a way that would limit significantly what had been available to bargaining unit members under the language of the predecessor collective bargaining agreement. Bargaining unit members accrued vacation leave under the prior language and made decisions about the use of this leave based on expectations of how and when unused vacation accrual could be cashed out. The one week annual cap proposed by the Employer appears to the fact finder to put in jeopardy those employees who have accrued vacation and carried it over from one calendar year to the next over a number of years. Such accruals could, under non-extraordinary circumstances, require the lapse of some of the vacation accrued.

The fact finder finds nothing wrong in encouraging that a benefit, having been accrued in the form of vacation, be used as such and thereby improve morale. The fact finder nonetheless finds the limitations proposed by the Employer in this regard to be too severe to be recommended.

The fact finder recommends the elimination of the extra carry over of vacation for an employee who announces his retirement for the following calendar year and recommends the cap on vacation conversion, but recommends an annual cap of two weeks of accrued vacation leave so as to allow any bargaining unit member presently with an accrued vacation leave balance to have the opportunity to

cash this accrued, unused vacation in, as intended by the language of the parties' predecessor agreement and as intended by the fact finder's recommendation herein. The intention of the language recommended by the fact-finder is to allow the Employer greater certainty about what vacation conversion funds will be necessary during the fiscal year, but not unduly limit the conversion of accrued vacation time not used and carried over under prior contractual language.

RECOMMENDED LANGUAGE - ARTICLE 23 - VACATIONS

Section 23.1. Maintain current contract language.

Section 23.2. Maintain current contract language.

Section 23.3. A maximum of two (2) weeks of vacation time may be carried over to the next calendar year. The scheduling of such vacations shall be by the employee's supervisor, subject to the needs of the City, with due regard for seniority and employee's preference. The City Manager or his/her designee shall determine the timing and sequence of vacations, should such matters fail to be decided by the employee's supervisor. If such accrued vacation is not carried over, it will be paid out pursuant to Section 23.4, below.

Section 23.4. Employees may take pay in lieu of vacation earned as of their last anniversary date of full-time employment with the City, except for the provisions of Section 23.3 hereof, but such conversion of vacation credits to pay shall be made with at least four (4) weeks notice and there shall be a cap on vacation conversion which shall be set at two (2) weeks of accrued leave. There shall be no reconversion from pay to vacation credits.

Section 23.5. Maintain current contract language.

Section 23.6. Maintain current contract language.

Article 24 - Sick Leave And Injury/Family And Medical Leave

All of Article 24 was agreed by the parties with the exception of sections 24.13 and 24.14. The only changes proposed by the Union are to the years appearing within section 24.13(A) (2005 to 2008), and section 24.13(B) (2005 to 2008).

The Employer proposes a change to section 24.6 that would subject the amount of sick leave time an employee may accrue to section 24.13. The Employer proposes changing the language of section 24.13 by eliminating the payment for unused sick days amounting to fifty days with those one to eight years of service; one hundred days for those with nine to sixteen years of service; and one hundred fifty days for those with sixteen years or more years of service, among those hired on or after January 1, 2005. The Employer proposes substituting language that would allow a full-time employee hired after January 1, 2008 who retires from the city with accumulated sick leave and has ten or more years of service to be paid at the retirement rate upon request for twenty-five percent of the employee's accumulated leave, up to a maximum of 960 hours, that is, twenty-five percent of 960 hours or 240 maximum hours payable.

The Union opposes the changes to Article 24 proposed by the Employer due to the severe shrinkage that would result to this benefit among new hires. The Union wishes to avoid creating two classes of bargaining unit members, dividing those with older

enhanced benefits from those new bargaining unit members whose benefits had been limited due to the earlier acquiescence of their Union brethren.

The fact finder does not recommend the 240-hour maximum cap proposed by the Employer. The fact finder recommends that the language of the predecessor Agreement in Article 24 be maintained in the successor Agreement. The fact finder does not recommend changing 2005 to 2008 within sections 24.13(A) and 24.13(B). Retaining these dates maintains what was intended by the agreed language found in the predecessor collective bargaining agreement between the parties, that those hired before January 1, 2005 and those hired after January 1, 2005 are to be treated differently in carrying over unused sick leave.

RECOMMENDED LANGUAGE - Article 24 - Sick Leave and Injury Leave/Family and Medical Leave

Sections 24.1 - 24.16. Maintain current contract language.

Article 30 - Insurance

All of the changes proposed by the parties to Article 30, Insurance, relate to section 30.2. Each of the parties has proposed changes to the language of Article 30, section 30.2, with most of the language proposed by the parties very similar, if not identical. The difference between the insurance proposals presented to the fact finder by the parties is language proposed by the Union that reads: "...including, but not limited to a HMO or similar

medical and hospitalization plan and dental plan..." The Union also proposes a change to the language of section 30.2 that would retain the parties' intention expressed within their predecessor collective bargaining agreement to establish a joint health insurance committee comprised of representatives from the bargaining units, management, and other city bargaining units. The intention of this committee, under the language proposed by the Union, would be to investigate alternative plans and benefits and make recommendations to the Franklin City Council. This proposed language confirms that the Franklin City Council maintains the right to determine appropriate insurance coverage.

The changes proposed by the Employer for Article 30, section 30.2 are intended to place all city of Franklin employees, exempt and non-exempt, workers, supervisors, managers, and administrators, for purposes of health insurance coverage, on the same plane, holding the same rights as every other city of Franklin employee. The Employer opposes the inclusion of the language proposed by the Union that would reserve to this bargaining unit alone a limitation on what is to be equally shared by all Franklin city employees as it relates to major medical/hospital care insurance plans and dental plans. The Employer also sees no reason for maintaining the language in Article 30, section 30.2 that refers to forming or maintaining a joint health insurance committee.

As to almost every aspect of bargaining, this fact finder has always proceeded with the conviction that a bargaining unit is entitled to make decisions about the terms and conditions of

employment that bear on that bargaining unit. While what is bargained and agreed among other bargaining units may be presented for consideration of local and regional trends, the power of a bargaining unit to make decisions about terms and conditions of employment that affect directly its members is a power that is viewed by the fact finder as integral to the fact-finding process, indeed fundamental to collective bargaining.

As is the case with any general rule, however, there are exceptions. In the case of bargaining unit autonomy, the exception to the general rule is the necessity of spreading risks among a pool of people for the purpose of providing health care coverage. It is axiomatic that a larger pool of people under the same coverage spreads the risks of illness and injury among a greater population and produces greater efficiencies and cost savings in providing health care coverage to city employees and their families.

Because economies of scale play such an important role in determining the costs of insurance coverage for a bargaining unit employed by a municipality, it serves the interests of the bargaining unit members and the interests of all other city of Franklin employees to join in a participant pool to be used for the provision of health care coverage that includes all city of Franklin employees. The fact finder finds legitimate, and in this time of sharply rising health care costs, compelling, the interest of the Employer to broaden its health insurance coverage base and thereby spread these substantial costs and risks among a larger

pool of participants. For this reason the fact finder recommends the language proposed by the Employer for inclusion in Article 30, section 30.2, as it relates to what coverage is to be offered the bargaining unit members participating in this fact-finding proceeding, intended to be coverage identical to what is to be provided to all other city of Franklin employees.

As to the joint health insurance committee as proposed by the Union, the fact finder fails to see the downside of this proposal. The Employer is not the only party that has an interest in controlling health care costs and thereby effect either lower costs or better coverage, and the input from a greater number of stakeholders is found by the fact finder to be sufficiently advantageous to all parties to recommend its inclusion in the parties' successor Agreement. Such language, of course, is only as effective as intended by both parties, but the intentions underlying this language have the potential to improve health care coverage, both as to costs and the services it provides, to bargaining unit members, non-organized city of Franklin employees, and the Employer as a municipal entity.

RECOMMENDED LANGUAGE - Article 30, Insurance

Section 30.1. Maintain current contract language.

Section 30.2. The City of Franklin shall make available to all bargaining unit employees the same major medical/hospital care insurance plans and dental plans that are available to non-bargaining unit City of Franklin employees. All insurance requirements (e.g., fees, copayments, etc.) specified for such non-

bargaining unit City employees shall also be applicable to bargaining unit employees; this does not include premium contributions, described below. The City will have the right to change carriers. If an insurance buyout is offered to non-bargaining unit employees, it shall be offered to employees covered by this labor agreement on the same basis.

The participating employee shall pay ten percent (10%) of the applicable premium rate in 2008, ten and one-half percent (10 1/2%) of the applicable premium rate in 2009, and eleven percent (11%) of the applicable premium rate in 2010. Employee contributions shall be by payroll deduction and shall be divided into two (2) equal deductions per month.

The parties shall establish a Joint Insurance Committee consisting of representative from the bargaining unit and management and/or other representatives from other City bargaining units. This Committee will investigate alternate plans and benefits and will submit package recommendations to the Franklin City Council; however, Franklin City Council maintains the right to determine appropriate coverage.

The Employer will furnish an annual statement to the Union showing the costs to the Insurance Reserve Fund and the balance remaining.

Article 36 - Wages

The Employer proposes an annual three percent (3%) wage increase effective January 1, 2008; January 1, 2009; and January 1, 2010. The Union proposes a four percent (4%) wage increase effective January 1, 2008; a 4.25% wage increase effective January 1, 2009; and a January 1, 2010 wage increase of 4.5%.

The Employer also proposes adding two steps to the dispatcher wage schedule so that instead of four steps to reach top pay a

dispatcher would have to move through six steps to reach top pay. The Employer points out that this is in line with the six steps applied to patrol officers as expressed in Appendix B of the parties' predecessor Agreement. The Employer proposes eliminating Appendix B and placing the six steps for patrol officers and the six steps for dispatchers within Article 36, section 36.1.

The Union proposes changes to Article 36, section 36.2 that would peg the wages of sergeant to six percent (6%) higher than patrol officer at step four. The Employer proposes similar language for Article 36, section 36.2, language that would maintain a six percent (6%) wage differential between step four for patrol officers and top step sergeant. The Union proposes pegging the lieutenant wages at twelve and one-half percent (12.5%) higher than patrol officer at step four. The Employer too in its proposed language refers to the differential between patrol officer at step four and top step lieutenant.

The Union proposes adding new language to be included within Article 36, section 36.3 that would pay all bargaining unit members, in addition to their normal pay, one dollar per hour for all hours worked between the hours of 3:00 p.m. and 7:00 a.m.

Both parties have presented city of Franklin budget figures, with the most recent actual figures being those effective December 31, 2006. The actual unencumbered carryover balance on January 1, 2007 is presented by the Employer, at Exhibit 7Q, page 2, as \$2,779,499.

The actual unencumbered carryover balance presented by the Union, at Exhibit 10, page 9, effective January 1, 2007, is \$7,754,515. The fact finder finds the five million dollar variance for the end of calendar year 2006's carryover, in an annual budget of thirteen million dollars, to be substantial.

At the fact-finding hearing it was indicated on behalf of the Employer that the five million dollar variance between the carryover amounts presented by the parties to the fact finder for the end of calendar year 2006 was caused by a five million dollar payment made to the city that was subsequently ordered returned.

The parties have also presented wage comparison data among police officers and dispatchers employed among political subdivisions either in the region in which the city of Franklin is located or among municipalities in Ohio with populations similar to that of the city of Franklin. At Exhibit 10, page 11, the Union presents wage comparisons among nineteen municipal police departments serving cities with populations between ten thousand and fifteen thousand. On this listing city of Franklin patrol officers rank fourteenth in annual wages among the nineteen departments listed. Within a comparison of area police departments in the general region containing the city of Franklin, the Union presents, at Exhibit 10, page 10, fourteen municipalities, among which the city of Franklin ranks twelfth in annual wages.

The Employer, at Exhibit 7M, presents wage comparisons among fifteen municipal police departments. On this listing the city of Franklin police officers rank seventh. At Exhibit 7N, the Employer

presents nine municipalities employing union dispatchers. The city of Franklin dispatchers rank second on this list based on annual salary with PERS pickup at the lower end of the wage schedule, and fourth of nine at the higher end of the wage schedule for annual salary with PERS pickup.

The budgetary numbers provided by the parties are significantly different, with the total revenue for 2006, an actual figure, reported by the Employer as \$8,477,573, at Exhibit 7Q, page 2. The Union, in Exhibit 10 at page 9, presents total revenues as of December 31, 2006 to be \$13,561,390.

The total expenditures presented by the Employer for the 2006 calendar year for the city of Franklin are \$8,608,718; the Union's statement of revenues, expenditures, and changes in fund balance for the 2006 calendar year presents total expenditures of \$5,954,760.

The bargaining unit members participating in this fact-finding proceeding received a five percent (5%) wage increase in 2001; a five percent (5%) wage increase in 2002; a five percent (5%) wage increase in 2003; a six percent (6%) wage increase in 2004; a 3.5% wage increase in 2005; a 3.75% wage increase in 2006; and a four percent (4%) wage increase in 2007. As noted above, the Employer proposes three percent (3%) annual wage increases during each of the three years of the successor Agreement, to be effective on January 1 of each of the years 2008, 2009, and 2010. The Union proposes a four percent (4%) wage increase in 2008, a 4.25% wage increase in 2009; and a 4.5% wage increase in 2010.

The Employer has also presented, at Exhibit 7I, statewide, citywide, and city of Franklin police wage increases from 1997 through 2007, along with the consumer price index for each year. In every year the police bargaining units have stayed slightly ahead of the statewide average. The average through calendar year 2006, statewide, was 3.01%. The consumer price index for 2006 is reported as 2.5%, while the consumer price index for 2007 is reported as 4.10%.

The wage increases to be guaranteed within the parties' successor Agreement are to be retroactive to January 1, 2008. The fact finder finds the Union's proposed wage increases slightly inflated in comparison to what similarly situated workers have experienced in wage increases in recent years.

The fact finder is aware that the consumer price index has jumped above four percent and this is an argument for an increase over the Employer's wage offer so as to allow bargaining unit members to keep up with the cost of living. It is also the case that the state of Ohio generally, and small municipalities in particular, face stagnating national, state, and local economies, while operating costs continue to rise. We have seen what increased operating costs and a slow down in the economy have done to the budget of the state of Ohio, and have observed the difficulties arising in the credit markets, the rising cost for fuel, and increasing costs for medical care, factors that must be kept in mind in calculating a fair but financially feasible wage increase.

The fact finder recommends a 3.5% wage increase annually for each of the three years comprising the parties' successor Agreement, beginning January 1, 2008 and occurring on January 1 of each of the ensuing two years. The fact finder finds this wage increase to be affordable by the public Employer and to maintain a history of wage increases that are slightly ahead of statewide averages. Notwithstanding the uncertainties facing the region's and state's economies, the fact finder finds the annual 3.5% wage increase to be fair, historically consistent, and affordable.

The fact-finder does not recommend the \$ 1.00 per hour premium proposed by the Union for hours worked between 3:00 p.m. and 7:00 a.m., but does endorse the differentials between patrol officers and sergeants and lieutenants that appear to be agreeable to both parties.

RECOMMENDED LANGUAGE - Article 36 - Wages

Section 36.1. Bargaining unit members shall receive wage compensation according to the following schedule, which reflects a three and one-half percent (3.5%) general increase in 2008; a three and one-half percent (3.5%) general increase in 2009; and a three and one-half percent (3.5%) general increase in 2010.

PATROL OFFICER	Probation	1 year	2 years	3 or more years
Effective 1/1/08				
Hourly	\$ 18.37	\$ 21.84	\$ 22.96	\$ 24.13
Effective 1/1/09				
Hourly	\$ 19.01	\$ 22.60	\$ 23.76	\$ 24.97
Effective 1/10/10				
Hourly	\$ 19.68	\$ 23.39	\$ 24.59	\$ 25.84

DISPATCHER	Probation	1 year	2 years	3 or more years	
Effective 1/1/08	Hourly	\$ 16.96	\$ 17.81	\$ 18.70	\$ 19.61
Effective 1/1/09	Hourly	\$ 17.55	\$ 18.43	\$ 19.35	\$ 20.30
Effective 1/1/10	Hourly	\$ 18.16	\$ 19.08	\$ 20.03	\$ 21.01

Section 36.2. The City shall maintain a six percent (6%) wage differential between Step 4 Patrol Officer and top step Sergeant. The rank of Lieutenant wages are to be established at twelve and one-half percent (12 1/2%) higher at top step Lieutenant than Patrol Officer at Step 4. These wage differentials are based on the rates in Section 36.1 and not in Appendix B.

Patrol Officers hired after January 1, 1999, shall receive wage compensation according to the schedules in Appendix B.

APPENDIX B

Patrol Officers hired after January 1, 1999 shall receive wage compensation according to the following schedule, which reflects a 3.5% wage increase in 2008; a 3.5% wage increase in 2009; and a 3.5% wage increase in 2010:

PATROL OFFICER	Probation	1-2 yrs.	2-3 yrs.	3-4 yrs.	4-5 yrs.	5+	
Effective 1/1/08	Hourly	\$ 18.37	\$ 19.47	\$ 20.63	\$ 21.85	\$ 22.96	\$ 24.13
Effective 1/1/09	Hourly	\$ 19.01	\$ 20.15	\$ 21.35	\$ 22.61	\$ 23.76	\$ 24.97
Effective 1/1/10	Hourly	\$ 19.68	\$ 20.86	\$ 22.10	\$ 23.40	\$ 24.60	\$ 25.84

Article 40 - Pension and Retirement

The parties reached agreement as to language to be included in their successor Agreement within Article 40. The fact finder recommends the language tentatively agreed by the parties and presented below.

RECOMMENDED LANGUAGE - Article 40 - Pension and Retirement

Section 40.1. Pension Pick-Up Plan: Consistent with the provisions of Internal Revenue Service Rulings (e.g. 77-462 and 81-35, etc.), the Employer shall pick-up each employee's mandatory contributions to the Employees Retirement System of Ohio (PERS) or the Police and Fire Pension Fund (PFPF), provided that no employee's total salary is increased by such pick-up nor is the Employer's total contribution to PERS or PFPF increased thereby. The dollar amount to be "picked-up" by the Employer:

- A. Shall equal the percentage amount of the employee's mandatory PERS or PFPF contributions as of December 31, 2007;
- B. Maintain current contract language.
- C. Maintain current contract language.
- D. Maintain current contract language.
- E. Maintain current contract language.
- F. Maintain current contract language.

Section 40.2. Maintain current contract language.

Section 40.3. Maintain current contract language.

Article 45 - Physical Standards

Article 45 within the parties' predecessor Agreement obligates the Employer to negotiate with the Union the formulation of specific plans and procedures for physical agility requirements. This language provides that these negotiations shall include a statutory dispute resolution procedure upon impasse, as expressed in Ohio Revised Code Chapter 4117.

The Employer proposes to delete the language of Article 45 that appears within the parties' predecessor Agreement and

substitute language that would implement a PAT procedures manual that was presented to the Union during bargaining but not agreed.

The Union proposes the maintenance of the prior language in Article 45 in the parties' successor Agreement.

The fact finder acknowledges the importance of physical agility in police work and finds within the language of the parties' predecessor Agreement, in Article 45, a process through which such standards may be negotiated. The fact finder is not willing to impose a particular set of agility standards upon bargaining unit members based solely on the unilateral suggestion of the Employer. The fact finder foresees a better result in the area of physical standards when those standards are reached through negotiation between the parties. Accordingly, the fact finder recommends the Union's position on Article 45, to retain the language of this Article within the parties' successor Agreement.

RECOMMENDED LANGUAGE - Article 45 - Physical Standards

Section 45.1. Maintain current contract language.

Article 49 - Duration

The parties reached consensus as to Article 49, Duration, agreeing to a three-year Agreement that is to be effective January 1, 2008 and to expire at 11:59 p.m. on December 31, 2010. Also agreed is the retention of an extension of the successor Agreement, expressed in Article 49, section 49.2, that would extend the operation of the Agreement until April 1, 2011. The fact finder

recommends the language tentatively agreed by the parties for inclusion within Article 49 in their successor Agreement.

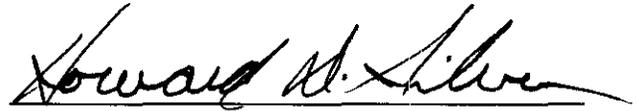
RECOMMENDED LANGUAGE - Article 49 - Duration

Section 49.1. This Agreement shall be effective on the 1st day of January, 2008, and shall expire the 31st day of December, 2010. If either the Employer or the Union desire to terminate, modify, or negotiate a successor agreement, it shall: (1) serve written notice upon the other party of the proposed termination, modification, or desire to negotiate a successor agreement, said notice shall be served not less than sixty (60) days prior to the expiration date of this agreement; (2) offer to bargain collectively with the other party for the purpose of modifying, terminating the existing agreement, or negotiating a successor agreement; and (3) notify the State Employment Relations Board of the offer, by serving upon the Board a copy of a written notice to the other party and a copy of the existing collective bargaining agreement.

Section 49.2. The effective date of this Agreement shall be January 1, 2008, as approved by the parties hereto. It shall remain in full force and effect until December 31, 2010 at 11:59 p.m. Effective at 12:00 a.m. on January 1, 2011, this Agreement shall be extended until April 1, 2011, with all of its terms and provisions remaining in full force during such extension period. If either party wishes to renegotiate this Agreement, it shall be done pursuant to Chapter 4117 of the Ohio Revised Code.

In addition to the recommended language proposed by the fact finder through this report, the fact finder adopts by reference, as if fully rewritten herein, all other Articles tentatively agreed by the parties.

In making the fact-finding recommendations presented in this report, the fact finder has considered the criteria required by Ohio Revised Code Chapter 4117., and sections 4117-9-05(K)(1)-(6) of the Ohio Administrative Code.



Howard D. Silver
Fact Finder

March 11, 2008
Columbus, Ohio

CERTIFICATE OF SERVICE AND FILING

I hereby certify that the forgoing Report and Recommended Language of the Fact Finder was filed, via hand-delivery, with the State Employment Relations Board, and mailed, postage prepaid, to the following, this 11th day of March, 2008:

Brett A. Geary
Regional Manager
Clemans, Nelson & Associates, Inc.
420 West Loveland Avenue, Suite 101
Loveland, Ohio 45140

and

Barry L. Gray
Staff Representative
Fraternal Order of Police, Ohio Labor Council, Inc.
5752 Cheviot Road, Suite D
Cincinnati, Ohio 45247-7008.


Howard D. Silver
Fact Finder

March 11, 2008
Columbus, Ohio