

**FACT FINDING REPORT
STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD
June 8 2010**

IN THE MATTER OF:

City of Franklin Professional Firefighters,
International Association of Fire Fighters,
Local 3742

Employee Organization

and

City of Franklin, Warren County, Ohio

Employer

CASE NO. 09-MED-08-0808

FACT FINDER: Howard Tolley Jr.

APPEARANCES

International Association of Fire Fighters, Local 3742
Tony Abston, President
Kyle Lovelace,
John Harvey, Vice President 4th District, OAAFF

City of Franklin
Donnette Fisher, City Law Director
Brett Geary, Management Consultant

Introduction

The IAFF bargaining unit certified by SERB in October 1997 currently includes six full time members at the rank of Captain and Lieutenant. The city has a population of about 13,000 and collective bargaining agreements with four employee groups including the IAFF. After expiration of their most recent three year agreement on October 11, 2009, the parties had several bargaining sessions, including one with a mediator, TA'd five articles, but were unable to reach agreement on thirteen articles.

The parties exchanged and submitted pre-hearing position statements that summarized their proposals. The parties prepared supporting documents for presentation at the hearing to address the criteria established by the Ohio Public Employees Bargaining Statute in Rule 4117-9-05:

- 1) Past collectively bargained agreements, between the parties
- 2) Comparison of 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, and 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; and,
- 6) Such other actors, 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.”

Fact Finding Hearing: May 24, 2010, City of Franklin

Following unsuccessful efforts to reach agreement through mediation that began at 9 am, the Fact-Finder conducted a hearing from 11:50 am until 3 pm with presentation of evidence and argument on thirteen articles. The parties reached agreement on several articles during the hearing, and the approved language has been incorporated in this report. The initial Fact Finding report circulated to the parties on June 4 contained several errors that have been corrected in this document circulated on June 7.

ARTICLE 7 LAYOFF AND RECALL

IAFF Position:

The Union position is that the members of the collective bargaining unit (full time career employees) be laid off last after the part time stand by and call employees of the fire department are laid off. Article 29.3 of the current Teamsters (Service) Labor Agreement with the City expressly provides that part time employees will be laid off before any full-time regular employees.

City of Franklin Position:

The Employer proposed maintaining current contract language in order to continue staffing the Fire Station with both full time paid supervisory personnel as well as part time paid standby “volunteer” firefighters. The city relies on Article 4 (Management’s Rights) which grants to the Employer the right to “utilize personnel . . . in the most appropriate ways and efficient manner possible,” to “determine the size and composition of the work force and to lay off employees,” and notes the public employer’s statutory and express contractual right to

contract or subcontract matters related to the personnel necessary for proper performance of safety obligations. Unlike the predominantly full time Service Unit, the predominantly part time Fire Department could not function by retaining full time supervisors after laying off the part time firefighters.

Discussion:

The city currently has twenty-eight non-bargaining unit part time firefighters on call, and six full time supervisors in the bargaining unit. At least four firefighters are assigned to the station house at all times so that a fire truck can respond immediately without awaiting the arrival of any firefighters on call who instead go directly to the scene. Four firefighters are needed at a building fire so that two remain outside to support two who enter the structure. One or two full time supervisors and two or three part time standby firefighters are assigned to the station house at all times. Unlike the FOP/OLC Labor Agreement with the city, the IAFF agreement does not include either a Minimum Manning article, nor any language in the Layoff Article about advance notice of an impending layoff or discussions with the union about the impact. The FOP/OLC Minimum Manning article 29.1 serves the public interest by assuring that each shift will have both a supervisor and patrolmen. The IAFF proposal could result in unbalanced staffing and insufficient non-supervisory firefighters needed to serve the public interest.

The city's elected representatives and the administrators they employ have the ultimate responsibility to assure public safety. Although the city cannot delegate its authority over personnel layoffs to the union, before laying off full time fire department supervisors, the IAFF agreement should include language similar to that found in both the FOP/OLC (Article 32) and Teamsters (Article 19) agreements that provides for advance notice and consultation with union representatives to explore all possible options for sharing and minimizing the impact of unavoidable layoffs or reductions in workload.

Recommendation:

The Fact Finder recommends the addition of two sentences to Article 7.01 providing for fifteen days advance notice and consultation prior to any layoff of a bargaining unit member.

ARTICLE 11 SPECIAL LEAVE

Discussion:

The parties agreed at the hearing to maintain current language.

ARTICLE 15 HOURS OF WORK

Discussion:

The parties agreed at the hearing to reduce the hours for four employees in Section 15.02 from approximately fifty-six to fifty-three paid at a higher hourly rate in conjunction with changes to Article 40 providing for additional vacation or Kelly Days in lieu of overtime.

ARTICLE 19 VACANCIES and PROMOTIONS:

IAFF Position:

The Union proposed deleting outdated language from the current Agreement, and the Employer agreed. The union also proposed that a Lieutenant and Captain be assigned to each shift, and that a Lieutenant receive step up pay when substituting for a Captain. The IAFF also sought to eliminate the requirement of EMT Paramedic certification for promotion to Captain.

City of Franklin Position:

In response to the proposed manning requirement, the Employer cited Article 4 on the Management's Right to schedule employees and determine the composition of the workforce. The City argued that in prior negotiations the union had as a condition of obtaining promotion of firefighters to Lieutenant accepted that Lieutenants would exercise supervisory responsibilities in the absence of a Captain on the shift. The Employer sought to retain current language requiring EMT Paramedic certification for promotion to Captain and noted the union favored extra compensation for that credential.

Discussion:

The FOP/OLC agreement Manning Article 29.1 requires only one supervisor on a shift, and only provides step up pay if a non-supervisory patrolman assumes the supervisory responsibility of a Sergeant. Since both Lieutenants and Captains in the Fire Department supervise part time firefighters, the Fact Finder can find no basis for increasing the compensation of the lower ranking supervisor to the pay rate of a superior officer who is unavailable for the shift. Nor did the Fact Finder see justification for eliminating the EMT Paramedic certification requirement for promotion to Captain.

Recommendation:

The Fact Finder recommends deletion of the outdated language in 19.05, 19.06 and 19.07 with retention of all other current language on Vacancies and Promotions.

ARTICLE 20: GRIEVANCE PROCEDURE**Discussion:**

The parties agreed at the hearing to maintain current language.

ARTICLE 23 UNIFORMS:**IAFF Position:**

The Union proposed that Franklin give the members of the collective bargaining unit fifty dollars above the current uniform allowance and also place the IAFF Logo on the left sleeve of the t-shirt and job shirt. Representatives brought to the hearing a Franklin Fire Helmet with the IAFF logo and a job shirt from another jurisdiction with IAFF logo on the back. At the hearing the union noted that one of the three Franklin fire squad cars displayed the IAFF logo, and reported that the union's public service activities benefited the city in securing funds.

City of Franklin Position:

The Employer has proposed maintaining current contract language, stating that the city provided washers and dryers for cleaning, that no justification was given for an additional clothing allowance, and that it would be improper for Franklin to advertise for the IAFF by placing a logo of shirts provided by the department.

Discussion:

The Fact Finder learned that firefighters wear four different shirts, including two more formal uniforms that would not have the proposed logo such as a Class A button up shirt for public appearances. The union representative indicated that members were prepared to bear the cost of adding a small logo to the two pull over work shirts, one short sleeve and one long sleeve, but provided no justification for the additional \$50 clothing allowance.

Recommendation:

The Fact Finder recommends that union members be allowed to add at their own expense a small IAFF logo to the left sleeve of their two work shirts and that current contract language on the \$400 clothing allowance be maintained.

ARTICLE 24 INSURANCE:**IAFF Position:**

The Union proposed a) that members of the collective bargaining unit pay a reduced per cent of the premium for health insurance, b) that the city pay 50% of the deductibles through the health savings account (HSA) and c) that the city provide an opportunity to discuss alternate health care plans six months prior to expiration of the current program. The IAFF provided budget data and analysis demonstrating the city's ability to pay and stressed the need for a contract provision that referenced the recently initiated HSA program. The union objected to a recent decrease in the city's contribution for deductibles and sought to assure future contributions of at least half that expense for both families and individuals. Unlimited future increases in monthly premiums and deductibles could offset any increased wages in the new contract.

City of Franklin Position:

The Employer proposed maintaining current language with the exception of increasing the amount of employee premium contribution by ½% in each of the contract years of 2010, 2011, and 2012, with the rates being 11%, 11½%, and 12% respectively in line with the increases paid by other bargaining and non-bargaining employees in the City. In support, the Employer offered a 2008 FOP/OLC Fact Finding Report that supported equal treatment of all employees in the city's health insurance programs. The city noted that its HSA contribution for deductibles was reduced to offset the \$500 employees could earn by voluntary participation in a wellness program, and argued that no specific reference to the HSA was needed or included in other labor agreements. The employer expressed willingness to consult about alternate health care plans, but considered the six month target date an unnecessary restriction.

Discussion:

At the hearing, the union accepted the employer's proposed increases of ½% each year for the health insurance premium. The Fact Finder heard the city indicate an intent to maintain HSA contributions that in combination with the bonus incentive would equal 50% of the deductibles without providing the \$500 windfall that members could obtain under the union proposal.

Recommendation:

The Fact Finder recommends adding two references to the HSA in Article 24 without mandating a particular cost split for deductibles that the city will continue to pay equally to all bargaining and non-bargaining unit employees. The Fact Finder considers the remaining current language on the Joint Insurance Committee satisfactory without the addition proposed by the union.

Article 26 HOLIDAYS:

IAFF Position:

The Union proposed elimination of the contract requirement that employees must work the day prior to and the day after the holiday to receive holiday pay and also proposed extra compensation if called from off duty to work on a holiday. The union also sought to remove contract language requiring prior approval for use of a personal day. The IAFF rejected the city's proposed introduction of "holiday repay time" for employees who work on holidays, and stressed the personal sacrifice involved in missing family celebrations while working on major holidays.

City of Franklin Position:

In order to achieve significant savings to the City in holiday overtime payments for Tour-of-duty (24/48) employees the city proposed a change to compensate a tour employee who works on a holiday (currently 12 paid per year plus four personal days) by paid time off for six tours (144 hours per year with no personal days). The paid time off would be scheduled after vacation leave with the supervisor's approval and unused time off paid in December. The city proposed incorporating language from the current IAFF agreement with the City of Mason and for purposes of comparison offered exhibits illustrating holiday, vacation, overtime, salary, pension pick-up, health, and other contract information from 15 jurisdictions. Mason is not listed in the tables for comparable jurisdictions.

The Employer rejected the union's proposed extra compensation for call in holiday work as unwarranted given the existing bonus for holiday pay. Franklin sought to retain as a deterrent to late call-in sick leave the requirements for pre-and post holiday work, and insisted that management needed to maintain approval authority over scheduling use of personal days for proper staffing.

Discussion:

Currently, employees who are not scheduled to work a holiday receive an eight hour bonus at their regular hourly rate, those who are scheduled to work midnight to 7 am on the holiday are paid twice their hourly rate for eight hours, and those who work the 24 hour shift beginning at 7 am are paid twice their hourly rate for twenty-four hours. Tour employees also receive four eight-hour personal days. For tour employees, the city proposes to replace all four unpaid personal days and all extra pay for hours worked on a holiday with 144 hours of compensated leave time in addition to regular vacation days. With prior approval, employees would schedule days off in blocks of 12, 24, or 36; leave days not taken would be paid out by the city at the end of the year rather than carried over.

The Employer's Exhibit Tab 7 displays current bonus hours for work on three two day holidays (Christmas, New Years, and Thanksgiving) and 5 single official holidays, but does not show bonus hours for the Employee's Birthday, the twelfth holiday listed in Article 26.01. The proposal for six tours of holidays to be repaid is taken from the Mason Agreement, a contract that only grants nine rather than twelve paid holidays, and three rather than four personal leave days. In effect Franklin proposes to reduce from twelve to nine the number of compensated holidays as well as eliminating four personal days. Eight rather than six tours of paid holidays would be needed to maintain the current holiday benefit.

The Fact Finder used Employer's Exhibit 7 Tab H illustrating the total bonus hours paid by the city was to calculate the total bonus hours currently earned on average by each employee. Assuming that every year each unit has four holidays off, 4 holidays with a midnight to 7 am assignment and 4 holidays with a 24 hour tour the Fact Finder calculated that on the average Franklin tour employees earned 192 hours per year of holiday pay compensated at the hourly rate paid for 2912 hours worked per year under the current contract. With the increased hourly rate

resulting from a change to 2756 hours worked per year, the employees would earn the same total dollars of holiday pay under the prior contract if compensated for 181 hours in the new agreement with the addition of Kelly days. They would still lose four personal days. The Fact Finder notes that his calculations depart somewhat from the data for “Holiday Bonus” and “Pay in Lieu” in Employer’s Exhibit 7 Tab M, and those tables were not discussed or explained at the hearing.

The Fact Finder estimates that city’s proposal would save the employer 25% of holiday bonus pay and cost the employees a reduction of 3% in the annual hourly total of regular and holiday bonus hours, from 2938 to 2852. The Employer’s Exhibit 7 Tab M show that its IAFF members receive more holidays and a higher overtime pay rate for holidays than firefighters in other jurisdictions, but that Franklin is at or near the bottom in wages. The Employer’s exhibits demonstrate that annual pay increases have been above the norm for raises in other jurisdictions, but the starting and top salaries for both Supervisor ranks are well below the average. Despite a current budget shortfall, a November vote on a critically needed tax levy, and exhibits showing the poor state of the economy, the city offered a 3% annual salary increase for all three years of the new contract.

The city however failed to provide an exhibit on the annual budget and the employer’s reserves, documents provided by the union accompanied by an analysis of Franklin’s ability to pay based on earmarked income from a fire levy and a surplus used to retire a bond for a fire truck. The city provided no information about the 15 jurisdictions in its exhibits to enable the Fact Finder to determine comparability in population, proximity, size of Fire Department, etc. The union did not offer any data from comparable jurisdictions.

The Fact Finder does not understand why Mason was not included in the city’s exhibits listing jurisdictions compared to Franklin and could not tell whether any other public employer except Mason used prepaid holiday time. Ten of the fifteen other cities have the 2756 hours worked per year proposed by Franklin. The Fact Finder concludes that the cost saving measures sought by the employer for holidays in this article as well as for Overtime in Article 38 would more than offset the proposed 3% wage increase, and that current salaries are far below the average in other jurisdictions. In addition, timely bonus pay for working holidays is the norm, and the Fact Finder discerned no good reason for IAFF members to have their holiday compensation deferred until December.

Recommendation:

The Fact Finder recommends current contract language.

ARTICLE 27 TRAINING AND EDUCATION

City of Franklin Position:

The Employer proposed increasing the time limits for service to the City from one to two years after the City has paid for college tuition in order to keep trained employees from getting a free education at Franklin’s expense. Also, the Employer proposed requiring repayment to the City for pre-payment or reimbursements to employees who fail to successfully pass or complete EMT or state-required certifications. The City argued that was only fair after agreeing to front or reimburse the money for such training. Finally, the City proposed language to exclude training time from overtime calculations if the FLSA does not require it to be counted since the Employer had already provided the training for free.

IAFF Position:

At the hearing, the union agreed to accept the two year period, as long as the employee was not laid off, and accepted the proposed reimbursement if made through payroll deduction.

Discussion:

Neither party knew for certain whether the FLSA required overtime payment for advanced certification. The Fact Finder believes the Article 39.2 of FOP/OLC agreement with Franklin provides an appropriate two year repayment schedule.

Recommendation:

The Fact Finder recommends that employees who voluntarily leave city employment within a year after receiving tuition reimbursement should re pay 100%, and that those departing in the second year repay 50%, as is the practice with the FOP/OLC Article 39. The Fact Finder accepted the employer’s proposed language on overtime and employee repayment to the city through payroll deduction for the expense of failed training for certification.

ARTICLE 38 WAGES

Discussion:

The parties agreed at the hearing to the city’s proposed increases of 3% per year in each year of the three year agreement, as well as the proposed language on the city’s pick up of the pension contributions taken from other labor agreements. The city proposed that pay increases take effect on ratification, while the union wanted an effective date of January 1, 2010. The Fact Finder notes that in 2007 the contract was not ratified until August, but increased compensation took effect in January of that year.

Recommendation:

The Fact Finder recommends a 3% increase effective January 1, 2010, followed by successor 3% increases as agreed in January 2011, and January 2012.

ARTICLE 40 OVERTIME

City of Franklin Position:

First, in order to reduce overtime expenses, the Employer proposed the introduction of “Kelly days” into the labor agreement incorporating language from the current IAFF agreement with the City of Mason. Under the FLSA employers must pay overtime for hours worked in excess of 212 in a 28 day period. The current 56 hour work week for tour employees invariably results in overtime that could be avoided by reducing the average to 53 hours in conjunction with extra scheduled “Kelly” days off.

Second, the City proposed to place a limit of 48 continuous working hours in Section 40.06 in order to prevent a safety risk from employees working more than two straight days without a break.

Third, Franklin proposed changing the designation the non-bargaining unit “part time” employees to “volunteer” employees in Section 40.07 based on new terminology adopted by City ordinance creating three categories of on call part time paid firefighters all designated as “volunteers” whether or not assigned to standby shifts at the fire station. The city sought to modify all provisions of the contract that identified “part time” employees by re-designating all those firefighters as “volunteers.”

IAFF Position:

The union agreed to the first two proposals, but objected to the change in designation of part time employees as volunteers. The IAFF provided as an exhibit City Ordinance 2007-51 that revised Chapter 31 provisions for the Division of Fire by replacing “Call” Firefighters with

the designation “Volunteer” Firefighters as well as Ohio Administrative Code Section 4765-11-01 Definitions:

(Y) “Part-time firefighter” means a person who provides firefighting services on less than a full-time basis, is routinely scheduled to be present on site at a fire station or other designated location for the purposes of responding to a fire or other emergency, and receives more than nominal compensation for the provision of firefighting services.

(DD) “Volunteer firefighter” means a person who provides fire fighting services on less than a full-time basis and who is not routinely scheduled to be present on-site at a fire station or other specified location for purposes of responding to a fire or other emergency, but instead responds from home, place of employment, or other unspecified location.

Discussion:

The city’s proposed addition of Kelly Days will save the employer paying time and a half for unnecessary overtime by reducing the regularly scheduled hours worked per year from 2912 to 2756 while increasing the hourly pay rate to maintain the same base salary. Kelly days appear to be the norm based on the exhibit showing that ten of the fifteen jurisdictions pay for 2756 hours per year.

The Fact Finder does not understand the rationale for the city’s proposal to call firefighters “volunteer non-bargaining unit employees.” By definition, a “volunteer” is not a paid employee, and the City Ordinance appears at odds with the Ohio Administrative Code. Most citizens would assume “volunteer” firefighters are unpaid citizens on call rather than paid employees on staff at a station house.

Recommendation:

The Fact Finder recommends the city’s proposed language on Kelly days accompanied by additional language from the Mason IAFF agreement about computation of overtime rates for tour employees working an average of 53 hours per week. The parties will need to modify other contract language that refers to a 56 hour work week, as in Article 25 Vacations. The Fact Finder also recommends a limitation to two consecutive twenty-four hour tours and maintenance of current language on “part-time employees” throughout the contract.

ARTICLE 51 RESIDENCY:

IAFF Position:

The Union proposed removing the residency article from the contract based on a change in Ohio Civil Service Law that limits public employer’s authority to require employees to live within the jurisdiction.

City of Franklin Position:

The Employer provided a copy of Ohio Revised Code Section 9.4.8.1 that allows a city to ensure adequate emergency response times of safety employees by requiring them to live within the political subdivision or an adjacent county.

Discussion:

The current contract language mandating that firefighters reside within Warren or a contiguous county is clearly authorized by ORC 9.4.8.1 and serves the public interest in having local emergency personnel on call who can respond promptly to a fire.

Recommendation:

The Fact Finder concludes that the current language of Article 51 best serves the public interest.

Recommended and Accepted Contract Language

Recommended ARTICLE 7 LAYOFF/RECALL

Section 7.01. Layoff: In the event the City should decide to layoff Fire Division personnel, the Employer shall notify the affected employee fifteen (15) calendar days in advance of the effective date of the layoff. The Employer agrees to discuss with representatives of the Union, the impact of the layoff on the bargaining unit member. The employee(s) with the least seniority in the layoff classification shall be laid off first in accordance with City of Franklin Civil Service Rules. Seniority for the purpose of this section, shall be the total time of current continuous service within the bargaining unit. In the event an employee is laid off, he shall receive payment for earned but unused vacation and sick leave conversion with his termination pay. Any payment received in the event of a layoff shall be made in accordance with the applicable provisions of this agreement. The provisions on layoff and recall in this agreement shall supersede all applicable state law including, but not limited to, ORC 124.321 through 124.328.

Accepted ARTICLE 11 SPECIAL LEAVE

As agreed at the hearing, no change to current language.

Accepted ARTICLE 15 HOURS OF WORK

Section 15.02. Tour Employees: The regular schedule shall be a tour of twenty-four (24) hours work followed by forty-eight (48) hours off. Each standard work period shall consist of a fixed number of working tours and periodic scheduled off days (Kelly days) consistent with a Section 7(K) exemption schedule under the Fair Labor Standards Act, and which, over the course of time, result in an average of approximately fifty-three (53) regular working hours per week. The hours of work for tour employees total approximately fifty-six (56). The work week for tour employees shall include Saturday and Sunday working hours in the interest of public health, safety and welfare.

Recommended ARTICLE 19 VACANCIES AND PROMOTIONS

~~Section 19.05. The provisions of Section 19.03 regarding promotional examinations and time in rank shall not apply in the single instance of reorganization occurring on execution of this agreement. Upon execution of this agreement, bargaining unit employees in the classification of Fire Fighter hired prior to January 1, 2007, shall be reclassified into the classification of Lieutenant without the use of a promotional examination.~~

~~Section 19.06. The Parties agree that on or before January 1, 2009, each platoon shall have at least one position available for a Captain. The City shall request the Civil Service Commission to provide a promotional examination for the Captain classification in January of 2009. The Parties agree that all applicants for a Captain promotional examination, or any Captain promotional examination after January 1, 2009, must be certified EMT Paramedics to be eligible to sit for such examination.~~

~~However, those employees reclassified as Lieutenant per Section 19.05 shall not be subject to the time in rank requirement of Section 19.03 only for any Captain promotional examination held prior to January of 2009.~~

Section 19.075. Any bargaining unit employee promoted to the position of Captain must be certified EMT-Paramedic. ~~on or before after January 1, 2009, or such employee shall be demoted to his or her prior classification.~~

Accepted ARTICLE 20 GRIEVANCES

As agreed at the hearing, no change to current language.

Recommended ARTICLE 23 UNIFORMS

Section 23.05 Employees may place the IAFF logo on the t-shirts and pull over job shirts issued by the city and worn while on duty.

Recommended ARTICLE 24 INSURANCE

Section 24.02. The City of Franklin shall make available to all bargaining unit employees the same major medical/hospital care insurance plans, health insurance accounts (HSAs), and dental plans that are available to non-bargaining unit City of Franklin employees. All insurance requirements (e.g., fees, co-payments, 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 eleven percent (11%) of the applicable premium rate in 2010, eleven and one-half percent (11 ½%) of the applicable premium rate in 2011 and twelve percent (12%) of the applicable premium rate in 2012. 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 representatives from the bargaining unit and management and/or other representatives from other City bargaining units. This Committee will investigate alternate plans, health care credit programs, and benefits and will submit package recommendations to the Franklin City Council; however, Franklin City Council maintains the right to determine appropriate coverage.

ARTICLE 25 VACATIONS

Section 25.01. All full-time firefighters covered by this agreement shall receive vacation days as follows:

<u>53</u> Hour Employee	40 Hour Employee
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ARTICLE 26 HOLIDAYS

Current Contract Language.

ARTICLE 27 TRAINING AND EDUCATION

Section 27.02. College Education: The City of Franklin will pay the cost of tuition for classes that benefit the Department, upon the Fire Chief's approval.

- A. If an employee fails to successfully complete the course he or she will reimburse the City for the cost of tuition through payroll deductions. Successful completion means a "Pass"

grade in Pass/Fail Grading system, and also, an “A,” B,” or “C” grade in a normal A-F grading system.

- B. Employees who voluntarily leave city employment less than two (2) years after being reimbursed for college course work must repay a portion of the money received for the course(s) based on the following schedule: Departure within 12 months -- 100% repayment, departure between 13 and 24 months -- 50% repayment.

Section 27.03. EMT Certification and State-Required Certification: Employees must be certified as EMT-Basic, EMT-Advanced, or EMT-Paramedic upon appointment, and they must maintain such EMT certification for continued employment. Further, employees must obtain all state-required certifications within twelve (12) calendar months of date of hire and must maintain all state-required certifications applicable to their positions. All bargaining unit employees must maintain all state-required certifications for continued employment; further, all bargaining unit employees must maintain the highest level of EMT certification obtained or held during their employment with the City of Franklin. The City will pay for the cost (including tuition, class materials, and examination fees) of re-certification for the applicable certification and initial certification for an advanced EMT status; the employee must successfully pass the specific certification or re-certification process for which the City has provided fronted or reimbursed funds, or the employee will have to pay for the cost of such certification or re-certification or reimburse the City through payroll deductions for any amounts fronted or reimbursed for such certification or re-certification. The Employer shall not pay or reimburse an employee more than once for any advanced certification or individual, periodic re-certification. Employees who are in re-certification and continuing education shall be allowed to attend all classes and training without loss of pay. Employees who are in training for advance EMT certification shall be allowed to attend all classes and training on a no loss/no gain basis. For purposes of this Article, any compensated time shall not be counted as hours worked for computing overtime provided such exclusion does not violate state or federal law.

ARTICLE 38 WAGES

Accepted: Section 38.01. The following pay ranges for bargaining unit members of the Division of Fire within the Service of the City are hereby established.

<u>Position</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>
Captain	*****	46,423.58	48,821.94	51,344.78
Lieutenant	39,482.99	42,764.91	44,984.34	47,322.69
Firefighter/EMT	35,790.82	38,765.97	40,777.91	42,897.66
Captain	*****	41,771	43,929	46,199
Firefighter/EMT	35,526	38,479	40,476	42,580

(These rates are effective upon execution of the labor agreement.)

- A. Effective January 1, 2007,-the City will pay to each bargaining unit member a three percent (3%) base rate increase. (INSERT NEW RATES)

<u>Position</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>
Captain	*****	43,441.84	45,686.16	48,046.96
Lieutenant	36,947.04	40,018.16	42,095.04	44,283.20
Firefighter/EMT	33,492.01	36,276.07	38,158.79	40,142.39

(hired on or after 01/01/07)

B. Effective January 1, 2011, the City will pay to each bargaining unit member a three percent (3%) base rate increase. (INSERT NEW RATES)

<u>Position</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>
Captain	*****	44,962.30	47,285.18	49,728.60
Lieutenant	38,240.19	41,418.80	43,568.37	45,833.11
Firefighter/EMT	34,664.23	37,545.73	39,494.35	41,547.37

C. Effective January 1, 2012, the City will pay to each bargaining unit member a three percent (3%) base rate increase. (INSERT NEW RATES)

<u>Position</u>	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>
Captain	*****	46,423.58	48,821.94	51,344.78
Lieutenant	39,482.99	42,764.91	44,984.34	47,322.69
Firefighter/EMT	35,790.82	38,765.97	40,777.91	42,897.66

Section 38.02. Biweekly Salary: All four employees shall have their yearly salary divided by 26 to obtain a biweekly salary.

Section 38.03. Salary Adjustment: The salary of each employee shall be reviewed annually or otherwise as herein provided by the Fire Chief for the purpose of determining which employees shall be entitled to a step increase. All of his personnel records, performance, and length of service shall be considered in making recommendations with major emphasis placed on the evaluation of services rendered. On the recommendation of the Fire Chief, the City Manager may advance an employee at the time of such review until the maximum step had been reached.

Section 38.04. Each bargaining unit member shall be eligible for a two dollar (\$2.00) per hour additional stipend on the employee's base hourly rate of pay if the member is certified EMT-Paramedic, and if the member is performing EMT-paramedic functions pursuant to a City-implemented EMT-Paramedic protocol.

Accepted: Section 38.05. 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 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 PFPF increased thereby. The dollar amount to be "picked-up" by the Employer:

- A. Shall equal the percentage amount of the employee's mandatory PFPF contributions as of December 31, 2008;
- B. Shall be credited by PFPF as employee contributions under authority of Ohio Attorney General Opinion 82-097;
- C. Shall be included in computing final average salary;
- D. Shall not be reported by the Employer as subject to current federal and state income taxes;

E. Shall be reported by the Employer as subject to city income taxes; and

F. Shall not affect the calculation of an employee's hourly rate of pay for any purpose whatsoever, including making wage adjustments because of absence, calculating severance pay, or in reporting employee authorized credit information to financial institutions.

Section 38.06. Each employee will be responsible for compliance with Internal Revenue Service salary exclusion regulations with respect to the "pick-up" in combination with other tax deferred compensation plans.

Section 38.07. If the foregoing "pick-up" provisions are nullified by subsequent Internal Revenue Service Rulings, Ohio Attorney General Opinions, or other governing regulations, the Employer will be held harmless and Sections 38.04-38.06 of this Agreement shall be declared null and void.

Recommended ARTICLE 40 OVERTIME

Section 40.01. So long as the overtime provisions of the Fair Labor Standards Act (FLSA), as amended, are applicable to state and local government fire department Employees, the Employer shall pay overtime in accordance with existing rules and regulations applicable to the FLSA. At the time of this agreement, overtime will be paid for all hours worked above 212 hours in a 28 day work period according to the FLSA. The Employer reserves the right to adjust its pay periods and overtime periods as allowable by the United States Department of Labor. Although not reaching overtime until 212 hours worked in a 28 day work period, forty (40) hour employees who work between 160 and 212 hours in a 28 day work period shall receive compensation as if they were tour employees (24/48) working overtime (by converting the forty [40] hour employee's salary into an hourly wage dividing by 2912 and multiplying by 1.5).

A. Overtime means actual hours worked in excess of 212 hours in the standard work period, unless the excess hours in the standard work period result from the employee switching his regularly scheduled off day (Kelly day). For purposes of this Agreement and compliance with the Fair Labor Standards Act, the employee is deemed to have been off on his regularly scheduled off day (Kelly day) in the same manner as is permitted under 29 CFR 553.31.

B. There shall be no duplication, pyramiding, or compounding of overtime and/or premium pay. The highest rate of compensation under this Article is one and one-half (1½) times the normal straight time hourly rate.

C. The regular schedule for tour employees shall be a tour of twenty-four (24) hours work followed by forty-eight (48) hours off. Each standard work period shall consist of a fixed number of working tours and periodic scheduled off days (Kelly days) consistent with a Section 7(K) exemption schedule under the Fair Labor Standards Act, and which, over the course of time, results in an average of approximately fifty-three (53) regular working hours per week for tour employees. An adjusted overtime rate for purposes of this subsection is determined as follows: Member's Annual Rate divided by 2756 times 1.5.

Section 40.06. Whenever necessary, the Employer can require employees to perform work during hours or days other than or beyond those falling within their regularly scheduled hours of

work (i.e., mandatory overtime). Such time shall be compensated for and regulated as provided in this article. However, a bargaining unit employee in a tour assignment shall not be permitted to work more than two (2) consecutive tours in a row, subject to Article 35 (Waiver in Emergency).

Accepted ARTICLE 47 DURATION

Section 47.01. This contract shall be effective October 12, 2009 and shall remain in force until October 11, 2012. Thereafter it shall be in effect from year to year unless either party notifies the other in writing at least sixty (60) days prior to the term of this agreement, of any intention to make changes or terminate the agreement.

Recommended ARTICLE 51 RESIDENCY

No change to current language

Articles Accepted Prior to Fact Finding to be incorporated in this report:

ARTICLE 2 RECOGNITION

ARTICLE 3 NONDISCRIMINATION

ARTICLE 9 SICK LEAVE

ARTICLE 25 VACATIONS

ARTICLE 45 FITNESS FOR DUTY

Professor Howard Tolley, Jr., University of Cincinnati
June 4, 2010

CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Corrected Fact Finding Report has been served via electronic mail to Tony R. Abston President Franklin Professional Firefighters Local 3742, 301 Lakeview Dr., Franklin, Ohio 45005, tabston@franklinohio.org, tabstoncdf@yahoo.com; Donnette Fisher, Law Director, City of Franklin 1 Benjamin Franklin Way Franklin, OH 45005 dfisher@franklinohio.org and Brett A. Geary, Regional Manager, CLEMANS, NELSON & ASSOCIATES, INC., 420 W. Loveland Ave., Suite 101 Loveland, OH 45140 BGeary@clemansnelson.com and to the State Employment Relations Board, Columbus, Ohio Mary.Laurent@serb.state.oh.us on this 7th day of June, 2010.

Howard J Tolley

Howard Tolley

June 7, 2010

Date