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**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD
IN THE MATTER OF THE FACT FINDING PROCEEDING IN
CASE NO. 11-MED-07- 0972**

**FRATERNAL ORDER OF POLICE, CAPITAL CITY LODGE NO. 9
(Full-time Sworn Police Officers below Rank of Sergeant)
and
THE CITY OF NEW ALBANY, OHIO**

FACT FINDING REPORT

**Submitted by John F. Lenehan
April 12, 2012**

TO:

VIA E-MAIL

Union Representative

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FINDINGS AND RECOMMENDATIONS

I BACKGROUND

On December 22, 2011, The State Employment Relations Board (SERB) appointed John F. Lenehan as the Fact Finder in the case of Fraternal Order of Police, Capital City Lodge No. 9 (Full-time Sworn Police Officers below the Rank of Sergeant) and the City of New Albany, Ohio. The parties mutually agreed to extend the filing of the fact finding report until, April 12, 2012, as provided under the Ohio Administrative Code, Section 4117-9-05 (G). A Fact Finding Hearing was held on March 20, 9:30 A.M., at the New Albany Police Department, directly behind the New Albany Village Hall, located at 99 W. Main Street, New Albany, Ohio. Present for and on behalf of the Employer were: Paul L. Bittner, Attorney; Eve M. Ellinger, Attorney; Mark A. Chaney, Police Chief; Debra K. Mecozzi, Deputy City Manager; and, James M. Nicholson, Finance, Director. Present for and on behalf of the Union were: Russell Carnahan, Attorney; Jason Pappas, Fraternal Order of Police; Joel Strahler, New Albany Police; and, Leland Kelly, New Albany Police.

During the Fact Finding Hearing an unsuccessful effort was made to mediate the outstanding issues. At the conclusion of the hearing, the parties agreed that the Fact Finder would issue his report on April 12, 2012.

A. Description of the Bargaining Unit

The parties are the Fraternal Order of Police, Capital City Lodge No. 9 (Union or FOP) and the City of New Albany (Employer or City). The Bargaining Unit consists of all full-time police officers below the rank of Sergeant; there are currently twelve (12) employees or bargaining unit members.

The City of New Albany is located in Franklin and Licking counties, Ohio, just northeast of Columbus. Most of the city is located in Franklin County and a small portion extends into adjacent Licking County. As a result of the 2010 U.S. census, the Village of New Albany achieved “City status” and became a “public employer” as defined in the Ohio Revised Code for

purposes of collective bargaining, i.e., a municipal corporation with a population of at least five thousand. At the time of the 2010 census the population was 7,724.

Although the members of the bargaining unit had been members of the FOP, Capital City Lodge No. 9 for many years, the Employer (a “Village” prior to the 2010 census) did not recognize the FOP for purposes of bargaining. Subsequent to its achieving “City” status with a population in excess of five thousand, the FOP filed for recognition with the State Employment Relations Board (SERB). As a result a representation election was held and SERB certified the FOP as the exclusive representative of the bargaining unit on July 12, 2011.

B. History of Bargaining

Since the current negotiations will result in the parties first collective bargaining agreement there is no prior negotiation or agreement to be considered. The parties began negotiations in early August 2011 and have had numerous negotiating sessions since then. When the negotiations reached a plateau, the parties engaged in mediation facilitated by SERB appointed Mediator Craig Young. Although the parties were able to resolve most issues, two remain unresolved. The unresolved issues submitted to this Fact Finder for findings and recommendations are: 1) Article 19.1 Rates of Pay/Wages, and 2) Article 23.1 Duration.

II CRITERIA

Pursuant to the Ohio Revised Code, Section 4117.14 (G) (7), and the Ohio Administrative Code, Section 4117-95-05 (J), the Fact Finder considered the following criteria in making the recommendations contained in this Report.

- 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 employers in comparable work, given consideration to factors peculiar to the area and the classifications 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 on the normal standards of public service;
- 4) Lawful authority of the public employer;

- 5) Stipulations of the parties; and,
- 6) Such factors as not confined to those above which are normally and traditionally taken into consideration.

III ISSUES

Issue 1

ARTICLE 19.1- Rates of Pay/Wages

UNION'S POSITION

The parties have agreed to continue the current five-step pay scale for the bargaining unit members. At the present time, all bargaining unit members are at the last step of the pay scale with an annual salary of \$67,639.10. It is anticipated, however, that the City will add new police officers in the future.

The FOP has proposed a wage increase of 5% effective January 1, 2012, 3.5% effective January 1, 2013, and 3.5% effective January 1, 2014. The rationale for its proposal is that it is seeking a market adjustment that reflects the transition from Village status to City status, the need to be competitive with comparable local jurisdictions represented by the FOP, the City's excellent financial condition, and the need to recruit and retain highly qualified police candidates.

According to the FOP there is no dispute that the increases which it is proposing are well within the City's ability to pay. The City's revenue stream and finances, generally, are among the very best of all municipalities in the State of Ohio. Also, the City anticipates significant business development and continued population growth that should further enhance revenues and also reinforce the need for professional law enforcement services.

The residents of New Albany have the highest standard of living of any city in Franklin County. With an annual *per capita* income of \$71,740 in 2010, it is the second highest of any city in the State. The closest *per capita* income of any other city in Franklin County is Upper Arlington, at \$51,049. New Albany residents include corporate CEOs, professional athletes, and owners of Fortune 500 companies.

The Union argues that both the quality of services provided by the New Albany Police Department and the community expectations, should reflect a level of compensation for this bargaining unit as being among the highest in Franklin County. However, it does not. A review of wage rates for other FOP bargaining units in Franklin County establishes that the current top-step pay rate for New Albany officers is at the bottom of all other cities within the county. Specifically, the 2012 wage rates for the other municipalities within Franklin County range from \$79,836.55 (Dublin) down to \$71,257.55 (Grandview). The only municipality represented by the FOP with a wage range that is comparable to New Albany is that of Pickerington (\$67,350.40), which is located in Fairfield County and has been faced with significant budget limitations in recent years.

The Union submitted into evidence at the hearing wage comparable tables for bargaining units represented by the FOP (Union Exhibits A, B and C). Those tables reflected the annual top-step wage rates for twenty-one different police agencies with collective bargaining agreements. Included within the group were the Franklin County Sheriff's Office, the Columbus Regional Airport Authority, The Ohio State University, thirteen municipal corporations and five townships. With the exceptions of the Pickerington Police Department (which had a top-step wage rate slightly below the current rate for New Albany officers) and the small township departments, the New Albany Police Department's top-step wage rate is significantly below that of all fifteen other police agencies in Franklin County. Even with its proposed wage increase, the 2012 wage ranking for the New Albany bargaining unit will remain below that of all twelve of the comparable municipal police agencies within Franklin County.

In addition, the Union maintains that the wage comparable tables reflect annual average increases for other bargaining units of 2.75%. Without a market adjustment and future wage increases that exceed the average increases for other cities, New Albany officers' wages will not move closer to, and will fall further behind the wages received by their peers in the other local police agencies.

In support of the Union's claim that the City has the ability to pay its proposed market adjusted increases, it submitted copies of the City's budgets and other documents. According to the Union the City's projected growth makes it the envy of other local governments. As an example, the City's General Fund year-end balance (i.e., year-end "carryover") was nearly 50% of all General Fund expenditures at the end of 2011. This fund balance of nearly \$5.8 million was conservatively projected by the City to grow to nearly \$6.4 million by the end of 2015. (Union Exhibit K) The Union also notes that the City's 2010 year-end General Fund balance of

\$2.75 million more than doubled during 2011 to \$5.8 million, which was significantly higher than projections made at the beginning of 2011.

Finally, the Union argues that the cost of its proposal is not significant. It is only approximately \$25,465 for 2012. Applying the parties proposed wage increases for 2013 and 2014 to the unit's total base wages shows that, for the entire life of the three-year contract, the difference in cost between the City's wage proposal and the FOP's proposal should range between approximately \$104,000 and \$77,000 or less.

Thus, the Union concludes that based upon the evidence and the foregoing arguments, its proposed wage increase is entirely reasonable and warranted.

EMPLOYER'S POSITION

The City proposes a 2.5% wage increase effective January 1, 2012 followed by a minimum 2.5% wage increase effective January 1, 2013 and a minimum 3% wage increase effective January 1, 2014. The future increases would be tied to the wage increase the City provides all other employees. For example, if in 2013, the City provided a 3% wage to all other employees, the bargaining unit employees would receive the same wage increase. However, if in 2013, the City could only afford to provide all other City employees with a 2% raise, then the bargaining unit would still receive their 2.5% wage increase.

In support of its wage proposal, the City maintains that it currently offers highly competitive wage rates in comparison to similarly situated central Ohio law enforcement agencies. Wage increases of 2.5% in 2012 and 2013, and 3% in 2014 would keep the bargaining unit employees competitive among their Central Ohio peers.

The City states that in 2011 the entry level police officer's annual base pay was \$48,732.11 and a top-step officer's base annual pay was 67,639.10. Both the FOP and the City's proposals have the starting annual pay step beginning at \$46,000. Under the City's proposal the top annual step would be at \$69,330.07. According to the City the decrease in the starting salary under the parties proposals resulted from the FOP's only wage proposal made on October 11, 2011. The FOP proposed at that time that the higher wages should be shifted to the top Steps, i.e., 4 and 5.

The City argues that the proper comparable wage data is the annual salary for police employees of other Central Ohio cities in Franklin and Licking Counties in the same job positions. These cities are: Grandview, Heath, Powell, Bexley, Worthington, Pataskala, Whitehall and Pickerington. The comparable wage data attached to the City's prehearing statement and submitted into evidence at the hearing as Employer's Exhibit 5, indicated that bargaining unit employees for 2011 ranked second for starting salaries and sixth for the top step on the salary schedule. The comparable wage data for 2012 which includes the City's proposed wage increase (Employer's Exhibit 6) indicated that bargaining unit employees would rank sixth for both starting and top salaries. For 2013, the comparable wage data which includes the City's proposed wage increase indicated that bargaining unit employees would rank fifth for both starting and top salaries. For 2014, the comparable wage data which also included the City's proposed wage increase indicated that bargaining unit employees would rank fourth for starting salaries and fifth for top salaries.

The City also submitted comparable data regarding the FOP's wage proposal (Employer's Exhibit 7). For 2012, the comparable wage data indicated that bargaining unit employees would rank sixth for starting salaries and fifth for top salaries. For 2013, the comparable wage data would rank bargaining unit employees starting salaries fifth and top salaries fourth. For 2014, the comparable wage data would rank bargaining unit employees starting and top salaries third.

According to the City, the foregoing comparables show that bargaining unit employees have been compensated competitively when compared to their counterparts around Central Ohio. Further the City states that the FOP's proposal is excessive and unnecessary.

The second argument proffered by the City to support its wage proposal is that the employees in the FOP bargaining unit are highly compensated within the City. Although the bargaining unit employees make up just over 16.4% of the City's workforce, they receive 20.67% of the City's wages. In 2011, the average FOP employee earned: (1) \$19,837.08 more than the average City Police employee who is not a member of the FOP; (2) \$11,475.27 more than the average Community Development employee; and (3) \$35,835.86 more than the average Service Department employee (Employer Exhibit 11). Thus, the City argues that the internal comparables do not support the FOP's proposed large annual increases.

The City's third and final argument regarding wages is that the City currently offers highly competitive wage rates in comparison to other employers within the City. The City surveyed data from its 17 largest employers and concluded that of the 6,611 employees covered,

the average annual income for an individual working within the City limits is \$53,935 (Employer's Exhibit 12A). In 2011, a City FOP employee made on average about \$20,000 more than other employees working within the City limits.

FINDING AND OPINION:

Based upon the prehearing statements, the testimony and exhibits submitted at the fact finding hearing, the Fact Finder makes the following findings and renders the following opinions.

1. The Employer has the financial resources to pay the proposed wage increases.

A review of the exhibits and testimony submitted at the hearing establishes that the City is in a unique position compared to other Ohio governmental entities. At this time, it has more than sufficient resources to meet even, as described by the City, the "excessive" wage demands of the FOP. Also, its future growth and income resources appear at the very least to be stable if not excellent. The City has presented no evidence or claim to the contrary.

2. Greater weight is to be given to external comparables in this case.

Frequently, a fact finder will give greater weight to internal comparables than external ones. This is especially true where financial resources are limited. However, in this case there is no issue as to the public employer's ability to pay. The City can certainly meet the FOP's wage demands.

While internal comparables are certainly a factor to be considered, it is the Fact Finder's opinion that they should not be controlling in this case. The City's argument that the employees in the FOP bargaining unit are paid more or consume a greater portion of the City's budget should not be considered as the deciding factor in determining the appropriate compensation for its police officers. No other City employees perform the same duties or meet the unique qualifications of police officers. The appropriate consideration should be market based, i.e., what are other police officers being paid in the area. Thus, greater weight should be given to external comparables in deciding a fair and appropriate wage settlement for the employees in the FOP bargaining unit.

3. Considering the comparables submitted by both parties, the FOP's proposed wage increase is excessive and the City's proposed wage increase is insufficient.

Each party has chosen comparable wage data most favorable to its position. The FOP uses wage rankings at the top step based upon 21 entities in the surrounding area; whereas the City uses wage rankings at the starting and the top step based upon 9 cities in the area. Each claims, of course, that its comparables are more relevant.

The City has proposed an 8% increase to be added to the wage steps, except for step one during 2012, over the term of the contract. The FOP proposes a 12 % increase to wage steps except for step one during 2012, over the term of the contract. The City proposes 2.5% in 2012, 2.5% minimum in 2013 and 3% minimum in 2014 with a "me too" provision in 2013 and 2014 should increases granted to other employees exceed the minimum. The FOP proposes 5% in 2012, 3.5% in 2013 and 3.5% in 2014.

Based upon the comparable wage data submitted by the FOP, there is no support for a 5% wage increase in the first year of the contract. No other entity listed in the FOPs Exhibits A through C received a 5% increase in any year. Nor does the FOP's comparable wage data support a 12% increase over a three year period. While there may be merit in the argument that because of the change from a village to a city and the need to have competitive wages in the market there should be a wage adjustment, the FOP's proposal is excessive

Likewise, the comparables do not support the City's position. According to the comparable wage data submitted by the City, employees at the top step of the salary schedule would be in the lower third or half throughout the term of the contract in comparison to the employees in the other cities. Also, employees at the starting step would be in the same position, except for the last year of the contract.

The City's data does not support its claim of competitive wages. Its wage offer is insufficient under the circumstances.

4, There should be a 10% wage increase during the term of the contract

The FOP's position that there should be some adjustment to make the employees it represents wages more competitive with other entities in the area has merit. However, not to the extent it has proposed. It is recommended that there be a 10% increase in the wage steps (except for Step 1) during the term of the contract. Said increase is to be implemented in the following manner.

- Effective January 1, 2012, the starting salary or Step 1 should be as proposed by the parties, i.e., \$46,000.

- Effective January 1, 2012, salaries for Steps 2, 3, 4, and 5 shall be increased by a minimum of 3.5%.
- Effective January 1, 2013, the Step salaries shall be increased by a minimum of 3%.
- Effective January 1, 2014, the Step salaries shall be increased by a minimum of 3.5%.
- In the event that the City provides a general cost of living increase in excess of the wage percentage increases for January 1, 2013 or January 1, 2014 o all other City employees who are not covered by this agreement, such greater wage percentage increase shall apply to all employees in the bargaining unit in lieu or the minimums.
- Step wage rates shall be retroactive to January 1, 2012 based upon wages paid.

RECOMMENDATION

Therefore, it is the finding and recommendation of the Fact Finder that the following wage provisions be implemented and incorporated into the Collective Bargaining Agreement.

- Effective January 1, 2012, the starting salary or Step 1 should be as proposed by the parties, i.e., \$46,000.
- Effective January 1, 2012, salaries for Steps 2, 3, 4, and 5 shall be increased by a minimum of 3.5%.
- Effective January 1, 2013, the Step salaries shall be increased by a minimum of 3%.
- Effective January 1, 2014, the Step salaries shall be increased by a minimum of 3.5%.
- In the event that the City provides a general cost of living increase in excess of the wage percentage increases for January 1, 2013 or January 1, 2014 o all other City employees who are not covered by this agreement, such greater wage percentage

increase shall apply to all employees in the bargaining unit in lieu or the minimums.

- Step wage rates shall be retroactive to January 1, 2012 based upon wages paid.

Article 19.1 of the Collective Bargaining Agreement should read as follows:

ARTICLE 19
RATES OF PAY/WAGES

Section 19.1 Wages. Effective January 1, 2012 and through December 31, 2012 the following wage steps shall be in place for Members:

Rank	Step 1	Step 2	Step 3	Step 4	Step 5
Police Officer	\$46,000	*3.5%	*3.5%	*3.5%	*3.5%

Effective January 1, 2013 the Step salaries set forth above shall be increased by a minimum of 3.0%. However, in the event that the City provides a general cost of living wage percentage increase effective January 1, 2013 in excess of the 3% to all other City employees who are not covered by this Agreement, such greater wage percentage increase shall apply to all Members herein in lieu of the 3% minimum.

Effective January 1, 2014 the Step salaries set forth above shall be increased by a minimum of 3.5%. However, in the event that the City provides a general cost of living wage percentage increase effective January 1, 2014 in excess of the 3.5% to all other City employees who are not covered by this Agreement, such greater wage percentage increase shall apply to all Members herein in lieu of the 3% minimum.

***Step wage rates for Steps 2 through 5 are to be increased by 3.5% over the existing rates for 2011. The calculation and actual rates are to be furnished by the parties and incorporated into this article.**

Issue 2

ARTICLE 23

Duration/Successor Agreement

EMPLOYER'S POSITION

The City proposed that the CBA become effective upon ratification by both the City and the FOP. Although the parties have not agreed on the effective date of wages, their proposals do account for a retroactive wage increase.

UNION'S POSITION

The Union did not submit a fact finding proposal for Article 23.1.

FINDING AND OPINION

The Employer's proposal should be adopted.

RECOMMENDATION

Article 23 should read as follows:

ARTICLE 23

DURATION/ SUCCESSOR AGREEMENT

Section 23.1. This Agreement and its terms shall be effective upon ratification by both the Lodge and the City and shall continue in full force and effect until midnight on December 31, 2014. This Agreement shall automatically renew for successive one-year terms unless a party to the Agreement provides written notice as provided in Section 23.2 below.

IV
CERTIFICATION

The fact finding report and recommendations are based on the evidence and testimony presented to me at a fact finding hearing conducted March 20, 2012. Recommendations contained herein are developed in conformity to the criteria for a fact finding found in the Ohio Revised Code 4717(7) and in the associated administrative rules developed by SERB.

Respectfully submitted,

/s/ John F. Lenehan
John F. Lenehan
Fact Finder

April 12, 2012

V

PROOF OF SERVICE

This fact-finding report was electronically transmitted this 12th day of April, 2012, to the persons named below.

VIA E-MAIL

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/S/ John F. Lenehan
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