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IN THE MATTER OF FACT FINDING

BETWEEN

OHIO PATROLMEN'S BENEVOLENT ASSOCIATION

AND

THE CITY OF AURORA, OHIO

**SERB CASES # 13-MED-09-0976
(Sergeants)**

Robert G. Stein, Fact-finder

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INTRODUCTION

The parties to this matter are the Ohio Patrolmen's Benevolent Association (hereinafter "Union," "OPBA" or "Unit") and the City of Aurora, Ohio (hereinafter "Employer" "City," "Department"). The Employer is located in Portage County, Ohio. There are approximately five (5) full-time police Sergeants in the Unit. In this report the current collective bargaining agreement shall be referred to as ("CBA" or "Agreement").

General/State/Local Economic Overview: Caution and uneasiness have characterized the mood of the country during the years since the "great recession," was declared to have ended on a national level. Of course, what is often declared to be ended nationally does not always translate immediately at the local level, particularly in Ohio, which has had more than its share of job losses prior to and as a consequence of the great recession. Recovery has been incremental since 2008, but cause for optimism appears to be on firmer ground in 2014. Through 2012 it has been marked by unevenness and was unaided by considerable national political discord, which only recently has shown signs of improvement. (e.g. Farm Bill, Budget Bill passage) In spite of the prolonged gridlock in Congress over most issues, which did little to relieve economic uncertainty, the private sector has continued to lead the way, with generally stronger profits, and adding jobs but in uneven numbers geographically. In April the national unemployment rate was 6.3%, a drop from 6.7% in the prior month. In Ohio the rate is 5.7%, which was approximately the rate in 2008. The stock market, which had a banner year in 2013, in January of 2014 experienced some retrenchment, but in April and so far in May it hit a record high, followed by modest retrenchment. However, anyone who makes it their business to pay attention to these matters will readily admit the U.S. economy remains vulnerable to national and international events such as instability in Syria, the Russian takeover of Crimea, and of course the economic health of the Chinese economy. *"Manufacturing remains a bright spot for the economy," said Russell Price, senior economist at Ameriprise Financial in Detroit and the best ISM index forecaster over the past two years, according to Bloomberg data. "There's still a sizable amount of pent-up demand in the consumer and corporate sector."* This may be "signaling strong demand at home and abroad that could boost growth prospects into next year." (WSJ, 12-3-13). What remain to be seen are the depth, breadth, and strength of the recovery from the recession, and while there is reason to be optimistic regarding eventual

recovery, there is much to be said as to what form it takes and in what geographical location of the United States. Furthermore, the infrastructure issues along with recovery from record severe weather will be a challenge for cities and states across the country and in Ohio for the foreseeable future.

Lessons learned from the recession and the advancement of technology question the way things used to be done and are affecting the nature of the recovery. Business continues to learn how to be more efficient and do more with less or with part-time rather than full-time employees. In Ohio the majority of manufacturing jobs are related to transportation, which has experienced sustained recovery. Yet, caution still exists and there is still cause for concern in the number of people unemployed and underemployed. Currently there are more than 4 million people who have been unemployed for 6 months or more. Complicating the future in another manner is the fact that for millions of workers income has not changed markedly for several years. ("Incomes are Flat, Reflecting a Slowdown in Job Growth, but Consumer Spending Rises," Associated Press, 2-2-14) What affect this will eventually have on markets and the willingness of citizens to be able to financially support their communities is a growing concern.

The economy in Ohio has been slow, but hopeful signs of improvement from a very long and severe national recession appear to be gaining momentum. Substantial activity has been initiated in the areas of shale gas and oil exploration, with a promise of billions of dollars of added income to Ohio in the future. ("Shale gas and oil will add \$5 billion to Ohio's economy by 2014, say economists" by John Funk, Plain Dealer, 2-29-12) And some would argue that jobs created from this exploration provide more employment for out of state workers than those who live in Ohio. ("Fracking: So where's the economic boom that was promised?" by Spencer Hunt and Dan Gearino, Columbus Dispatch, January 28, 2014) But, as previously stated the April unemployment rate in Ohio is the lowest it has been since 2008 and it is hoped that most of that is a result of new job creation. What holds for the remainder of 2014 is not certain on a national or statewide perspective, yet signs of sustained recovery remain in positive territory.

The local economy in northeast Ohio is a mixed bag of prosperity, recovery, and continued austerity. Depending upon location some municipalities are prospering, while others are still finding it difficult in adjusting to substantially less revenue from the state of Ohio, the elimination of the estate tax, lower property values, etc. Fortunately, the City of

Aurora appears to be in the prosperous category, having experienced a healthy increase in population (an approximate growth of 15% from 2000 to 2010), a seemingly strong business sector, excellent schools, highly educated citizens, skilled city workers, and competent leadership. Indications are this trend will continue according to data found on the City's own website. (See Union Exs. 1, 2, and 3)

The items specifically addressed by the fact finder in this report are based upon the evidence and arguments proffered by the Union and the City. The recommendations contained in this report conform to the statutory criteria that all fact finders must follow.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C) (4) (E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

Summary of the Parties' Positions and Discussion:

The Union's and the Employer's detailed position and rationale on the two unresolved issues can be found in their respective Pre-hearing Statements and in evidence in the record. However, in summary the proposed position of each party is as follows:

ISSUES 1 & 2 Articles 29 and 30 COMPENSATION AND HOSPITALIZATION

ARTICLE 29:

CITY: The City is proposing modification of the language contained in Section 29 as follows: **Replace current sections 1, 2, with the following three (3) sections:**

ARTICLE 29: COMPENSATION

**§1 BEGINNING JANUARY 1, 2014 THE SERGEANTS' RATE OF PAY SHALL BE
\$37.25 PER HOUR OR \$77,480.00 PER YEAR (HOURLY RATE x 2080 HOURS)**

**§2 BEGINNING JANUARY 1, 2015 THE SERGEANTS' RATE OF PAY SHALL BE
\$38.09 PER HOUR OR \$79,227.20 PER YEAR (HOURLY RATE x 2080 HOURS)**

**§3 BEGINNING JANUARY 1, 2016 THE SERGEANTS' RATE OF PAY SHALL BE
\$39.04 PER HOUR OR \$81,203.20 PER YEAR (HOURLY RATE x 2080 HOURS)**

§4 Current Contract Language (*former §3 language*)

§5 Current Contract Language (*former §4 language*)

§6 Current Contract Language (*former §5 language*)

ARTICLE 30: HOSPITALIZATION

The City proposes to increase the employee premium contribution to **3% for 2015**, to **6% for 2016**, and to also modify the insurance coverage regarding spouses including **exclusion for spousal coverage if they have available coverage from pension coverage or another employer**. It proposes the following changes:

Section 1.

Effective January 1, 2012, the employer shall provide the following medical insurance

coverage and benefits:

Deductible at \$1,250.00 individual / \$2,500.00 family - In Network
Deductible at \$2,500.00 individual / \$5,000.00 family - Out of Network
Co-pay at twenty (20%) percent \$750.00 individual, \$1,500.00 family - In Network
Co-pay at forty (40%) percent \$1,500.00 individual, \$3,000.00 family - Out of Network
Total out of pocket at \$2,000.00 individual, \$4,000.00 family - In Network
Total out of pocket at \$4,000.00 individual, \$8,000.00 family - Out of Network
Emergency Room \$50.00 if non-life threatening/Emergency Room \$0 if life threatening
Urgent Care at \$25.00 co-pay
Doctor's office visits at \$10.00 per visit - In Network
Doctor's office visits Per Major Medical - Out of Network
Prescriptions - retail at \$5.00 generic / \$15.00 brand - 90 Day Supply
Prescriptions - mail at \$5.00 generic / \$15.00 brand - 90 Day Supply

NOTE: \$50.00 non-life threatening emergency room; \$5.00/\$15.00 prescriptions; and \$10.00 doctor's office visits are not applied toward out of pocket caps. Dental and vision insurance shall remain unchanged.

NOTE: Healthy Reward Credits Applied Toward Deductibles as Follows:

Completion of City's Wellness Program; individual \$500.00; family \$1,000.00

Abstinence from Tobacco in any form; individual \$500.00; family \$1,000.00

Healthy Reward Credits available after individual satisfies \$250.00 deductible or family satisfies \$500.00 of the deductible.

Section 2.

Effective January 1, 2015, if an Aurora employee's spouse works and is eligible for insurance coverage through his/her employer's medical, dental or other insurance plan, or is eligible for insurance under a retirement system plan, then primary coverage must be carried with the primary employer or retirement system of each spouse in order for an employee to be eligible for such insurance coverage under the City of Aurora's Plan.

Section 3.

Eligible dependents, other than an employee's spouse, may be covered by the insurance coverage of the spouse or the insurance coverage of the employee. The decision regarding which insurance coverage shall be used for eligible dependents is at the employee's discretion but any such decision shall be applicable for the entire calendar year(s).

Section 4.

In the calendar year, eligible dependents for which the Aurora employee has a

formal, legal responsibility for the primary medical insurance coverage will continue to be eligible under Aurora's Plan.

Section 5.

The employee must notify the plan administrator immediately in writing of the commencement of such group health coverage for the spouse and other dependents for eligibility determination(s) under this provision

Section 6.

Effective January 1, 2015, an employee shall contribute (3.0%) three percent of the total annual cost of his/her medical insurance coverage and benefits. The employee(s) contributions(s) shall be deducted in the appropriate amount(s) per pay period.

Effective January 1, 2016, an employee shall contribute (6.0%) six percent of the total annual cost of his/her medical insurance coverage and benefits. The employee(s) contribution(s) shall be deducted in the appropriate amount(s) per pay period.

Section 7.

The employees' contributions in Section 6 above shall not exceed the amounts contained in Appendix 1, attached. Any costs incurred under Section 2, or any payments made under Section 6, shall not be included in the total out-of-pocket calculations referenced in Section 1.

Section 8.

Newly hired employees will be eligible for medical insurance and benefits thirty (30) days after their date of hire.

Section 9.

Life insurance - The City shall provide for all the full-time members of the bargaining unit a life insurance plan of Twenty-Five Thousand Dollars (\$25,000.00).

The City argues that as in the past the bargaining unit should follow the settlement pattern established by other bargaining units in the City related to Article 29, Compensation, and Article 30, Hospitalization. The Employer points out that other City bargaining units represented by the OPBA, namely the Police Officers and the Dispatchers, who in number are larger than the Sergeants bargaining unit have *"negotiated, ratified, and approved their respective successor labor agreements."* (p. 2 of City's Pre-hearing Position Statement) The settlements reached in these negotiations resulted in above average wage increases and changes in health care cost allocations, argues the Employer.

In the area of compensation, the Employer is proposing the same pay as provided for in

Article 29's automatic 12% differential that first became effective with the current Agreement, but is arguing the differential language should be removed as a result of the unintended consequences that took place in the instant negotiations.

In its Pre-hearing Position Statement the Employer supports its position as follows:

"It is accepted by most labor practitioners that an Employer is required to maintain the current terms and conditions of a labor contract until the parties reach a new agreement. It is also accepted that a Conciliator (and presumably a Fact-Finder) cannot award increases in rates of compensations and other matters with cost implications that would be effective during the current the current fiscal year. The end result of superimposing these two labor principles on the Sergeants' current contract language is that it creates an unintended consequence whereby the Sergeants are economically encouraged to delay all future negotiations. It is undisputed that the Sergeants received their twelve percent (12%) rank differential wage increase on January 1, 2014. It is also undisputed that the Sergeants now seek to avoid, or delay by one year, the concessions in healthcare that were made in conjunction with the Police Officers' wage increase that is the base for the Sergeants' rank differential.

RELEVANT LAW

R.C. §4117.14 governs the settlement of disputes between Public Employers and unions such as the OPBA. The following is submitted for the Fact-Finder's consideration:

- The following guidelines apply to fact-finding...in making recommendations the Fact-finder shall take into consideration the factors listed in divisions (G) (7) (a) to (f) of this section. [R.C. 4117.14*
- The interests and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service. [R.C.4117.14(G)(7)(C)(4)(e)]*
- Increases in rates of compensation and other matters with cost implications awarded by the conciliator may be effective only at the start of the fiscal year next... [R.C.4117.14(G)(11)].*

*STATE EMPLOYMENT RELATIONS BOARD
SERB CASE NO: 2013-MED-09-0976
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In terms of its health care proposal the Employer argues that in its bargaining history with the Sergeants' bargaining unit it has always provided the same health care coverage to all three of its OPBA bargaining units and the bargaining unit's position to now

depart from this pattern and to seek health care benefits different than those provided to other police personnel is not supported by the facts.

ARTICLE 29: COMPENSATION

UNION: The **Union** is proposing to maintain current language in Article 29, Compensation. It wishes to maintain the current language that it negotiated in the last round of negotiations and which established a 12% differential between the highest paid Police Officer's pay and a Sergeant's pay. The Union points out in its Pre-hearing Position Statement the following regarding Article 29:

"During the initial negotiation meeting, the Sergeants unit objected to the City's proposed modification of the healthcare article that required employees to contribute toward the premium and also excluded spouses from coverage. As a result of that objection, the City proposed to remove the differential language." The Union opposes the modification." (p. 3, Union's Pre-hearing Position Statement)

ARTICLE 30: HOSPITALIZATION

As with Compensation the Union proposes to maintain the status quo of 100 % coverage.

The Union argues that the City is in very good financial condition and should maintain this benefit for the bargaining unit. It opposes any modification from current language.

DISCUSSION: Regarding compensation, the parties do not disagree as to the amount Sergeants should be paid during the life of the Agreement, but the City argues that the change from an established amount of compensation over three (3) years for Sergeants to a negotiated percentage above that of the highest paid Police Officer has resulted in the unintended consequences of the Sergeants receiving an automatic pay increase even though they did not reach a settlement in negotiations with the City. The Union argues that the bargaining unit negotiated a change to a percentage, which is commonly found in labor

agreements covering higher ranking police personnel. The data clearly establishes the Sergeants in the bargaining unit receive a very competitive wage when compared to other sergeants in comparable municipalities. (See City Ex.A) It is also noted that the existence of a rank differential, while not uncommon, is far from uniformly applied in neighboring jurisdictions. The City's argument regarding the "Catch 22" unintended consequences regarding the automatic compensation percentage increase vis à vis the imposition of health care contributions in this particular situation is troubling. It is also clear, as strongly argued by the Union's advocate, that consideration should be given to bargaining history when the bargaining unit in the last round of negotiations negotiated the establishment of an automatic differential in good faith. In the experience of this fact finder, differentials can be a useful benchmark in separating the work and pay between ranks, providing they are not misused to undermine the bargaining process. The fact finding also took note of the fact that no member of the bargaining unit appeared at the fact finder hearing and there was no reasonable explanation for this absence. In the history of this fact finder's work, which spans the entire length of the Collective Bargaining Law in Ohio, this was the first time not a single member of a bargaining team for either side showed up for a fact finding or conciliation hearing.

Hospitalization coverage, particularly for cities with a small number of employees, is commonly applied uniformly for a number of sound reasons, not the least of which is controlling costs for the best coverage. The facts indicate the current plan coverage is competitive and comprehensive when compared to other like jurisdictions. (See City Ex. B) Also, the fact that internal comparable bargaining units, particularly the Police Officer and Dispatchers units, who are represented by the same bargaining agent, agreed to the City's proposed changes strongly supports the City's position in this matter. The percentage

increase proposed by the City of 3% in 2015 and 6% in 2016, while representing a marked departure from fully paid health insurance are relatively modest when compared to higher premiums paid by the majority of public employees in Ohio jurisdictions. Regardless of opinion or position, the fact is that a vast majority of employees in both the public and private sector pay a portion of their health care premium. However, in the experience of the fact finder in jurisdictions where public employers are fortunate to have considerable revenue, the percentage of health insurance premium paid by employers is usually higher when compared with employees who work in public entities with less revenue, and the plans they have are frequently more comprehensive. The facts support the City's desire to have employees pay a reasonable and graduated portion of their health insurance premium over the next three (3) years. Health insurance should not be a labor vs management issue; it is best managed when understood and realistically viewed as a joint labor and management concern with the goal of maintaining affordable and comprehensive health coverage as a matter of necessity.

RECOMMENDATION (bold/cross out, including any prior TAs):

ISSUE 1: ARTICLE 29 COMPENSATION

Section 1. (Replaces current Section 1 and 2)

Effective **January 1, 2014**, the Sergeants rate of pay shall be Twelve percent (12%) above the highest paid patrol officer, **based upon annual patrol officer pay rates effective through December 31, 2016.**

Sections 2, 3, 4 (formerly 3, 4, 5) remain as current language, unless otherwise tentatively agreed to outside of fact finding.

ISSUE 2: ARTICLE 30: HOSPITALIZATION

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Section 4.

In the calendar year, eligible dependents for which the Aurora employee has a formal, legal responsibility for the primary medical insurance coverage will continue to be eligible under Aurora's Plan.

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Section 8.

Newly hired employees will be eligible for medical insurance and benefits thirty (30) days after their date of hire.

Section 9. (formerly Section 2)

Life insurance - The City shall provide for all the full-time members of the bargaining unit a life insurance plan of Twenty-Five Thousand Dollars (\$25,000.00).

TENTATIVE AGREEMENT

Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

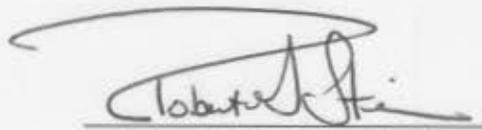
The fact finder respectfully submits the above recommendations to the parties this ____ day of May 2014 in Portage County, Ohio.

Robert G. Stein, Fact finder

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Any tentative agreements reached by the parties as well as any current language that is not changed or not addressed above shall be considered to be recommended in the successor Collective Bargaining Agreement.

The fact finder respectfully submits the above recommendations to the parties this 22nd day of May 2014 in Portage County, Ohio.

A handwritten signature in black ink, appearing to read "Robert G. Stein", written over a horizontal line.

Robert G. Stein, Fact finder