

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

In Regard To The Matter Of The Fact-Finding Between:

THE CITY OF NEW FRANKLIN) CASE NO(S):
) 2016-MED-07-0683 & 0684
 -AND-)
)
OHIO PATROLMEN'S BENEVOLENT)
ASSOCIATION)

REPRESENTATION:

For The City:

Patrick J. Hoban, Esq., Attorney

For The Association:

Jeff Perry, Esq., Attorney

BEFORE ALAN MILES RUBEN, FACT-FINDER

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BACKGROUND:

The City of New Franklin, population 14,222 as of the 2010 Census, is a residential community located in Summit County, Ohio, south of the City of Akron. New Franklin was incorporated in 1997 as a "Village" and merged with the surrounding Franklin Township to become a "City" on March 5, 2006.

The City's nine full-time Patrol Officers form a Bargaining Unit represented by the Ohio Patrolmen's Benevolent Association. Two full-time Police Sergeants and one full-time Police Lieutenant, form a second Unit which is represented by the same Union.

Both Units are parties to a single Collective Bargaining Agreement, entered into as of October 1, 2013 for an initial term which expired on September 30, 2016.

The parties met several times to negotiate a successor Agreement, but were unsuccessful.

The parties declared impasse, and on April 3, 2017, the undersigned was appointed Fact-Finder by the State Employment Relations Board to conduct a hearing and serve

the parties with a written Report of his Findings and Recommendations.

At the direction of the parties, an evidentiary hearing was held on May 23, 2017 at the City's Administrative Building.

Timely in advance of the hearing, the parties provided the Fact-Finder with the statement required by Ohio Revised Code Section 4117.14(C)(3)(a), and Ohio Administrative Code 4117-9-05(F).

Prior to the evidentiary presentation the Fact-Finder attempted to mediate the disputes, but was unsuccessful.

However, the parties tentatively agreed to carry forward and incorporate into the new Agreement, mutatis mutandis, all Articles, Appendicies and Memoranda from the prior Agreement except those listed below. The Fact-Finder finds appropriate and recommends the adoption of all of these tentative Agreements.

The following contested proposals of the parties for inclusion in the successor Agreement have been submitted to the Fact-Finder for his recommendations.

The City proposes amendments to Article 13 "Duty Hours"; Article 17 "Holidays"; Article 29 "Paychecks"; Article 28 "Hospitalization"; Article 30 "Wages" and Article 37 "Duration of Agreement".

The Union seeks to modify Article 8 "Employee Rights/Corrective Action"; Article 17 "Holidays"; Article 18 "Vacations"; Article 20 "Sick Leave"; Article 30 "Wages" and Article 37 "Duration of the Agreement".

A series of other proposals to add new provisions and to amend other Articles and Sections of Articles of the expired Contract were withdrawn by the parties and are deemed to have been abandoned.

The City offered the following evidentiary, exhibits and explanatory comments in support of its proposals for inclusion in the new Contract:

A City of Green Councilmanic Resolution opposing the construction and routing through the City of the proposed Nexus High Pressure Natural Gas Transmission Pipeline. (A copy of the Resolution was forwarded to the Federal Energy Regulatory Commission); an April 11, 2017 City of Green Councilmanic Resolution appropriating \$10,000.00 to a 501(C)(3) non-profit organization to support the rerouting of the Nexus Pipeline; a New Franklin Councilmanic Resolution, introduced on June 3, 2015, "supporting the alternative route for the Nexus Pipeline; a complaint filed by residents of New Franklin and other communities "for injunctive and declaratory relief" against the installation of the natural gas pipeline through their jurisdictions; analyses of New Franklin's finances prepared by its Finance Director, Susan Cooke; a survey of the City's tax levy receipts and the balances of the General Fund and other Funds; an analysis of the City's health insurance costs, and a study of the value of City's and Union's proposals.

In addition, the City presented the testimony of Finance Director, Susan Cooke and of its health insurance Consultant, Mr. Tim T. Jones.

The Union introduced a New Franklin Fact-Finding Report issued a October 4, 2010; a 2016 SERB Ohio wage settlement report; comparative reports of the 2016 compensation and benefits paid by Communities in Summit County and the surrounding areas to Patrol Officers, Police Sergeants and Police Lieutenants who have ten years seniority; a comparison of Police Officers' "pension pick-up" by Communities in Summit County; a compilation of data on New Franklin's financial resources, employment and payrolls; the current Contract between the City and the Union representing its Firefighters; a comparative analysis of the wages paid to Firefighter-Paramedics in New Franklin; a table portraying the paid time-off for New Franklin Firefighters; comparative economic data in Communities in Summit County and the surrounding region; a survey of the allowable sick days and sick leave time-off for

Firefighters in New Franklin; a survey of hours worked by New Franklin Firefighters; a comparison of the annual available "sell back" of unused sick leave time by New Franklin Firefighters and by Police Officers; a comparison of the sick leave entitlements of New Franklin Police Officers and Firefighters; a study of the potential cost to the City of the Union's proposals.

Economic data supplied by both parties included the City's comprehensive, audited 2014, 2105 and 2016 financial reports.

In making his analysis of the evidence and his recommendations upon the unresolved issues, the Fact-Finder has been guided by the factors set forth in O.R.C. Section 4117.14(C)(4)(e) and Ohio Administrative Code 4117-9-05(K) namely:

"(a). past collectively bargained agreements, if any, between the parties;

"(b). comparison of the issues submitted to final offer settlement relative to the employees in the bargaining unit involved with those issues related to other public and private employees doing comparable work, giving

consideration to factors peculiar to the area and classification involved;

"(c). the interest and welfare of the public, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;

"(d). the lawful authority of the public employer;

"(e). the stipulation of the parties;

"(f). such other facts, not confined to those listed in this section, which are normally or traditionally taken into consideration in the determination of the issues submitted to final offer settlement through voluntary collective bargaining, mediation, fact-finding, or other impasse resolution proceedings in the public service or private employment."

CONTRACT PROVISIONS AT ISSUE:

ARTICLE 8, SECTION 5 -"EMPLOYEE RIGHTS/CORRECTIVE ACTION",

THE EXPIRED CONTRACT:

Article 8, Section 5, "Employee Rights/Corrective Action" provision the expired Contract states:

"Section 5: Any employee who refuses to answer questions by the Employer or refuses to participate in an investigation shall be advised that such refusal is a violation of the work rules, policies, and procedures of the Employer and that continued refusal may subject him

to disciplinary actions at the discretion of the Chief or his designee. However, no employee shall be required to submit to any interrogation, participate in any investigation or attend any disciplinary meeting or hearing without being apprised of his right to have a Union representative present”.

THE UNION’S PROPOSAL:

The Union proposes to add to Section 5 the following sentence:

“Employees and their representative(s) shall have the right to review and discuss all documents and videos prior to making any statement”.

THE CITY’S PROPOSAL:

The City accepts the Union’s proposal for preliminary review of documentary materials and video recordings by an Officer possibly subject to charges of misconduct in the carrying-out of official duties. It proposes to resolve a “drafting ambiguity” by providing employees and their representative(s) with the right to review and discuss “body camera” video prior to an Officer making a statement.

THE FACT-FINDER’S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City offers no persuasive reason to deny the Union's request. The Union's proposal is consistent with discovery in criminal proceedings, and does not interfere with the City's investigation of potential misconduct.

Accordingly, the Fact-Finder finds appropriate and recommends the adoption of Union's proposal with a slight modification:

"Employees and their representatives shall have the right to review all relevant documents, and all pertinent body camera and patrol car camera videos prior to making any statements".

ARTICLE 13 - "DUTY HOURS", SECTIONS 3 AND 4,

THE EXPIRED CONTRACT:

Article 13, Sections 3 and 4, presently reads as follows:

"Section 3: Subject to Section 4 of this Article, employees who are required to work by the Employer more than forty (40) hours in a seven (7) day work period shall be entitled to overtime compensation at time and one-half (1½) their regular base rate of pay for all hours in active pay status in excess of the forty (40) hour maximum. A record of all overtime hours worked or refused shall be maintained by the Employer. Overtime shall be offered to the low hour eligible employee. When an employee refuses overtime he will be charged the amount of hours he refused. When filling a shift vacancy the hours will be offered in 4 hour blocks (the first 4

hours to the preceding shift and the second four hours to the succeeding shift)."

"Section 4: Any employee may accumulate compensatory time off at the rate of one and one-half hours off for each hour of overtime in lieu of overtime pay for all authorized overtime worked in accordance with Section 3 herein: If the employee wishes to request compensatory time he shall designate this request in writing to the Employer prior to the end of the pay period in which the overtime is worked. The initial one and one-quarter (1 ¼) hours of possible authorized overtime per week (comprised of up to five (5) segments of one-quarter (1/4) hour worked over eight (8) hours each day), however, may be designated as compensatory time for the entire term of this Agreement by an employee executing and submitting an agreed upon form. Compensatory time shall be taken at a time mutually convenient to the employee and the Employer. Employees may not be permitted to accumulate over four hundred (400) hours yearly of compensatory time at any one time".

THE CITY'S PROPOSAL:

The City seeks to modify Section 3 of Article 13, "Duty Hours" by increasing the minimum number of hours an employee is required to work in a week from 40 to 43 hours before being entitled to overtime compensation. It would also delete the last 3 sentences of Section 4 regarding authorized overtime:

THE UNION'S PROPOSAL:

The Union wishes to retain Article 13 without change.

**THE FACT-FINDER'S ANALYSIS, FINDINGS AND
RECOMMENDATIONS:**

Federal Law exempts Police Officers from mandatory overtime payments until a threshold of forty-three hours of work in a seven day period is exceeded. (See, 29 C.F.R. 553.230). The current forty hour overtime threshold provides Officers with some \$2,547.00 in additional annual compensation and employer pension contributions. The City estimates that its elimination would save approximately \$30,000.00 a year. However, it would significantly reduce Officers' take-home pay at a time when they are being paid well below the average compensation available in comparable communities.

The Fact-Finder concludes that the City's proposal to reduce overtime payments would be unfair to Police Officers while continuation of the proposed limit is supportable by the City's revenue stream.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 13 be incorporated into the successor Agreement without change.

ARTICLE 17 - "HOLIDAYS",
SECTIONS 17.1; 17.3 & 17.4

THE EXPIRED CONTRACT:

Article 17, "Holidays", Sections 17.1, 17.3 and Section 17.4, read as follows:

"Section 1: For each of the below designated holidays, each employee shall be entitled to eight (8) hours of holiday pay, at his regular base rate of pay. These eighty (80) hours shall be placed in a bank on January 1st and may be utilized throughout the calendar year by employees scheduling time-off in increments of one (1) hour or more. An employee who terminates employment for any reason and who has taken holiday hours in advance of the dates that holiday hours would have been earned during the contract year, shall reimburse the Employer in an amount equal to the employee's regular rate of pay for such hours. Repayment shall be made through direct payment or payroll deduction from the employee's separation compensation, if any.

...

"Section 3: Employees shall be allowed to sell back to the Employer, at the employee's regular rate of pay, no more than seven (7) accumulated holidays in any given calendar year. Such request shall be made to the Chief, and shall be noted on the employee's time slip.

"Section 4: In addition to the eighty (80) hours specified above in Section 1, employees shall have twenty-four (24) hours in lieu of three (3) personal days off per year added to the pay bank. These one hundred four (104) hours shall be usable in increments of one (1) hour or more upon notice to the Chief".

THE UNION'S PROPOSAL:

The Union proposes to increase the number of holiday hours earned each year from 80 to 100 hours.

The Union also proposes to increase the number of holidays that can be "cashed-in" from the present limit of seven to ten.

THE CITY'S PROPOSAL:

The City opposes any increase in the number of holiday hours. Instead, the City seeks to eliminate the three personal days-off currently provided Officers by deleting Section 4 in its entirety.

THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City notes that only four of the allegedly comparable communities allow employees to cash-in unused holiday time. However, as the Fact-Finder has already pointed-out, the average compensation paid Officers by comparable communities is significantly higher than that offered by New Franklin.

Consequently, the Fact-Finder does not find the City's proposal which would reduce Officers' compensation to be worthy of favorable consideration.

The Union points-out that the Firefighters' schedule requires them to work twenty-four hours on duty and then forty-eight hours off duty. This, so the Union asserts, means that the Firefighters are scheduled to work on approximately one third of the Contract specified holidays whereas Police Officers are scheduled on-duty on approximately five out of seven holidays. Furthermore, since Firefighters receive 240 holiday hours annually, the Union seeks to move towards "parity" by increasing the number of holiday hours earned each year from the current 80 hours to 100 hours.

The Fact-Finder does not find merit in the Union's attempt to achieve parity with the Firefighters because their work schedules are entirely different from those of the Police Officers.

Accordingly, the Fact-Finder finds appropriate and recommends that Article 17 be carried forward into the successor Contract without change.

ARTICLE 20 - "SICK LEAVE",

SECTIONS 2, 6 AND 7:

THE EXPIRED CONTRACT:

Article 20, "Sick Leave", Sections 2, 6 and 7 read as follows:

"Section 2: Upon retirement, an employee shall be entitled to be compensated with pay for up to fifty percent (50%) of his or her total accumulated sick leave. An Officer with ten (10) years of service or more, who is no longer employed by the City, but does not retire, shall be compensated at 20% of accumulated sick leave. An employee shall not be paid for more than two hundred (200) days of sick leave upon retirement or other separation of employment.

"Section 6: All employees who qualify for the following incentives shall be compensated the first pay in December of each year:

"No sick day used in one year period - \$500.00;

"One sick day used in one year period - \$400.00, and

"Two sick days used in one year period - \$300.00.

"For purposes of this Section, the one year period shall be computed from December 1, 2002, and each subsequent December 1st.

"Section 7: If a federal, state or local law, statute or regulation is passed or implemented that requires sick leave be provided to employees, this Agreement may be re-

opened by providing written notice to SERB and to the other party. The re-opener would be for the limited purpose of negotiating the benefits set forth in this Article".

THE UNION'S PROPOSAL:

The Union seeks to increase payout of accumulated sick leave upon the retirement or separation from service from 50% to 60% of up to 1700 hours. It would also add the following sentence to Section 6:

"An employee who has at least 300 hours of sick time on December 1st, may cash-out what was earned, but not used, during the year in the first full week of the following January. Such payment shall not count as use of sick time for the sick leave incentive".

The Union would also permit "borrowing" of sick leave entitlements from one or more employees when the borrowing employee lacks available sick leave to cover a period of absence.

THE CITY'S PROPOSAL:

The City would maintain Article 20 without change.

THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The Union points-out that Firefighters' may cash-out their full value of up to 825 hours of their accumulated

sick leave, whereas, Police Officers can be paid only up to 800 hours, but at 50% of their actual value.

The Fact-Finder has already observed that the Firefighters' schedule is so radically different from that of the Police, as to make the comparability requests of the Union unpersuasive.

Nevertheless, the City does not contend that a modest improvement in the cash-out values would materially prejudice its financial condition.

The Fact-Finder finds appropriate and recommends that the Section 2 of Article 20 of the expired Contract be amended to increase the value of the payout of accumulated sick leave from 50% to 60% and the total number of days from 200 to 216.5. He also finds appropriate and recommends the Union's proposal to permit "borrowing" of available sick leave entitlements from fellow Officers.

ARTICLE 28 - "HOSPITALIZATION"

THE EXPIRED CONTRACT:

Section 1 of Article 28, "Hospitalization", designates Emerald Health as the insurance provider.

Pursuant to Section 2, each employee (choosing single coverage) is subject to a deductible of \$250.00 for "in-network" services and \$500.00 for "out-of-network" services and to a \$125.00 co-payment for all Emergency Room visits.

For "family coverage", the deductibles increase to \$500.00 for "in-network" services and \$1,000.00 for "out-of-network" services.

Prescription drug co-payments require \$5.00 for the purchase of a generic drug, \$20.00 for the purchase of a "brand" formulary drug and a \$35.00 co-payment for a non-formulary drug. Mail order service is required for prescription orders of more than 21 days.

Pursuant to Sections 4, 5 and 6, prescribed occupational therapy, speech therapy and physical therapy are each limited to twenty visits per year, and each is subject to a \$10.00 per visit co-payment.

Under Section 7, if the cost of hospitalization insurance increases by more than 10% in any one year, the Article is subject to being reopened.

Under Section 8, eligibility of Bargaining Unit members and their dependents for coverage is subject to restrictions imposed by the insurance provider.

In Section 9, the City agrees to provide, without charge, \$50,000.00 of life insurance coverage to each Bargaining Unit member.

Section 10 states that if any legislation or regulation is adopted during the term of the Agreement which requires a revision or addition to the hospitalization plan, the Agreement may be reopened upon written notice to SERB and to the other party.

THE CITY'S PROPOSAL:

The City proposes to replace Sections 2 through 7 of Article 28 so as to require, effective as of June 1, 2017, employee contribution through payroll deduction, of up to 10% of the cost of the equivalent "Cobra" premium

rate, or the fully-insured premium rate for all health care coverage.

As of January 1, 2018, employees would be required to contribute by payroll deduction up to 12% of the cost of the Cobra rate premium equivalent.

In Section 3 the City would require employees to pay up to amounts indicated for the following "in-network" categories of service:

- a. Up to \$750.00 annual deductible for single coverage and up to \$1500.00 for family coverage;
- b. Up to 20% co-insurance;
- c. Annual maximum out-of-pocket in-network: Up to \$1500.00 for single coverage and \$3,000.00 for family coverage;
- d. Up to \$150.00 co-payment for Emergency Room service (waived if admitted). Up to \$150.00 co-payment, plus co-insurance for non-emergency room use;
- e. Up to \$65.00 co-payment for Urgent Care visits;
- f. Co-payment of up to \$20.00 for non-specialist physician office visit and up to \$30.00 for specialist physician visit;
- g. Prescription drugs, up to \$10.00 for generic drugs, up to \$25.00 for name brand formulary drugs, up to \$40.00 for name brand non-formulary drugs, and up to \$200.00 for specialty drugs;
- h. All other plan design and coverage terms are to be established by the carrier.

In Section 4, the City is allowed to offer an alternative, high deductible health insurance plan.

In Section 5, the spouse of an employee who is eligible for insurance coverage from another employer, but who elects to be covered under the City's plan would be assessed a monthly surcharge of up to \$100.00.

Under Section 6, the City may offer a wellness program which provides employees with discounts and other incentives.

In Section 7, the City would be allowed to create a Health Insurance Committee comprised of representatives of its Union-represented and non-represented employees to provide recommendations on health insurance coverage issues.

THE UNION'S PROPOSAL:

The Union wishes to maintain the current language of Article 28 and asserts that it has traditionally been subject to the same insurance provisions as are applicable to members of other Bargaining Units. Recognizing that the lack of a requirement of any contribution by its members towards the cost of health

insurance premiums is rare in Ohio's public service, the Union points-out that the compensation paid to its members is significantly less than that available in comparable communities so that the absence of any employee premium contribution is, in part, an alternative to higher wage rates.

**THE FACT-FINDER'S ANALYSIS, FINDINGS AND
RECOMMENDATIONS:**

The Fact-Finder understands that it is the City's intention to bargain for the same insurance terms with the other Unions, as well as to impose those terms upon the unrepresented employees.

The City of New Franklin self-insures its employee through a "preferred providers" health plan. As of the end of 2016 the City's plan had enrolled fifty-seven employees and ninety-seven dependents for a total of 154 members.

The City has purchased both general and specific individual (laser) "stop loss" coverage for its health insurance plan. The stop loss coverage begins at \$30,000.00 per "lasered" member, and the aggregate stop-

loss protection is set at 125% of the estimated total expenditure.

The City's health insurance consultant, Kenneth Jones, averred that the City can anticipate an increase in health insurance costs in 2017 of at least \$70,000.00.

The Fact-Finder believes that the absence of a required employee premium contribution tends to foster overutilization of benefits, and that treating different groups of employees differently tends to foster subsidization by the un-favored group. Furthermore, offering a diversity of insurance plans tends to increase administrative costs.

Economic data presented by the City makes a persuasive case for requiring employee subvention of the cost of health insurance.

In 2008, the expenditures from the City's self-insurance fund amounted to \$774,077.45, leaving a carryover balance of \$108,168.85 or 13.9% of the annual health insurance expenditures.

By the end of 2016, however, health insurance expenditures had increased by 17% over that of the 2015 plan year. As a result, the City's self-insurance fund balance was reduced from an average of 18% of annual expenditures over the period 2008-2015 to only 4.5% as of the end of 2016, with a balance of only \$48,906.00.

The decline in the City's insurance reserves, since "Stop Loss" coverage requires the City to pay all claims first and then seek reimbursement from the insurer.

The members of the Police Department do not contribute to the premium cost of the health insurance plan. In contrast, for all cities in Ohio, the average percentage of health insurance cost paid by employees is 12.3% for single coverage and 13.2% for family coverage. The Ohio average single plan deductible is \$500.00 while the family deductible state-wide average is \$900.00.

The median Ohio employee "out-of-pocket" maximum is \$2,000.00 for single coverage and \$4,000.00 for family coverage.

The fact is that Union members pay some \$1,574.00 less for single coverage, and \$3,516.00 less for family coverage annually than employees in comparable communities. Provisions of the City's proposal - imposition of a spousal surcharge, the discretionary implementation of a high deductible plan and the creation of a joint Management-Union health care committee - are common and constitute worthwhile additions.

The Fact-Finder finds appropriate and recommends adoption of the City's proposal subject, however, to the following "me too" provision, in the event that any Bargaining Unit or group of non-represented employees receive a health insurance program which contains more favorable benefits or requires less cost sharing than that offered to the members of the Police Unit.

"If the health insurance program offered to any other Bargaining Unit or group of non-represented employees contains benefits superior to those provided to Police Officers or requires less contribution towards the cost of such insurance, then, such additional benefits and/or reduced cost sharing shall be forthwith offered to members of the Police Officers' Unit".

ARTICLE 29 - "PAYCHECKS":

THE EXPIRED CONTRACT:

Article 29, "Paychecks" reads as follows:

"Section 1: Each employee shall be paid on a bi-weekly basis pursuant to the practice in effect upon the signing of this Agreement.

"Section 2: Paychecks shall be available to the employees no later than 4:30 p.m. each pay Friday".

THE CITY'S PROPOSAL:

The City want to add a new Section 3 to Article 29 which would read:

"Section 3: The City may pay employees by check, direct deposit or pay card in its discretion".

THE UNION'S PROPOSAL:

The Union wishes to retain the current language.

THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

The City asserts that its proposal will reduce its payroll processing costs, without delaying the timely receipt by employees of the compensation they are due.

The asserted cost saving which would be achieved by adoption of the City's proposal has not been estimated, but is unlikely to be substantial.

Payment by check or direct deposit is customary in both private and public sector employment. However, payment by "pay card" has not yet achieved similar widespread acceptance and may create some unnecessary complications for employees.

Accordingly, the Fact-Finder finds appropriate and recommends that a new Section 3 be added to Article 29 to read as follows:

"Section 3: The City, in its discretion, may pay employees by check or direct deposit".

ARTICLE 30 - "WAGES":

THE EXPIRED CONTRACT:

Article 30, "Wages" reads as follows:

"Section 1: Effective October 1, 2013, each employee not subject to a new hire probationary period shall be entitled to annual compensation pursuant to the following schedule:

"	<u>10/1/2013</u>	<u>10/1/2015</u>
"Start:	\$36,385.03	\$37,112.73
"After 1 Year	\$39,008.13	\$39,788.29
"After 2 Years	\$41,631.22	\$42,463.84
"After 3 Years	\$44,254.33	\$45,139.42
"After 4 Years	\$53,302.34	\$54,368.39
"Corporal	\$56,539.42	\$57,670.21
"Sergeant	\$59,775.85	\$60,971.37
"Lieutenant	\$64,686.31	\$65,980.04

"For purposes of this provision, years of service shall be defined as years of service spent by the employee as a full-time law enforcement officer. See attached memorandum of understanding regarding lump sum payments.

"Section 2: PERS Pick-Up. The employer will 'pick-up' or pay 4% of the employee's share of the contribution to PERS, the OPF or the FPF, whichever is applicable.

"Section 3: An employee working in the capacity of Acting Chief will be paid an additional five percent (5%) of wages for all hours worked during all appointments to that status. Appointments to Acting Chief will be made when the Chief is off-duty for three (3) or more consecutive workdays".

THE CITY'S PROPOSAL:

The City offers a wage increase of 1.5% effective as of the date of ratification and an additional 1% increase effective on October 1, 2017.

The City would also amend Section 2 to read:

"PERS Pick-Up the Employer will 'pick-up' or pay two percent (2%) of the employee's share of the contribution to PERS, OPF, whichever is applicable".

THE UNION'S PROPOSAL:

The Union asks for a 3.5% increase in wages in each year of a three year Contract term, effective as of October 1, 2016. It also seeks an additional 2% "Pension

Pick-Up" to mirror the pension pick-up given to Firefighters in their current Contract.

THE FACT-FINDER'S ANALYSIS, FINDINGS AND RECOMMENDATIONS:

Taking one thing with another, a Fact-Finder's lot is not a happy one.

The Union cogently argues that its wages are significantly below the amount paid by comparable communities and, less than that paid to the City's Firefighters.

The significant differences between the two occupations impels the Fact-Finder to give more consideration to the compensation received by Patrol Officers in comparable communities than to the compensation paid to the New Franklin Firefighters.

The 2017 "top level wage and benefits" paid to a New Franklin Patrol Officer, (\$61,469.93) ranks the City twentieth among twenty-nine communities the City deems to be comparable. The City's "benefit" calculation includes scheduled overtime, longevity pay, uniform

maintenance allowance, shift differential, shooting proficiency forward/fitness, forward/LEADS payments, and pension pick-up.¹

As of September 30, 2016, the total value of the foregoing wages and benefits offered New Franklin Police amounted to \$61,469.93 while the average for the City's list of comparable communities group totaled \$64,707.99.

For Police Sergeants, New Franklin's 2017 top level wage and benefit compensation placed its Sergeants twenty-second out of the foregoing twenty-eight communities. New Franklin's average Sergeants' compensation amounted to \$68,799.43 while the average in the City's proposed group of comparable communities was \$74,125.65.

¹The Fact-Finder notes that not all employees share in the shift differential and it is problematic whether overtime should be included as a unit "benefit". Furthermore, the Union argues that the City's list of comparable communities includes Townships and several significantly smaller cities which are not comparable to the City of New Franklin.

Of the eleven communities which employ Officers in the rank of Lieutenant, New Franklin ranked tenth, with an average compensation of \$74,321.34. The average compensation of Police Lieutenants for the group of eleven, was \$84,093.78.

These comparative statistics offered by the City support the Union's demand for a significant wage increase.

In its turn, the City points-out that its financial condition limits its ability to pay and does not permit the increases sought by the Union.

The Union's proposal for annual 3.5% increases would cost an additional \$93,000.00 - almost \$10,000.00 more than the General Fund's ending balance for 2016.

As of December 31, 2015, New Franklin's General Fund cash balance was \$106,058.00. By year end 2016, the General Fund cash balance amounted to only \$84,251.00 (39% of 2016 expenditures). This situation represents a

continuation of the annual decline in year-end, General Fund balance which began in 2010.

The Police Department's expenditures began to exceed its dedicated property tax revenues in 2010 and have since required annual General Fund subventions of between \$500,000.00 and \$725,000.00 a year.

In 2017, \$980,000.00 was budgeted from the General fund for the Police Department because of the loss of \$327,000.00 the dedicated property tax was eliminated.

Before 2017, the Police Department was supported by two dedicated property tax levies which provided 50.5% of the Department's budget and the General Fund provided 33%. In 2017, following the reduction of property tax support, 58% of Police Department support came from the General Fund.

The City has documented the fact that its General Fund Reserves have shrunk significantly over the past several years. It managed to pass a 1% income tax levy increase in 2017. However, in exchange for passage of

the increase, the City agreed to eliminate a property tax levy which was dedicated to Police Department operations, and which had produced \$327,000.00 in 2016.

Furthermore, as a result of the increase in the income tax, the fee charged by the Regional Income Tax Agency (RITA) to collect the tax is expected to increase to \$80,000.00 for 2017 and thereafter.

While the City's income tax increase from 1% to 2% became effective as of January, 2017, the City lost \$600,000.00 a year from the discontinuance of State subsidies. Moreover, since 40% of the City's income tax revenue comes from individual filers, the City will not see the full amount of the new revenue (estimated to be \$478,000.00) until April, 2018. Meanwhile, as of April, 2017, the City realized a loss of \$227,000.00 from the discontinued property tax.

The Firefighters' Union negotiated 1.5% wage increases in 2015, 2016 and 2017 and a 2% pension contribution pick-up by the City.

Making-up for the absence of wage increases in 2015 and 2016 the Police Union seeks to maintain parity with the Firefighters by seeking 3.5% increases in each of the three years.

As of April, 2017, the City had realized only a \$95,000.00 increase in General Fund revenues from collection of the additional one-percent income tax.

The Union, however, points to the prospective revenue to be received from the possible construction of a natural gas pipeline through the City. In 2014, Spectra Energy Corporation and DTEenergy proposed the construction of a Nexus High Pressure Natural Gas Transmission Pipeline from Columbiana County, Ohio to Canada. The proposed pipeline would pass through the Cities of Green and New Franklin. Environmental concerns led Summit County and both Cities to oppose the construction of the pipeline. As of the date of the Fact-Finding hearing, litigation seeking to block the construction was pending. See, e.g., Urban vs. FERC et al, case number 5:17-cv-01005 (U.S. D.C. N.D. Ohio.)

Under these circumstances, the Fact-Finder cannot conclude that the City's revenues will be increased as a result of the pipeline construction.

In considering his recommendation for compensation, the Fact-Finder takes into account that the previous Contract had expired as of September 30, 2016 - almost a year earlier. While the Union, consistent with prior practice, requests that the renewal Contract extend for a three year term, the City seeks to limit the term to August 31, 2018 coincident with the expiration date of its Firefighters' Contract.

Since the Union compares the wages and benefits it receives from the City to those given to Firefighters, the Fact-Finder finds appropriate and recommends that the Contract expire as of August 31, 2018 - coterminous with that of the Firefighters - Contract - so that the City may bargain with both units concurrently.

Balancing the City's limited "ability to pay" with the Patrol Officers' low compensation as compared with the wages and benefits offered by comparable communities,

the Fact-Finder finds appropriate and recommends that Officers in each rank receive a 4% (four percent) increase in their respective wage rates effective as of September 30, 2017, and an additional, one-time payment of a lump-sum "signing bonus" of \$500.00 as of the date of ratification of the successor Contract. The \$500.00 payment shall not be included in the Police Officers' wage scale.

ARTICLE 37 - "AGREEMENT"

THE EXPIRED CONTRACT:

Article 37, "Agreement" provides:

"Section 1: The OPBA and the Employer acknowledge that during the negotiations which preceded this Agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter not removed by law from the area of collective bargaining and that the understanding and agreements arrived at between the parties after the exercise of that right and opportunities are set forth in this Agreement. Therefore, the OPBA and the Employer for the life of this Agreement, each voluntarily and unqualifiedly waive the right and agree that the other shall not be obligated to bargain collectively with respect to any subject or matter, even though such subjects or matters may not have been within the knowledge or contemplation of either or both the parties at the time they negotiated and signed this Agreement. By mutual consent of the OPBA and the City the covenants of this paragraph may be waived for

negotiations on the Article or subject stated in the written consent request.

"Section 2: Except as otherwise provided herein, this Agreement shall be effective 12:01 a.m. on October 1, 2013, and shall remain in full force and effect until 12:00 Midnight, September 30, 2016. Written notice of the intent to negotiate a successor Agreement shall be given no later than sixty (60) calendar days prior to the expiration date of this Agreement.

"Section 3: If either party desires to modify or amend this Agreement, or to negotiate a successor Agreement, it shall give written notice of such intent no later than sixty (60) days prior to the expiration date of this Agreement".

THE UNION'S PROPOSAL:

In keeping with past negotiations, the Union seeks a three year Contract and would, accordingly, revise Section 2 to read:

"Section 2: Except as otherwise provided herein, this Agreement shall be effective 12:01 a.m. on October 1, 2016 and shall remain in full force and effect until 12:00 midnight, September 30, 2019. Written notice of the intent to negotiate a successor Agreement shall be given no later than sixty (60) calendar days prior to the expiration date of this Agreement".

THE CITY'S PROPOSAL:

The City seeks an additional one year Contract term so that the new Contract would expire as of midnight, August 31, 2018.

**THE FACT-FINDER'S ANALYSIS, FINDINGS AND
RECOMMENDATIONS:**

The Fact-Finder has already noted his approval of the City's desire to extend the Contract for only one year so that it is coterminous with the Agreement negotiated with the Firefighters' Unit. Although he recognizes that the limited term will require the parties to shortly resume negotiations, with attendant additional time and cost commitments, he also believes that the total revenues generated by the income tax increase and possibly by the construction of the gas pipeline, will become evident, and the City's future "ability to pay" will be clarified.

Accordingly, the Fact-Finder finds appropriate and recommends that the successor Contract be effective from the date of ratification by the parties and remain in full force and effect until 12:00 midnight, August 31, 2018.

The Fact-Finder's Report and Recommendations signed,
dated and issued at Cleveland, Ohio this 9th day of
August, 2017.

Respectfully submitted,

Alan Miles Ruben

Fact-Finder

AMR:l jg

August 9, 2017

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RE: SERB Case No(s): 2016-MED-07-0683 & 4
The City of New Franklin -and- OPBA
Fact-Finding

For Services Rendered:

Hearing - 5/23/17 1 day at \$950.00 per day	\$ 950.00
Mileage - Bratenahl, OH/New Franklin, OH 112 miles at \$.53 per mile	\$ 59.36
Travel Time - No Charge:	\$ 0.00
Meals - No Charge:	\$ 0.00
Duplication - No Charge:	\$ 0.00
Postage - No Charge:	\$ 0.00
Consideration and Preparation of Fact-Finding Report 4.5 days at \$950.00 per day:	<u>\$4275.00</u>
Total Amount Due:	\$5284.36
The City's Share:	\$2642.18
The Union's Share:	\$2642.18

Respectfully submitted,

Alan Miles Ruben
Fact-Finder
TAX ID NO: 189-24-1171

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