

STATE OF OHIO

STATE EMPLOYMENT
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD

2003 FEB 21 A 10: 12

In the Matter of Fact-Finding :

Between :

CITY OF PORTSMOUTH, :

Employer, :

-and- :

FRATERNAL ORDER OF POLICE, :

Lodge No. 33, :

Union. :

Case No: 02-MED-09-0885

Case No. 02-MED-09-0886

FACT FINDING AND RECOMMENDATIONS

Richard E. Gombert, Fact-Finder

APPEARANCES

For the City of Portsmouth:

Robert W. Cross
 Cross Management Consulting Services, Inc.
 631 Seventh Street
 Portsmouth, Ohio 45662

For the Fraternal Order of Police, Lodge No. 33:

Henry A. Arnett, Esq.
 Livorno & Arnett
 280 North High Street, Suite 1410
 Columbus, Ohio 43215

SUBMISSION

The undersigned was appointed Fact-Finder in this dispute on or about November 29, 2002. There was a collective bargaining agreement in full force and effect between the City of Portsmouth (hereinafter sometimes referred to as the "City" or the "Employer") and the Fraternal Order of Police, Lodge No. 33 (hereinafter sometimes referred to as the "Union," "Lodge No. 33" or "FOP"). The labor contract became effective on January 1, 2000. It expired on December 31, 2002. There are two (2) bargaining units. One unit consists of all sworn officers below the rank of sergeant. It includes twenty-six (26) employees holding the rank of patrolman or officer. The other unit consists of all sworn officers holding the rank of sergeant or above. It excludes the chief and one (1) captain. It includes eight (8) sergeants, four (4) lieutenants and one (1) captain.

The parties have negotiated intensely. They have had five (5) meetings. The parties resolved most of the issues. But, they were not able to resolve two (2) issues involving two (2) articles in the collective bargaining agreement.

The parties agreed to a fact-finding hearing on February 10, 2003. The meeting was held in a conference room in the Municipal City Building.

There were several people present at the hearings in addition to the Representatives and the Fact-Finder. They are as follows:

For the City:

Greg Bauer	Mayor
Lyn Risby	Negotiating Committee
Juanita Jewett	Negotiating Committee
Michael Blackburn	Director, Public Services

For the Union:

Jim Charles	Sergeant
Lee Bower	Officer
Lynn Brewer	Detective
Wayne Campbell	President, Lodge No. 33

The parties were not able to agree on two (2) issues involving two (2) articles. Therefore, the Fact-Finder heard evidence submitted by the parties on these points.

In rendering this Award, the Fact-Finder has given full consideration to all reliable information relevant to the issues and to all criteria specified in O.R.C. Sec. 4117.14(C) (4) (e) and Rule 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

- (1) Past collectively bargained agreements between the parties;

- (2) Comparison of the 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, 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) Stipulations of the parties;
- (6) Such other factors, 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.

ISSUES IN CONTENTION

ARTICLE 29 – HEALTH INSURANCE

Employer Position: The City believes that there should be a change in section A of this article. The last sentence should be deleted. It reads “Thereupon, the City shall pay 100% of such premiums.” It wishes to replace this sentence with language which indicates that the City will pay Three Hundred Twenty Dollars (\$320.00) per month for a single plan and Nine Hundred Ten Dollars (\$910.00) per month for a family plan for the contract year 2003. Then, there would be health insurance reopeners for the years 2004 and 2005.

Union Position: The FOP believes that the current language should be maintained for the life (i.e., three (3) years) of the new collective bargaining agreement. In short, the status quo should be maintained.

Discussion: There does not appear to be any middle ground on this issue. It is noted that the insurance carrier has given the Employer a fifteen (15) month commitment. The current premium cost is slightly less than the proposed caps in the proposed language. It will not exceed those caps during the first year. But, there is a concern about future premium costs. The City wants to be able to negotiate on this issue in 2004 and 2005.

The Union is concerned. It notes that the Employer negotiated a new labor contract with the Firefighters in the recent past. That collective bargaining agreement does not contain health insurance reopeners. So, Lodge No. 33 does not believe that it should have to accept reopeners.

The City’s financial situation is precarious. But, it should be able to continue to pay one hundred percent (100%) of the police officers’ health insurance premiums for the life of the new labor contract.

Fact-Finder Decision/Recommendation and Rationale: The FOP's argument is the better argument. It should not be compelled to negotiate on this benefit during the term of this new collective bargaining agreement when the Firefighters do not have the same obligation. There does not appear to be a valid reason to treat these two (2) bargaining units differently on this issue.

APPENDIX A: PAY SCALE

Union Position: The FOP believes that there should be a general five percent (5%) across-the-board wage increase in each year of a three (3) year labor contract. It notes that the current wage scale lags behind the wage scale in comparable Ohio cities.

Employer Position: The City believes that there should not be any wage increase in the first year. However, it is willing to agree to wage reopeners in the second and third years. In short, it notes that it just does not have the funds to pay across-the-board general wage increases at this time.

Discussion: The City has a serious problem. It has lost several of its larger established businesses. So, it has to struggle with declining revenues. There isn't any shining light on the horizon.

In 2002, the Employer was able to acquire Two Hundred Thousand Dollars (\$200,000.00) of inheritance tax prematurely (it was slated to be paid in 2003). Consequently, it resolved last year's budget shortfall. But, those monies aren't available in 2003.

The City has implemented a hiring freeze.

Currently, the Employer is looking at Capital Improvements funds for some relief in its budget shortfall. It is possible that the City may only spend about Six Hundred Thousand Dollars (\$600,000.00) of this One Million Dollar (\$1,000,000.00) fund. If so, it will petition the Court of Common Pleas for authorization to transfer and appropriate the Four Hundred Thousand Dollars (\$400,000.00) balance into the General Fund. In that event, the City could appropriate Two Hundred Thousand Dollars (\$200,000.00) into the Special Revenue line. It will appropriate Two Hundred Dollars (\$200,000.00) into the Inheritance Tax revenue line to replace the amount previously advanced and used in 2002. But, there will still be a shortfall of about Fifty Thousand Dollars (\$50,000.00). This amount will probably be negated by the sale of three (3) parcels of property, the hiring freeze and prudent fiscal management.

There isn't any money for general across-the-board wage increases.

Fact-Finder Decision/Recommendation and Rationale: The Employer's position is the better position. There is an inability to pay increased wages at this time. The Firefighters settled for no wage increase in 2003 and wage reopeners in 2004 and 2005. The City is at the mercy of the Court of Common Pleas. If the court does not allow some unused Capital Improvement funds to be transferred to the General Fund, there could be (and probably would be) a fiscal disaster. The Employer would have to lay off employees and cut some programs or services.

Consequently, there should not be any general across-the-board wage increase in 2003. There should be wage reopeners in 2004 and 2005.

TENTATIVE AGREEMENTS

The parties reached tentative agreement on many items prior to the hearing on February 10, 2003. The Fact-Finder did not rule on any of these items. But, the parties want some assurance that those tentative agreements are known to be part of the total package. Therefore, it is understood that all tentatively agreed items are considered to be part of this Report and Recommendations.

This concludes the Fact-Finder's Report and Recommendations.

Respectfully submitted,



Richard E. Gombert
Fact-Finder

Worthington, Ohio
February 20, 2003

STATE EMPLOYMENT
RELATIONS BOARD

2003 FEB 21 A 10 13

February 20, 2003

Mr. Dale A. Zimmer
Administrator, Bureau of Mediation
State Employment Relations Board
65 East State Street
Columbus, Ohio 43215-4213

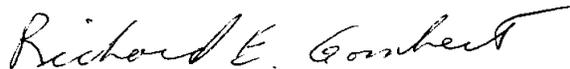
Re: SERB Case Nos. 02-MED-09-0885
02-MED-09-0886

Dear Mr. Zimmer:

I have enclosed my Fact-Finding Report and Recommendations. Also, I have enclosed a copy of my Bill for Professional Services. I am sending copies of these documents to the parties today.

If I can ever be of any further assistance to you, please feel free to call on me.

Sincerely,



Richard E. Gombert

REG:cjs

Encl.

cc: Henry A. Arnett, Esq.
Robert W. Cross