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STATE EMPLOYMENT
RELATIONS BOARD

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Factfinding Report and Recommendations

in the Matter of Factfinding

between

the City of Portsmouth (Ohio)

and

the Fraternal Order of Police/
Ohio Labor Council Inc.

Ohio Labor Council Inc.

SERB Case No: 03-MED-10-1245;1246

MARCUS HART SANDVER, Ph.D.
Factfinder

Hearing Date: April 2, 2004

Recommendations Issued: April 14, 2004

Representing the City:

Mr. Marc Fishel
Attorney at Law
Downes, Hurst, & Fishel
Columbus, Ohio

Representing the FOP/OLC

Mr. Henry Arnett
Attorney at Law
Livorno and Arnett
Columbus, Ohio

I. Background

This case grew out of a collective bargaining dispute between the City of Portsmouth (the employer) and the FOP/OLC (the union) over the second year reopener of Appendix A (pay scale) of the CBA which was last negotiated in 2003. The parties negotiated to resolve the dispute but were unsuccessful. Under the provisions of O.R.C. 4117 the parties requested the Ohio State Employment Relations Board (SERB) provide a list of names of possible factfinders. By mutual agreement the parties chose Marcus Hart Sandver as the factfinder to the dispute. By mutual agreement of the parties and the factfinder, April 2, 2004 was chosen as the date of the hearing.

II. The Hearing

The hearing began at 10:15 a.m. on April 2, 2004 in the conference room of the Police Annex of the Portsmouth City Hall. In attendance at the hearing were:

For the City of Portsmouth:

1. Marc Fishel Attorney for the city
2. Lyn Risby Administrative Assistant to the Mayor
3. Juanita Jewett Assistant Director of Engineering - City

For the FOP/OLC:

1. Henry A. Arnett FOP Counsel
2. Michael Hamilton FOP Member
3. Chris Kelley FOP Member
4. Debby Brewer FOP Trustee
5. Jason Hedrick FOP Member

6. Wayne Campbell FOP Lodge 33 President

The parties placed the following exhibits into evidence.

Employer Exhibits

1. City Exhibit #1 Multi tabbed exhibit containing 16 exhibits

FOP/OLC Exhibits

1. FOP Exhibit #1 Prehearing brief
2. FOP Exhibit #2 Statewide wage increases police officer 2003/2004
3. FOP Exhibit #3 Comparable departments as selected by the City of Portsmouth in other negotiations and in its classification study
4. FOP Exhibit #4 Comparable jurisdictions wage increases police officer 2003/2004
5. FOP Exhibit #5 Annual salary comparison police officer comparable cities one year ago
6. FOP Exhibit #6 Annual salary comparison police officer comparable cities - this year
7. FOP Exhibit #7 Annual salary comparison - police sergeant - comparable cities
8. FOP Exhibit #8 Annual salary comparison - police lieutenant - comparable cities
9. FOP Exhibit #9 Annual salary comparison - police captain - comparable cities
10. FOP Exhibit #10 Portsmouth police manpower
11. FOP Exhibit #11 Portsmouth Daily Times April 2, 2004
12. FOP Exhibit #12 2004 Roll Call of PPD Personnel

The parties were notified by the factfinder that the hearing would be conducted in accordance with the rules for factfinding as found in O.R.C. 4117 and in associated

administrative rules as promulgated by S.E.R.B. The parties waived opening statements and proceeded immediately into a discussion of the single issue in dispute, wages.

III. The Issue

A. Wages

1. Union Position

The union position on the issue is for a 5.5 percent increase for 2004. In support of its position the union directed the factfinder's attention to FOP exhibits 2, 3, 4, 5, 6, 7, 8, and 9. The FOP representative's conclusion drawn from the aforementioned data is that the "market wage rate" for police officers statewide increased about 3 ½-4 percent in 2003 and will increase by about the same amount in 2004. Because the Portsmouth police got a zero percent increase in 2003 they need something above the "market" increase in 2004 to maintain the rank they had with comparable departments in 2002.

The FOP called Officer Louis Wayne Campbell as a witness. The factfinder swore in the witness. Officer Campbell testified that he was a top step patrolman. Officer Campbell testified that he was serving his 4th term as the President of the FOP Scioto Lodge #33. The witness testified that he had been in the Portsmouth Police Department for 23 years. Patrolman Campbell testified that the job of police officer had become more difficult over the years and that the trend in arrests had been up every year even though the number of officers in the department had fallen. The witness testified that there had been some turnover in the department and that Portsmouth had lost some officers to other cities. The witness testified that the salaries in Portsmouth are not so good as in some other cities. At this point the witness was dismissed. The FOP rested its case at this point.

2. City Position

The City began its presentation by directing the factfinder's attention to tab 1 in City exhibit #1 and asked that the factfinder note that the City ran a budget deficit in 2002 and 2003 and is projected to run a small \$16,794 surplus for the year 2004. The City representative expressed his opinion that this surplus is nowhere near enough to fund the kind of wage increase the union is requesting. In short, the City representative asserted, the City has an inability to fund the wage increase requested by the union.

The City representative asked the factfinder to inspect tab #3 and to note that a number of employees had been laid off in Engineering, Traffic, Grounds and Street Maintenance, which will save the City \$313,000 in 2004. Tab 4 shows additional positions which will be eliminated. Tab 5 shows the entire general fund budget. Tab 6 shows a ruling from the Common Pleas Court which allows the City to transfer funds from the Capital Improvement Project into the General Fund. In exhibit #7 the City representative pointed out to the factfinder that the City gave the police officers raises of 5% in 2000, 2001 and 2003. In exhibit 8 the City representative pointed out to the factfinder that in the same years that the City was giving the police raises of 5%, the inflation rates were 3.4%, 2.9% and 1.6%. In tab 9 the City representative pointed out to the factfinder that the cost to the City of the union's wage proposal would be \$113,829.00 in 2004, and \$113,829 in 2005 for a total cost of \$227,685. The City estimates that a 1% increase in compensation for the police officers costs the City approximately \$20,696 including pension contribution, workers compensation and Medicare. The City representative asked the factfinder to inspect city exhibit #1 tab 10. City exhibit #1 tab 10 compares the wages and pension pick up of the City of Portsmouth with a group of 11 cities in Southern Ohio which the City

representative feels is more comparable to Portsmouth than the list of cities used by the union.

The City representative further pointed out to the factfinder that any wage raise given to the FOP would be coveted by the other two bargaining units in the City (AFSCME and IAFF) and that the City likely would face some pressure from these groups for wage raises should raises be recommended (and accepted by both sides) for the police.

3. FOP Reply

In reply to the City position on the issue, the FOP representative pointed out to the factfinder that the people listed under tab #3 in City exhibit #1 were not actually the ones laid off. By exercising their bumping rights the employees in these classifications kept their jobs and in fact, lower classified employees in the Sanitation Department actually were laid off. The FOP representative pointed out to the factfinder that in tab #5 of city exhibit #1 under the police budget there are 2 positions in the Police Department that are budgeted for but not filled. One officer is on disability and will not be returning to duty. A second officer is on military duty and is not expected to return this year.

At this point the union representative produced union exhibit #11. Union exhibit #11 is a copy of the Portsmouth Daily Times from April 2, 2004. The union representative directed the factfinder's attention to the lead article on the front page "Mayor Puzzled by Criticism." The gist of the article is that the City has achieved significant (estimated \$454,000) cost savings on its health insurance from amounts projected earlier.

4. City Rebuttal. Witness - Lyn Risby

The witness was sworn in by the arbitrator. The witness testified that she has worked for the City of Portsmouth for 6 years in the Mayor's Office, in the Budget Office and in Labor

Relations. The witness testified that the City had originally (in 2003) budgeted for a 15% increase in health insurance premiums for 2004. The City learned in late January or early February of 2004 from its health insurance provider that rates would rise 6% for 2004, a significant savings over the amount originally budgeted in the 2003 labor cost projections for 2004. Mr. Fishel asked Ms. Risby if the employees of the Portsmouth Police Department pay any of the premium for their health insurance and the witness testified that they do not. Mr. Fishel asked Ms. Risby to estimate the cost savings to the City from the projected health insurance savings and the witness testified that the actual savings city wide would be \$300,000. Of these savings, \$140,000 would be for employees paid out of the general fund budget.

On cross examination, Mr. Arnett asked Ms. Risby if this \$140,000 would be enough revenue to fund the 5.5 percent increase the union is requesting. The witness testified that the \$140,000 would cover the 5.5 percent wage increase for 2004 the union is requesting.

5. Closing Statements

A. City Closing

In his closing, Mr. Fishel emphasized to the factfinder that the central issue in these deliberations is the economics of the City. Mr. Fishel agreed that the data from the comparables do not put the City in a favorable light. But, Mr. Fishel pointed out, all the comparable cities, particularly the union comparables, have higher revenues than Portsmouth. Mr. Fishel emphasized the fact that the \$140,000 savings to the general fund from the lower than expected health insurance premium is money that the IAFF and the AFSCME bargaining unit employees

will want to share in, as well as the FOP¹. Mr. Fishel directed the factfinders's attention back to tabs 1 and 2 in employer's exhibit #1 and asked him to consider the extremely tight budget that is projected for the City of Portsmouth for 2004.

B. Union Closing

In his closing Mr. Arnett pointed out to the factfinder that under O.R.C. 4117.14(g)(7)(a-f) there are a variety of criteria that factfinders and conciliators are required to consider in making their awards or in crafting their recommendations; ability to pay is only one of these. Mr. Arnett directed the factfinder's attention to tab 5 in City exhibit #1 and asked that he note that the City projected less revenue in 2003 for 2004 than it actually received. Mr. Arnett stated his opinion that projected revenue figures in municipal budgets are usually conservative and understated. At this point the union rested. The hearing was closed at approximately 1:15 p.m.

IV. Discussion

I don't usually cite previous decisions I have made in factfinding recommendations but this case reminds me of a recommendation I made in Wellston (SERB Case No. 03-MED-09-0864) in late December 2003 (a municipality cited by the City representative as comparable to Portsmouth). The fact pattern was much the same as in Portsmouth. The City budget was lean. The comparables (the parties agreed on the comparables) showed the City at the bottom of the wage ranking at every rank both for starting and for top step officers. The mayor (who had been voted out of office weeks before) was representing the City and made it very clear that police officers salaries were not a priority item of his administration. In any city with a General Fund

¹I have verified that the AFSCME and IAFF contracts both have wage reopener provisions for 2004 and 2005.

Revenue of \$10 million+ or so there is some purchase somewhere that can be deferred for a year or some position or two that can go unfilled for a year or two that can generate funds for a wage raise. It is a matter of priority to a certain degree.

I notice from tab 7 in City exhibit 1 that the police and firefighters both received raises of 3 percent in 1998 and 1999. In 2000, 2001 and 2002 the raises were 5 percent each year. In 2003 the negotiated raise was zero for FOP and IAFF and both had wage reopeners for 2004 and 2005.

I contacted S.E.R.B. on April 13, 2004 and asked an employee from the Bureau of Mediation to read to me the salient portions of Factfinder Gomberg's report in 2003 which addressed the issues of wages and insurance for the police in the City of Portsmouth. The report with a recommendation for a wage freeze in 2003 and reopeners in 2004 and 2005 was deemed accepted; which means it was not rejected by either side. Therefore, I assume that both parties freely accepted a wage freeze in 2003. I can't help but notice that the employees make no contribution to their health insurance premium (somewhat unusual these days) and that there is an 8 percent pension pick up. Looking at employer tab 10 from exhibit #1 for the two cities that I consider similar to Portsmouth in population and are geographically proximate (Athens and Chillicothe), one provides a P.P.U. (Athens 10%) and one does not (Chillicothe). Paradoxically, the salaries in Athens are higher than in Portsmouth and the salaries in Chillicothe are slightly lower.

Looking over union exhibit #6 and #5 (and excluding some cities that I wouldn't consider comparable to Portsmouth (e.g., Delaware, Forest Park, Miamisburg and Whitehall) the top step Police Office in Portsmouth is paid considerably less than his or her counterpart in the other Ohio

cities of comparable size on the list. Of course, we don't know anything about health insurance contributions in those other cities, p.p.u.'s, longevity pay and a variety of other benefits that make "apple to apple" comparisons difficult. Looking over union exhibit #2 (police wage data for all Ohio cities 2003 & 2004) shows that wage increases for 2003 and 2004 vary from city to city and range from a 0% increase (Canton 2003, Masillon 2003) to as high as 10% for the 2 years combined (Aurora, Franklin, Madeira, Ontario, Northwood [13%], Powell, University Heights). The average increase statewide for police officers was 3.7 percent.

Considering that the health insurance contract was negotiated late in 2003 after the labor negotiations were concluded, with the insurance costs not known until early 2004, it makes sense that the parties negotiated a wage freeze in 2003. Now that the costs are known, it makes sense that the union would negotiate a wage increase with the idea that the City has \$140,000 to spend.

I think a wage increase is clearly justified based on the comparability data and given the fact that there is some ability to pay based on the health insurance cost estimates. There may also be some savings from the unfilled positions in the Department, although there may be some overtime generated to cover these positions due to the minimum staffing levels as specified in the City Charter (tab 12 City exhibit #1). A 5.5 percent increase would be a very large increase; the second largest in the State, (Northwood gave a 7% raise in 2004). I do think an average raise of 3.5 percent would be justified however. This would represent a 1.75 percent increase per year over the 2 year period which is certainly a modest increase, but yet probably will be enough to keep up with the inflation rate (see City exhibit #1 tab 8).

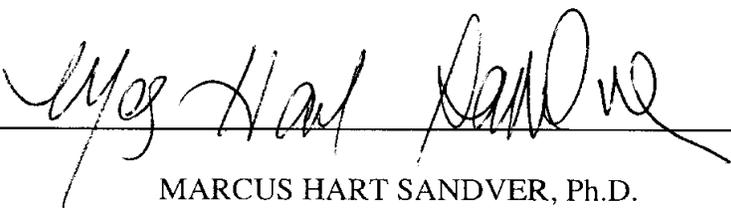
V. Recommendation

A 3.5 percent increase in wages (retroactive to January, 2004) is recommended for the

police officers of the City of Portsmouth for the year 2004. All other provisions of the agreement are to remain unchanged.

VI. Certification

This factfinding report and recommendation was developed in accordance with the rules for factfinding as found in O.R.C. 4117 and in associated administrative rules as promulgated by S.E.R.B. This report is based upon evidence and testimony presented to me at a hearing I conducted in Portsmouth, Ohio on April 2, 2004.



MARCUS HART SANDVER, Ph.D.

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