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**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

STATE EMPLOYMENT
RELATIONS BOARD

DEC 16 10 07 AM '96

**CITY OF PORTSMOUTH, EMPLOYER
and
FRATERNAL ORDER OF POLICE, SCIOTO LODGE NO. 33,
EMPLOYEE ORGANIZATION**

In the Matter of:

**96-MED-09-0691 and
96-MED-09-0692**

FACT FINDING

FACT FINDER:

**Philip H. Sheridan, Jr.
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FOR THE UNION:

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FOR THE CITY:

**Robert W. Cross
Management Consultant
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December 12, 1996

FACT FINDING

STATEMENT OF THE CASE

The parties, the City of Portsmouth, represented by Robert W. Cross, Management Consultant, and the bargaining unit, The Fraternal Order of Police, Scioto Lodge No. 33, including all patrol officers, sergeants, lieutenants and one captain in two bargaining units, represented by Henry A. Arnett, Esq., Livorno and Arnett, have entered into negotiations for a successor contract to the contract which expired November 7, 1996.

The parties met and conducted negotiating sessions on October 28, November 1, 5, 18, and 22, 1996.

The parties attached a copy of the existing collective bargaining agreement to their materials.

Pursuant to R.C. § 4117.14 and Admin.R. 4117-9-05, Philip H. Sheridan, Jr., 580 South High Street, Columbus, Ohio, was chosen by the parties as Fact Finder.

The parties agreed to a Fact Finding Hearing on November 26, 1996, and the meeting was convened at 9:30 a.m., in the Portsmouth Administration Building. In addition to their representative, the City was represented by Captain Joe McKinnon, Jackie Ramey, Administrative Assistant to the Chief. In addition to their representative, Carl Compton, President of the Local, Paul Isgett, Sergeant, David Brown, Lynn Brewer, Debbie Tackett, and Robert Ware, patrolmen, who appeared on behalf of the bargaining unit. The matter was presented upon statements and arguments presented to the fact finder.

According to provisions of R.C. Chapter 4117, the parties provided me with a copy of the current contract, the issues which have been resolved, the unresolved issues, and each party's positions on the unresolved issues.

In issuing the Fact Finding report, I have given consideration to the provisions of R.C. Chapter 4117, and in particular, the criteria contained within R.C. § 4117.14(G)(7)(a)-(f).

UNRESOLVED ISSUES:

- Article 9 Grievance Procedure
- Article 10 Corrective Disciplinary Procedure
- Article 11 Corrective Action
- Article 13 Seniority
- Article 14 Death Benefits
- Article 15 Sick Leave
- Article 16 Funeral Leave
- Article 17 Retirement Termination Pay
- Article 18 Injury leave
- Article 19 Special Leaves
- Article 21 Legal Representation
- Article 22 Personal Articles
- Article 23 Clothing and Equipment
- Article 24 Life Insurance
- Article 26 Vacation, Holidays and Longevity Pay
- Article 27 Emergency Call Time and Court Time
- Article 28 Hours of Work and Overtime
- Article 29 Health Insurance
- Article 30 Tuition Reimbursement

- Article 32 Health and Safety
- Article 34 Alcohol and Drug Testing
- Article 36 Termination (Management)
- Article 36 Minimum Staffing (FOP) - New Proposal
- Article 37 Time Off (FOP) - New Proposal
- Article 38 Acting Pay (FOP) - New Proposal
- Article 39 FOP Time (FOP) - New Proposal
- Article 40 Hazardous Duty Pay (FOP) - New Proposal
- Article 41 ERT Training Time (FOP) - New Proposal
- Article 44 Field Training Officers (FOP) - New Proposal
- Article 45 Maternity Leave and Pregnancy Light Duty (FOP) - New Proposal
- Article 46 Promotional Exams (FOP) - New Proposal
- Article 47 Training (FOP) - New Proposal
- Article 48 Longevity Pay (FOP) - New Proposal
- Appendix A Wage Rates 1996-97
- Appendix B Wage Rates 1997-98
- Appendix C Wage Rates 1998-99

POSITIONS OF THE PARTIES:

Article 9. Grievance Procedure

The CITY'S POSITION:

The parties have agreed to all of the issues between them in Article 9 except that the City has proposed changing Paragraph D-4-(a) to add the words "by the City" in the sentence which provides

(concerning arbitration) "any bargaining unit member whose attendance is required by the City for such hearing shall not lose pay or benefits to the extent such hearing hours are during normally scheduled working hours on the day of the hearing." The City does not believe it should pay employees which the union requires to be at an arbitration hearing. However, the City would pay any employee subpoenaed by the arbitrator for any arbitration hearing.

The BARGAINING UNIT POSITION:

The bargaining unit wants to keep the language the same since this has not been a problem between the parties.

RECOMMENDATION:

I recommend the contract language remain the same. The City admits it would pay any bargaining unit member who is subpoenaed for the hearing. I see no need to require subpoenas where agreement would work as well. This is dealing with employees within the bargaining unit who are on duty at the time of the hearing. I recommend no change in the contract language.

**Article 10: Corrective Disciplinary Procedure and
Article 11: Corrective Action**

The CITY'S POSITION:

The City has proposed language to streamline Article 10 and Article 11 to conform to the actual practice between the parties. The hearing which is a part of the disciplinary process is now moved to Article 10 and makes clear the hearing is before the Mayor, who is the appointing authority. The City objects to paying any bargaining unit member who is required to come in to answer questions as a result of an investigation outside of regular working hours, as is proposed by the bargaining unit.

The City also proposed to streamline Article 11 in conjunction with the changes in Article 10. The section concerning hearings has been deleted and moved to Article 10. The City also proposes

changing the language of the article because the City alleges the current language does not comport with the Ohio Revised Code and public records law. The City also proposes a change in the way anonymous complaints are handled.

The BARGAINING UNIT'S POSITION:

Lodge 33 proposes moving the language concerning hearings out of Article 11 and incorporating it into the disciplinary process established in Article 10.

The Lodge also proposes that a bargaining unit member receive notice in writing, rather than orally, of the nature of a disciplinary investigation against him. The bargaining unit also asks that a bargaining unit member who is called in for a hearing or questioning outside his regularly scheduled work hours should receive overtime pay.

In Article 11, the Lodge proposes deleting language regarding departmental hearings, which is moved to Article 10, and proposes changing the time periods for removal of disciplinary actions from personnel records.

The bargaining unit proposes current contract language concerning anonymous complaints.

RECOMMENDATION:

Neither of the parties has provided me with specific instances wherein the current language has been misinterpreted or the subject of dispute. Both parties desire a change in the language of Article 10 to make clear that a hearing before the Mayor is a part of the disciplinary process before any disciplinary action is taken. I recommend that change, with the corresponding removal of the language from Article 11 which dealt with the same hearing. In addition, I recommend the change proposed by the Lodge that complaints be made in writing. This avoids needless misunderstanding or difference of recollection which can easily occur where charges are brought orally. I do not recommend the

bargaining unit's proposal concerning a form of "call-in pay" where a bargaining unit member is being investigated. I do not believe this has been a problem, and I believe such investigations will continue to be held on the officer's work time except in the most unusual and serious of circumstances.

I recommend the language proposed by the City concerning Article 11 Sections C and D. It seems to me the need for public access to records is at the basis of R.C. 149.43 and the Ohio Supreme Court decisions which have interpreted the public records law. I recommend current contract language with respect to anonymous complaints.

Article 13: Seniority

The CITY'S POSITION:

The City would maintain current contract language except for the removing of paragraph 4, which no longer applies. The City believes the changes proposed by the FOP would take away some of the important discretion which the Chief has currently.

The BARGAINING UNIT POSITION:

The FOP Lodge 33 proposes changes to Article 13 which give greater emphasis on departmental seniority and which allows seniority to be used to select a shift when a bargaining unit member is reassigned or transferred from a special unit to a shift. The bargaining unit wishes to have the opportunity to select a shift based upon seniority when a unit member is leaving a special unit. The bargaining unit also wants the Chief to document any reasons given for denying a shift or day off based upon a seniority choice, and the Chief must show "just cause" for the decision.

RECOMMENDATION:

I recommend removing Paragraph D as both parties agree to it. I recommend adding the language proposed by the bargaining unit which provides "bargaining unit members leaving a special

unit will be able to select a shift based upon seniority.” That language should follow immediately after “otherwise” in the first sentence of Section B. However, I recommend leaving the rest of the language in the article as it was. It appears to me the Chief does and should have discretion to determine who shall hold positions and when their days off will be. It is a difficult task to show abuse of discretion, but it should be.

Finally, I recommend no additional language in the contract to deal with the problem asserted by the sergeants with respect to the Chief not applying seniority. The language of the contract appears to apply to the sergeants as well as to other bargaining unit members, and my only additional language proposed would be a sentence which provides “if a member feels his reassignment, or the denial of his selection of days off, or other determination by the Chief under this article is an abuse of discretion, the member will have the right to file a grievance in accordance with this agreement.”

Article 14: Death Benefits

The CITY’S POSITION:

The City proposes to use the deceased member’s hourly rate in order to calculate the benefits paid under Article 14. The City’s stated reason for the change is that the current practice does not follow the contract language. The City believes it should clarify the issue and pay at an hourly rate which everyone agrees on, rather than following the current practice which is to divide two thousand eighty hours into the employee’s total salary for the previous twelve-month period. According to the City, in order to properly calculate benefits under Article 14 as it now stands, the salaries for the previous twelve-month period should be divided by 365 days (the actual number of work days for the department). The current calculation gives an inflated hourly rate to the deceased member in the City’s opinion.

The BARGAINING UNIT POSITION:

The bargaining unit proposes no change to the language of the contract and asserts that there have been no problems concerning this article and there are no current issues to be solved. The Lodge points out the contract language was intended to take into consideration overtime, sellbacks, and other matters which would not be considered if the straight time hourly rate were used.

RECOMMENDATION:

I recommend no change in the contract language. It appears to me the past practice of the parties began with the use of a 260 divisor for the calculation and then the "daily average wage" which was calculated was divided by 8 to determine the hourly rate to pay. It is obvious that members accrue vacation and other leave on an hourly basis so I see no real existing problem with saving a step in the process by dividing by 2080 in order to obtain the "hourly average wage".

Article 15: Sick Leave

The CITY'S POSITION:

The City has proposed language which would provide an incentive if bargaining unit member does not use any sick leave in a calendar year, paying \$100.00. The City also proposes language in a new paragraph F which provides: "any bargaining unit member who fraudulently obtains sick leave, or falsifies a sick leave request or sick leave records shall be subject to disciplinary action, up to and including termination." The City is concerned with controlling the usage of sick leave and avoiding its abuse.

The City opposes the addition of the term "significant other" in paragraph B of Article 15. The City sees the addition of language such as this as indicating the City approves a living circumstance which is against what the City believes is the moral fiber of the community. The City also opposes any

additional language being added to paragraph E which now allows the City to follow State law in requiring a physician's affidavit.

The BARGAINING UNIT POSITION:

The bargaining unit proposes language which adds "significant others" to the definition of those whose illness would allow the bargaining unit member to use sick leave when the significant other lives in the same household with the bargaining unit member. The bargaining unit sees this as a fairness issue and does not believe the City or the bargaining unit should make moral judgments in determining who should qualify for sick leave.

The bargaining unit has proposed allowing the City to require a member to present a health care provider statement after three consecutive days of sick leave. The bargaining unit alleges that the Chief has required on several occasions a medical certificate each time an officer called in sick. There is no requirement that the City and the bargaining unit follow the statute which is cited in paragraph E as the parties are entering into a collective bargaining agreement which is intended to modify general State law. The bargaining unit opposes the language in the City's proposal for paragraph F which provides "up to and including termination". The bargaining unit has no objection to the mention of discipline or to putting a period after "action" in the paragraph provided by the City. However, there is already a disciplinary and grievance article in the contract which should not be modified by a statement which seems to indicate that termination would be appropriate for the misconduct which is charged. The bargaining unit would agree to an incentive program for the non-use of sick leave. However, the bargaining unit would propose \$150.00 for perfect attendance, \$100.00 for the use of 8 or less hours of sick leave and \$75.00 for the use of 16 or less hours of sick leave in a calendar year.

RECOMMENDATION:

I recommend the City's language with respect to an incentive for perfect attendance. I agree with the City's argument that the incentive should mean something.

I agree with the bargaining unit's argument that a contract clause which determines how sick leave should be used should not be limited because of the allegation that there is something morally wrong with having a "significant other" living in one's household. The current paragraph B of the just expired contract recognizes that some illness may require the presence of the employee to tend to the ill household member or care for other remaining family members. However, the bargaining unit did not allege specific instances of a problem in this area. Given the rest of the language of that paragraph, it appears to me if there is a specific problem the bargaining unit and the City ought to be able to have a letter of agreement outside the contract which would deal with a specific instance where a "significant other" is being deprived of care because of the bargaining unit member's inability to use sick leave.

I recommend the bargaining unit's language for paragraph F for the reasons which the bargaining unit gave. There is no need to suggest a specific penalty.

R.C. 124.38 of the Revised Code provides in part: "if medical attention is required, a certificate stating the nature of the illness from a licensed physician shall be required to justify the use of sick leave" (emphasis added). Based upon that language, I recommend the City's language. Unless the employee "requires medical attention" there is no authorization for the City to require a statement from the health care provider.

Article 16: Funeral Leave

The CITY'S POSITION:

The City proposes that the language concerning funeral leave be clarified so that the work days are consecutive work days. The City also opposes the addition of "significant other" to the paragraph which defines when funeral leave will be granted.

The BARGAINING UNIT POSITION:

The bargaining unit proposes to add "significant other" to language in paragraph A and paragraph B of Article 16. The bargaining unit would also add a paragraph C which defines "significant other". The bargaining unit also opposes shortening funeral leave which is the effect of the City's proposal.

RECOMMENDATION:

I recommend the parties continue with their past practice with respect to the amount of funeral leave which is granted. I understand the past practice to be the granting of the days based upon consecutive scheduled work days. I agree with the bargaining unit there is no cause shown to shorten the funeral leave which has previously been granted.

Concerning the "significant other", I reluctantly recommend the City's position, that is no change in the contract language. However, it appears to me the purpose of funeral leave is to recognize bereavement and the need for some time away from work to deal with that issue. When a person who lives in the household with the bargaining unit member, whether in a "committed relationship" or not, and that person dies, it seems reasonable to me that there would be some bereavement that should be recognized by the contract.

Article 17: Retirement Termination Pay

The CITY'S POSITION:

The City believes the way in which retirement termination pay is calculated is not following the language of the contract appropriately and that the auditor is not following the contract language. The City makes basically the same argument as it made under Article 14.

The City also opposes the FOP proposal to change the way in which the pay out of sick days is calculated at retirement.

The BARGAINING UNIT POSITION:

The bargaining unit believes the City has shown no justification for changing the past practice of the City in calculating the hourly rate for the retirement termination pay calculation.

The bargaining unit proposes changing the payout calculation for sick leave by combining all the sick leave and paying it at 67% of the total amount.

RECOMMENDATION:

I recommend no change in the contract language for Article 17. Neither party has provided a substantial reason for changing the contract and the way in which it has been applied.

Article 18: Injury Leave

The BARGAINING UNIT POSITION:

The bargaining unit wants to modify Article 18 to allow 180 days of injury leave based upon one medical documentation and the disinterested physician statement rather than having that process happen twice. The bargaining unit also proposes removing language which would prohibit a bargaining unit member from working at any other job during the time he was on injury leave.

The CITY'S POSITION:

The City proposes current contract language and opposes the changes proposed by the bargaining unit. The City wants the Chief to retain the discretion to approve or deny any outside work when a member of the bargaining unit is on injury leave.

RECOMMENDATION:

I recommend no change in the current contract language. There does not appear to be any significant problem with this article of the contract as it currently stands.

Article 19: Special Leaves

The BARGAINING UNIT POSITION:

FOP Lodge 33 proposes a change in Article 19 to make it consistent with Ohio statute on military leave. The bargaining unit also proposes family and medical leave be granted for the care of a "significant other" and that the contract be made consistent with the definition in Federal law of "serious health condition".

The CITY'S POSITION:

The City wants current contract language because no one has been inconvenienced or unable to go to any military service based upon the current contract language, and the current definition is correct.

RECOMMENDATION:

I recommend no change in the language of the contract concerning military leave. However, I recommend the definition of "serious health condition" be taken from the entire definition of that term as provided by the City in the documents provided at the hearing. The entire definition should be used, not just a part of it.

Article 21: Legal Representation

The BARGAINING UNIT POSITION:

The bargaining unit does not want to be a part of the committee which decides whether or not the City will provide legal representation for a bargaining unit member who has charges filed against him or a civil action brought against him resulting from an action taken in the performance of his official duties. The bargaining unit also proposes removing some language from Article 21 which refers to the FOP/OLC since the bargaining unit no longer belongs to that group.

The CITY'S POSITION:

The City does not object to making the decision concerning legal representation since the City controls the committee under the current language.

RECOMMENDATION:

I recommend that change according to the language proposed by the bargaining unit. I also recommend deletion of any reference to FOP/OLC. I see no reason to take out the language about defense provided by the FOP since it is not required in the article. If the bargaining unit does not provide a legal defense then the issue will never arise.

Article 22: Personal Articles

The BARGAINING UNIT POSITION:

The bargaining unit proposes raising the amount of the threshold for personal items which the officers may carry while on duty to \$400.00 before they must be approved by the Chief for use or wear while on duty in order to be covered by this article.

The CITY'S POSITION:

The City proposes no change in the current contract language and asserts that there have been no problems with the requirement or with replacing items lost, damaged, destroyed or stolen while in the line of duty.

RECOMMENDATION:

I recommend no change in the current contract language because there is no current issue to be dealt with.

Article 23: Clothing and Equipment

The BARGAINING UNIT POSITION:

The bargaining unit proposes changes in section A setting forth specific brands of items to be provided at the initial issue of uniforms and equipment. The bargaining unit points out the new officers coming on the force are not protected by the bargaining unit and they want their new officers to be as well equipped as possible. They point out several items in particular which require the type of quality which the specific brands they have listed provide. This is especially true in the area of handcuffs, flashlights, and body armor.

The CITY'S POSITION:

The City has made some changes in response to the demands by the bargaining unit. The City would also add language which requires officers to wear body armor, if provided. The City resists a requirement that a particular type of equipment be mandated for initial issue.

RECOMMENDATION:

I recommend the City's proposal as documented in their presentation at the fact finding. The City has the discretion to determine what brands are bought.

Article 24: Life Insurance

The BARGAINING UNIT POSITION:

The Lodge proposes increasing the amount of group term life insurance on members from \$10,000 to \$30,000. The bargaining unit provided comparables which indicate the City is at the bottom of the cities which were taken from a list which a city consultant prepared.

The CITY'S POSITION:

The City proposes no change to the current contract language. The City points out the comparables are from a list which was put together from 1990 or before.

RECOMMENDATION:

Since I do not know how much the premium for the current policy is or the amount of increase which would be necessary to raise to the higher level of insurance proposed by the bargaining unit I recommend the current contract language.

Article 26: Vacation, Holidays and Longevity Pay

The CITY'S POSITION:

The City proposes a change to paragraph B-2 (holidays) that clearly limits the payment of holiday premium to individuals who work on the holiday. According to the City, the language of the contract is not being followed because of arbitration decisions and a past practice of the parties. Clearly, the past practice is that all of the employees of the bargaining unit got the benefit even though the language of the paragraph says "holidays worked". The additional language provides: "no officer shall receive premium pay of time and one-half (1-1/2) for the holiday who does not actually work the holiday."

The BARGAINING UNIT POSITION:

The bargaining unit opposes a change in the past practice of the parties because this matter has been hotly contested and the members have benefited from the past practice. The bargaining unit also proposes adding an additional holiday for Easter, and proposes additional steps of vacation to increase the maximum amount of vacation to be earned. The Lodge also wishes to limit the Chief's discretion in denying the use of vacation days and wishes to increase the number which may be sold back to the City. The bargaining unit points out Portsmouth is last among the comparables in amount of vacation accrued.

RECOMMENDATION:

I recommend the parties maintain their current position. That is, no change in the way in which vacation pay is calculated, and no increase in number of vacation days, or amount of accrued vacation. I also recommend no additional language to the contract concerning the Chief's discretion to deny vacation for the good of the department.

Article 27: Emergency Call Time and Court Time

The BARGAINING UNIT POSITION:

The bargaining unit wishes to maintain the current practice which includes payment for hearings attended as well as "court". Thus, the bargaining unit has recommended language which uses the term "hearing". The only other change proposed by the bargaining unit is that they be paid for 3 hours instead of a 2 hour minimum to be paid at time and one-half.

The CITY'S POSITION:

The City is opposed to increasing the amount of time from 2 hours to 3 hours which is the minimum amount of time employee would be paid at time and one-half. The City also does not want to pay for off-duty time of the officers.

RECOMMENDATION:

I recommend the addition of the term "hearing" as a substitute for the term "court" in the same manner in which I recommended the language for pay of arbitration witnesses. I see no justification for increasing the minimum call-in time since the officers are being paid time and one-half for the 2 hours minimum. I heard no complaint that the actual time spent in call-ins of this sort is more or less than 2 or 3 hours.

Article 28: Hours of Work and Overtime

The BARGAINING UNIT POSITION:

The Lodge requests an increase in the amount of compensatory time that can be accumulated be increased from 80 to 160 hours. The Lodge also proposes language which specifically states overtime is paid for work beyond an 8 hour work day or a 40 hour work week. The Lodge also proposes establishing a point system for dispensing detail overtime so that it may be dispensed fairly to all members of the bargaining unit. This would be a procedure for providing overtime shift work on a fair and equal basis. The bargaining unit also proposes increasing the shift differential from \$.20 to \$.45 per hour and changing the number of briefing days to 7. The Lodge finally proposes establishing the hours of work for the bargaining unit.

The CITY'S POSITION:

The City proposes doing away with the accrual of compensatory time and paying overtime as it accrues. The City also wants to eliminate briefing time and they will give directions at work for the duties to be performed. The City is against the change in the shift differential because of its cost, and opposes set hours of work because management should have the authority to determine when shifts will begin and end. The City also opposes the overtime procedures which the bargaining unit is proposing because of the administrative difficulties and because they do not believe the bargaining unit has shown any problems in need of solution.

RECOMMENDATION:

I recommend the current contract language. Neither side has shown a specific problem in need of correction and I am unaware of any clear issues which either side has presented in order to justify a change.

Article 29: Health Insurance

The BARGAINING UNIT POSITION:

The bargaining unit proposes 100% City coverage of the premium payments for health insurance. The Portsmouth police officers are the only City employees who pay a portion of their health insurance costs. The situation has been the same for the last six years and the City has failed to do anything about changing any of its non-union employees, let alone negotiating such changes with the other two bargaining units. In addition, the City in fact charged more than it was due for some period of the last contract.

The CITY'S POSITION:

The City opposes changing the current 80 - 20 payment of premiums with this bargaining unit. The City went to conciliation in 1990 concerning this matter with the firefighters and the police. The police conciliation resulted in the 80 - 20 award while the firefighters maintained their 100% balance. The City alleges that ASFME took less money in order to maintain its 100% coverage.

RECOMMENDATION:

I recommend the bargaining unit's position on this issue. If the City were serious about mandating the 80 - 20 insurance coverage and making it work for the bargaining units it could appropriately have imposed such provision on its employees not covered by bargaining units. It has not done so which indicates to me a lack of will in this matter. This issue has been an important one for safety forces and I believe the bargaining unit has shown sufficient evidence to support the changes proposed.

Article 30: Tuition Reimbursement

The parties agreed at fact finding and signed-off on a tentative agreement on this Article.

Article 34: Alcohol and Drug Testing

The parties agreed at fact finding to current contract language and signed-off on a tentative agreement.

Article 35: Physical Fitness

The parties agreed at fact finding and signed a tentative agreement.

Article 36/49 Termination

The bargaining unit proposes a 36 month contract effective the day after the last contract expired.

The CITY'S POSITION:

The City recommends the current contract language except for a change which makes clear the agreement is between the City and the FOP Lodge 33 rather than FOP/OLC.

RECOMMENDATION:

I recommend the addition of language to paragraph A of the current language of the contract to provide for the situation where a contract might be settled by conciliation. I see no real justification for being wedded to a particular contract expiration date. I also believe the parties are best served by having a full 36 month contract where possible.

Article 37: Time Off

The BARGAINING UNIT POSITION:

The bargaining unit proposes a new article regarding time off to establish criteria concerning when time off can be denied to bargaining unit members. The bargaining unit alleges a problem in the past with the Chief concerning this. The Chief turns down requests for time off without giving a reason and the bargaining unit members believe this is time they have earned, time they should be able to take, and should have some control of.

The CITY'S POSITION:

The City does not want to add this language into an already complicated system of time off. The City also opposes the Chief having to show good cause for denying time off.

RECOMMENDATION:

I believe the FOP provision is too broad and improperly limits the discretion of the Chief concerning time off. The Chief should also not be arbitrary in his determinations, but on balance I recommend no addition to the contract for this article.

Article 39: FOP Time/FOP Business

The BARGAINING UNIT POSITION:

The bargaining unit proposes allowing the officers of FOP Lodge 33 a contract provision which would allow them to use a total of 5 duty days in a calendar year for Union business. This would apply to two employees and not cause overtime.

The CITY'S POSITION:

The City is opposed to this proposal because it asserts the representation article covers this issue. The City does not want to pay more money out for Union business.

RECOMMENDATION:

I recommend no change in the contract based upon this language. The language of the representation article does provide for reasonable time off for the highest ranking officer of the bargaining unit to do Union business.

Article 40: Hazardous Duty Pay

The BARGAINING UNIT POSITION:

The bargaining unit wants a payment of \$3,000 annually as part of the compensation package because of the nature of the position.

The CITY'S POSITION:

The City is against such a payment. It was hazardous duty pay which they negotiated out of the contract in 1981 and rolled into the base wage rate. The City opposes clauses directly related to pay which are not contained within the pay appendices.

RECOMMENDATION:

I recommend no change in the contract language. There is no showing of a particular problem and I agree with the City that wages should be dealt with in the wage portion of the contract.

Article 41: ERT Training Time

The BARGAINING UNIT POSITION:

The bargaining unit proposes training for the emergency response team so that this unit can be appropriately trained to carry out its mission.

The CITY'S POSITION:

The City is opposed to paying for training for an emergency response team which was voluntary. The City believes the specific training is not necessary.

RECOMMENDATION:

I recommend no additional language in the contract concerning the emergency response team training.

Article 44: Field Training Officers

The BARGAINING UNIT POSITION:

The bargaining unit proposes an additional pay of \$10 per day if a member has to break in a new officer. This field training requires a written evaluation and the acceptance of blame if problems arise.

The CITY'S POSITION:

The City asserts that it is traditional for experienced officers to train new recruits and a normal part of the duties of a police officer. The City should not pay more for it.

RECOMMENDATION:

I recommend no additional language in the contract concerning training officers.

Article 45: Maternity Leave and Pregnancy Light Duty

The BARGAINING UNIT POSITION:

The bargaining unit proposes a new article on maternity leave and pregnancy light duty. There is now a woman on the force and the bargaining unit wishes to provide for that employee and future employees.

The CITY'S POSITION:

The City states no other City employees received six weeks of pay for "pregnancy disability" and there is no light duty for any one else in the City. The City also points out the federal law with respect to maternity leave would be applied.

RECOMMENDATION:

I recommend no additional language in the contract providing for specific maternity issues as proposed by the bargaining unit.

Article 46: Promotional Exams

The BARGAINING UNIT POSITION:

The bargaining unit asserts it is unfair to give an exam without knowing where the materials come from for promotional examinations. The bargaining unit proposes that the materials be made available by and at the cost of the City.

Appendix A, B, and C

The CITY'S POSITION:

The City offers a 3% across the board raise in each of the three years of the contract. The City believes this raise will keep pace with inflation, and maintain the City's position in the middle of appropriate comparables. The City asserts that the 6% pension pickup which Portsmouth pays is not reflected in the comparables provided by the bargaining unit and should also be taken into consideration. There are difficult financial issues to calculate and the City wishes to be financially and fiscally prudent with its funds.

The BARGAINING UNIT POSITION:

The bargaining unit recommends a 6% raise in each of the three years of the contract. The bargaining unit points out that either using its comparables or the City's comparables, it is clear that at least four of the City's chosen also have pension pickups from 6 to 10 percent, and that no matter whose comparables are used, the City of Portsmouth ranks last in entry level salary and top salary for patrol officers. The bargaining unit asserts there is no rationale for the City to be so low and that even with the demanded amounts the City will not move up appreciably.

RECOMMENDATION:

The City is able to pay and the materials presented to me do indicate the need for a larger increase than that offered by the City. I recommend an across the board salary increase of 3% in each of the years of the contract. In addition, I recommend an increase of the pension pickup of 2% so that the City will pickup 8% of the pension amount otherwise paid by the employee.

CONCLUSION

I have examined the positions of the parties with respect to each of the issues presented to me in accordance with the procedures outlined in Chapter 4117 of the Revised Code. I have tried to resolve all of the issues for the parties in the Fact Finding which will result in a fair agreement between the parties. The parties can consider resolving all issues between them as a result of compromise and agreement. Adoption of the Fact Finding would have the same result. I thank the parties for their professional and forthright presentations on the issues.

Respectfully submitted,



PHILIP H. SHERIDAN, JR.

December 12, 1996