

STATE EMPLOYMENT
RELATIONS BOARD
JAN 12 10 34 AM '00

**IN THE MATTER
OF
FACT FINDING
REPORT
DISCUSSION & DETERMINATION**

BETWEEN	CASE NO: 99-MED-09-0786 99-MED-09-0787 Police Officers & Command Officers
The City of Portsmouth, OH and the Fraternal Order of Police Scioto Lodge No. 33	FACT FINDER: JOHN S. WEISHEIT
	HEARING DATE: December 21, 1999
	AWARD ISSUED: January 10, 2000

**REPRESENTATION
by**

<u>Employer Representatives</u>	<u>Union Representatives</u>
Robert W. Cross, Consultant Cross Management	Henry A. Arnett, Esq. Livorno & Arnett Co.

AUTHORITY

This matter was brought before Fact Finder John S. Weisheit, in keeping with applicable provisions of ORC 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matters before the Fact Finder are for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, particularly those applicable to safety forces..

BACKGROUND

The above named parties engaged in collective bargaining for a successor labor agreement to the one expiring December 17, 1999. In the course of good faith bargaining, several issues were tentatively agreed to, however, a few issues remained unresolved and an impasse was declared. The above named Fact Finder was assigned in keeping with provisions of the ORC 4117 and SERB Rules & Regulations. A Fact Finding Hearing was convened on December 21, 1999. The testimony and evidence was submitted related to the issues at impasse. Before adjourning the Hearing, the parties indicated sufficient opportunity to introduce such documents and testimony considered relevant. The Fact Finding Report, inclusive of recommendation, was agreed to be issued January 10, 2000.

In compliance with ORC 4117.14(C)(4)(e), and related rules and regulations of the State Employment Relations Board, the following criteria were given consideration in making this Award:

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. Any 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 public service or in private employment.

The parties have tentatively agreed to a number of provisions to be included in the Agreement.

The following Report is based on information provided in documents and testimony introduced at that time and in keeping with statutory consideration cited above.

ISSUES OF TENTATIVE AGREEMENT

The following issues were at tentative agreement between the parties prior to the declaration of impasse.

Article 1	Preamble/Purpose Agreement	Article 19	Special Leave
Article 2	Management Rights	Article 20	Credit Union & Miscellaneous Deductions
Article 3	Prevailing Rights	Article 21	Legal Representation
Article 4	Recognition	Article 22	Personal Articles
Article 5	No Strike/No Lockout	Article 23	Clothing & Equipment
Article 6	Nondiscrimination	Article 24	Life Insurance
Article 7	Representation	Article 25	Pay Ranges
Article 8	Negotiation Procedure	Article 27	Emergency Call Time and Court Time
Article 9	Grievance Procedure	Article 30	Tuition Reimbursement
Article 10	Investigative Procedure	Article 31	Dues Deductions
Article 11	Corrective Action and Records	Article 32	Health and Safety
Article 12	Work Rules and Informational Orders	Article 33	Sole Recourse
Article 13	Seniority	Article 34	Alcohol & Drug Testing
Article 14	Death Benefits	Article 37	Termination
Article 15	Sick Leave	Appendix D	Attendance.
Article 16	Funeral Leave		
Article 17	Retirement Termination Pay		
Article 18	Injury Leave		

ISSUES AT IMPASSE

The following issues were at impasse at time of the Fact Finding Hearing:

Article 26	Vacation, Holidays & Longevity Days	Article 38	Hazardous Duty Pay
Article 28	Hours of Work & Overtime	Article 39	Field Training Officer/Supervisor
Article 29	Health Insurance	Article 40	Emergency Leave
Article 35	Physical Fitness	Article 41	Professional Patrol Officer
Article 36	Promotional Examinations	Appendix A	Pay Scale Year One
		Appendix B	Pay Scale Year Two
		Appendix C	Pay Scale Year Three

**SUMMARY OF THE PARTIES RESPECTIVE POSITIONS
ON ISSUES AT IMPASSE**

Employer	Issue	Union
Vacation: Inc. Vaca days: 10-24 yrs = 20 wk days vaca 25 + yrs = 25 wk days vaca Holidays Extra vaca day for wking holiday delete	Article 26 Vacation, Holidays and Longevity Days	Vacation Inc. Vaca days: 10-14 yrs = 20 wk days vaca 15-19 yrs = 25 wk days vaca 20 + yrs = 30 wk days vaca Holidays Extra vaca day for wking holiday Retain current language
E. Shift Differential inc. to \$0.25/hr.	Article 28 Hours of Work and Overtime	E. Shift Differential inc. to \$0.30/hr.
A. Premium Payment chg so Employer pays 90%- Employee pays 10% B. City reserve right to determine plan benefits. Retain current language	Article 29 Health Insurance	A. Premium Payment Retain current language (Employer pays 100%) B. City reserve right to determine plan Add "The same or better" lang.
Establish the highest level of physical fitness criteria stated in the agreement as the sole standard for Officers. Inc. Employer contribution to health club to \$200.00/yr.	Article 35 Physical Fitness	Retain current language. Inc. Employer contribution to health club to \$150.00/yr.
Inc. time in rank of Patrol Officers for promotion consideration.	Article 36 Promotional Examinations	Grandfather current Patrol Officers to current time in rank provision for promotional consideration
Reject Union proposal.	Article 38 Hazardous Duty Pay	Add hazardous duty pay as an additional economic benefit.
Reject Union proposal	Article 39 Field Training Officer/Supervisor	Add field training officer/supervisor provision.
Reject Union proposal	Article 40 Emergency Leave	Propose new provision for leave with pay when other leave exhausted or an event for which paid leave is not addressed.

Employer	Issue	Union
Reject Union proposal	Article 41 Professional Patrol Officer	New provision that provides \$0.50/hr. for officers who meet standards set forth in proposal
Propose inc. of current wage scales by 3% each year of the 3-year Agreement	Appendix A-C Pay Scale	Propose inc. of current wage scale by 8% each year of the 3-year Agreement.

DISCUSSION & DETERMINATION

General

The economic issues at impasse are considered collectively. Economic impact was reviewed in context of cost estimates of issues tentatively agreed to as well as those economic issues at impasse. Recommendations were made on an item by item basis, as called for under ORC 4117.

It is understood that any base wage increase has an additional cost factors to the Employer. Cost to increase the base rate of pay by 1% annually is estimated at \$6,000, in addition to the aforementioned added costs.

Comparables

Several sets of comparables were submitted for consideration. Some address a single issue, others reflect information and comparisons of a number of contract terms. Comparables are considered to the extent determined relevant. It is recognized that such information is submitted to support the position(s) of the respective party. Each bargaining unit and/or employee group of similar employees is recognized as having unique differences in matters of employment consideration and priorities. Differences exist in specific terms and priorities that may well result in differences in the ultimate terms of the respective agreements. Greater consideration was given to those employee units of similar duty, size, similar demographics, purpose and function in like or similar geographical settings. The comparables submitted are given such weight and influence considered appropriate. Such information is well established and widely accepted as a basis for making determinations in interest labor disputes.

Bargaining History

Much documentation and testimony was introduced regarding the bargaining history of a number of issues at impasse. Such is found of considerable value and considered relevant in a number of the resulting recommendations.

Financial Atmosphere

Inability to pay was not raised as an issue. Rather, the Employer contends that appropriateness and relevancy of wage and economic benefits of this bargaining unit to other employee groups should be controlling. The Union argues disparate wages to comparables and seeks significant addition and/or modification of base wage and economic benefits. All are given due consideration in making issue by issue recommendations.

Priority of Issues

The parties communicate that their respective positions are significant and have been addressed in prior rounds of bargaining without resolution. It is determined that prior and more common resolution by reverting to status quo has tended to increase polarization on positions with negative impact on what otherwise appears to be a well meaning and public interest oriented management and employee unit. Not all such matters can be modified satisfactorily in one bargaining period. Even when parties maintain certain issues are conveyed as being of equally high priority, there is a need to make choices and rankings. Otherwise, particularly in this situation, decisions can be made by a third party with good intentions that actually go contrary to what the parties desired.

Effective Date of Contract/duration

The parties have agreed that the Agreement will be of a three-year duration, starting January 1, 2000.

Issue

**ITEM BY ITEM
DISCUSSION & DETERMINATION**

**Article 26
Vacation, Holidays
and Longevity
Days**

All terms of this provision are tentatively agreed to except for Vacation Time and the provision providing that an employee who works Holidays in one year is credited with additional vacation time in the next year..

Vacation Time

Each party has proposed adjusting this provision. It is determined that an added level and adjustment of service time to qualify is appropriate.

Issue

**ITEM BY ITEM
DISCUSSION & DETERMINATION**

B. Holiday work day annual carryover to Vacation time.

This provision has a long and controversial history in contract interpretation and application. The City proposal is recognized as a significant reduction of an employee economic benefit. No similar benefit is found in the employer/employee comparisons. This in and of itself does not justify reducing the benefit. Other major economic benefit increases sought by the Union rely heavily on the argument that compared to others similar units, they rank low. This is the appropriate setting to address the matter in total context.

It is concluded that the concept proposed by the City on this issue can be accomplished while making significant revision in other economic benefits to reflect a more balanced comparison to other comparable employee/employer situations.

Determination

It is recommended that Article 26. be modified as follows:

A. Vacation.

1. All regular employees of the City shall earn annual vacation leave credit with pay according to the following schedule;

Completed Years of Service	Vacation Leave in Workdays
1 - 4	10
5 - 9	15
10 - 15	20
16 +	25

2. Current Language

3. Delete

4. - 10. Current Language

Issue

**ITEM BY ITEM
DISCUSSION & DETERMINATION**

**Determination
cont'd**

- B. Legal Holidays Enumerated
 - 1. Current Language
 - 2. Any police officer who works, or is on work status, on any holiday, except for New Years Eve, as set forth herein, shall receive a premium payment of time and one and one-half (1 ½) his regular rate of pay in addition to his regular pay hours.
 - 3. Any police officer who is not scheduled to work on the holiday shall receive eight (8) hours pay.
- C. As tentatively agreed to by the parties.
- D. Retain current language.

**Article 28
Hours of Work
and Overtime**

The only term in dispute in this Article is the amount of pay for shift differential. Such adjustments normally occur during every few rounds of contract negotiation. The following recommendation is made taking into account other economic recommendations in this Award.

Determination

Article 28 will include the same language as set forth in the expiring agreement, except for the following modification:

- E. Shift Differential
Shift differential of thirty cents (\$0.30) per hour in addition to their regular rate of pay when they are performing work during the hours from 4:00 p.m. to 8:00 a.m.

Issue

**ITEM BY ITEM
DISCUSSION & DETERMINATION**

**Article 29
Health Insurance**

The Employer proposes that the employees pay a share of health insurance premiums and retain control of the benefit level. The FOP proposes to add a retention of benefits language while maintaining continued full payment of premiums by the Employer.

It is customary when employees pay a portion of insurance that they have a stronger right to determine the level and/or quality of coverage provided. Both parties have presented what is considered a contradiction in positions on this issue.

Determination

It is recommended that Article 29 be retained as it found in the expiring agreement.

**Article 35
Physical Fitness**

The concepts introduced by the Employer on this issue, while arising with good intent, is not persuasive to recommend. The Union's argument is found more persuasive. Its contention that the basis for fair and objective determination of the fitness of officers is lacking. Any change in, or establishment of, physical fitness needs clear and precise language understood by both parties. Such is not found on this matter at this time.

It is a positive step to encourage officers to voluntarily keep in a good physical condition as required by their position. This is not a significant additional cost to the City but is considered as part of the total economic package.

Determination

It is recommended that Article 35 be retained as set forth in the expiring agreement except for the following:

Article 35. Section C (5) shall be changed to begin by stating:

5. The City will pay up to \$200.00 per calendar year. *****

Issue

**ITEM BY ITEM
DISCUSSION & DETERMINATION**

**Article 36
Promotional
Examinations**

The parties have reached tentative agreement on this Provision, except for the FOP's concern regarding the service time eligibility requirement for current patrol officers to become eligible for promotion to sergeant. The use of a grandfather clause is common when change is made in such contract terms. It is persuasive that such is appropriate in this case.

Determination

It is recommended that Article 36. E be added as follows:

- E. Notwithstanding other terms of this Article, any Patrolman with sufficient time in rank to be eligible for a promotion to Sergeant as of December 31, 1999, shall remain eligible for a promotion to that position during the life of this Agreement.

**Article 38
Hazardous Duty
Pay**

This issue is determined to be an alternative pay benefit to regular wages. FOP argument is not persuasive since the wage issue is also open for recommendation. This provision is the exception rather than the rule. This is reflected in comparison to comparative employee units submitted at the Fact Finding Hearing. Law enforcement employment is recognized, inherently, as a hazardous occupation. Periodic wage adjustments is considered a more appropriate means to address this matter, so long as occupational hazards are given due consideration.

Determination

It is recommended that this provision not be included in the Agreement.

**Article 39
Field Training
Officer/Supervisor**

While the FOP proposal is a positive interest in the quality of staff training, the ultimate establishment of such activities is tempered by specific management rights provisions under the Ohio Collective Bargaining Law. Lacking City interest and/or willingness to adjust this provision in a manner proposed by the Union, results in the determination that inclusion of such a provision in the Agreement is not appropriate at this time.

Determination

It is recommended that this provision not be included in the Agreement.

Issue

**ITEM BY ITEM
DISCUSSION & DETERMINATION**

**Article 40
Emergency Leave**

The bargaining history of the parties and a review of public sector employees in Ohio reflects a pattern that paid leaves are most frequently specifically identified for use by title and set forth in labor agreements. This includes such coverage for approved leave related to personal and family illness, bereavement, personal, court attendance, to name but a few. The current agreement includes such traditional listing of types and conditions for approved leave. This Union proposal would add a level of leave beyond what is considered normal and customary. The Union argument is not persuasive in justifying inclusion of this provision.

Recommendation

It is recommended that this provision not be included in the Agreement.

**Article 41
Professional Patrol
Officer**

The Union proposal, while found to have merit, also has economic ramification to the Employer. The concept is lacking in specifics in a similar manner found regarding the City's proposal regarding a Physical Fitness Standard.

Recommendation

It is recommended that this provision not be included in the Agreement.

**Appendix A-C
Pay Scale**

The appropriate increase in the pay scale takes into consideration all economic issues previously addressed in this section of the Report. The intent is to provide a balanced wage and economic benefit appropriate to this bargaining unit in relations to other similar employee units within the local setting.

Recommendation

It is recommended that the Attachment I, Appendix A, Pay Scale, of this Report, be included in the Agreement.

ATTACHMENT I**APPENDIX A:****PAY SCALE**

A. During the life of this Agreement, member of the bargaining unit shall be paid in keeping with the pay schedule set forth below:

Pay Range	Description	Effective January 1, 2000 Hourly Rate	Effective January 1, 2001 Hourly Rate	Effective January 1, 2002 Hourly Rate
Police Recruit	Police Civil Service Test Passed: schooling not yet completed. Once schooling is successfully completed, the Recruit moves to Pay Range 1 and begins progression through the pay ranges listed below. This date of appointment as a Probationary Patrolman will serve as the date of service.	\$10.59	\$11.12	\$11.68
Pay Range 1	Probationary Patrolman-completion of school to	\$12.86	\$13.51	\$14.18
Pay Range 2	Rookie Patrolman-completion of probationary year to two years of service.	\$13.49	\$14.17	\$14.88
Pay Range 3	Patrolman-from two years of service until four years of service.	\$14.16	\$14.87	\$15.62
Pay Range 4	Top Step Patrolman A-from three years of service until four years of service.	\$14.85	\$15.59	\$16.37
Pay Range 5	Top Step Patrolman-after completion of one year in Pay Range 4.	\$15.45	\$16.22	\$17.03
Pay Range 6	Sergeant	\$16.81	\$17.65	\$18.53
Pay Range 7	Lieutenant	\$18.13	\$19.04	\$19.99
Pay Range 8	Captain	\$19.39	\$20.36	\$21.38

DETERMINATION AND AWARD

It is recommended that all items of tentative agreement prior to Fact Finding be included in the Agreement. If not otherwise resolved by the parties, it is recommended all provisions of the expiring agreement be included in the Agreement.

It is recommended the Agreement include the Fact Finders' recommendations as set forth in this Award.

TOTALITY OF AGREEMENT

This will affirm the foregoing report, consisting of **13 pages**, inclusive of this page, Appendix A (Attachment) and recommendations contained herein are made in this matter of Fact Finding Award by the below signed Fact Finder.

All matters presented before the Fact Finder and not specifically addressed were given consideration but are not recommended for inclusion in the Agreement.

If there is found conflict in the Report between the Fact Finder's Discussion and his Recommendations, that language in the Recommendations shall prevail.

All matters of tentative agreement are recommended to be included in the Agreement.

To the best of my knowledge, said Report and its included determinations complies with applicable provisions of ORC 4117 and related Rules and Regulations adopted by the State Employment Relations Board.

I therefore affix my signature at the City of **Galion**, in the County of **Crawford**, in the State of **Ohio**, this date of **January 10, 2000**.


John S. Weisheit, Fact Finder

CERTIFICATE OF SERVICE

This will affirm that the Fact finding Report in the Matter of Fact finding between

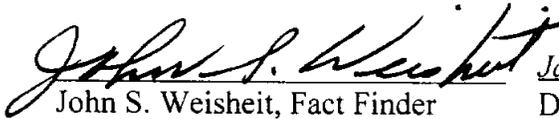
was served to the below named parties at the stated addresses

Robert W. Cross, Consultant
8593 Ohio River Rd.
Wheelersburg, OH 45694

Henry A. Arnett
Livorno & Arnett
28 N. High St., Suite 1410
Columbus, OH 43215

by U.S. Postal Service Mail, overnight express, on January 10, 2000.

I affirm, to the best of my knowledge that the foregoing is true and accurate and in keeping with ORC 4117 and related SERB Rules and Regulations..


John S. Weisheit, Fact Finder January 10, 2000
Date