

STATE EMPLOYMENT  
RELATIONS BOARD

STATE EMPLOYMENT RELATIONS BOARD

Fact Finding Report

2003 APR 18 A 10: 29

|                           |   |                                     |
|---------------------------|---|-------------------------------------|
| In the issues at impasse  | ) | Fact Finder: Janet C. Goulet, Ph.D. |
| between                   | ) |                                     |
| City of Kettering, Ohio   | ) | Hearing Date: March 23, 2003        |
| and                       | ) | Report Date: April 17, 2003         |
| Fraternal Order of Police | ) | SERB Case No.: 02 MED 12 1248       |
| Lodge No. 92              | ) |                                     |

APPEARANCES

**For the Employer**

Daniel G. Rosenthal, Esq.  
Jim O'Dell, Police Chief  
Rick Strader, Director,  
Human Resources  
Jessie Sletten, Legal Asst.  
Thomas O. Weahorst, H.R. Analyst  
Jeff Hoagland, Asst. City Mgr.  
Karen Sejas, H.R. Analyst  
Stephen L. Hopf, Insurance Analyst

**For the Union**

Susan D. Jansen, Esq.  
Michael W. Franklin, President  
Michael J. Gabrielson, V-P  
Bruce A. Abrams, Lodge 92

## PROCEEDINGS

Mediation commenced at 10:00 am, however, it did not result in the resolution of any of the issues. The Fact Finding hearing was held in the City of Kettering's Conference Room and began at 11:45 am. Those listed above were present for at least a part of the hearing. The parties presented witnesses, evidence and testimony and each was given the opportunity to fully present arguments and proofs in support of their respective positions. All evidence, testimony and arguments were carefully considered in reaching these recommendations whether or not all are specifically set forth or discussed herein.

In offering resolution of the following issues, the Fact Finder shall take into consideration all reliable information relevant to the issues and the criteria listed in Ohio Administrative Code Rule 4117-9-05(J). All contractual issues, other than those set forth below are considered settled and the entire contract will be completed with the acceptance of this report. The issues considered in this report are those submitted in the pre-hearing statements.

### ISSUES AT IMPASSE

- Article 5, Section 1: **Wages**
- Article 6, Section 14: **Health Insurance**
- Article 5, Section 3: **Shift Differential**
- Article 5, Section 4: **Weekend Differential**

- Article 5, Section 9: **Call-In Pay**
- Article 5, Section 10: **Court Time**
- Article 5, Section 11: **Officer in Charge**
- Article 5, Section 12: **Uniform Allowance**
- Article 5, Section 15: **On-Call Pay**
- Article 5, Section 16: **Special Assignment Pay**
- Article 6, Section 1: **Holidays**
- Article 6, Section 3: **Personal Leave Days**
- Article 7, Section 1: **Vacations**
- Article 8, Section 10: **Accumulated Sick Leave Payment at Retirement**
- Article 8, Section 15: **Life Insurance**
- Article 14, Section 1: **Tuition Reimbursement**

#### BACKGROUND

The Employer, the City of Kettering, and the Union, the Fraternal Order of Police, Lodge Number 92, have a mature, long term collective bargaining relationship. The parties are cordial in their interactions, each respecting the other. The City is proud of its police force and justifiably so. A large portion of the officers have college degrees and the average length of service on the force is eleven years. These officers are well paid in comparison to the local referent group as well as the state wide comparable cities. The City of Kettering has stable and growing (albeit slowly) tax revenue. The City is ably managed and looks to economic development in order to maintain and enhance its economic position.

Most labor contracts between the parties have been resolved without appeal to the state dispute resolution procedures for safety forces. In the previous contract impasse a Fact Finder was used but nearly all the issues at impasse were resolved in mediation. The remaining issue was health insurance: both the contribution and the ability of the Employer to alter coverage during the life of the contract. The Fact Finder, David Stanton, recommended language which gave the City the flexibility that it needed for mid-term health insurance changes and the parties accepted it (Fact Finding Report, July 29, 2000).

The report also reveals that the Employer sought premium participation during the previous negotiation. Arbitrator Stanton on page 8, of his report states: "the data presented based on factors customarily and normally taken into consideration in this forum, would provide a compelling basis to recommend that the Parties adopt a proposal that would support the inclusion of language that would compel the employees to engage in some level of cost sharing of premiums."

The most recent Command Officers Agreement was concluded after a Fact Finding Report was issued. However, the Agreement was concluded through negotiation between the parties. The City expressed that neither party was happy with it, but given the requirement for 10% health insurance cost sharing, it was the best that could be bargained.

During the mediation session which occurred prior to this Fact Finding hearing the parties considered packaging the remaining

issues and resolving them in the same pattern as the Agreement with the Command Officers. The sticking point of the mediation as well as in the preceding negotiations is the 10 per cent health insurance contribution required by the Employer. The FOP said that premium participation is the primary issue for the officers. The Union stated that the 10 percent premium participation by the employee is too large a dollar amount. Particularly, since it is the first time that employees have participated in the payment of premiums on their health insurance. Furthermore, the Union might have agreed given the following circumstances: First, if the Employer had agreed to a cap, a maximum amount that the premium portion paid by the employee could increase. Second, if the 10 % premium payment could have been achieved gradually by steps over the three year life of the labor contract. Of course, the final settlement would necessarily have to take into account wages and the consequent disposable income remaining for the patrol officers.

The City expressed a serious concern about wage compression between the Command Officers and the Patrol Officers. These two groups now bargain separately for their respective labor agreements. The wage compression issue has several facets: The maturity of the department (11 year average) means that many of the Patrol Officers have reached a high enough level of seniority to be well paid. In addition, the Patrol Officers earn a great deal of overtime. Some even earn more annually than the top level of the City and Police Department management.

The compression issue has two sides and when negotiating with

this unit, it may appear as if the Employer wants to keep wages down in this group in order to increase the spread between the bargaining units. The other side of the compression problem is the wage level of the Command Officer's bargaining unit. The Command Officers unit is much smaller, consisting of only sixteen members. Wage increases might be considered for these 16 officers rather than trying to keep the wages of this larger bargaining unit constrained. While this is a continuing problem, both bargaining units are well paid.

The Patrol Officers do have the right to negotiate their own contract. However, the labor contract does not exist in a vacuum and comparability represents a very real consideration. The number of negotiating sessions was not reported on the pre-hearing statement, however, it appeared at the hearing that some of the proposals were not discussed in depth. For example, the union bargaining team did not know that health insurance premium sharing could be paid out of pre-tax dollars through the flexible spending plan.

In October, 2002, the non-represented employees of the City of Kettering were informed by letter from the Director of Human Resources that they would be required to pay 10% of their health insurance premiums. This letter detailed that it would be paid out of a required flexible spending pre-tax deduction. In addition, the Command Officers recently resolved their agreement which required the 10% health insurance participation. Now comes the negotiation with the Patrol Officers and the 10% solution appears

to be a foregone conclusion based on internal comparability.

The majority of both public and private sector employees are required to participate in payment of health insurance premiums. Insurance consultants generally recommend cost sharing without restriction on the amount paid by the individual in order to induce cooperation when plan changes are made necessary by cost increases. While the City of Kettering has experienced increases in the cost of health insurance, the dollar amount paid for health insurance is less than what many organizations are paying according to the exhibits. The City has not experienced decreases in tax revenues nor decreases in fund carry overs from year to year. Indeed, it received a large cash infusion when its insurance company changed its organizational structure.

#### RECOMMENDATIONS

The following recommended changes are discussed individually but presented as a package. Some issues overlap and may be included in sections which deal with other issues. All of the issues are economic in nature and therefore impact the net disposable income of the members of the bargaining unit. Those proposals which are not recommended are presented briefly and dismissed summarily. The primary issue for both parties, as stated above, is health insurance premium sharing.

#### **Article 5, Section 1: Wages**

The Union seeks a wage increase of 5% in each of the three years of the Agreement and retroactivity. As an exemplary department they are currently at the top of their comparable groups

in both the local and statewide comparisons and want to retain that position. Furthermore, the FOP is concerned that the health insurance premium sharing could wipe out any gain from wage increases. (Health insurance will be discussed later in the report)

The Union provided a table showing the effect of cost of living increases and health insurance cost increases on the patrol officers disposable income. The Union seeks wage increases and other benefit increases that will result in an increase in real (inflation adjusted) compensation. Table 1 is appended to the end of this report and is a modification of that table showing the effect of the tax savings from using the flexible spending approach to payment of the health insurance premium sharing.

The Employer offers 2.2% and requires 10% premium sharing on health insurance. It points out that this is a highly paid department which has had 100% of its health insurance provided while other similar departments have been contributing to that cost. It has enjoyed substantial wage increases in the past, however, in general lower wage increases are the result of the current economic situation. The non represented employees received a 3% wage increase and the Command Officers bargaining unit received 3.5% in each of the three years of the Agreement.

The City is also concerned with wage compression between the patrol officers and the command officers and seeks a lower wage increase for the patrol officers in order to maintain an appropriate wage spread.

**Recommendation: Wages**

A 3.5% wage increase in each of the three years of the Agreement. This wage increase is to be retroactive. This wage increase along with the other benefits recommended will cover the tax adjusted cost of the health insurance premium sharing and allow for a small increase in real compensation. Table 1 estimates the cost of living, using the Consumer Price Index to be 2.33%. This estimate, according to other economic projections, is quite reasonable. While there are numerous items in the index that are not regularly purchased by individuals, this conservative 2.33% projected increase is appropriate considering the difficulties associated with the index as well as predicting the future.

This wage increase does not help the City with the compression problem, however, any smaller wage increase could leave the patrol officers with a deficit in disposable income. Furthermore, the tax base of the City is stable and growing. The City does not have financial problems and is taking action to prevent any future problems stemming from health insurance cost increases by insisting on the 10% premium sharing without a cap. The City of Kettering is proud of its police force and this wage increase maintains the department's pay levels in the top position within comparable departments. A review of the Employer's composite wage tables of comparable information, found behind Tab 3 of its binder, reveal that a 3% wage increase would also maintain the department's relative position. The recommendation of the 3.5% increase and other benefit changes is based on the concept of increasing compensation to the employee in order to cover the increased cost

of health insurance premium sharing. This increase cost is now covered without it seeming like a "give back" from the Union to the City. The positive relationship between the Employer and the police officers is important and needs to be preserved. This recommendation will not be popular with either party but the external pressure of health insurance cost increases cannot be ignored.

**Article 6, Section 14: Health Insurance**

The Employer's position is that the employees of the City need to participate in the cost of health insurance premiums. This was an issue in the previous negotiations with this bargaining unit. The non-represented employees were informed in a letter dated October 4, 2002 that they would be required to make a monthly contribution which works out to be 10%. The letter gives the reasons for requiring the contribution. One of those reasons is that an arbitrator would not look favorably on this proposal for safety forces if the other employees did not also share in the cost.

The other reasons stated in the letter were argued at the Fact Finding hearing. A primary reason advanced was that the employees financial stake in the purchase of health care is the incentive to choose an efficient plan when costs escalate as they have recently. Indeed, the vast majority of organized bargaining units participate in payment of premiums as do most of the citizens of the City of Kettering. While some of the arguments in favor of participation may seem to be based on a public relations strategy, the City

wisely pays attention to the needs and perceptions of the public.

The Union argues quite persuasively that the City can afford to pay 100% of the health insurance premium. Its insurance costs are quite reasonable compared to those of other jurisdictions. Premium sharing at the 10% level, according to the FOP is both a financial burden on the employee and too large a jump at the beginning of this premium participation program. In addition, the ability of the City to alter the health insurance benefits is limited by the Agreement.

The Union's local comparable data shows that 41% of the cities pay 100% of health insurance costs and the cities that have a 10% contribution rate were able to show a financial necessity. The majority of the cities have a lower contribution rate and two cities with the 10% or higher rate have a dollar cap. Yet three cities with the 10% contribution rate do not have a cap. The state comparable data show a similar pattern.

**Recommendation: Health Insurance**

The 10% premium sharing is recommended for several reasons. First, the patrol officers are highly paid and the 10% contribution represents a relatively small amount of their pay, 1.2% of gross base wage after tax savings. The pay raise and the benefit increases compensate them for the increased cost. While the City of Kettering does not have the financial necessity that other jurisdictions have experienced, it benefits the employees as well as the citizens when the City administration plans ahead in order to avoid financial problems.

The non-represented and the Command Officers Agreement requires the 10% premium sharing and internal comparability is maintained when this unit participates in the 10% solution. The flexible spending plan has been extended to health insurance premium payment which makes this cost out of pre-tax income smaller (See Table 1). The Command Officers Agreement adds Dental Insurance for the bargaining unit. The pre-hearing statements of the parties did not list this issue and it was not argued at the Fact Finding hearing therefore it is not covered in this report.

The contract language on health insurance premium sharing is taken from the Command Officers Agreement:

**GROUP MEDIAL INSURANCE - PREMIUM SHARING:** Beginning with the second Pay Date of May the City shall pay 90% and the Employee shall pay 10% of the premium of medical insurance coverage. Employees may Opt-Out of Coverage and receive a cash payment equal to 10% of the Family premium, if acceptable proof of other coverage is provided to the City and they are not otherwise insured by the City's Medical Plan. Election of Opt-Out of coverage and begin receiving payments will be effective as soon as practicable following the execution of the Agreement, consistent with Plan Document and IRS Section 125.

The remaining outstanding issues are economic and those that are recommended form a part of the total package. The increased shift differential and uniform allowance maintain internal comparability while the increase in week- end differential and vacation recognize the distinction between the command officers and this unit.

**Article 5, Section 3: Shift Differential**

The Union position is that this has not been increased since 1993 and in constant dollar terms it should be \$1.01 to maintain

the same buying power.

The Employer responds that the officers are well paid and this is an addition to an already highly paid department.

**Recommendation: Shift Differential**

An increase of .10 per hour (moving it to \$0.90) in shift differential is recommended. This is consistent with the Command Officers Agreement. However, unlike the command officers agreement week end differential is maintained and increased below.

**Article 5, Section 4: Week-end Differential**

The Lodge argues that this payment has remained static in the contract for a long period of time. It is necessary compensation because of the 6/2 scheduling. Many officers do not have week-end days to spend with their families. The Union proposes a \$.40 increase in this benefit which has not changed in several years.

The Employer sees this as an economic issue which it does not want to increase for this highly paid bargaining unit. The comparables show that almost no other departments have this benefit and no other group in the City has this benefit.

**Recommendation: Week-End Differential**

The Chief has been adjusting the schedule to ameliorate this problem but some officers will always have to work the week-end. This is a product of the unusual schedule that the officers work. An increase of \$.20 per hour is recommended to bring the amount of the week-end differential to \$.30 per hour. The language in the article remains the same with the only change is from \$0.10 to \$0.30. This is actually a small cost to the City but it offers

recognition and a reward for working the week-end shift.

**Article 5, Section 12, Uniform Allowance**

The Union proposed an increase in uniform allowance of \$40.00 based on the fact that the City will no longer pay for the leather goods used by the officers. In addition, the cost of living increases have eroded this benefit over the years.

The City responds that the current uniform allowance is sufficient to maintain the uniforms.

**Recommendation: Uniform Allowance**

An increase in the uniform allowance of \$140 to a total of \$800 per year is recommended. This is an area of the Agreement where the bargaining unit is below average with respect to the comparable data both at the local and state level. Furthermore, the Command Officers settled for this amount in their contract and it compensates the members of this bargaining unit for expenses incurred. It also maintains internal comparability.

**Article 7, Section 1: Vacations**

The Lodge proposes that additional vacation days be added in all the categories based on the local and state wide comparable data. The City is low in some categories and because of the 6/2 schedule officers have little time to spend with their families. Since officers often work week ends, their days off are during the week when children are in school and the spouse may be employed on a normal schedule.

The City opposes any increase in this area because it would put this bargaining unit ahead of other City employees. The City

has always emphasized wages over paid time off and increased vacation means more overtime for this unit.

**Recommendation: Vacations**

One additional day of vacation in two of the seniority categories is recommended. Add one day for officers in the 5-9 year category and add one day for officers in the 10 to 14 year category. The bargaining unit is behind its comparable groups at both the local and state level for this benefit in these categories. While this provision may put this bargaining unit slightly ahead of others in the City, these employees have significantly different types of duties which may require different levels of benefits.

**Article 8, Section 10, Sick Leave Accumulation**

The Lodge proposes to increase the conversion ratio of accumulated sick leave days at retirement from 1/3 to 1/2.

The Employer argues for internal comparability since all the employees of the City receive the same conversion rate.

**Recommendation: Sick Leave Accumulation**

The Union comparables show a variety of conversion ratios and are not conclusive. Some cities have a 1 for 1 while others have 2 for 1 and 3 for 1. The Command Officers settled for an increase in the accumulation of sick leave hours of 20 hours from the current 240 to a cap of 260. This Command Officers settlement is recommended to maintain internal comparability.

**Article 8, Section 15, Life Insurance**

The Union seeks to increase life insurance coverage from

\$25,000 to \$50,000 and accidental death coverage by the same amount.

The City responds that this is an amount larger than other City employees have. However, the Command Officers received an increase in the recent Agreement.

**Recommendation: Life Insurance**

The Command Officers Life and Accidental Death and Disability insurance provision is recommended here because of internal comparability and because employees in the safety forces have risks associated with their jobs which are not faced by other employees.

**Article 14, Section 1, Tuition Reimbursement**

The Union requests an increase in tuition reimbursement from 80% to 100% and from \$1,000 to \$2500 per year per employee. In addition, the Union wants accredited on-line course work to qualify for the benefit.

The City responds that this is unprecedented in the City and unjustified. Furthermore, it argues that the benefit is seldom used.

**Recommendation: Tuition Reimbursement**

The officers in the police department are already well educated. This benefit does not need to be increased, however, the Command Officers added a sentence to their contract which deals with reimbursement of qualified course work. This sentence is recommended for the Patrol Officer's Agreement as well: "Once the City has approved payment for tuition costs, such approval may not

be withdrawn."

**Article 5, Section 9 and 10, Call-In Pay; Court Time**

The Union proposes to increase both call in pay and court time pay from 2 hours at time and one half to 4 hours at time and one half. The comparables show that the averages at both the local and state level are higher than the two hours currently in the Agreement. The Lodge states that the officers receive a number of subpoenas to appear in court and are called in on their days off for a variety of reasons. This is disruptive and deprives them of the few days off that they have to spend in recreation with their families and friends.

The City argues that this increase is not justified. The officers already have a high level of overtime pay.

**Recommendation: Call-in Pay and Court Time**

No increase in call-in pay and court pay is recommended. This is an economic issue and the bargaining unit is already highly compensated in both base wage and overtime pay. While the average pay for call-in and court time is higher according to the comparables, several departments are paid two hours at time and a half as the minimum.

**Article 5, Section 11, Officer in Charge**

The Union proposal is for an increase in Officer in Charge (OIC) pay from \$1.00 per hour to that of the entry level sergeant. The comparables show that several cities compensate OIC at a higher rate than the City of Kettering.

The Employer objects to this increase because it does not

exist elsewhere in the City and increases pay levels for this already highly compensated bargaining unit.

**Recommendation: Officer in Charge**

Maintain the current rate of pay for OIC. While the comparables show other cities paying more for this service, several do not pay anything at all for OIC. Furthermore, it is an economic benefit which adds to the cost of compensation for the City.

**Article 5, Section 15 and 16, On-Call Pay and Special Assignment Pay**

The Union proposes to include two new section in the Agreement which provides pay for officers who are required to be on-call and/or who have special assignments. The on-call requirement restricts the activities and travel of these officers who may be on-call for as long as two years. Those officers who have special assignments are technically and trained and qualified in specific areas and should receive extra compensation (\$500) according to the FOP.

The Employer responds that these are a new forms of compensation which other City employees do not have and since this bargaining unit is already highly compensated they are not warranted.

**Recommendation: On-Call Pay and Special Assignment Pay**

These new provisions are not recommended because these duties are part of a safety officers job. The high level of pay in this City compensates the officers for the inconvenience of being on-call. In addition, the special assignments carry with them status within the police community. Comparable cities seldom have these

benefits.

**Article 6, Section 1, Holidays**

One additional holiday, Veterans Day, is proposed by the Union. The state wide comparables show that the average number of holidays is 11.38 while Kettering only has 10.

The City points out that the officers work holidays if it falls on a scheduled work day and receive pay for the 10 holidays. This is seen by the Employer as a request for additional compensation which is unjustified.

**Recommendation: Holidays**

Do not increase the number of holidays. The local comparable data show the average number of holidays to be 10.05 and Kettering is right there. Furthermore, it is a compensation issue and the officers are already well paid.

**Article 6, Section 3, Personal Leave Days**

This proposal was withdrawn at the Fact-Finding hearing.

Submitted on April 17, 2003

  
by Janet C. Goulet, Arbitrator





39c USA 38c USA

APR 17 2003

17

Bureau of Mediation  
SERB  
65 E. State Street 12 th Floor  
Columbus, OH 43215-4213