

STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD

STATE EMPLOYMENT
RELATIONS BOARD

2006 JAN 30 A 11: 41

IN THE MATTER OF FACT-FINDING BETWEEN:

The City of Kent, Ohio)
and) Case No: 05-MED-05-0652
Ohio Patrolmen's Benevolent Association) Fact-Finder: Colman R. Lalka

HEARING

Date of Hearing: January 17, 2006
Location of Hearing: Kent, Ohio

ATTENDANCE AT HEARING

For the Employer:

James P. Wilkins, Esq.
William Lillich, Safety Director
James Peach, Police Chief
Barbara Rissland, Budget and Finance Director
Kevin Pratt, Human Resources Manager

For the Union:

Michael Hostler, Esq.
James Cole, OPBA Negotiating Committee
Michelle Lee, OPBA Negotiating Committee

CRITERIA

After giving thorough consideration to the evidence and argument of the Parties, the criteria used by the fact-finder in resolving the disputed issues were those set forth in Rules 4117-9-05(J) and (K) of the State Employment Relations Board, to wit:

4117-9-05(J). The fact-finding panel, in making findings of fact, shall take into consideration all reliable information relevant to the issues before the fact-finding panel.
4117-9-05(K). The fact finding panel, in making recommendations, shall take into consideration the following factors pursuant to division (C)(4)(e) of section 4117.14 of the Revised Code:
4117-9-05(K)(1). Past collectively bargained agreements, if any, between the parties;

4117-9-05(K)(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;
4117-9-05(K)(3). The interests 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;
4117-9-05(K)(4). The lawful authority of the public employer;
4117-9-05(K)(5). Any stipulations of the parties;
4117-9-05(K)(6). Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of the issues submitted to mutually agreed-upon dispute settlement procedures in the public service or in private employment.

BACKGROUND

Pursuant to a SERB-conducted election, the City of Kent has recognized the OPBA as the bargaining representative for a unit comprised of the sergeants and lieutenants in the police department. This is the first collective bargaining agreement between the parties. By mutual agreement, the parties have been using the City's existing collective bargaining agreement covering its patrol officers as the basis for their new agreement, and changes have been negotiated from that base agreement.

The fact-finder was appointed to convene a hearing, attain relevant facts, and prepare a report and recommendations in keeping with ORC Chapter 4117 and related regulations adopted by SERB. The hearing was convened on the date and at the place indicated above. At that time, the parties were given the opportunity to present evidence and argument in their preferred manner that would allow the fact-finder to render a report and make recommendations on the issues at impasse.

The parties identified eight issues for resolution. To expedite the issuance of the fact-finder's report and recommendations, the parties mutually agreed that a brief analysis of the evidence and rationale for the fact-finder's recommendations would suffice. In accordance therewith, the fact-finder's report and recommendation on each unresolved issue is as follows:

ISSUES AT IMPASSE AND RECOMMENDATIONS

1. FAIR SHARE

The parties have resolved all issues in Article 3 regarding Dues Deduction except whether a fair share fee provision should be included. The Union sought such a provision. The City proposed excluding current bargaining unit employees, in effect giving them the opportunity not to be required to pay a fair share fee. Based on the evidence and arguments

presented and in particular the existence of fair share fee provisions in the City's other collective bargaining agreements, the fact-finder recommends inclusion of the following fair share provision:

**ARTICLE 3
DUES DEDUCTION**

3.06 It is hereby agreed by and between the Employer and the Union that as a condition of employment, at the effective date of this Agreement, each bargaining unit employee shall either become a dues paying member of the Union, or remit a fair share fee in an amount specified by the Union, not to exceed the monthly dues, all on the basis of automatic dues deduction .

2. UNIFORMS AND PERSONAL EQUIPMENT

At issue was the amount of the annual uniform allowance to be paid to bargaining unit employees and whether the City would be required to pay the cost of new items or changes in uniform requirements. Based on the evidence and argument presented, the fact-finder determines an increase in the amount of the uniform allowance is justified, but not of the magnitude sought by the Union. The fact-finder also recommends that employees pay for new or changed items out of their allowance unless insufficient advance notice has been provided by the City to allow the employee to transition to the new or changed item. Therefore, the fact-finder recommends the following language for Article 24:

**ARTICLE 24
UNIFORM AND PERSONAL EQUIPMENT**

24.01 In February of each year of this Agreement, each bargaining unit employee shall receive a uniform allowance as follows:

Effective 2006: \$800

Effective 2007: \$850

Effective 2008: \$900

In addition, any employee who is promoted to sergeant or lieutenant during the term of this Agreement shall receive a one-time supplemental uniform allowance of one hundred dollars (\$100.00) for each such promotion.

It is understood that the uniform allowance is subject to applicable taxes and withholdings as defined by law.

24.02 When articles of uniform or personal equipment become unserviceable because of normal wear or are damaged in the line of duty, they shall be replaced or

repaired as may be ordered by an employee's supervisor, the Captain(s) or the Chief of Police.

24.03 Articles of uniform and equipment may be inspected at least twice yearly by the Police Chief. The cost of missing or damaged Employer-owned articles, missing or damaged because of an employee's negligence, shall be charged to the employee to whom said articles were entrusted. For this purpose "cost" shall mean the Employer's then current replacement cost with setoff for depreciation or normal wear, and paid within sixty (60) days.

24.04 Upon resignation, retirement, death or separation from the Police Division, Employer-owned equipment shall be returned to a supervisor and shall remain the property of the Employer. Final payment of wages, sick leave and accrued vacation shall be withheld until Employer-owned equipment, as well as medical insurance and prescription cards, Employer-owned keys and identification have been returned to the Employer.

24.05 The Chief of Police may issue regulations which shall prescribe a standard dress code for all employees. Any employees who fail to comply with such regulations shall be sent home without pay and shall be subject to such further disciplinary action as the Chief of Police may prescribe. Inspections for all shifts shall be held whenever the shift supervisor so decides and as the Chief of Police also may prescribe. Nothing contained herein shall be interpreted to limit the authority given by statute to the Chief of Police.

24.06 All new employees shall receive a sidearm and personal body armor furnished by the City. The City shall retain ownership of these items. Upon termination of employment for whatever reason, these items shall be returned to the City. The employer shall maintain and/or replace these items when needed.

24.07 In the event of any change in uniform item or a new item is required by the department, without sufficient time for the members to transition to the new item during the normal course of equipment or uniform purchase, the first issue of such item(s) shall be paid by the employer.

3 and 4. GROUP INSURANCE and LIFE INSURANCE

As is often the case, health care was a contentious issue. The City established that the cost of providing health insurance coverage to its employees has risen dramatically in recent years, particularly the cost of providing a prescription drug benefit. The Union recognized the increase in costs, but disagreed with the amount of the cost to be shifted to employees. Based on the evidence and argument presented, the fact-finder determines that changes in the design of the health insurance plan reflect benefit levels already negotiated with the City's firefighters unit is justified. The fact-finder also determines that higher co-pays on mail order prescription drugs is justified, as is implementation of co-pays for the first time on the mandatory mail-order prescription drug plan. The fact-finder also determines that the increases sought by the City in

employee contributions toward premiums are too great, but that a modest increase to be effective January 1, 2007 is justified. Finally, the Union sought a four-fold increase in the amount of life insurance provided by the City. While an increase of that magnitude is not justified, the fact-finder determines that an increase to \$50,000 does have merit. Accordingly, the fact-finder recommends the following language for Article 25 as well as the associated Exhibits A and B:

ARTICLE 25 GROUP INSURANCE

25.01 The Employer shall continue to provide full-time bargaining unit employees, and their eligible dependents, with the existing major-medical, dental and vision insurance coverage except as modified by Exhibit A. For any employee hired after the effective date of this Agreement, coverage shall commence on the first day of employment. From the effective date of this Agreement through December 31, 2006 all employees covered by this Plan and provided with health care coverage shall pay \$50.00 per month for family plan coverage or \$25.00 per month for single plan coverage. Effective January 1, 2007, all employees covered by this Plan and provided with health care coverage shall pay \$60.00 per month for family plan coverage or \$30.00 per month for single plan coverage. This amount shall be deducted from the affected Employee's pay monthly.

25.02 The Employer will continue to provide a prescription drug plan to all full-time bargaining unit employees and their eligible dependents with coverage limitations as set forth in Exhibit B. Eligibility of dependents will be determined on the same basis as under the medical insurance plan provided pursuant to Section 25.01.

25.03 The Union and the Employer agree that ALL employers should pay their fair share of medical fees for their employees. Therefore, it is agreed that if an employee's spouse works or is eligible for insurance under a retirement system plan, and is eligible for coverage through his or her employer's medical, dental, or other insurance plan, then primary coverage must be carried with the primary employer of each spouse to be eligible for medical coverage under the City of Kent's plan. Eligible dependents will be covered by the insurance coverage of the spouse which has the earlier birthday in the calendar year. Eligible dependents for which the City of Kent employee has a formal, legal responsibility for the primary medical insurance coverage will continue to be eligible under the City of Kent medical plan.

The employee must notify the Plan Administrator immediately in writing of the commencement of such group health coverage for the spouse and other dependents. For eligibility determination under this provision, a semi-annual re-enrollment form will be completed by the Employee. The Employer reserves the right to verify this information at any time. Under this provision, the Employer reserves the right to pay an employee's spouse and covered dependent(s) medical claims as a secondary payer, but not primary.

25.04 The Employer's cost of providing coverage shall be calculated in accordance with 29 U.S.C. § 1164 (the "COBRA rate"). The COBRA rate, expressed as a monthly rate for both single and family coverage, shall be recalculated on or about October 1 of each year of this agreement. If during the term of this agreement the

Employer's COBRA rate exceeds the COBRA rate in effect as of October 1 of the previous year by fifteen percent (15%) or more, then the parties shall commence negotiations, upon notice by the City, regarding the method of financing the increased insurance costs. In the event the parties cannot agree, the dispute shall be the subject of an arbitration pursuant to Article 35 hereof. The arbitrator's authority in an arbitration pursuant to this section shall be limited to choosing the last offer of either the City of the Union.

25.05 At no cost to the employee, the Employer shall provide each employee \$50,000 in life insurance with double indemnity for accidental death and a \$5,000 accidental death and dismemberment benefit.

25.06 At no cost to the employee, the Employer shall provide each employee a time loss weekly benefit equal to 70 percent of weekly earnings up to a maximum weekly benefit of \$325 pursuant to the guidelines listed below. The time loss weekly benefit is payable for a maximum of 26 weeks.

Time Loss Weekly Benefit (Short Term Disability) Policy

1. Purpose. The purpose of the time loss weekly benefit is to provide partial wage or salary replacement for an employee who is unable to perform the essential functions of the employee's position due to a non-work related disabling illness, injury or condition.

2. Eligibility. A full-time permanent employee who has completed one year of continuous service immediately prior to the date of the disabling condition, who has exhausted accumulated sick leave benefits, and who is unable to perform the essential functions of the employee's position due to a disabling illness, injury, or condition not received in the course of or arising out of any employment covered by any workers' compensation, federal compensation plan, or during any period in which the employee is receiving occupational injury leave or lost time wages from the bureau of workers' compensation, that will last more than fourteen consecutive calendar days, may make application for the time loss weekly benefit.

3. Waiting Period. Payment of the time loss weekly benefit will begin after the employee's accrued sick leave balance has been exhausted, provided that seven (7) calendar days have elapsed since the date of the onset of illness or injury, inclusive of any sick leave hours used. The time loss weekly benefit is payable for a maximum of 26 weeks.

4. Application. The employee shall file an application for the time loss weekly benefit with the employee's appointing authority. The application shall be filed on a form designated by the Employer and shall be filed, completed in its entirety, with the appointing authority within twenty days of the last day the employee received sick leave pay. The Employer reserves the right to reject applications and/or deny benefits to applicants that do not meet all criteria set forth in this policy.

5. Medical Certification. It shall be the employee's responsibility to provide written documentation to substantiate the cause, nature, and extent of the disabling illness, injury, or condition for which the employee is requesting a time loss weekly benefit. A medical examination report shall be required prior to the granting of

any benefits and the employee shall be responsible for the cost of obtaining such report. The Employer may request that the employee provide periodic medical certification reports from his/her attending physician, to continue to substantiate the disabling condition and necessity for remaining off work. The Employer also may require a second or third medical opinion based upon a medical examination performed by a physician selected by the Employer, at no cost to the employee, at any time during the period an employee is receiving a time loss weekly benefit, and may discontinue such benefit payment upon receipt of medical certification that the employee is capable of returning to work.

6. **Payment of Benefit.** Time loss weekly benefit will be paid in an amount not to exceed \$325 per week, up to seventy percent of the employee's base rate of pay, for a period not to exceed twenty-six (26) weeks. Employees may supplement the time loss weekly benefit payments with accumulated vacation, floating holiday, or compensation/paid leave time hours, if applicable, up to a maximum of seventy percent of regular salary. In no event shall an employee receive more than seventy percent of his/her regular gross compensation while receiving time loss weekly benefits.

7. **Continuation of Other Benefits.** The Employer shall continue to provide medical insurance coverage during the period an employee receives a time loss weekly benefit. The Employer shall pay the employee's share as well as the Employer's share of retirement contribution to the retirement system on the time loss weekly benefit only. These contributions shall be made in the amounts set forth by law based on the employee's base rate of pay in effect at the time the employee becomes disabled. Longevity, holiday and sick leave benefits shall not be paid and accrual of such benefits shall not include credit for the period of time an employee was in time loss benefit status.

8. **Return to Work.** An employee who is receiving a time loss weekly benefit shall provide medical certification to the Employer that the employee is able to return to work. An employee who is unable to provide medical certification shall not be permitted to return to work. An employee who is unable to return to work must make application with the state retirement system for disability retirement benefits, and during the period of time after which the employee makes such application until their retirement benefits become effective under the state retirement system, the Employer shall continue to provide medical insurance coverage for the employee.

9. **Subsequent Disability.** A subsequent disability unrelated to a previous illness, injury or condition shall be considered the same claim if it occurs while an employee is on an approved disability leave, pursuant to this policy. A subsequent unrelated disability that occurs following a previously requested disability leave benefit period shall be considered a new claim. A new waiting period must be served and sick leave time exhausted before the employee will be eligible to receive time loss weekly benefits. A related disability that occurs within one (1) year of a return to active work status will be considered the same disability claim. Benefits may be payable from the first day of the subsequent related disability for any weeks remaining from the initial period of approved time loss weekly benefit, up to a total maximum of 26 weeks. A related disability that occurs beyond one (1) year of a return to active work status will be considered a new disability claim. A new waiting period must be served and sick leave time exhausted before the employee will be eligible to receive a time loss weekly benefit.

10. **Conditions Precluding Receipt of Disability Leave Benefits.** The Employer reserves the right to reject an application for time loss weekly benefits if the application for benefits is the result of criminal or unlawful acts.

11. **Employee's Right to Appeal Decision.** An employee may appeal a decision made pursuant to this policy by filing a grievance in accordance with procedures established by way of the respective collective bargaining agreement. Those employees not represented by a bargaining unit may file an appeal through the respective department head with final authority resting with the City Manager.

25.07 The Employer shall have no obligation to provide insurance coverage for dependents in cases where the employee who desires such coverage fails to make a written application for same to the Director of Finance or to provide information reasonably requested by the Director of Finance to establish the eligibility of dependents.

25.08 The Employer has the right to self-insure or change carriers as it deems appropriate, providing the effected coverage remains comparable. The Employer shall also have the right to modify existing cost containment procedures or implement additional reasonable cost containment procedures, provided they do not reduce coverage or benefits provided herein.

25.09 The Employer reserves the right to reduce appropriate coverage on retirees who have retired prior to January 1, 1988 when that coverage is already being provided by the Police and Fire Disability and Pension Fund.

25.10 No insurance shall be provided and paid for by the Employer, except for \$12,500 life insurance, for any employees who retire subsequent to December 31, 1987 but prior to January 1, 2006. No insurance of any kind shall be provided and paid for by the Employer for any employees who retire on or after January 1, 2006.

**EXHIBIT A
MEDICAL, DENTAL AND VISION BENEFITS
MEDICAL**

Cash Deductibles:

Effective
January 1, 2006

Insured Person Deductible	\$260
Family Deductible	\$520

Benefit Percentage (paid by the Plan)

Network	90% of the Network Provider Charge unless Specifically noted otherwise
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Non-network	80% of Reasonable and Customary (R&C) Unless Specifically noted otherwise
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Maximum Out-of-Pocket Liability:

Effective
January 1, 2006

Network	
Individual coverage	\$660
Family coverage	\$1,320
Non-network	
Individual coverage	\$1,060
Family coverage	\$2,120

**EXHIBIT B
PRESCRIPTION DRUG PLAN**

The prescription drug plan provider will issue a drug plan card that will enable a covered individual to purchase up to a fifteen (15) day supply of a prescription drug that is needed on an emergency basis. From the effective date of this Agreement through February 28, 2006, such purchase will be subject to a deductible (per prescription) of \$5 for generic and \$10 for name brand drug. As of March 1, 2006, such purchase will be subject to the deductible (per prescription) of \$7.50 for generic, \$15.00 for formulary drugs, and \$25.00 for non-formulary drugs.

Non-emergency prescriptions or prescriptions in excess of the initial fifteen day supply must be purchased directly from the prescription drug plan provider. Postage paid envelopes and a toll free telephone number will be provided. From the effective date of this Agreement through February 28, 2006, covered drugs furnished by the prescription drug plan provider for a ninety (90) day supply will be provided completely free of charge with no deductible or co-payment. As of March 1, 2006, the plan will require a deductible (per prescription) of \$15.00 for generic, \$30.00 for formulary drugs, and \$50.00 for non-formulary drugs.

5. LONGEVITY

The Union sought a significant increase in the longevity schedule, ostensibly to bring the City into line with other comparable municipalities. The City countered that all bargaining units within the City enjoy the same longevity schedule and that the overall compensation paid to employees in this unit is already sufficiently competitive that an increase in longevity is not justified. Based on the evidence and argument presented, the fact-finder determines that the Union's request is not justified and, therefore, the fact-finder recommends the following language for Article 27, which reflects no change in the longevity schedule, but several language changes mutually agreed by the parties:

**ARTICLE 27
LONGEVITY**

27.01 All employees shall receive longevity payments based on the employee's total continuous service with the City of Kent, in accordance with the following schedule:

<u>AT THE COMPLETION OF:</u>		<u>Monthly Payment:</u>
7 through 9 years		\$20.00
10 through 13 years		\$30.00
14 through 17 years		\$40.00
18 through 21 years		\$50.00
22 through 25 years		\$60.00
26 years and over		\$70.00

27.02 Longevity bonus payments shall be calculated annually and paid in the first pay period of December.

6. RATES OF PAY

The City presented evidence showing that it has been in a deficit spending situation for at least the last two years. It also presented evidence that its sergeants and lieutenants are fairly compensated relative to appropriate comparables. Therefore, it proposed increases of two percent per year. The Union sought increases of 4.5% the first year and 5% in the second and third years. As is often the case, the appropriate amount of increase reasonably falls somewhere in between. Based on the evidence and argument presented and particularly considering the City's financial difficulties and the levels of compensation currently enjoyed by employees in this unit, the fact-finder recommends wage increases of 3% in the first and second years of this agreement and 2.75% in the third year, along with language changes in Article 28 that were mutually agreed by the parties as set forth below:

ARTICLE 28 RATES OF PAY

28.01 Effective December 26, 2005 all employees shall be paid in accordance with the following schedule, which reflects a three percent (3%) increase and which defines the employee's base rate of pay:

Job Title	Step 1	Step 2	Step 3
Police Sergeant	\$27.11 \$56,388.80	\$27.83 \$57,886.40	\$28.55 \$59,384.00
Police Lieutenant	\$30.84 \$64,147.20	\$31.26 \$65,020.80	\$31.67 \$65,873.60

28.02 Effective December 25, 2006, all employees shall be paid in accordance with the following schedule, which reflects a three percent (3%) increase and which defines the employee's base rate of pay:

Job Title	Step 1	Step 2	Step 3
Police Sergeant	\$27.92 \$58,073.60	\$28.66 \$59,612.80	\$29.41 \$61,172.80
Police Lieutenant	\$31.77 \$66,081.60	\$32.20 \$66,976.00	\$32.62 \$67,849.60

28.03 Effective December 24, 2007, all employees shall be paid in accordance with the following schedule, which reflects a two and three-quarters percent (2.75%) increase and which defines the employee's base rate of pay:

Job Title	Step 1	Step 2	Step 3
Police Sergeant	\$28.69 \$59,675.20	\$29.45 \$61,256.00	\$30.22 \$62,857.60
Police Lieutenant	\$32.64 \$67,891.20	\$33.09 \$68,827.20	\$33.52 \$69,721.60

28.04 Step 1 shall be paid upon entry into the classification. Step 2 shall be paid beginning with the pay period following six months in the classification provided performance is satisfactory. Step 3 shall be paid beginning with the pay period following satisfactory completion of the probationary period.

28.05 An employee who is promoted to a higher classification because of a promotional examination or a temporary emergency appointment shall be paid at a rate in the higher class which will result in at least a six percent (6%) wage increase over the regular rate established for the class and rate in which the employee had been serving immediately prior to promotion regardless of whether the employee had been receiving merit pay.

28.06 No employee shall keep any other compensation, gift or fee from any other party for work performed while the employee is on duty or is paid by the Employer. This applies to witness fees, mileage fees, Deputy Clerk of Court compensation which in the past has been paid to the secretary and dispatchers, and all other types of payments or objects of value. Should an employee receive such payments or objects, these amounts or items shall be deposited with the Finance Director immediately upon receipt thereof by the employee. Should an employee fail to deposit such amounts or items as required hereby, the amount not deposited or the value of the item shall be deducted from the employee's pay.

28.07 Employees who have completed at least fifteen (15) years of service with the Employer and have reached age 48, shall upon retirement from the Employer, receive

a lump sum retirement benefit which shall be equal to 176 hours of pay at the regular rate of pay which shall have been in effect for said employee at the time her/she shall have retired.

28.08 At the sole discretion of the Chief of Police, employees may be awarded up to a maximum of eight hours administrative leave with pay, in lieu of a normally scheduled work day, in recognition of extraordinary performance on duty.

7. IN-GRADE BONUS

The Union sought a method of rewarding members who have chosen to seek and accept promotions into the supervisory positions encompassed by this bargaining unit. While not adamantly opposed to the concept, the City was concerned about the cost impact based on its financial condition. Based on the evidence and argument presented, the fact-finder determines appropriate the inclusion of an in-grade bonus, though at a lesser magnitude than that sought by the Union. Therefore, the fact-finder recommends the following language for Article 38:

ARTICLE 38 MISCELLANEOUS

38.01 In the event that an employee resigns/separates or dies, said employee shall be compensated at the current rate of pay for all unused vacation and personal leave. Sick leave payoff (which is defined as buying out a sick leave balance at the rate of two hours of balance for the equivalent of one hour's pay) will only be made in the case of death of the employee, retirement, or disability separation. In the event an employee is laid off and not recalled, after all recall rights are exhausted said employee shall also be entitled to this provision. Employees will not be eligible for vacation compensation if said employee is terminated or resigns within his/her first year of employment. Thereafter, vacation accrual shall be calculated through the last date of active service based on the anniversary year. In the case of death, payment for unused vacation time and personal leave shall be paid to the employee's spouse or their estate.

38.02 In-grade bonus. After one year in a supervisory position, each bargaining unit employee shall be eligible to receive an annual in-grade bonus. The in-grade bonus is calculated based on the number of full months in a supervisory position as of December 1 of each year, with eligible bargaining unit employees receiving three dollars (\$3.00) for each month in a supervisory position as of that date (e.g., sixty months in a supervisory position would result in an in-grade bonus of \$180 for that year). The in-grade bonus will be paid in the first pay period of December.

8. SHIFT DIFFERENTIAL

The Union sought a shift differential for the supervisory officers in this unit. In fact, none of the City's safety forces receive a shift differential. Based on the evidence and argument

submitted, the fact-finder recommends that no language regarding a shift differential be included in the parties' agreement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'C. Lalka', written in a cursive style.

Colman R. Lalka, Fact-Finder

Dated: January 27, 2006
Madison, Lake County, Ohio