



STATE EMPLOYMENT
RELATIONS BOARD

2005 APR 17 A 11: 16

IN THE MATTER OF FACT FINDING

BETWEEN

CITY OF KENT

AND

FRATERNAL ORDER OF POLICE, OLC, INC.

BEFORE: Robert G. Stein

SERB CASE NO. 05-MED-07-0740, 41, 42

PRINCIPAL ADVOCATE FOR THE UNION:

Hugh Bennett, Sr. Staff Representative
FRATERNAL ORDER OF POLICE, OLC, INC.
3076 Hillside Trail
Stow OH 44224

and

PRINCIPAL ADVOCATE FOR THE CITY:

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INTRODUCTION

The three bargaining units involved in this proceeding include people in the classifications of Police Officer, Dispatcher, and Civilian who provide security and incarceration services for the City of Kent (hereinafter, "Kent" or "Employer").

Prior to a formal submission of evidence, the fact-finder, acting as a mediator, made a concerted effort to bridge the differences between the parties concerning the above referenced issues. Settlement possibilities were assessed with the parties in an effort to find common ground upon which to construct a settlement. To some extent this was achieved; however, complete agreement was not reached on all issues and fact-finding went forward. In order to expedite the issuance of this report, the fact-finder will provide a summary of his rationale on all issues, followed by determinations regarding each issue.

CRITERIA

OHIO REVISED CODE

In the finding of fact, the Ohio Revised Code, Section 4117.14 (C)(4)(E) establishes the criteria to be considered for fact-finders. For the purposes of review, the criteria are as follows:

1. Past collective bargaining agreements
2. Comparisons
3. The interest and welfare of the public and the ability of the employer to finance the settlement.
4. The lawful authority of the employer
5. Any stipulations of the parties
6. Any other factors not itemized above, which are normally or traditionally used in disputes of this nature.

These criteria are limited in their utility, given the lack of statutory direction in assigning each relative weight. Nevertheless, they provide the basis upon which the following recommendations are made:

ARTICLE 19 OVERTIME:

Section 19.01

The City proposes to add language to Section 19.01 that reads: **“Up to the maximum accrual of sixty (60) hours worked/ninety (90) hours accrued, per year.”** It desires this language to apply to all units. The City argues it has experienced significant operational problems in scheduling overtime due to the amount of compensation time being accrued through overtime and holidays. The Union does not share the Employer's concern that there is a problem with compensatory time and proposes current language. The Union also wants to add language in the civilian Collective Bargaining Agreement that applies to detention officers. It wants to change the language to read, “Employees covered by this Agreement shall receive overtime pay of one and one-half times the employee's normal hourly rate for all time worked and approved time off in excess of eight (8) hours per **twenty-four hour period** or forty hours a week.” The City recommends current language. The Union, citing the schedules of detention officers, provided a convincing argument to change this language. The City makes a convincing case for a partial adjustment to occur in the area of compensation time accumulation. However, the Union also makes a persuasive argument to maintain an employee's option to convert overtime to compensation time.

Determination:

Article 19.01

Maintain current language, except in the first sentence of the **Civilian Collective Bargaining Agreement for detention officers** modify the sentence to read:

Employees covered by this Agreement shall receive overtime for all time worked and approved time off in excess of eight (8) hours **per twenty-four hour period** or forty (40) hours per week.

Article 19.02; 19.92 (D) and (F); and 19.03

The City argues that its proposed language is intended to confirm the components of pay that are included in calculating overtime pay. In addition, the City proposes language relating to when an employee is entitled to overtime for court appearances. The Union proposes current language in 19.02 and desires to define the phrase, "regular rate of pay".

The fact-finder is in an untenable position to judge the merits of the City's or the Union's desired changes in redefining "regular rate of pay". Scheduling problems are multi-faceted and frequently depend upon such factors as minimum staffing requirements, absenteeism rates, demand for services, workforce strength, the amount of time off, and a myriad of other factors unique to the mission of the Kent Police Department. In this regard it is very difficult to compare one city's police department with another. Whether changing the phrase "regular rate of pay" to "premium overtime" or further defining "regular rate of pay" will ultimately impact the amount of pay an employee currently receives and requires the parties to thoroughly address this issue in negotiations.

Determination:

Maintain current language

Article 19.06

The Union is proposing to increase the compensatory time carry over balance from 125 hours to 480 hours. The Employer is seeking to maintain the current carryover balance language. As previously stated, the City made a convincing argument that compensation time management is becoming a problem, and it needs some relief in this area. The facts demonstrate that increasing the balance level will likely exacerbate the problem, particularly in an ever-tightening budgetary future.

Determination:

Maintain current language

ARTICLE 20 HOLIDAYS

Article 20.05 (A) and (B), 20.06 (B), and 20.07

The City is proposing language that distinguishes holiday time from compensation time and places it in a separate bank. The City is also proposing a change of language from "normal rate of pay" to "**base rate of pay.**" The Union is proposing current language. The City made a convincing argument that it needs some relief in scheduling and the costs associated with having to replace officers who take time off. The problem becomes more acute with the likely prospect of pending financial "belt tightening" that is looming on the horizon. This reality must be dealt with in this area as well as others. The City's proposal, while calling for some sacrifice in scheduling on the part of bargaining unit members, is reasonable in light of the problem it faces. Moreover, there already exists a long-standing procedure for the use of vacation time that appears to be applicable to scheduling holidays. While an adjustment in the accounting for holiday time is supported by the facts, I do not find there is sufficient justification to change the definition of pay. Moreover, given the fact that almost four months of the current year have transpired, it is reasonable that a change to a holiday bank of hours take place with the next calendar year.

Determination:

Maintain current language for the remainder of calendar year 2006.

Effective January 1, 2007:

Section 20.05 (A) Maintain current language

Section 20.05 (B) Delete current language replace with:

Use the holiday at a later date, with an additional one-half holiday accumulated as a floating holiday.

Section 20.06 (A) Modify to read:

- A) Take eight (8) hours of holiday leave at a later time or;**
- B) Maintain current language**

Section 20.07 Modify to read:

The floating holidays may be taken off at a rate of eight (8) hours holiday leave per holiday.

ARTICLE 21 VACATIONS

ARTICLE 21.12 (B), (C) and (E).

The City wants to change minimum staffing language, and the Union is adamantly opposed to this idea. Staffing levels are unique to each public jurisdiction and do not easily lend themselves to comparables. The City is seeking a change in language as another way to deal with the compensatory scheduling issue. The Union seeks to maintain current language. I find the Union's position to be more persuasive and consistent with the history of bargaining between the parties. The Union is also seeking a change to Section 21.12 (E) that is consistent with its proposal to raise the compensatory time level to 480 hours. As previously stated, such a change is at odds with the City's concerns over compensation time scheduling.

Determination:

Maintain current language

ARTICLE 23 SICK LEAVE

ARTICLE 23.12 (D)

In light of the facts of this case, I find the Union's position to maintain a level of 400 hours for all years of the Agreement to be persuasive.

Determination:

(1)	Year's end in 2006	400 hours
(2)	Year's end in 2007	400 hours
(3)	Year's end in 2008	400 hours

ARTICLE 24 UNIFORM AND PERSONAL EQUIPMENT

ARTICLE 24.01 (a), (b), and (c)

The parties agreed in principle in the fact-finding hearing to increases of \$50 each year in the uniform allowance. The dispatcher uniform allowance requirements are less demanding, therefore warranting a like percentage increase based on lower net totals. The Union and the Employer are \$100 and \$50 dollars apart on their proposals for increases in the uniform allowance for newly hired police officers and officers in their second year of employment. It seems reasonable to increase these totals in line with what the parties have agreed upon for officers in their third year of employment.

Determination:

Third year officers shall receive:

Effective 2006 \$800

Effective 2007 \$850

Effective 2008 \$900

Newly hired patrolmen.....shall receive \$1250 at time of hiring.

2nd year officers ...shall receive \$500.

Dispatchers shall receive:

2006 \$500; 2007 \$525; 2008 \$550

ARTICLE 24.06

The Union proposed that an officer's sidearm, duty holster, and ballistic vest be replaced every five years from the date of issuance based upon manufacturer's warranty. The City argues that a manufacturer's warranty date is not determinative of the useful life of a ballistic vest and that it is costly to replace them every five years. During the fact-finding hearing the emphasis of the Union's proposal dealt with the ballistic vest. The useful life of a sidearm and a duty holster readily lend themselves to

continual testing and visible inspection. This is not the case with ballistic vests.

One could certainly speculate that depending on the amount of wear and tear a ballistic vest undergoes, it may continue to provide adequate protection to an officer beyond five years. However, the consequences of an out of warranty vest failing is far too great a safety risk to rely upon speculation or emotion. It would also be irresponsible for a neutral to render an uninformed decision in a matter of this importance. While a manufacturer must stand behind its warranty, which is presumably supported by considerable research, there are many factors that contribute to the viability of a ballistic vest. The frequency of wear and exposure to ultra violet light are just two of the many factors contributing to the longevity of a vest (see City's submission of U.S. Department of Justice Report). I understand the City's need to make equipment last longer due to reasons of efficiency, yet this is a safety item that cannot be left to opinion without further joint in-depth exploration. It is also recognized that there are few comparables to rely upon. Fortunately, the bargaining unit received new ballistic vests in March of 2006, giving the parties time to further examine this issue in depth.

Determination:

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 Union and the City shall form a safety taskforce (with equal number of employees from the Union and the City, with the parties choosing their own representatives) to research and examine the issue of ballistic vest maintenance and replacement, and any other issues the parties determine to be appropriate. The City Manager shall appoint a person to chair the committee. The committee shall meet during working hours on a schedule determined by the parties, and shall make specific recommendations to the Chief of Police, the City Manager, and to City Council, by November 1, 2007 regarding an agreed upon protocol to be followed. If the safety committee does not fulfill its obligations to research and make specific recommendations, or cannot come to consensus regarding a protocol for the specific issue of ballistic vest safety, this single issue shall be referred back to the fact-finder in November of 2007 for a final recommendation. At that time a hearing shall be convened by the fact-finder in order for the parties to present any data and arguments in support of their respective positions. A decision will then be rendered by the fact-finder in accordance with O.R.C. 4117.**

ARTICLE 25 GROUP INSURANCE

Article 25.01, 25.05, and 25.10.

The first time employees had to contribute their health insurance took place on the last day of the month of the current agreement (October 2005). I concur with the changes that the City stated it needs to continue to make affordable health care coverage available to employees and their families. The only departure from the City's position in this matter is the timing of an adjustment in health care premiums. The Union raised a valid criticism of the lack of choices in the prescription drug plan. The City appears to be committed to improving the drug plan in the near future, and they should be given an opportunity to fulfill this commitment. The Union is also proposing that married couples who work for the City receive a break in the cost of health care coverage. A change of this nature promises to benefit both parties in terms of the cost of premiums. The City is seeking relief in providing life insurance to employees who retire after January 1, 2006. The Union is seeking to raise the amount of life insurance for current employees. While maintaining a commitment to provide benefits to current employees upon retirement, it appears that both parties may be accommodated if each is granted future relief in these respective areas.

Determination:

25.01 The health care changes proposed by the City shall be adopted in their entirety, but the additional increases in premium proposed by the City shall not go into effect until the first pay period in October 2007.

The health care exception for married couples shall be adopted as proposed by the Union.

25.05 At no cost to the employee, the Employer shall provide each employee with a fifty thousand dollar (\$50,000) life insurance policy double indemnity for accidental death and a ten thousand dollar (\$10,000) accidental death and dismemberment benefit.

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.**

ARTICLE 27 LONGEVITY

Article 27.02

The City proposes to remove the last sentence in this section. Based upon the discussions which took place at fact-finding, this is a reasonable clerical correction.

Determination:

Modify Article 27.02 by removing the last sentence as proposed by the City.

ARTICLE 28 RATES OF PAY

Articles 28.01, 28.02, 28.03, 28.04, and 28.05

The City is facing a declining financial situation that it must address in a timely fashion. It appears from the evidence that the City and the Union have historically negotiated reasonable wage increases when the City had the resources. However, absent an infusion of unexpected revenue, the next few years are likely to be considerably challenging. I find the raises provided to the supervisory unit by the fact-finder to be reasonable, given the context of the City's financial condition. It is recognized that in addition to across-the-board increases, the supervisory unit receive an "In-Grade bonus. In lieu of a bonus the patrol unit has (as a result of this fact-finding report) a later starting date for any health care premium increases, and an equity upgrade for the position of Juvenile Counselor. It is also recognized that the supervisory unit made greater concessions in the area of compensation time scheduling than is being recommended in this report. However, it is also noted that the two units are not alike in the manner in which scheduling can be accommodated. The evidence supports no other changes in this article.

Determination:

Article 28.01 through 28.03

3% for all bargaining unit members effective 12/26/05

3% for all bargaining unit members effective 12/25/06

2.75 % for all bargaining unit members effective 12/24/07

The position of Juvenile Counselor shall be increased by one pay step.

28.04 Maintain current language

28.05 Maintain current language

TENTATIVE AGREEMENTS

During negotiations, mediation and fact-finding the parties reached tentative agreement on several issues. All tentative agreements reached by the parties are part of the determinations contained in this report.

The arbitrator respectfully submits the above recommendations to the parties this 13th day of April 2006 in Portage County, Ohio.



Robert G. Stein, Fact-finder