

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS
BOARD
FACT FINDING PROCEEDINGS**

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RELATIONS BOARD

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**REPORT & RECOMMENDATIONS
OF THE FACT FINDER**

IN THE MATTER OF:

City of Dover
(Employer)
-and-
Fraternal Order of Police
Lodge No. 4
(Union)

Case No. 96-MED-08-0635
Case No. 96-MED-07-0590

HEARING:

As the result of an Evidential Hearing held on November 27, 1996
at the Dover Municipal Building in Dover, Ohio.

APPEARANCES:

On Behalf of the Union:

Ronald G. Macala
Robert W. Everett
Marc A. Lautenschlienger

Attorney
President, FOP Tuscora #4
Secretary, FOP Tuscora #4

On Behalf of the Employer:

Robert J. Tscholl
Roy Crawford
Tweed Vorhees
Ronald Johnson
Tom Watson

Attorney
President, City Council
Safety Director
Chief of Police
Law Director

Gregory James Van Pelt
Fact Finder
2203 Murray Hill Road
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BACKGROUND AND SUBMISSION

In accordance with the provisions of Section 4117.14(C)(3) of the Ohio Revised Code, the undersigned was appointed Factfinder in the present matter, effective October 2, 1996. The positions of the Parties were submitted to the Factfinder prior to the hearing.

Prior to the evidential hearing, exploration of a mediated resolution of the issues at impasse indicated no such process would prove fruitful. Accordingly a hearing was held, at which the Parties were afforded an opportunity to present witnesses and evidence in support of their respective positions.

At the conclusion of the hearing, the Parties requested the submission of post-hearing statements of position. The statements were served by facsimile and postal delivery and the matter was declared closed on Friday, December 6, 1996.

ISSUES AT IMPASSE

The Parties identified nine issues remaining unresolved:

1. Shift Rotation
2. Comp Time
3. Vacation Time
4. Long Weekends
5. Call-In/Call-Back
6. Holiday Pay/Holiday Scheduling
7. Life Insurance
8. Injury Leave/Light Duty
9. Wages

A proposal by the City regarding the elimination of the Captain/Detective position from the bargaining unit was withdrawn at hearing.

The first four issues at impasse affect, collectively, the scheduling of Officers by the Administration. Accordingly these issues were heard and discussed as a set, and will be so considered in this report.

I. Scheduling

Issues:

1. Shift Rotation
2. Comp Time
3. Vacation Time
4. Long Weekends

Position of the City of Dover

The City maintains that various provisions in the present agreement have hampered its ability to schedule police officers in a manner consistent with the best interests of the citizens of Dover. Under the present system, contractual scheduling mandates regarding compensatory time, vacation time and other paid time off have diminished the Chief's role in managing the Department. The result of this situation, says the City, is that scheduling under the current system is beyond the Chief's control and requires the efforts of a Captain/Detective on

virtually a full-time basis. Accordingly, the City proposes contract revisions it argues would enable it to schedule more effectively.

A. *Article VIII - Work Week, Pay Period and Scheduling*

The City proposes that Section 8.05 of the present agreement be changed to read:

“The City reserves the right to determine the shifts and schedules for the department, including, but not limited to, the number of officers to be scheduled on any given shift, the hours to be worked by any officer, and the days off for an officer assigned on any given shift (except as expressly limited by Section 8.03)”

In conjunction with this language, the City proposes elimination of Section 8.04 and a renumbering of Article VIII to reflect the deletion.

At present, Officers rotate through three shifts on a weekly basis. In addition to scheduling difficulties, says the City, this system creates a situation in which Officers are unfamiliar with the environment on the shift they are charged with patrolling; a condition the City asserts is contrary to effective police work.

B. *Article XXXIV - Overtime*

The ability of Officers to manipulate compensatory time under the present contract likewise exacerbates scheduling problems for the Department, says the City. Accordingly, it proposes elimination of Section 34.04, providing for Compensatory time at a rate of one and one-half hours for each hour of overtime.

Instead, the City proposes to pay overtime for all overtime hours worked and to pay all accumulated compensatory time to date.

C. *Vacation Schedules*

The City proposes elimination of a Memorandum of Understanding regulating vacation scheduling and the use of compensatory time, which has obtained between the Parties since May of 1995. This addendum, says the City, enables bargaining unit members to dictate who, when and how much time can be taken for vacation and compensatory time. It proposes that the right to determine vacation schedules be retained by the Administration.

D. *Long Weekends*

The City rejects Union proposals that long weekend scheduling provided in Article VIII be expanded.

Position of the FOP

The present scheduling system has been in place for a considerable period, says the FOP. At no time has the City failed to fully man shifts, and personnel have been available for duty when needed. Moreover, the Union maintains that no citizen complaints have been alleged regarding a shortage of police protection, nor has criminal activity in the City of Dover increased due to the present scheduling system. Accordingly, the FOP makes the following proposals regarding scheduling issues:

A. *Article VIII - Work Week, Pay Period and Scheduling*

The FOP rejects the City's proposal to eliminate the present shift rotation system. This system, says the Union, has been in place for some fifteen years. Moreover, a majority of bargaining unit members have indicated a desire to maintain their existing shift rotation.

The City's contention that Officers on a single shift are able to become more familiar with a given patrol environment is not sufficient rationale to eliminate the present system, according to the Union. All Dover Police Officers are Dover residents, it says, and are familiar with all parts of the City. Given the sharing of information between Officers, the shift to which bargaining unit members are assigned will not appreciably affect their knowledge of the community. Consequently, the Union proposes retention of the present scheduling system.

B. *Article XXXIV - Overtime*

The FOP likewise rejects the City's proposal to eliminate the compensatory time provisions of Section 34.04. This provision has also been in place for a significant period of time, says the Union, and its elimination would represent a terrible loss to bargaining unit members.

Extended to public employees under the Fair Labor Standards Act, comp time permits the City to avoid immediate payment for overtime work, while allowing junior Officers to take time off they might not be able to under other

circumstances. Both these goals, says the Union, work laudably to the benefit of both Parties.

In order to allay the City's concerns regarding compensatory time, the Union maintains it entered into the May, 1995 Memorandum of Understanding in which bargaining unit members made several significant concessions in their utilization of comp time. Under this Addendum, says the Union, the present system has served the community well, and should not be altered.

C. Vacation Schedules

The FOP rejects the City's proposal that the vacation scheduling provisions of the May, 1995 Memorandum of Understanding be eliminated. Such an agreement would grant the Chief an "unfettered right to deal with vacation scheduling", says the Union.

Instead, the FOP proposes a new Section 11.04(b) requiring bargaining unit members to submit their vacation preferences to the Chief on or before March 1st of the calendar year. Officers not submitting vacation preferences by March 1st would be subject to vacation at the discretion of the Chief. Conflicts between vacation preferences will be resolved on the basis of seniority.

Under this proposal, the Union argues, both Parties will benefit from a stabilized vacation scheduling system. Failing acceptance of the Union's proposal, it argues that current contract language should be retained.

D. Long Weekends

The present contract language recognizes the desire of bargaining unit members to spend weekend time with their families and communities, the Union points out. While it concedes that, as Police Officers, bargaining unit members cannot expect to be eligible for the same amount of weekend time off as other members of the community, it argues that the expectation of at least one weekend per month is not unreasonable. Accordingly, the FOP proposes the following change to the language of Section 8.05:

“Both parties in this agreement recognize there is a definite desire to have weekends as days off. However, the City will ensure that the current practice of dividing the long weekends amongst the membership of the police department shall continue. This shall mean no less than one long weekend per month each calendar year of this agreement for the Captains and Senior Officers, no less than ten (10) long weekends and two (2) weekends per calendar year for the “middle” Officers and no less than six (6) long weekends and six (6) weekends per year for the Junior Officers and Desk Personnel. A long weekend is defined as beginning at 7:00 am on Friday morning and ending at 3:00 pm on Wednesday of the following week. A weekend is Saturday and Sunday. “

Discussion and Recommendations

The issues related to scheduling contained in the present collective bargaining agreement and the May, 1995 Memorandum of Understanding unquestionably result in significant administrative effort on the part of the City. However, these issues represent rights fairly bargained and obtained by FOP members in past negotiations; therefore, they cannot be summarily eliminated without appropriate consideration. The following recommendations are made in order to balance the City's need to schedule its Police Officers in the community

interest and the preservation of rights and benefits already obtained by bargaining unit members.

A. Article VIII - Work Week, Pay Period and Scheduling

It is reasonable to believe that the City requires a certain amount of latitude in its ability to schedule safety forces according to the necessities of public safety. Moreover, there would seem some merit to the City's contention that Officers working regularly established shifts become more familiar with their patrol environments. Notwithstanding the Union's argument that a majority of its members prefer rotating shifts, public safety interests must be considered foremost. Accordingly it is my recommendation that the following language be inserted as Section 8.01, and that existing sections of Article VIII be renumbered to reflect the insertion:

The City reserves the right to determine the shifts and schedules for the department, including, but not limited to, the number of officers to be scheduled on any given shift, the hours to be worked by any officer, and the days off for an officer assigned on any given shift (except as expressly limited by provisions of this agreement.)

B. Article XXXIV - Overtime

In conjunction with its proposal to reserve the right to determine shifts and schedules for the department, the City also proposes elimination of the bargaining unit's right to compensatory time contained in Section 34.04. Comp time is a benefit established through the Fair Labor Standards Act and afforded members of this bargaining unit in Article XXXIV.

The elimination of such an important historical benefit without significant consideration cannot be made absent considerable evidence that abuse or other circumstances regarding the use of comp time adversely affect the public safety. No such evidence was presented here. It is not sufficient that Officers' utilization of their contractual right to comp time requires significant administrative attention. Accordingly, it is my recommendation that the provisions of the May, 1995 Memorandum of Understanding be memorialized in Article XXXIV, and that all other provisions for compensatory time remain as provided in the predecessor agreement.

C. *Vacation Schedules*

The City's proposal to eliminate vacation scheduling provisions contained in the May, 1995 Memorandum of Understanding would result in the eradication of bargaining unit members' right to vacation at the time of their choice, a right they have historically enjoyed. The FOP's proposal for insertion of a vacation scheduling clause at Section 11.04(b) would provide the City with a reasonable mechanism to ensure stable vacation rotation, while preserving the historical rights of Officers. Accordingly, it is my recommendation that the following language be included in Article XI:

11.04(b)

On or before March 1 of any calendar year, the Chief will obtain from employees entitled to vacation their preferences as to vacation periods and will, as soon thereafter as possible, establish workable vacation schedules according to seniority. In establishing such schedules, the City will respect the employee's vacation preferences. If an employee does not submit a

preference on or before March 1, the Chief shall have the discretion to schedule vacation time for that employee during periods which are least disruptive to the established schedule. Conflicts among preferences will be resolved according to seniority. Bargaining unit members will be notified of any changes in the currently established schedule procedure on or before April 1 of any calendar year. In order to accommodate vacation requests, schedule changes for bargaining unit members may be made by the chief or his designee so long as done so by April 1 of that calendar year. Any schedule change will be made on the basis of seniority. (Example: if a change must be made because of a vacation request, the least senior employee scheduled to work will have his schedule changed first. If after rescheduling the least senior employee, further adjustments are necessary, the next least senior employee will have their schedule adjusted in that same week). The process will continue until the necessary schedule adjustments are made. Vacation requests for the months of January & February shall be granted on the basis of seniority. Vacation requests for the months of January and February shall be on the basis of inverse seniority. Once the employee's vacation request has been turned into the scheduling officer, no changes or cancellations shall be permitted unless under extreme emergency which will permit the schedules to be completed by April 1st for the entire year. After vacation schedules have been established, an employee may thereafter request a vacation scheduling change to an open vacation slot. Such change must be approved by the scheduling officer.

D. Long Weekends

The FOP proposes the extension of the present provisions mandating long weekends for senior Officers contained in Section 8.05 of the Agreement.

Modification of this benefit, says the Union, will more equitably distribute weekends off among bargaining unit members. However, expansion of long weekend requirements would unreasonably restrict the City's scheduling options during periods in which manpower needs are conceivably the greatest.

Accordingly, it is my recommendation that current contract language be retained.

II. Additional Issues at Impasse

A. Call-In/Call-Back

Position of the FOP

The Union proposes to increase call-in/call-back pay for Officers from the present two hours for appearance at a court proceeding to three hours on normal working days and to four hours for those Officers called back on days off or after working a midnight shift. This compensation, says the FOP, is in keeping with other police departments in the state who enjoy four hours of minimum call-back compensation.

Position of the City

The City maintains present call-back pay adequately compensates officers required to make court appearances. Such duties do not normally take the full two hours now payed Officers, says the City. Accordingly, it rejects the Union proposal.

Discussion and Recommendations

While court appearances may not, as the City asserts, require the entire time for which Officers are now compensated, it is reasonable to conclude that such duty constitutes a significant intrusion in an Officers off-duty time and a preclusion of other activities. Nor was evidence presented to indicate the proposal would place an unmanageable financial burden on the City. Accordingly, it is my recommendation that the Union' request for additional compensation be reflected in the language of Article IX.

B. Holiday Pay/Holiday Scheduling

Position of the FOP

The Union proposes that Peace Officers Memorial Day, occurring on May 15th of each year be added to the nine paid holidays already provided in Section 10.01, for a total of ten paid holidays. The observance, says the Union, is a solemn occasion for all peace officers in the country, and a day the FOP has requested the City to observe by lowering its flags to half-mast. Moreover says the Union, it is not uncommon for police departments to grant officers twelve or thirteen paid holidays annually.

The FOP also proposes Section 10.01 be changed to entitle bargaining unit members to two times their normal rate of pay for hours worked on the holiday. This, says the Union, would be consistent with holiday pay for members of the Dover Fire Department.

Position of the City

The City argues that Police Officers already enjoy nine specified paid holidays as well as two personal days. Consequently, it argues that Dover Officers receive an adequate number of days off when compared to employees in the private sector. The City also rejects the Union's request for double time for bargaining unit members required to work on recognized holidays.

Discussion and Recommendations

The Union's desire to observe Peace Officer's Memorial Day is both understandable and commendable. However, as the Union points out, bargaining unit members do not typically enjoy "days off" on holidays. Consequently, observance of May 15th would, in reality, provide FOP members with nothing more than an additional paid holiday. No evidence was presented to indicate that Dover Police Officers compare unfavorably to other departments or to private sector employees in surrounding areas. Accordingly, it is my recommendation that the number of paid holidays provided for in Section 10.01 remain at eleven and that current contract language be retained, including the two personal days.

FOP members are currently paid at two times their rate on Christmas Day, New Year's Day and Thanksgiving. The Union's contention that Dover Firefighters enjoy double their normal rate of pay for hours worked on designated holidays is, moreover, persuasive. Parity between members of the City's safety forces has been the subject of negotiations and conciliation in the past, and every attempt should be made to equalize benefits, without instituting a spiraling competition between the two. Accordingly, it is my recommendation that the language of Section 10.01 be changed to compensate bargaining unit members at a rate of two times their normal rate of pay for hours worked on observed holidays.

C. Life Insurance

Position of the FOP

The Union contends the current provision for \$10,000 life insurance coverage contained in Article XXV is inadequate. Burial costs and other related expenses can easily exceed that amount, it says, conceivably leaving surviving families not only inadequately protected, but potentially liable for additional expenses. Accordingly, the Union proposes an increase in provided coverage from the current \$10,000 to \$25,000 with provision for double indemnity in cases of accidental death and dismemberment. Such additional coverage would be only incidentally expensive and not burdensome to the City, according to the FOP.

Position of the City

The City agrees that present policy limits might prove inadequate. However, it is concerned that additional coverage, when extended not only to Police Officers but other City employees might result in significant expense to the City. Accordingly, it offers an increase in coverage to \$15,000.

Discussion and Recommendations

There is little disagreement that a \$10,000 life insurance policy is not adequate to cover burial and other death-related expenses. Little, if any surplus would remain to benefit the family of a deceased officer. However, the intended purpose of this insurance policy is not to provide financial security for a deceased

Officer's survivors; pensions and other vehicles are specifically intended to fulfill that function. Accordingly, it is my recommendation that Section 2502 be modified to provide a \$15,000 benefit, with double indemnity for accidental death and dismemberment, in which cases it is conceivable that burial and other expenses might be greater:

25.02 Effective with the signing of this agreement, coverage shall be in the amount of Fifteen (\$15,000) with a provision for double indemnity for accidental death and dismemberment.

D. Injury Leave/Light Duty

Position of the FOP

The Union contends the present contract language providing injury leave of up to thirty days for injuries incurred during emergencies in the line of duty is inadequate and inequitable. Officers injured in any manner in the line of duty, says the FOP, should be entitled to injury leave, subject only to certification by an appropriate medical professional.

Moreover, the Union argues that thirty days is not a reasonable period. Worker's Compensation claims, it says, can take longer than thirty days to process, leaving Officers without compensation for injuries incurred in the line of duty. Accordingly, the Union proposes language providing for six months of paid leave for any on-the-job-injury for which the bargaining unit member provides medical certification.

The Union also proposes contract language providing for light duty. Such accommodation, it argues, would allow Officers to return to work on a limited

basis without requiring the filing of Worker's Compensation claims, or compensation by the City. This accommodation is not only good labor policy, but necessary under the Americans with Disabilities Act.

The Position of the City

The City maintains that thirty days of paid leave for injuries incurred in the line of duty have proven adequate in the past, and therefore no reason exists to alter the contract.

Moreover, it argues that no positions for light duty exist within the Department. To return an Officer to work in a capacity for which he is physically unprepared could potentially endanger the Officer and the public. Accordingly, the City rejects the inclusion of the FOP's language regarding light duty.

Discussion and Recommendations

The Union presents no evidence to indicate that the thirty days of paid injury leave provided by the present Agreement is inadequate, or that the requirement that such injury be sustained in the course of an emergency has created a burden for bargaining unit members in the past. Consequently, it is my recommendation that the present contract language be retained in this regard.

Light duty, however, is an accommodation of Officers it would seem the City might be eager to make. It would certainly benefit from the employment of Officers who otherwise might be collecting pay at City expense while at home.

And it might benefit its rating under Worker's Compensation by reducing the number of claims chargeable to its account. Evidence presented indicates that, contrary to the City's assertions, such duty assignments have been made in the past and that qualified patrol Officers are currently assigned to dispatch and other duties potentially manageable by physically restricted Officers. Moreover, limited work assignments are referenced in Section 32.04(B)(4) of the current agreement.

Therefore, it is my recommendation the following language be included in at Section 32.05:

The City shall find alternative work assignments for employees currently receiving on-the-job injury leave who may be able to perform such duties in the opinion of the treating physician. Light duty shall be temporary and limited to not more than ninety (90) days, during which progress toward normal duty occur.

E. Wages

Position of the FOP

The Union proposes a six percent (6%) increase in wages for each of the Agreement's three years. The City enjoys a strong economic base and solid municipal income tax system, according to the FOP. Given this solid financial position, a six percent annual wage adjustment would recognize and reward the professional service of bargaining unit members, while serving to attract and retain qualified Officers to the Department.

The FOP rejects the City's comparison with other law enforcement agencies in Tuscarawas County. These agencies lack the financial resources of the

City of Dover, nor have they made the concerted effort to attract and retain quality Officers. Therefore, the Union maintains a six percent annual adjustment is equitable.

Position of the City

The City maintains its Police Department is the highest paid agency in Tuscarawas County. Both the City of New Philadelphia and the County Sheriff's Office are substantially below the wages paid by the City of Dover. Internally, it asserts that Firefighters achieved parity with the Police Department through a Conciliator's decision in June of 1996, which granted an eight percent increase over the course of their Agreement. Therefore, says the City, its offer of two percent in each of the first two years of the Agreement and one and one-half percent in the final year would maintain the parity between its Police and Fire Departments.

Moreover, the City points to recent evidence that the Consumer Price Index has been erroneously overstated by approximately one percent. Accordingly, Dover proposes that bargaining unit wages be adjusted to accurately reflect increases in the cost of living.

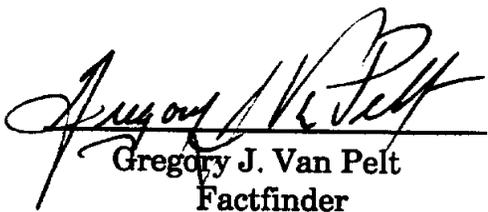
Discussion and Recommendations

It is clear that Dover Police Officers enjoy wages substantially higher than those of law enforcement professionals in comparable communities. It is also evident that the wages of bargaining unit members are comparable to those of

Dover Firefighters. And while it is reasonable to assume the community benefits from the qualifications of the Officers these wages attract and retain, it is not reasonable to conclude that ever-higher wages would result ever-more-effective police services.

Alternatively, the City has asked that bargaining unit members relinquish the right to shift rotations to which they have become accustomed for the benefit of what the City argues is the public good. It must be expected that some consideration will be exchanged for that concession.

Accordingly, it is my recommendation that wages for bargaining unit members be adjusted to reflect an increase of four percent (4%) in the first year of the successor agreement, and three (3%) in each of the two (2) following years, to equal a ten (10%) increase over the duration of the contract.


Gregory J. Van Pelt
Factfinder

Subscribed this 13th day of December, 1996
at Cleveland, Cuyahoga County, Ohio.