

BEFORE THE STATE EMPLOYMENT RELATIONS BOARD

In the Matter of Fact Finding Between:

City of Kettering, Ohio

and

S.E.R.B. Case No. 96-MED-12-1131

**Fraternal Order of Police,
Kettering Lodge No. 92**

Appearances:

For the City:

Dean E. Denlinger, Esq.
and
Scott Poley, Esq.
Denlinger, Rosenthal & Greenberg
Cincinnati, Ohio

For the F.O.P.:

Susan D. Jansen, Esq.
Logothetis, Pence & Doll
Dayton, Ohio

REPORT AND RECOMMENDATIONS OF THE FACT FINDER

**Frank A. Keenan
Fact Finder**

Background:

This case, well presented by the parties' advocates, was heard in Kettering, Ohio on March 26, April 8, and May 9, 1997.

At the commencement of the proceedings, the parties were at impasse with respect to nineteen (19) issues. Through the good faith and diligent efforts of the parties' advocates in conjunction with their respective negotiating teams, and with some assistance from the undersigned acting as Mediator, seven (7) issues were resolved. There remains, therefore, some twelve (12) issues at impasse.

In reaching the Recommendations made here the Fact Finder has taken into consideration the criteria listed in Rule 4117-9-05 (J) of the State Employment Relations Board. References to the "current Contract" are more accurately references to the most recently expired Contract, too cumbersome a phrase.

ISSUE #1 - ARTICLE V - WAGES

A. The Evidence and the Positions of the Parties:

The record reflects that currently some fifty-eight (58) police officers (some 63 are authorized) compose the bargaining unit. Under the wage progression schedule in place, it takes five (5) years to reach top pay. There are three separate wage scales: one for employees with no advanced degrees; one for employees with an Associate's degree; and one for employees with a Bachelor's degree. An employee must be employed two years before becoming eligible for one of the degree wage scales. An employee holding an Associate's degree receives a 1.5% differential over the basic

rate; an employee holding a Bachelor's degree receives a 3% differential over the basic rate.

The F.O.P. seeks a 4% across-the-board wage increase. It contends that "4% in each of the three (3) years of the Contract is necessary in order for the Lodge to maintain a current comparable ranking with Police Departments in other cities in Ohio similarly sized." In this regard the F.O.P. compiled a list of twenty-five (25) municipalities (including Kettering) statewide with populations within 30,000 more or less than that of Kettering, which has a population of approximately 60,000. It also compiled a list of seventeen (17) municipalities (including Kettering) locally, within a ten mile radius of Kettering and with a population of 5000 or more. Additionally the F.O.P. compiled a list of municipalities in Montgomery County, which is the County in which Kettering is located, with a population range of approximately 30,000 greater than or less than Kettering. These lists constitute appropriate comparable jurisdictions, asserts the F.O.P. Statewide, Kettering ranks third in terms of the minimum/maximum salary range for police officers, and second on its Local and Montgomery County list. In terms of all the cities in the F.O.P.'s surveys, Kettering ranks third. The F.O.P. contends that its 4% across-the-board proposal would maintain those relative positions. The F.O.P. also introduced data concerning these same purportedly comparable jurisdictions reflecting their respective compensation packages when longevity pay and uniform allowances were taken into account along with wages. Although Kettering pays

a uniform allowance, it does not pay longevity pay. When all cities surveyed are reviewed, the F.O.P. data reflects that Kettering ranks ninth (9th) out of the forty-one (41). In terms of the F.O.P.'s Statewide data, Kettering ranks eighth (8th). In terms of its Local and Montgomery County comparables, Kettering ranks third (3rd).

The F.O.P. introduced the City's 1996 and its 1997 Budget. Both of these documents refer to the closure of operations at the Defense Electronics Supply Center (DESC) and the adverse economic impact of same to the City's revenues. However, both documents note a substantial bounce back, and optimism vis-a-vis the ongoing alternative uses and new employers for the DESC facilities. Significant excerpts from the 1997 Budget statement by the City Manager are as follows:

" . . . this budget reflects a 1.7% decrease in income tax revenues during 1997, compared to 1996, despite healthy gains in recent years."

"GENERAL FINANCIAL POSITION

The City remains in a healthy financial position . . ."

"Revenue

1997 revenues are projected to be 9.5% more than estimated 1996 revenues. The primary reason for this increase is a one-time influx of additional federal and state grants to be used for the reuse of Gentile Station (DESC)."

"Income Tax - The current year's growth should be about 2% . . ."

The F.O.P. additionally submitted a document entitled "Overall Budget Summaries" comparing proposed revenue, proposed expenditures, and balances, with actual revenue, expenditures, and

balances for 1994, 1995, and 1996, which document supports the F.O.P.'s contention to the effect that historically the budget underestimates revenues and overestimates expenditures.

The F.O.P. also submitted 1995 crime statistics covering for example murders and non-negligent manslaughter, rapes, robberies, etc., and the crime index total, which generally supports the contention that the bargaining unit remains "busy," and the work "difficult."

The F.O.P. also introduced the percentages of wage increases enjoyed by all jurisdictions it relies on as comparable (except Centerville) and excluding Kettering for periods embracing mostly three year contracts, since commencing in 1994, and some going up to 1998. Statewide the average increase was 3.67%; locally the average increase was 3.8%.

The City proposes a 3% across-the-board increase over a two year period, the City being desirous of but a two year Contract. In support of its proposal the City relies upon a Statewide survey of cities it deems comparable, namely, cities with a population of 40,000 to 80,000, and thus approximately 20,000 more or less than Kettering, whose population was 60,569 in the 1990 census. Including Kettering, the survey encompasses fifteen (15) municipalities. Except for Elyria, these same jurisdictions are included in the F.O.P.'s argued-for Statewide comparables. The F.O.P., whose differing formula captures cities with 30,000 greater or lesser population than Kettering, includes the following municipalities not relied on by the City: Westerville; Upper

Arlington; Gahanna; North Olmstead; Parma; Garfield Heights; Fairfield; Youngstown; Canton; and Zanesville. The City also relies on as comparable a survey of Local municipalities within a ten (10) mile radius of Kettering. This survey yields the same municipalities as does the F.O.P.'s Local comparable data, with the exception of Riverside which the City would rely upon and which is not included and relied upon by the F.O.P.

In support of its wage proposal, the City points out that the Consumer Price Index (CPI) has increased 2.5% and 3.3%, in the last two years, respectively, and is projected to increase 2.9% for 1997. The City also points out that recent studies indicate that the CPI overstates inflation by 1.1% and possibly more.

The City additionally points to SERB data indicating that the Dayton region experienced a 2.79% increase for 1996.

The City points out that among the cities in its surveys a police officer's wages are composed of base wages with one or more of the following components: pension pick-up, whereby the City picks up some or all of the employee's share of their pension cost; longevity pay; educational incentive; shift differential; and weekend differential. The City points out that no City pays all of these components; and that Kettering pays an educational incentive, shift differential, and weekend differential.

The City asserts that the average officer in the bargaining unit has 10 years of service. Additionally, 30 officers have Bachelor's degrees and 21 have Associate's degrees. The City contends that an officer with 10 years of service and a Bachelor's

degree is entitled to a composite wage of \$48,046. This excludes the City's generous shift and weekend differentials to which some employees would be entitled. And "only two (2) cities in the Local survey [would] have a higher composite pay maximum than Kettering, and no city has a higher composite in the Statewide survey. The composite maximum for Moraine is \$47,591. All others remain behind. These composites include any pension pick-up and longevity pay." The City asserts that its data shows that "the average composite maximum wage, Statewide and Local, with either an Associate's or Bachelor's degree, and with either 10 or 20 years of service, is approximately \$40,000 (give or take \$1,000)--far lower than Kettering's.

By way of rebuttal of the F.O.P.'s data, the City asserts that such relies on Union, which is a township and not a city/municipality, and that it ignores some 28 other townships in the State falling within its population parameters. The City also asserts that the F.O.P. listed cities with population ranges outside its announced parameters, and "included wealthy cities outside the stated range of its survey (Shaker Heights, Upper Arlington, Westerville, Gahanna, North Olmstead) apparently skewing the results." It is the City's contention that "this selective sampling undermines the reliability of the [F.O.P.'s] surveys."

The F.O.P. seeks to relate the City's data by pointing out that only ten (10) officers have ten (10) years of service and an Associate's degree, and only three (3) officers have ten (10) years of service and a Bachelor's degree, such that the City's analysis

currently applies to only thirteen officers. The F.O.P. also asserts that while SERB data may show a less than 3% average increase for employees in the Dayton area, looking at just safety forces, this is incorrect. Rather, safety forces in the Dayton region, as per the F.O.P.'s survey, have averaged 3.8% increases, asserts the F.O.P.

The F.O.P. additionally points out that under its five-platoon system, less than half of the workforce benefits from the shift differential; and still fewer benefit from the weekend differential.

The City points out that it used 10 years of service because this was the average of the number of years of service. The City also asserted that it gets its police officers to the top of the pay scale sooner than most comparable municipalities.

The record also reflects the following wage increases established in past collectively bargained Contracts: 1990 - 4%; 1991 - 4.5-5.5%; 1992 - 4.5%; 1993 - 4%-5%; 1994 - 4%; 1995 - 4%; and 1996 - 4%. For its AFSCME represented employees, Police Sergeants and Lieutenants (unrepresented) and other unrepresented City employees, the City has recently (1996 and 1997) granted 3% across-the-board increases. The City's firefighters are currently in negotiations. S.E.R.B. data submitted reflects that "public sector wage settlements hold steady at 3-4% increase level, 1996 summary shows."

B. Rationale:

As addressed more specifically hereinafter, the City makes a persuasive case for the proposition that it pays virtually top dollar in wages, a conscious philosophical choice. Consequently, past collectively bargained Contract increases (going back to 1990) have ranged from 4% to 5.5%, with the typical increase being 4%. This has historically kept the bargaining unit near the top amongst comparable jurisdictions, and ahead of inflation. The F.O.P. seeks this same historic increase here, namely, 4% in each year of the contract. Consistent with its top dollar philosophy, Statewide and Local comparable data are also more supportive of 4% than 3%. Accordingly, a 4% across-the-board increase in each year of the Contract will be recommended. Furthermore, I find no basis for denying retroactivity.

C. Recommendation:

It is recommended that the parties' Contract at Article V - Wages provide that "Effective March 7, 1997 and March 7, 1998, all basic rates of pay shall be increased by four (4%) percent."

ISSUE #2: ARTICLE VIII, SECTION 14 - MEDICAL COVERAGE

A. The Evidence and the Positions of the Parties:

The F.O.P. seeks and proposes that the level of benefits remain "substantially equivalent" to the current benefits, and that, as in the past, the City maintain and be responsible for the full cost of the medical insurance premium for bargaining unit employees for the life of the Contract. The F.O.P. further proposes that the level of benefits not be changed during the term

of the contract unless mutually agreed to between the City and the F.O.P., and that any changes in carriers during the term of this Contract shall be subject to the approval of the F.O.P. The City agrees to a "substantially equivalent" standard, but opposes granting veto power to the Union vis-a-vis carrier and level of benefits. In that regard the City's insurance consultant explained as to how flexibility is necessary in a managed care system; and to get the best cost effective price, i.e., premium; and to keep City and Board of Education employees as a pool to be bid for. He also conceded (and comparable data confirms) that there was a trend toward according public employees access to dental coverage, albeit the employees very often paid all the premium.

The City seeks premium sharing. This would be accomplished by establishing a floating cap on its health insurance premiums equal to current premiums, increased 3% for 1998 and another 3% for 1999. City comparable data (16 out of 31) have medical plans in which employees share in the premium. However, local safety forces are most resistive to that trend. S.E.R.B. data shows that premium sharing is a commonplace response to increasing health costs. As for the Union's veto power proposal, only two cities provide for such, asserts the F.O.P. On cost grounds the City opposes adding dental coverage and points out no other City employees have it.

B. Rationale:

Past collectively bargained agreements have provided full cost medical premium pick up by the Employer, and hence this factor supports the F.O.P.'s proposal on this point. Also safety forces

have been more successful than other bargaining units in resisting change in this area. Nothing suggests the City cannot afford anticipated relatively modest increases. In light of the recommendation herein that the City maintain the status quo vis-a-vis the picking up the full cost of the health insurance premium, a favorable climate for establishing a "new" benefit (dental) does not exist, notwithstanding comparable data which tends to support it. Since the bargaining unit is but a part of the pool of insureds (and since the pool concept itself is greatly advantageous to the bargaining unit, according better coverage and lower cost), it makes no sense to accord the bargaining unit veto power over benefit and carrier changes. And since both parties are agreed to the "substantially equivalent" standard, such shall be recommended.

C. Recommendation:

It is recommended that the parties' Contract at Article VIII, Section 14 - Medical Coverage read as follows:

"Section 14. Medical Coverage. The City shall maintain medical coverage through the term of this Contract. The City shall pay the full cost of the insurance coverage. The level of benefits shall remain substantially equivalent to the benefits existing at the expiration of the predecessor Contract."

ISSUE #3: ARTICLE XVI, SECTION 1 - DURATION

A. The Evidence and the Positions of the Parties:

The City proposes a two (2) year Agreement, expiring February 28, 1999. The City asserts that its proposal, calling for an agreement shorter than that called for by the F.O.P. "is necessary to respond to any relevant changes that may occur in the next two years."

The F.O.P. proposes a three (3) year Agreement, remaining in full force and effect through March 5, 2000. The F.O.P. asserts that given the maturity of the parties' relationship, a three year Agreement is more appropriate than a two year Agreement.

The parties' predecessor Agreement was a two year Agreement.

B. Rationale:

As the F.O.P. points out, the parties' relationship is a mature one. But it was mature two years ago as well and the parties nonetheless saw fit to enter into but a two year Agreement. Given the Wage and Medical Insurance Recommendations made here, and the vicissitudes in the economy in general and health care in particular, the City's argument for a two year Agreement is the more persuasive.

C. Recommendation:

It is recommended that the parties' Agreement provide as follows:

Article XVI - DURATION

Section 1. This Agreement shall be in full force and effect through March 2, 1999. All provisions shall be effective from and after the signing date of this agreement, unless otherwise specified, or as soon thereafter as benefit coverage can be obtained in the normal course of business or as provided by law.

ISSUE #4: ARTICLE V - WAGES: NEW SECTION, LONGEVITY PAY

A. The Evidence and the Positions of the Parties:

The F.O.P. seeks Longevity Pay provisions. The City asserts that in essence this same request in the '70's was responded to with the career ladder concept. That was integrated into the wage scheme such that now wages are among the best in the State. Even

without longevity pay, few jurisdictions exceed the bargaining unit's compensation, asserts the City. The City's degree attainment wage scales compensates for its lack of longevity, claims the City. Comparable Local data shows 10 jurisdictions provide for longevity pay; 7 do not.

The F.O.P. notes that longevity pay would most benefit the non-degreed seniors, who don't benefit from the degree pay scales.

The City asserts that adopting longevity pay would result in wage compression vis-a-vis supervision. The F.O.P. counters that it bargains and its rights are for the unit not the supervisors.

B. Rationale:

The issue was hard fought in negotiations, mediation, and in fact finding. Directly to the point, the City's contentions are the more persuasive. The critical fact is that the City's historic wage package, reconfirmed here, has obviated the need for any longevity pay. Additionally, there is no evidence of any morale problems in the face of a lack of it, nor of any turnover in more senior ranks, the typical circumstances pointed to as necessitating longevity pay. Then too, greater viability would have adhered to the F.O.P.'s proposal had they coupled it with a quid pro quo, such as a measurably more modest wage proposal, but the F.O.P. elected not to do so. Accordingly, in view of the above, longevity pay shall not be recommended.

C. Recommendation:

It is recommended that the parties' Agreement not contain provisions for longevity pay as proposed by the F.O.P.

ISSUE #5: ARTICLE V, SECTION 10 - COURT APPEARANCE, CANCELLATION
PAY - 48 HOURS ADVANCE NOTICE

A. The Evidence and the Positions of the Parties:

Currently the Contract provides for certain minimum hours at premium pay rates where a required court appearance during off-duty time or on a scheduled day off is canceled. The F.O.P. would provide additional compensation where less than 48 hours notice of cancellation is given, as follows:

"In the event an employee is not given forty-eight (48) hours notice of the cancellation of any court appearance scheduled on his/her regularly scheduled day off or pre-approved vacation, the Officer shall receive four (4) hours pay for any court appearance scheduled for the second or any subsequent day off. An employee may, at his/her option, receive compensation pursuant to this Section in the form of compensatory time off."

The F.O.P. asserts that anything less than 48 hours notice represents an interruption with a scheduled day off deserving of compensation. The F.O.P. asserts that Dayton provides such for its officers.

The City proposes maintaining current Contract language on pay for Court appearance. The City asserts that the Courts, not the City, control cancellations of scheduled Court appearances. Furthermore, asserts the City, of the thirty-one cities in its surveys, only four (including Dayton) have any such notice provisions; the vast majority have no such provision.

B. Rationale:

The City makes a telling point when it points out that it is the Courts, and not the City, who control court appearance

cancellations. Significantly, the comparable data does not support the F.O.P.'s proposal. Accordingly, it shall not be recommended.

C. Recommendation:

It is recommended that the parties retain the language of the current Contract at Article V, Section 10.

ISSUE #6: ARTICLE VIII, SECTION 10 - SICK LEAVE CASH OUT AT RETIREMENT

A. The Evidence and Positions of the Parties:

The current Contract provides as follows:

"Section 10. Payment for Accumulated Sick Leave at Retirement

At retirement, a Patrol Officer who has accumulated 50 or more days sick leave may convert one-third (1/3) of all accumulated sick leave days in excess of 50 days and up through 240 days for a lump sum payment. This provision does not apply to service separations other than retirement."

The City would maintain current Contract language. The F.O.P. seeks an improvement and proposes that upon retirement, a Patrol Officer may convert from 1 to 240 sick leave days for one (1) day of regular pay.

The City contends that, looking at comparable cities, "there is no standard policy for sick leave conversion at retirement." The City points out that several elements typically go into sick leave conversion formulas, e.g.:

- minimum hours not subject to conversion
- maximum hours subject to conversion
- ratio for conversion

The City's comparable data is in hours, not days; and the City, converting the contractual references of days to hours,

points out that while some surveyed cities have no minimums, some, such as Kettering, do. The City points out that Kettering's minimum not subject to conversion is 400 hours. Among cities with a minimum, the minimums range from 300 to 640. Maximums range from 240 hours to unlimited, Kettering's being set at 1,920 hours. Conversion ratios range from 1 hour of pay for each hour converted to 1 hour of pay for each 4 hours converted. Kettering's ratio is 1 hour of pay for 3 hours converted.

It is the City's position that its current formula puts it in the middle and hence it "is solidly within the range of typical sick leave conversion formulas, and there is no need for change." In any event, argues the City, change can be expensive, diverting funds to increased severance payments instead of being used for current operations. City survey data also indicates a trend to shrink this benefit, at least for new hires. For example, in Hamilton those hired before 1995 can convert 1200 hours for 900 hours pay, while those hired since 1995 can convert all accumulated sick leave but only four for one.

The F.O.P. comments that the City's own Statewide survey data shows that those jurisdictions with smaller maximums than Kettering tend to have zero minimums, and that in any event, the City's maximum does not fare favorably. The City counters that its maximum is set where it is because of the high wages it pays.

B. Rationale:

As the City points out, there are many variable factors which make comparing this benefit somewhat difficult. In any event the

record evidence supports the conclusion that the City is in a middling position with comparable jurisdictions on this issue. A persuasive case for change and a need for improvement of this benefit pursuant to the statutory factors has not been made out.

C. Recommendation:

It is recommended that the parties retain the current Contract's language at Article VIII, Section 10.

ISSUE #7: ARTICLE VI - HOLIDAYS, SECTION 1.

A. The Evidence and the Positions of the Parties:

The F.O.P. proposes to increase the number of holidays from nine (9) to ten (10) by adding Police Memorial Day. Currently Officers who work a holiday are paid straight time for doing so and in addition receive eight hours holiday pay. Officers who don't work the holiday are paid eight hours holiday pay. Officers scheduled to be off who are required to work the holiday are paid two times their regular rate of pay.

The F.O.P. proposes for Section 4 that Officers who work a holiday should be paid eight (8) hours holiday pay and time and one-half for the holiday hours worked. The F.O.P. also seeks to clarify what it describes as an already existing practice, namely, to allow an employee who gives written notice to the City in November of each year to receive holiday pay in the first pay period in December of the following year.

The F.O.P. points out that in its Statewide Survey, Kettering ranks third from the bottom in the number of holidays; likewise in its Local Survey. And in both surveys time and one-half for

holidays worked is typical. Looking at all cities surveyed by the F.O.P. with respect to employees with 9 years, 11 years, and 25 years of service respectively, in terms of total annual paid days off (i.e., holidays, vacation, and personal days), Kettering ranks sixth from the bottom of the forty-two (42) cities surveyed.

The City resists these proposals of the F.O.P. It asserts that the appropriate comparison is Holidays and Personal Days taken together, and in this regard, the City currently has 14 total paid days (personal leave plus holidays), which is equal to the average of 14 cities in its Statewide survey. Additionally, only one of the fourteen cities, Euclid, recognizes Police Memorial Day as a paid holiday. Looking to its Local survey, the City's 14 total paid days under the current contract is greater than the average of 13 of these same days for the cities in the Local survey. Accordingly, argues the City, no change is necessary.

With respect to the rate of pay, the City contends that its rate is in line with the majority surveyed. Of the 31 cities surveyed, 26 do the same. The City's practice is consistent with the City's policy of keeping pay high and avoiding unneeded expenses in fringe benefits. The payment of straight time for holiday pay is comparable to cities local and statewide.

Were the F.O.P.'s proposals adopted, each Officer would receive 48 additional hours of holiday pay, asserts the City.

The F.O.P. notes that vacation days, which purportedly lag here, ought to be put into any mix of total paid days. Doing so,

as the F.O.P.'s data shows, the City fares poorly, asserts the F.O.P.

As for the F.O.P. proposal on an advance of holiday pay, the City asserts that this unusual provision would pose an additional financial and administrative burden on the City to come up with holiday pay before the end of the year.

B. Rationale:

As indicated hereinafter, I believe the City is a little parsimonious in terms of time away from the job, when one looks at holidays, personal days, and vacation days taken together. In my view, however, this is better ameliorated by somewhat augmenting vacation leave. Holiday pay and personal leave days are short respites from the work routine; vacations are typically longer term. Given this "short respite" commonality between paid holidays and personal leave days, it makes some sense to view them together, as the City urges. Doing so the comparable data does not favor change. Accordingly, the F.O.P.'s proposal will not be recommended.

C. Recommendation:

It is recommended that the parties retain the language of Article VI - Holidays, Section 1 of the current Contract. Section 4, Article VI, proposed by the F.O.P. is not recommended.

ISSUE #8: ARTICLE VII - (NEW) SECTION 8. SUPPLEMENTARY VACATION ACCRUAL

A. The Evidence and the Positions of the Parties:

The F.O.P. points out that currently, with less than 5 years service one gets 10 days of vacation; with 5 to 10 years service, one gets 12 days of vacation, with 10 to 15 years of service, one gets 15 days of vacation; and with 15 or more years of service, one gets 20 days of vacation. The F.O.P. would augment this schedule as follows:

"After 5 years - 4 supplementary days annually

After 10 years - 5 supplementary days annually

After 15 years - 8 supplementary days annually

After 20 years - 10 supplementary days annually

The F.O.P. asserts that Kettering Officers do not accrue vacation days as quickly nor do they accrue as many vacation days as do employees of other similarly sized cities. Thus the F.O.P. points to its Statewide survey showing that for the 5 to 14 years of service range, the average is 14 to 15 vacation days, whereas here it is but 12; that in the 15 to 19 years of service range, the average is 20 vacation days, whereas here it is but 16. The F.O.P. additionally asserts that unlike Kettering, at 20 years of service, most grant 25 days of vacation.

The City opposes such a supplementary vacation schedule. It asserts that the Contract already provides that employees with greater length of service accrue vacation at a faster pace than those with less service.

The City takes the position that it is close to the average vis-a-vis its State and Local surveys, lagging only slightly and

insignificantly. The F.O.P.'s proposal would put the City far in excess of the other cities in the surveys.

The City asserts its days off are generous; it has more personal days than most. Additional vacation is real time off and creates scheduling problems.

B. Rationale:

As the City concedes, the comparable data indicates that the City lags somewhat with respect to the vacation benefit. Given the stressful nature of the work involved, morale and hence the public's interest, calls for blocks of time away from the job. Modest augmentation of vacation leave is called for. The additional vacation leave being recommended would appear to be insufficient to cause scheduling problems, as the City suggests. Such shall be recommended.

C. Recommendation:

It is recommended that the parties' Contract provide as follows:

"Section 8. Supplementary Accrual. In addition to the vacation days accrued in Section 1 above, employees with consecutive years of service or who have been reinstated within one (1) year from the date of resignation or who return from disability retirement will earn supplementary days on the following schedule:

After 5 years - 1 supplementary day annually

After 10 years - 2 supplementary days annually

After 15 years - 3 supplementary days annually

After 20 years - 4 supplementary days annually"

ISSUE #9: ARTICLE VII - VACATIONS, SECTION 6, PRIORITY PROTECTION SCHEDULING

A. The Evidence and the Positions of the Parties:

The current Contract provides as follows:

"Section 6, Priority Protection Scheduling. Requests for desired vacation dates are to be submitted by the end of January. Blocks of at least five (5) consecutive days must be requested for preferred scheduling. The Police Chief will strive, barring emergencies, to assure such approved vacations, and will provide reasons for cancellation of any approved vacation. Patrol Officers canceling previously approved vacations will in turn also provide reasons for the cancellation."

The F.O.P. would add thereto the following language:

"If, due to an emergency, a previously guaranteed vacation period is canceled by Management, such vacation, or any part thereof, may be rescheduled during the vacation year upon the mutual agreement of the parties or be paid in October following the vacation year for those vacation days that cannot be carried forward pursuant to the limit of thirty (30) contained in Section 3, in the event mutual agreement to reschedule is not obtained."

The F.O.P. would also introduce into the Agreement a new Section reading as follows:

"Section _____. Denial of Non-Guaranteed Vacation. Employees ["who" sic] are required by Management to forfeit vacation time off, other than that subject to the guaranteed period specified in Section 6 above, will be paid for all vacation days that cannot be carried forward pursuant to the limit of (30) contained in Section 3. Said days will be paid in October following the vacation year, if Management is not able to reschedule the time during the remainder of the vacation year."

The F.O.P. asserts that its Section 6 proposal is intended to avoid the situation where an Officer loses vacation time through no fault of his own. Its "new" Section, asserts the F.O.P., will protect against vacation forfeiture for those employees who do not

request vacation time off by the contractually required date of January 31st of each year in order to receive priority scheduling.

The City opposes the F.O.P.'s proposed changes, asserting that such could cause increased scheduling difficulties. The City further contends (without contradiction) that nobody is losing vacation time because of the current Contract's language and provisions. Accordingly, argues the City, no change is warranted.

B. Rationale:

Vacation forfeiture, "use it or lose it" policies are generally designed to foster and encourage vacation use. Vacation use is deemed especially important for safety forces due to the stress involved in such occupation. The modified "use it or lose it" policy embodied in the Contract serves this goal of encouraging vacation usage and at the same time recognizes that some vacation carryover may be necessary. Most significantly the evidence of records fails to demonstrate that any bargaining unit employees have unfairly lost accrued vacation leave, or that any are at risk of losing accrued vacation time. In these circumstances, no sound basis exists to change the current Contract's provisions.

C. Recommendation:

It is recommended that the parties' Article VII, Section 6, read as per the current Contract and that the parties not adopt the F.O.P. proposed "new" Section.

ISSUE #10: ARTICLE VIII, SECTION 1, AND (NEW) SECTION - SICK LEAVE
CONVERSION TO VACATION CREDITS

A. The Evidence and the Positions of the Parties:

The current Contract provides as follows:

"Section 1. All sworn Patrol Officers shall accrue sick leave at the rate of one and one quarter (1 1/4) days per month of service but not to exceed a total of 240 days."

The F.O.P. proposes to add a provision to convert sick leave to vacation credits. The F.O.P. would also provides that Officers who are granted a leave of absence for sick leave or injury purposes shall continue to accrue sick leave at the regularly prescribed rate during such absence, but such accrual shall not be available for use until the Officer returns from the leave. The ratio of conversion of sick leave to vacation leave proposed varies depending upon the number of accumulated sick leave days.

In support of its proposals the F.O.P. asserts that it encourages individuals to use sick leave only when necessary and enables individuals with more sick leave credits to convert them rather than to use or lose them. And its conversion to vacation day provision would serve to alleviate what the F.O.P. perceives as a problem of insufficient time off, especially for senior employees.

The City opposes this conversion feature, asserting it would exacerbate scheduling difficulties. The City additionally asserts that of the Statewide survey of cities it compiled, only 5 of the 14 cities therein have such a provision; 11 of the 17 cities in the Local survey have such a position. Given the reasonableness of the status quo, no change is necessary, asserts the City.

B. Rationale:

Local comparable data lends some support for the addition of this benefit, but the Statewide data does not. Local comparables

are somewhat more persuasive. Nevertheless the City raises a legitimate concern, and one that has more meaningfulness in light of the modestly augmented vacation leave benefit recommended herein, namely, the potential for scheduling problems. Looking at the totality of the current Contract, as maintained, updated, and augmented by the Recommendations made herein, as the City has put it, the status quo on sick leave and its features is reasonable. No change will be recommended.

C. Recommendation:

The changes and/or additions proposed by the F.O.P. are not recommended, and it is recommended that the parties retain the language of Section 1 of Article VIII as set forth in the current Contract.

ISSUE #11: ARTICLE XIII - SECTION 1

A. The Evidence and the Positions of the Parties:

The current Contract provides as follows:

Section 1. The City will pay 80% of the tuition costs for courses directly related to a permanent employee's current position or his preparation for promotion with a maximum payment of \$1,000 per year per employee."

The F.O.P. would delete the maximum. The F.O.P.'s surveys, both Statewide and Locally, show that of those jurisdictions which provide tuition reimbursement, most pay 100% or higher maximums than Kettering's \$1,000 maximum.

The City proposes that current Contract language be retained. The City points out that employees may take advances from future entitlements to augment the \$1,000 maximum. It asserts that the maximum is reasonable and that there is no reason to change the

existing provision. The City asserts that in recent years, and back to 1994, employees have not been affected by the maximum limit. For example, in 1996, the total reimbursement paid out was \$322 for one (1) employee. Of 14 cities surveyed in the City's Statewide survey, only 10 provided for tuition reimbursement. Of these 5 had no dollar limitation; five had dollar and/or other limits affecting the City's cost and outlay. Of 17 cities surveyed in the City's Local Survey, 12 provided some tuition reimbursement; 5 did not. Of the 12 providing for tuition reimbursement, 9 had some restrictions. For example, Oakwood has an \$800 maximum; Vandalia a \$1,200 maximum; and Xenia an \$850 maximum.

The F.O.P. contends that as long as the \$1000 maximum is in place, employees are dissuaded from taking advantage of the tuition reimbursement benefit. And if you take an advance you're indentured to the City for years. On this latter point the City acknowledges that if you take an advance on tuition reimbursement you commit to two years of service from the date of the loan, however, you can leave and pay the City back. In any event with the new minimum requirement of an Associate degree for new hires, the trend within the bargaining unit is for non-use of the benefit.

B. Rationale:

Had there been examples of several employees utilizing the benefit up to the maximum limit, it's inadequacy, and the dissuading factor of the limit, might arguably have been established, but such is not the state of the record. Rather, for several years now, this benefit has been underutilized. It appears

that the current educational levels of the force, and the educational minimum for new hires account for much of this underutilization. In any event, a case for raising the limitation, indeed abolishing it, has simply not been made out.

C. Recommendation:

It is recommended that the parties retain the language of the current Contract at Article XIII Tuition, Section 1, and that the F.O.P.'s proposed changes not be adopted.

ISSUE #12 - ARTICLE XVI, SECTION 2, LODGE PROPOSALS

A. The Evidence and the Parties Positions:

The current Contract provides as follows:

"Section 2. The Lodge shall provide their proposals for a new agreement to the City 120 days before the Agreement expires. Negotiations will commence either 90 days before the Agreement expires or within the 7 days following the 90th day."

The F.O.P. would delete the first sentence calling for submission of F.O.P. proposals 120 days prior to expiration. The F.O.P. asserts this provision lacks mutuality because the City is not required to do likewise. Under the Statute (4117.14(B)(1)(2)) modification proposals need only be served "not less than sixty days prior to the expiration date of the existing agreement. . . ."

The City would maintain current Contract language in this matter. It asserts that it abets the orderly administration of the bargaining process. This provision ensures that negotiations start early and that both sides have sufficient time to study and develop counter proposals. The F.O.P.'s "mutuality" contentions are not well taken, argues the City, because typically it is the F.O.P.

which wants contract modifications and changes, and hence mutuality is not truly an issue.

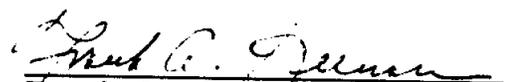
B. Rationale:

Directly to the point, the number of items concerning which the F.O.P. sought modifications in the current contract negotiations bespeaks the wisdom of the current Contract's provisions at Article XVI, Section 2. And given the number of modifications the City proposed, there certainly is some support for the "mutuality" point the F.O.P. seeks to make. Nonetheless, as the City asserts, more typically the City is not seeking modifications. Except for these negotiations, it was not shown otherwise. Accordingly, the F.O.P.'s proposal will not be recommended.

C. Recommendation:

It is recommended that the current Contract's provisions at Article XVI, Section 2, be retained.

This concludes the Fact Finder's Report and Recommendations.


Frank A. Keenan
Fact Finder

Date: May 30, 1997