

Received Electronically @ SERB Feb 14,  
2012 3:59pm

FACT FINDING REPORT  
STATE OF OHIO  
STATE EMPLOYMENT RELATIONS BOARD  
February 10, 2012

In the Matter of:	)	
	)	
The City of Toledo	)	
	)	
vs.	)	SERB Case No.
	)	11-MED-10-1576
	)	
Toledo Police Command Officers	)	
Association (TPCOA)	)	
	)	
	)	

APPEARANCES

For the TPCOA:

Gregory Lodge, Attorney for the TPCOA  
Matthew Bombrys, Recording Secretary, TPCOA  
David Bonner, Financial Secretary, TPCOA  
Michael McGee, Chaplain, TPCOA  
Daniel Raab, Vice President, TPCOA  
Daniel Schultz, President, TPOCA

For the City:

Ellen Grachek, Attorney for the City of Toledo  
Michael Niedzekski, Attorney for the City of Toledo  
Stephen Herwat, Deputy Mayor City of Toledo  
Patrick McLean, Finance Director City of Toledo  
Dona Ruiz-Krause, Police Department City of Toledo  
Amy Wood, Law Department City of Toledo

Fact Finder: Dennis M. Byrne

## **Background**

The fact-finding involves the members of the Toledo Police Command Officers Association (TPCOA/Union) bargaining unit and the City of Toledo (Employer/City). The TPCOA represents 132 Toledo police officers in the ranks of Captain, Lieutenant, and Sergeant. Prior to the Fact Finding Hearing, the parties engaged in a number of negotiating sessions; but they were unable to come to an agreement, and four (4) issues remained on the table; 1) Wages, 2) PERS Pickup, 3) Medical Insurance, and 4) Deferred Compensation. Consequently, a Fact Finding Hearing was held on February 9, 2012, in the City of Toledo Environmental Services Building. Before the beginning of the formal hearing, the Fact Finder attempted to mediate the dispute. That mediation effort was successful and the parties were able to come to a mediated, tentative agreement on all the outstanding issues.

The Ohio Public Employee Bargaining Statute sets forth the criteria the Fact Finder is to consider in making recommendations in Rule 4117-9-05. The criteria are:

- (1) Past collectively bargained agreements, if any.
- (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.
- (3) The interest and welfare of the public, and the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standards of public service.
- (4) The lawful authority of the public employer.
- (5) Any stipulations of the parties.
- (6) Such other factors, not confined to those listed above, which are normally or traditionally taken into consideration in the determination of issues submitted to mutually agreed-upon dispute settlement procedures in the public service or private employment.

The following report contains the Fact Finder's recommendations on the unresolved (mediated) issues.

**Introduction:**

The reality facing the parties is the fact that the City's financial condition precludes the City from paying higher wages and/or benefits to the Union membership. That is, the parties agree that the Union members will have to make concessions over the life of the proposed contract. The major disagreement between the parties was the size of the concessions that are required. The City argued that its finances required the TPCOA members to make concessions. The Union argued that, while it was cognizant of the City's financial problems, it did not agree with the amount of the concessions demanded by the City. In addition, the Union believes that the City has weathered the worst of the financial storm caused by the national recession of the past few years. The Union agrees that the impending cuts in State funding will cause further financial problems, but it argued that the financial health of the City is slowly and steadily improving.

The City agreed that its financial condition is gradually improving. Tax collections are increasing and other economic indicators point to a gradual recovery for the local economy. However, the City argued that projected cuts in State funding for local governments, changes in the tax laws, and a still uncertain economic future meant that it had to have concessions from not only from the TPCOA but also from all other organized employees in order to balance its budget. The evidence shows that this is true even if the City's financial outlook is gradually improving.

The parties were able to find agreement on the issues that divided them during mediation. The tentative agreement recognizes the financial reality in Toledo and the Union made concessions on a number of issues. However, the Union and the City both

tried to find a workable solution to their problems, and the settlement that they reached is, in the Fact Finder's opinion, a fair agreement for both.

The following report will identify the parties' positions based on their respective pre-hearing submissions. The report will also contain the mediated settlement language on each issue. In addition, the Fact Finder recommends that all tentative agreements not discussed at the hearing be included in the report by reference. That is, the Fact Finder's recommendation is that the parties ratify the entire agreement.

**Issue:** Section 2109.09 Deferred Compensation

**City Position:** The City proposed current contract language on this issue. That is, the City rejects the Union's demand for the addition of cost sharing language in Section 2109.09.

**Union Position:** The Union Demands a cost match of 3% for contributions to the City's existing IRA plan.

**Discussion:** The City's position was that it could not afford a 3% cost match to the current IRA plan. The Union tried to add cost share language as a quid pro quo for changes in the PERS pickup language, but ultimately withdrew the demand.

**Finding of Fact:** The parties agreed that the current language of Section 2109.09 should remain in the contract.

**Suggested Language:** None

**Issue:** Section 2109.64 Hospitalization-Prescription Drug-Dental Insurance

**City Position:** The City proposes increasing monthly health insurance co-pays from the current amount of \$25(single)/\$40(single plus 1)/\$55(family) to \$48/\$80/\$92 in 2012, \$71/\$120/\$129 in 2013, and \$94/\$160/\$166 in 2014.

**Union Position:** The Union proposes increases in the monthly co-pays to \$50/\$70/\$90 in 2012. In 2013 and 2014, the employee contribution would increase to 10% of the employer cost (based on COBRA rates) with maximum increases (caps) of \$60/\$75/\$100.

**Discussion:** The Union recognizes that the City's financial position requires that its membership pay more for their healthcare.

**Finding of Fact:** The parties reached an agreement on the Hospitalization-Prescription Drug-Dental Insurance language.

**Suggested Language:**<sup>1</sup>

A (1) Coverage shall be provided to each employee, each employee's spouse, and all unmarried dependent members of the employee's family to age twenty-three (23) unless superseded by federal or state law. Spouses who are both employed by the City must jointly elect one coverage. A new election may occur after an open enrollment due to circumstances such as layoff, or other separation of one of the spouse's death or divorce. Where spouses who are both employed have dependents from a prior marriage for whose hospitalization they are responsible shall be exempt from this joint requirement.

A (4) There shall be a monthly co-premium paid by each employee for hospitalization, prescriptive drug and dental insurance. Employees will pay the following monthly co-premiums.

	Single Coverage	Single + 1 Coverage	Family Coverage
Effective first full pay period of March 2012	\$48	\$80	\$92
Effective first full pay period of July 2013	\$71	\$120	\$129

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<sup>1</sup> The suggested language only references changes to the current contract language. If a section (paragraph) is not mentioned, then current contract language remains in the contract.

Effective first full pay period of January 2014	\$94	\$160	\$166
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(D) The first sentence is deleted and the second sentence reads.  
All employees shall be enrolled in the Consortium Plan.

There are no other changes to 2109.64.

**Issue:** Section 2109.65: Ohio Police and Fireman’s Disability and Pension Fund

**City Position:** The City demands that the current PERS pickup be reduced by 4.0% in 2012, by 3.0% in 2013 and, by 3.0% in 2014

**Union Position:** The Union opposed the City’s proposal.

**Discussion:** The Union recognized that the city’s financial position required a concession on this issue.

**Finding of Fact:** The parties agreed that the PERS pickup shall be reduced to zero during the life of the proposed agreement.

**Suggested Language:**

- A) No change
- B) In the event the City participates in a pension “pick-up” plan in accordance with Internal Revenue Service regulations and Ohio Attorney general opinions, state and Federal income taxes on employee pension contributions by all bargaining members may be deferred.
- C.1) Deleted
- C.2) Deleted
- C.3) Deleted
- C.4) Deleted
- C.5) Deleted
- C.6) Deleted
- C.7) Deleted
- C.8) Deleted
- C.9) Deleted
- C.10) Deleted
- C.11) Deleted

**New Language:**

(C) Effective with the first full pay period of March 2012 the City will pay five percent (5%) of the employee's pension contribution, and the employee shall be responsible for the remaining percentage (employee payment increased from 0% to 5%). By March 31, 2012 the employee receiving a reduction in pension pickup will receive a separate lump sum check in the amount of one thousand two hundred dollars (\$1,200).

(D) Effective with the first full pay period of January 2013 the City will pay two percent (2%) of the employee's pension contribution, and the employee shall be responsible for the remaining percentage (employee payment increased from 5% to 8%). This reduction in pension pickup by the City is in exchange for a 2% increase in the spread between a Sergeant and a Patrolman, which is effective the first full pay period of July 2013, as contained in section 2109.75 (C).

(E) Effective with the first full pay period of January 2014 the City will pay zero percent (0%) of the employee's pension contribution, and the employee shall be responsible for the entire employee pension contribution (employee payment increase from 8% to 10%). This reduction in pension pickup by the City is in exchange for a 3% increase in the spread between a Sergeant and a Patrolman which is effective the first full pay period of July 2014, as contained in section 2109.75 (C).

(F) In the event the employee share of the pension contribution increase due to a change in law or regulation during the term of this agreement, the employee shall be responsible for paying the entire increase in the employee share.

(G) Employees are prohibited from receiving the payments specified in paragraphs (C) through (E) directly instead of having them paid by the City to the pension plan.

(H) All TPCOA members hired or reinstated as City of Toledo employees after January 1, 2009 will be required to pay the entire employee contribution to the Police Pension Fund. Any TPPA member who is paying their full pension employee contribution, regardless of date of hire, will continue to do so if promoted and becomes a member of the TPCOA.

**Issue:** Section 2109.75 Wages

**City Position:** The City's proposal is for a wage freeze during the first two years of the prospective contract and a 3% increase in the wage spread for the third contract year.

**Union Position:** The Union demands an increase in the spread of 2% in the second contract year and a 3% spread during the third contract year. The Union proposal also includes a wage freeze for 2012.

**Discussion:** No discussion.

**Finding of Fact:** The parties were able to reach a mediated settlement that covered the wage and PERS pickup issues.

**Suggested Language:**

**2109.75 Wage Rates**

A. The following shall be the wage rates for the members of the Association during the term of this contract, except as revised by Section 2109.75 (B) and (C), below,  
:

<u>Rate</u>	<u>Hourly</u>	<u>Daily</u>	<u>Bi-Weekly</u>	<u>Annual</u>
<u>SERGEANT</u>				
<u>Full Rate</u>	<u>32.040</u>	<u>256.32</u>	<u>2,563.20</u>	<u>66,643.20</u>
<u>After 5 years</u>	<u>32.459</u>	<u>259.67</u>	<u>2,596.72</u>	<u>67,514.72</u>
<u>After 10 years</u>	<u>32.874</u>	<u>262.99</u>	<u>2,629.92</u>	<u>68,377.92</u>
<u>After 15 years</u>	<u>33.286</u>	<u>266.29</u>	<u>2,662.88</u>	<u>69,234.88</u>
<u>After 20 years</u>	<u>33.709</u>	<u>269.67</u>	<u>2,696.72</u>	<u>70,114.72</u>
<u>LIEUTENANT</u>				
<u>After 5 years</u>	<u>37.328</u>	<u>298.62</u>	<u>2,986.24</u>	<u>77,642.24</u>
<u>After 10 years</u>	<u>37.805</u>	<u>302.44</u>	<u>3,024.40</u>	<u>78,634.40</u>
<u>After 15 years</u>	<u>38.279</u>	<u>306.23</u>	<u>3,062.32</u>	<u>79,620.32</u>
<u>After 20 years</u>	<u>38.765</u>	<u>310.12</u>	<u>3,101.20</u>	<u>80,631.20</u>
<u>CAPTAIN</u>				
<u>After 5 years</u>	<u>42.181</u>	<u>337.45</u>	<u>3,374.48</u>	<u>87,736.48</u>
<u>After 10 years</u>	<u>42.720</u>	<u>341.76</u>	<u>3,417.60</u>	<u>88,857.60</u>
<u>After 15 years</u>	<u>43.255</u>	<u>346.04</u>	<u>3,460.40</u>	<u>89,970.40</u>
<u>After 20 years</u>	<u>43.804</u>	<u>350.43</u>	<u>3,504.32</u>	<u>91,112.32</u>
<u>DEPUTY CHIEF - PRO</u>				
<u>TEM</u>				
<u>(Exempt)</u>				
<u>After 5 years</u>	<u>46.821</u>	<u>374.57</u>	<u>3,745.68</u>	<u>97,387.68</u>
<u>After 10 years</u>	<u>47.419</u>	<u>379.35</u>	<u>3,793.52</u>	<u>98,631.52</u>
<u>After 15 years</u>	<u>48.013</u>	<u>384.10</u>	<u>3,841.04</u>	<u>99,867.04</u>
<u>After 20 years</u>	<u>48.622</u>	<u>388.98</u>	<u>3,889.76</u>	<u>101,133.76</u>

~~A. With the understanding between the City and the Association that there shall be full co-operation in effecting reasonable and efficient economies, the following wage rates are to be paid to the Command Officer in each salary group included in this agreement that are set forth in the table below:~~

~~B. Beginning with the first full pay period in January 2010 the following wage spreads between the ranks will become effective and will be maintained until the first full pay period of through July 2013: the term of this agreement.~~

Patrol Officer/Sergeant	20%
Sergeant/Lieutenant	15%
Lieutenant/Captain	13%

In the event members of the Toledo Police Patrolman's Association (TPPA) receive a base wage increase prior to the first full pay period in July of 2013, the existing spread of

<u>Patrol Officer/Sergeant</u>	<u>20%</u>
<u>Sergeant/Lieutenant</u>	<u>15%</u>
<u>Lieutenant/Captain</u>	<u>13%</u>

shall be maintained from January 1, 2013 through the first full pay period of July, 2013.

C. Effective with the first full pay period of July 2013 the spread between Patrol Officer and Sergeant shall be increased to 22%. The spread between Sergeant and Lieutenant shall remain at 15%, and the spread between Lieutenant and Captain shall remain at 13%.

Effective with the first full pay period of July 2014 the spread between Patrol Officer and Sergeant shall be increased to 25%. The spread between Sergeant and Lieutenant shall remain at 15%, and the spread between Lieutenant and Captain shall remain at 13%.

D. For purposes of the attached wage rate charts, years of service for rates at each classification and the duration for the first step Sergeant's rate shall be determined as follows:

(1) Employees hired prior to July 1, 1972 shall be paid based on their years of service with the City as of that date.

(2) Employees hired prior to July 1, 1972 shall be paid based on their continuous service to the City of Toledo after that date. Any employee hired after July 1, 1972, shall not receive credit for any prior service to the City for the purpose of determining "years of service" pay to which the employee may be entitled.

E. After twenty-six full years from the date of appointment to the Department, Command Officers shall be paid an annual payment of two percent (2%) of the 1988 annual base of the applicable Command rank, which shall not be added to their base rate. The amount shall be paid during the week which they begin their seventh (27th) year of service.

F. In order to facilitate compliance with the Fair Labor Standards Act, the City will adjust its regular pay rates for Command Officers to include stress allowance and shift premiums of all overtime payments. The stress allowance add-on shall be determined by dividing the annual stress allowance by 2080 hours. Existing regular pay rates will continue to be utilized for all other purposes. Payment for overtime hours worked in an acting capacity shall be based upon the regular rate for the rank including stress allowance and shift premium. All other overtime hours shall be paid at the regular rate for the Command Officer's permanent rank including stress allowance and shift premium.

G. In recognition of the additional responsibility and paperwork associated with being a Field Training Officer (FTO) Program Supervisor, the City agrees to compensate those sergeants selected to be Field Training Supervisors an additional five percent (5%) of their base wage during the days they are actually serving as Field Training Officer Supervisor. ~~Compensation will commence upon graduation of the next Academy class and will continue regardless whether or not the sergeant is engaged in active Field Training Supervision, as long as the sergeant remains in the Program.~~

Any Field Operations sergeant may volunteer to be selected for this special assignment. The Police Administration shall determine the number of sergeants needed to successfully administer the Field Training Officer Program. Sergeants interested in this assignment shall be afforded an interview and a review of their qualifications. The interview and selection committee shall consist of the Field Training Officer (FTO) Program Coordinator (Lieutenant), the Captain in charge of Field Operations, and the Deputy Chief in Charge of the affected District Station. The committee shall make a recommendation to the Chief of Police, who will make selection. The Chief's selection is subject to the grievance procedure but may only be overturned if it constituted an "abuse of discretion".

~~This FTO compensation will be spread out over 26 pay periods and will not be rolled into the base wage for any other purpose, including future wage increases. The compensation is not intended for the general supervision of Probationary Officers/Field Training Officers in the field. It is intended for those sergeants who are specifically chosen to be Field Training Officer (FTO) Program supervisors and are expected to complete all of the necessary paperwork associated with this responsibility~~

Signed this \_\_\_\_\_ day of February 2012, at Munroe Falls, Ohio.

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Dennis M. Byrne, Fact Finder