

**STATE OF OHIO
BEFORE THE OHIO STATE EMPLOYMENT RELATIONS BOARD**

**IN THE MATTER OF FACT FINDING
BETWEEN THE
CITY OF TOLEDO
And
TOLEDO FIRE CHIEF'S ASSOCIATION**

SERB Case # 11-MED-10-1578

Date of Hearing: December 29, 2011

E. William LEWIS, Fact Finder
Fact Findings and Recommendations

Appearances:

For the Association:

Gregory T. Lodge, Esq.
Schumaker, Loop & Kendrick
North Courthouse Square
1000 Jackson Street
Toledo, Ohio 43604

For the City:

Ellen Grachek, Esq.
Labor & Employment Section Chief
City of Toledo, Department of Law
One Government Ctr., Suite 2250
Toledo, Ohio 43604

AUTHORITY

This matter was brought before Fact Finder E. William Lewis in keeping with applicable provisions of Ohio Revised Code 4117 and related rules and regulations of the Ohio State Employment Relations Board. The parties have complied in a timely manner with all procedural filings. The matter before the Fact Finder is for consideration and recommendation based on merit and fact according to the provisions of ORC 4117, particularly those that apply to Safety Forces and mutual directions of the parties.

STATE EMPLOYMENT
RELATIONS BOARD
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In attendance:

For the City:

Ms. Ellen Grachek	Department of Law, Section Chief
Mr. Michael P. Bell	Mayor, City of Toledo(witness)
Mr. Stephen Herwat	Deputy Mayor, Operations
Ms. Lisa Marie Kowalski	Law Dept., Adm. Specialist II
Mr. Patrick McLean	Finance Director(witness)
Mr. Anthony Markwood	Attorney, Law Department

For the Fire Chief's Association:

Mr. Gregory Lodge	Attorney/Advocate for TFCA
Mr. Ken Gehring	Battalion Chief
Mr. Peter J. Jaegley	Battalion Chief
Ms. Karen Marquardt	Battalion Chief
Mr. Gary Martin	Deputy Chief, Pres. TFCA

BACKGROUND:

This is a successor agreement to a CBA that expired on December 31, 2011. The parties bargaining relationship dates back to the 1980's. The Toledo Fire Chief's Association(TFCA), is one of the eight bargaining units within the City. The TFCA is a bargaining unit of nineteen supervisory employees composed of fifteen Battalion Chiefs, three Deputy Chiefs, and one Fire Administration Assistant-Secretary.

Bargaining on this successor agreement commenced in October 2011, with numerous sessions resulting in resolutions to most of the unresolved issues. The parties also enlisted the assistance of a SERB appointed mediator, with some success. However, they were unable to resolve all their issues.

A request for Fact Finding was submitted to SERB, resulting in this Fact Finder being appointed on November 30, 2011. The parties continued to negotiate on their own with some success, however, they were unable to resolve all their issues. Thus, by mutual agreement the Fact Finding Hearing was scheduled for December 29, 2011.

In accordance with Ohio Revised Code 4117.14(C)(4)(e), in making recommendations, the Fact Finder takes into consideration the following factors:

- (1) Past collectively bargained agreements, if any, between the parties;
- (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, the ability of the public employer to finance and administer the issues proposed, and the effect of the adjustments on the normal standard of public service;
- (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 in private employment.

THE FACT FINDING HEARING:

The Fact Finding Hearing commenced on December 29, 2011, at 10:00am, in

Toledo, Ohio. The City's Environmental Services Division provided the conference room for the Hearing. The Fact Finder discussed the possibility of mediation, as encouraged by ORC 4117, and the parties, who had come close to settlement on their own, were interested in participating.

It was mutually agreed between the parties, that we would begin the process by opening the Evidentiary Hearing with the introduction of evidence and testimony regarding the City's recent economic experiences. Evidence and testimony was also introduced addressing the future anticipated revenues and expenditures. The City's Finance Director, McLean and Mayor Bell introduced evidence and testimony addressing the City's economic past and anticipated future. TFCA Advocate Lodge, reviewed the introduced evidence and cross examined the witnesses.

Following these two witnesses, it was mutually agreed to adjourn the Evidentiary Hearing and commence mediation on the unresolved issues. It was agreed between the parties, per their pre-submittals and the Hearing issue review that the following issues were to be addressed in mediation:

Section 2113.61 HOSPITALIZATION-PRESCRIPTIVE DRUG-DENTAL INSURANCE

SECTION 2113.62 OHIO POLICE AND FIRE PENSION FUND

SECTION 2113.70 WAGE RATES

**SECTION 2113.71 TRAVEL, CLOTHING MAINTENANCE AND TRAINING
ALLOWANCE**

SECTION 2113(NEW) MID-TERM BARGAINING

SECTION 2113(NEW) ZIPPER CLAUSE

All the above identified issues were resolved in mediation with the exception of the 2013 Wage Differential, SECTION 2113.70(B)-WAGE RATES. It was agreed between the parties that it was not necessary to reopen the Evidentiary Hearing since the Hearing's submitted evidence and testimony properly addressed their positions on the single remaining unresolved issue. When addressing the lone unresolved Wage Differential issue the parties' respective positions will be accompanied by the Fact Finder's discussion and recommended resolution to the issue(2113.70(B)).

The following issues resolved through mediation will identify the parties' pre-Hearing submitted positions on the issue. All the agreements reached in mediation will be incorporated in the Fact Finder's recommendation. Agreement language will accompany the Fact Finder's recommendations when appropriate.

Section 2113.61 HOSPITALIZATION-PRESCRIPTIVE DRUG-DENTAL INSURANCE

City Position:

No change to the level of benefits. Increase employee monthly premium contribution as follows:

Effective the first full pay period of January 2012: Single-\$48; Single +1-\$71; Family-\$94. Effective the first full pay period of January 2013: Single-\$80; Single +1-\$120; Family-\$160. Effective the first full pay period of January 2014: Single-\$92; Single +1-\$129; Family-\$166.

TFCA Position:

Current contract for level of benefits. Increase employee monthly copay premiums to:

Effective January 2012: Single-\$35; Family-\$77. Effective January 2013: Single-\$37; Family-\$82. Effective January 2014: Single-\$40; Family-\$87.

Fact Finder Recommendation:

Per mediated agreement with signed Tentative Agreement(TA) dated 12/29/11, Section 2113.61 to read as follows:

2113.61 HOSPITALIZATION-PRESCRIPTIVE DRUG-DENTAL INSURANCE

(A) General Provisions:

The City will provide hospital, medical, surgical, major medical outpatient diagnostic laboratory services, prescriptive drug, dental care and benefits under the terms and conditions set forth below:

- (1) Coverage shall be provided to each employee, each employee's spouse, and all unmarried dependent members of the employee's family in accordance with the plan document 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 spouses, death or divorce. Where spouses who are both employed have dependents from prior marriages for who hospitalization coverage they are responsible shall be exempt from this joint requirement.

Where the spouse of a City employee has health care coverage through a different employer, the spouse must enroll in his/her employer's plan. Dependents shall be covered as provided by the "birthday Rule". Co-ordination of benefits shall be provided so that coverage is extended to the spouse and dependents that is provided by the other employer's plan. ~~the ass~~ In case of demonstrated hardship due to excessive co-premiums (i.e 40% co-premiums or premium payments equaling 30% or more of earnings) special consideration will occur.

- (2) Coverage for this purpose shall be furnished through the insurance carriers selected exclusively by the City on a fair fee or other basis until such time as some other insurer may be selected or the City determines that it would in its best interest to insure these benefits. The Association shall receive advance notice of and the reasons for the change in carriers.
- (3) Coverage shall be provided at the levels existing as of December 31, 1999 except as set forth herein.

B.)The following health care cost containment procedures shall be effective for all employees enrolled under traditional coverage:

- (1) Second surgical opinions, pre-admission notification or certification emergency care limitations, concurrent review, post-admission concurrent review, outpatient surgery, continued treatment and technological review, medical case management, planned discharge and other procedures a may be established under the medical review programs established by the City shall be followed.
- (2) Full time employees covered by another employer's health care program due to marriage or other reasons may waive their City of Toledo coverage and receive twenty five thousand dollars (\$25,000) in life insurance coverage. This shall also be extended to those employees whose spouses are also employed by the City.
- (3) Coverage for nervous and mental treatment is limited as follows: inpatient care shall be maintained at a maximum of thirty one (31) days per calendar year. Outpatient coverage shall be expanded to a maximum of twenty two visits per year at fifty (50%) percent co-insurance.
- (4) Coverage for drug and Alcoholism treatment is limited to a maximum of twenty five thousand dollars (\$25,000) lifetime benefits for all in patient and out-patient care. In-patient care shall be maintained at a maximum of thirty one (31) days per calendar year. Out-patient coverage shall be expanded to a maximum of twenty five hundred dollars (\$2,500) per calendar year at fifty per cent co-insurance. Employees using drug and alcohol treatment programs must us the Fire Department Employee Assistance Program when one is available .The Co-operative health net work or other such agency selected the City for managing health care must be used by employees to certify coverage for drug and alcohol treatment for themselves or their dependents.

Treatment of alcoholism and drug addiction. In addition to coverage for nervous/mental diseases or disorders, coverage for inpatient treatment of alcoholism and drug abuse is limited to thirty one days (31) days per calendar year for each covered person following that covered person's admission to a Hospital.

Once combined in-patient /out patient maximum of twenty five thousand (\$25,000) has been met for alcohol and drug care, no further in patient benefits will be available. Coverage is limited to a lifetime maximum of twenty five thousand dollars (\$25,000). Covered services for a covered person's first admission will paid at one hundred percent

(100%) of the provider's reasonable charge. A second admission will be paid at seventy five percent (75%) of the provider's reasonable charge. A third admission will be paid at fifty percent (50%) of the provider's reasonable charge. After three admissions per lifetime, no further inpatient benefits are available.

(5) The panel of providers and PPP selected by the City for managing and providing nervous and mental, drug and alcohol treatment must be utilized. The City may request proposals toward a managed care plan for this purpose with an effective date of June 1, 2000 or thereafter. The selection shall be by mutual agreement. The schedule of benefits in effect as of December 31, 2000 shall be maintained, without additional co-pays or deductibles.

(C) The following cost sharing plan and cost coverage restrictions shall be effective for all employees enrolled under conventional coverage.

(1) there shall be a five hundred dollar (\$500.00) annual per person maximum on chiropractic care in 2003 which shall increase to a one thousand dollar maximum effective in 2005 and a thirteen hundred (\$1,300.00) annual per person maximum on physical therapy, both subject to the major medical deductible (\$100.00/individual and two hundred dollar (\$200 /family) and co insurance 80%/20%.

(2) Major Medical benefits shall be paid to a lifetime maximum of the one million dollars (\$1,000,000) per person with one hundred dollars (100.00) / individual and two hundred dollar (200.00) /family deductible and 80%/ 20% co-payment; provided that coverage for nervous mental , drug and alcoholism is limited per paragraph (b) ; (3) and (4).

(3) There shall be a sixty five dollar (\$65.00) co-pay for all emergency room visits , which shall be waived if the individual is admitted or if the visit is between the hours of 8:00 p.m. and 9:00 a.m. or on a Saturday after 12:00 p.m. noon or a Sunday.

(4) ~~There shall be a monthly co-premium payment amount for each employee. Employees will pay \$25.00, \$40.00, \$55.00 per month depending on the level of coverage selected. Coverage selections include the following: single coverage (employee only) will be \$25 per month; single plus one (employee plus spouse or one (1) dependent) will be \$40 per month; or family coverage (employee plus two (2) or more dependents) will be \$55.00 per month. These co-premiums will increase by 15% in 2010 and by another 15% in 2011.~~

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:

	<u>Single Coverage</u>	<u>Single + 1 Coverage</u>	<u>Family Coverage</u>
<u>Effective with the first full pay period of January 2012</u>	<u>\$48</u>	<u>\$71</u>	<u>\$94</u>
<u>Effective with the first full pay period of January 2013</u>	<u>\$80</u>	<u>\$120</u>	<u>\$160</u>
<u>Effective with the first full pay Period of January 2014</u>	<u>\$92</u>	<u>\$129</u>	<u>\$166</u>

The co-premiums will be made by payroll deduction on a pre-tax basis. Spouses who are both employed by the City of Toledo will on pay one co-premium payment based on the level of coverage selected. The "Birthday Rule" and the "Spousal Exclusion" language in Part A of this section continue to apply to coverage options

~~(D) Effective March 1, 1994, the availability of Health Maintenance Organization (HMO) and preferred provided (PPO) shall be discontinued. All employees, including those in the Traditional Plan, shall thereafter be enrolled in the Consortium plan. Consortium coverage and benefits shall be at the Traditional Plan levels as of December 31, 1993 except as otherwise provided herein. Consortium plan Medical Providers shall be restricted to those hospitals, physicians and other care providers designated in the plan as developed by the City in co-operation with Cost containment committee. It is understood that the City will not be utilizing the hospital, physicians and ancillary provider's panels through Frontpath/ Co-operative health Network. There is a 20% out of network penalty.~~

~~(E)~~ (D) The Cost Containment Committee shall be maintained from among the representatives of the various bargaining units, including the Toledo Fire Chiefs Association. The Committee shall develop

other cost containment measures, which shall include: 1.) enhanced managed care, such as pre-certification , concurrent review, and utilization review. 2.) changes of coverage or benefits such as increased deductibles, limitations on coverage and contributions from employees. 3.) increased claims control, such as co-ordination of benefits, subrogation, workers compensation deferral, patient audits and claim audits; 4.) negotiations and 5.) development of a participative employee plan by which employees will be encouraged to contain costs, audit bills, correct lifestyles, maintain wellness and undertake other cost saving measures. The Cost Containment Committee shall meet regularly on at least a monthly basis and attendance shall be required. The cost containment Committee shall develop annual goals, objectives and timetables directly aimed at reducing health care costs. Subcommittees may be formed as deemed necessary by the co-chairpersons to study issues, develop reasonable solutions and report back to the committee. Goals and objectives not met within the established time frames shall be critically reviewed by the Cost containment contract as they affect TFCA shall be permitted unless the authorized to do so by the TFCA through its president. In the event any change in benefits is required by either federal or state law, the TFCA and City shall negotiate the replacement language. If no agreement is reached, the matter shall be subject to interest arbitration. The parties shall use a panel of seven arbitrators with experience in interest arbitration.

(E) The Association releases the City from any obligation to add or to expend moneys currently in the Healthcare Savings fund created pursuant to former paragraph (f) of this section on future cost increases or wellness programming. The Association further releases the City from any obligation to consult with the Cost Containment Committee relative to the transfer or expenditure of those funds. Annual reports from third party administrators of the City's health and benefits, including any such reports showing costs and cost reductions shall be shared with the Cost Containment Committee.

~~G~~ (F) Coverage for all well baby care, pap tests, and office visits shall be offered to all employees enrolled under the Co-operative Health Network coverage.

- i) Well baby care is limited to routine examinations and immunizations for an infant until the infant's first birthday.
- ii) Pap tests as well as office fees will be paid in full once every twelve months.
- iii) Officer visits for routine services rendered in the physicians office including physical examinations and family planning shall be subject to a fifteen dollar (\$15.00) co-payment, which shall be counted toward the individuals major medical deductible.

Fees that the physician charges for the services under paragraphs(1), (2) and (3) shall be paid on the same basis as other covered services (e.g. usual, customary and reasonable; payments for services under part ~~(G)~~ (F) (1) and (3) of 100% will be made for the first one hundred and twenty

five dollars (\$125.00) per single contract or three hundred dollars (\$300.00) per family per calendar year collectively for well baby care (after federally specified limits have been met) and for office visits. The fifteen dollar office visit co-pay shall not be counted toward the \$125/300 limits. After deductibles are reached, payment shall then be under the major medical plan; provided however, that the bill shall be reduced by the fifteen dollar (\$15.00) office visit co-pay before the 80%/20% co-payment formula is applied.

H) (G) The City shall provide a three tier closed formulary prescriptive drug purchase program with a co-payment structure of a six dollar (\$6.00) co-payment for Tier 1 drugs (generics); fifteen dollar (\$15) co-payment for Tier 2 drugs (preferred brand name drugs); and a thirty dollar (\$30) co-payment for Tier 3 (non –preferred brand name drugs). This program will include a generic drug substitution option, and shall select the provider for the formulary drug program , who shall group drugs according to determinations made by the provider’s therapeutic committee as it deems necessary.

The City may implement managed care for the prescriptive drug program. This would allow for an evaluation of the interaction of an individual’s different prescriptions on a voluntary basis. Recommendations could then be made to the individual and his/her physician for more effective drug therapy.

H) (H) The City shall continue to provide a major dental plan which provides the following:

Type A services : Preventative 100%

Type B Services : Major and Minor Restorative – 80%

Deductible for Type B Services Fifty Dollars per person per year.
Maximum payment of \$1000.00

Type C Services: Orthodontia: - 60%

Maximum lifetime benefit for Type C Services for any covered person
\$1000.00 coverage limited to dependent children under age 19

Such benefit shall continue in effect for the life of this agreement. The city however, may select an alternative carrier or become self insured as it deems necessary. The coverage to be provided to each employee shall be either an individual or family contract, as may be appropriate. The selection of

insurance carrier to provide the coverage herein is the exclusive right of the City.

~~J~~ (I) Vision care: Beginning in July, 2000 the City shall contribute fifteen dollars (\$15.00) per employee per month for vision care benefits to the Toledo Fire Chiefs Association. Said shall be used by the Association to purchase whatever vision care benefits they will buy. The city shall no responsibility relative to the administration of this Vision Care Plan.

~~K~~ (J) The city agrees to all conditions and terms relating to the hospitalization-prescriptive drug – dental insurance shall be maintained at less than the highest minimum standards in effect as of the effective date of this agreement (Per the Fact-finders report and acceptance by the union and City Council). It is further agreed that any terms or conditions agreed to that are in excess of those established shall not be reduced.

Section 2113.62 OHIO POLICE AND FIRE PENSION FUND

City Position:

Eliminate the City's 10% "pension pickup" of the employees share of the pension contribution, effective the first full pay period of January 2012. In consideration of TFCA members paying the 10% employee share, the City will pay each bargaining unit member a \$1200 annual lump sum payment in 2012, 2013, and 2014.

TFCA Position:

Current language, unless the city agrees to a 3% Wage Differential as provided for in Section 2113.70(Wage Rates). Plus an annual lump sum payment of \$1800/TFCA member.

Fact Finder Recommendation:

Per mediated TA dated 12/29/11, Section 2113.62 to read as follows:

2113.62 OHIO POLICE AND FIRE PENSION FUND

(A) The City will continue to participate in the Ohio Police and Fire Pension Fund as provided in the Ohio Revised Code.

(B) ~~As long as t~~The City will ~~implement~~ participates in a pension "pick-up" plan in accordance with Internal Revenue Service regulations and Ohio Attorney General opinions, whereby as permitted by law State and Federal Income Taxes on employee pension contributions by all bargaining members may be deferred.

~~(C) In addition to and apart from the "designated pick-up" plan above, the City shall pick up and pay the one percent increase in employee contributions to the Fund, which is to become effective in 1986 pursuant to H.B. 721, as of the date said contributions become due. Effective March 30, 2000, said payment shall be considered as being made in lieu of the employee paying same. It is intended that this payment, and those specified in paragraphs (D) through (K) below, qualify as non-taxable pick-ups in accordance with internal revenue code §414(h)(2).~~

~~————(D) Effective January 1, 1997, the City will pay one half percent (0.5%) of each individual employee's 9.0% pension contribution (employee payment reduced from 9.0% to 8.5%) in lieu of the employee paying the same.~~

~~————(E) Effective January 1, 1998, the City will pay an additional one percent (1.0%) of each individual employee's 8.5% pension contribution (employee payment reduced from 8.5% to 7.5%) in lieu of the employee paying the same.~~

~~————(F) Effective January 1, 1999, the City will pay an additional one and one half percent (1.5%) of each individual employee's 7.5% pension contribution (employee payment reduced from 7.5% to 6.0%) in lieu of the employee paying the same.~~

~~————(G) Effective the first full pay period in January of 2000, the city will pick-up and pay an additional one half percent (0.5%) of each individual employee's pension contribution (employee payment reduced from 6% to 5.5%) in lieu of the employee paying the same.~~

~~————(H) Effective the first full pay period in January of 2001, the City will pick-up and pay an additional one quarter percent (0.25%) of each individual employee's pension contribution (employee payment reduced from 5.5% to 5.25%) in lieu of the employee paying the same.~~

~~————(I) Effective the first full pay period in January of 2002, the City will pick-up and pay an additional one quarter percent (0.25%) of each individual employee's pension contribution (employee payment reduced from 5.25% to 5.0%) in lieu of the employee paying the same.~~

~~(J) Effective the first full pay period of July 2004, the City will pay an additional one half percent (1/2%) of each individual employee's pension contribution (employee payment reduced from 5% to 4.5%) in lieu of the employee paying the same.~~

~~(K) Effective the first full pay period of July 2005, the City will pay an additional three~~

~~quarter percent (3/4%) of each individual employee's pension contribution (employee payment reduced from 4.5% to 3.75%) in lieu of the employee paying the same.~~

~~L) Effective the first full pay period of JANUARY 2007, the City will pay an additional TWO AND ONE quarter percent (2.25%) of each individual employee's pension contribution (employee payment reduced from 3.75% to 1.5%) in lieu of the employee paying the same.~~

~~M) Effective the first full pay period of JANUARY 2008, the City will pay an additional ONE AND A HALF percent (1.5%) of each individual employee's pension contribution (employee payment reduced from 1.5% to 0%) in lieu of the employee paying the same.~~

(C) Effective with the first full pay period of January 2012 the City will pay six percent (6%) of the employee's pension contribution, and the employee shall be responsible for the remaining percentage. In January of 2012 the employee receiving a reduction in pension pickup will receive a separate lump sum check in the amount of fifteen hundred dollars (\$1,500).

(D) Effective with the first full pay period of January 2013 the City will pay three percent (3%) of the employee's pension contribution, and the employee shall be responsible for the remaining percentage. In January of 2013 the employee receiving a reduction in pension pickup will receive a separate lump sum check in the amount of fifteen hundred dollars (\$1,500).

(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 remaining percentage, if any. This reduction in pension pickup by the City is in exchange for a 3% increase in the spread, effective in the first full pay period of January 2014, as contained in section 2113.70(C).

(F) Members entering the bargaining unit after the annual lump sum payment date will receive a prorated amount equal to one hundred twenty five dollars (\$125) per month for each month in which they work in the new classification, payment for which shall be made within thirty (30) days after the effective date of the promotion.

(G) Any member who elects to retire on or before January 31, 2014 shall receive an additional one time lump sum payment of seven hundred and fifty dollars (\$750) payable by a separate check in the pay period following the effective date of the retirement.

(H) In the event that the employee share of the pension payment increases due to a change in law or regulation during the term of this agreement the employee shall be responsible for paying the entire increased employee share.

(I) Employees who are promoted to positions in this bargaining unit and who were hired or reinstated after January 1, 2009 shall be required to pay the entire employee share of their pension, and, furthermore, shall not receive the lump sum payments contained in this section.

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

SECTION 2113.70 WAGE RATES

TFCA Position:

Current language, except increase Wage Spreads as follows:

Captain/Battalion Chief	16%
Battalion Chief/Deputy Chief	13%

City Position:

The City's position is no wage increase during the term of the successor agreement(3yrs.). Wage rates in effect December 9, 2011 will be paid to TFCA members during the term of the agreement, unless the wage rate increase provision of section 2113.70(B) applies.

2113.70(B) In the event that members of Local 92 receive a wage rate increase during the life of this agreement, effective with the first full pay period of January 2014, or a later effective date of the Local 92 wage increase, members of the TFCA will receive a wage rate increase in accordance with the following spreads:

Captain/Battalion Chief	13%
Battalion Chief/Deputy Chief	13%

Also delete last paragraph of this section, which reads as follows:

It is also understood that should Local 92 wage increases be in the form of lump sum payments, pension pickups, allowances, or safety stipends, TFCA members will receive a like form of wage increase (SEE APPENDIX A)

DISCUSSION:

In mediation, the parties reached agreement on all but one provision in this Section. Although a two year wage freeze was agreed to, a potential reduction in the Wage Differential percentage was not resolved.

This City, probably more so than others, has been, and is, going through extremely hard times since the "great recession" of 2008 and 2009. Income tax revenues, the primary source of General Fund income(65%), dropped from a 2007 high of \$169,689,000 to a 2009 low of \$141,500,000(CE-5B). According to witness testimony, approximately 2/3 of the City's expenditure is for labor costs.

Fortunately for the City, they were able to survive the recession without layoffs. According to witness testimony, they achieved this goal by implementing drastic cost savings procedures, labor concessions, and temporary voter approval to divert a portion of the Capital Improvements Fund to the General Fund. The City is not out of the “woods” yet, but they are projecting a modest increase in the income tax revenue(CE-5A). Per Finance Director McLean’s testimony, the City finances have improved in the last two years. However, the City’s financial status is still fragile and precarious, and their revenues are still worse than five years ago.

However, even considering the City’s monumental effort to “stay afloat”, the Fact Finder is not convinced that a potential reduction in the 2013 Wage Differential is appropriate. The 13% wage differential has been in effect for nearly thirty years(UE-Wages). Furthermore, Toledo’s Fire wage differential between Captain/Battalion Chief of 13%, is a minimum of 3% below the six other major cities in Ohio(UE-Comps.). The TFCA has made many needed collective bargaining concessions in this bargaining process. Therefore, the Fact Finder’s recommendation regarding the Wage Rate Differential for year of 2013 is that the WRD shall not fall below 13%. (See Section 2113.70(B). Section 2113.70 WAGE RATES is to read as follows:

2113.70 WAGE RATES

~~With the understanding between the City and the Association that there shall be full cooperation in effecting reasonable and efficient economies, the parties have agreed to the following:~~

Wage spreads between the ranks will be as follows except as modified in section (B) below:

Captain/Battalion Chief	13%
Battalion Chief/Deputy Chief	13%

~~Wage rate charts will be developed for hourly and annual rates when the Captains' rates become available. The wage charts will then become an addendum to the contract. (See Appendix A)~~

~~It is understood between the parties that wage rate increases will be determined by the increases to the Captain's wage rates in Local 92 AS OF JANUARY 1, 2009.~~

~~It is also understood that should Local 92 wage increases be in the form of lump sum payments, pension pickups, allowances, or safety stipends, TFCA members will receive a like form of wage increase. (SEE APPENDIX A)~~

(A) The following wage rates, which are the rates that were in effect as of December 9, 2011, will be paid to members of the TFCA during the term of this agreement, until the first full pay period of January 2014, unless paragraph (B) below applies.

Battalion Chief

	<u>Hourly Rate</u>	<u>Bi-Weekly</u>	<u>Annual Wage</u>
<u>After 5 Full Years</u>	\$41.831	\$3,346.48	\$87,008.48
<u>After 10 Full Years</u>	\$42.366	\$3,389.28	\$88,121.28
<u>After 15 Full Years</u>	\$42.894	\$3,431.52	\$89,219.52
<u>After 20 Full Years</u>	\$43.441	\$3,475.28	\$90,357.28

Battalion Chief – Medic Rate 2%

	<u>Hourly Rate</u>	<u>Bi-Weekly</u>	<u>Annual Wage</u>
<u>After 5 Full Years</u>	\$42.668	\$3,413.44	\$88,749.44
<u>After 10 Full Years</u>	\$43.213	\$3,457.04	\$89,883.04
<u>After 15 Full Years</u>	\$43.752	\$3,500.16	\$91,004.16
<u>After 20 Full Years</u>	\$44.310	\$3,544.80	\$92,164.80

Deputy Chief

	<u>Hourly Rate</u>	<u>Bi-Weekly</u>	<u>Annual Wage</u>
<u>After 5 Full Years</u>	\$47.269	\$3,781.52	\$98,319.52
<u>After 10 Full Years</u>	\$47.874	\$3,829.92	\$99,577.92
<u>After 15 Full Years</u>	\$48.470	\$3,877.60	\$100,817.60
<u>After 20 Full Years</u>	\$49.088	\$3,927.04	\$102,103.04

Deputy Chief – Medic Rate 2%

	<u>Hourly Rate</u>	<u>Bi-Weekly</u>	<u>Annual Wage</u>
<u>After 5 Full Years</u>	\$48.214	\$3,857.12	\$100,285.12
<u>After 10 Full Years</u>	\$48.831	\$3,906.48	\$101,568.48
<u>After 15 Full Years</u>	\$49.439	\$3,955.12	\$102,833.12
<u>After 20 Full Years</u>	\$50.070	\$4,005.60	\$104,145.60

(B) In the event that Captains in Local 92 receive a base wage increase in 2013, the existing spread of 13% for Battalion Chief to Captain and 13% for Deputy Chief to Battalion Chief in 2013 shall be maintained.

(C) Effective the first full pay period of January 2014, and in exchange for the reduction in pension pickup as contained in section 2113.62(E), TFCA members will receive a three percent (3%) increase in spread between ranks as indicated below:

Captain/Battalion Chief 16%

The Battalion Chief/Deputy Chief spread shall remain at 13%.

Section 2113.71 TRAVEL, CLOTHING MAINTENANCE AND TRAINING ALLOWANCE

City Position:

Reduce current allowance of \$575/yr. to \$275/yr.

TFCA Position:

Increase allowance to \$900/yr.

Fact Finder Recommendation:

Per mediated TA: Current language.

Section 2113.xx(NEW) MID-TERM BARGAINING

City Position:

City may implement changes and the Union may bargain on the effects. This new section is intended to allow the City to address issues related to dire financial straits.

TFCA Position:

No change to current contract.

Fact Finder Recommendation:

Per Tentative Agreement reached in mediation on 12/29/11, new provision to read as follows:

2113.xx Mid-Term Bargaining

In the event the City, as a result of exigent circumstances (as this term is defined under Ohio law developed under R.C. 4117) that were unforeseen at the time of negotiations or the passage of legislation which conflicts with the terms of this Agreement, finds it necessary to seek a change or changes to a term or terms of this Contract, the City, after approval by City Council, shall notify the Union of the proposed change or changes. The Union may, with ten calendar days of such notice, submit a written demand to bargain over such change or changes.

Should the Union demand to bargain as provided herein, the parties shall engage in good faith bargaining for a period of not less than five days and not more than ten days. Bargaining shall be conducted by teams consisting of not more than four persons, unless a larger number is mutually agreed to by the City and the Union.

If the bargaining teams have not reached agreement by the end of the bargaining period, the parties will engage in mediation for a period of not more than ten days, or until a resolution is reached or impasse is declared by either party, whichever first occurs. The mediator shall be assigned by the State Employment Relations Board, unless the parties mutually agree on a mediator.

If the parties have not reached agreement by the end of the mediation period, the City may elect to submit the unresolved issue or issues to conciliation. The conciliator shall be selected and the hearing conducted in accordance with the provisions of R.C. 4117 and the implementing provisions of the Ohio Administrative Code. The City shall maintain the status quo until the conciliator provides his or her decision.

Section 2113.xx(NEW) ZIPPER CLAUSE

City Position:

Terms and conditions contained in this Agreement constitute the entire agreement. This contract represents complete collective bargaining and full agreement by the parties in respect to pay rates, wages, hours of employment or other conditions of employment, which shall prevail during the term of the contract. All matters or subjects not covered herein have been satisfactorily adjusted, compromised, or waived by the parties for the life of this agreement.

TFCA Position:

Current language.

Fact Finders Recommendation:

Per mediated agreement: No change to current language

Section 2113.79 TERMINATION

Fact Finder Recommendation:

Per tentative agreement reached between the parties on 11/7/11, Agreement language to read as follows:

This chapter of the code shall be effective as of the 1st day of January 2012, and shall remain in full force and effect through December 31, 2014, and thereafter until terminated, amended or repealed pursuant to Chapter 4117 of the Ohio Revised Code.

CONCLUSION

The Fact Finding recommendations contained herein were arrived at giving consideration to the positions and arguments of the parties, our mediation discussions and agreements, and criteria enumerated in ORC 4117.14(C)(4)(e). In addition, I also incorporate by reference into this Report, the tentative agreements of the parties reached through negotiations, and the language of the expired Agreement which remains unchanged by the parties.

This concludes the Fact Finding Report.

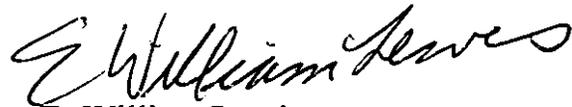
Respectfully submitted and issued this 5th day of January 2012.

A handwritten signature in black ink that reads "E. William Lewis". The signature is written in a cursive style with a large initial "E" and a long, sweeping underline.

E. William Lewis
Fact Finder

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of this Fact Finding Report was served by Fedex Overnight Express on Ellen Grachek, Esq., for the City of Toledo, One Government Center, 22nd Floor, Toledo, Ohio 43604; and Gregory Lodge, Esq. for the Union, North Courthouse Square, 1000 Jackson St., Toledo, Ohio 43604, and by regular U. S. Mail upon Donald M. Collins, General Counsel, State Employment Relations Board, 65 East State Street, 12th Floor, Columbus, Ohio 43215 this fifth day January 2012.

A handwritten signature in black ink that reads "E. William Lewis". The signature is written in a cursive style with a large, stylized initial "E".

E. William Lewis
Fact Finder

