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STATE EMPLOYMENT RELATIONS BOARD  
STATE OF OHIO

In the Matter of the Fact-finding Proceedings Between:

TOLEDO POLICE COMMAND	)	Case No. 96 MED 11 1093
OFFICERS ASSOCIATION	)	<u>RECOMMENDATIONS</u>
	)	
and	)	Margaret Nancy Johnson
	)	Fact-finder
THE CITY OF TOLEDO	)	

Appearances

For the Association:

Timothy C. McCarthy, Esq.  
Ron Korsog, President  
Terry Stewart, Vice-President  
Louis Borucki, Committeeman  
Wes Bombrys, Committeeman

For the City:

David L. O'Connell, Esq.  
James Burkhardt, Esq.  
Donald Saunders, Finance Director  
Jim Wiegand, Deputy Chief  
Mike Navarre, Deputy Chief  
Carol Bader, Employee Relations  
Marsha Senio, Director, Human Resources  
Bridgett Root, Legal Intern

Introduction

Approximately 147 employees of the City of Toledo, Ohio, hereinafter "City," or "Employer," comprise the Toledo Command Officers Association, hereinafter "Association" or "Union." The bargaining unit consists of the classifications of "Police Sergeant," "Police Lieutenant," "Police Captain," and "Secretary of Police." Negotiations for a successor to the Collective Bargaining Agreement between the parties which expired on January 1, 1997, resulted in resolution of a substantial number of issues, a list of which is attached hereto as Exhibit A. Unable to resolve the remaining seven issues, however, the parties engaged in fact-finding on January 23, 1997 in a conference room at the law offices of Shumaker, Loop and Kendrick, in Toledo, Ohio. In accordance with Section 4117-9-05 of the Administrative Code, Margaret Nancy Johnson had been appointed fact-finder by the State Employment Relations Board Bureau of Mediation and, accordingly, she presided over the fact-finding proceedings.

## Issues

In timely pre-hearing statements the parties identified the issues remaining in dispute as follows: vacancies, command officers reassigned, holiday overtime, the police and firemen's disability and pension fund, wage rates, field training officer pay, termination.

## Criteria

In rendering the recommendations set forth hereinafter, the hearing officer took into account the criteria listed in Ohio Administrative Rule 4117-9-05.

### Positions of the Parties

#### I VACANCIES

##### City

The City proposes modifying Section 2109.30 of the Collective Bargaining Agreement to enable the City to reduce by attrition the number of captains from 14 to 7, and the number of lieutenances from 36 to 26. The City also seeks authorization for the Chief of Police to civilianize unit positions which he determines do not require sworn officers. Finally, the City endeavors to extend the contractual time for filling vacancies from thirty (30) to sixty (60) days.

Justifying its proposal to reduce minimum manning at the command levels, the City maintains that its department is top heavy with command personnel. Reduction of captains and lieutenants through attrition would enable the City to increase field operations and create a greater presence of patrol officers on the streets where police protection is needed. Without compromising police operations, the proposed reduction will create greater balance between command and patrol officers, bringing Toledo more in line with comparable cities in the state. Moreover, the proposed modification is consistent with implementation of the concept of community policing. Finally, the savings effected by the reduction of command officers would assist the City not only in achieving a balanced budget but also in preserving and increasing police patrol ranks.

The proposed civilianization is not intended to reduce police personnel but rather to utilize police personnel in crime fighting instead of clerical functions. At present command officers perform administrative duties. Civilianization of these clerical duties is consistent with trends across the country.

Due to the complexity of selection procedures, the City is not at present able to fill vacancies within the contractual thirty day time period. The proposal of the City would bring the contract into line with actual practices and is a more appropriate response to the delay problem than that submitted by the Association. The "lost dues" demand of the Union is an unreasonable expenditure of city funds since the individual to be promoted is already receiving the benefit of union

representation within another bargaining unit.

Association

Opposed to the proposal of the City to reduce manning levels, the Association proposes the addition of four sergeants and one captain and the reduction of Deputy Chiefs by one. Further, the Association proposes that it be reimbursed by the City for dues it does not receive when the contractual time limitations for promotions are not met by the City.

The parties herein have already collectively bargained over the manning issue. During the 1994 negotiations the Association agreed to a reduction in the number of captains and sergeants. The City has failed to demonstrate why further reductions are warranted. Since the number of patrol officers has increased, the need for additional command personnel has correspondingly increased. Indeed, actual numbers of lieutenants and sergeants exceed the contractual manning levels.

The police needs of the City will be not met by further reducing the number of command officers. Indeed, Toledo has the lowest ratio of police officers to civilian population, as well as the lowest number of sworn officers per square mile, among major Ohio municipalities. Finally, the City has been awarded grants to enable it to bring the number of sworn officers up from 705 to 802. While the proposal of the City to reduce is unwarranted, there is proper justification for the increase proposed by the Union.

Since the City consistently fails to meet the contractual time limits for promotions, the Association is entitled to compensation for its lost dues. Accordingly, the Union proposes contract language entitling the Association to dues when the City is remiss in meeting promotion deadlines.

## II COMMAND OFFICERS REASSIGNED

City

The City proposes deleting language currently set forth in Section 2109.34 providing a reassignment review panel and granting, instead, sole authority for the assignment of command officers within the Police Department to the Chief of Police. Bargaining history underlies a proper understanding of the proposal of the City. Prior to 1991 the Police Chief retained complete authority in the assignment of command officers but only whenever five or more vacancies were posted. Reassignment decisions could be grieved but not appealed to arbitration. In order to exercise the authority to reassign officers when there were less than five vacancies, the City in 1991 proposed a Reassignment Review Panel. The agreed upon language provided that either party could dissolve the panel prior to October, 1991. As no reassignments occurred during the first three-quarters of 1991, there were no appeals and neither party had the opportunity to judge the effectiveness of the panel which has remained in the contract until the present.

The City submits that the Review Panel is an undue restriction upon managerial authority of the Police Chief. To administer the Police Department in an efficient and effective

manner, the Chief of Police ought to retain the right to assign command officers, free of concern for objection and reversal by a third party unfamiliar with the needs of the department. A study of practices in the region indicates that in the majority of cases, the Police Chief retains total discretion in the matter of assignments. The City, therefore, proposes elimination of the Reassignment Review Panel

#### Association

The Union seeks to retain the current contract language. In the absence of any evidence whatsoever as to the inefficiency of the review panel, the Union rejects the proposal of the City. Since the initiation of the review panel in 1991, only 1.65 of reassigned command officers have appealed to the panel, and of all reassignments, the City has prevailed 99.33 per cent of the time.

Through negotiations, the parties established a system that safeguarded employees from abuses of discretion while it protected the right of the City to make appropriate and reasonable assignments. The system has worked since 1991 and there is no reason to now unilaterally eliminate this negotiated procedure.

### III HOLIDAY OVERTIME

#### City

The City seeks to maintain the current contract language on Holiday Overtime in Section 2109.51 of the Collective Bargaining Agreement. At present command officers required to work on the major seven (7) holidays receive 12 hours straight time pay. No other service unit contract, including the Patrolmen's contract, provides more than seven holidays. Indeed, the current contract compares favorably with those of other police departments in the state.

#### Association

The Association proposes adding Martin Luther King, Jr. as a recognized holiday and to provide holiday premium compensation at two times the employee's customary hourly rate rather than the current time and one-half. In recognition of the need to promote tolerance and racial harmony in the law enforcement departments, the Association maintains remembrance of Martin Luther King Jr., is appropriate. Moreover, double time compensation is presently paid by the City of Toledo to its nonuniform employees as well as by other similarly situated employers to law enforcement employees.

### IV PENSION FUND

#### City

Pursuant to the present contract provisions, the City pays 1% of the 9.5% pension contribution of each Command Officer. Unless there is a corresponding reduction in the number of command officers, an expansion of the right to civilianize, and a freeze on longevity payment, the City is opposed to any increase in the pension pick-up. The cost of each per centage of pension pick-up is the equivalent of a 1% increase in wages.

Accordingly, the City proposes maintaining the current provision.

Association

The Association proposes increasing pension pick-ups in 3% increments for each year of the contract. At present, the City of Toledo has one of the lowest pension pick-up provisions in the state. The City has already agreed to increase pension pick-ups in the TPPA and the AFSCME bargaining units. To remedy the present disparity and to bring Toledo in line with prevailing practices in the state, a 3% increase in pension pick-ups are proposed for each of the three years of the contract.

V WAGES

City

The City proposes reducing the wage spread of Sergeant over Patrol Officer from 16% to 14% and maintaining the current spread of Lieutenant and Captain over Sergeant and Lieutenant, respectively. Such a change would still provide the classifications of the Command Officers with a 1%, 3% and 3% increase for each year of a three year contract. In addition to a need to reduce command officer costs, the proposal of the City is justified on the basis of comparisons with cities of comparable size. A review of the wage spread among officers in cities similar in size to Toledo indicates that the wage spread of Sergeants is high. Moreover, the annual base rate for sergeants is about \$1,300 over average, while rates of pay for lieutenants and captains are about \$3,000 above average. When total compensation is analyzed, the disparity does not abate, with Sergeants receiving nearly \$5,000 more than the average for major Ohio cities. Accordingly, the City maintains adjustments to the wage spread are warranted, but that the same should be reductions rather than the increases sought by the Union.

Moreover, the City is opposed to the other forms of wage increases demanded by the Association. There is no justification for the Union proposals which would have a devastating impact on the finances of the City if implemented. Over the three years of the contract, the base wage increases submitted by the Association would effect 15% to 31% increases over the three years of the contract--per centage increases which are far in excess of rates negotiated for other command officers within the State as well as inconsistent with increases in the consumer price index.

Opposed to increasing the lump sum payments made under the expired contract, the City proposes eliminating such payments entirely. The lump sum payments were negotiated as a quid quo pro for the reduction of eight command positions and ought not to be continued in the absence of similar concessions. No other bargaining unit in the City receives comparable payments.

By having longevity included in base rates, Command Officers already receive 2 to 3 times the normal longevity payment. While the Association proposes enhancing this wage benefit, the City suggests modifying longevity so that employees with less than five years service would receive payments more

comparable to those received throughout the state. Current employees would continue to receive the same level supplemented by a lump sum payment at the higher longevity tiers.

Finally, the City is opposed to the overtime add-ons proposed by the Association. Just prior to impasse proceedings, the parties reached an agreement on the issue of overtime add-ons. Having been just recently negotiated, the issue should not be reconsidered in these proceedings.

Underlying the economic issues presented by the City is a need to address the financial uncertainty of the City. As described by its Finance Director through a variety of charts, there is a restricted source of revenue for the general fund from which the City must meet its obligations. Growth in revenue has not kept pace with the increase in costs. Accordingly, the City has taken the position that any wage increases must be offset by steps to reduce labor costs.

#### Association

The Association proposes increasing the spread between wage rates of the command officers. Among major Ohio cities, Toledo has the lowest spread in rates between ranks. Indeed, Toledo is low when compared to similar cities outside of Ohio. The proposal of the Union is intended to correct the disparity by increasing the spread of Sergeant, Lieutenant and Captain to 20%, 18% and 16% over patrol officer, Sergeant, and Lieutenant, respectively.

In addition, the Association proposes an increase in the annual lump sum payments paid to command officers. The lump sum payments are intended to compensate command officers for increases in work load. As the number of patrol officers has increased during the life of this contract, a corresponding increase in the lump sum payment to command officers is justified. Accordingly, the Association proposes increasing lump sum payments from 1% to 2% of the annual base rate for each year of the contract.

In order to promote retention of qualified senior employees, the Association proposes calculation of longevity bonuses on the basis of current rates rather than 1976 compensation levels. For longevity to be an effective incentive, it must be paid on current, not 1976 rates. Additionally, the Association proposes making a longevity bonus available to Command Officers upon completion of twenty-five rather than twenty-six years of service.

Command Officers ought to be paid at the rate to which entitled for the services rendered. Accordingly, the Association proposes elimination of the start rate for newly promoted sergeants. Since such employees perform the services of a sergeant and assume the responsibilities and duties of the classification, they ought to be compensated at the proper rate of pay. The current practice of paying sergeants at 93% of the full rate for the first 100 days is unjustifiable.

The Association proposes adding benefit payments to the base hourly rate for the purpose of calculating overtime. The change proposed by the Association is intended to facilitate

compliance with the Fair Labor Standards Act.

While the City argues economic hardship, it is apparent that the City has the ability to pay the proposals made by the Association herein. Indeed, the budget submitted by the administration for contract year 1997 provides for wage increases for the Command Officers unit and includes a lump sum payment. Increases in the Police Officers, the Fire Fighters and in the non-safety services units have already been agreed upon. These include a 15.9% wage and pension increase for the AFSCME unit over a three year contract. Having accepted such agreements with other bargaining units, the City cannot now fairly argue inability to pay.

#### VI FIELD OFFICER TRAINING PAY

##### City

The City proposes the elimination of the daily premium presently paid to sergeants who perform duties associated with the Police Department's Field Officer Training Program. As training duties are part of the job description of a command officer, extra pay for performing such services is unwarranted. Indeed, there are no extra duties associated with supervisory functions of sergeants. Under the current contract, there is no entitlement to the premium pay. Most jurisdictions surveyed by the City do not provide additional compensation for field training.

##### Association

As both the City and the Association recognize the need for a Field Officer Training Program, an agreement as to selection for participation and compensation for services rendered ought to be implemented. The need to compensate field officer trainers had already been recognized by the City. In the absence of pay, the City had been unable to find command officers willing to participate in training programs. Moreover, the City has already agreed to compensate Police Officers for field training, and the refusal to grant comparable compensation to Command Officers is without justification.

#### VII TERMINATION

##### City

While the City has agreed to a three year contract, the City proposes that the effective date for the new Command Agreement be changed to February. Because the wage rates negotiated for the TPCOA are tied to rates negotiated by the TPPA, the City and the Union must wait for settlement of the TPPA contract before meaningful bargaining can begin for the Command Officers. The City submits that by changing the effective and expiration dates, more meaningful negotiations will take place.

##### Association

The Association is opposed to any change in the expiration and effective dates of its Collective Bargaining Agreement. Such a change would impact upon the ability of the Association to bargaining meaningfully with the City. Only when negotiations

with the other units had been completed would the Association be able to begin the process.

In these proceedings the Association also seeks a recommendation for retroactivity. Other units within the city have had their wage rates be retroactive. Since bargaining with other units prevented the City from negotiating with this unit, the Command Officers ought not to be penalized because of the priorities of the City. Moreover, the City has the ability to pay any retroactive increase. Such increases have already been budgeted and the same should not be withheld from the Union.

### Discussion

Of the six (6) major units with which the City collectively bargains, this is the fourth unit to go to fact-finding to effect a successor contract. Prior hereto, recommendations of fact-finders were accepted by the City to resolve its impasse with AFSCME Local 7, Toledo Firefighters, and Toledo Police Patrolmen's Association. In each of these previous proceedings factual economic data and arguments similar to those presented to this hearing officer were submitted as evidence. The reports and recommendations issued by the preceding fact-finders and their analysis and review of data were introduced for consideration herein.

In each of these reports the fact-finders acknowledged a correlation between the bargaining units. The two later hearing officers, however, declined to be governed by the recommendations rendered in the AFSCME, Local 7 fact-finding. While significant "catch-up" recommendations were accepted by the City in the case of the AFSCME, Local 7 unit, the fact-finders in the subsequent safety-service units issued recommendations distinguishing those units and providing for more moderate contract adjustments. Presented with the same economic evidence, this fact-finder now endeavors to recommend contract modifications which will effect a collective bargaining agreement for this unit. Her intent is make recommendations consistent with both the economic needs of the city as well as its settlement with the other safety service units. In doing so, she heeds the opinion of Fact-finder Dobry that while "this is no time to disarm the soldiers in the 'war on crime,'" wage increases must be paid for by improved efficiency.

The economic presentation in the case now pending has been thoroughly analyzed and discussed in the preceding fact-finding reports. Rather than repeat opinions on the economic status of the City previously expressed, this hearing officer briefly summarizes salient points. In the presentation of its economic data, the City establishes expenditures of the City outpace the composite growth rate for general fund tax revenues. Moreover, the City emphasizes a reliance upon revenues which have the potential for change, such as a per centage of the income tax subject to voter approval, and income generated by the operation of a major automobile plant. The consistent decrease in a budgetary surplus and a lagging growth rate for

General Fund Revenues reflect a declining urban population with a diminished purchase power. Economic trends suggest the need for caution in these proceedings. The testimony and documentation provided by the Finance Director warrant careful consideration.

Even so, inability to pay is not alleged by the City in this case. On the contrary, settlement costs and increases for this unit have, indeed, already been incorporated into the City budget. Moreover, the City has contracted with other bargaining units for significant increases. In these negotiations the City does not seek concessionary bargaining in its traditional meaning. Rather, the City is urging caution in this collective bargaining process. Further, the City is seeking enhanced ability to control growing costs.

In evaluating the economic data submitted and attempting to resolve the pending contract dispute, this fact-finder has the advantage of perusing carefully thought out and well reasoned fact-finding reports and recommendations. Without being bound by pattern bargaining, she has available to her recommendations which are based on a balancing of the economic needs of the City and a fair consideration of the reasonable and legitimate expectations of employees. Extending a concept stated by fact-finder Dobry in his report, this hearing officer is of the opinion that it is unrealistic to expect this unit to look favorably upon anything less than what was achieved by the companion safety service units of the City.

Having made these preliminary observations, the fact-finder proceeds to address the issues raised by the parties. Her intent is to suggest solutions which provide the City with greater flexibility while protecting the integrity of the bargaining unit. The economic interests of both the City and the Union can only be served by prudent but reasonable contract terms.

#### Recommendations

##### I 2109.30 Vacancies

###### A. Reduction by Attrition

The City proposal to reduce captains and lieutenants by attrition was described as a stumbling block in the attempt of the parties to reach an agreement. A proposal about which the City is tenacious, the reduction would clearly provide the City with greater leeway in managing the department manpower. In what the city calls a "top heavy" police department, fewer command officers would enable the city to expend more of its shrinking dollars on field operations. At the same time, however, the proposal would not result in loss of employment to any member of the present bargaining unit. Rather, as captains and lieutenants retire, the vacated positions would not be filled.

The Association points out that a reduction in manning was negotiated in the expired contract in exchange for a lump sum payment to command officers. In the absence of evidence of the need for additional reductions, the Association objects to the further loss of positions. Moreover, the Association

maintains that increased numbers of patrol officers warrant a corresponding increase in command officers and it proposes the addition of four sergeants and one captain and the elimination of one deputy chief pro-tem.

This factfinder shares the opinion of a preceding factfinder. Increased efficiency in this department is essential in making the tax payer dollars go further. It should be noted, however, that the review of this factfinder is limited to positions within the bargaining unit. Thus, she recommends there be additional reductions in the unit. She has modified the number of positions, however, and she has tied the reduction as the parties did previously to a lump sum payment as discussed below. Accordingly, the fact finder recommends the reduction by attrition of the number of captains from fourteen (14) to ten (10) and the number of lieutenants from thirty-six (36) to thirty-two (32).

#### B. Civilianization

Civilianization was also, apparently, discussed in negotiations with the the Police Patrolmen's Association. Understanding that the parties had reached an agreement on the matter, the factfinder declined to make any recommendations on the issue. In the present proceedings, however, the hearing officer was advised that the parties had not agreed upon the issue in the prior case. Additionally puzzling to this hearing officer is the lack of specificity as to how the City would effect the proposed civilianization of unit positions.

A review of the documentation submitted by the City indicates that civilianization is recommended by a Citizen Study, it is consistent with national trends, and it would effect significant savings for the City. This factfinder does not deny the potential economic benefits of civilianization. Such a plan, however, must be thoughtfully worked out and implemented. The Citizen Study, for example, requires the City to "identify all positions that do not require sworn officers." While the City submitted a chart incorporating the proposed civilianization of personnel, the chart lacks the specificity on positions suggested by the Citizen Study. Moreover, the proposal of the City is too broad in its language giving the Chief unrestricted discretion "to replace command officers with civilians where the chief determines that the work does not require uniformed personnel."

In the absence of specificity on the details of the proposed civilianization and a total lack of a review mechanism, this factfinder cannot issue a recommendation in favor thereof.

#### C. Time Extension

Both parties agree that the City is unable to fill vacancies within the thirty days presently provided for in the contract. Accordingly, the proposal of the City is simply to bring the contract language in line with the realities of practice. The factfinder is of the opinion that this change is warranted. It ought not, however, to be at the tax payers' expense. Accordingly, the factfinder does not recommend the dues pick-up proposed by the Union. In view of the economic evidence

presented, the Union proposal cannot be justified.

The factfinder recommends changing the contractual thirty (30) days to sixty (60) days for filling vacancies.

#### II 2109.34 Command Officers reassigned

The issue of the reassignment review panel was bargained by the parties in their most recent contract negotiations. Although the agreed upon language provided for an opportunity to annul the panel, neither party opted to do so. Since its inception, the review panel has been utilized but not overly so. There is no evidence that the panel interferes with administrative efficiency other than, as the City points out, it imposes a restriction upon managerial authority. Nonetheless, it is a restriction that had been bargained in good faith by the parties. In the opinion of this factfinder, the bargain previously made ought not to be set aside in the absence of justification for doing so. Stable bargaining relationships require a consistency in dealings between the parties.

The factfinder recommends retention of Section 2109.34.

#### III 2109. 51 Holiday Overtime

The issue of the holiday provisions of the Collective Bargaining Agreement presents a dilemma for this hearing officer. While she concurs with the opinions expressed by the Association on the significance of honoring Martin Luther King, Jr., she also recognizes that no other safety unit in the city has this holiday in its contract. The issue was not addressed by the factfinder in the TPPA recommendations and, though referenced in the recommendations for the Firefighters, the issue was not discussed and that contract remains unchanged on the matter. Given the financial situation of the City and the fact that economic adjustments for Command Officers are provided elsewhere in these recommendations, the hearing officer declines to issue a recommendation on extending holidays and increasing holiday pay at this time, suggesting instead that the additional holiday be considered in future negotiations.

#### IV 2109.65 Pension Fund

The factfinder recommends that the pension pick up provision of the contract be modified in the same manner as that for the Toledo Police Patrolmen's Association. There is no justification for the Command Officers of the city to receive less than the companion safety force. Moreover, given the recommendation on the reduction of the number of captains and lieutenants, this hearing officer is of the opinion that the pension pick-up increase is both justified and warranted. Accordingly, this factfinder recommends an increase in the pension pick-up consistent with that awarded to the TPPA, or an additional one per cent (1%) in January of each year of the contract.

#### V 2109.75 Wage Rates

##### A. Spreads

Both parties propose adjustments to the spreads between

the ranks within the police department. While the City suggests decreasing spreads, the Association proposes increases. Both parties cite comparables within the State of Ohio as well as across the nation. In regard to the spreads, the factfinder notes first, the per centage spreads were agreed upon by these parties in negotiations in 1994. Second, the spreads in the City of Toledo are within one per cent of either the spreads in comparable Ohio cities or the average spread in cities in north central United States. For example, the 16% between Sergeant and Patrol Officers and the 15% between Lieutenant and Sergeant compares within one per cent of spreads in Akron, Cincinnati, and Dayton. While the 13% between Captain and Lieutenant is less than in those comparable Ohio cities having the rank of captain, it compares well with the average spread in comparable north central cities. Third, spreads are difficult to analyze as a comparison in wage negotiations given the variety of other factors impacting on wages, such as longevity, PERS pick-up, lump sum payments and so on. Accordingly, since this factfinder does not find the wage spreads to be so disproportionate as to warrant modification, and since rate changes are recommended elsewhere in this report, she does not recommend an adjustment in the wage spreads between ranks of the Command Officers.

Consistent with the recommendations and Agreements reached with the TPPA and the IAFF, the factfinder recommends a 3% wage increase on January 1 of each year of the contract.

#### B. Longevity

Both parties propose adjustments to longevith pay. While the Association proposes maintaining current language for five, ten, fifteen and twenty year employees, it suggests longevity pay of 2% of current annual bases for officers with twenty-five years of service. The City proposes maintaining longevity pay for employees hired before 1992, but instituting lump sum payments of \$200, \$400, \$600, and \$800 for employees hired after 1992.

The longevity provisions of the expired collective bargaining agreement are somewhat unique in that except for the twenty-six year employee, longevity is not paid in lump sums upon the conclusion of the years served, but rather is incorporated into the base annual pay of the Officer. This appears to be the practice also followed in the contract for the Toledo Police Patrolmen's Association, which apparently, was not changed in the most recent negotiations and fact-finding. The factfinder assumes that the twenty-six year patrolmen receives the same longevity pay as the Command Officer.

As consistency with wage spreads and settlements for the TPPA is an underlying intent in this case, maintenance of the current longevity payments is recommended. A change in the longevity provisions of this Collective Bargaining Agreement would impact the spreads whose retention has been previously recommended and distort the relationship between TPPA and TPCOA wage rates. Since lump sum payments and PERS pick-ups are recommended herein for the Command Officer, substantial wage

adjustments are already provided, and the additional cost of changing longevity payments is not warranted.

#### C. Lump Sum Payments

As previously discussed in regard to the reduction of command officers by attrition, a lump sum payment of 1% of annual base wages rates in 1997, 1998, and 1999 is recommended for each command officer. This is the same per centage that was agreed upon when the parties previously settled upon a reduction of eight positions in the unit.

#### D. Sergeant Pay

The fact finder notes that full rate pay for promoted sergeants was not included in the original position statement of the Association. While the City did not object to the introduction of the same at factfinding, the hearing officer recognizes the statutory restrictions on her authority. Accordingly, she declines to render a recommendation on this issue.

#### E. Overtime Pay Computation

The Association proposes adding certain benefits to the base hourly rate for overtime pay purposes. Specifically, the Association seeks inclusion of stress allowance, CEP payments, lump sum payments, longevity payments, holiday bonus, clothing allowance and clothing maintenance payments as add-ons for overtime calculation. In September, 1996, however, the City and the Association entered into an Agreement whereby the parties negotiated a settlement to an overtime add-ons dispute. Pursuant to this agreement, payments under the career enhancement program, 1% lump sum payments, and the 26 year longevity payments are included in the regular pay for FLSA overtime purposes. Add-ons for contract overtime purposes are distinguished from add-ons for FLSA overtime purposes.

The Factfinder agrees with the City that the Association proposal changes a bargain just recently negotiated. As in the case with the Review Panel, stability and consistency in negotiated settlements require the factfinder to sustain the September Agreement. Accordingly, the factfinder recommends that add-ons for overtime purposes comply with the September, 1996 agreement.

#### F. Retroactivity

In these negotiations the City has consistently refused to make its wage adjustments retroactive. As other units in the city were granted retroactive adjustments, as the parties have always heretofore agreed upon retroactivity, and as retroactivity is accepted practice in public sector factfinding, this hearing officer recommends that the wage adjustments recommended above be made retroactive to the effective date of the new contract as discussed below.

### VI Field Officer Training Pay

The proposal of the Association for Field Officer Training Pay evolves from a practice initiated in 1992 whereby Sergeants who perform duties associated with an FTO program receive daily premium of one hour's pay for such service. Started by the

TPPA, the FTO program began as a way of attracting quality applicants for FTO duties. While the City now seeks to discontinue FTO pay for this Association, the factfinder recommended and the City accepted FTO pay for the Police Patrolmen's Association.

As previously indicated, this factfinder believes that settlements with other safety units, and specifically, the TPPA, are a guide to reasonable and appropriate recommendations for this unit. Accordingly, the factfinder recommends the formalization of the Field Training Officer program and an increase in the rate previously paid for such supervisory duties as set forth by the City in its December 23, 1996 proposal on FTO pay, attached hereto as Exhibit B.

#### VII Section 2109.96 Termination

While both parties are in agreement as to a three year contract, the City seeks to change the effective day of the new Agreement. The factfinder recognizes the interrelationship between the TPPA and the TPCOA. Indeed, consistency in the Agreements between the two were a factor in these recommendations. Nonetheless, the factfinder does not believe that it follows the TPCOA Agreement must always be negotiated second or placed on hold pending settlement of the TPPA contract. In the absence of a compelling reason to change the effective date of the new contract, the Factfinder recommends the new Agreement be effective as of January 1, 1997, and shall remain in full force and effect until January 1, 2000.

#### Summary of Recommendations

- I     2109.30 Vacancies
- |                       |                       |
|-----------------------|-----------------------|
| TOTAL CAPTAINS        | DEPUTY CHIEFS PRO-TEM |
| 10                    | 4                     |
| 32 LIEUTENANTS        |                       |
| 96 SERGEANTS          |                       |
| 1 SECRETARY OF POLICE |                       |
- Vacancies be filled within sixty (60) days.
- II    2109.34 Command Officer Reassigned  
no change in present language
- III   2109.51 Holiday Overtime  
no change in present language
- IV    2109.65 Pension Fund  
The fact-finder recommends the pension pick-up be increased by 1% in January of each year of the contract.
- V     2109.75 Wages  
A 3% increase in wages is recommended to be effective January 1 of each year of the contract and to be retroactive

to January 1, 1997.

No change in longevity is recommended.

A lump sum payment of 1% of the annual base wage rate be paid to each Command Officer on January 1 of each year of the contract.

Overtime be computed on the basis of the September, 1996 Agreement between the parties.

VI Field Training Officer pay be effected consistent with attached Exhibit B.

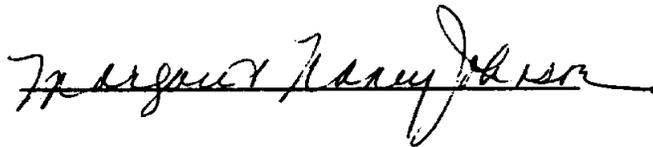
VII 2109.96 Termination  
A three year contract effective January 1, 1997 until January 1, 2000.

Respectfully submitted,

  
Margaret Nancy Johnson  
Fact-finder

Service

A copy of the foregoing recommendations and report was issued the 28th day of February, 1997 by Federal Express to Timothy C. McCarthy, Esq. Shumaker, Loop & Kendrick, North Courthouse Square, 1000 Jackson, Toledo, Ohio 43624-1573; David L. O'Connell, Esq., Marshall & Melhorn, Four SeaGate, Eighth Floor, Toledo, Ohio 43604-1599; James G. Burkhardt, Esq. Department of Law, One Government Center, Suite 2250, Toledo, Ohio 43604-2293; G. Thomas Worley, Administrator, Bureau of Mediation, State Employment Relations Board, 65 East State Street, Columbus, Ohio 43215-4213.



**CHAPTER 2109**  
**Toledo Police Command Officers' Association**  
**RESOLVED ISSUES 1996 BARGAINING**

- 2109.01 Toledo Police Command Officers' Association Recognition.
- 2109.03 Other Agreements
- 2109.04 Authorization Card.
- 2109.05 Credit Union.
- 2109.06 Savings Bonds and United Appeal.
- 2109.07 Command Officers' Life Insurance Fund.
- 2109.08 Association Dues Deductions.
- 2109.09 Deferred Compensation.
- 2109.10 Pledge Against Discrimination and Coercion.
- 2109.11 Representatives.
- 2109.12 Association Business.
- 2109.13 Rights to Visit.
- 2109.14 Grievance Procedure.
- 2109.15 Expedited Labor Arbitration Rules.
- 2109.16 Command Officers' Bill of Rights.
- 2109.17 Drug Testing.
- 2109.18 Relief From Duty
- 2109.19 Suspension and Disciplinary Action.
- 2109.20 Reprimand.
- 2109.21 Retraining.
- 2109.22 Personal Service Records.
- 2109.23 Record Retention.
- 2109.24 Resignation.
- 2109.25 Seniority.
- 2109.26 Seniority During Military Service.
- 2109.27 Seniority During Industrial Disability.
- 2109.28 Promotions.
- 2109.29 Performance Evaluation.
- 2109.31 Layoff Procedure.
- 2109.32 Recall From Layoff.
- 2109.33 Posting Vacancies-Schools.
- 2109.35 Acting Time.
- 2109.36 Personal Leave Up to 5 Days.
- 2109.37 Personal Leave up to 30 Days and 30 Days or More.
- 2109.38 Fringe Benefits/Leave.
- 2109.39 Falsification of Request.
- 2109.40 Military Leave.
- 2109.41 Maternity Leave.
- 2109.42 Sick or Injury Leave.
- 2109.43 Workday.
- 2109.44 Work Schedules.
- 2109.45 Shift Selection.
- 2109.46 Starting Time.
- 2109.47 Quitting Time.
- 2109.48 Work in Excess of Regular Workdays.
- 2109.49 Court Appearance Time.

2109.50 Compensatory Time.  
2109.52 Overtime Captains.  
2109.53 Recall-Special Events.  
2109.54 Accumulation of Sick Days.  
2109.55 Bonus Days.  
2109.56 Sick Pay Usage.  
2109.57 Reporting Proof of Illness.  
2109.58 Sick Pay Extension.  
2109.59 Injury Pay.  
2109.60 Disability Assignments.  
2109.61 Maternity Pay.  
2109.62 Report to Physician Designated by the City.  
2109.63 Death Benefit.  
2109.66 Safety Equipment and Welfare.  
2109.67 Provisions for Safety.  
2109.68 Vacations.  
2109.69 Paid Holidays.  
2109.70 Funeral Pay.  
2109.71 Jury Duty.  
2109.72 Military Pay.  
2109.73 Unemployment Compensation.  
2109.74 Compensated Time as Time Worked.  
2109.76 Career Enhancement Program.  
2109.77 Educational Reimbursement.  
2109.78 Clothing Allowance.  
2109.79 Meal Allowance.  
2109.80 Overnight Pay.  
2109.81 Travel Allowance.  
2109.82 Termination and Severance Pay.  
2109.83 Shift Premium.  
2109.84 Stress Allowance.  
2109.85 Time Bank.  
2109.86 Payday.  
2109.87 Rules and Regulations.  
2109.88 Retirement.  
2109.89 Other Employment Compatibility.  
2109.90 Trade Days Off.  
2109.91 Fatal Force/Mortal Wounding.  
2109.92 Residency Requirement and Waiver.  
2109.93 Administrative Responsibility.  
2109.94 Savings Clause.  
2109.95 Continuation of Services.

(ATTACHMENT B)

**FIELD TRAINING OFFICER (FTO) PAY**

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. 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 the 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.

The current method of compensating Field Training Officer (FTO) Program Supervisors (40 minutes daily at the overtime rate) will discontinue.