

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

_____)	
UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	
)	
THE CITY OF ALBUQUERQUE,)	
)	
Defendant,)	CIVIL NO: 1:14-cv-1025-RB
)	
v.)	
)	
THE ALBUQUERQUE POLICE)	
OFFICERS' ASSOCIATION,)	
)	
Intervenor.)	
)	
_____)	

**JOINT STIPULATION MODIFYING PARAGRAPH 157 OF THE FIRST AMENDED
AND RESTATED COURT-APPROVED SETTLEMENT AGREEMENT AND JOINT
BRIEF EXPLAINING MODIFICATION**

Plaintiff, United States of America, and Defendant, City of Albuquerque (collectively, the Parties), file this joint stipulation and brief, with the consent of Intervenor, Albuquerque Police Officers' Association (APOA), and approval of the Independent Monitor, regarding modification of paragraph 157 of the First Amended and Restated Court-Approved Settlement Agreement (Doc. 247-1) (CASA). This paragraph requires that, in order to qualify to be a Field Training Officer (FTO), officers of the Albuquerque Police Department (APD) shall have four years of non-probationary service. The Parties have agreed to reduce the minimum qualification

from four years to three years of non-probationary service. We have reached this agreement for two reasons. First, the goals of the CASA to ensure that APD provides training that is supportive of constitutional and effective policing can be met with this amendment, due to the positive changes that APD has made to its FTO program. Second, the present complement of FTOs is not sufficient to support the training needs of APD. As the Department works to increase its staffing, APD requires more FTOs.

I. Joint Stipulation to Modify Paragraph 157 of the CASA

The Parties jointly stipulate to modify paragraph 157 of the CASA, by changing the minimum qualification for a Field Training Officer from four years of non-probationary service to three years of non-probationary service. The proposed amendment is as follows:

APD shall revise the qualifications for Field Training Officers to require ~~four~~ three years of non-probationary experience as a sworn police officer and to ensure that Field Training Officers have a demonstrated commitment to constitutional policing, ethics, and professionalism.

II. Joint Brief Explaining the Modification

Under the terms of the CASA, the Parties “may jointly stipulate to make changes, modifications, and amendments” that shall be effective 45 days after submitting them to the Court, absent further action from the Court. (Doc. 247-1 ¶ 338.) The CASA further notes that “[s]uch changes, modifications, and amendments to this Agreement shall be encouraged when the Parties agree, or where the reviews, assessments, and/or audits of the Monitor demonstrate that the Agreement provision as drafted is not furthering the purpose of this Agreement or that there is a preferable alternative that will achieve the same purpose.” *Id.* In its Memorandum Opinion and Order approving the CASA (Doc. 134), the Court instructed the Parties to use the following procedures when submitting joint stipulations for modifications under Paragraph 338:

Should the parties wish to jointly modify the consent decree, they must file briefing explaining (1) the nature and purpose of the change; (2) a description of the practices or events necessitating the change; and (3) an explanation of why each party, separately, consents to the change. *Cf. Am. Cyanamid Co.*, 719 F.2d at 565 n.7 (suggesting that courts should look to the Tunney Act, 15 U.S.C. § 16, for “useful guidance” on modification procedures for consent decrees). This briefing will help the Court determine whether it will permit the change without further action or if the Court needs to examine the issue. For example, if the change is merely technical, the Court will permit the modification without requiring more of the parties. Otherwise, the Court may order additional briefing from the Intervenor and Amici to help the Court evaluate the change. (Doc. 134 at 13.)

A. *The Nature and Purpose of the Modification of the CASA*

The Parties propose to reduce the number of years an APD officer must serve to qualify to be an FTO. The CASA originally required four years of service after the one-year probationary period, or a total of five years. Under the modification, the requirement will be three years of post-probation experience, or four years total. Lowering the years-in-service requirement will allow APD to recruit FTOs from a larger pool of candidates, which is expected to result in more FTOs overall. As explained more fully below, having more FTOs will enable APD to recruit and train more officers—both new recruits and lateral hires.

B. *Events Necessitating the Modification*

1. Background regarding the CASA’s FTO requirements and APD’s implementation of those requirements

In negotiating the CASA, the Parties agreed to a four-year, post-probation, minimum length of service for an officer to qualify to serve as an FTO. The United States’ findings from its investigation of APD informed that decision. The United States found that APD trained new recruits at its police academy and trained officers who were already working in the field through regular in-service or annual training referred to as “maintenance of effort” training. According to the United States’ findings, “[i]t appeared to us that the maintenance-of-effort training was

largely a lost opportunity. Officers we spoke to perceived it as a waste of their time.” (Doc. 1-1 at 31.) Those specific shortcomings were compounded by the “numerous deficiencies in the department’s training program that have contributed to the pattern of unreasonable uses of force.” *Id.* at 30. Against the backdrop of deficient training, the Parties chose a relatively lengthy service requirement for an officer to qualify to serve as an FTO. When a department’s overall training is lacking, it follows that FTOs should have more experience in the field before being given the heavy responsibility to train new officers.

After entry of the CASA, APD began improving its field training, and the Monitor’s assessments demonstrate that it has been successful. The Monitor found APD to be in full compliance with the CASA’s field training-related paragraphs—155 through 161—in his Sixth Report (Doc. 313), and he found APD to be nearly in full compliance in his Fourth (Doc. 223) and Fifth Reports (Doc. 274).¹ Specifically, the Monitor has found full compliance with paragraph 155’s requirement that FTOs be competent and ethical (Doc. 313 at 287-88); paragraph 158’s requirement that FTOs receive specialized training and demonstrate ongoing proficiency in managing and teaching new officers, *id.* at 290-92; and paragraph 160’s requirement that APD measure the effectiveness of field training, *id.* at 293-94. APD has established a high-quality field training program.

2. APD has established rigorous systems for selecting and training FTOs

Reducing the number of years of experience required for FTO candidates will not

¹ The Monitor’s Third Report (Doc. 183) assessed all of the field training-related paragraphs as “not yet due.” In the Monitor’s Fourth Report (Doc. 223), APD was in full compliance with all paragraphs except 161. In the Fifth Report (Doc. 274), APD was in full compliance with all paragraphs except for operational compliance related to paragraph 160, which requires APD to secure feedback from recruits about their training, and to document APD’s response to the feedback.

substantially affect the quality of APD's FTO program in light of the program's rigorous selection and training criteria. While the pool of eligible applicants will have one year less field experience, field experience is only one measure of the quality of an FTO candidate and, ultimately, an FTO. If the selection and training of FTOs is rigorous—meaning that it successfully selects those who are most committed to the FTO mission, the CASA, and the values of the Department—the additional year of field experience becomes less critical.

As validated by the Monitor's assessments, APD has established a rigorous selection process and training program for FTO candidates. FTO training is open to anyone who meets the basic requirements, including years of service. But once the candidate has successfully completed FTO training, the pool of candidates is winnowed to ensure that officers assigned to serve as FTOs are not merely minimally qualified but “demonstrate the highest levels of competence, professionalism, impartiality, and ethics.” *Id.* APD's approach of training FTO candidates before selecting those who will serve as FTOs provides the agency an opportunity to evaluate candidates during FTO training itself, measuring their competence and commitment before deciding to entrust each candidate with the training of new recruits. APD reports that between 30% and 50% of those who complete FTO training are not selected to serve as FTOs.

3. APD needs to expand the numbers of FTOs so that it can increase staffing and maintain the quality of the program

The Parties' proposed amendment to the CASA will increase the number of potential FTOs, which will help APD get more officers on the street. As the Court is well aware, APD is under its authorized strength. (*See* Doc. 328, Nov. 16, 2017 Hr'g Tr. 216-219.) To increase staffing levels, APD must have the capacity to train larger numbers of recruits. Training more recruits requires APD to have more FTOs to work with those recruits once they graduate from

the Training Academy. To have a sufficient number of FTOs, APD must expand the pool of FTO candidates.

During the November 16, 2017 status conference, former Major Jessica Tyler stated that APD was then 17% below its authorized strength of 1000 officers. (Doc. 328 at 216). However, merely adding 170 new officers will not bring the department to full strength because APD loses officers to retirement, dismissals, and resignations. Major Tyler stated that even though the department ran overlapping academies in 2016 and graduated 93 new officers, the net gain after attrition was in the single digits. *Id.* at 218. As the Court observed, an annual net gain of four, six, or eight officers will not be sufficient to close the staffing gap in the near future. *Id.* at 218, 219.

APD's long-term goal is to expand the capacity of the Training Academy to accommodate 180 recruits per year in three classes of 60. Its current capacity is 120 per year—two classes of 60. But the size and frequency of Academy classes is only part of the picture, because after recruits are trained at the Academy, they undergo 16 weeks of field training under the tutelage of an FTO. *See CASA* at 54, ¶ 156. Without more FTOs, there will be a logjam at the doors of the Academy when each class graduates.

APD believes that to maintain the integrity of the FTO program, the ratio of the total number of FTOs to trainees at any given time should be at least 2 to 1—and ideally 3 to 1 or greater. The ratio fluctuates based on the number of recruits in field training and the number of FTOs. Earlier this year, APD had 76 FTOs and 44 recruits in field training, for a ratio of 1.7 to 1. APD then lost 26 FTOs, but the next Academy class was smaller—18 recruits—so the ratio of FTOs to recruits was approximately 2.8 to 1. As noted above, small Academy classes will not

bring APD to its authorized strength, so over the next year APD hopes to conduct three Academy classes with 30 to 50 recruits per class. If APD seats a class of 50 and sees no increase in the number of FTOs, the ratio of FTOs to trainees will drop to 1 to 1. Also, without an increase in the number of FTOs, APD will not be able to reach its long term goal of seating 60 recruits in each Academy class.

By changing the years-in-service requirement from four to three years, APD expects that 27 additional officers will become eligible to serve as FTOs—a needed boost for APD to reach its optimum 3-to-1 ratio. This ratio builds in sabbaticals to hedge against FTOs leaving the assignment due to burnout. If APD had more FTOs, it could accommodate more recruits per year while allowing FTOs to have a break between trainees, and creating a cadre of officers who can mentor younger officers when not serving as FTOs.

III. Parties' Statements on Why They Consent to Modifying Paragraph 157

STATEMENT OF THE UNITED STATES:

The United States supports the modification of the CASA to make officers who have three years of non-probationary service—four years total—eligible for FTO duty. As noted above, changing the eligibility requirement will help APD close its staffing gap. The United States believes that a reduction in the length of service requirement is not likely to degrade the quality of the FTO program, and the ability to increase staffing is a benefit that outweighs any potential negative effects of the change. APD has demonstrated its commitment to effective field training, a fact reflected in the compliance findings by the Monitor. The proposed modification therefore serves the interests of the United States and the Albuquerque community in ensuring that APD officers provide effective and constitutional policing services.

STATEMENT OF THE CITY OF ALBUQUERQUE:

The City of Albuquerque supports the proposed modification of the CASA to allow officers with three years of non-probationary time and a total of four years of service to serve as an FTO. This modification would increase the number of officers eligible to become an FTO and allow the Department to meet the national best practice in training to have a 3 to 1 ratio of FTO to officer. The Field Training and Evaluation Program (FTEP) would not experience a decrease in the quality of training provided by FTOs because an officer with three years non-probationary experience and four total years of service will have developed sufficient skill and experience with a wide variety of calls for service to proficiently mentor and instruct new officers.

This proposed modification strikes the appropriate balance between maintaining sufficient manning to continue the FTEP while assuring that the quality of training is not diminished. As such, this modification is crucial if the Department is expected to continue the FTEP which has delivered quality training to new officers over the period of monitored reform. Therefore, this modification is absolutely necessary if the FTEP is expected to continue providing this critical training to all new officers in the Department, and one that is fully supported by the City.

STATEMENT OF ALBUQUERQUE POLICE OFFICERS' ASSOCIATION:

The Albuquerque Police Officers' Association fully supports the proposal to shorten the FTO qualification period from four years to three years. The APOA believes the presence of more FTOs in the Department will ensure the growth of the Department is done with proper training and supervision.

STATEMENT OF THE INDEPENDENT MONITOR:

The monitor has reviewed the City's proposal regarding a reduction in the on-the-job experience an officer must have to qualify as a Field Training Officer (FTO). In the monitor's opinion, reducing the experiential base of FTO candidates will have no meaningful effect on the candidate officers' ability to fulfill the duties of that position.

WHEREFORE, the Parties respectfully request that the Court accept the Parties' stipulated modification to paragraph 157 of the CASA to require three years of non-probationary service for an officer to qualify to serve as an FTO.

Respectfully submitted this 19th day of September, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 19th day of September, 2018, I filed the foregoing pleading electronically through the CM/ECF system, which caused the Parties, counsel of record and independent monitor on the service list to be served by electronic means.

/s/ Stephen M. Ryals

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ORDER

This matter is before the Court pursuant to the Parties' Joint Stipulation Modifying Certain Provisions of the First Amended and Restated Court-Approved Settlement Agreement and Joint Brief Explaining the Modifications. (Doc. 404). The Court notes that the Parties' stipulation has the approval of the Independent Monitor and the consent of the Albuquerque Police Officers' Association. Having reviewed the proposed modification and the underlying rationale, the Court accepts the modification.

IT IS ORDERED that the Joint Stipulation Modifying Certain Provisions of the First Amended and Restated Court-Approved Settlement Agreement (Doc. 404) is accepted effective immediately.

ROBERT C. BRACK
UNITED STATES DISTRICT JUDGE