

TABLE OF CONTENTS
FOR CITY COUNCIL PACKET

APRIL 29, 2014

The April 29, 2014 Policy Session is Cancelled.

BACK-UP INFORMATION FOR THE WEDNESDAY, APRIL 30, 2014 FORMAL AGENDA

Boards Citywide	Page 1	Boards and Commissions - Mayor's Appointments
Boards Citywide	Page 1	Boards and Commissions - Council Members' Appointments
Item 25 Citywide	Page 61	Public Hearing - Position Statements from City and AFSCME Local 2384 (Unit 2) Unresolved Issues
Item 26 Citywide	Page 62	Public Hearing - Position Statements from City and AFSCME Local 2960 (Unit 3) Unresolved Issues
Item 27 Citywide	Page 63	Public Hearing - Position Statements from City and PLEA (Unit 4) Unresolved Issues
Item 59 Citywide	Page 97	Ordinance S-40757 - Master License Agreement for Use of City Property for Installation of Network Huts by Google
Item 86 Citywide	Page 123	Resolution 21219 - MOU Between the City of Phoenix and LIUNA, Local 777 (Unit 1)
Item 91 District 5	Page 126	Increase Phoenix Tennis Center Fees

Packet Date: April 24, 2014

CITY COUNCIL REPORT

FORMAL AGENDA

TO: City Council AGENDA DATE: April 30, 2014
FROM: Greg Stanton PAGE: 1
Mayor
SUBJECT: BOARDS AND COMMISSIONS

Library Advisory Board

I recommend the following for appointment:

Suzanne Pfister

Ms. Pfister is the President and CEO of St. Luke's Health Initiatives. She will replace Debbie Dillon and serve a term to expire June 30, 2016.

City Tourism and Hospitality Advisory Board

I recommend the following for appointment:

John Chan

Mr. Chan is the director of the Phoenix Convention Center. He will replace Debbie Cotton as the voting City staff member on the board and will serve a term to expire September 30, 2015.

Jerry Harper

Mr. Harper is the deputy director of sales and marketing for the Phoenix Convention Center. He will replace John Chan as the non-voting City staff member on the board and will serve a term to expire September 30, 2015.

Hotel Corporation Board

I recommend the following for appointment:

John Chan

Mr. Chan is the director of the Phoenix Convention Center. He will replace former City Attorney Gary Verburg on the board.

Milton Dohoney, Jr.

Mr. Dohoney is the Assistant City Manager and will replace City Manager Ed Zuercher on the board.

CITY COUNCIL REPORT

FORMAL AGENDA

TO: Mayor and Council Members AGENDA DATE: April 30, 2014

FROM: Penny Parrella, Executive Assistant PAGE: 1
to the City Council

SUBJECT: BOARDS AND COMMISSIONS – CITY COUNCIL APPOINTEES

Estrella Village Planning Committee

Councilman Michael Nowakowski recommends the following for appointment:

Dafra Joel Sanou

Mr. Sanou is a human resources professional and a resident of District 7. He is recommended to fill a vacancy on the committee and will serve a term to expire November 19, 2015.

CITY COUNCIL REPORT

FORMAL AGENDA

TO: Ed Zuercher
City Manager

AGENDA DATE: April 30, 2014

THRU: Lionel D. Lyons
Senior Executive Assistant to the
City Manager

ITEM: 25 PAGE: 61

FROM: Cindy Bezaury
Labor Relations Administrator

SUBJECT: PUBLIC HEARING - POSITION STATEMENTS RELATED TO
NEGOTIATIONS WITH AFSCME LOCAL 2384 (UNIT 2)

This report is submitted as back-up information to Item 25 on the Formal City Council agenda of April 30, 2014. This item provides an opportunity for a public hearing to present positions statements from the City and the American Federation of State, County and Municipal Employees (AFSCME) Local 2384 (Unit 2).

THE ISSUE

The meet and confer process with the City's five authorized employee organizations ("Meet and Confer units"), as outlined in Section 2-219 of the City Code, began in January 2014. Following notification to the Phoenix Employment Relations Board (PERB) that a dispute still existed after the March 1, 2014, deadline outlined in Section 2-219 of the City Code, a fact finding process was initiated with AFSCME Local 2384. As of April 14, 2014, issues remain unresolved and an agreement has not been reached with AFSCME Local 2384.

In accordance with the terms of Section 2-219 of the City Code, if no agreement has been reached by April 14, the City Manager and the employee organization shall submit to the City Council written position statements on all unresolved issues in dispute; and, the City Council shall conduct a public hearing at which the parties shall be given full opportunity to explain their respective positions on all unresolved issues.

Within ten working days following the conclusion of the public hearing, the City Council is authorized to take final action imposing terms and conditions of employment (by May 13).

OTHER INFORMATION

Attached to this report are:

- **Attachment 1: Fact Finding Report**
- **Attachment 2: Position Statement from the City**
- **Attachment 3: Position Statement from AFSCME Local 2384**

RECOMMENDATION

This report provides backup information to agenda Item 25 on the Formal City Council agenda of April 30, 2014.

No action is required.

UNIT 2
AFSCME 2384
PACKET

ATTACHMENT 1

FACT FINDER'S REPORT

FACT FINDER'S REPORT

City of Phoenix, AZ)	
)	
)	
)	
&)	
)	
)	Report and Recommendations
)	Douglas P. Hammond
)	Fact Finder
AFSCME LOCAL 2384)	April 1, 2014
)	
)	
)	
)	
)	
)	

APPEARANCES

For the City of Phoenix

Alisa A. Blandford, Assistant City Attorney
Judith L. Boros, Deputy HR Director
Stephanie Hart, Assistant City Attorney

For the Union

Nick Enoch, Attorney
Dennis Houlihan, AFSCME Int'l
Luis Schmidt, President, Local 2384

INTRODUCTION

Pursuant to City of Phoenix Ordinance G -1532 (Chapter 2 -219 Resolution of impasses) and a decision by the Phoenix Employment Relations Board (PERB) that an impasse exists between the City of Phoenix (the "City") and the representative of certain employees, the American Federation of State, County and Municipal Employees, Local 2384 (the "Union"), collectively referred to as the Parties, (the "Parties"), over the terms and conditions of a successor Memorandum of Understanding (MOU), the undersigned was selected, by the Parties, to serve as the Fact Finder.

In accordance with the Ordinance, the Parties met for a reasonable number of times to meet and confer over the terms of a successor MOU covering the years 2014 - 2016, and mutually agreed, by March 1, 2014, that a dispute still exists. The PERB directed the Parties to seek mediation over the outstanding issues. Subsequent to attempts to achieve accord through the mediation process, the Parties continued to

be in dispute over certain remaining issues. Rather than go directly to the City Council for resolution, as allowed by the Ordinance, the Parties chose to present their latest positions on the outstanding issues to a neutral, mutually chosen Fact Finder.

Fact-finding hearings were held on March 27, and March 28, 2014 before the undersigned Fact Finder. The Parties were afforded a full and fair hearing, including the opportunity to present evidence, examine witnesses, provide documents, and make arguments in support of their respective positions. No official transcript was made of the proceedings.

The Fact Finding process was developed and used, primarily in the public sector, as a substitute for the right to strike. It purports to be a means for the Parties, in a negotiating relationship, to have a neutral third party view and consider the outstanding issues and to render an opinion, based on the "facts" presented, as to which of these issues is most readily appropriate for the succeeding contract or MOU. The Fact Finder is usually free to accept either Parties' position, modify one or more parts of those positions, or fashion a solution separate from those of the Parties. The Fact Finder's actions, both in content and application, are often limited by the regulation establishing the process. There appears to be no such restriction here in the Phoenix Ordinance. Once the issues, and the rationale for the respective positions supporting these issues, is presented, the Fact Finder writes a report, and offers a recommendation for the settlement of each outstanding issue. The Parties are typically free then to: continue negotiations with these recommendations as a benchmark for further discussion; are allowed to maintain their previous positions and ignore the Fact Finder's recommendation; or do nothing and move the process to the next step where decision makers can adopt the recommendations or fashion their own remedy for the outstanding issues.

BACKGROUND

AFSCME Local 2384 represents all employees, in positions within what is described in the MOU as Field Unit II, regarding wages, hours and other conditions of employment. For labor relations purposes, it is commonly referred to as "Unit 2" to differentiate it from the other bargaining units within the City.

During the period covered by the 2010 – 2012 MOU, the City's budget faced a significant deficit. Characterized by a number of City witnesses as the "Great Recession", the City, in addition to other fiscal changes, sought to alleviate a portion of this deficit by requiring concessions from their employees during their negotiations. The results were that Unit 2, along with other City employees, experienced a reduction in compensation of 3.2%. As these concessions were apparently insufficient to balance the budget, the City, among other changes, reduced or eliminated a number of services to its citizens, and instituted, for a five year period, a 2% sales tax on food. This tax was reduced to 1% in January 2014. This sales tax expires on March 31, 2015.

The negotiations for the 2012-2014 MOU resulted in a return of one half of the 2010-2012 reduction or a restored compensation to the employees of 1.6%.

On March 25 2014 the City Manager's Trial Budget for the budget year 2014 - 2015, a "formal" draft of a potential final budget, was presented to the Mayor and City Council. As a "trial" it is described as a first opportunity for "the Mayor, City Council, and the community to review a budget which balances estimated revenue against estimated expenditures". Subsequent to budget hearings scheduled throughout the City in April 2014, a revised final balanced budget will be presented in May 2014. The trial budget focused primarily on the General Fund, and provided information on both General Fund resources as well as expenditures. The Trial Budget, based upon available resources, is estimated to be \$1.137 billion, an increase of less than 1% over the budget for 2013-2014. The expenditures, however, amount to about 1.175 billion or a potential deficit of \$38 million. The available resources do not assume any new revenues, taxes, or fees, but the Trial Budget does contemplate the expiration of the sales tax on food and assumes a continuation of the 1.6% reduction in compensation for city employees restored in the 2012-2014 MOU. The General Fund is the source for employee costs (wages, benefits, legally mandated fees, pension, etc.), contractual expenditures, investments in technology, equipment, building repair and maintenance, and deposit into the City's contingency fund.

It is a legal mandate that the City Budget must balance. The Trial Budget is a means to provide opportunity for the various interested Parties, e.g. the City Council, the city employees, and the community to provide input into this budgetary process.

The Trial Budget suggests that to balance the General Fund, and eliminate the \$38 million deficit, further efficiencies in City operations, reductions in a variety of community services, which would include the diminishing of the internal services necessary to administer these services, and a deferral of capital expenditures on those items that can wait to be replaced or repaired must take place. A different way to achieve the same thing would be to cut back or eliminate selected services, reduce the compensation of employees through the negotiation process, or raise funds by tax or fee increases.

It is estimated that of the increased expenditures, and by extension the amount of the potential deficit of \$38 million in the 2014-2015 budget, employee costs are about \$27 million. Other costs comprise the remainder, e.g. Capital equipment - \$10 million; technology - \$6 million; Contingency fund - \$2 million. The possible source of deficit reduction include deferred replacement of fleet- \$2 million; improve efficiencies - \$7 million; and program reductions - \$29 million. No specific amount has been included in this Trial Budget referencing a specific decrease of compensation for employees as an alternative to service reductions.

The Contingency fund was described by a number of witnesses as a fund to take care of unexpected problems as they arise. As of the date of the hearing, this fund held about \$43.7 million or about 3.9% of the General Fund. Various City leaders shared their hopes to raise this fund, during this Budget cycle, to 4% by "depositing" \$2 million from the current budget into this fund. The long-term goal is a Contingency fund of about 5% of the General fund. The Union asked the witnesses whether the City has considered using some of the contingency fund to ameliorate the budget deficit. The responses raised an almost unanimous caution against such a use of these funds because of their purpose in allowing for preparedness for emergencies and the necessity for having a viable contingency fund, as one of the criterion, to insure an acceptable rating from various independent rating sources. The Union further queried whether it was necessary to add to the contingency fund during a time of budgetary deficit.

The Union also sought information whether the City has pursued alternative sources of revenue to make up the difference between revenue and expenditures. Witnesses

shared some of their initial thoughts and will look to input from the community in the upcoming public forums for further ideas. A reluctance was shown to the possibility of extending the sales tax on food beyond its expiration date in 2015. It was clear that other ideas were acceptable for consideration.

ISSUES

The Parties presented the Fact Finder with three issues. The issues are:

1. Economic Issues
2. Union Rights
3. Sick Leave and Vacation Leave conversion for purposes of Pension improvement

1. Economic Issues (as presented as exhibits to the Fact Finder)

Article 3: Wages/Compensation

The City Position (City Exhibit_M-20)

Section 3 – 1 Wages

A. Continue 2012- 2014 MOU Concessions. During the term of this agreement the remaining 2012 -2104 MOU concession will be continued: suspension of compensatory time conversion benefit, suspension of "12 -hour rule" for overtime benefit, fifty percent (50%) suspension of vacation sell-back, and employer deferred compensation is reduced by 1.95%.

B. 2014 -2016 Concessions. The following concessions will be applied: no merit increases, no productivity enhancement pay increases (Section 3 -1) Suspend remainder of annual vacation buyback, unpaid holidays on President's Day, Memorial Day and ½ day Christmas Eve (Section 5-5 C and D), and a general wage decrease of .97%.

The Union Position (Union Exhibit #6)

Section 3 – 1: Wages

A. The total compensation for 2104 – 2015 year will be 5.65% and will be allocated as follows:

First, An overall wage increase of 4.0% effective the first pay period of July 2014.

Second, The employer Deferred Compensation contribution is restored by 1.65%.

B. Effective for the second year of the term of this MOU, the total compensation package will be an increase of 3.0% wage increase.

C. All concessions in effect in the 2012-2014 (sic) shall end at 11:59 pm June 30, 2014. (Unbold: This amount continues the \$150 monthly allowance for Post Employment Health Plan accounts (PEHP) for all qualifying employees eligible to retire after August 1, 2022. (The date of an individual's retirement eligibility was determined on August 1, 2007.

D. It is understood that for implementation purposes, the practice of rounding off fractional cents shall be done in accordance with universally accepted mathematical and accounting practices.

E. The term "Pay Schedule" shall mean the schedule computed and published by the Human Resources Department for payroll purposes.

Opinion and Recommendation

The City, through a number of talented and articulate witnesses, presented it's rationale for pursuing the *status quo* regarding the continuation of the 1.6% concession as well as supporting its position regarding further cuts in compensation. If the concessions survive the budgetary scrutiny process, and no alternatives are developed, the proposal would apply, and if implemented, be extended to all bargaining units currently in meet and confer sessions with the City.

The City contends that no employee should see a reduction in her or his "take-home" pay because of the City's current position. Rather, any changes in compensation would be felt by the "freezing" of an employee's position on both the merit pay scale and the productivity enhancement pay scale with no evident increases in these payments for the life of the MOU. Further, employees would forgo holiday pay for two and one-half holidays. In support of its position on longevity and merit pay the City compared this part of compensation with other cities within the State of Arizona and found that it was a leader in both for "non-sworn" employees. Why this comparison was not made with other large cities, with represented employees, in other parts of the country was unclear. It was simply confined to Arizona. The Union did not present it's own comparisons so it is assumed that the offered documents are reliable, accurate, and acceptable to the Union.

The Union's position on wages is significantly higher than what one would expect at this stage of negotiations. To approach an impasse procedure with a position clearly beyond that offered by the City does little in mitigating the difference between the Parties. Apparently it is simply a wish list, which seems to ignore, or disbelieve, the financial plight of the City. Absent a foundation for such a high demand and with minimal testimony to rationale its position, the Unions compensation proposal is easily rejected.

I chose to not go into the merits of each proposed change in compensation. There is sufficient information available to sustain the position taken by the City, and absent any other means to alleviate the burden of a budgetary deficit¹, I recommend acceptance of the City's position on Economics.

2. Union Rights

The City Position (Employer exhibit M 24 a - e)

The City argues that even though the Parties here were not a part of the law suit referenced below, they are required, by Court ruling, to offer the same or similar restrictions regarding release time to all City employees currently in negotiations. Rather than include the several pages of the City's position here, as presented in the above referenced exhibit, I shall allude to the recent court decision dealing with Union release time, included in the MOU, between the City and the Police Law Enforcement Association (PLEA) (*Cheatham v. Gordon*, Superior Court of Arizona, Maricopa County, CV 2011-021634, dated January 24, 2014). Judge Cooper ruled and granted a permanent injunction against the police union and the City from entering into a MOU involving release time unless the requirements set forth in her ruling are met. This order was reiterated in a "Minute Entry" from Judge Cooper, dated February 28, 2014. Among these, and incorporated into the City's position in the instant dispute, are the following:

- the Union duties clearly define and confer a direct benefit to the public;

¹ I am unclear as to my role for suggesting alternatives. However, I question whether the City has considered a combination of less onerous compensation concessions and a reduction of some city service that would have the least amount of impact on its citizens? Lacking expertise, I offer no suggestions other than a possible consideration of this idea.

- the Union will reimburse the City for hours used that do not directly benefit the City;
- the City implements a system to know how release time is used;
- a system is developed to evaluate and measure the benefit to the public of activities claimed to be beneficial;
- release time may not be used for lobbying or political activities adverse to the City unless approved by the City Manager;
- release time may not be used to fund the Union's lobbyist.

The Judge included in her ruling the following admonishment:

"Finally, at trial, evidence was presented that the City had MOUs with other unions. While these MOUs are not before this Court, the law regarding City-funded release time applies to these union as well as PLEA. The City should review its MOUs with these unions to ensure that these agreements are consistent with the Court's ruling here."

The City's position includes provisions that allow for a determination of activities that mutually benefit the Parties; allows for a means to report union activities; establishes a bank of leave donations to allow for AFSCME members to share their annual leave with union officials for union activity purposes; lists a number of accepted as well as prohibited activities that purport to provide a dual benefit to both the public and the union; institutes a procedure to administer and "supervise" these activities; and modifies the current Savings Clause (Article 6, Section 6 – 1), by proposing the reopening of negotiations in the case where the Court ruling "is stayed, reversed, vacated or otherwise not given effect in whole or in part, by any court..."

The proposal includes an Addendum that gives direction to these changes.

The Union contends that since they were not a party to the ruling by Judge Cooper they have no obligation, requirement, or interest in changing the *status quo* regarding Union release time. In the information supplied to me I found no Union proposal covering this subject. They argued, in the hearing, that the Savings Clause in the MOU is sufficient to protect against further actions should a ruling be issued requiring a change. The current Savings Clause, at Article 6, reads:

If any article or section of this Memorandum should be held invalid by operation of law or by final judgment of any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of this Memorandum shall not be affected thereby; and upon issuance of such final decree, the Parties, upon request of either of them, shall meet and confer to endeavor to agree on a substitute provision or that such a substitute provision is not indicated.

This provision would allow for the Parties to meet and confer if, in the Union's view, the Decision in the *Cheatham* case is extended to all unions.

Opinion and Recommendation:

It is clear from both the City's position and the testimony during the Fact Finding hearing that there is no flexibility on their part on this subject. Their contention is that their proposal has met all the criteria required by Judge Cooper and that even though AFSCME 2384 was not a party to the lawsuit, the actual decision specifically included and applied to "...MOUs with other unions...". Therefore, the City could receive a judicial scolding or be held in contempt if it deviated from the Court's ruling.

I recommend acceptance the City's position on Union Rights.

3. Sick Leave and Vacation Leave conversion for purposes of Pension improvement

The City Position

In recognition of the recent widespread scrutiny and attention given to public sector employee pension plans in the State of Arizona, frequently referred to as "Pension Spiking", the City has chosen to address the issue pension conversion by proposing changes in the current system.

Their proposal adds to the current MOU language at Article 3 – Compensation/Wages

A. Sick Leave Cash Out Formula

A unit member who has accumulated a minimum of seven hundred and fifty (750) qualifying hours or more of accrued and unused sick leave at the time of a duty-related retirement shall be eligible for payment of an amount of compensation equal to twenty-five (25%) of his base hourly rate for all hours in excess of two hundred and fifty (250) hours.

B. Final Average Salary

The number of vacation leave hours eligible to be cashed out and included in an employee's Final Average Salary upon retirement will be limited to the number of vacation leave hours in the employee's leave bank on June 30, 2014 not to exceed 450 hours.

The number of sick leave hours. ...will be limited to the number of sick leave hours in the employee's leave bank on July 1, 2012, provided all criteria are met as describe in Subsection A. (modified version, see above, emphasis added)

Employees with less than 250 hours of accrued and unused sick leave on July 1, 2012, will not meet the minimum balance requirements for a sick leave cash out that can be included in their Final Average Salary. The portion of accrued and unused sick leave that is not included in the Final Average Salary upon retirement can be cashed out as a lump sum upon retirement, provided all criteria are met as described in Subsection A.

In its exhibit the City explained its intent. All hours, in both sick leave and vacation, will be paid out as appropriate and in compliance with payment practice in place at the time of retirement. Only certain limited sick leave accrued as of July 1, 2012 and certain limited vacation leave accrued as of June 30, 2014 will be used in calculating the Final Average Salary for retirement purposes. Employees will still be paid for their accrued leave, but only that applied, and within the announced limits, will apply toward retirement benefits.

The Union Position

The Union proposes that current employees, upon retirement, shall be paid for 25% of their accumulated sick leave and such payment, at their hourly rate, shall be considered compensation in the calculation of their retirement benefits. Employees hired after June 30,, 2014 shall have 75% of their sick leave paid at upon retirement, but shall not apply this compensation to the calculation of their retirement benefits.

Similar changes would apply to the application of vacation pay upon retirement. The Union language reads:

Effective for Unit employees hired **on or before** June 30, 2014 ...

Upon retirement, bargaining unit employees with a maximum of 450 hours accrued vacation leave, will be paid 100% of the hours as base hourly wage for retirement pension calculations. Such payment shall be made at the employee's hourly rate of pay and shall constitute payment of compensation and/or wages and/or salary under the Phoenix City Charter and such **payments shall be included** in compensation and final average compensation for purposes of benefits under the City of Phoenix Retirement System.

Effective for employee **hired after** June 30 2014...

Upon retirement.....maximum of 800 hoursSuch payment shall be made at the employees hourly rate of pay and **shall not** constitute payment....

The Union proposal rewards current employees and allows for a continuation of the application of accrued benefits upon retirement, and changes the process of application for those yet to be hired. Their argument is obvious. Money will be saved in the future, but the current employees will have little harm upon retirement.

Although this does, on a limited basis, meet the larger needs of pension reform, it certainly shows that the Union is cognizant of the necessity to change and is willing to take small, but meaningful steps toward that reform. The hourly rates, which will be applied, will not be significant, yet will be of help to retiree when calculating the future pension payment. The City, however, will see little or no savings during the current MOU, based on this position.

In light of the other changes requested of the union during these negotiations, the continuation of the 1.6% concession included in the 2012-2014 MOU and their sincere effort of being willing to embrace modifications in the pension plan, I recommend acceptance of the Union position on Sick leave/vacation leave Conversion. It does nothing to help the current budgetary problem, but does save money in the future.

Recommendations

To arrive at the following recommendations, the Fact Finder relied on:

- The testimony provided, the evidence presented, and the vast number of documents entered by both Parties;
- The cogent and compelling presentations and arguments of both the City and the Union;
- The expiring MOU;
- The interest and welfare of taxpayers, and the ability of the City to finance and administer the positions proposed;
- A thorough understanding of the negotiation process and the dynamics of labor relations.

1. I recommend the City's latest position on Economics
2. I recommend the City's latest position on Union Rights
3. I recommend the Union's latest position on Sick Leave/Vacation Conversion for Pension Improvement.

Respectfully submitted,

Douglas P. Hammond

Douglas P. Hammond
Fact Finder

April 1, 2014

ATTACHMENT 2

CITY'S POSITION STATEMENT



City of Phoenix
HUMAN RESOURCES DEPARTMENT



City of Phoenix Position Statement
Unresolved Negotiations for the 2014-2016 Memorandum of Understanding
With AFSCME 2384
April 21, 2014

Honorable Mayor and Council Members;

After three months of negotiations between the City of Phoenix and AFSCME 2384, the parties reached a determination of impasse on February 28, 2014. In accordance with the ordinance governing our Meet and Confer process, the parties proceeded to and completed Fact Finding. Following receipt of the Fact Finders recommendation, the parties met to continue negotiations but were unable to reach agreement.

The City of Phoenix proposals included:

- Continuing the 1.6% concession from the 2012-2014 Memorandum of Understanding (MOU) (this provides no additional budget savings since it is already assumed, but it is important to recognize the continuing nature of the concessions),
- Requesting additional concessions of 2.5% over two years of the 2014-2016 MOU (saving \$3.9 million) in response to the budgetary shortfall,
- Amending the Union Release sections of the MOU consistent with the court injunction in *Cheatham v. Gordon, et. al*, and
- Limiting the use of sick leave payouts to the balance as of July 1, 2012, and the vacation leave payouts to the balance as of June 30, 2014, in the calculation of Final Average Compensation, per Council direction of October 31, 2013.

The AFSCME 2384 proposals included:

- Restoration of the 1.6% concessions from the 2012-2014 MOU (costing \$2.8 million),
- A wage increase of 4.0% (costing \$5.4 million), effective July 1, 2014,
- A wage increase of 3.0% (costing \$4.2 million), effective July 1, 2015,
- Maintain the current Union Release language in the MOU, pay the Union attorney fees in the Piccoli lawsuit of approximately \$170,000, and
- No change to the current practice of sick or vacation included in the calculation of Final Average Compensation for pension for current employees. End the practice regarding sick leave payouts

for employees hired after June 30, 2014, but increase the payout percentage on sick leave payouts from 25% to 75%. End the practice regarding vacation leave payouts for employees hired after June 30, 2014, but increase the cap on hours that can be banked from 450 hours to 800 hours.

City of Phoenix Trial Budget

The City of Phoenix has presented a trial budget for the general fund which projects \$37.7 million in additional expenses above the projected revenue. Various measures have been taken to reduce expenditures through efficiencies and departmental budget cuts, but the fact remains that personnel costs make up 81% of the general fund budget and represent \$27 million of the projected shortfall.

The City's options are as follows:

- Find further efficiencies
- Eliminate services to the public,
- Eliminate civilian positions,
- Receive compensation concessions from employees
- Increase revenues, or
- Some combination of the above.

In the hearing before the Fact Finder, the City presented detail on the Trial Budget which was not challenged by the Union. In his report the Fact Finder clearly articulated his acceptance and understanding of the City deficit situation.

Unresolved Issues

The parties presented several issues in private hearing before the Fact Finder on March 27 and 28. Since the hearing, the parties have met and exchanged final offers. The final offers are summarized in the following table.

Item	City Final Position	AFSCME 2960 Final Position
1. Prior Concessions	Maintain 1.6% concessions for term of agreement	Restore 1.6% concessions
2. Merit Increases	Freeze for both years of the MOU	Continue annual merit increases for both years of the MOU
3. Productivity Enhancement Pay (previously called Longevity)	Freeze any increase to these payments for both years of the MOU	Continue annual increases to these payments for both years of the MOU
4. Deferred Compensation Plan Contribution	Reduce from 1.65% to 1.60% in the first year of the agreement; further reduction to 1.27% in the second year of the agreement.	No change
5. Lump sum annual vacation buyback	Suspend for both years of the MOU	Continue for both years of the MOU
6. Eliminate reimbursement for Union training programs	Eliminate payments	Continue for both years of the MOU
7. Unpaid holiday furlough days	Unpaid holiday on President's Day, Memorial Day, and ½ day on Christmas Eve each year of MOU	No unpaid holidays
8. Sick and vacation limitation on hours used in Final Average Compensation for pension	Use only those sick leave hours accumulated as of July 1, 2012, and vacation hours accumulated as of June 30, 2014, as part of the Final Average Compensation for pension	Make changes only for employees hired after June 30, 2014. For those new hires pay out sick leave at 75% instead of 25%, and increase the vacation leave bank cap from 450 hours to 800 hours. The City will pay the Union's attorney fees in the Piccoli lawsuit of approximately \$170,000.
9. Union Release	Amend the MOU consistent with the current court injunction	Maintain current language

Economic Impact of Unresolved Issues	<p>Total Economic Concession of:</p> <p>1.6% from 2012-2014 MOU (total all funds \$2.8M)</p> <p>1.6% new concession in first year (total all funds \$2.5M), and</p> <p>0.9% new concession in second year (total all funds \$1.4M)</p>	<p>Total Economic Increase of:</p> <p>1.6% in concessions restored from 2012-2014 MOU in first year (total all funds \$2.8M)</p> <p>4.0% wage increase in first year (total all funds \$5.4M)</p> <p>3.0% wage increase in second year (total all funds \$4.2M)</p>
---------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Recommendations

COMPENSATION: The City and the Union remained a significant distance apart in the compensation proposals taken to the Fact Finder. As part of the decision, the Fact Finder recognized this disparity and called the Union proposal, "a wish list, which seems to ignore, or disbelieve, the financial plight of the City."

The Fact Finder concluded, "There is sufficient information available to sustain the position taken by the City, and absent any other means to alleviate the burden of a budgetary deficit, I recommend acceptance of the City's position on Economics."

The City agrees with the Fact Finder, who also recognized and supported the City's intent to apply the same proposal to all bargaining units.

PENSION SPIKING: The Fact Finder recommended adoption of the Union's proposal and gave the following recommendation in its support, "Although this does, on a limited basis, meet the larger needs of pension reform, it certainly shows that the Union is cognizant of the necessity to change and is willing to take small, but meaningful steps toward that reform. The hourly rates, which will be applied, will not be significant; yet will be of help to retiree when calculating the future pension payment. The City, however, will see little or no savings during the current MOU, based on this position. In light of the other changes requested of the union during these negotiations.....I recommend acceptance of the Union position on sick leave/vacation leave conversion."

In 2013, the City Manager received the following direction from Mayor and Council:

"The Subcommittee recommended to the City Council that the following items **not** be included in the definition of compensation for the purpose of pension calculation for COPERS employees: ...

- Lump-sum payouts on unused leave accrued sick leave upon retirement (except unused leave accrued pursuant to the sick leave “snapshot” effective July 1, 2012)
- Lump-sum payouts on unused accrued vacation leave upon separation (except unused leave accrual pursuant to new vacation policies yet to be developed...)”

Mayor and Council approved these recommendations on October 31, 2013, with direction to address during labor negotiations.

Item 8 in the table above represents the limits to be placed on sick and vacation leave balances that would be applied to the calculation of Final Average Compensation for pension. The Union proposal continues to apply all balances to the calculation of Final Average Compensation for pension, and increases costs to the City in future years by expanding payout percentages or caps. The City proposal complies with the direction of Mayor and Council.

UNION RELEASE: On January 24, 2014, the Superior Court issued a ruling in *Cheatham v. Gordon, et al.* that permanently enjoined the City of Phoenix from agreeing to any MOU provisions related to union release that violated the Gift Clause of the Arizona Constitution. Amongst other provisions, the Court specifically enjoined the City from funding full time release positions except under limited circumstances; funding a bank of hours; and funding lobbying or political activities adverse to the City unless approved by the City Manager. The Court also required the City to implement systems to ensure accountability.

Upon receipt of the *Cheatham* Court’s decision, the City analyzed the MOU’s of all of the employee organizations and determined that the union release provisions were substantially similar to those the Court held unconstitutional, with the notable absence of any lobbying hours in some of the MOU’s. As they are currently set forth in AFSCME 2384’s 2012-2014 MOU, therefore, the union release provisions likely violate the Gift Clause in the same way that PLEA’s MOU did.

The City has proposed to restructure how union release works to conform with the *Cheatham* Court’s rulings. The City’s Proposal does the following:

- States in clear, obligatory language the specific duties that confer a direct public or dual private/public benefit that will be performed by Authorized Employees from AFSCME 2384.
- Requires AFSCME 2384 to reimburse the City for hours used by Authorized Employees that are for Union business.
- Implements a system for tracking how Authorized Employees use their time.
- Prohibits specific activities that the Cheatham Court held do not confer a public benefit, including negotiations, representation in disciplinary and grievance proceedings, and lobbying without approval of the City Manager.
- Eliminates monies paid to AFSCME 2384 for yearly training provided by the Union.
- Establishes a donation bank into which all unit employees can donate time to be used for Union Business.

- Distributes the value of the release positions and hours to all employees of the unit in the form of a grant of annual leave hours each year on a pro rata basis.

Given that the *Cheatham* decision is being appealed, the City has proposed the following safeguards should the decision be reversed, vacated, or modified in any way:

- An expanded Savings Clause that will reopen negotiations if the Cheatham decision is reversed, vacated, or modified.
- An amendment to the proposal that preserves the language from the 2012-14 MOU.

The Fact Finder recommended that the City's Proposal related to union release be adopted. In making this recommendation, the Fact Finder noted that the city could receive a judicial scolding or be held in contempt if it deviated from the Court's ruling. He also noted that AFSCME 2384 had not presented a union release proposal.

The City's position on this issue is clear. Although AFSCME 2384 is not a party to the underlying legal matter, the City is a party and therefore is bound by the *Cheatham* Court's ruling. The Court has been exceedingly clear that the City cannot enter into **any** MOU that does not meet the legal standards set forth in its decision. As it is currently written, the union release provisions in AFSCME 2384's 2012-2014 MOU do not comply with the *Cheatham* Court's legal standards.

By adopting the City's Proposal, the language in the AFSCME 2384 2014-2016 MOU will be consistent with the legal standards set forth by the *Cheatham* Court with which the City must comply. The Fact Finder accurately identified the City's primary concern, that it may be held in contempt if it deviates from the Court's ruling by signing MOU's that do not comply with the Court's requirements; adopting the City's Proposal will greatly alleviate this concern while providing AFSCME 2384 with certain safeguards should the *Cheatham* Court's decision be modified during the 2014-2016 MOU

Conclusion

The City agrees with our employees that the prospect of continued concessions is difficult and has an impact on the morale of those employees we count on most for providing core customer services to our citizens and our community. Treating all City employees equitably, which includes shared sacrifice among all employee groups, during these difficult times is the one tool the City of Phoenix has consistently used to demonstrate the importance of every employee's contribution to the services delivered across our community.

The City final offer to AFSCME 2384 includes the 1.6% continued concession from the 2012-2014 MOU, an additional 1.6% concession in the first year of the 2014-2016 MOU, and an additional concession of 0.9% in the second year of the 2014-2016 MOU. Included in the final offer is language amending the Union Release provisions consistent with the *Cheatham* Court's ruling. And finally, the final offer includes an end to the pension spiking as directed by Mayor and Council. The City recommends that Mayor and Council implement this final offer.

The City encourages Mayor and Council to consider the negative impact of providing a different compensation settlement to any single union, and to implement the City's Final Offer for a 2014-2016 Memorandum of Understanding with AFSCME 2384.

Respectfully submitted,

A handwritten signature in black ink that reads "Cindy Bezaury". The signature is written in a cursive, flowing style.

Cindy Bezaury
Assistant Human Resources Director
Labor Relations Administrator

ATTACHMENT 3

UNION'S POSITION STATEMENT

LUBIN & ENOCH, P.C.

PHOENIX | DENVER | EL PASO | DES MOINES

Nicholas J. Enoch
Also admitted in Colorado and Texas

Jarrett J. Haskovec
Also admitted in Iowa and Texas

Kaitlyn A. Redfield-Ortiz

Stanley Lubin *of Counsel*
Also admitted in Texas

349 North 4th Avenue
Phoenix, Arizona 85003-1505
(602) 234-0008
Fax (602) 626-3586

April 21, 2014

Via Regular and E-Mail
[karen.peters@phoenix.gov] this date to:

Mayor Greg Stanton
City of Phoenix, Mayor's Office
attn: Karen Peters, Chief of Staff
200 West Washington Street, 11th floor
Phoenix, Arizona 85003

**Re: AFSCME Local 2384 (2014-2016 MOU Negotiations)
Our File No. 1109-017**

Dear Mayor Stanton and Members of the Phoenix City Council:

My law firm is counsel for Local 2384 of the American Federation of State, County and Municipal Employees, AFL-CIO ("Local 2384"). As you know, Local 2384 is the certified representative of the 1,885 (or so) City employees in Field Unit II with authority to negotiate their wages, hours and working conditions.

Presently, there are three pressing areas of dispute between the City's negotiator and Local 2384 *vis-à-vis* regarding the yet to be consummated Memorandum of Understanding ("MOU"), which encompasses the term of July 1, 2014 up to June 30, 2016, *to wit*, union release, economics, and so-called "pension spiking." Via e-mail dated April 11, 2014, Local 2384 was instructed to submit to the City Council its recommendations for settling the dispute and this position statement is written in response thereto. As these were the three topics addressed by fact finder Douglas P. Hammond in his report dated April 1, 2014, Local 2384 will address each of them in the order presented therein.

I. LOCAL 2384 SEEKS NO CHANGE IN THE EXISTING UNION RELEASE LANGUAGE.

As the City Council is well aware of the saga that has become the *Cheatham* case, Local 2384 will not needlessly repeat the underlying facts and legal argument contained therein. Rather, Local 2384 will confine its comments as to why it is that no change in Local 2384's existing union release language is warranted, let alone required. Indeed, Local 2384 is somewhat puzzled as to why the City's negotiators tend to think that the union release provisions need, or ought, to

Mayor Greg Stanton
April 21, 2014
Page 2 of 5

be revised.

It is abundantly clear that the *Cheatham* case is not binding upon Local 2384, nor does it specifically call into question the legality of the union release language contained in the City's existing MOU with Local 2384. Judge Katherine Cooper expressly said as much on page 2 of her minute entry dated February 28, 2014,¹ and Judge Sally Duncan reiterated this fact in her April 10, 2014 ruling in the matter of *United Phoenix FF Assn. L. 493 v. City of Phoenix*.² **To be clear, no court, at any level, has ever ruled that the union release language contained in Local 2384's existing MOU violates the Gift Clause!** Should that claim ever be made, by the Goldwater Institute or anyone else for that matter, the City Council can be assured that Local 2384 intends to put up a vigorous, protracted and, we anticipate, ultimately successful defense of its union release language. For as the City's own attorneys made abundantly clear in their recent filings in the Arizona Court of Appeals, "the City and the citizenry benefit greatly from the City's Meet and Confer Ordinance, and the use of release time to facilitate meaningful and effective collective bargaining." In this regard Local 2384 fully agrees with the City's position that the use of union release time does not violate the Gift Clause.

However, assuming, *arguendo*, that some court, someday, somehow, determines that Local 2384's existing/proposed union release language violates the Gift Clause, then the Saving Clause set forth in Section 6-1 of the MOU would kick in. It states as follows:

If any article or section of *this* Memorandum should be held invalid by operation of law or by a final judgment of any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of this Memorandum shall not be affected thereby; and upon issuance of such final decree, the parties, upon request of either of them, shall meet and confer to endeavor to agree on a substitute provision or that such a substitute provision is not indicated.

To summarize, the City Council has two ways of proceeding *vis-à-vis* Local 2384's union release language. First, and really for no legally sound reason, it can say that the existing language should be replaced with the convoluted, monstrosity proposed by the City's negotiators at the bargaining table.³ Second, it could simply maintain the existing language until such time, as ever, that it is "held invalid by operation of law or by a final judgment of any tribunal of

¹ Judge Cooper expressly, and correctly, stated that "[t]he Court made no determination as to whether the City's contracts with other unions are in violation of the Gift Clause and the Court's Ruling. Those contracts were not before the Court."

² In a somewhat unremarkable decision, Judge Duncan found that the ruling in the *Cheatham* case "does not apply to nor binds non-parties[.]"

³ It is far from clear whether the City's proposed change to Local 2384's union release language would, in the opinion of the Goldwater Institute, pass muster under the Gift Clause. The informed speculation of undersigned counsel is that it will not.

Mayor Greg Stanton
April 21, 2014
Page 3 of 5

competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal[.]” If and when that happens, the City and Local 2384 will “meet and confer to endeavor to agree on a substitute provision” as set forth in Section 6-1 of the MOU. In other words, the City’s proposed change to Local 2384’s union release provisions is a convoluted solution in search of a problem.

II. LOCAL 2384 SEEKS A REASONABLE ECONOMIC PACKAGE.

While much has been said about the size and scope of the City’s expected budget shortfall, it is obvious to everyone watching that this Council has, at its disposal, the ability to mitigate, if not rectify, the budget situation without having to, once again, go back and slice yet another pound of flesh from the thousands of dedicated, hard-working employees of the City of Phoenix. As the City Manager stated himself in his March 25, 2014 budget message:

To balance the budget differently would require one or more of the following:

- **Cutting different services and costs than the ones presented.** Cuts presented represent city management recommendations. Feedback from budget hearings can help with identifying any options.
- **Reducing employee compensation levels.** This would require negotiated labor agreements. Negotiations are currently underway.
- **Increasing revenue.** Raising taxes or fees requires a vote of the City Council.

On this note, it is important to highlight the fact - somewhat overlooked by the City’s negotiating team - that the City Manager’s most recent budget projection “does not assume any new revenues, taxes or fees” and, purportedly, “[t]here are no assumptions made about the outcome of ongoing labor negotiations, *other than the continuation of the current 1.7% concessions.*” Suffice to say, Local 2384 finds it puzzling that the City Manager would create a trial budget assuming no new revenue while, at the same time, assuming the continuation of *temporary economic concessions* on the part of the City’s employees. In other words, if there are three ways to address this problem - *i.e.*, service cuts, employee compensation, and revenue - why are only the first two of the alternatives being placed on the table for consideration? After all, in his report to the City Council, the City’s Budget and Research Director expressed pride in the fact “[f]or several years the City has taken a multi-faceted approach to resolving budget issues and ongoing financial challenges,” including, *inter alia*, “alternate revenue.” It is time for the City Council to reinsert this third leg into the budget stool; if it fails to do so, and the stool fall overs, that is a problem of the City Council’s making and it is not attributable to some sort of uncontrollable, macroeconomic forces beyond anyone’s control. It will certainly not be the fault of Local 2384 and the hundreds of dedicated public servants that it proudly represents.

As explained by Dr. T. Zane Reeves in his recent fact finding relating to Local 2384’s sister local, Local 2960: “Ultimately, public budgeting is not a science where one side is right and the other wrong[.] It is about choices and priorities made by policymakers.” It is time for the City

Mayor Greg Stanton
April 21, 2014
Page 4 of 5

Council to make such a choice and take affirmative steps to increase the City's revenue and, in so doing, demonstrate to everyone, *including the various ratings agencies* - who, we can safely assume, are closely monitoring this very discussion - that its employees, including those in Unit II, are a high priority and not simply a cost item. Local 2384 is confident that such a step on the part of the City Council would send a strong and positive message to the ratings agencies that the City's labor relations is stable and mature.

III. LOCAL 2384 SUPPORTS REASONABLE MEASURES AIMED AT CURBING SO-CALLED "PENSION SPIKING."

Local 2384 is fully aware of the immense public scrutiny associated with so-called "pension spiking" at the City. Unfortunately, most of that derision - some of which was well-deserved - has come about as a result of largess granted to the former City Manager but not enjoyed by the vast majority of City employees including those represented by Local 2384. That being said, Local 2384 realizes that the City Council needs and wants to take steps aimed at curbing "pension spiking" and as the parties' fact finder, Mr. Hammond, determined,⁴ the Local has provided the City with an abundantly reasonable, two-pronged, proposal aimed at doing just that.

The Local's proposal not only saves the City an enormous amount of money in the short term, and an even greater sum of money in the long term but, because it is forward looking, it clearly complies with the Pension Clause of the Arizona State Constitution. It specifically states that "[m]embership in a public retirement system is a contractual relationship that is subject to Article II, section 25, and *public retirement system benefits shall not be diminished or impaired.*" See Ariz. Const. art. 29, § 1(c). Along the same lines, the Contracts Clause of the Arizona State Constitution, which is referenced in the Pension Clause, specifically warns that "No... law impairing the obligation of a contract, shall ever be enacted." See Ariz. Const. art. 2, § 25.

In its recent 5 to 0 decision in *Fields v. Elected Officials' Ret. Plan*, 2014 Ariz. LEXIS 51 at *18, ¶ 28, 680 Ariz. Adv. Rep. 15 (Ariz. Feb. 20, 2014), our State Supreme Court made clear "the protection afforded by the Arizona Pension Clause extends broadly and unqualifiedly to 'public retirement system benefits,' not merely benefits that have 'accrued' or been 'earned' or 'paid.'" The Supreme Court also held that public employees, such as those represented by Local 2384, had a right in the existing formula by which their benefits were calculated as of the time they began employment and any beneficial modifications made during the course of their employment. *Id.* at ** 15-17, ¶¶ 23-27. In response to this decision, Republican State Representative John Kavanagh publicly lamented that "[t]his ruling wipes out most of the pension-saving reforms we enacted a few years ago[.]"⁵ He also correctly pointed out that,

⁴ In his fact finding report (p. 12), Mr. Hammond "recommend[ed] the Union's latest position on Sick Leave/Vacation Conversion for Pension Improvement."

⁵ A succinct overview and discussion of the *Fields* case can be found using the following link: <http://www.azcentral.com/news/politics/articles/20140220arizona-pension-judges-supreme-court-ruling.html>. In addition to the legal points raised above, the City Council should also pay attention to the enormous

Mayor Greg Stanton
April 21, 2014
Page 5 of 5

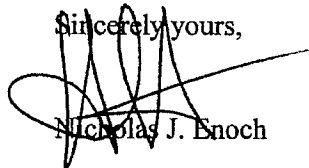
moving forward, the only way for the Legislature to address the issue would be to put a measure before voters, possibly this fall, to amend the Arizona Constitution by inserting provisions that could diminish benefits and rein in the rising cost of public pensions. Absent such an amendment, however, a legislative body, in this case the City Council, is without the requisite legal authority to negatively tamper with public employee pensions including the formulas associated therewith.

IV. CONCLUSION.

The current economic and political environment places the City's public employees in a difficult position. They are often inaccurately portrayed as the problem – the “fat” or “waste” that needs to be cut. Yet nobody is more frustrated with bureaucratic inefficiencies than front-line workers, who know how to improve the delivery of public services and the work they do for the community.

It is said that a leader is anyone who has two characteristics: first, she is going somewhere; second, she is able to persuade other people to go with her. What the parties need in this circumstance is a demonstration of leadership on the part of the City Council to persuade other people, mainly the City's tax payers and negotiators, that the hard-working civil servants represented by Local 2384 are simply being asked to give up too much with respect to union release, economics, and so-called “pension spiking.” Local 2384 remains open to “a multi-faceted approach” to resolving these three sticky issues, and it is optimistic that, with the City Council's forthcoming participation in the process, these issues can be amicably resolved in short order.

Sincerely yours,



Nicholas J. Enoch

NJE:cs

cc: Luis Schmidt [via e-mail only to: lschmidt2007@afscme2384.com]
Cindy Bezaury [via e-mail only to: cindy.bezaury@phoenix.gov]
Debbie Grant [via e-mail only to: debbie.grant@phoenix.gov]
Ben Lane [via e-mail only to: ben.lane@phoenix.gov]
Timothy Merritt [via e-mail only to: timothy.merritt@phoenix.gov]
Cris Meyer [via e-mail only to: cris.meyer@phoenix.gov]

F:\Law Offices\client directory\AFSCME 2384\017\2014-4-21 (1109-017) MOU Negotiations letter to City Council.wpd

financial consequences associated with the legislature's ill-conceived attempts at “pension reform.”

CITY COUNCIL REPORT

FORMAL AGENDA

TO: Ed Zuercher
City Manager

AGENDA DATE: April 30, 2014

THRU: Lionel D. Lyons
Senior Executive Assistant to the
City Manager

ITEM: 26 PAGE: 62

FROM: Cindy Bezaury
Labor Relations Administrator

SUBJECT: PUBLIC HEARING - POSITION STATEMENTS RELATED TO
NEGOTIATIONS WITH AFSCME LOCAL 2960 (UNIT 3)

This report is submitted as back-up information to Item 26 on the Formal City Council agenda of April 30, 2014. This item provides an opportunity for a public hearing to present positions statements from the City and the American Federation of State, County and Municipal Employees (AFSCME) Local 2960 (Unit 3).

THE ISSUE

The meet and confer process with the City's five authorized employee organizations ("Meet and Confer units"), as outlined in Section 2-219 of the City Code, began in January 2014. Following notification to the Phoenix Employment Relations Board (PERB) that a dispute still existed after the March 1, 2014, deadline outlined in Section 2-219 of the City Code, a fact finding process was initiated with AFSCME Local 2960. As of April 14, 2014, issues remain unresolved and an agreement has not been reached with AFSCME Local 2960.

In accordance with the terms of Section 2-219 of the City Code, if no agreement has been reached by April 14, the City Manager and the employee organization shall submit to the City Council written position statements on all unresolved issues in dispute; and, the City Council shall conduct a public hearing at which the parties shall be given full opportunity to explain their respective positions on all unresolved issues.

Within ten working days following the conclusion of the public hearing, the City Council is authorized to take final action imposing terms and conditions of employment (by May 13).

OTHER INFORMATION

Attached to this report are:

- **Attachment 1: Fact Finding Report**
- **Attachment 2: Position Statement from the City**
- **Attachment 3: Position Statement from AFSCME Local 2960**

RECOMMENDATION

This report provides backup information to agenda Item 26 on the Formal City Council agenda of April 30, 2014.

No action is required.

UNIT 3
AFSCME 2960
PACKET

ATTACHMENT 1

FACT FINDER'S REPORT

FACT FINDER REPORT AND ADVISORY RECOMMENDATIONS

2014 APR 21 PM 2:30

AMERICAN FEDERATION OF STATE, COUNTY)
AND MUNICIPAL EMPLOYEES, LOCAL 2960,)
Union/Bargaining Agent)
and)
CITY OF PHOENIX, ARIZONA)
A Municipal Corporation,)
City/Employer)

T. ZANE REEVES, PhD
IMPARTIAL FACT FINDER

INTRODUCTION

The Parties selected T. Zane Reeves, under auspices of the Federal Mediation and Conciliation Service, to serve as a third-party Fact Finder to assist in the resolution of the issues at impasse between the Parties. The Fact Finder convened an investigative proceeding in the Historic Phoenix City Hall at 17 South 2nd Avenue on April 7 and 8, 2014. The City of Phoenix (hereinafter “the City”) was represented by Alisha Blandford and Stephanie Hart, Assistant City Attorneys. Jennifer Kroll, Attorney at Law, and Debra Novak-Scott, Local 2960 Vice President represented the American Federation of State, County, and Municipal Employees, Local 2960 (hereinafter “the Union” or “AFSCME”). Within three days after the conclusion of the hearing, the Fact Finder is obligated to file a Report and Advisory Recommendations with the Phoenix Employment Relations Board and Phoenix City Council.

Witnesses for the City

1. Sean Kindell, Deputy Finance Director
2. Rick Naimark, Deputy City Manager
3. Mario Paniaqua, Director of Budget and Research
4. Cindy Bezaury, Assistant Human Resources Director/ Labor Relations
5. Tracy Reber, Deputy Director of Budget and Research
6. Ed Zuercher, City Manager
7. Judith Boros, Deputy Human Resources Director/ Labor Relations

Witnesses for the Union

1. Frank Piccioli, President of AFSCME Local 2960
2. Debra Novak-Scott, Vice President of AFSCME Local 2960

BACKGROUND

The American Federation of State, County, and Municipal Employees, Local 2960, is one of five bargaining units representing employees of the City of Phoenix. As such, it is the exclusive representative of 2, 214 employees and is identified as Bargaining Unit # 3. These employees include office employees, including clerks, 911 operators, administrative aides, building inspectors and fire inspectors. The other bargaining units and unions that bargain collectively with the City include: (1) the Laborers International Union of North America, Local 777, which includes 958 landscapers, solid waste equipment operators, (2) AFSCME Local 2384, which is comprised of 1, 632 mechanics, electricians, skilled workers, aviation staff, and water service employees, and water service employees, (3) the Phoenix Law Enforcement Association that represents 2, 413 sworn police officers, (4) and the United Phoenix Fire Fighters Association that represents 1,508 firefighters.

The instant matter concerns only AFSCME Local 2960 and the City of Phoenix. The Parties have successfully negotiated Memoranda of Understanding in 2010-2012 and 2012-2014. They have been negotiating a Memorandum of Understanding for 2014-2016, but a number of issues remain at impasse. The purpose of the present hearings is for the Hearing Officer to consider evidence, prepare findings of fact, conclusions and make recommendations for impasse resolution to the Public Employee Personnel Board and City Council.

ISSUES AT IMPASSE

The Parties were at a negotiations impasse over a number of economic and non-economic issues.

“Non-economic” and “court ordered” proposals:

Union #11 (2/28/14)

The current language is found in the current MOU at Section 2, “Rights of Unit Members,” Section E.

The proposed new language (*in italics*) is as follows:

“Unit members may serve suspensions of more than forty (40) hours on an alternating weekly schedule. Unit members will be allowed to exchange up to forty hours of vacation or comp time in exchange for serving a suspension. The City retains the option to deviate from this provision for suspensions involving sexual harassment, violence in the work place, felonies, and drugs/alcohol.

Supervisor’s comments and ‘not met’ ratings on goals on the performance management guide (PMG) or annual performance evaluation are subject to the grievance procedure.

At any time when management has more than one representative at a meeting with a unit member the employee will be allowed to have a representative present at the meeting.

Unit members will not be excluded from applying and/or competing in a transfer process based solely on a pending investigation or non-finalized discipline. However, the transfer process will not be delayed pending the conclusion of the related discipline.”

Union #16 (3/21/14)

“The City will schedule a meeting with the Union, with a minimum of seven calendar days’ notice, to discuss management recommendations for contracting of work presently performed by unit members which would directly result in reduction in the number of regular unit positions during the term of this agreement. The meeting will occur prior to any final recommendation to the City Council. Failure by the City to meet with the Union under this Article may be subject to the Grievance Procedure (Article 2, Section2-1) of this MOU. *The City shall endeavor to meet with the Union at least thirty (30) days prior to elimination of any Unit 3 positions.*”

City #20 a-e MOU Article 1 “Rights”

Section1-3 Union Rights Release

This issue concerns full-time release and union release time for union representatives as well as time for unit members to attend training courses. The 2012-2014 MOU contains the following language regarding employee release time:

“Section 1-3: Union Rights

It is understood by the parties that the benefits granted by this Article shall not be interpreted or applied as requiring the employer to count as time worked, any hours or fractions of hours spent outside the employee's work shift in pursuit of benefits provided by this Article. The employer shall count as time worked any hours or fractions of hours spent within the employee's regular work shift in pursuit of benefits provided by this Article.

A. Union Release

The Phoenix community benefits from harmonious and cooperative relationships between the City and its employees. The City and AFSCME Local 2960 have negotiated full-time release positions, and release hours, as an efficient and readily available point of contact for addressing labor-management concerns. Examples of work performed by representatives using union release in support of the City include ensuring representation for employees during administrative investigations and grievance/disciplinary appeal meetings with management; participating in collaborative labor-management initiatives that benefit the City and the members; serving on City and departmental task forces and committees; facilitating effective communication between City and Department management and employees; assisting unit members in understanding and following work rules; and administering the provisions of the Memorandum of Understanding. Union release is also used for authorized employees to prepare for appeals and hearings and attend Union conferences, meetings, seminars, training classes and workshops so that employees better understand issues such as City policies and practices, conflict resolution, labor management partnerships, and methods of effective representation. The cost to the City for these release positions and release hours, including all benefits, has been charged as part of the total compensation package detailed in this agreement.

1. Full-Time Release Positions

The President and Vice President, in addition to one additional full-time release position to be designated by the Executive Board of the Union, shall each be allowed up to 2,080 work hours per M.O.U. year to engage in lawful union activities, pursuant to and consistent with this Memorandum. The fulltime release employees will be engaged in either union activities or city activities in accordance with city administrative regulations during paid release time. The City will pay the employees' full time fringe benefits. Time used for this purpose in excess of 2,080 hours per position shall be at the expense of the Union, and the Union shall reimburse the City at the applicable employee's hourly rate of pay.

The Union will keep the Labor Relations Division apprised of the regular work schedules of the release positions and submit leave slips for processing.

Upon return to regular City duties, a full-time release employee shall be reinstated to his/her original position, location and schedule by seniority. In addition, any

approved leave time the full-time release employee had scheduled prior to his/her return shall be honored by the department.

The City values and benefits from the participation of Union leaders on citywide task forces and committees, Labor-Management work groups, and a variety of Health and Safety committees. These activities take time away from expected tasks such as representation and communicating with the membership and may occur outside the regular work day of the Union officials. The full-time release positions agree to participate in these important committees and task forces. In recognition of this commitment, the City agrees to provide a compensatory time bank of three hundred sixty-eight (368) hours for use by the full-time release positions each MOU year. The Union will submit a written request to redeem the hours from this bank to the Labor Relations Division no later than July 1st of each MOU year for processing in the second pay period of August.

3. Bank of Release Hours

The unit will be allowed, during each 12 month term of this Memorandum, subject to operational and scheduling factors and three (3) working days advance notice to the Labor Relations Division, a unit total of four thousand five hundred forty (4,540) hours paid release time in a bank of release hours per M.O.U. year.

With the exception of the ten elected union officials, only one representative may be released from the same work group on the same shift at the same time. The union may request an exception when training is being provided by the International Union. Approval will not be arbitrarily withheld. No representative (with the exception of the ten elected union officials), will be permitted to use more than 420 hours of release time from the bank of hours in any one MOU year.

Any hours used in excess of the bank of hours must be approved by the Labor Relations Administrator and the AFSCME Local 2960 President. The number of hours used in excess of the bank at the end of the MOU term will be deducted from the bank of hours in the first year of the next MOU. A surplus of hours will be carried over into the next MOU to a maximum beginning bank of 6,810.

- G.** The Union shall be allowed fourteen thousand dollars (\$14,000), reimbursable to the Union by the City each M.O.U. year, for designated members of the local to attend schools, conferences, workshops and training to develop skills in effective member representation, conflict resolution techniques, labor-management cooperation, and other employee relations areas that promote cooperative and harmonious relationships. The Union will submit receipts for reimbursement by the City. If the entire \$14,000 is not used in the first year of the M.O.U. the balance will carry over into the second year not to exceed twenty-eight thousand (\$28,000) during the term of this M.O.U. Funds not used by the end of the M.O.U. will expire.

The Labor Relations Administrator will continue the practice of providing the union information concerning grievance and arbitration cases. The union agrees that they will be reasonable in making these requests for information.”

On January 29, 2014, Judge Katherine Cooper, in *William R. Cheatham, et. al., v. Phil Gordon, et. al.*, a case involving the Phoenix Law Enforcement Association (PLEA) and City of Phoenix, ruled that police officers who have traditionally received paid release time were in violation of Arizona’s anti-donation/gift provisions. Although the City’s other bargaining units were not a party to this matter, the Court advised the City to review its MOUs/contracts “to ensure that these agreements are consistent with the Court’s rulings here.” Thus, Judge Cooper stated that the City must comply with the requirements set forth in the Court’s Ruling in dealing with all bargaining units, not just PLEA. To paraphrase the Court: “Effective immediately, no City funds shall be spent on union business.”

The current court order is under consideration by the Court of Appeals and there is optimism that certain parts of the Judge’s order will be overturned by the higher court. In fact, the Hearing Officer was apprised on Thursday, April 10th, the day after the fact finding hearing was closed, that the Firefighters’ union had filed a declaratory judgment action and the Court had granted a Temporary Restraining Order (TRO) enjoining the City from violating its MOU with respect to union release time. The Firefighters’ Union was granted relief on their declaratory judgment action that the case involving PLEA union release time does not apply to the Firefighters’ MOU. The advocate for AFSCME Local 2960, Jennifer Kroll, on Thursday, April 10th contacted the Hearing Officer and made the following argument:

“Like the firefighters’ MOU release time provisions, AFSCME Local 2960’s MOU was never before the Court in the PLEA matter. AFSCME 2960 was not a party to that case and the testimony was that the City has never even analyzed the activities of the Unit 3 positions. Unit 3’s MOU is different than PLEA’s and the

facts considered by the Court regarding PLEA's union release time are different than and not applicable to Unit 3's union release time. No further change to the MOU union release time is necessary. The written order granting the firefighters' union's request for declaratory relief hasn't issued from the Clerk's office yet but we will forward it when we receive it..."

However, the advocate for the City, Alisa Blandford, replied on the same day with the following argument:

"...[T]he City's position on the union release proposal has not changed. The parties agreed at the hearing that AFSCME 2960 was not a party to the Cheatham lawsuit. However, the City was and is a party and continues to be bound by the Court's orders in that case. At this time, the City is enjoined from entering into any MOU's with any groups if the MOU does not comply with the Cheatham court rulings, all of which are contained in the exhibit notebook provided to you at the hearing. A ruling in a breach of contract case involving only the current MOU where AFSCME 2960 again was not a party has made no difference in the City's negotiating position with regards to this MOU or any other.

In short, the City was a party and the City is therefore bound until the Court of Appeals in the Cheatham matter itself, which has not happened and will not happen during this negotiations period."

Having considered the respective arguments, this Hearing Officer has no authority to recommend that the City ignore or alter the Court's order in Cheatham.

The Court's order must be complied with in the interim period and the City has implemented steps to comply with the court's order, until new language can or will be negotiated with the unions:

1. *Any employee on full-time release will be returned to their last department worked;*
2. *No bargaining unit may use city paid time to:*
 - *Provide representation during grievance or discipline meetings or hearings,*
 - *Negotiate MOUs or MOAs,*
 - *Attend union/association seminars, lectures, conventions, or any other union/association function,*
 - *Lobby on legislative or political issues approved by the City Manager, or*

- *Manage union/association activities or elections.*

City Proposal M-20a

The following new language is proposed by the City to be in compliance with the ruling in *Cheatham v. Gordon* [in part]:

“D. Bank of Donated Leave

- 1. Members of AFSCME Local 2960 will have the opportunity to voluntarily donate vacation leave time to a Bank of Donated Leave one time each fiscal year to be used by union officers and representatives for Union-related activities as determined by the AFSCME Local 2960 Union President and Executive Board. Members will receive a letter informing them of their opportunity to voluntarily donate leave, following approval of the MOU.*
- 2. The total number of hours donated by the members of AFSCME Local 2960 will be considered the maximum number of hours available for donated hours under Article 1, Section 1-3.*
- 3. The maximum number of hours that may be donated by any Unit member is forty (40) hours, per fiscal year.*
- 4. Only unit members may donate hours to the AFSCME Local 2960 bank of hours; AFSCME Local 2960 may only accept donated hours from their unit members.*
- 5. No union member may use more than 40-hours of donated time during any one work week.*

E. City Business Time

This time is paid by the City and therefore not in dispute.

F. No Gift of Public Funds

In order to avoid even the appearance of a “gift of public monies to a private association,” Union Designated Employees shall be prohibited from engaging in any of the following activity while on paid City Business:

- 1. Lobbying. This includes letter writing or telephone calls.*
- 2. Legislative Activity. This includes participating in the preparation or distribution of legislative proposals.*

3. *Organizing. This includes preparing and/or distributing union related materials.*
4. *Civil Service Discipline. This includes the representation of any bargaining unit member in disciplinary matters before the Civil Service Board.*
5. *Bargaining/Negotiations. This includes any matters deemed to be a mandatory subject of bargaining.*
6. *Representation in grievance or disciplinary proceedings.*

G. Consideration

The Union is obligated to support, at no cost to the City, Union Designated Employees as they carry out their duties and responsibilities.

I. Requests for City Business Time

This section details procedures and timelines for filing a request to use City Business time.

Economic issues and proposals

Union proposal #30 ARTICLE 3: Compensation/Wages

Current language:

“A. The total negotiated compensation for the contract year 2012-13 will be a 1.6% restoration of the 3.2% economic concessions that were negotiated in 2010–2012. The restorations will be effective July 9, 2012 and allocated as follows:

First, the combined increases in health, dental and life insurance result in a charge to the unit of .1% in total compensation. This amount continues the \$150 monthly allowance for Post Employment Health Plan accounts (PEHP) for all qualifying employees eligible to retire after August 1, 2022. (The date of an individual’s retirement eligibility was determined on August 1, 2007).

Second, 0.7% of the previous 1% wage concession is restored.

Third, 50% of the vacation buyback benefit is restored.

Fourth, the number of furlough days unit members have agreed through the Meet and Confer process to take is reduced from six (6) to three (3) 8-hour unpaid furlough days (total of 24 hours).

All other 2010–2012 concessions remain in effect through the first year of this agreement including 0.3% of the 1% wage concession, suspension of the deferred compensation benefit, suspension of the “12-hour rule” for overtime benefit, suspension of the compensatory time conversion benefit, 50% suspension of the vacation buyback benefit, and 50% suspension of the linguistics pay benefit.”

New Language or Change:

“All concessions end on July 1, 2014. This includes wage concessions, furloughs, deferred compensation benefit suspension, “12-hour rule” overtime benefit suspension, compensatory time conversion benefit.

In addition, there will be an overall wage increase of 1.5% effective the first pay period of July 2014.

M-22 City’s New Language or Change to Section 3-1 Wages

- A. *Continue 2012-2014 MOU Concessions. 0.3% of the 1 % wage concession, suspension of the deferred compensation benefit, suspension of the 12-hour rule” for overtime benefit, suspension of the compensatory time conversion benefit, 50% suspension of the vacation buyback benefit, and 50% suspension of the linguistics pay benefit.*
- B. *2014-2016 Concessions. The following concessions will be applied: no merit increases, no productivity enhancement pay increases (Section3-1A), Suspend the remainder of annual vacation buyback (Section5-5B), Eliminate payment for additional insurance (Section5-5B), Elimination of reimbursement for training (Section 5-3), unpaid holidays on President’s Day, Memorial Day and ½ day Christmas Eve (Section 5-5)*

M-6 Section 3-4: Sick Leave Conversion at Retirement

Current language:

A unit member who has accumulated a minimum of seven hundred and fifty (750) qualifying hours or more of accrued and unused sick leave at the time of a duty related retirement shall be eligible for payment of an amount of compensation equal to twenty five (25%) of his base hourly rate for all hours in excess of two hundred and fifty (250) hours.

New language or change:

Section 3-4: Sick Leave Conversion at Retirement

A. Sick Leave Case Out Formula

A unit member who has accumulated a minimum of seven hundred and fifty (750) qualifying hours or more of accrued and unused sick leave at the time of a duty related retirement shall be eligible for payment of an amount of compensation equal to twenty five (25%) of his base hourly rate for all hours in excess of two hundred and fifty (250) hours.

The maximum accrual bank of sick leave hours an employee can maintain is 2080 hours. An exception is made for accumulated sick leave prior to July 1, 2014.

B. Final Average Salary

The number of vacation leave hours eligible to be cashed out and included in an employee's Final Average Salary upon retirement will be limited to the number of vacation leave hours in the employee's leave bank on June 30, 2014, not to exceed 450 hours.

FINDINGS OF FACT AND DISCUSSION

Obviously, the issues at impasse between the City and AFSCME Local 2960 are deep and highly contentious. The “evidence” is readily known to both parties, but their interpretation of the “facts” is quite divergent. Ultimately, public budgeting is not a science where one side is right and the other wrong. As has been frequently noted, budgeting is about “the allocation of scarce resources” or perhaps as the most widely text in public budgeting states, “[B]udgeting as a matter of allocating resources in terms of opportunity cost where allocating resources to one consumer takes resources away from another consumer” (Smith and Lynch, p. 37). It is about choices and priorities made by policymakers. In the present scenario, the City and AFSCME Local 2960 have different perspectives on the same set of data. Those two perspectives will be briefly considered and then conclusions and recommendations offered for resolution of this impasse.

The City's Position

City Manager Ed Zuercher testified and presented his Trial Budget, which outlines his perspective, plan and view of the future for the City of Phoenix [emphasis added]:

“As discussed at the January 28, 2014 City Council meeting and in a February 27, 2014 follow-up report to the City Council regarding the preliminary status of the 2014-15

General Fund budget, the City must address a significant General Fund budget deficit for 2014-15. Updated resource and expenditure estimates result in a deficit projection of \$37.7 million. As the City must legally present and adopt a balanced budget, the Trial Budget includes efficiency actions and significant service reductions decreasing costs by the deficit amount.

For several years the City has taken a multi-faceted approach to resolving budget issues and ongoing financial challenges. These have included:

- Employee pay concessions. In the 2010-2012 labor unit contracts, the City and employee unions agreed to reduce total compensation by 3.2%, with nearly half of those concessions restored in the 2012-14 labor unit contracts.
- Innovation and efficiency savings. To date over \$90 million has been saved, of which \$40 million is in the General Fund.
- Alternate revenue. The emergency sales tax on food for home consumption was approved for a five-year period beginning April 1, 2010. The tax was reduced from 2% to 1% effective January 1, 2014.
- Financial transactions. These one-time measures have included:
 - Refinancing/restructuring General Fund supported debt;
 - Deferring maintenance and equipment replacement;
 - Using lease-purchase financing to cover costs of pay-as-you-go capital and vehicle replacements;
 - Reducing funding to reserves that were above actuarially required/recommended levels;
 - Taking a health insurance premium holiday;
 - Including tort liability amounts in primary property tax;
 - Freezing middle manager and executive pay;
 - Implementing a hiring freeze to achieve higher vacancy savings.

The City is now at a point where one-time transactions previously used are no longer available or recommended to balance the budget. Ongoing adjustments to expenses and/or revenue are necessary to ensure long-term financial stability for the City. On the expense side of the balance sheet, these changes must come from some or all of the following:

- New efficiencies that lower currently budgeted costs without impacting community services;
- Reduced service levels to the community; and/or
- Lower personnel costs.

Additional efficiencies and significant service reductions necessary to close the \$37.7 million funding gap are outlined in this report. Employee costs are currently being discussed as part of current negotiations regarding labor contracts that expire June 30, 2014. Any changes to economic aspects of the contracts will affect employee costs and would result in changes to the City's budget proposal. Extensive detail regarding estimated staffing costs is included in this Trial Budget in the Zero-Based Inventory of Programs document attached as Schedule G.

Proposed Efficiency and Service Reductions

Efficiency Savings: The City has taken significant steps to manage costs and implement innovation and efficiency measures that have reduced costs by over \$90 million since 2010, \$40 million of which is savings to the General Fund. Staff continues to explore and identify ways to lower costs and operate more efficiently. The City has also:

- Reduced the authorized position count by more than 2,700 since peak levels in 2008 resulting in the lowest staffing per capita since 1970-71;
- Eliminated nearly 100 management positions; a decrease of 22% which is a significantly higher percentage than position reductions overall;
- Decreased overtime costs by 52%; and
- Implemented pension reform measures expected to save more than \$800 million over the next 25 years.

Under the direction of the City Manager, over the last few months City departments conducted an early annual Organizational Review in conjunction with the Zero-Based Program Review process. As a result, an additional \$6.5 million in General Fund savings from new efficiencies and cost realignment actions are part of the balanced 2014-15 Trial Budget proposal. For example, due to the efforts of the City Manager's Office and the Public Works, Finance and Budget and Research Departments, a recent analysis and planned sale of underutilized vehicles in various departments will result in proceeds expected to bring in nearly \$400,000 to the General Fund in FY 2014-15. Additionally, Municipal Court, Prosecutor's Office and Police collaborated to develop a proposed procedural change that may assist in prosecuting Domestic Violence cases while also reducing Police overtime costs, for a net savings of an estimated \$500,000 annually. Those efficiency actions involving vacancy elimination will be brought to the Council in April for approval.

Proposed efficiency actions are described further in Schedule A.

Service Reductions: The complete list of internal and external service reductions is outlined in Schedule B attached. Because Public Safety/Criminal Justice programs comprise 70% of General Fund operating costs, it is necessary to include those services in the proposed reductions in order to avoid much more severe service cuts in other areas. However, staff seeks to minimize cuts to the community's highest priority as much as possible. As a

result, the potential reductions to Police and Fire programs represent a significantly lower percentage of the reductions.

It is important to note, because of existing federal funding agreements for the Staffing for Adequate Fire and Emergency Response (SAFER) grants, any cuts to Fire's sworn personnel would greatly exacerbate the funding shortfall and require extensive additional cuts. This is because, as stated in an official publication by the U.S. Department of Homeland Security- Federal Emergency Management Agency, "*SAFER grantees that lay off any firefighters during the SAFER grant's period of performance will be considered in default of their award and the grant will be terminated,*" and "*Grantees...must agree to maintain the SAFER-funded positions as well as the number of positions declared at the time of award throughout the two year commitment.*" Based on these provisions, if any sworn Fire position cuts or layoffs occurred at this time, the grants would be terminated and the City would be required to forego and return funds totaling nearly \$30 million for the SAFER grants. This would also mean even further General Fund service cuts. Additionally, the 98 filled Firefighter positions currently paid through SAFER funds would need to be eliminated, unless other funding sources were to be identified, which would result in more layoffs to sworn Firefighters. Consequently, the proposed Fire Department reductions listed do not include sworn personnel cuts that would violate the SAFER funding agreements; proposed reductions to Fire would eliminate or reduce critical Fire programs staffed by non-sworn employees.

The reductions include:

- Closure of the Police Central Booking Unit in the Police Department. This cut would reduce efficiencies in the processing of prisoners and not allow officers to spend as much time with crime response and investigation;
- Elimination of highly important fire prevention and victim response services in the Fire Department;
- Closure of three senior centers;
- Elimination of two community prosecutors;
- Closure of two courtrooms;
- Reduction of the Graffiti Busters program;
- Closure of the Barrios Unidos and Holiday summer neighborhood centers;
- Elimination of supervised activities at the Rose Mofford and Encanto Sports Complexes;
- Closure of three city pools;
- Elimination of 11 swim teams and six dive teams;
- Closure of most community and recreation centers;
- Reduced street repair and maintenance;
- Reduced maintenance of traffic signals;
- Elimination of citywide Volunteer Program coordination;

- Reduction of internal auditors that reduce the City's financial and legal compliance risks;
- Reduction of tax enforcement inspectors that increase revenue by identifying taxes owed to the City; and
- Other cuts to important internal and external services.

Library Services: Due to provisions in Chapter XVIII of the City Charter limiting the City's primary property tax rate to \$1.00 with the exception of libraries, no reductions are proposed to Library services. The proposed 2014-15 primary property tax rate is just under the limit of \$1.00 per \$100 of assessed valuation, not including the portion of the rate allocated to cover the Library Department's operating costs. Any reductions to Library services would require a corresponding decrease in primary property tax revenue and would not decrease the General Fund deficit. Therefore, no reductions to Library services are recommended.

Changes to General Fund Budget

The total proposed 2014-15 General Fund (GF) budget is \$1.137 billion, an increase of 0.9 percent over the 2013-14 GF budget of \$1.128 billion. The proposed balanced budget addresses a deficit of approximately \$37.7 million. The deficit is a result of the projected resources amount of \$1.137 million, along with projected costs of \$1.175 million. The table below outlines the specific areas with significant increased costs from 2013-14 to 2014-15 reflected in the projected deficit.

General Fund Item	2014-15 Increase Amount over 2013-14 Budget
Increased Total GF Pension	\$18 Million
<i>Public Safety Pension</i>	<i>\$13 Million</i>
<i>Civilian Pension</i>	<i>\$5 Million</i>
Increased cost of Industrial Injury Insurance	\$5 Million
Increased cost of Medical Insurance	\$3 Million
Increased cost of Liability Insurance	\$1 Million
Increased General Fund Overtime (reflects additional Police OT for 2015 Super Bowl)	\$1 Million
Critical Capital Fleet Equipment Replacement Needs	\$10 Million
Minimum Added Critical Technology	\$6 Million
Increase to Contingency Fund	\$2 Million
Additional Pay-as-you-go Capital Needs	\$0.4 Million

Other increased Personnel, Contractual and Commodities Costs	\$1 Million
Total	\$47 Million

This Trial Budget includes the following:

- Efficiency actions totaling \$6.5 million in savings as outlined in **Schedule A**.
- Deferral of \$1.9 million in capital fleet equipment replacement, reducing the costs from \$10 million to \$8.1 million. Remaining replacements address the highest priority of replacement needs, such as Fire pumper and ladder trucks and Police vehicles, which have reached expected end of life resulting in risk of operational failure and increased maintenance costs.
- Reduction of internal and external service levels to the community totaling \$29.2 million as outlined in Schedule B.
- Assumed continuance of existing employee contracts and compensation structure-labor contract negotiations are currently in progress; any changes to compensation outlined in new contracts beginning July 1, 2014 would change the estimated costs and reduce or eliminate the need for service reductions.
- Addition of \$2 million to the contingency fund, which remains underfunded to maintain an adequate fund balance per the higher levels recommended by bond rating agencies. This increases the contingency percentage of the operating budget from 3.9% to 4.0% and edges the City closer to the long-term goal of 5%.
- Inclusion of about \$6 million to address critical information technology needs, such as funding needed to keep the City's telephone system functioning and keep current critical systems operational.
- Schedule C includes necessary additional funding of \$103,000 for contracted street landscape maintenance for seven additional miles of new surface streets on Sonoran Desert Drive from I-17 to Dove Valley Road and Dove Valley Road from 23rd Avenue to Poloma Parkway, and for contracted maintenance of block walls and gates on 1st Avenue from McDowell Road to Thomas Road.

Recommended Elimination of Vacant Positions/Reduced Salary Savings:

Most department budgets include a "salary savings" line item, which is a credit amount of expected cost savings from vacancies occurring during the year offsetting budgeted expenditures. This is a common practice, and under normal circumstances, this line item is intended to account for savings realized due to natural turnover and the typical time to recruit and fill positions.

Over the last several years however, the salary savings credit amount has increased in General Fund budgets to reflect the City's hiring freeze, which means positions held vacant for this purpose are considered unfunded. The hiring freeze is a one-time transaction used to achieve temporary savings. In most cases, holding positions vacant means departments are unable to fully provide Council-adopted service levels.

Staff conducted a review of full-time General Fund civilian positions to determine whether elimination of the vacant position would result in:

- Risk to citizen or employee safety;
- Reduction of current services to the community;
- Negative impact to internal controls or City risk; and/or
- Decreased revenue, or increased costs:

As a result of the review, staff recommends the elimination of 68 full-time General Fund civilian vacant positions that do not meet the above criteria and a corresponding reduction of \$4.3 million to FY 2014-15 General Fund salary savings. Because the eliminated civilian vacancies are offset by a corresponding reduction to budgeted salary savings, the change results in a net \$0 impact to the budget. As mentioned previously, the City must ensure ongoing resources match ongoing expenditures, and as such must not continue to rely on one-time savings actions like the hiring freeze to balance the budget. Reducing the current level of salary savings in General Fund budgets is necessary to be able to phase away from the multi-year hiring freeze. Also recommended is the elimination of 35 full-time civilian vacancies in the Police Public Safety Expansion Fund. These positions were initially authorized as part of anticipated civilian support as the sworn Police positions were filled. However, the civilian positions are vacant and unfunded due to the substantial deficits in Public Safety funds. The total dollar value of the 35 Expansion Fund positions is about \$2.1 million. Salary savings within the fund will decrease \$1.8 million, resulting in a net savings of about \$300,000.

Included in the Trial Budget are several additional full-time and part-time GF vacancies proposed for elimination as part of the efficiencies and service reductions shown in Schedules A and B.

In evaluating the elimination of vacancies, the following issues must be considered:

- Strategic Approach: The elimination of all existing vacancies would prevent the Council from taking a strategic approach to minimize the negative impact on community services. The timing of vacancies can be unpredictable and arbitrary; many only recently became vacant are currently being filled. In many cases, less community impact would result from eliminating a filled position as compared to filling a more necessary vacant position. Some positions need to be filled as soon as possible to reduce risk to citizen or employee safety, maintain internal controls, reduce litigation or legal compliance risk, prevent decreased revenue or increased costs, and maintain critical service levels.
- Salary Savings: As mentioned, many vacancies are accounted for in a budget credit amount called salary savings, which temporarily reduces costs. The elimination of these vacancies requires a corresponding reduction to salary savings, which has a net \$0 impact on the budget and therefore does not address the budget deficit.
- Offset to Contracted Service: In cases where positions are difficult to fill, such as in the Information Technology Services Department, vacancy savings offset the costs

associated with paying for temporary contracted services. In these cases, although contractors are not a permanent solution due to higher costs or other operational issues, their service is temporarily necessary to continue operations while recruitment is in progress.

- Interdepartmental Charges: Some positions recover costs through interdepartmental charges. These are charges for certain City services, such as Street repairs necessary due to Water capital projects that damage City roads, or other maintenance. In these cases, savings would be offset by reduced work order charges and therefore have little to no impact on the deficit.

General Fund Revenue

Projected General Fund (GF) revenue in FY 2014-15 is estimated to be \$1.058 billion, an annual increase of 3.0% over the revised current year estimate. Including revenue, the estimated beginning fund balance of approximately \$60 million, and necessary net fund transfers estimated at \$20 million, total FY 2014-15 General Fund resources are estimated to be \$1.137 billion. Details on specific revenue categories and assumptions are shown in **Schedule E**, the new report included this year at the request of Mayor Stanton and Councilman Gates. General Fund revenue consists of the categories shown in the chart below.

General Fund Revenue Categories

Local Sales & Excise Tax	41%
User Fees & Taxes	11%
Primary property	13%
State shared revenue	35%

Sales Tax on Food: The City's five-year sales tax on food for home consumption, which went into effect April 1, 2010, will expire completely on April 1, 2015. In October 2013, the City Council approved a reduction of the sales tax on food rate from 2% to 1% effective January 1, 2014. The reduction in revenue for fiscal years 2013-14 and 2014-15 totaled approximately \$33 million and was offset by a combination of Transit debt refinancing savings, inclusion of some tort liabilities in the primary property tax, sales of excess City property, and efficiency savings.

State-Shared Revenue / Legislative Changes Affecting City Taxing Authority: The proposed FY2014-15 City Manager's Trial Budget assumes no change to current stateshared formulas, which have been in place since the 1940s when initially adopted by Arizona voters through three initiatives. If the state legislature changes state-shared revenue formulas and reduces the amount of revenue to cities and towns, balancing the budget may require additional cuts to Community services, including public safety positions, parks, senior centers, street maintenance and others.

Additionally, the proposed budget assumes no state legislative changes are adopted negatively impacting City revenue. Decreased revenue as a result of new state legislation may require cuts in services to the community to ensure a balanced budget.

Budget Process Improvements

Further improvements are being made to this year's award-winning budget presentation and community process to strengthen public engagement and fiscal transparency.

Additional Revenue Report: New this year as requested by Mayor Stanton and Councilman Gates, this Trial Budget includes a detailed report explaining the basis and assumptions of General Fund revenue projections (Schedule E). The report provides additional transparency and clarity regarding the specific categories of General Fund revenue projections, including economic forecasts, recent growth trends, historical growth and other pertinent information.

Budget Hearings: Community involvement is essential to the City's longstanding budget process. This year, additional public outreach and opportunities to participate are being provided. The City will hold more budget hearings than last year; the number of hearings held has increased each of the last three years. The hearings will be held throughout the City in April and will include:

- An interactive, online hearing hosted by the Mayor and City Manager, allowing residents to submit comments or questions live from a computer or mobile device;
- A hearing provided in Spanish and English; and
- Video recordings on the City's "YouTube" Webpage for public access anytime.

Five-Year Forecast: In January 2014, for the third straight year, the Budget and Research Department provided a five-year General Fund forecast. The long-range forecast is a financial management best practice providing the Council with a tool for long-term planning and strategic decision-making. The forecast report explained economic, resource, and expenditure assumptions providing the basis for potential ending balance ranges over the next five years. The ending balance ranges showed the City may face an additional General Fund deficit in FY 2015-16. However, assuming continued economic improvement, strong cost management and further innovation and efficiency, a balanced budget is possible for the subsequent years during the forecast period.

Zero-Based Inventory of Programs Budget Document: Also for the third consecutive year, the Budget and Research Department provided a Citywide Budget Information Packet and Inventory of Programs as part of a Zero-Based Budget approach. This year, additional information was added regarding detail on employee costs. The information was presented to the Council on February 11, 2014, providing the Council and Community with an earlier view of the upcoming fiscal year's estimated expenditures. The Zero-Based Inventory of Programs is included with this report in **Schedule G** and includes program changes proposed in the Trial Budget.

Non-General Funds

The City Manager's Trial Budget includes recommended changes to non-General Funds, as explained below. More detail is provided for non-General Fund changes in Schedule D.

Development Services Fund: In order to meet needs for expected further increases in development activity, Planning and Development proposes to add 12 full-time positions to conduct civil, residential, and commercial plan reviews, inspections, and site planning. Additionally, increased contractual services are proposed to enhance permitting technology and online services.

Phoenix Parks and Preserves Initiative Fund (PPPI): The PPPI fund includes a proposal to add 4.0 part-time FTE to operate the new Chavez Dog Park, Deems Hills Dog Park, Paradise Valley Dog Park, and Carver Mountain Trailhead expansion.

Wastewater Fund: Water Services proposes the use of Wastewater funds for operating costs related to the enhanced multi-phase digestion process for wastewater treatment and for costs related to the newly converted centrifuge for wastewater treatment.

The Union's Position

AFSCME Local President Frank Piccioli testified regarding his view of what had led the Parties the present negotiating impasses. Piccioli underscores that his bargaining unit was slated to bear the targeted cuts of 232.3 full and part time employees, out of 300 proposed by the City. He also noted that police, fire, and library employees would be spared any layoffs at all. Piccioli had this to say about the impasses:

For the first time in the City of Phoenix's history with AFSCME Local 2960 we CANNOT come to an agreement with the City over the upcoming 2014-2016 contract. For over 45 years we have negotiated a fair contract with the city, even during the dark days recession, but this year we are at impasse. The City's last best offer was to continue our concessions two more years AND to add a total freeze on all merit increases and longevity for two years, and a freeze on sick leave and vacation days that count towards your pension. Additional cuts include wanting our members to take additional furlough days on two holidays plus 1/2 holiday on Christmas Eve. As well, the city wants to take away our units life insurance/health and welfare policy which has so far helped over 25 of our brothers and sisters families when they lost their loved one in the last few years. For our members that still receive merit increases these concessions would have meant 13% less pay over 2 years. For some of those that receive longevity it would have meant thousands of dollars less over two years. For those near retirement the snap shot and freezes would have impacted pensions for life. For new members it would have meant less pay in two years than you are getting today. For all of our members it would have been an additional 11 furlough days (totaling 30 furlough days over the last few years). We fought for something more reasonable day after day...week after week, up until 2:00 am last Friday night. The city would not budge. After a year of telling us the economy has picked up, after giving a city manager a \$78,000 raise, after our sacrifices year after year to balance the city's

finances...they want to force a contract on us more draconian than ever before.

At this same time the city releases a ridiculous budget to the citizens showing hundreds of our unit members on the chopping block. A wipe out of detention officers, fire prevention specialists, closing of pools, senior centers, and community centers. A budget that not only decimates our employees but risks the safety of the citizens of our city and the loss of services to our most vulnerable. They have used such scare tactics before. They have lied to the public before. They have lied to city council before. This is no different. I no longer have faith in our city management who have produced a budget with not ONE suggestion of a source of income. I no longer have faith in our city financial wizards who told us 2 months ago that the city was doing great but now are saying we need \$40 million. I no longer have faith that the city wants to bargain in good faith.

AFSCME Local 2960 and 2384 have now picked a fact finder who will be presented testimony over the next two weeks and who will summon city personnel and negotiators under oath to present the facts and truth of our current economy. AFSCME has international staff in town to present the city revenue options. AFSCME has hired lawyers to defend our rights. AFSCME has gotten staff from Washington DC to go line by line through this budget. This level of confrontation with the city has never happened in the past...We have never gone this far. But then again we have never faced such persecution before.

I ask the members of Local 2960 to remain calm during this tumultuous time and know that the union is using every available resource to secure your job and your pay and we WILL NOT bow down and be used as scapegoats to bad financial decisions. Myself and Luis Schmidt, President of AFSCME 2384 went before city council a few months ago and told them not to get rid of the 1% food tax early until we knew for sure that we were out of financial difficulty and the council turned their heads. Now, we find out the deficit is almost exactly the same as this 1% food tax was. Well now it's time for that same council, who ignored our warnings to step up and fix this. It is now up to our members to voice their opposition. It is now up to this local to say, "Enough is enough!"

We can no longer be silent, we can no longer sit back and watch, we can no longer afford to sit on the sidelines and not get involved. Too much is on the line. VOICE your opposition before that voice is silenced.

CONCLUSIONS AND RECOMMENDATIONS

Having heard argument, considered the credibility of witnesses, and weighed the evidence presented at the fact finding proceedings, the Fact Finder reaches the following conclusions and recommendations:

- **Union #11 (2/28/14) "Rights of Unit Members," Section E**

The proposed new language (*in italics*) is as follows:

- (1) “Unit members may serve suspensions of more than forty (40) hours on an alternating weekly schedule. *Unit members will be allowed to exchange up to forty hours of vacation or comp time in exchange for serving a suspension. The City retains the option to deviate from this provision for suspensions involving sexual harassment, violence in the work place, felonies, and drugs/alcohol.*”

Conclusions and Recommendation

It is well known that the purpose of disciplinary action is to correct unacceptable behavior or attendance, usually through the application of principles of progressive discipline. To allow employees to use comp time or vacation days for disciplinary suspensions dilutes the seriousness of the infraction or their perceived need to change behavior or improve performance. As an aside, suspensions need not always be without pay; other options such as a working suspension, discipline held in abeyance, are also widely used by public jurisdictions. The Hearing Officer recommends that the Union proposal be denied.

- (2) *Supervisor’s comments and ‘not met’ ratings on goals on the performance management guide (PMG) or annual performance evaluation are subject to the grievance procedure.*

Conclusions and Recommendations

The purpose of performance appraisal and annual evaluations is to encourage the employee to focus on areas of needed improvement. A “not met” rating is not a disciplinary action and the employee has not been adversely affected. The Hearing Officer recommends that the “not met” rating on the performance management guide or annual performance evaluation should not be grievable.

- (3) *At any time when management has more than one representative at a meeting with a unit member the employee will be allowed to have a representative present at the meeting.*

Conclusions and Recommendations

It is a commonly accepted practice among public sector organizations to grant so-called “Weingarten rights” to employees who are attending a meeting where there is a reasonable expectation of disciplinary action. In such cases, the employee may request union representation to be present. To allow union representation at any and every meeting with management would be extremely unwieldy and unnecessary. The Hearing Officer recommends that an employee who is going to be disciplined should be allowed to have a union representative present.

- (4) *Unit members will not be excluded from applying and/or competing in a transfer process based solely on a pending investigation or non-finalized discipline. However, the transfer process will not be delayed pending the conclusion of the related discipline.”*

Conclusions and Recommendations

A pending investigation may or may not lead to disciplinary or corrective action by management. There can be no assumption of guilt or employee wrongdoing until the investigation is complete and all employee due process requirements are met. Therefore, the transfer process should not be delayed or impacted at all. The Hearing Officer recommends that the Union proposal be accepted.

- **Union #16 (3/21/14) Layoff due to Contracting Out**

“The City shall endeavor to meet with the Union at least thirty (30) days prior to elimination of any Unit 3 positions.”

Conclusions and Recommendations

The Hearing Officer recommends that the Union proposal be adopted. The proposal asks the City to “endeavor” to meet with the Union; it does not require the City to do so.

- **Proposal #20 a-e. Section1-3 Union Rights Release**

Conclusions and Recommendations

Having considered the respective arguments, this Hearing Officer has no authority to recommend that the City ignore or alter the Court's order in the Cheatham ruling. The Court's order must be complied with in the interim period and the steps implemented to comply with the court's order, until new language can or will be negotiated with the AFSCME Local 2960: 1) any employee on full-time union release time must be returned to his/her former position, 2) no bargaining unit may use city paid time to: (a) provide representation during grievance or discipline meetings or hearings, (b) negotiate MOUs or MOAs, (c) attend union/association seminars, lectures, conventions, or any other union/association function, (d) lobby on legislative or political issues approved by the City Manager, or (e) manage union/association activities or elections. This recommendation does not affect the proposals offered in City Proposal M-20a. Revised #3 (below)

- **City Proposal M-20a. revised #3 (Tentative Agreement with Union)**

- **Bank of Donated Leave**

- Members of AFSCME Local 2960 will have the opportunity to voluntarily donate vacation leave time to a Bank of Donated Leave one time each fiscal year to be used by union officers and representatives for Union-related activities as determined by the AFSCME Local 2960 Union President and Executive Board. Members will receive a letter informing them of their opportunity to voluntarily donate leave, following approval of the MOU.
 - The total number of hours donated by the members of AFSCME Local 2960 will be considered the maximum number of hours available for donated hours under Article 1, Section 1-3.
 - The maximum number of hours that may be donated by any Unit member is forty (40) hours, per fiscal year.
 - Only unit members may donate hours to the AFSCME Local 2960 bank of hours; AFSCME Local 2960 may only accept donated hours from their unit members.
 - No union member may use more than 40-hours of donated time during any one work week.

Conclusions and Recommendations

Because of the Cheatham decision, these measures appear to be a reasonable compromise solution so that union leaders may perform needed duties on release time.

City Business Time

This time is paid by the City and this proposal is recommended for adoption.

Consideration

The Union is obligated to support, at no cost to the City, Union Designated Employees as they carry out their duties and responsibilities. This proposal is recommended for adoption by the Hearing Officer.

- **M-6 Section 3-4: Sick Leave Conversion at Retirement**

(Proposed language)

C. Sick Leave Case Out Formula

A unit member who has accumulated a minimum of seven hundred and fifty (750) qualifying hours or more of accrued and unused sick leave at the time of a duty related retirement shall be eligible for payment of an amount of compensation equal to twenty five (25%) of his base hourly rate for all hours in excess of two hundred and fifty (250) hours.

The maximum accrual bank of sick leave hours an employee can maintain is 2080 hours. An exception is made for accumulated sick leave prior to July 1, 2014.

D. Final Average Salary

The number of vacation leave hours eligible to be cashed out and included in an employee's Final Average Salary upon retirement will be limited to the number of vacation leave hours in the employee's leave bank on June 30, 2014, not to exceed 450 hours.

Conclusions and Recommendations

Sick leave and vacation ("annual") leave serve different purposes. Sick leave is a *privilege* that is only to be used for a particular purpose, a short term measure to enable a sick employee to return to work. Thus, it is similar to military leave, jury leave, bereavement leave, etc., whereas

vacation leave is an employee *right* promised as a condition of employment. Many employers exercise a “use it or lose it” approach to sick leave utilization. This Hearing Officer recommends that the City continue a policy of not compensating employees for unused sick leave upon retirement.

Vacation leave is promised upon hiring and accrued as an employment right. Employees should be paid for any unused vacation leave when employment is terminated by either party. However, the Hearing Officer recommends that unused vacation leave should not be applied to increase retirement payments.

- **Union proposal #30 ARTICLE 3: Compensation/Wages & City proposal #M-22 to Section 3-1 Wages**

Union’s Proposed Language:

“All concessions end on July 1, 2014. This includes wage concessions, furloughs, deferred compensation benefit suspension, “12-hour rule” overtime benefit suspension, compensatory time conversion benefit.

In addition, there will be an overall wage increase of 1.5% effective the first pay period of July 2014.

City’s Proposed Language:

- A. Continue 2012-2014 MOU Concessions. 0.3% of the 1 % wage concession, suspension of the deferred compensation benefit, suspension of the 12-hour rule” for overtime benefit, suspension of the compensatory time conversion benefit, 50% suspension of the vacation buyback benefit, and 50% suspension of the linguistics pay benefit.*
- B. 2014-2016 Concessions. The following concessions will be applied: no merit increases, no productivity enhancement pay increases (Section3-1A), Suspend the remainder of annual vacation buyback (Section5-5B), Eliminate payment for additional insurance (Section5-5B), Elimination of reimbursement for training (Section 5-3), unpaid holidays on President’s Day, Memorial Day and ½ day Christmas Eve (Section 5-5)*

Conclusions and Recommendations

City Manager Zuercher correctly identified the major problem facing the parties, “The City is now at a point where one-time transactions previously used are no longer available or recommended to balance the budget. Ongoing adjustments to expenses and/or revenue are necessary to ensure long-term financial stability for the City.” Zuercher contends that on the expense side of the balance sheet, these changes must come from the following: (a) new efficiencies, (b) reduced service levels, (c) and lower personnel costs. By contrast, the proposed budget for FY 2014-15 offers no new revenue streams. In fact, revenues are projected to decline sharply as the Sales Tax on Food expires completely on April 1, 2015 and state revenues also may drop.

The budget proposed for FY 2014-15 to close the deficit is the same approach that was negotiated in 2010-2012, by making further budget cuts in expenses. As a result, AFSCME Local 2960 is slated to bear the brunt of the projected cuts, once again. It is not the task of the Hearing Officer to formulate specific strategies for increasing available revenues, yet it seems to be the only option to continuing to lay off employees and cut public services. Two options for increasing revenue that might be considered are the following:

- The decision to prematurely reduce the City’s five-year sales tax on food for home consumption from 2% to 1 % effective January 1, 2014 exacerbated the revenue decline. When the sales tax on food “sunsets” entirely on April 1, 2015, the Council has the option of passing a new tax dedicated solely to funding services targeted to be cut in the 2014-15 budget;

- The percentage of City Sales tax in Maricopa County varies considerably, even though the Arizona State Sales Tax is constant at 5.6% and the Maricopa County Sales Tax is 0.7%. However, the relative percentage of City Sales Tax ranges from 1.5% in Chandler and Gilbert, to 2.0 in Phoenix and Tempe, to 3.0 in Cave Creek and Carefree. Again, a proposed increase in sales tax could be marketed as a measure to prevent public services from being cut.

With a commitment to increase revenues, the City would be in a credible position to restore part of the concessions made by AFSCME Local 2096 in 2010. The Hearing Officer makes the following recommendations for consideration in the 2014-2016 municipal budget:

- The following concessions will be applied: no merit increases, no productivity enhancement pay increases (Section 3-1A), Suspend the remainder of annual vacation buyback (Section 5-5B), Eliminate payment for additional insurance (Section 5-5B), Elimination of reimbursement for training (Section 5-3), unpaid holidays on President's Day, Memorial Day and ½ day Christmas Eve (Section 5-5)
- In addition, there will be an overall wage increase of 1.5% effective the first pay period of July 2014.
- That proposed layoffs be rescinded for some or all of the following positions:
 - Part time summer positions in Parks and Recreation, especially among pool and recreational part-time employees;
 - Employees in the Police booking center;
 - Detention Officers

Respectfully submitted,


 T. Zane Reeves, PhD

April 11, 2014

References:

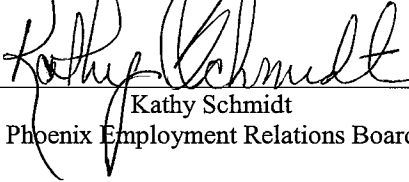
Smith, Robert W. and Thomas D. Lynch (2004), *Public Budgeting in America*, 5th Edition. Pearson; Upper Saddle River, New Jersey. 37.

**SERVED VIA PERSONAL SERVICE THE
21ST DAY OF APRIL, 2014 ON:**

City of Phoenix – Office of the Mayor
Karen Peters, Chief of Staff

City of Phoenix – Office of the City Council
Tim Merritt, Management Assistant

Copy of the foregoing **Fact Finder's Report and Advisory Recommendation for Unit 3, AFSCME 2960** delivered to the above individuals this 21st day of April, 2014.


Kathy Schmidt
Phoenix Employment Relations Board

ATTACHMENT 2

CITY'S POSITION STATEMENT



City of Phoenix
HUMAN RESOURCES DEPARTMENT



City of Phoenix Position Statement
Unresolved Negotiations for the 2014-2016 Memorandum of Understanding
With AFSCME 2960
April 21, 2014

Honorable Mayor and Council Members;

After three months of negotiations between the City of Phoenix and AFSCME 2960, the parties reached a determination of impasse on February 28, 2014. In accordance with the ordinance governing our Meet and Confer process, the parties proceeded to and completed Fact Finding. Following receipt of the Fact Finders recommendation, the parties met to continue negotiations but were unable to reach agreement a complete agreement.

The City of Phoenix Management remaining proposal is as follows:

- Limiting the use of sick leave payouts to the balance as of July 1, 2012, and the vacation leave payouts to the balance as of June 30, 2014, in the calculation of Final Average Compensation, per Council direction of October 31, 2013.

The AFSCME 2960 remaining proposal is as follows:

- No change to the current practice of sick or vacation included in the calculation of Final Average Compensation for pension.

Recommendations

In 2013, City leaders received the following direction from Mayor and Council:

“The Subcommittee recommended to the City Council that the following items **not** be included in the definition of compensation for the purpose of pension calculation for COPERS employees: ...

- Lump-sum payouts on unused leave accrued sick leave upon retirement (except unused leave accrued pursuant to the sick leave “snapshot” effective July 1, 2012)
- Lump-sum payouts on unused accrued vacation leave upon separation (except unused leave accrual pursuant to new vacation policies yet to be developed...”

Mayor and Council approved these recommendations on October 31, 2013, with direction to address during labor negotiations.


The Fact Finder gave the following recommendation in support of the City proposal: "This Hearing Officer recommends that the City continue a policy of not compensating employees for unused sick leave upon retirement.... the Hearing Officer recommends that unused vacation leave should not be applied to increase retirement payments."

The City proposal identified the limits to be placed on sick and vacation leave balances that would be applied to the calculation of Final Average Compensation for pension. The City proposal complies with the direction of Mayor and Council.

Conclusion

The City final offer to AFSCME 2960 follows the direction provided by Mayor and Council to end the practice of pension spiking, and is supported by recommendation of the Fact Finder. The City recommends that Mayor and Council implement this final offer.

Respectfully submitted,



Cindy Bezaury

Assistant Human Resources Director

Labor Relations Administrator

ATTACHMENT 3

UNION'S POSITION STATEMENT

AMERICAN FEDERATION OF STATE,)
COUNTY AND MUNICIPAL EMPLOYEES,)
LOCAL 2960)
Meet and Confer Representative for)
Unit 3 Employees of City of Phoenix)

And)

CITY OF PHOENIX, ARIZONA)
A Municipal Corporation City/Employer)

POSITION OF AMERICAN
FEDERATION OF STATE, COUNTY
AND MUNICIPAL EMPLOYEES,
LOCAL 2960
PURSUANT TO PHOENIX CITY CODE
§ 2-219(K)

American Federation of State, County and Municipal Employees, Local 2960 (“AFSCME Local 2960” or “Local 2960”) hereby submits this position statement pursuant to Phoenix City Code §2-219(K). AFSCME Local 2960 represents Unit 3. There are over 3,000 Unit 3 employees in over 20 City departments. They serve vital roles in public safety and providing essential City services to the public. In this current round of negotiations, the parties have reached agreement on almost all of the other issues and Local 2960 has agreed to significant concessions. However, Local 2960 simply cannot agree to the City’s proposal, M-6, the so-called “vacation snapshot.” The City’s proposal M-6 violates the Charter, City employees’ vested rights and the United States and Arizona Constitutions. It may also result in additional litigation for the City.

Local 2960’s position is that the proposal to impose a snapshot that changes and reduces the pensionability of paid vacation should be rejected as unreasonable and unlawful in violation of the Charter, which only the voters have the authority to revise. The proposed change would violate the retirement provisions of the City Charter as interpreted by the Court in the case challenging the sick leave snapshot imposed in 2012. In the Order dated January 7, 2014, attached hereto as Exhibit 1, the Court made clear that compensation such as payments that accrue in the last three years of employment is clearly compensation under the City Charter. The Court stated with respect to the calculation of final average compensation under the Charter: “the

obvious intent of the statutory scheme was to calculate an employee's pension based on his highest rate of compensation for services over a three year period." *Piccioli v. City of Phoenix*, No. CV2012-010330 (Maricopa Super. Jan. 7, 2014). There are maximums that prohibit accrual and carryover of vacation so that employees do not get a vacation payment at retirement for more than 3 years of accrued vacation.¹ One of the reasons the City provided for imposing a "sick leave snapshot" in 2012 was because of the unlimited nature of the accrual of sick leave. However, the City already imposes maximum limitations on accrued vacation payouts and the amount that can be carried over. Local 2960 is not proposing any changes to the vacation carryover and accrual limitations. The vacation leave paid at retirement is actually based on compensation earned in the last three years of employment and to disregard it would violate the terms of the Charter under the Court's order in the sick leave snapshot litigation. It is counterproductive to implement a proposal that will result in more litigation and expense.

The hearing officer's finding that "Vacation leave is promised upon hiring and accrued as an employment right. Employees should be paid for any unused vacation leave when employment is terminated by either party" applies just as well to the right to have retirement benefits include the vacation pay itself.² Since the practice of payment of vacation at time of

¹ By way of example, take an employee with 20 years of employment who determines to retire and who hasn't taken his vacation in the current year nor used his vacation earned in the last two months of the prior year. For the past three years, that employee has accrued 13 hours of vacation a month, which is 372 hours per year. That employee may carryover up to 312 hours and receive a payout at retirement of 390 hours of vacation. See 2012-2014 MOU Section 5.5 B. If the employee did not use any vacation in his last year, he would have 372 hours earned solely in his last year of employment and could use only 18 additional hours from the prior year before he would reach the maximum payout. All of these hours are earned in the last 3 years of employment.

² Although the City contended in the fact-finding hearing that the Court somehow determined multiple issues, that contention is incorrect. The only issue the Court determined was that the change to impose the sick leave snapshot did not violate the express terms of the Charter. See *Piccioli v. City of Phoenix*, No. CV2012-010330 (Maricopa Super. Jan. 7, 2014). With respect to the remaining claims, the Court determined that questions of fact preclude summary judgment on Plaintiffs' claims. Employees that retired after implementation of the sick leave

retirement began, all paid vacation has been used in the calculation of retirement benefits for Unit 3 employees.³ To change that practice would violate the law in Arizona that “[a] public employee has a right to rely on the statutory or contractual provisions governing benefits as they existed at the time he entered into the contract of employment.” *Godbey v. Roosevelt Sch. Dist. No. 66 of Maricopa County*, 131 Ariz. 13, 21, 638 P.2d 235, 243 (App. 1981) (citing *Yeazell v. Capins*, 98 Ariz. 109, 402 P.2d 541 (Ariz. 1965)). See also *Norton v. Ariz. Dep’t of Pub. Safety Local Ret. Bd.*, 150 Ariz. 303, 304, 723 P.2d 652, 653 (Ariz. 1986) (Public Safety Personnel Retirement System violated the plaintiff’s vested rights when it determined that the plaintiff could not reinstate his prior credit when it determined he was no longer eligible for inclusion in system following termination and rehire). Imposing that change would violate existing Unit 3 employees’ vested rights.

A change to the pensionability of paid vacation as to existing employees would also violate Article XXIX of the Arizona Constitution which provides:

Membership in a public retirement system is a contractual relationship that is subject to Article II, § 25 and public retirement system benefits shall not be diminished or impaired.

Earlier this year, the Arizona Supreme Court decided the case of *Fields v. The Elected Officials’ Retirement Plan*, CV-13-0005-T-AP, ___ Ariz. ___, ___ P.3d ___, 2014 WL 644467 (Ariz. Feb. 20, 2014). *Fields* held that a change to the State Elected Officials’ Retirement Plan’s funding policy that had the effect of reducing the amount of investment earnings that were used to fund

snapshot have also made a motion to intervene in that action contending that the change constituted violations of their vested rights, breached their employment agreements and also violated the Arizona and United States Constitutions.

³ As most of the testimony was spent on economic issues, the fact-finder clearly did not understand the testimony of the City’s witnesses on proposal M-6 regarding the vacation issue. For example, there was no proposal to amend the sick leave snapshot which is currently in litigation. The fact-finder also did not appear to understand that paid vacation leave is currently included in retirement benefit calculations.

benefit increases and also changed the formula used to calculate permanent benefit increases violated the Arizona Constitution's protection for public employee pensions, Ariz. Const. art. 29, §1. In *Fields*, the Court reaffirmed the Arizona Constitution's protections and earlier holdings including *Yeazell v. Capins*, 98 Ariz. 109, 402 P.2d 541(Ariz. 1965), stating: "As in *Yeazell*, Fields has a right in the existing formula by which his benefits are calculated as of the time he began employment and any beneficial modifications made during the course of his employment." (citing *Thurston v. Judges' Ret. Plan*, 179 Ariz. 49, 51, 876 P.2d 545, 547 (1994) (recognizing that "when the amendment [to retirement benefits] is beneficial to the employee or survivors, it automatically becomes part of the contract by reason of the presumption of acceptance")). 2014 WL 644467, at *5.

The proposed change would also violate the federal and state contract clauses. Article II, § 25 of the Arizona Constitution provides that "No bill of attainder, ex post- facto law, or law impairing the obligation of a contract, shall ever be enacted." The Contracts Clause of the United States Constitution likewise provides that "No State shall...pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts..." U.S. Const. Art. I, § 10, cl 1. See *U.S. Trust v. New Jersey*, 431 U.S. 1 (1977); *Barnes*, No. CV 2011-016638, at p. 3 (finding statute increasing contribution is substantial impairment of state contract "and no significant and legitimate public purpose exists for the breach"); *Cherry v. Mayor and City Council of Baltimore City*, 2012 WL 4341446 (D. Md. 2012) (COLA modifications were not "reasonable and necessary to serve important public interest").

Accordingly, Local 2960 urges City Council to reject the City's unlawful and unreasonable vacation snapshot proposal.

CONCLUSION

For the foregoing reasons, Local 2960 requests that the City Council reject imposition of

M-6, the City's proposed "vacation snapshot."

Dated this 21st date of April, 2014.

MARTIN & BONNETT, PLLC

By: s/Jennifer Kroll

Susan Martin
Jennifer Kroll
1850 N. Central Ave. Suite 2010
Phoenix, AZ 85004
Tel: (602) 240-6900
Fax: (602) 240-2345
smartin@martinbonnett.com
jkroll@martinbonnett.com

Attorneys for AFSCME Local 2960

CERTIFICATE OF SERVICE

I hereby certify that on April 21, 2014, I transmitted the foregoing to the following individuals via email:

Karen Peters, Chief of Staff Mayor Stanton
karen.peters@phoenix.gov

Tim Merritt, Staff to City Council
timothy.merritt@phoenix.gov

Cris Meyer, City Clerk
cris.meyer@phoenix.gov

Ben Lane, Deputy City Clerk
ben.lane@phoenix.gov,

Cindy Bezaury, Labor Relations Administrator
cindy.bezaury@phoenix.gov

[s/Jennifer Kroll](#)
Attorney for AFSCME Local 2960

CITY COUNCIL REPORT

FORMAL AGENDA

TO: Ed Zuercher
City Manager

AGENDA DATE: April 30, 2014

THRU: Lionel D. Lyons
Senior Executive Assistant to the
City Manager

ITEM: 27 PAGE: 63

FROM: Cindy Bezaury
Labor Relations Administrator

SUBJECT: PUBLIC HEARING - POSITION STATEMENTS RELATED TO
NEGOTIATIONS WITH PLEA (UNIT 4)

This report is submitted as back-up information to Item 27 on the Formal City Council agenda of April 30, 2014. This item provides an opportunity for a public hearing to present positions statements from the City and the Phoenix Law Enforcement Association (PLEA).

THE ISSUE

The meet and confer process with the City's five authorized employee organizations ("Meet and Confer units"), as outlined in Section 2-219 of the City Code, began in January 2014. Following notification to the Phoenix Employment Relations Board (PERB) that a dispute still existed after the March 1, 2014, deadline outlined in Section 2-219 of the City Code, a fact finding process was initiated with PLEA (Unit 4). As of April 14, 2014, issues remain unresolved and an agreement has not been reached with PLEA (Unit 4).

In accordance with the terms of Section 2-219 of the City Code, if no agreement has been reached by April 14, the City Manager and the employee organization shall submit to the City Council written position statements on all unresolved issues in dispute; and, the City Council shall conduct a public hearing at which the parties shall be given full opportunity to explain their respective positions on all unresolved issues.

Within ten working days following the conclusion of the public hearing, the City Council is authorized to take final action imposing terms and conditions of employment (by May 13).

OTHER INFORMATION

Attached to this report are:

- **Attachment 1: Fact Finding Report**
- **Attachment 2: Position Statement from the City**
- **Attachment 3: Position Statement from PLEA (Unit 4)**

RECOMMENDATION

This report provides backup information to agenda Item 27 on the Formal City Council agenda of April 30, 2014.

No action is required.

**UNIT 4
PLEA
PACKET**

ATTACHMENT 1

FACT FINDER'S REPORT

IN THE MATTER OF A FACT FINDING INVESTIGATION

BETWEEN

CITY OF PHOENIX)	
)	
Employer,)	
)	
and)	<i>In Re: Economic Benefits</i>
)	
PHOENIX LAW ENFORCEMENT)	
ASSOCIATION, UNIT 4)	
)	
Union.)	

BEFORE

BENNETT S. AISENBERG, FACT FINDER

Appearances

For the Employer:

Stephanie Hart, Esq.
Phoenix, Arizona

For the Union:

Michael Napier, Esq.
Phoenix, Arizona

PRELIMINARY REMARKS

This matter involves a fact finding hearing involving the City of Phoenix and the Phoenix Law Enforcement Association (PLEA), Unit 4. The issues involved regard the compensation to be paid to the employees and the matter of pension benefits.

As background, in 2010, due to the economic recession, the City requested and was granted a 3.2% cut in the salary to be paid to the public safety employees which includes PLEA. In 2012, PLEA was restored one-half of the 3.2% cut, or 1.6%. In addition, these employees have been permitted under a Memorandum of Understanding to defer sick leave and vacation

benefits when a certain trigger point was reached, at which time the deferred vacation and sick leave would be added to their base pay and pension benefits would accrue based upon the increased base pay (a practice known as pension spiking). Furthermore, the employees were permitted to utilize their uniform allowance in a similar fashion.

The following represent the proposals of the parties:

Employer

1. A continuation of the remaining 1.6% concession.
2. A reduction of the base pay by 3%, 2.1% in 2014-2015 and .9% in 2015-2016.
3. A discontinuation of the practice of permitting employees to defer sick leave and vacation time and utilize benefits under the uniform allowance for the purpose of increasing the base pay for pension purposes.
4. The estimated salary proposal is estimated to save the City \$10,000,000.00.

Union

1. Restoration of the remaining 1.6% which had been previously agreed to, to take effect as of the 2014-2015 calendar year.
2. A 2% base salary increase commencing in 2015-2016.
3. A continuation of pension spiking for those employees on the payroll as of June 30, 2014. Any new employees would not be entitled to these pension benefits.
4. The estimated cost to the City would be between \$10,000,000.00 and \$11,000,000.00.

FINDING OF FACT

1. Both sides agreed that the PLEA employees do a dangerous and difficult job. The Fact Finder adopts this position.

2. There has been economic growth since the recession of the years 2008-2010.

3. Numerous studies were introduced in comparing these employees with other members of their peer groups. The Fact Finder concludes that these employees are compensated relatively equal to their peers and the Fact Finder's findings are not based upon peer review comparison.

4. These employees have made sacrifices over the years in the area of holiday pay and overtime which have accrued to the City's benefit by way of increased savings.

5. These employees have received automatic increases as they progressed through the step process.

6. There has been a freeze on the hiring of police officers as of 2009 resulting in a decrease of approximately 454 officers.

7. The City had experienced a surplus for the fiscal years ending June 30, 2009 to 2012. At the conclusion of the fiscal year ending June 30, 2012, the City had designated \$37,890,000.00 to what is referred to as a contingency fund and had an overall fund balance of \$92,908,000.00 inclusive of the contingency fund.

8. At the conclusion of the fiscal year ending June 30, 2013, the City had \$42,658,000.00 in the contingency fund, but the fund balance had decreased by \$30,069,000.00, bringing it down to \$62,741,000.00. The decrease was partly as a result of increased services to the public as a result of what was a rosy outlook which had not been present in previous years.

Further, there had been a retail food tax of 2%, which the City reduced to 1% during this period amounting to a decrease of approximately \$15,000,000.00 in the general fund. The remaining 1% is due to be sunsetted as of 2015.

9. The preferred ratio of the contingency fund to the general fund expenditures is 5%. The current ratio is at 4%.

10. The City is claiming that it has an excess of expenses over revenue of approximately \$37,700,000.00 for the 2014-2015 fiscal year which would represent the deficit if the status quo was retained. The City has budgeted to reduce this deficit through efficiencies, deferral of equipment replacement and the like bringing the deficit down to in the neighborhood of \$29,300,000.00. It is faced with the option of either reducing services to the public or reducing the compensation paid to its public safety employees.¹

RECOMMENDATIONS

The Fact Finder adopts the Union's proposal in essence, but modifies it as in the following manner:

- a. The Fact Finder recommends that PLEA employees not receive a restoration of the 1.6% concession for the fiscal year 2014-2015.
- b. However, the Fact Finder adopts the Union's proposal insofar as he recommends that these employees receive a 3.6% (2% plus 1.6%) increase in compensation over their base pay as of June 30, 2015, to take effect in the 2015-2016 fiscal year.²

¹ The Fact Finder realizes that other groups besides PLEA have been negotiating with the City regarding wages and economic benefits. The Fact Finder has no knowledge as to the figures and considerations involved with these other groups and therefore his Fact Findings and Recommendations are made in a vacuum pertaining only to PLEA, based on the status quo as regard to these groups. In addition, civilian employees have already experienced pay cuts.

² This amounts to less than a cost of living increase when applied over the two-year period.

As a basis for these recommendations, the Fact Finder makes the following observations.

1. As of June 30, 2012 there was a fund balance of over \$92,000,000.00. It is noteworthy that the City used a portion of this surplus in 2012-2013 to restore services it had not provided in previous years. However, the Fact Finder concludes that in doing so, the City, in effect, utilized funds it could have used for increased compensation at the expense of these police officers.

2. The evidence showed that the repeal of 1% of the retail food tax deprived the City of revenue in the general fund in the amount of approximately \$15,000,000.00. The Fact Finder concludes that the decrease in revenue by the repeal was at the expense of these employees.

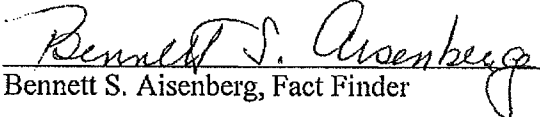
3. The evidence further showed that should the 1% that has been repealed be reinstated, it would take a period of time late into 2014 before any revenue would be recognized. The same may be true with regard to any reduction of services. For that reason, the Fact Finder recommends that no increase in compensation be given to the employees as of July 1, 2014, but the Union's proposal be adopted as of July 1, 2015, representing a composite 3.6% increase at that time.

4. With regard to the matters involving the pension, the Fact Finder recommends that the Union proposal be adopted, i.e. a continuation of pension spiking for those officers who are on the payroll as of June 30, 2014. However, this would not apply to those officers who are hired after July 1, 2014. The basis for the Fact Finder's recommendation is that these employees have foregone benefits and depended on the Memorandum of Understanding which permitted them to pension spike. They have given up something of value in exchange for the increased pension benefits at their retirement. There is a legal concept which has been recognized in the field of labor arbitration as estoppel, i.e. where one party has changed its position, and suffered detriment in reliance upon the conduct of the other party, labor arbitrators have held that the company is estopped from changing its position to the employees' detriment. See *Jim Walter Resources*, 87 LA 857 (promise to continuing insurance premium payments to retired

employees); *Armco, Inc.*, 86 LA 928 (employee incurred expenses in reliance on Company's representations these services were compensable).

The Fact Finder has made his Findings of Fact and Recommendations based upon a 2-day hearing that was held on April 9 and 10. Due to the short time period within which his Fact Findings and Recommendations were due, the Fact Finder has merely set forth broad principles which he believes support his Findings and Recommendations.

DATED at Denver, Colorado this 14th day of April, 2014.


Bennett S. Aisenberg, Fact Finder

ATTACHMENT 2

CITY'S POSITION STATEMENT



City of Phoenix
HUMAN RESOURCES DEPARTMENT



City of Phoenix Position Statement
Unresolved Negotiations for the 2014-2016 Memorandum of Understanding
With Phoenix Law Enforcement Association (PLEA)
April 21, 2014

Honorable Mayor and Council Members;

After three months of negotiations between the City of Phoenix and PLEA, the parties reached a determination of impasse on February 28, 2014. In accordance with the ordinance governing our Meet and Confer process, the parties proceeded to and completed Fact Finding. Following receipt of the Fact Finders recommendation, the parties met to continue negotiations but were unable to reach agreement.

The City of Phoenix Management proposal is as follows:

- Continuing the 1.6% concessions from the prior 2012-2014 Memorandum of Understanding (MOU)(this provides no additional budget savings since it is already assumed, but it is important to recognize the continuing nature of the concessions),
- Requesting additional concessions of 2.5% over the two years of the 2014-2016 MOU(saving \$8.2 million) in response to the budgetary shortfall; and
- Halting the use of periodic payments including sick leave, vacation leave and uniform allowance to increase pension eligible income, per Council direction of October 31, 2013.

The PLEA proposals included:

- Restoration of the 1.6% concessions from the 2012-2014 MOU(costing \$5.7 million),
- A wage increase of 2.0% (costing \$5.4 million); and
- No change to the current practice of sick leave, vacation leave and uniform allowance periodic payments that increase pension eligible income except for those new employees hired after July 1, 2014.

City of Phoenix Trial Budget

The City of Phoenix has presented a trial budget for the general fund which projects \$37.7 million in additional expenses above the projected revenue for the fiscal year 2014-2015. Various measures have been taken to reduce expenditures through efficiencies and departmental budget cuts, but the fact remains that personnel costs make up 81% of the general fund budget and represent \$27 million of the projected shortfall.

The City's options are as follows:

- Find further efficiencies,
- Eliminate services to the public,
- Eliminate civilian positions,
- Receive compensation concessions from employees
- Increase revenues, or
- some combination of the above.

As part of the Fact Finding presentations, the parties agreed that the current expenses are fairly represented. PLEA disagreed about the City's current revenue, as its financial expert believed there was more revenue than accounted for and a surplus in the General Fund. However, the Fact Finder accepted as true the City's revenue evidence and \$37.7 million deficit projection. The Fact Finder also agreed with the City's evidence that Phoenix Police Officers are not underpaid, but are paid at market. PLEA contends, however, that the City should address the budget shortfall in the following ways:

- Institute different creative efficiencies and cuts than the ones proposed;
- Project greater revenues based on the improving economy,
- Create new revenue sources, and
- Use the funds targeted for contingency or other purposes to provide compensation increases.

In addressing PLEA's suggestions, the City would argue as follows:

Different efficiencies or cuts: The following efficiencies and cuts are currently under consideration in the City's Trial Budget: cutting compensation, eliminating civilian positions, continued freeze on police officer hiring, closing senior centers, and eliminating recreation centers and youth programs. In the past City leaders have had the ability to utilize one-time fixes to balance the budget during this extended period of economic recession, but these one-time fixes have forced the City into a structural deficit position. Those fixes are no longer available or advisable and the City must continue to take measures to address our largest single expense, personnel costs, to put the City in a more stable financial position.

Projecting greater or new revenues: While the general economic outlook for the City of Phoenix is improving, the reality is that while revenues continue at a small but steady climb, expenses are increasing at a rate that is significantly higher. Revenue forecasts are based on the best economic

information available at the time – to forecast aggressively above that information would be irresponsible. Projecting new revenues requires public input and potentially a public vote—limiting the ability to include those revenues in a forecast. A limited list of options to increase revenue is posted for public comment at this time. Unfortunately the report of the Fact Finder concludes that the reduction of revenues by decreasing the Food Tax has created the deficit situation. Further, the Fact Finder concludes that this decrease in revenues has been done at the expense of the Police Officers by not having a clear revenue stream to provide pay increases. The reality is quite different: with or without the food tax, increased expenses for pension, health insurance and other employee related costs are exceeding the available revenues, and therefore constitute a significant portion of the deficit. Further, the food tax has always been set to expire on March 31, 2015, by ordinance, so depending on the food tax for long term revenue is not advisable.

Use of contingency or surplus funds: The City of Phoenix has a limited fund balance that is set aside to address emergency situations and to provide beginning fund balances that are necessary to demonstrate financial responsibility. The City needs to start each year with at least \$60 million on hand to be viewed as reasonable by financial rating agencies. The contingency fund, currently at \$44 million, provides a significant source for the beginning balance. The contingency fund needs to be higher, not lower. The use of any surplus balance in this fund for one time projects, such as capital outlay is the only appropriate application of those funds. The Fact Finder's determination that these funds should be used for ongoing employee costs during a continued economic recession is fiscally irresponsible, and would increase the existing structural deficit by using these reserves. It is clear that the Fact Finder's perception is such that use of taxpayer dollars for Police Officer pay increases is more important than the preservation and restoration of public services, including public safety services such as Central Booking. The City disagrees with that perception.

Unresolved Issues

The parties presented two issues in private hearing before the Fact Finder on April 9 and 10, compensation concessions versus compensation increases, and halting the use of sick leave, vacation leave, and uniform allowance periodic payments to increase pension eligible income. Since the hearing, the parties have met and exchanged final offers. The final offers are summarized in the following table.

Item	City Final Position	PLEA Final Position
1.Prior Concessions	Maintain 1.6% concessions for term of agreement	Restore 1.6%concessions
2.Merit Increases	Freeze for both years of the MOU	Continue annual merit increases for both years of the MOU
3.Productivity Enhancement Pay (previously called Longevity)	Freeze any increase to these payments for both years of the MOU	Continue annual increases to these payments for both years of the MOU
4.PLEA Post Employment Health Plan	Suspend payments for both years of the MOU	Continue payments for both years of the MOU
5.Deferred Compensation Plan Contribution	Reduce City contribution from 0.37% to 0.1%	Maintain City contribution at 0.37%
6.Annual Uniform Allowance (not pension eligible)	Reduce payment from \$1,150 to \$1,080	Maintain annual allowance at \$1,150
7.Optional Uniform Allowance as pension eligible income	Eliminate and add value to economic concession	Continue for both years of the MOU
8.Selling vacation on a holiday as pension eligible income	Eliminate and add value to economic concession	Continue for both years of the MOU
9.Sick Leave Periodic Sellback as pension eligible income (Public Safety Enhancement Pay)	Limit to three years of sellback as lump sum not pension eligible and add value to economic concession	Continue for both years of the MOU for all existing employees but not available to employees hired after 7-1-2014
10.Vacation Leave Periodic Sellback as pension eligible income(Public Safety Enhancement Pay)	Limit to three years of sellback as lump sum not pension eligible and add value to economic concession	Continue for both years of the MOU for all existing employees but not available to employees hired after 7-1-2014
Economic Impact of Unresolved Issues	Total Economic Concession of: 1.6% continued from 2012-2014 MOU (total all funds \$5.7 M) 1.6% new concession in first year (total all funds \$5.3 M), and 0.9% new concession in second year (total all funds \$2.9M)	Total Economic Increase of: 1.6% in concessions restored from prior agreement in first year (total all funds \$5.7M) 2.0% wage increase in second year (total all funds \$5.4M)

Recommendations

COMPENSATION: The Fact Finder recommended that in the Fiscal Year 2014-2015, that the City not restore the 1.6% concessions from the 2012-2014 MOU and that no additional concessions be required.

The Fact Finder went on to recommend that in Fiscal Year 2015-2016, that the PLEA unit members receive a 3.6% increase over base pay, which would cost \$9.8M.

The Fact Finder accepted as true the City's evidence regarding its revenue and expenses. So what funds did he anticipate the City would use to pay for these increases? The Fact Finder believes the City should increase revenues and/or take the money out of fund balance to pay these costs.

The City disagrees with these recommendations. They are fiscally irresponsible and divisive among employee groups. Without modest concessions from PLEA, that match concessions from all City employees, service cuts will be necessary. This would not be in the best interests of our community.

PENSION SPIKING: The Fact Finder recommended that the Public Safety Enhancement Pay provisions and any other pension spiking items be continued for all Police Officers on the payroll as of June 30, 2014, but not for any hired thereafter. The basis for the Fact Finder's recommendation appears to be that the City is estopped from making this change.

In 2013, the City Manager received the following direction from Mayor and Council:

"The Public Safety Enhanced Regular Compensation payments made upon reaching certain sick and vacation milestones, and the enhanced pay instead of uniform allowance for Police personnel after 17 years, also are recommended not to be considered as compensation for the purposes of calculating pension."

Items 7,8,9, and 10 in the table above represent payments made under the current Memorandum of Understand with PLEA that are paid as additional pension eligible compensation that Mayor and Council recommended not be considered for purposes of calculating pension. The City's proposal does not eliminate the ability of PLEA to continue to receive the benefit of sick leave, vacation leave or the associated payouts. The City's proposal does not discontinue the payment of uniform allowance. The City's proposal complies with the direction of Mayor and Council to end the practice of paying these amounts as pension eligible compensation that is included in calculating Final Average Compensation for pension purposes.

It must be further noted that nothing in the MOU addresses whether the payments and compensation at issue are considered compensation for the purposes of calculating pensions. As such, any estoppel argument would not be applicable to this particular situation.

Conclusion

The City agrees with our employees that the prospect of continued concessions is difficult and has an impact on the morale of those employees we count on most for providing core customer services to our citizens and our community. The City also agrees that Police Officers perform a dangerous task. This is why the City funds a generous compensation package for Police Officers with many different forms of compensation beyond base pay, including a costly but necessary pension system. The pay scale, benefits package, and pension system recognizes the important work of our Police Officers. However, treating all City employees equitably, which includes shared sacrifice among all employee groups, during these difficult times is the one tool the City of Phoenix has consistently used to demonstrate the importance of every employee's contribution to the services delivered across our community.

The City final offer to PLEA includes the 1.6% continued concession from the 2012-2014 MOU, an additional 1.6% concession in the first year of the 2014-2016 MOU, and an additional concession of 0.9% in the second year of the 2014-2016 MOU. Included in that final offer is an end to the pension eligibility for sick, vacation and uniform allowance periodic payments. The City recommends that Mayor and Council implement this final offer.

The City encourages Mayor and City Council to consider the negative impact of providing a different compensation settlement to any single union, and to implement the City's Final Offer for a 2014-2016 Memorandum of Understanding with PLEA.

Respectfully submitted,



Cindy Bezaury

Assistant Human Resources Director

Labor Relations Administrator

ATTACHMENT 3

UNION'S POSITION STATEMENT

Phoenix Law Enforcement Association

Position Paper for City Council

April 30, 2014

I. Introduction

Rank-and-file Phoenix police officers have had significantly lower take-home compensation over the past 4 years than in prior years, while at the same time battling substantially increasing violence on the streets, demand for increased productivity, and, at home, rising inflation. Phoenix police officers are compensated below the average of other sworn public safety ranks; in particular, rank-and-file Phoenix firefighters. In addition, the City has the ability to pay, in large part because of cost savings of hundreds of millions of dollars generated by Phoenix police officers and the fact that the City historically has an ending general fund balance surplus, tens of millions of dollars above the budgeted contingency fund. For these reasons, and more, PLEA urges the City Council to adopt the independent fact-finder's decision.

II. Background

On April 9 –10, 2014 PLEA and the City of Phoenix entered into fact-finding on the disputed issues of the 2014 – 2016 MOU. The disputed issues were as follows:

Economics:

Year 1: PLEA 1.6% concessions restored / City: 2.1% Additional concession

Year 2: PLEA 2% base wage increase / City 0.9% Additional concession

Pension:

PLEA: Apply pension changes only to those hired after July 1, 2014 / City: apply pension changes to all

On Monday April 14, 2014 the fact-finder issued his recommendations for settling the dispute.

III. Fact-Finder Recommendations

Economics:

Year 1: Status Quo (current 1.6% concession to remain in effect)

Year 2: 1.6% concessions restored and a 2% base wage increase

Pension:

Apply pension changes to only officers hired after July 1, 2014

Findings of Fact:

The Fact-Finder found that Phoenix police officers have made significant sacrifices by the way of a severe reduction of overtime pay and reduced ability to earn extra holiday pay over the past few years. He found that the Phoenix police department is at least 454 officers fewer than it was in its peak of 2009. He found evidence that the City routinely ends every fiscal year with a general fund ending balance

surplus. This amount is tens of millions of dollars above the amount listed as the contingency fund. This has been occurring for at least the past 5 fiscal years.

The Fact-Finder made these recommendations looking at the issue only as it relates to Phoenix police officers and no other employee groups. He observes that the recommended 2nd year increase is still less than a cost of living increase when applied over a two year period of the MOU. He noted that the City used some of the ending fund balance for this budget year to restore services at the expense of compensating police officers. He concluded that the City reduction of the food tax is directly related to the present City's call for reduced compensation for police officers.

The Fact-Finder also concluded that the pension changes can only be legally made to officers hired after July 1, 2014, noting that police officers have sacrificed for years use of their leave time with the promise that it would be able to be used towards their pensions and to change that in mid-stream is unfair.

History

In 2010, police officers voluntarily reduced their compensation by 3.2% to assist the City through difficult times. In 2012, PLEA and the City went to Fact-Finding; at that time PLEA was insisting that all concessions be restored (as we were promised) and PLEA wanted a raise in year 2. The City's position was that it could

only afford to restore 1.6% of the concession and only grant an increase in year 2 if certain triggers were met. The Fact-Finder in 2012 agreed almost entirely with the City's position. PLEA respected the process in 2012 and came to an agreement with the City based on the independent Fact-Finder's report.

It appears that the City is refusing to respect the process in 2014. They held PLEA to the Fact-Finder's decision in 2012, even scolding PLEA that they expected us to abide by the decision and respect the process. Fast-forward two years and all PLEA is doing is asking the City to respect the process and accept the Fact-Finder's decision. This is what the creators of the ordinance had envision in 1975.

City Financial Position (Ability to Pay)

The City is in the financial position to afford this award. The City and State economy is recovering at a healthy pace. The City, a leader in the United States in job creation (especially high-paying IT and finance jobs) and Maricopa County are adding residents at a pace only slower than Harris County, TX. Revenues have been increasing for the past three fiscal years and will continue to increase going forward.

The Fact-Finder found that the City has an established history of a substantial general fund ending balance. In layman's terms, the City over-estimates

budget costs and under estimates revenues. In doing so, at the end of the fiscal year, the City has consistently shown between \$30,000,000 and \$70,000,000 surplus in the general fund. This is on top of the currently \$44,000,000 designated as “contingency fund.” It is argued that PLEA is requesting the City spend the “contingency fund” to pay for the police officers MOU. Nothing could be farther from the truth. If the city council approves the Fact-Finder’s recommendations, the City will not have to spend a penny out of the “contingency fund.”

In late 2013 the city council elected to reduce the food tax by 1%. Part of the caveat of this reduction was no reduction in services, in particular public safety services. The Fact-Finder found that there is convincing evidence that the reduction in the food tax is directly tied to the current predicament the city council perceives the City in. The City argues that it must either enact service cuts or cut the compensation of the hard working Phoenix police officers. If this is so, the food tax reduction was premature. Actually, as the Fact-Finder concluded, there is a means, other than resurrecting this revenue stream, to achieve no cuts to compensation and significantly fewer cuts (or none) to services. Yet, the community (the bosses) have indicated by acclamation that they want the food tax to be brought back to 2% and extended, the citizens’ message at every budget meeting.

Police Officer Concessions / Cost Savings

Phoenix police officers have already sacrificed, making significant concessions / cost savings over the past four years:

- 3.2% concession for 2010 – 2012: In 2010 Phoenix police officers agreed to reduce their total compensation 3.2% for a period of two fiscal years. (20) **This saved the City 21.6 million dollars from 2010 to 2012.**
- 1.6% concession for 2012 – 2014: The 3.2% concession was promised back to Phoenix police officers in 2012; however, realizing that the City was still recovering from the economic downturn, Phoenix police officers agreed to continue 1.6 % of the concession for another two years. (21) **This has saved the City 10.8 million dollars over the past two years.**
- Reduction of Overtime pay: Since 2010 overtime pay for Phoenix police officers has been substantially reduced, from 25 million dollars in fiscal year 2009 to 17.5 million dollars in fiscal year 2010. The reduction has remained consistent since fiscal year 2010. (22) This is a reduction of 30%. **The cumulative savings and wage loss sustained by Phoenix police officers is 37.5 million dollars over the past 5 fiscal years.**
- Reduction of working holidays: Previously, all officers were able work holidays, receiving their normal pay plus an additional 8 hours of holiday pay. For the past three years only officers assigned to patrol have been able to work

on holidays and of those only a minimum number have been allowed to work, with the others being sent home. This data has only been tracked for the past three fiscal years. (23) 2010 – 2011: patrol reduction \$884,000, estimated reduction of officers (non-patrol) \$500,000.

2011 – 2012: patrol reduction \$807,000, estimated reduction of officers \$500,000.

2012 – 2013: Patrol reduction \$654,000, estimated reduction of officers \$500,000.

Total cumulative savings: 3.85 million dollars

- Reduction in number of sworn officers: The city of Phoenix has not hired a new sworn police officer since 2008. (The exception being 11 reserve officers transitioned to regular officers July 2013.) This has left the department over 500 officers below its peak in 2009, (24) resulting in substantial cost savings to the City, at the same time, despite thinning ranks, police officers have been required to significantly increase their productivity; their work load has increased. (25) Savings are calculated using a conservative total compensation number of \$120,000 per position per year.

1/1/2009: 3332 total sworn

1/1/2010: 3216 total sworn, 116 fewer than 1/1/2009 (**savings for 2010
\$13,920,000**)

1/1/2011: 3121 total sworn, 211 fewer than 1/1/2009 (**savings for 2011
\$25,320,000**)

1/1/2012: 3039 total sworn, 293 fewer than 1/1/2009 (**savings for 2012
\$35,160,000**)

1/1/2013 2967 total sworn, 365 fewer than 1/1/2009 (**savings for 2013
\$43,800,000**)

1/1/2014 2878 total sworn, 454 fewer than 1/1/2009 (**savings for 2014
\$54,480,000**)

**Total cumulative savings from reduction of officers over past 5 years:
\$172,680,000**

**The total savings Phoenix police officers provided to the City over past 5
years exceeds 214 million dollars!**

Phoenix Police Officers' Standing Compared to Other Sworn

Ranks/Parity:

Peer Comparison

Phoenix police officers stand at the bottom of the compensation charts when compared to all other sworn ranks. The City commissioned a study in 2012 (Segal Study) which evaluated total compensation of various City job classes, including all sworn classifications. This study found Phoenix officers to be 98% of the market, while all other sworn ranks ranged from 105% to 120% of market, between 7% and 22% above rank and file Phoenix officers. Phoenix police officers are **2% below the market average**, while the other sworn ranks are collectively 7.5% above the market average. Since the time of this study, most agencies in the valley metropolitan area have provided their sworn officers with an average cost of living increase of 3.2%, with some agencies increasing salary by up to 16%. Only 1/3 of the valley agencies did not increase salary during this period. This has all occurred during a time in which Phoenix officers have provided significant concessions / cost savings to the City.

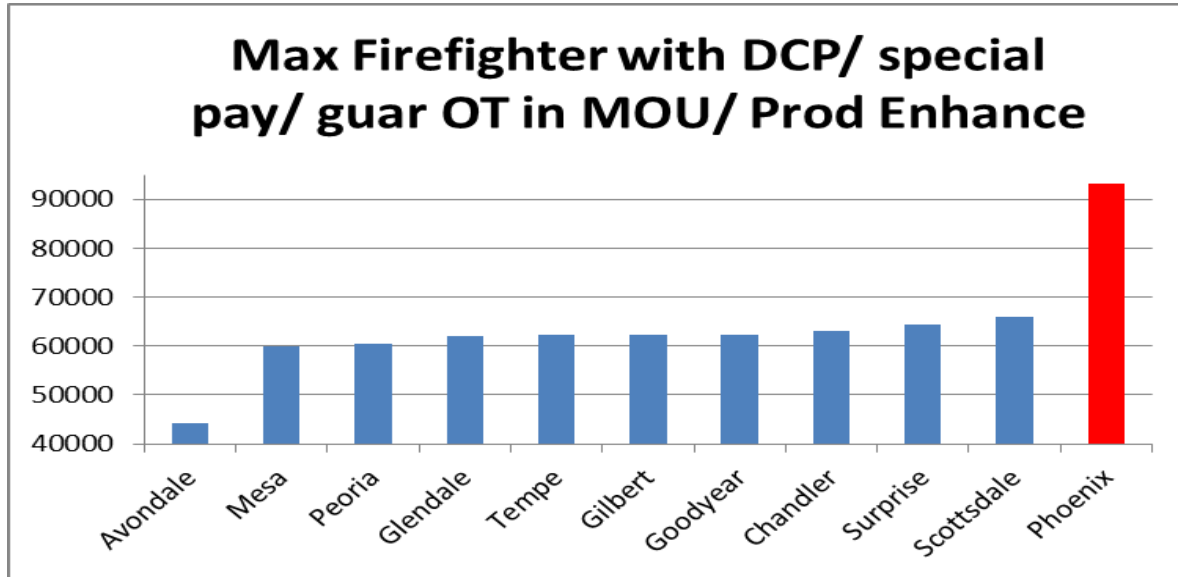
The City will argue that even though they called it a total compensation study, it really wasn't. This fact alone shall cause credibility issues with the City. They suggest that when CEP and longevity are added Phoenix officers compare

more favorably to surrounding jurisdictions. While on its face this might be plausible, the City is unable to conduct an apples to apples comparison (as the Segal study did) as the City insists on comparing a Phoenix officer's "all-in" compensation (which doesn't occur until 22 years of service) to other agencies "base" salaries.

However, to appease the City a comparison was conducted that showed Phoenix police officers "all-in" compensation to the base salaries of surrounding agencies. The same was also performed for all other sworn ranks. While this oranges-to-apples comparison does improve Phoenix officer's compensation compared to other agencies, it also significantly improves the "all-in" comparisons of all other sworn ranks. Phoenix rank and file officers come in at 14% above the market average. All other sworn ranks are above the market average collectively at 32.3%. This leaves Phoenix police officers 17.7% below all other rank and file officers.

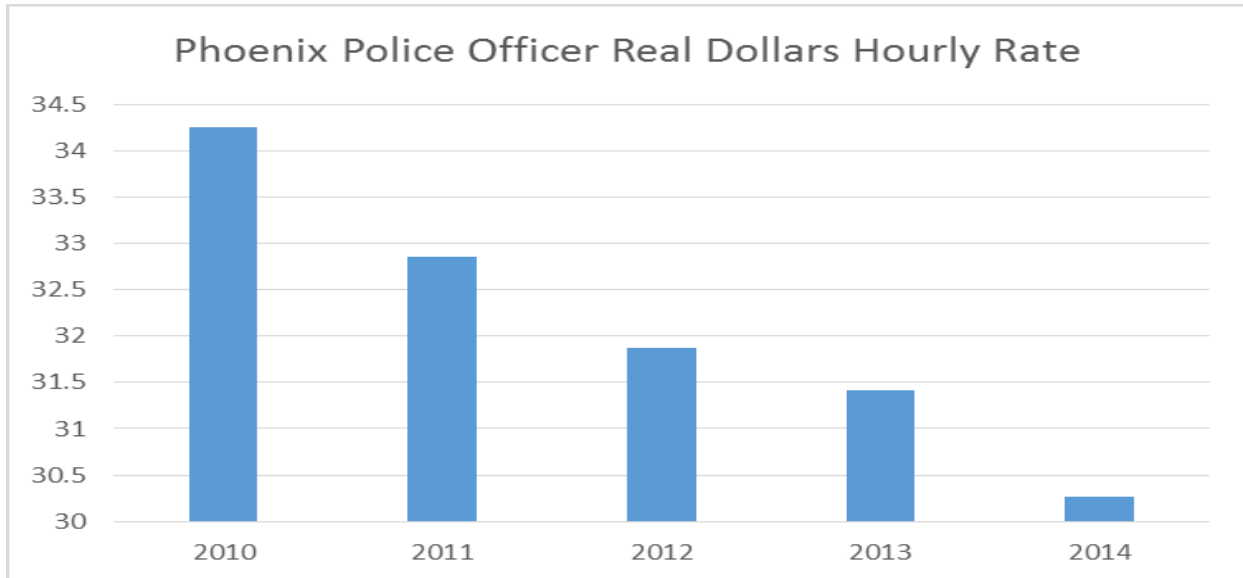
This is an especially startling comparison when matched against rank and file Phoenix firefighters. **Phoenix firefighters are 52.5% above the market average. This is 38.5% above where Phoenix police officers stand.** The City has always stated that police and fire have parity, but apparently not when it comes to compensation. One can see that the City directed total compensation study is still relevant and even the oranges-to-apples comparison shows that Phoenix police

officers are by far the lowest compensated rank when compared to their peer groups.

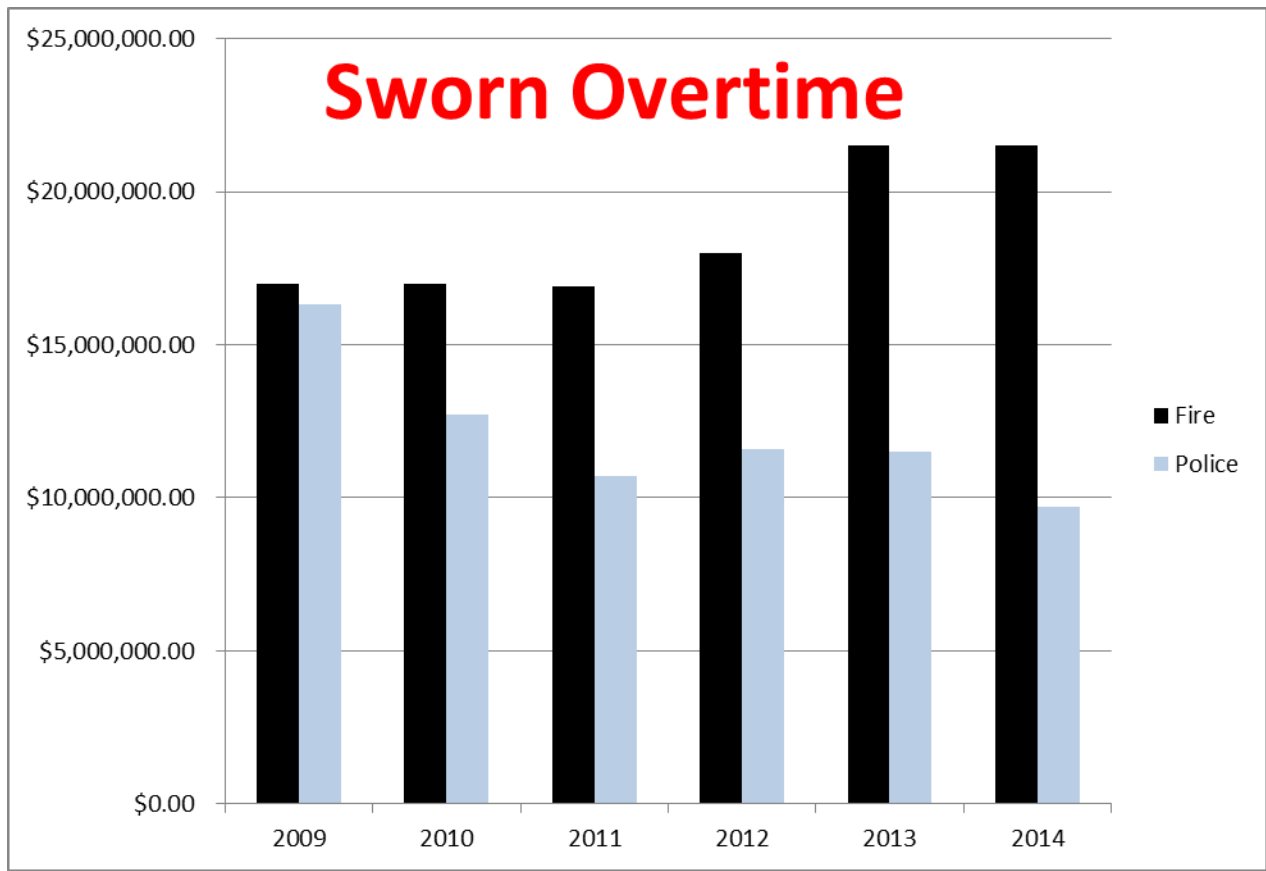


Take Home Pay Comparison

Phoenix police officers have seen significant cuts to their take-home pay over the past four years. In real dollars their hourly rate has decreased from a peak \$34.26 per hour to \$30.26 over the last five years. This represents a decrease of 15%. While the City has been balancing the budget on the backs of rank-and-file police officers, the same cannot be said about Phoenix firefighters. Firefighters have enjoyed significant gains to their overtime wages and have not seen their ability to work holidays reduced, which is in direct contrast to what officers have had to endure over the past four years.

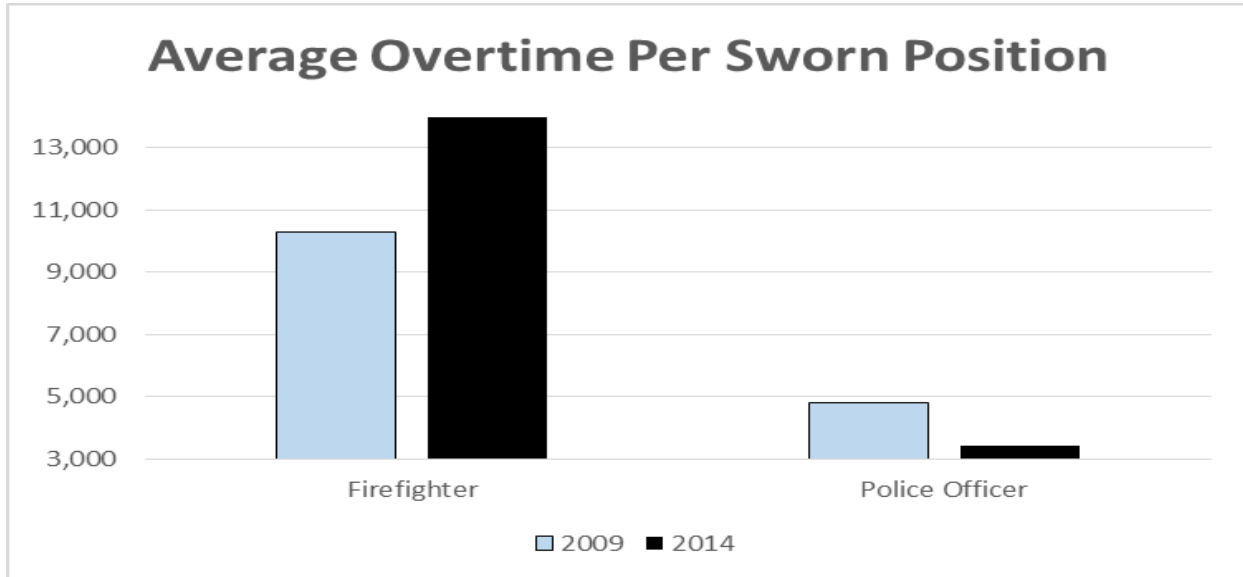


At the same time Phoenix officers have significantly sacrificed with regards to compensation, Phoenix firefighters have enjoyed wage increases over the past four years. In just overtime pay alone, they have increased from 16.8 million dollars in 2009 to 21.5 million dollars to today. This represents an increase of over 30%. Plus, they have not had their ability to work holidays and receive that extra pay reduced. It appears that when it comes to take-home pay, Police officers suffered a severe overtime and holiday pay decline but Phoenix firefighters continued to increase their overtime earnings and have not had their ability to work holidays removed. That's not parity.



When overtime is evaluated as the amount per sworn firefighter or police officer, the overtime differences become even more dramatic. In fiscal year 2009 Fire overtime per sworn position was approximately \$10,300 (per position). For the last two fiscal years that amount has increased to approximately \$14,000 per position or an INCREASE of \$3,700 or 36%. Conversely, sworn Police overtime has been reduced by a significant margin. In fiscal year 2009 Police overtime per sworn position was approximately \$4,800 (per position). Over the last 4 fiscal years that number has been REDUCED to its current amount of \$3,400. This represents a REDUCTION of \$1,400 or 30%. Another way to summarize this

disparity in sworn overtime is that over the last 5 years firefighters have seen their overtime increase in terms of dollars more than the entire amount of the average police officer's yearly overtime pay. **The average firefighter receives 400% more overtime per year than the average police officer.**



Merits and Longevity

The City will argue that Phoenix police officers have received merit and longevity increases the past two years. While theoretically officers would have received merit increases, the City has not hired any Phoenix police officers in almost 6 years (except 11 reserves in 2013). This means that very few officers received merit increases. Almost all officers have not been eligible for merits increases for several years.

With regard to longevity, the increases have been minimal. The average officer receives \$80.00 per year in longevity. (32) Using the City's logic, an \$80.00 per year increase is significant; yet, this is illogical and when coupled with the over **\$214,000,000 (214 million dollars)** in concessions / cost savings Phoenix officers have provided over the past four years, placing the average Phoenix police officer in an untenable compensation situation.

More Risk – Less Pay

Phoenix police officers have done a tremendous job at reducing crime, even while the Department has lost over 500 sworn officers. Total crimes have fallen from 110,423 in 2002 to 69,942 in 2013. (40) This is a reduction of crime of almost 40% over the past decade. Unfortunately, the same trend cannot be said for violence involving Phoenix police officers. In 2013 Phoenix police officers were involved in 31 officer involved shootings. Already in 2014, Phoenix police officers have been involved in 15 officer involved shootings, on pace for 60 officer involved shootings this year, almost double the amount from 2013. This is an occupation that commands every consideration not only for officer safety, but, as well, that the officers be fairly compensated for performing this high risk job.

Benefits: Vacation Buy Back; Periodic Payment of Additional Sick Leave; Optional Uniform Conversion

PLEA did not submit proposals relating to vacation buyback, sick leave and uniform conversion. The City has proposed to eliminate these benefits. Vacation buyback has been in every MOU since 1988 – 1990. For over 28 years all Phoenix police officers have planned their retirements around this important benefit. Once an officer has at least 17 years of service and has reached maximum vacation carry-over, they can elect to no longer receive vacation time and instead receive an increase to their base salary. This may be elected for a maximum of 6 years. In addition, these vacation buy-back benefits save the City millions of dollars a year in productivity and overtime costs. Furthermore, the periodic payment of vacation and sick leave saves the City a significant amount of money. When people use leave, the City has to backfill their position with someone on overtime. There is a substantial higher cost to paying an officer overtime when someone calls in sick then there is for paying the sick leave amount at base wage. The periodic payment of vacation and sick leave saves the City taxpayers between 32% and 38% per officer that elects the benefit.

Sick leave conversion has been in every MOU since 2002. For the last 12 years all Phoenix police officers have planned their retirements around this important benefit. Once an officer has at least 1714 hours of sick leave in their

banks, they can elect to no longer receive sick leave and instead receive an increase to their base salary. This may be elected for a maximum of 6 years.

Optional uniform conversion has been in every MOU since 2006. For the last 8 years all Phoenix police officers have planned their retirements around this important benefit. Once an officer has at least 17 years of service, they can elect to forgo the yearly uniform allowance and instead receive the uniform allowance in monthly installments. The amount is reduced to take into account the City's portion of pension payment; hence, this benefit is a cost neutral benefit to the City. This may be elected for a maximum of 6 years.

In a sign of good faith, PLEA proposed to eliminate these benefits for officers hired after July 1, 2014. The Fact-Finder agreed with PLEA's position that it is wrong and can subject the City to litigation if the City ends these benefits for current employees. In his decision, he found that police officers have forgone the benefits of their sick and vacation leave with the promise that they would be able to use it later towards their pension. PLEA urges that the City Council adopt the Fact-Finder's recommendation.

Pattern Bargaining

The City is insistent that each group should receive the same economic package. This is a practiced known as pattern bargaining. This is the first year that

all 5 Meet and Confer groups have gone to fact-finding. Each group presented the merits of its position. One element of the Fact-Finder's conclusions was that Phoenix police officers provide a valuable service. It is readily apparent that police risks do not equate to any other group. Police, because of those risks, are unique. To hold them to the same terms, imposed or not, achieved with other groups is not realistic nor cognizant of the risk of life of first responders in this ever increasingly violent society. If the City refuses to treat the units on their own merits, the City inherently places no value on the risk to life nature of the job of policing. Police officers should not have to bargain for all 5 units; nor should any other unit bargain for police. The Fact-Finder's decision is tailored to, and should apply to, as intended, only police officers.

Remember that PLEA has provided several disparities in regard to sworn compensation. **If there was true parity and pattern bargaining, why have Phoenix firefighters received on average 36% more overtime in the last 5 years while Phoenix police officers have received 30% less overtime.** This doesn't even account for the fact that Phoenix police officers receive on average over \$10,000 less each than firefighters per year in overtime. The independent fact-finder was correct in his ruling that Phoenix police officers should not be cut and receive an increase in year 2 of the MOU.

IV. Conclusion

How much is enough? Phoenix officers have sacrificed for the last 4 years. They have given the City over \$217,000,000 in concessions and cost savings. Over 200 million dollars and the City still says that is not enough. In January, the City sent an insert in the water billing to all City residents claimed financial good health, stating how well the City was doing financially. All of a sudden, in negotiations the City cries poverty, as always seems to be the case. Yet, also always the case is a healthy general fund year- end balance. Phoenix police officers are only asking for the City to respect the process (just as PLEA did two years ago) and award the Fact-Finder's decision of a status quo contract for fiscal year 2015 and the 1.6% concession restored along with a cost of living increase of 2% (1.6% total compensation) that doesn't even keep up with the pace of inflation for fiscal year 2016. The City has experienced significant revenue growth this fiscal year and is predicting the largest increase in revenue in the 2014 – 2015 fiscal year since the 2006 -2007 fiscal year. It's all about priorities, a \$14,000,000 increase to the rainy day fund, leaving over 500 sworn police officer positions vacant, while at the same time funding other projects, like a \$650,000 garbage study.

At the same time, Phoenix police officers remain severely under compensated compared to their public safety counterparts, particularly Phoenix

firefighters who make comparatively 38.5% more. This doesn't even account for the severe decreases in overtime and holiday compensation that Phoenix police officers endured while at the same time Phoenix firefighters have seen their overtime pay skyrocket. The lowest compensated sworn position is that of the Phoenix rank and file police officer, while at the same time, police officers bear the largest tally of City employees killed in the line on duty at 35, including Detective Hobbs who was just gunned down the beginning of March after getting into a broad daylight shootout with a violent murder suspect. Phoenix officers have sacrificed with concessions upon concessions, doing more work with 20% less officers (500 positions), and some, tragically, have paid the ultimate sacrifice with their lives. These sacrifices should not be overlooked as they are when the City treats officers as they would any other group.

The Fact-Finder's decision is reasonable and well thought out, restoring Phoenix police officers the prior cuts as they were promised two years ago and it is affordable to the City of Phoenix. \$217,000,000 in sacrifices is enough.

PLEA urges the City Council to accept the Fact-Finder's decision:

Year 1: Status Quo (no restoration of 1.6% concession)

Year 2: 1.6% concession restored and a 2% base wage increase

Leaving periodic payment of vacation and sick leave and optional uniform conversion as is for current employees while removing the option for officers hired after July 1st, 2014.

_____04/21/14_____

Date

Will Buividas

One of the Checklist items relates to Google “Huts,” which are structures of approximately 300 square feet, housed on 1,400-square-foot sites, to be used to house network equipment and fiber that are part of Google’s network throughout Phoenix to provide internet and television services to city residents and public facilities. Each Hut supports Google fiber service to approximately 20,000 residents. As part of the Checklist, Google requested the City develop a Hut License Agreement. It is anticipated that Google may eventually request approximately 30 to 40 Network Hut sites on City-owned property, based upon residential demand for Google Fiber services in localized areas across the city. City staff will review and approve each site.

OTHER INFORMATION

Between May and the end of 2014, Google will evaluate the Checklist information provided by the cities and will complete a detailed study of local factors that could affect construction such as topography, housing density, and the condition of local infrastructure. By the end of 2014, Google hopes to announce the next cities to receive the Google Fiber service.

More information about current Google Fiber cities, and proposed expansion study areas is available at: <https://fiber.google.com/about/>.

The Google Fiber City Checklist is available online at: <https://static.googleusercontent.com/media/fiber.google.com/en/us/about/files/googlefiber-city-checklist-2-24-14.pdf>.

RECOMMENDATION

April 30, 2014 Formal Agenda Item 59, Master License Agreement for Use of City Property for Installation of Network Huts by Google, requests that the City Council authorize the City Manager, or his designee, to negotiate and enter into a master license agreement with Google for use of City property at various locations throughout the city for installation and maintenance of “Network Huts” to be used to house network equipment and fiber that are part of Google’s fiber optic network throughout Phoenix to provide internet and television services to city residents and public facilities.

CITY COUNCIL REPORT

FORMAL AGENDA

TO: Ed Zuercher
City Manager

AGENDA DATE: April 30, 2014

THRU: Lionel D. Lyons
Senior Executive Assistant to the
City Manager

ITEM: 86 PAGE: 123

FROM: Cindy Bezaury
Labor Relations Administrator

SUBJECT: RESOLUTION APPROVING LIUNA, LOCAL 777 (UNIT 1) MOU

This report is submitted as back-up information to Item 86 on the Formal City Council agenda of April 30, 2014, for the resolution approving the Memorandum of Understanding (MOU) between the City of Phoenix and the Laborers' International Union of North America (LIUNA), Local 777 (Unit1).

The City Manager, Human Resources Director, and Labor Relations Administrator recommend approval of this MOU.

Attachment:
Proposed MOU between the City of Phoenix and LIUNA, Local 777 (Unit 1)

UNIT 1
LIUNA 777
2014-2016
DRAFT MOU

MEMORANDUM OF UNDERSTANDING

2014-2016

BETWEEN

LABORERS' INTERNATIONAL UNION

OF NORTH AMERICA,

LOCAL 777, AFL-CIO

AND

CITY OF PHOENIX

COVERING

FIELD UNIT I

TABLE OF CONTENTS

ARTICLE 1: RIGHTS 5

Section 1-1. Purpose..... 5

Section 1-1A. Recognition 5

Section 1-2. City and Department Rights 6

Section 1-3: Union Rights..... 6

Section 1-4. Rights of Unit Employees 13

Section 1-5. Prohibition of Strikes and Lockouts..... 17

Section 1-6. New Positions / Classifications 18

ARTICLE 2: GRIEVANCE / ARBITRATION / LABOR MANAGEMENT..... 19

Section 2-1. Grievance Procedure..... 19

Section 2-2. Labor-Management Committee..... 23

Section 2-3. Notification..... 24

Section 2-4. Health and Safety Committee 24

ARTICLE 3: COMPENSATION / WAGES 25

Section 3-1. Wages 25

Section 3-1A. Productivity Enhancement Pay..... 26

Section 3-2. Overtime..... 28

Section 3-2A. Call-Out Pay 29

Section 3-3. Out-Of-Class Pay 30

Section 3-4. Sick Leave Conversion at Retirement 31

Section 3-5. Shift Differential Pay 32

Section 3-5A. Weekend Shift Differential Pay..... 32

Section 3-6. Stand-By Pay 33

Section 3-7. Show-Up Time 33

Section 3-8. Jury Duty Pay 33

Section 3-9. Deferred Compensation Program.....	34
ARTICLE 4: HOURS OF WORK / WORKING CONDITIONS.....	34
Section 4-1. Hours of Work.....	34
Section 4-2. Rest and Lunch Periods.....	36
Section 4-3. Clean-Up Time	36
Section 4-4. Seniority	37
Section 4-5. Transfer Program	37
ARTICLE 5: BENEFITS	37
Section 5-1: Employee Assistance.....	37
Section 5-2: Health and Dental Insurance	38
Section 5-3: Life Insurance	38
Section 5-4. Long Term Disability Insurance.....	39
Section 5-5. Holidays and Vacation Pay.....	40
ARTICLE 6: MISCELLANEOUS.....	43
Section 6-1. Saving Clause.....	43
Section 6-2. Copies of MOU	43
Section 6-3. Aid to Construction of Provisions of MOU.....	43
Section 6-4. Part-Time Employees.....	44
Section 6-5. Term and Effect of MOU.....	44
ADDENDUM.....	46

PREAMBLE

Whereas the well-being and morale of employees of the City are benefited by providing employees an opportunity to participate in the formulation of policies and practices affecting the wages, hours and working conditions of their employment; and

Whereas the parties hereby acknowledge that the provisions of this Memorandum of Understanding (hereinafter "Memorandum") are not intended to abrogate the authority and responsibility of City government provided for under the statutes of the State of Arizona or the charter or ordinances of the City except as expressly and lawfully modified herein; and

Whereas the parties agree that the Phoenix Employment Relations Board (PERB) unit certification reflects that there exists a clear and identifiable community of interest among employees covered by this Memorandum; and

Whereas the parties, through their designated representatives, met and conferred in good faith pursuant to the Meet and Confer Ordinance in order to reach agreement concerning wages, hours, and working conditions of employees in Field Unit I; and

Whereas it is understood by the parties that any hours or fractions of hours spent outside the employee's work shift in pursuit of rights and benefits provided by this Memorandum, shall not be counted as hours or time worked for the purpose of calculating and paying overtime;

Now therefore, the City of Phoenix, hereinafter referred to as the "City" and Laborers' International Union of North America, Local 777, AFL-CIO, hereinafter referred to as the "Union", having reached this complete agreement concerning wages, hours and working conditions for the term specified, the parties submit this Memorandum to the City Council of the City of Phoenix with their joint recommendation that the body resolve to adopt its terms.

ARTICLE 1: RIGHTS

Section 1-1. Purpose

It is the purpose of this Memorandum of Understanding (hereinafter "MOU") to continue and maintain harmonious relations, cooperation and understanding between the City and its employees; and to set forth the full and entire understanding of the parties reached as a result of good faith meeting and conferring regarding wages, hours, terms and conditions of employment of the employees covered hereby, which understanding the parties intend jointly to submit and recommend for approval and implementation to the Mayor and City Council.

Section 1-1A. Recognition

The City of Phoenix recognizes Laborers' International Union of North America, Local 777, AFL-CIO, (hereinafter "Union") as the sole and exclusive meet and confer agent pursuant to the Meet and Confer Ordinance for all regular employees in positions as certified or hereafter certified by the Phoenix Employment Relations Board (PERB) as constituting Field Unit I. This includes the following positions in Unit I:

All regular full-time and part-time field employees employed by the following City of Phoenix Departments: (1) City Clerk – Mail Room, (2) Human Services – Laborers, (3) Parks & Recreation – Division Operations, Sports and Turf Management, Specialized Maintenance, and Aquatics Division, (4) Public Transit – Minibus Operators, (5) Public Works – Solid Waste Collections and Disposal Divisions, Landfill Operations and Transfer Stations, and (6) Street Transportation – Street Maintenance Division, Sign Manufacturing, Street Marking and Parking Meter Sections.

Whenever any words used herein in the masculine, feminine or neuter, they shall be construed as though they were also used in another gender in all cases where they would so apply.

The City will notify the Union, in writing, thirty (30) calendar days in advance before any new position or classification is placed permanently within any Field Unit. The parties agree to consult on the inclusion or exclusion of new classification(s) in Unit I and will thereafter refer any such matter to PERB for appropriate action.

If any conflict exists between the language in the Administrative Regulations or employment/department rule and the language of this MOU, the MOU shall prevail.

Section 1-2. City and Department Rights

- A. The Union recognizes that the City has and will continue to retain, whether exercised or not, the sole and exclusive right to operate, administer and manage its municipal services and work force performing those services in all respects except as expressly modified by this MOU.
- B. The City Manager and Department Heads have and will continue to retain exclusive decision-making authority on matters not officially and expressly modified by specific provisions of this MOU, and such decision making shall not be in any way, directly or indirectly, subject to the grievance procedure contained herein.
- C. The exclusive rights of the City shall include, but not be limited to, the right to determine the organization of City government and the purpose and mission of its constituent agencies, to set standards of service to be offered to the public, and through its management officials to exercise control and discretion over its organization and operations, to establish and effect Administrative Regulations and employment rules and regulations, consistent with law and the specific provisions of this MOU to direct its employees, to take disciplinary action for just cause, to relieve its employees from duty because of lack of work or for other legitimate reasons, to determine the methods, means and personnel by which the City's services are to be provided, including the right to schedule and assign work and overtime, and to otherwise act in the interest of efficient service to the community. Nothing herein shall be construed to diminish the rights of the City under the Meet and Confer Ordinance.

Section 1-3: Union Rights

- A. **No employee shall suffer reprisal for the exercise of rights granted by this MOU.**
- B. **Mutual Benefit Activity Clause**

The Phoenix community benefits from harmonious and cooperative relationships between the City and its employees. The Phoenix City Council has determined there are specific activities that confer a public benefit, a dual public/private purpose or an exclusively public purpose for which up to three (3) bargaining unit members of LIUNA Local 777 (LIUNA), will perform duties as outlined below.

C. Reporting And Accountability Of Authorized City Business Time

In order to ensure the City maintains control over public resources the City will identify a Designee in order to ensure Authorized Employees are providing the services consistent with the findings herein. The City's Designee shall work directly with LIUNA in order to confirm any and all paid activity of the Authorized Employees is consistent with the activity approved below. The Union shall submit monthly reports to the City's Designee documenting the City Business of the Authorized Employees and any leave used during that pay period. The City has the right to audit and challenge time cards submitted. In the event there is disagreement, the parties will meet to discuss the matter at the request of LIUNA or the City. The results of the audit may result in LIUNA reimbursing the City for activity not deemed City Business under this Agreement.

D. City Business Time

The City has determined that there are activities that confer a public benefit, a dual public/private purpose or an exclusively public purpose for which members of LIUNA should be released from their official duties to perform. LIUNA agrees that it will perform the following activities and acknowledges that it will receive City Business time for the time spent performing them:

- 1. Authorized Employees will attend trainings that have been authorized in advance by the City.**
- 2. Authorized Employees will facilitate communication between employees and management ensuring a safe and efficient delivery of services, as well as developing a heightened degree of labor/management cooperation.**
- 3. In coordination with management, Authorized Employees will communicate new programs and/or policy changes to the broader City workforce that are members of the bargaining unit in order to streamline service delivery and ensure the timely implementation of changes in policy or programs. Changes in safety or security policy and procedure will be prioritized.**
- 4. In coordination with management, as a means of achieving a healthier workforce and driving down costs associated with workers compensation, the cost of providing healthcare and the use of sick time, Authorized Employees will assist bargaining unit members with understanding and coordination of benefits.**

5. **With the goal of driving down medical costs while providing appropriate medical benefits, Authorized Employees will participate directly and assist the City with benefit evaluations, including the Citywide Healthcare Task Force.**
6. **In order to ensure City resources are well coordinated, upon the direction of the City and consent of LIUNA, Authorized Employees will participate in various City committees, as a member of the committee.**
7. **Represent employees involved in critical incidents at the time of incident (e.g. personal injury related).**
8. **Participate in City-sponsored community projects.**
9. **As a means of controlling administrative and litigation costs associated with employee matters in a large and complex City and with the goal of resolving matters at the earliest possible stage, in coordination with management, Authorized Employees will assist bargaining unit members and management in matters related to employer/employee relations.**

E. No Gift Of Public Funds

In order to avoid even the appearance of “a gift of public monies to a private association,” Authorized Employees shall be prohibited from engaging in any of the following activity while on paid City Business:

1. **Lobbying. This includes letter writing or telephone calls.**
2. **Legislative Activity. This includes participating in the preparation or distribution of legislative proposals.**
3. **Organizing. This includes preparing and/or distributing union related materials.**
4. **Civil Service Discipline. This includes the representation of any bargaining unit member in disciplinary matters before the Civil Service Board.**
5. **Bargaining/Negotiations. This includes any matters deemed to be a mandatory subject of bargaining.**
6. **Representation in grievance or disciplinary proceedings.**

F. Consideration

Recognizing the work of the Authorized Employees as they carry out the above duties will require supervision, administrative oversight, transportation, office space, office supplies, administrative support, and liability coverage, LIUNA agrees as follows:

- 1) At no cost to the City, LIUNA agrees that it will provide monthly activity and progress report(s) to a representative designated by the City.**
- 2) At no cost to the City, LIUNA will provide and pay for all costs associated with the transportation needs of the Authorized Employees as they carry out the duties identified in this agreement. Such costs will include providing an automobile, all maintenance associated with the automobile, liability insurance, and fuel expenditures.**
- 3) At no cost to the City, LIUNA Local will provide office space for the Authorized Employees as they carry out the duties outlined in this agreement.**
- 4) At no cost to the City, LIUNA Local will provide the needed, as determined by LIUNA, office and communications equipment and services required by the Authorized Employees to successfully carry out their duties as outlined above. Such supplies equipment and services shall include the following: office telephones, cellular telephones, computers, fax machines, etc.**
- 5) At no cost to the City, LIUNA will provide any needed liability coverage for the Authorized Employees, including automobile liability.**
- 6) At no cost to the City, LIUNA will reimburse the Authorized Employees, as appropriate, for any costs incidental to the carrying out of the duties outlined by this agreement.**

G. Union Stewards

The Union may designate forty-five (45) Union members as stewards and shall notify the Labor Relations Administrator of such designations. There shall be no obligation on the City to change or adjust normal departmental scheduling or assignments of personnel as a result of such designations. Such designations shall be made from amongst Union members regularly working at the job sites within the proximate geographic area where they are intended to provide representation. The Union shall endeavor to be equitable in the distribution of its stewards.

- 1) One such representative from the Grievant's home department may, after the Grievant and the supervisor were unable to resolve the matter informally (Article 2, Section 2-1-A), when the Union is designated by a Grievant as his representative, attend mutually scheduled grievance meetings and hearings with department representatives. No City Business time will be available for this purpose.
 - 2) City employees who are on duty and are, either witnesses, charging parties, appellants or grievants may attend grievance, Civil Service, Phoenix Employment Relations Board (P.E.R.B.) and Public Works Accident Review Board meetings on city time provided 1) it is for their particular case which is either scheduled or on the public meeting agenda for that date and time and 2) Once a witness testimony has been concluded, or if a grievant, charging party or appellant once that agenda item has been completed or if the grievance meeting concluded, unless they have made other arrangements in advance with their immediate supervisor's approval, they will promptly return to work. Management reserves the right to restrict the number of witnesses who can be off of the job at any one time but will cooperate in rotating witnesses from the workplace so as to minimize the impact to operations and service to the public. For group grievances, the group will be allowed to select no more than two non-witness members of the group to attend the proceeding. These do not have to be the same group members for each step or meeting of the entire proceeding. As a matter of courtesy, employees will give management as much notice as possible.
 - 3) Union designated representatives shall be admitted to the buildings and grounds of the City for the purpose of assisting in the adjustment of grievances and other official Union business so long as such will not, in any manner, interfere with any work operation or the safety and security of any work site. Such representative will check in with the supervisor involved and will be required to conform with the operational and safety regulations and procedures as directed by the supervisor. No City Business time will be available for this purpose.
- H. Unit members may be authorized in advance in writing to engage in lawful Union related activities during City work hours on a non-paid basis by the City Manager or designee in his unrestricted discretion consistent with this MOU.
- I. City Business time may only be used for activities expressly authorized under Section 1-3 of this MOU. The City reserves the right to deny approval of a request to use City Business time for activities not expressly authorized under this MOU. The City shall not arbitrarily deny requests for use of City Business time for activities that serve a dual public/private purpose or an exclusively public purpose.

J. Requests for City Business Time

- 1) A designated union steward who wishes to use City Business time must submit a request as soon as the need for time is known but no later than 72 hours in advance of the time requested to an individual designated by the Labor Relations Administrator. Any such request must specify what the time will be used for. A request for City Business time will be approved only if the activity has either a dual public/private purpose or an exclusively public purpose.**
- 2) If a request is denied and the designated union steward believes that the activity for which time was requested has either a dual public/private purpose or an exclusively public purpose, the designated union steward may appeal that denial to the Labor Relations Administrator whose determination is final and may not be grieved or appealed in any way.**

K. Payroll Deductions

- 1) The City shall deduct from the first and second pay warrants of Union members, in each month, the regular periodic Union membership dues as certified by an authorized official of the Union and regular periodic Union sponsored insurance benefits pursuant to the City's deduction authorization form duly completed and signed by the employee and transmit such deductions monthly to the Union no later than the fourteenth (14th) day following the end of the pay period in which the deduction occurs, along with an alphabetical list of all employees for whom deductions have been made. Such deductions shall be made only when the Union member's earnings for a pay period are sufficient after other legally required deductions are made. Authorization for membership dues deductions herein shall remain in effect during the term hereof unless revoked by the employee. Revocation of deductions shall be accepted by the City only during the first week of July or January to be effective the following payroll period. The City will notify the Union of any revocations submitted to it, consistent with the PERB Ordinance Section 2-214.

In addition, the City shall provide the Union the alphabetical list, including, the last four digits of the Social Security Number, the active Union deductions list, and the deductions register on a CD.

If it is determined by a final decision by a court of competent jurisdiction that "Fair Share" does not violate Arizona State law or the Arizona State Constitution, the Union and City shall open up this contract to bargain in good faith over the "Fair Share" issue.

- 2) The City shall not make dues deductions for unit employees on behalf of any other employee organization as defined in the Meet and Confer Ordinance, during the term of this MOU.
- 3) The City assumes no liability on account of any actions taken pursuant to this section. The City shall, however, as promptly as technically possible, implement changes brought to its attention. The City shall, at the written request of the Union during the term of this agreement, make changes in the amount of deduction hereunder for the general membership, provided cost for implementing such changes shall be reimbursed by the Union. This charge shall not apply to submission of new individual authorization cards or revocations or individual status changes.

L. Facilities and Services

- 1) The Union may distribute Union authorized materials on the City's premises (buildings and grounds) before and after scheduled working hours or in non-work areas during scheduled work hours provided both the employee distributing and the employee receiving such material are on their own time.
- 2) The City shall provide the Union with bulletin board space for its sole and exclusive use in communicating with its members at mutually agreeable locations.
- 3) Material which is not abusive of any person or organization, which does not violate Administrative Regulation (A.R.) 2.16, and which is not disruptive of the City's operations, may be posted or distributed, provided that such material is submitted to the City and also signed by an authorized official of the Union. The Union may grieve any refusal by the City to approve posting or distribution of submitted material.
- 4) The Union shall have the right to meet with new unit employees for the purpose of informing each such employee of the Union and of that employee's right to have Union dues deducted from his/her pay warrant. The Human Resources Department will notify the Union when orientation sessions involving new unit employees are scheduled.

Such opportunity shall be accorded the Union during the new employee orientation (NEO) sessions conducted by the Human Resources Department, Public Works Orientation Program (PWOP), **Street Transportation** and Parks Department new employee orientation (Parks NEO). **No City Business time will be available for this purpose.**

The Union and the Public Works Department will jointly present an operational training program not to exceed two full days of training depending on the number of new hires and department operations. This time will be allotted during new hire orientation specifically for solid waste equipment operators. The content of such information shall not be political in nature, abusive of any person or the Department or disruptive of the Public Works Department's operation. City Business time will be available for this purpose.

M. List of Unit Members

Upon the Union's filing of a Third Party Data Sharing agreement with the HR Department, the City shall provide electronically, at no cost, a list of unit members which includes the following: Emp ID, First Name, Last Name, Initial, Deduct, Service Date, Dept ID, Department, Job Title, Job Locator Code, Mailing Address, City, State, Zip, Home Phone, Work Phone.

Any and all information furnished by the City shall be used by the Union solely for the purpose of communicating with unit members, other legitimate union purposes, and shall not be shared with any other individual or organization.

The City shall provide a monthly electronic report of Unit 1 vacancies.

- N. The Union shall have the right to file a grievance on behalf of our member(s) when personally requested by the member. Filing procedures for grievance shall be those in Article 2, Section 2-1, Grievance Procedure.
- O. Upon written request from the Union, the City will provide specific information from an employee's personnel files pertinent to a written grievance, arbitration case or civil service appeal. The City will also provide all pertinent collective bargaining information requested by the Union. The information will be supplied to the Union at no charge.

Section 1-4. Rights of Unit Employees

- A. All unit members have the right to have the Union serve as their meet and confer representative without discrimination based on membership or non-membership in the Union.
- B. All unit members have the right to present their own grievance, in person or by legal counsel in accordance with Article 2, Section 2-1. A copy of all MOU grievances, filed by anyone

other than a designated official Union representative, shall be sent to the Union office. There shall be no cost incurred to the Union.

- C. Unit members have the right to be represented by the Union and the Union reserves the right to provide protection to its members in dealings with the City concerning grievances, and matters pertaining to their individual employment rights and obligations, and during the conduct of a management initiated investigatory interview concerning allegations focused on the employee which may result in disciplinary action against the employee for violation of City or departmental work rules or regulations.

An interview becomes investigatory when facts or evidence sought by management may result in any disciplinary action against the employee being interviewed.

Prior to the employee being interviewed, a supervisor shall advise the employee of the right to a representative. When discipline is issued, and the incident is discussed with the employee, the employee shall be advised of their right to representation.

If any unit member is instructed not to speak to anyone regarding an investigation, this restriction does not apply to speaking to the Union representative.

A unit member under investigation that may lead to a written reprimand, suspension, demotion or discharge and who is interviewed, will be given a written statement informing them of the nature of the allegations. The Notice of Inquiry (NOI) shall be used. The employee has the right to know if their accuser is a City employee or citizen/customer.

Prior to giving the member the above written statement, the supervisor shall also tell the member they have the right to a Union representative. The written statement shall also notify the member that they have the right to have a Union representative attend the investigation meeting. The written statement shall state that the member normally has 72 hours (excluding N days) to respond to the Notice of Inquiry. By mutual agreement, if there are extenuating circumstances, the 72 hours may be extended. The member or representative may ask for a caucus during the meeting. The member shall be allowed to seek advice and counsel from their representative during the caucus and after the conclusion of the interview. Prior to the conclusion of the meeting, the member, or representative on behalf of the member, shall have the opportunity to make a closing statement. Supervisors shall tell the members they normally have 72 hours (excluding N days) to respond after receipt of the Notice of Inquiry.

If personally requested by a witness, a Union representative may meet with the witness prior to the witness meeting with the City.

A unit member shall receive a copy of any statement that they are asked to sign.

A unit member under investigation will be notified in writing every three (3) months as to the current status of the investigation. Every thirty days, a unit member under investigation may request a status update. At management's discretion, the status will be provided either verbally or in writing. This will include the number of known witnesses still to be interviewed and an estimated date the investigation will be completed.

D.

- 1) Any unit member covered hereunder shall, at their request and by appointment, be permitted to examine their personnel files in the presence of an appropriate supervisory official of the Department and/or authorize a Union representative to obtain copies of documents in their personnel files. Said files shall be in a location as specified below, one per location. These include the main Human Resources Department file, the department personnel file, and the official department office personnel file contained at the district or yard office.
- 2) No unit member shall have any adverse statements entered into his personnel file without the member receiving a copy of such statement. Unit members shall acknowledge receipt of such statement in writing by signing that they received a copy. Signing or initialing is not an indication of agreement, but solely evidence of receipt.
- 3) A unit member may, at his discretion, attach rebuttal statements to any material contained in his personnel file which may be of a derogatory nature.
- 4) All unit employees may request that their home department personnel files, both electronic and paper versions, be purged of any adverse materials which are three (3) years or older providing the employee has received no disciplinary action for the same thing during the one-year period immediately preceding the request. The request must be in writing and forwarded through official channels. Any adverse materials which are three (3) years or older, shall be purged from the home department personnel file and moved to a section marked "Inactive" in the Central HR Department personnel file. Discipline notices are exempted from these provisions except as described below.
- 5) A unit member may request to have documents related to disciplinary actions, which are ten (10) years or older, removed from their home department personnel file when there have been no incidents or problems of a similar nature within the ten (10) year period immediately preceding the request, and the discipline notice will be moved to a section marked "Inactive" in the Central HR Department personnel file. The term "disciplinary actions" is defined as:

- a) Any discipline given a Unit member that resulted in suspension of eighty (80) hours or less and,
 - b) For an infraction which did not result in a criminal charge or actions which did not include violent or assaultive behavior directed at another person or,
 - c) Any infraction that is no longer considered to be a disciplinary matter under current contemporary department standards in effect at the time of the Unit member's file purge request.
- 6) Upon written request to department personnel, performance evaluations over ten (10) years old will be purged from a unit member's personnel file after ten (10) years as an active employee. Upon advanced written request, employees can receive a copy of the purged performance evaluation.
- E. All unit members have the right to be treated in a manner, which is fair and impartial.
- F. A unit member shall be given a minimum of seventy-two (72) hours, excluding weekends, to confer with his representative prior to responding, either orally or in writing, to any document presented by the City.
- G. A coaching is a verbal discussion with an employee. A coaching is not to be considered a first offense for purposes of progressive discipline. A written record of a coaching may be placed in the supervisor's files for both positive and negative incidences. A coaching is to be one-on-one. When two (2) or more supervisors are present at the coaching, the employee shall be advised of their right to representation. An employee may receive more than one (1) coaching for a similar matter.

A supervisory counseling is a verbal warning that the supervisor shall document in memo form. A supervisory counseling is not discipline. They are to be used to determine only notice to the employee. If a supervisory counseling is to be used in any disciplinary or personnel action or any performance rating, the employee will be given the supervisory counseling in memo form, that identifies the behavior requiring improvement, the reason for the improvement, and the consequences of continuing the unacceptable behavior. The memo will contain a line for the employee's signature and an above the line statement of "The employee shall date and sign the supervisory counseling, not as an indication of agreement, but solely as evidence of being advised of its existence." The employee will receive a copy of the memo.

A supervisory counseling will only be retained in the supervisor's file. It will not be placed in the employee's personnel file. The supervisory counseling will be purged from the supervisor's file one (1) year from the date of receipt provided no further incidents of a similar nature occur during this one (1) year period from the incident. Upon request, a purged supervisory counseling will be returned to the employee.

- H. Upon request, an employee who receives a written reprimand or suspension will receive a copy of the information upon which the discipline is based.
- I. Purging requests apply to all files, in all formats, in all locations.
- J. In the event documentation that is eligible for purging is not purged, it will not be considered in future disciplinary matters. Discipline over five years old will not be considered in any process.
- K. Although the terms "coaching" or "supervisory counseling" will not be used, the employee's behavior or performance which resulted in the "coaching" or "supervisory counseling" can, along with any other behavior or performance, be discussed in the PMG.
- L. The City shall maintain and provide to each employee at each annual PMG review, a record of exposure for the following: herbicides and pesticides. Asbestos will be included, provided the employees are wearing the required protective equipment necessary for asbestos removal.
- M. If an employee is not given his/her PMG by the annual review date, the employee's merit increase shall be processed within twenty-one (21) calendar days following the above due date and be retroactive to the PMG annual review date. (If the PMG is an overall "met").
- N. The City will notify employees and Unit I of new or revised written City or Departmental policies affecting unit employees as soon after release as possible. The City shall post on their bulletin boards any new policies and/or revisions in City or written department policies and procedures affecting Unit I employees. Notice shall remain posted for no less than twenty-one (21) working days. Review of policy and procedure revisions shall be included in employee group meetings when appropriate and practical to do so.

Section 1-5. Prohibition of Strikes and Lockouts

- A. The provisions of the Meet and Confer Ordinance are expressly incorporated herein.

- B. The City nor its agents for any reason shall authorize, institute, aid or promote any lockout of employees covered by this MOU.

Section 1-6. New Positions / Classifications

- A. The City shall give notice to the Union within ten (10) working days whenever a reclassification study relating to a group or work unit belonging to Unit I is undertaken. The Classification and Compensation Section shall provide the Union with an opportunity to meet with the person conducting the study prior to preparation of any report or recommendations. The City shall notify the Union of any Unit I reclassification study thirty (30) calendar days prior to that study being presented to the Personnel Committee.

The City will notify the Union, in writing, thirty (30) calendar days in advance before any new position or classification is placed permanently within any field unit.

- B. The parties agree to consult on the inclusion or exclusion of new classification(s) in the bargaining unit and will thereafter refer any such matter to PERB for appropriate action.
- C. The City agrees that except in extraordinary situations it will notify the Union in advance in writing when significant changes will be made in the duties and responsibilities in position classification standards resulting in classification changes.
- D. The Union may submit written requests for job classification studies to the Human Resources Department. Requests from the Union will be prioritized with other standing requests.
 - 1) All written requests for classification studies submitted by the Union shall include, but not be limited to, the following information:
 - a) A full description of the new duties and responsibilities.
 - b) A full explanation of why the Union feels the position(s) should be reclassified.
 - c) A list of comparative positions/ classifications that led to the Union's request.
 - d) Such other information as is normally considered relevant to a classification review.
 - 2) The results of the audit of any classification study shall be subject to review by the City's Personnel Committee in accordance with existing procedures.
 - 3) The City will inform the Union when Union-requested classification studies are begun and will inform the Union in writing of progress of the study at thirty (30) calendar day intervals.

ARTICLE 2: GRIEVANCE / ARBITRATION / LABOR MANAGEMENT

Section 2-1. Grievance Procedure

The benefits granted by this Article shall not be interpreted or applied as requiring the employer to count as time worked, any hours or fractions of hours spent outside the employee's work shift in pursuit of benefits provided by this Article. The employer shall count as time worked any hours or fractions of hours spent within the employee's regular work shift in pursuit of benefits provided by this Article.

A. Informal Resolution

It is the responsibility of unit members who believe that they have a bona fide complaint concerning their working conditions to promptly inform and discuss it with their immediate (non-unit) supervisor in order to, in good faith, endeavor to clarify the matter expeditiously and informally at the employee's immediate supervisor level.

If such informal discussion does not resolve the problem to the unit member's satisfaction, and if the complaint constitutes a grievance as herein defined, the unit member may file a formal grievance in accordance with the following procedure.

B. Definition of Grievance

A "grievance" is a written allegation by a unit member, submitted as herein specified, claiming violation(s) of the specific express terms of this MOU for which there is no Civil Service or other specific administrative method of review provided by State or City law.

C. Procedure

In processing a formal grievance, the following procedure shall apply:

Step I

The unit member shall reduce his grievance to writing by signing and completing all parts of the grievance form provided by the City, and submit it to his second-line supervisor designated by the City within fifteen (15) calendar days of the initial commencement of the occurrence being grieved or when the employee has reasonable cause to become aware of such occurrence. Either party may then request that a meeting be held concerning the grievance or they may mutually agree that no meeting be held. The supervisor shall, within ten (10) calendar days of having

received the written grievance or such meeting, whichever is later, submit his response there to in writing, to the grievant and the grievant's representative, if any.

Step II

If the response of the first level of review does not result in resolution of the grievance, the grievant may appeal the grievance by completing, signing and presenting the City form to the second level of review (Department Director designated by the City) within ten (10) calendar days of the grievant's receipt of the level one (1) response. Either party may request that a meeting be held concerning the grievance or may mutually agree that no meeting be held. Within ten (10) calendar days of having received the written grievance or the meeting, whichever is later, the second level of review shall submit his response to the grievance to the grievant and the grievant's representative, if any.

Step III

If the response of the second level of review does not result in resolution of the grievance, the grievant may, within ten (10) calendar days of the second level response, appeal the grievance by completing, signing and presenting the City form to the Grievance Committee. The Grievance Committee shall be composed of:

Chairman - A member of the City Manager's Office designated by the City Manager.

Member - A City of Phoenix Department Director.

Member - The Business Manager of the Union or his designee.

At the beginning of each contract year, the Union and the City will each select five Department Directors to serve as Grievance Committee members. No selected Department Director will serve as a committee member when the grievance involves his/her department. Staff support to the Grievance Committee will be provided by the Human Resources Department. The Labor Relations Administrator and/or Deputy Director in Labor Relations will serve as an advisor to the committee.

This Grievance Committee composition is a continuing pilot program for the 2014-2016 contract. Both parties must mutually agree to adopt this Grievance Committee composition beyond this contract, otherwise the Grievance Committee composition reverts to the previous composition of a member of the City Manager's Office, Labor Relations Administrator and Business Manager of the Union or his/her designee on June 30, 2016.

The Grievance Committee shall, within ten (10) calendar days of receipt of the appeal, schedule a hearing regarding the grievance at which the grievant shall be afforded the opportunity to fully present his position and to be represented.

The Grievance Committee shall, within ten (10) calendar days of the conclusion of the hearing, make an advisory recommendation on the grievance and submit it to the City Manager for final determination for those employees who have elected to use this procedure instead of arbitration. In lieu of such hearing, the grievant and the Union may jointly invoke the following procedure by submitting written notice to the Labor Relations Division within ten (10) calendar days of the second level response.

If the grievant so elects and the parties mutually agree, the grievant may request the assistance of a Federal Mediation and Conciliation Service (FMCS) mediator to try to resolve the issue within a reasonable time. If no resolution is found during this process, the grievant may submit a request in writing within ten (10) calendar days of this finding to invoke the following procedure.

If the grievant so elects in writing within the above time limit, in lieu of such hearing, the grievance may be reviewed by an arbitrator. The parties, or their designated representative, shall agree on an arbitrator, and if they are unable to agree on an arbitrator within a reasonable time, either party may request FMCS to submit to them a list of seven (7) arbitrators who have had experience in the public sector.

The parties shall, within seven (7) calendar days of the receipt of said list, select the arbitrator by alternately striking names from said list until one name remains. Such person shall then become the arbitrator. The arbitrator so selected shall hold a hearing as expeditiously as possible at a time and place convenient to the parties, and shall be bound by the following:

- 1) The arbitrator shall neither add to, detract from nor modify the language of the MOU or of departmental rules and regulations in considering any issue before him.
- 2) The arbitrator shall expressly confine himself to the precise issues submitted to him and shall have no authority to consider any other issue not so submitted to him.
- 3) The arbitrator shall be bound by applicable State and City law.

The grievance committee or the arbitrator shall submit findings and advisory recommendations to the grievant and to the City Manager. The cost of the arbitrator and any other mutually incurred costs shall be borne equally by the parties.

The City Manager, shall, within fourteen (14) calendar days of the receipt of the written findings and recommendations, make the final determination of the grievance and submit it in writing to the grievant and his/her designated representative.

D. Union Grievance

The Union may, in its own name, file a grievance that alleges violation by the City of the rights accorded to the Union by Article 1, Section 1-3. The Union shall file such grievance at Step II of the procedure.

E. Time Limits

Failure of City Management representatives to comply with time limits specified in Section C shall entitle the grievant to appeal to the next level of review. Failure of the grievant to comply with said time limits shall constitute abandonment of the grievance. Except however, that the parties may extend time limits by mutual written agreement in advance.

F. Notice to Union of Grievance Resolutions

The City will put the Union on notice of proposed final resolutions of grievances where the Union has not been designated as the grievant's representative for the purpose of allowing the Union to ascertain that a final resolution will not be contrary to the terms of this MOU.

G. The City will not discriminate against employees because of their exercise of rights granted by this Article.

H. Full-time and part-time employees are covered by this grievance procedure.

I. Employer grievances, should they occur as a result of official Union activities or actions, including the failure to act as required under this agreement, will be presented directly to the Union Business Manager, or his designee within fifteen (15) days of the date upon which the employer became aware of the situation prompting the grievance. The Business Manager, or his designee shall in each case provide a written answer within ten (10) calendar days from receipt of the grievance.

Unresolved employer grievances may be submitted to either the Grievance Committee or arbitration pursuant to Step III herein; provided, the employer bears the cost of the arbitrator.

J. Group Grievance

When more than one unit member claims the same violation of the same rights allegedly accorded by this MOU, and such claims arise at substantially the same time and out of the same circumstances, a single group grievance may be filed in the name of all such members. Such group grievance shall be filed at the Step II of this procedure which provides the next level of supervision having authority over all named grievants. Each unit member that is a party grievant must be named and must sign such group grievance.

- K. The City will notify Grievant by mail, to Grievant's on file home address of the date, time, and place of his Grievance Committee hearing, and e-mail a copy of the letter to the Union Hall. Unless emergency circumstances apply, if either the City representative or Grievant does not appear at the Grievance Committee hearing, the party not appearing shall lose the grievance.

Section 2-2. Labor-Management Committee

The benefits granted by this Article shall not be interpreted or applied as requiring the employer to count as time worked, any hours or fractions of hours spent outside the employee's work shift in pursuit of benefits provided by this Article. The employer shall count as time worked any hours or fractions of hours spent within the employee's regular work shift in pursuit of benefits provided by this Article.

- A. There shall be a Labor-Management Committee consisting of a maximum of six (6) **Union committee members, no more than four (4) of whom may be bargaining unit members** and five (5) representatives of the City in addition to the Labor Relations Administrator, **or designee**, who shall be Chairman. The purpose of the Committee is to facilitate improved labor-management relationships by providing a forum for free and informal discussion of mutual concerns and problems.
- B. The Committee shall meet, **at least once a month** per MOU year, or more often by mutual agreement, at mutually agreed upon times. The Committee will meet to discuss **matters to be of a mutual benefit including, but not limited to**, methods of improving the level of productivity when needed. The members shall, upon request for a meeting, provide the Chairman with proposed agenda items and the Chairman shall provide the members with the meeting agenda in advance of the meeting.
- C. Any signed/dated written Labor/Management agreements with the signatures of the parties and the Chairman will be binding on the parties for the remaining term of the MOU.
- D. If the representative of the Union is a unit member, such representative shall not lose pay or benefits for meetings mutually scheduled during duty time.
- E. **During this Memorandum of Understanding, the City and the Union will establish a Labor-Management Committee dedicated to the discussion of cost analysis for potential contracted work presently performed by Unit employees, the reduction in force process and any other matters deemed relevant by the Committee.**

Section 2-3. Notification

- A. The City will schedule a meeting with the Union, with a minimum of seven calendar days' notice to discuss management recommendations for contracting of work presently being performed by unit members, which would directly result in a reduction in the number of regular unit positions during the term of this agreement. The meeting will occur prior to any final recommendation to the City Council. Failure by the City to meet with the Union under this Article may be subject to the Grievance Procedure (Article 2, Section 2-1) of this MOU. The management recommendation, and final decision thereon by the City, shall not be subject to the Grievance Procedure (Article 2, Section 2-1.)
- B. Prior to the City changing any FMLA administrative practices, the City will meet with the Union to discuss these changes and consider the Union's input.
- C. The Management recommendation, and final decision thereon by the City, shall not be subject to the Grievance Procedure (Article 2, Section 2-1) of this MOU.

Section 2-4. Health and Safety Committee

The benefits granted by this Article shall not be interpreted or applied as requiring the employer to count as time worked, any hours or fractions of hours spent outside the employee's work shift in pursuit of benefits provided by this Article. The employer shall count as time worked any hours or fractions of hours spent within the employee's regular work shift in pursuit of benefits provided by this Article.

- A. The City will continue to undertake all reasonable efforts to provide for employee health and safety in accordance with the State's Occupational Safety and Health Law.
- B. In order to facilitate this policy, a joint committee entitled "Health and Safety Committee" shall be established. This Committee shall be composed of two (2) unit employees appointed by the Union and two (2) City representatives as designated by the City Manager. The Chairmanship shall rotate among the members.
- C. The Committee shall meet quarterly at mutually scheduled times or more frequently by mutual agreement to consider on-the-job safety matters referred to it by the existing departmental safety committees and safety officers, or otherwise coming to its attention, and shall advise Department Heads and the City Manager concerning on-the-job safety and health matters.

All written recommendations of the Committee shall be submitted to the Department Head concerned and to the City Manager.

- D. The Committee shall be guided by the applicable regulations of the State's OSHA agency, and the City's existing practices and rules relating to safety and health, and formulate suggested changes.
- E. Employee members of the Committee shall not lose pay or benefits for meetings mutually scheduled during their duty time.
- F. The City will provide to the employee a copy of the completed accident investigation and any other material the City plans to present at a hearing or appeal process.

The City will also receive a copy of any material the employee plans to present at a hearing or appeal process. This material will be supplied as quickly as possible after the material has been prepared. A hearing or appeal date will not be scheduled sooner than fourteen (14) calendar days after employee's receipt of the material.

ARTICLE 3: COMPENSATION / WAGES

Various sections of this MOU contain a form of compensation, wages, or benefits that have been negotiated in good faith and may or may not provide a direct payment of wages or other benefit to each member. Those forms of compensation, wages, or benefits that do not provide a direct payment to each unit member have been negotiated in place of a direct payment and costed as part of the overall economic package. Examples include: life insurance, long term disability insurance, leave payouts, etc.

Section 3-1. Wages

- A. Continue 2012-2014 MOU Concessions. Deferred compensation contribution is reduced by 2.4%.**
- B. 2014-2016 Concessions. The following concessions will be applied: 1.88% wage concession in fiscal year 2014-2015, and an additional 1.04% wage concession in fiscal year 2015-2016.**
- C. MOU Reopener on Section 3-1: If the City projects a 2015-2016 General Fund surplus* of \$10 million or more, upon request by the labor unit, the City will be required to negotiate with the unit to determine a portion of the surplus be used to provide one-time compensation in fiscal year 2015-2016. The agreed upon portion will be used to**

determine the one-time compensation payment in the General Fund, which will then be also applied to positions across all funds in the City.

***Surplus or deficit to be calculated based on the Preliminary 2015-2016 Budget Status presented to Council no later than February 2015 and determined as the excess/deficit of projected available General Fund resources over/under expenditures needed to provide current Council-adopted service levels. If a range is provided in the preliminary status, the mid-point of the range will be used.**

- D. Licensed Pesticide Applicators shall receive fifty (\$.50) in addition to their base hourly rate for each hour engaged in assigned and authorized activities when applying, mixing, or managing herbicide or pesticides. This compensation includes any preparation and maintenance of application equipment.
- E. Employees will be allowed City time to renew their CDL license and or related endorsements and will be reimbursed for such renewal fees which will include the HAZMAT background screening fee.
- F. It is understood that for implementation purposes, the practice of rounding of fractional cents shall be done in accordance with accepted mathematical and accounting principles.
- G. Notwithstanding the rates of pay set forth in any appendix or attachment to the agreement for reference, the term "Pay Schedule" shall mean the schedule computed and published by the Human Resources Department for payroll purposes pursuant to Council Action in the Pay and Compensation Ordinance.

Section 3-1A. Productivity Enhancement Pay

In recognition of continuous service and overall performance, the City agrees to the following longevity-performance pay formula for unit employees.

A. Pay Benefit:

In November of each calendar year and May of each calendar year, unit members who meet the additional qualifications of this section shall qualify for fifty dollars (\$50.00) for each full year of continuous full-time service in excess of five (5) years, up to an annual maximum of fourteen hundred dollars (\$1,400.00) at nineteen (19) years.

In November of each calendar year and May of each calendar year, unit members who have completed at least twenty (20) years of full-time service and who meet the additional qualifications of this section shall qualify for sixty-five dollars (\$65.00) for each full year of

continuous full-time service in excess of five (5) years, up to an annual maximum of eighteen hundred twenty dollars (\$1,820.00).

B. Qualifications:

- 1) An employee must have completed at least one (1) year of continuous full-time service at the top step in his pay range. Qualifications for **Productivity Enhancement** pay are made in the base class and will not be affected by movement into or out of assignment positions. As well, **Productivity Enhancement pay** will not be affected by movements to positions within the same pay range.
- 2) An employee must have received a performance rating of overall "Met" on his latest scheduled performance evaluation on file **at the time of the qualifying date**. For employees who are otherwise eligible for **Productivity Enhancement pay**, an employee who receives an overall "Not Met" evaluation shall receive another evaluation within ninety (90) days to one-hundred-twenty (120) days, and if that evaluation is an overall "Met", he will be eligible to **start receiving Productivity Enhancement pay the first paycheck for the first full pay period after the next qualifying date**. A unit member who receives an overall "Not Met" rating may appeal by memo through his chain of command to the Department Head.
- 3) An employee must be on full-time active status. Employees on industrial leave shall qualify for this payment for only the first year of the industrial leave. However, the entire period of industrial leave shall qualify as continuous service when the employee returns to active employment.

C. Terms of Payment:

- 1) The **Productivity Enhancement** payment will be **pro-rated and** included **each pay period** in the **qualifying unit member's** regular paycheck.
- 2) When a position is reclassified to a higher classification, or when classification is assigned to a higher pay range, incumbents who are receiving **Productivity Enhancement** pay shall be moved to that step of the new range which corresponds the closest to their combined base pay and previous **Productivity Enhancement** amount (incumbent's **annualized payment**), and which does not result in a decrease from that **total** amount. The placement in the new range will be limited to the maximum step in the range. If the reclassification or pay range change only results in a maximum possible one-range increase, and the incumbent is receiving **Productivity Enhancement** pay, **the**

employee will be moved to the top step and continue to be eligible for **Productivity Enhancement** pay.

Section 3-2. Overtime

- A. As a regular practice, overtime shall not be used. The parties agree that at times the City may require overtime work outside of an employee's regularly-scheduled shift.
- B. Overtime is defined as time assigned and worked beyond the regularly scheduled eight (8) hours per shift or forty (40) hours per week; except overtime for unit members who normally work a daily work shift of eight (8) consecutive hours including a paid meal period on the job, is defined as time assigned and worked in excess of forty (40) hours in a seven (7) day work period or eight (8) hours per daily shift, excluding paid meal breaks.

Overtime for unit employees assigned to a 4/10 schedule is defined as time assigned and worked beyond the regularly scheduled ten (10) hours per shift or forty (40) hours per week.

- C. Except for paid sick leave, all duly authorized paid leave time shall be considered as time worked for the purposes of the regularly scheduled workweek (but not daily work shift). Paid sick leave shall not be considered as time worked for the purpose of calculating overtime for the regularly scheduled workweek.

The employee's appropriate leave bank will be charged only for the difference between the scheduled daily work shift and the hours actually worked that day.

- D. Overtime shall be worked and shall be allowed if assigned by the non-unit supervisor or other authorized representative of the City. The City shall endeavor to be equitable in the distribution of voluntary overtime amongst qualified employees or crews of employees within the same classification, function, work location, and shift. Seniority may be used as a factor in determining the assignment of overtime work. Other factors include skill level, assigned equipment, etc. The City will make available to the Union upon request reports of overtime worked by unit members on a quarterly basis. The City reserves the right to assign overtime in the event insufficient employees volunteer, to avoid inadequate staffing, to insure timely service delivery or to conduct mandatory training.

Employees may be required to work on scheduled holidays and/or non-work days during the holiday week in order to provide City services on weeks containing holidays.

Rotational overtime work lists ranked by seniority shall be posted on city bulletin boards and updated each time it is worked.

- E. Compensation for overtime work as defined in Section B. above will be as follows: One and one-half (1-1/2) times the regular rate. The regular rate shall include, if applicable, night shift differential, stand-by pay, and out-of-class pay. Overtime will be compensated after the first seven (7) minutes assigned and worked beyond a member's regularly scheduled work week or work shift, as outlined in Section B, calculated to the nearest quarter (1/4) hour. There shall be no compounding or pyramiding of overtime pay with regular or premium pay except as required under the Fair Labor Standards Act. There shall be a minimum of fifteen (15) hours off between shifts [thirteen (13) hours for a unit member working a 4/10 schedule]. If this is not possible, the unit member shall receive overtime compensation at his regular rate of pay for each full hour worked within the described fifteen (15) hour period [thirteen (13) hour period for a unit member working a 4/10 schedule]. This language only applies to employees who work two (2) full shifts. If an employee works less than a full shift, either before or after his/her regular shift, the 15/13 hour rules do not apply. This rule does not apply to scheduled training hours worked within the fifteen (15) hour window.
- F. In lieu of cash payment, a unit employee may request compensatory time credits up to a maximum accumulation of two hundred-ten (210) hours. The request for compensatory credit must be made at the time the overtime is worked. Use of compensatory time off within the work period shall be subject to departmental approval and scheduling.

Accumulated compensatory time in excess of two hundred-ten (210) hours must be paid in cash.

Effective July 2009, two hundred-ten (210) hours is increased to two-hundred-fifteen (215) hours.

Section 3-2A. Call-Out Pay

- A. A unit member called out for work after going home from a shift or called out for overtime work while on stand-by pay shall be entitled to a minimum of three (3) hours pay at time and one-half (1 1/2) times the employee's regular rate of pay.
- B. Travel time shall be included in the minimum call-out guarantee and shall be paid only if the total work and allowed travel time exceed the three (3) hour minimum. The total travel time compensated for round trip travel to and from the job site shall be forty-five (45) minutes.

- C. Travel time shall not apply when the employee is working on overtime which was planned in advance. An employee requested to report early, before the normal starting time of the shift, shall not be eligible for travel time, but would qualify for overtime for the extra time worked at the job site.

Section 3-3. Out-Of-Class Pay

A unit member temporarily required to serve in a regular authorized position in a higher classification shall be compensated at a higher rate of pay in accordance with the following:

- A. To be eligible for the additional compensation, the unit member must first accumulate ten (10) regular working shifts of assignment in the higher class within any twenty-four (24) month period; satisfactory performance during a previous appointment to the higher class will be credited to the qualifying period. The days of out-of-class assignment need not necessarily be consecutive.

The days of out-of-class will be credited to the qualifying period. Once this qualification is satisfied, no additional re-qualification will be required. Any employee in the Parks and Recreation Department and the Street Transportation Department, who has accrued one hundred and twenty (120) hours and who has completed training approved by the City and who has received a City certificate certifying that they can operate the equipment, shall not be required to accumulate any shifts as stated in this section to qualify for out-of-classification pay.

- B. Temporary assignments out-of-class shall be recorded only in full-shift units. A unit member working out-of-class for four (4) hours in an eight (8) hour shift or five (5) hours in a ten (10) hour shift or more in a given shift shall be credited with working out-of-class for the entire shift. No out-of-class credit shall be given for out-of-class work of less than four (4) or five (5) hours in any given shift.
- C. To qualify for out-of-class pay, a unit member must be assuming substantially the full range of duties and responsibilities of the higher level position. Out-of-class pay is not authorized, for example, if the organization of a work unit is such that each unit member carries on his normal duties during the temporary absence of a supervisor, without a need for the direction which the supervisor would provide on a longer term basis. However, eligibility for out-of-class compensation shall take place when an employee becomes responsible on a regular basis, for the full range of duties normally assigned to the higher class.

- D. Time worked in a higher class shall not earn credits toward the completion of probationary requirements in the higher class.
- E. A unit member who has qualified under these provisions shall be compensated at the minimum rate established for the higher class for each completed work shift served in the higher class. In the event of overlapping unit salary ranges, a minimum one-step differential shall be paid for out-of-class assignments into unit classifications. The higher rate of pay shall be used in computing overtime when authorized overtime is served in out-of-class work assignments; the overtime rate shall be the rate established by the overtime regulations that apply to the higher rank.
- F. The City shall endeavor to be equitable in the distribution of out-of-class assignments amongst qualified unit members.
- G. The City shall not make out-of-class assignments pursuant to this Article in an arbitrary and capricious manner.

Section 3-4. Sick Leave Conversion at Retirement

A. Sick Leave Cash Out Formula

A unit member who has accumulated a minimum of seven hundred and fifty (750) qualifying hours or more of accrued and unused sick leave at the time of a duty-related retirement shall be eligible for payment of an amount of compensation equal to twenty-five percent (25%) of his base hourly rate for all hours in excess of two hundred and fifty (250) hours.

B. Final Average Salary

The number of sick leave hours eligible to be cashed out and included in an employee's Final Average Salary upon retirement will be limited to the number of sick leave hours in the employee's leave bank on July 1, 2012, provided all criteria are met as described in Subsection A.

Employees with less than 250 hours of accrued and unused sick leave on July 1, 2012, will not meet the minimum balance requirements for a sick leave cash out that can be included in their Final Average Salary.

The portion of accrued and unused sick leave that is not included in the Final Average Salary upon retirement can be cashed out as a lump sum upon retirement, provided all criteria are met as described in Subsection A.

The number of vacation leave hours eligible to be cashed out and included in an employee's Final Average Salary upon retirement will be limited to the number of vacation leave hours in the employee's bank on June 30, 2014, not to exceed 450 hours.

Section 3-5. Shift Differential Pay

Unit members shall receive fifty cents (\$.50) per hour in addition to their hourly rate of pay when working a night shift which ends at or after 9:00 p.m. and before midnight, and seventy-five cents (\$.75) per hour in addition to their hourly rate of pay when working a night shift which includes work during the period after midnight to 3:30 a.m.

Employees shall receive night shift pay differential only for hours scheduled and worked, and not while on paid leave time.

Employees participating in a 4/10 work schedule shall receive fifty cents (\$.50) per hour in addition to their hourly rate of pay when working a regular night shift which ends between 10:00 p.m. and 3:30 a.m., inclusive, and seventy-five cents (\$.75) per hour in addition to their hourly rate of pay when working a regular night shift which ends after 3:30 a.m. Night shift differential shall continue to be paid at the rate of the regular shift for any additional hours worked following the regular shift.

Section 3-5A. Weekend Shift Differential Pay

A unit employee shall receive forty-five cents (\$0.45) per hour added to his base hourly rate of pay and any other shift differential or any other premium pay he may be receiving for working a weekend shift. A designated weekend shift is defined as any shift that starts on or after 2:00 p.m., on Friday, and continuing through any shift that starts on or before, but not after 11:59 p.m. on Sunday.

A unit member shall receive weekend shift pay differential only for hours scheduled and worked, and not while on paid leave.

A unit member, who is called out and works between 2:00 p.m. on Friday and 11:59 p.m. on Sunday, will be paid weekend shift differential for all hours worked at the rate specified in this

article. If a unit member was called out while on stand-by status, he will not receive weekend shift differential.

Section 3-6. Stand-By Pay

When a unit member is required and assigned to be available for emergency call back, outside of his regular daily or weekly work schedule, the employee shall be compensated for such stand-by hours that he remained available at three dollars and twenty-five cents (\$3.25) per hour. Unit members serving in stand-by assignments shall be subject to contact requirements as provided for by the Department Head.

Section 3-7. Show-Up Time

Except in emergencies, an employee who is scheduled to report for work, has not been notified to the contrary, and presents himself/herself for work as scheduled, shall be paid for at least four (4) hours at the hourly or applicable rate of pay. If work on the employee's regular job is not available for reasons beyond his control, the City may assign the employee substitute work. Where there is substitute work readily available, the opportunity for such work will not be arbitrarily denied.

In the event scheduled work is interrupted due to conditions beyond the City's control, and substitute work is not available to be assigned, affected employees shall be paid for four (4) hours at the hourly or applicable rate of pay, beginning at release, or to the end of the scheduled work shift, whichever occurs first. An employee shall have the option of using either vacation time, accumulated substitute holiday credit, or unpaid leave for the balance of his regular shift.

Employees released hereunder prior to the end of their scheduled shift may be required to stand-by and keep themselves available for immediate call-back during the balance of their scheduled shift (for which time they shall be entitled to stand-by pay under Article 3, Section 3-6 hereof). Employees called back to work shall be entitled to their hourly rate of pay only and not any guaranteed minimums for work performed during the balance of their regularly scheduled shift.

Section 3-8. Jury Duty Pay

A unit member called for jury duty or subpoenaed by a court as a witness shall be granted a leave of absence for the period of jury or witness service and will be compensated his/her regular pay and jury or witness pay for work absences necessarily caused by such jury or witness duty. To be eligible for such pay, an employee must present verification of the call to jury or witness duty.

A unit member required by the Court to call in for jury duty the morning of his/her scheduled daily work shift may elect to take the day off on vacation or compensatory time. Such leave request shall not be denied. Should the unit member be required by the Court to report for jury duty, the vacation or compensatory time will be restored from the actual time of reporting required by the Court through the end of the scheduled work shift. To be eligible for such leave restoration, the unit member must present verification of the jury service.

Unit members subpoenaed to appear as a witness in court as a result of their official duties on their status as a City employee shall return all fees tendered for such service to the City.

Paid witness leave shall not be allowed when the unit member is the defendant, plaintiff, or voluntary character witness in a court action.

Section 3-9. Deferred Compensation Program

The current percentage of base pay for deferred compensation is .45 %.

The Deferred Compensation Program benefit will be increased by up to 2.4% in the second year of the 2012-2014 contract, provided the Stability Indicators are met as described in Attachment A.

ARTICLE 4: HOURS OF WORK / WORKING CONDITIONS

Section 4-1. Hours of Work

A. This Article is intended to define the normal hours of work and to provide the basis for calculation and payment of overtime pursuant to Article 3, Section 3-2.

B. Work Week Defined

The regular work week for regular full-time unit members shall consist of five (5) consecutive work days in a seven (7) day pre-established work period, except as provided in Article 4, Section 4-1-F and except in those departments performing normal services regularly on Saturday and/or Sunday and except in those operations utilizing a different work week, such as a four (4) day work week.

C. Work Day Defined

The work day for regular full-time unit members shall consist of eight (8) hours of work within any twenty-four (24) hours in a pre-established work schedule, exclusive of unpaid time allotted for meals except in those operations utilizing a different workday schedule such as a ten (10) hour work day.

D. Work Schedule Changes

Except for emergency situations, permanent regular work schedules shall not be changed without notice by the Department of at least fourteen (14) days to the affected employee(s) and to the Union. Exceptions for more or less than the fourteen (14) days notice mentioned above may be mutually agreed to by labor and management on a case by case non-precedent basis.

When temporary work schedule changes are necessary, the Department will try to give affected employees at least two (2) calendar days notice or, if less notice, it will be considered an emergency.

When changes are to be made by the City on a permanent basis for other than emergency reasons, or where new permanent schedules are to be adopted, the City will notify the Union of such changes or new schedules, prior to implementation. Overtime work or stand-by, before or after the normal work day or work week, does not constitute a change in the work schedule.

E. Summer Work Schedules

Summer hours may begin no later than the first Monday in April, and may terminate no earlier than the second Monday in October whenever such scheduling impacts operations, all of which are within the discretion and control of the City, and where such summer scheduling has been customarily used in the past. Summer scheduling may, at the discretion of the City, be implemented earlier or terminated later in the year than specified in this section.

It shall be within the Department Head's discretion to determine starting times for summer hours based on such operational considerations as dividing and/or rotating crew starting times to facilitate safety to the public, employees and equipment, to guarantee a high level of convenient service to the public, to preclude negative impact on traffic flow, and similar factors.

It shall be appropriate for the Labor-Management Committee (Article 2, Section 2-2) to review and discuss the daily starting and ending times of summer hours.

- F. The City may implement a ten (10) hour workday, four (4) workdays per week schedule in all functions of the Solid Waste Management Division. The implementation of the "four/ten" work schedule in other departments designated under Field Unit I may be considered in the Labor-Management Committee upon submission of a request by either party.

Except for Solid Waste Collections and Disposal, the regular work-week for regular full-time unit members working a "four/ten" work schedule shall consist of four (4) consecutive work days in a seven (7) day pre-established work period.

Section 4-2. Rest and Lunch Periods

- A. Existing workday schedules spanning nine (9) elapsed hours shall continue to include a sixty (60) minute unpaid meal period. Existing workday schedules of eight and one-half (8-1/2) hours and ten and one-half (10-1/2) hours shall continue to include a thirty (30) minute unpaid meal period. Workday schedules of eight (8) and ten (10) consecutive hours shall include a paid straight time meal period of up to one-half (1/2) hour on the job. Two (2) non-work periods of up to fifteen (15) minutes during a regular daily shift shall be permitted by supervision to promote the health, safety, and efficiency of employees on the job. Emergency situations may make this impossible in rare situations. Activities of employees during those non-work periods shall not be subject to any unreasonable restrictions.
- B. When a unit member does not receive a paid meal period, his/her meal period shall be uninterrupted and duty-free.

Section 4-3. Clean-Up Time

Employees will be given time, in keeping with past practice, at the end of a normal daily shift for personal clean-up.

Such time is in addition to and exclusive of any time the City requires be spent for maintaining equipment.

The intent of the above provision has always been to allow field employees who need personal clean-up prior to rest or lunch periods a reasonable amount of time to do so. Clean-up material should be supplied on an as needed basis to field employees. If the field supervisors and

employees act reasonably in addressing the issue, everyone will have a healthier and safer work environment.

Section 4-4. Seniority

- A. The City shall provide the Union with a list of unit members showing each unit member's employment date and class date.
- B. Seniority shall be by length of service within a class. If seniority within a class is not determinative, then length of service with the City shall prevail.
- C. Seniority shall be used as a factor consistent with established Civil Service procedures in choice of work assignments, vacation schedules, and in the determination of layoffs.

Section 4-5. Transfer Program

The City and the Union acknowledge mutual interest in the success of the present program of minimizing layoffs of employees by seeking to place such employees in other positions, consistent with Civil Service Rules on seniority. The Union agrees to provide positive counseling to unit members so affected to ease the transition to other positions. The City agrees to make available, on request, job counseling in order to provide training assistance to the employee during the first thirty (30) days of the new work assignment.

Although not required to honor a request for a voluntary transfer for an employee having documented extraordinary personal hardship beyond his/her control, the City will try to honor the request. In such a case, factors such as, but not limited to, the employee's shift, seniority, and work record may be considered.

To every extent practicable, a transferred unit member will be allowed to maintain his previous vacation schedule.

ARTICLE 5: BENEFITS

Section 5-1: Employee Assistance

The City Employee Assistance Program, will provide confidential, individual and family counseling to all unit employees and their eligible dependents. These services will be furnished by an independent contract agency to be chosen by the City.

Section 5-2: Health and Dental Insurance

- A. The City shall maintain the current 80/20 split for health insurance for both single and family coverage. If there is a rate increase or decrease the City shall pay 80% of the new monthly contribution and the employee will pay 20%.
- B. The City agrees to the continuation of a Health Insurance Advisory Committee for the purpose of studying existing plans and to explore alternative plans. The Committee shall include representatives of the City and Union.
- C. The City shall retain the dental insurance plan for unit members and their qualified dependents. The plan shall consist of eighty percent (80%) payment of reasonable and customary charges covered for preventive and diagnostic services, basic services, and major services. The plan shall also include an orthodontia benefit providing for eighty percent (80%) payment of reasonable and customary charges up to a maximum lifetime benefit of four-thousand (\$4,000) dollars per person. This plan is subject to the deductibles and limitations contained in the contract between the dental insurance carrier and the City of Phoenix. The City shall pay the premium costs for single unit employees (employee only coverage), and seventy-five percent (75%) of the premium costs for unit employees and their qualified dependents (family coverage).

The City shall maintain the current dental premium split. If there is a rate increase or decrease, the City will pay 100% of the new monthly contribution for single coverage. If there is a rate increase or decrease, the City will pay 75% of the new monthly contribution, and the employee will pay 25% for family dental coverage.

- D. The City agrees to continue the formalized complaint procedure with respect to the service under all plans.
- E. Unit members retiring on or after July 1, 2006, who meet all other MERP eligibility requirements and purchase either single or family City of Phoenix health insurance, shall receive an additional \$100.00 (one hundred dollars) per month to help defray the cost of health insurance.

Unit members retiring after August 1, 2022, who meet eligibility requirements, shall receive the \$150 month allowance for Post Employment Health Plan accounts (PEHP).

Section 5-3: Life Insurance

The City will provide regular full-time unit members the existing off-the-job and on-the-job life and dismemberment insurance coverage. The face value of the policy being fifteen thousand

dollars (\$15,000); in addition the City will pay seventy-five thousand dollars (\$75,000) for death in-the-line-of-duty insurance.

The designated beneficiary of a unit member will be paid for all accumulated sick leave hours that remain on the City's official file at the time of a line-of-duty death of the unit member and payment will be based upon the unit member's current base hourly rate. The beneficiary shall be designated on the Employee Declaration of Beneficiary card for the City of Phoenix Group Life Insurance Program on file in the City Human Resources Department.

Additionally, the City will provide to each unit member a \$200,000 death benefit covering the unit member's commutation to and from his City work location. This policy will be consistent with the policy negotiated in 1997 with CIGNA Group Insurance, and will cover the unit member's commute for up to two hours before his shift begins, and two hours after his shift concludes. The Union will only pay the cost of this benefit the first year of the MOU.

In the event of the death of a unit member while commuting to or from his work location, for a period of two hours each way, the City will continue to pay the full monthly health insurance premium for the spouse and all eligible dependents. This policy will be consistent with the terms of the 1997 agreement between the City of Phoenix and CIGNA Group Insurance, for the payment of a supplementary commutation life insurance policy for each unit member. The Union will pay the cost of this benefit, if any, the first year of each new MOU period.

Section 5-4. Long Term Disability Insurance

Pursuant to A.R. 2.323, the City will offer a long term disability benefit for all regular full-time unit members. The City may revise the A.R., provided, however, that such revisions shall not conflict with the express provisions of the MOU.

Employees who have been continuously employed and working on a full-time basis for twelve consecutive months are eligible for long term disability coverage. After an established ninety (90) calendar day qualifying period, the plan will provide up to sixty-six and two-thirds percent (66-2/3%) of the employee's basic monthly salary at the time disability occurs and continue up to age seventy-five (75) for employees who have been employed full-time for 36 months and one day. This benefit will be coordinated with leave payments, industrial insurance payments, unemployment compensation, social security benefits and disability provisions of the retirement plan.

Employees who have been employed full-time with the City of Phoenix for 36 months or less, will be eligible to receive a long term disability benefit for no more than thirty (30) months.

Section 5-5. Holidays and Vacation Pay

- A. The City agrees to incorporate into the MOU the benefits provided under A.R. 2.11 modified to indicate the following holidays.

Employees, except those on hourly paid status, shall, when possible without disrupting the various municipal services, be allowed the paid holidays listed below:

New Year's Day	January 1
Martin Luther King's Birthday	January, Third Monday
President's Day	February, Third Monday
Cesar Chavez Birthday	March 31
Memorial Day	May, Last Monday
Independence Day	July 4
Labor Day	September, First Monday
Veteran's Day	November 11
Thanksgiving Day	November, Fourth Thursday
Friday after Thanksgiving Day	Friday after Thanksgiving
Christmas Eve	Four (4) hours on December 24
Christmas Day	December 25
Two Personal Leave Days	After completion of six months of full-time employment.

When a holiday named in this regulation falls on Sunday, it shall be observed on the following Monday. When a holiday named in this regulation falls on Saturday, it shall be observed on the preceding Friday except that in the case of six (6) day operations such holidays may be observed on Saturday. This paragraph shall not apply to Christmas Eve, which shall only be granted when it falls on the employees' regular scheduled workday. In the case of continuous twenty-four (24) hour, seven (7) day operations and seven (7) day non-continuous operations, holidays shall be observed only on the calendar days on which they actually fall.

The Personal Leave Days are added to an employee's vacation leave bank and may be taken on any day of the employee's choosing after completion of six months of full-time employment, subject to operational and scheduling factors and the limitations of A.R. 2.11. This time does not alter the maximum carryover of vacation hours outlined in A.R. 2.18.

If a full-time unit member's regularly scheduled day off falls on a holiday to which he is entitled under this Article, first (1st) consideration shall be given to allowing three (3) consecutive days off, but if this is not feasible, a substitute day off of eight (8) hours with pay shall be given at straight time on a day designated by the Department Head. Unit members who work a 4/10 schedule, whose regularly scheduled day off falls on one of the holidays listed in paragraph C of this Article, shall receive ten (10) hours of compensatory time. An

accumulated a minimum of one-hundred seventy-five (175) hours and has used forty (40) hours of vacation/comp-time during the calendar year.

D. Parental/Family Leave

The City will, as a matter of general policy, and subject to operational needs, authorize up to three (3) months of unpaid leave for an employee who is the parent of a newly born or legally adopted child or any Unit member who needs to care for an ill family member. Family members include spouse, children (natural, adopted, foster, or stepchildren), brother, sister, parents, grandparents, as well as others living in the same household with the employee. Approval and use of this leave shall be subject to existing Personnel Rules.

- E. An employee may use up to ten (10) hours of accumulated sick leave in at least one-hour increments each calendar year for the home care or medical treatment for an immediate family member residing in the employee's household. This will be marked as "BO" on leave slips. When there is an extreme illness or injury situation where a life or death question exists involving an immediate family member, an employee may use up to five (5) days of accumulated sick leave. (This should not be construed as bereavement leave under Personnel Rule 15g). This will be marked as "BN" on leave slips.

In addition, employees may have dependent care situations where the above leave is insufficient to cover their absence. Therefore, employees will be allowed to use unscheduled accumulated vacation or compensatory time for the care of an immediate family member up to a maximum of five (5) incidents not to exceed a total of forty (40) hours each calendar year.

For all the above mentioned leaves, (sick leave, vacation, and compensatory leave) the employee will not have these leaves be considered a negative factor, when evaluating the job performance of an employee involved in a leave management program, up to a maximum total of seven (7) incidents per calendar year. An incident is defined as an absence from work, regardless of the length of time.

An immediate family member is defined as the employee's spouse, qualified domestic partner, mother, father or child. A child is defined as a biological, adopted, foster or stepchild, legal ward, or a child of a person standing in place of a parent. A brother, sister, grandparent, or in-law who is living with the employee under his/her care is also defined as an immediate family member.

- F. Unit members may contribute accrued vacation or compensatory time to other employees in accordance with City policy governing contribution of leave for serious illness or injury of an employee or their immediate family member. An immediate family member is defined as the employee's spouse, qualified domestic partner, mother, father, or child. A child is defined as a biological, adopted, foster or stepchild, legal ward, or a child of a person standing in place

of a parent. A brother, sister, grandparent, or in-law who is living with the employee under his/her care is also defined as an immediate family member. Requests to receive such leave contributions will require a completed doctor's certification.

- G. During the next twelve months, the Union will participate in Labor-Management efforts to discuss options to a Paid Time Off program.**

ARTICLE 6: MISCELLANEOUS

Section 6-1. Saving Clause

- A. If any article or section of this MOU should be held invalid by operations of law or by a final judgment of any tribunal of competent jurisdiction, or if compliance with or enforcement of any article or section should be restrained by such tribunal, the remainder of this MOU shall not be affected thereby.
- B. In the event the decision of the court in *Cheatham, et al v. Gordon*, is stayed, reversed, vacated or otherwise not given effect in whole or in part, by any court, then the City and LIUNA will meet and confer on any modifications to this memorandum.**

Section 6-2. Copies of MOU

- A. Within sixty (60) days after this MOU is adopted by the City Council, the Union will arrange for printing of jointly approved copies of it for furnishing one to every unit member, unit supervisor and to management personnel. The costs of such duplication and distribution will be borne equally by the Union and the City.
- B. Printing vendors secured by the Union shall comply with Chapter 18, Articles IV (City Construction Contractors' Affirmative Action Requirements) and V (Supplier's and Lessee's Affirmative Action Requirements), Phoenix City Code.

Section 6-3. Aid to Construction of Provisions of MOU

- A. The provisions of this MOU shall be in harmony with the rights, duties, obligations and responsibilities which by law devolve upon the City Council, City Manager, and other City boards and officials, and these provisions shall be interpreted and applied in such manner.

- B. The lawful provisions of this MOU are binding upon the parties for the term thereof, it being understood that the Union is precluded from initiating any further meeting and conferring for the term thereof relative to matters under the control of the City Council or the City Manager.

Section 6-4. Part-Time Employees

Hourly paid unit members, excluding seasonal and temporary employees, who have worked a minimum of fifty (50) hours in each pay period for twenty-six (26) consecutive weeks shall be entitled to the same benefits for authorized work on holidays as received by regular full-time unit members. In addition, such employees shall receive vacation credits prorated for the number of hours worked after the qualifying period is satisfied. Vacation credits shall be calculated and paid in cash in December and June. These hourly-paid employees shall be considered for advancement from Pay Step 1 to Pay Step 2 after completing one-thousand forty (1,040) hours of work in Step 1 and for advancement from Pay Step 2 to Pay Step 3 after working two-thousand-eighty (2,080) hours in Pay Step 2.

Employees who completed the twenty-six (26) weeks qualifying period shall be eligible for participation in the City's Health, Life, and Dental insurance programs. The City's premium participation will be the same as that provided for full-time employees. Continuation of participation under these plans will be determined on November 1, February 1, and May 1. If the employee has worked a minimum of fifty (50) hours in each pay period in July, August, and September, his/her participation shall continue for the period November through January. A similar review and qualification will be required for October, November and December; January, February and March; and April, May and June. If the employee separates from City employment, the participation will cease.

Part-time employees are allowed an hours reduction of up to two (2) weeks in one pay period in the twenty-six (26) week qualifying period and each period thereafter, without impacting their eligibility to participate in the part-time employees' benefit programs.

Section 6-5. Term and Effect of MOU

- A. This MOU shall remain in full force and effect commencing with the beginning of the first regular pay period in July **2014**, up to the beginning of the first regular pay period July **2016**. In compliance with the Meet and Confer Ordinance (Phoenix City Code Chapter 2, Article XVII, Division 1) as may be amended, on or before December 1, **2015**, LIUNA 777 shall submit its proposed memorandum of understanding for the next contract period.

- B. Except as expressly provided in this MOU, the City shall not be required to meet and confer concerning any matter, whether covered or not covered herein, during the term or extensions thereof.
- C. The provisions of this MOU shall be subject to Federal, State and local law that vests jurisdiction and authority in other public boards and officials, including the City Council, Phoenix Employment Relations Board, Phoenix Civil Service Board, City Manager and Department Managers, or determines issues contrary to the provisions hereof.
- D. This MOU constitutes the total and entire agreements between the parties and no verbal statement shall supersede any of its provisions.

DRAFT

ADDENDUM

The following Article 1, Section 1-3 Rights of the Association is suspended pending the outcome of the Cheatham vs. Gordon litigation. At the time a decision is reached, the language from the prior agreement that is deemed permissible by the court will be implemented.

For reference, due to the court's injunction, revisions were made to the following bolded areas of Article 1, Section 1-3.

Section 1-3: Union Rights

1. No employee shall suffer reprisal for the exercise of rights granted by this MOU.

2. **Union Release**

The Phoenix community benefits from harmonious and cooperative relationships between the City and its employees. The City and LIUNA Local 777 have negotiated full-time release positions, and release hours, as an efficient and readily available point of contact for addressing labor-management concerns. Examples of work performed by the release positions in support of the City include ensuring representation for unit employees during administrative investigations and grievance/disciplinary appeal meetings with management; participating in collaborative labor-management initiatives that benefit the City and the unit members; serving on City and departmental task forces and committees; facilitating effective communication between City and Department management and unit employees; assisting unit members in understanding and following work rules; and administering the provisions of the Memorandum of Understanding. The cost to the City for these release positions, including all benefits, has been charged as part of the total compensation contained in this agreement in lieu of wages and benefits.

1. **Full-Time Release Positions**

Three (3) persons designated as official full-time release Union representative for the unit shall be allowed up to two-thousand eighty (2,080) work hours for each representative per MOU year to engage in lawful Union activities pursuant to and consistent with this MOU. The full-time release positions agree to be bound by all City rules and regulations. Time used for this purpose in excess of two thousand eighty (2,080) hours for each representative shall be at the expense of the Union and the Union shall reimburse the City at the employee's hourly rate of pay. The City will pay the employee's full-time fringe benefits.

The Union shall notify Labor Relations and the appropriate Human Resources Liaison five (5) working days in advance when requesting release time for the above official designated Union representatives.

The Union will submit quarterly reports to the Labor Relations Division documenting the regular work schedules of the release positions and any leave used during the quarter.

Upon return from full-time release, the official Union representative shall be reinstated to their original location/yard and schedule. If the previous location no longer exists then the employee will have their choice of location/yard and schedule. Once at the location/yard the employee will, if applicable, receive an available assignment of route, truck and partner. They will then have an opportunity to participate in the next future transfer process in accordance with the department's transfer policy. In addition, any approved leave time the employee had scheduled prior to their return to their department shall be honored by the department.

2. Union Stewards

The Union may designate forty-five (45) Union members as stewards and shall notify the Labor Relations Administrator of such designations. There shall be no obligation on the City to change or adjust normal departmental scheduling or assignments of personnel as a result of such designations. Such designations shall be made from amongst Union members regularly working at the job sites within the proximate geographic area where they are intended to provide representation. The Union shall endeavor to be equitable in the distribution of its stewards.

a) One such representative from the Grievant's home department may, after the Grievant and the supervisor were unable to resolve the matter informally (Article 2, Section 2-1-A), when the Union is designated by a Grievant as his representative, attend mutually scheduled grievance meetings and hearings with department representatives without loss of pay or benefits. Paid release time used for any other purpose, such as gathering information, interviewing the grievant or witnesses, or preparing a presentation shall be charged against the bank of Union release hours (Section 1-3 D).

b) City employees who are on duty and are, either witnesses, charging parties, appellants or grievants and the shop steward representing any such employee from the employee's home department, may attend grievance, Civil Service, Phoenix Employment Relations Board (P.E.R.B.) and Public Works Accident Review Board meetings on City time provided 1) it is for their particular case which is either scheduled or on the public meeting agenda for that date and time and 2) Once a witness testimony has been concluded,

or if a grievant, charging party or appellant once that agenda item has been completed or the grievance meeting concluded, unless they have made other arrangements in advance with their immediate supervisors approval, they will promptly return to work. Management reserves the right to restrict the number of witnesses who can be off of the job at any one time but will cooperate in rotating witnesses from the workplace so as to minimize the impact to operations and service to the public. For group grievances the group will be allowed to select no more than two non-witness grievant representatives to attend the proceeding. These do not have to be the same group grievant representative for each step or meeting of the entire proceeding. As a matter of courtesy, employees will give management as much notice as possible.

c) Union designated representatives shall be admitted to the buildings and grounds of the City for the purpose of assisting in the adjustment of grievances and other official Union business, so long as such will not, in any manner, interfere with any work operation or the safety and security of any work site. Such representative will check in with the supervisor involved and will be required to conform with the operational and safety regulations and procedures as directed by the supervisor.

3. Bank of Union Release Hours

The Union will be allowed, subject to operational and scheduling factors and four (4) working days advance request in each instance, a unit total of five thousand (5,000) hours paid release time in a bank of release hours per M.O.U. year. Requests for release time shall be submitted to the Labor Relations Administrator and approval of release time hereunder shall not be arbitrarily withheld. The cost to the City for these release hours, including fringe, has been charged as part of the total compensation contained in this agreement in lieu of wages and benefits. Examples of how these hours are used by the Union include:

- For Executive Board members to attend meetings of the Executive Board, meetings of the general membership, and for preparation for negotiations.
- For stewards to provide representation when a steward from the employee's home department or a full-time release employee is unavailable.
- For a second representative to attend a grievance or investigative meeting.
- For authorized representatives to attend Union conferences, meetings, seminars, training classes and workshops so that representatives better understand issues such as

City policies and practices, conflict resolution, labor-management partnerships, and methods of effective representation.

- **For authorized representatives to research and prepare for grievance meetings and disciplinary hearings.**
- **For authorized representatives to educate and communicate with unit members in support of City policies and programs, and participate in City partnerships.**

Only one representative may be released from the same work group at the same time. No representative will be permitted to use more than 420 hours of release time from the bank of hours in any one MOU year.

Any hours used in excess of the bank of Union release hours must be approved by the Labor Relations Administrator and the LIUNA Local 777 Lead Business Manager. The number of hours used in excess of the allowable Union release hours at the end of the contract term will be deducted from the Union release hours available for the following year. A surplus of hours will be carried over into the next year to a maximum total Union release of 7500 hours.

a) The Union shall be allowed up to fourteen thousand (\$14,000) dollars per MOU year for designated unit members of the local to attend schools, conferences, workshops, trainings, in-house CDL instruction, and any other activity approved by the Labor Relations Administrator. These monies are to be paid in one lump sum in the first pay period of each MOU year. The City Auditor Department may conduct an audit of the funds used for training purposes periodically. Any payments not adequately supported by the documentation of expenses, or payments made for activities outside the scope of this agreement will be returned to the City by the Union.

b) In recognition of the mutual benefit provided to the City and the Union by the full-time release positions, the City agrees to pay the Lead Business Agent of the Unit two hundred and eight overtime hours each MOU year. The two full time Union Representatives will be paid eighty (80) hours overtime each MOU year. The overtime will be paid on the last paycheck of July upon request of the Union. The Union shall make such request no later than June 1. “

The Union agrees to reimburse the City of Phoenix for the equivalent salary costs plus fringe benefits on or before the last day of July each MOU year.

C. Unit members may be authorized in advance in writing to engage in lawful Union related activities during City work hours on a non-paid basis by the City Manager or his designee in his unrestricted discretion consistent with this MOU.

D. There shall be no use of official time for unit-related activities except as has been expressly authorized under this MOU. The City reserves the right to deny approval of request for use of official time for activities not expressly authorized under this MOU. The City shall not arbitrarily deny requests for use of official time for union activities.

E. Payroll Deductions

1) The City shall deduct from the first and second pay warrants of Union members, in each month, the regular periodic Union membership dues as certified by an authorized official of the Union and regular periodic Union sponsored insurance benefits pursuant to the City's deduction authorization form duly completed and signed by the employee and transmit such deductions monthly to the Union no later than the fourteenth (14th) day following the end of the pay period in which the deduction occurs, along with an alphabetical list of all employees for whom deductions have been made. Such deductions shall be made only when the Union member's earnings for a pay period are sufficient after other legally required deductions are made. Authorization for membership dues deductions herein shall remain in effect during the term hereof unless revoked by the employee. Revocation of deductions shall be accepted by the City only during the first week of July or January to be effective the following payroll period. The City will notify the Union of any revocations submitted to it, consistent with the PERB Ordinance Section 2-214.

In addition, the City shall provide the Union the alphabetical list, including, the last four digits of the Social Security Number, the active Union deductions list, and the deductions register on a CD.

If it is determined by a final decision by a court of competent jurisdiction that "Fair Share" does not violate Arizona State law or the Arizona State Constitution, the Union and City shall open up this contract to bargain in good faith over the "Fair Share" issue.

2) The City shall not make dues deductions for unit employees on behalf of any other employee organization as defined in the Meet and Confer Ordinance, during the term of this MOU.

3) The City assumes no liability on account of any actions taken pursuant to this section. The City shall, however, as promptly as technically possible, implement changes brought to its attention. The City shall, at the written request of the Union during the term of this agreement,

make changes in the amount of deduction hereunder for the general membership, provided cost for implementing such changes shall be reimbursed by the Union. This charge shall not apply to submission of new individual authorization cards or revocations or individual status changes.

F. Facilities and Services

1) The Union may distribute Union authorized materials on the City's premises (buildings and grounds) before and after scheduled working hours or in non-work areas during scheduled work hours provided both the employee distributing and the employee receiving such material are on their own time.

2) The City shall provide the Union with bulletin board space for its sole and exclusive use in communicating with its members at mutually agreeable locations.

3) Material which is not abusive of any person or organization, which does not violate Administrative Regulation (A.R.) 2.16, and which is not disruptive of the City's operations, may be posted or distributed, provided that such material is submitted to the City and also signed by an authorized official of the Union. The Union may grieve any refusal by the City to approve posting or distribution of submitted material.

4) **The Union shall have the right to meet with new unit employees for the purpose of informing each such employee of the Union and of that employee's right to have Union dues deducted from his/her pay warrant. The Human Resources Department will notify the Union when orientation sessions involving new unit employees are scheduled.**

Such opportunity shall be accorded the Union during the new employee orientation (NEO) sessions conducted by the Human Resources Department, Public Works Orientation Program (PWOP), and Parks Department new employee orientation (Parks NEO).

G. List of Unit Members

Upon the Union's filing of a Third Party Data Sharing agreement with the HR Department, the City shall provide electronically, at no cost, a list of unit members which includes the following: Emp ID, First Name, Last Name, Initial, Deduct, Service Date, Dept ID, Department, Job Title, Job Locator Code, Mailing Address, City, State, Zip, Home Phone, Work Phone.

Any and all information furnished by the City shall be used by the Union solely for the purpose of communicating with unit members, other legitimate union purposes, and shall not be shared with any other individual or organization.

H. The Union shall have the right to file a grievance on behalf of our member(s) when personally requested by the member. Filing procedures for grievance shall be those in Article 2, Section 2-1, Grievance Procedure.

I. Upon written request from the Union, the City will provide specific information from an employee's personnel files pertinent to a written grievance, arbitration case or civil service appeal. The City will also provide all pertinent collective bargaining information requested by the Union. The information will be supplied to the Union at no charge.

The following Article 1, Section 1-4.B, paragraph 7, Rights of Unit Employees the Association is eliminated pending the outcome of the Cheatham vs. Gordon litigation. At the time a decision is reached, the language from the prior agreement that is deemed permissible by the court will be implemented.

Section 1-4. Rights of Unit Employees (Letter B, paragraph 7)

If an employee is held over or a Union Steward is requested by management to hold over, or is called in from home by a supervisor to represent an employee at a meeting required by management, the employee and/or Union steward will receive overtime compensation for actual time held over or a minimum of one (1) hour if called in from home.

CITY COUNCIL REPORT

FORMAL AGENDA

TO: Lisa Takata
Deputy City Manager

AGENDA DATE: April 30, 2014

FROM: James P. Burke
Acting Parks And Recreation
Director

ITEM: 91 PAGE: 126

SUBJECT: INCREASE PHOENIX TENNIS CENTER FEES

This report provides backup information to the April 30, 2014 Formal Agenda Item 91 requesting the City Council adopt the increase of fees at the Phoenix Tennis Center.

BACKGROUND

The Phoenix Tennis Center (Center) located at 6330 North 21st Avenue, was constructed in 1969 and featured 22 lighted courts, a clubhouse, a practice wall, pedestrian walkways, landscaped areas, and parking lot. At that time, the Center was available for reservations, lessons, and competitive leagues. During the next few decades, the Center hosted national and international tournaments and was a popular destination for tennis greats like Billie Jean King.

Over the last 45 years, the Center lost much of its luster and had increased needs for repairs and improvements. The Parks and Recreation Department sought community feedback on design, repair, and upgrades to the facility. The Center is currently undergoing major restorations valued at almost \$4 million dollars. When complete, the Center will feature 25 new courts, upgraded lighting, windscreens, new shade structures, pedestrian walkways, seating areas, landscaping, and an irrigation system.

THE ISSUE

The current fees at the Center are \$2.00 per person for 1.5 hours with an additional \$3.00 light fee per court for night play. The Center's court and light fee were last increased November 2002.

In order to accommodate tennis users who not do want a fee-based facility, the Department offers 140 courts located in community and neighborhood parks which are available on a first-come first-serve bases. In addition, within close proximity of the Center, there are free tennis courts at Encanto Park, 2605 North 15th Avenue; Rose Mofford Sports Complex, 9833 North 25th Avenue; and Solano Park, 5625 North 17th Avenue.

OTHER INFORMATION

To keep the Center a viable entity, staff conducted a recent fee analysis by sampling similar facilities in the greater Phoenix and Tucson metropolitan areas. Research reflected Center fees were well below market averages and an increase should not adversely impact participation levels.

Local market research indicated that similar tennis centers revised their rates between 2007 and 2013. The research also showed fees varied greatly among various centers. The day fee ranged from \$2.00 per player to \$8.00 per player per 1.5 hours. The lights per court fee ranged from \$5.00 to \$10.00 among sites. In lieu of a court light fee some facilities charge a per player evening fee. Those fees ranged from \$3.00 per player to \$12.00 per player for 1.5 hours.

After analyzing the market-based rates, staff determined the most optimum fees for the Center should be \$4.00 per person for 1.5 hours with a \$5.00 light fee per court.

Staff held several community meetings to advise Center users of the fee analysis findings and the proposed fee increase. At the February 20, 2014 meeting, some attendees requested a lower rate for junior players, under 18 years of age. Staff discussed this recommendation with the concessionaire and it was agreed that juniors could be charged a reduced rate of \$2.00 per player, under these conditions:

- Except during prime time unless unreserved courts are available.
- Except on holidays, or during tournaments or lessons.

There was no major opposition and the community was supportive of the proposed rates.

The Parks and Recreation Board recommended City Council approval of the fee increase on February 27, 2014, as well as the Parks, Arts, Transparency, and Education Subcommittee on March 26, 2014.

RECOMMENDATION

This report is for information only.