

ARIZONA COURT OF APPEALS

DIVISION ONE

FRANK PICCIOLI, et al.,

Plaintiffs/Intervenors/Appellees/
Cross-Appellants,

v.

CITY OF PHOENIX, et al.

Defendants/Appellants/
Cross-Appellees.

Court of Appeals
Division One
No. 1 CA-CV-16-0690

Maricopa County
Superior Court
No. CV2012-010330

**DEFENDANTS/APPELLANTS/CROSS-APPELLEES'
COMBINED OPENING BRIEF AND APPENDIX**

Colin F. Campbell (004955)
Eric M. Fraser (027241)
Hayleigh S. Crawford (032326)
OSBORN MALEDON, P.A.
2929 North Central Avenue, Ste. 2100
Phoenix, Arizona 85012
(602) 640-9000
ccampbell@omlawcom
efraser@omlaw.com
hcrawford@omlaw.com

Attorneys for
Defendants/Appellants/Cross-
Appellees

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INTRODUCTION

This is a case about “pension spiking” –the practice of adding amounts to an employee’s pensionable pay right before retirement so that the employee will receive an artificially high lifetime pension benefit. The Charter of the City of Phoenix, which governs the City’s retirement plan, does not allow pension spiking. Although the City had previously allowed employees to spike their pensions with lump-sum amounts received at retirement for unused sick leave, the City ended this improper practice in 2012.

In this case, the superior court correctly held that the Charter does not require pension spiking. But it incorrectly held that the City had to allow pension spiking during a two-year window due to the parties’ collective bargaining agreements. Because the Charter (analogous to a constitution for a city) does not permit pension spiking, the City had no authority to contractually alter the Charter’s terms by permitting such spiking. Accordingly, the Court should reverse that portion of the judgment.

STATEMENT OF FACTS AND CASE*

I. The City of Phoenix's retirement plan.

The City of Phoenix is organized under a charter adopted by popular vote of its residents. See [Ariz. Const. art. XIII, § 2](#) (authorizing electors of a city of more than 3,500 to frame a charter for their own government). The Charter operates as the City's constitution. *Strode v. Sullivan*, [72 Ariz. 360, 362-63](#) (1951) (“when ratified at an election and approved by the Governor such charter ‘shall become the organic law of such city’”) (quoting [Ariz. Const. art. XIII, § 2](#)). The people created the Charter and only the people may amend the Charter. [Charter of the City of Phoenix, ch. XXII, § 2](#) (“No amendment shall be effective until approved by a majority vote of the qualified electors . . .”).

In 1953, Phoenix voters adopted Chapter XXIV, article II of the Charter to establish the City of Phoenix Employees' Retirement Plan.¹ The

* Selected record items are included in the Appendix attached to the end of this brief, cited by page numbers (e.g., [APP160](#)), which also match the PDF page numbers and function as clickable links. Other record items are cited with “IR-” followed by the record number.

¹ [APP465](#) [Tr. Ex. 57] (Ordinance No. S-522 (1953) referring Chapter XXIV of the Charter to special election).

voters therefore specified the terms of the retirement plan in what amounts to the City's Constitution.

"COPERS," as it is commonly called, is a defined benefit pension plan. See [Charter ch. XXIV, art. II, §§ 3, 19](#).² Under the terms of the plan, members become eligible upon retirement to receive a fixed pension benefit for life. See, *id.* § 19. The Charter ties the amount of the benefit to the member's pre-retirement earnings (pay) and length of service (time). *Id.* Specifically, an employee's pension is calculated by multiplying the employee's final average compensation by credited service and a benefit multiplier set in the Charter:

$$\text{Benefit} = (\text{Final Average Compensation}) \times (\text{Credited Service}) \times (\text{Benefit Rate})$$

See *id.*

For the pay component of the formula, the Charter defines "final average compensation" and the related terms "final compensation" and "compensation" as follows:

² All references to COPERS or the Charter refer to the version of the Charter in force in 2012. A copy of the 2012 version of Chapter XXIV of the Charter is available at IR-102. Relevant excerpts of the Charter are attached at [APP115-59](#). Unless otherwise indicated, references to the Charter refer to sections of Chapter XXIV, article II.

“Final average compensation” means the average of the highest annual compensations paid a member for a period of 3 consecutive, but not necessarily continuous, years of his credited service contained within his 10 years of credited service immediately preceding the date of [sic] his City employment last terminates. . . .

“Final compensation” means a member’s annual rate of compensation at the time his City employment last terminates.

“Compensation” means a member’s salary or wages paid him by the City for personal services rendered by him to the City. In case a member’s compensation is not all paid in money the City Council shall, upon recommendation of the City Manager, fix the value of the portion of his compensation which is not paid in money.

Id. §§ 2.14, 2.15, 2.13 (emphases added).

For the time component of the formula, the Charter defines credited service as “the number of years and months of service credited a member by the Retirement Board pursuant to the provisions of this Article.” *Id.* § 2.8. Section 14 of COPERS outlines the parameters of credited service. Section 14.4, relevant here, provides service credit for unused sick leave a member has left over at retirement. *Id.* § 14.4 (“A member shall be granted unused sick leave credited service for the period of unused sick leave standing to the member’s credit at time of retirement . . .”). The Charter thus treats unused sick leave (if a member has any) as a time factor for pension purposes.

The Charter places sole responsibility for administering the retirement plan in the Retirement Board (the “Board”). *Id.* § 4.1. Although the Board has some discretion to develop practical solutions for administering and operating the retirement plan, the terms and benefits of COPERS are fixed by the Charter.³ Moreover, these terms and benefits cannot be changed except by a majority vote of qualified Phoenix electors. *Id.* ch. XXII, § 2.

II. The City of Phoenix’s personnel system.

In contrast to the fixed terms and benefits of COPERS, the Charter gives the City Council and City Manager discretion over the general terms of City employment, including employee pay and benefits. *See* Charter ch. III (Government), § 9; *id.* ch. XXV (Personnel System), §§ 6–8.

Using that discretion, the City Manager, with approval from the City Council, prepares and implements a compensation plan covering all City employees. *Id.* ch. XXV, § 6 (directing City Manager to prepare and

³ For example, § 14.1 of COPERS requires the Board to “fix and determine by appropriate rules and regulations, consistent with the provisions of this Article, the amount of service to be credited any member” But the Charter’s terms define the scope of the Board’s discretion. *See, e.g., id.* (Board may set rules for credited service, but “in no case shall less than 10 days of service rendered by a member in any calendar month be credited him as a month of service . . .”).

maintain pay/classification plan for all City employees). Under the City's ordinances, public employees have the right to organize, and the City Manager is the City's designated representative for purposes of negotiating with unions about salaries, fringe benefits, and other terms of employment. *See, e.g., Phoenix City Code §§ 2-213, 2-218.* The City Manager also promulgates rules and regulations governing the personnel system. [Charter ch. XXV, § 8\(2\).](#)

In practice, the City Manager and City Council set employee salaries, wages, and benefits each year in a comprehensive "Pay Plan" ordinance.⁴ The City Manager negotiates Memoranda of Understanding ("MOUs") and Memoranda of Agreement ("MOAs") with union-represented employees to set their salaries, wages, and fringe benefits. [Phoenix City Code § 2-218](#) (MOU meet-and-confer process); [§ 2-231](#) (MOA meet-and-discuss process). For non-union employees, the City Manager unilaterally sets salaries, wages, and benefits. *See* [Charter ch. XXV, § 6.](#)

All salary, wage, and benefit terms (negotiated and non-negotiated) get incorporated into a comprehensive ordinance (the "Pay Plan") for City

⁴ *See, e.g., APP460* [Tr. Ex. 51] (2010-2011 Pay Plan Ordinance).

Council approval. See [Charter ch. XXV, § 7](#). The City Manager then revises or promulgates any personnel rules and administrative regulations necessary to implement the Pay Plan and related collective bargaining agreements. See *id.* § 8. (Although rule and regulation changes frequently occur during the Pay Plan and collective bargaining process, the City Manager can amend or adopt rules and regulations to effect City policies at any time. *Id.* § 8(2).)

Once approved, the Pay Plan fixes employee pay and benefits by law and the City Manager and City Council no longer have discretion to pay employees other than in accordance with the Pay Plan. See [Charter ch. III, § 9\(B\)](#) (prohibiting the City from paying employees additional compensation, fees, emoluments, or rewards about the employees' salary as fixed by law).

III. The administrative regulation that allows employees to “cash out” accrued sick leave at retirement.

The City has exercised its discretion under the Charter to establish a paid sick leave policy for employees. Under Personnel Rule 15(c), City employees accrue ten hours of paid sick leave per month, without

limitation.⁵ When employees take sick leave, the City pays them at their current rate of pay, even if the employee accrued the leave at a lower pay rate.⁶

In 1996, the City Manager adopted an administrative regulation (AR 2.441) allowing employees to elect a cash payout for their unused, accrued sick leave at retirement.⁷ AR 2.441 had two purposes.⁸ First, the City wanted to discourage employees from abusing the sick leave policy by taking leave when not actually sick.⁹ Second, the City wanted to reward retiring employees for their loyalty.¹⁰

The original version of AR 2.441 permitted eligible employees with at least 1,000 hours of unused sick leave at retirement (about 8.5 years' worth)

⁵ [APP178-79](#) [Tr. Ex. 45 at FP007248-49] (Personnel Rule 15).

⁶ *Id.*

⁷ [APP173](#) [Tr. Ex. 8] (AR 2.441 (1996)).

⁸ IR-224 (Joint Stipulated Facts) at 22, ¶ 102 (“The City began paying and continues to make lump sum payments of a portion of accrued and unused sick leave at retirement to employees in order to encourage employees to manage paid leave appropriately, to encourage employees not to abuse the sick leave bank, and to recognize loyalty to the City.”).

⁹ *Id.*

¹⁰ *Id.*

to cash out their accrued leave.¹¹ Eligible employees could cash out 20% of all hours accrued in excess of 500 “base hours.”¹² The regulation specified that cashed-out leave could not also be used to increase the employee’s credited service under COPERS.¹³ From its adoption in 1996 until the version at issue in 2012, however, AR 2.441 said nothing about whether the money received from such cash-outs would be considered pensionable.¹⁴

As an employment benefit, sick leave payouts are subject to collective bargaining. *See Phoenix City Code §§ 2-209, 2-214(B)* (listing wages, hours, and working conditions as permissible meet-and-confer topics); *id.* §§ 2-223, 2-229 (listing salaries and fringe benefits as permissible meet-and-discuss topics). In part because of labor negotiations, the City Manager has revised AR 2.441 three times to expand the categories of employees eligible for cash-outs and to increase the number of hours employees can cash

¹¹ [APP173-74](#) [Tr. Ex. 8 at D000268-69] (AR 2.441 (1996)).

¹² *Id.*

¹³ *Id.*

¹⁴ [APP202](#) [IR-372 at 17, ¶ 68] (Findings of Fact & Conclusions of Law) (“The various historical versions of Regulation 2.441 are silent regarding the use of cashed-out sick leave as part of a member’s final average compensation for purposes of a pension calculation.”) (footnote omitted).

out.¹⁵ But just like the AR, the City’s collective bargaining agreements remained silent about whether payouts for accrued sick leave qualified as pensionable compensation under the Charter.¹⁶

¹⁵ [APP206](#) [IR-372 at 21, ¶ 83] (Findings of Fact & Conclusions of Law); [APP160-75](#) [Tr. Exs. 8-12] (AR 2.441 (all versions)).

¹⁶ **Unit 2 MOUs:** IR-473 (Tr. Transcript Day 2 p.m.) at 129:10-131:4 (plaintiff Luis Schmidt testifying that none of the Unit 2’s MOUs from 1998 through 2012 say anything about the inclusion of sick leave payouts in pension calculations; “that terminology is not in those memorandums”); *see also* [APP278-79](#) [Tr. Ex. 18 at FP-6750-51] (2012-2014 MOU); Tr. Ex. 19 (2010-2012 MOU) at D6238; Tr. Ex. 20 (2008-2010 MOU) at D6177; Tr. Ex. 21 (2006-2008 MOU) at D6117; Tr. Ex. 22 (2004-2006 MOU) at FP6963; Tr. Ex. 23 (2002-2004 MOU) at FP7091; Tr. Ex. 24 (2000-2002 MOU) at D2529; Tr. Ex. 25 (1998-2000 MOU) at D6014.

Unit 3 MOUs: IR-473 (Tr. Transcript Day 2 p.m.) at 21:24-24:4 (labor relations personnel Lori Steward testifying that none of Unit 3’s MOUs from 1998 through 2012 say anything about the inclusion of sick leave payouts in pension calculations); *see also* [APP336](#) [Tr. Ex. 26 at D1184] (2012-2014 MOU); Tr. Ex. 27 (2010-2012 MOU) at FP6495; Tr. Ex. 28 (2008-2010 MOU) at FP6562; Tr. Ex. 29 (2006-2008 MOU) at D6355; Tr. Ex. 30 (2004-2006 MOU) at FP6630; Tr. Ex. 31 (2002-2004 MOU) at FP6869; Tr. Ex. 32 (2000-2002 MOU) at D2540; Tr. Ex. 33 (1998-2000 MOU) at D6311.

Unit 7 MOAs: IR-471 (Tr. Transcript Day 1) at 106:5-107:7, 110:15-112:10, 113:10-114:15, 115:9-23 (plaintiff Ron Ramirez testifying that none of Unit 7’s MOAs from 2006 through 2012 say anything about the inclusion of sick leave payouts in pension calculations; “[the MOA] Doesn’t say it”); *see also* [APP375](#) [Tr. Ex. 34 at D1223] (2012-2014 MOA); Tr. Ex. 35 (2010-2012 MOA) at FP3315; Tr. Ex. 36 (2008-2010 MOA) at FP3363; Tr. Ex. 37 (2006-2008 MOA) at FP3338.

The revised AR 2.441¹⁷ allows eligible employees with at least 750 hours of unused leave (about 6.25 years' worth) to cash out 25% of all hours accrued in excess of 250 base hours.¹⁸ So, for example, an employee with 2,250 hours of accrued sick leave can cash out 500 hours:

$$(2,250 \text{ hours} - 250 \text{ base hours}) \times 0.25 = 500 \text{ hours}$$

Those 500 hours would be paid at the employee's final rate of pay immediately before retirement, and would not be counted for service credit.¹⁹

IV. Past treatment of sick leave payouts for pension purposes.

When adopting AR 2.441, the City never formally considered or determined whether the sick leave payouts would be reported to COPERS as pensionable compensation.²⁰ The City simply reported an "all-in"

¹⁷ For purposes of this brief, "revised AR 2.441" refers specifically to the administrative regulation effective July 8, 2012, which is the subject of this litigation.

¹⁸ A slightly different formula applies to executive and middle management employees. That group can cash out 20% of accrued hours with no "base hour" deduction. Like other eligible employees, however, they must have accrued 750 hours to qualify. [APP161-62](#) [Tr. Ex. 12 at D000262-63] (AR 2.441 (2012)).

¹⁹ See *id.*

²⁰ [APP508-10](#) [IR-475 at 23:20-25:21] (Tr. Transcript Day 3 p.m.); see also IR-481 (Tr. Transcript Day 7 p.m.) at 28:5-30:12; IR-224 at 49, ¶9.

amount for an employee's final year of employment to COPERS administrators, without differentiating among the types of pay received.²¹ Without any thought, this all-in amount included retirement payouts for accrued sick leave.²² The COPERS Board likewise never undertook a formal interpretation of the nature of the payouts.²³

As a result, from 1996 until 2012, if an employee elected to receive a one-time payout for accrued sick leave at retirement, this payout increased the employee's final average compensation for pension purposes.²⁴ During this period, the City and COPERS told employees in presentations and in educational materials that amounts they received at retirement for accrued

²¹ See [APP508-10](#) [IR-475 at 23:20-25:21] (Tr. Transcript Day 3 p.m.); IR-477 (Tr. Transcript Day 4 p.m.) at 23:12-24:4; IR-224 at 49, ¶ 9.

²² [APP508-10](#) [IR-475 at 23:20-25:21] (Tr. Transcript Day 3 p.m.); IR-477 (Tr. Transcript Day 4 p.m.) at 23:12-24:4; IR-224 at 49, ¶9.

²³ [APP507](#) [IR-475 at 22:13-17] (Tr. Transcript Day 3 p.m.); [APP508-10](#) [*Id.* at 23:20-25:21]; [APP514-15](#) [*Id.* at 43:22-44:2]; see also IR-478 (Tr. Transcript Day 5) at 50:3-51:3; IR-474 (Tr. Transcript Day 3 a.m.) at 122:7-123:25.

²⁴ IR-224 (Joint Stipulated Facts) at 4, ¶ 13 & 8, ¶ 40; see also IR-481 (Tr. Transcript Day 7 p.m.) at 27:14-28:4.

sick leave under AR 2.441 would be counted as part of their final average compensation.²⁵

V. The City's revision of AR 2.441 to eliminate pension spiking.

In December 2010, the Mayor convened a Pension Reform Task Force ("Task Force") to study the COPERS system and recommend any necessary changes.²⁶ The Task Force, which consisted of members from all affected constituencies including union members, spent more than a year examining the Charter, the City's rules and regulations, other public retirement plans (in Arizona and nationally), and the actuarial impact of various reforms.²⁷ The Task Force ultimately determined that accrued sick leave payouts do not qualify as pensionable compensation under the terms of the Charter.²⁸ Accordingly, the Task Force recommended that the City stop the practice of reporting sick leave payouts at retirement as part of an

²⁵ IR-224 (Joint Stipulated Facts) at 10, ¶ 50 & 30, ¶ 136.

²⁶ See IR-224 (Joint Stipulated Facts) at 31, ¶ 142.

²⁷ See [APP491](#) [Tr. Ex. 150] (Feb. 14, 2012 Memo to City Council re Pension Reform Task Force Recommendations).

²⁸ See [APP493](#) [Tr. Ex. 150 at 3] (Feb. 14, 2012 Memo to City Council); IR-481 (Tr. Transcript Day 7 p.m.) at 120:13-121:10.

employee's final compensation to COPERS in the future, at least for new hires.²⁹

After receiving the Task Force's recommendation, the City Council directed the City Manager to revise AR 2.441 to prohibit the use of sick leave payouts for pension spiking going forward.³⁰ Effective July 8, 2012, the City Manager revised AR 2.441 to make clear that the City would no longer report sick leave payouts as pensionable compensation.³¹ Sick leave accrued after July 2012 could still be cashed out, but was not counted

²⁹ [APP493](#) [Tr. Ex. 150 at 3] (Feb. 14, 2012 Memo to City Council); IR-224 (Joint Stipulated Facts) at 31, ¶ 44.

³⁰ Although the City had the authority to implement the policy unilaterally, the City Manager offered to negotiate the change with the unions first, giving them the opportunity to bargain for valuable consideration in exchange for their buy-in. (*See* IR-224 (Joint Stipulated Facts) at 39, ¶ 160; IR-481 (Tr. Transcript Day 7 p.m.) at 24:12–26:25.) The employees in Unit 1 agreed to the changes in exchange for other benefits in their 2012-2014 MOU, but the City and the representatives of employees in Units 2, 3, and 7 did not reach an agreement. (IR-224 at 41, ¶ 167; IR-481 (Tr. Transcript Day 7 p.m.) at 24:12–26:25.) The 2012-2014 MOUs and MOA for these units therefore remained silent as to the pensionability of sick leave payouts at retirement. (*See id.* & [n.16](#), *supra.*)

³¹ [APP160](#) [Tr. Ex. 12] (AR 2.441 (2012)).

towards an employee’s final average compensation for pension purposes.³²

In light of the City’s past practice, however, the revised AR 2.441 grandfathered all previously accrued leave into the new policy.³³ The so-called “sick leave snapshot” works like this:

| Status on 7/1/12 | Hours accrued as of 7/1/12 | Hours accrued after 7/1/12 | Illustration |
|-------------------------|--|---|--|
| Retiree | All eligible hours included in final average compensation (“FAC”). | N/A, because already retired. | Employee has 1,000 hours of accrued sick leave at retirement on 7/1/12. Entire payout included in FAC. |
| Current Employee | All eligible hours included in FAC. | Can receive lump-sum payout, but not included in FAC. | Employee has 750 hours of accrued leave as of 7/1/12, accrues another 250 hours before retirement. Employee can use all 1,000 hours for cash out, but only 750 hours’ worth (the “snapshot”) is included in FAC. |
| Future Employee | N/A, because not yet hired. | Can receive lump-sum payout, but not included in FAC. | Employee accrues 1,000 hours of sick leave as of retirement date. Employee can use all 1,000 hours for cash out, but payout is not included in FAC. |

³² Employees may “replenish used sick leave with newly accrued sick leave up to the established pensionable-benefit maximum (i.e., snapshot amount).” ([APP163](#) [Tr. Ex. 12 at D000264] (AR 2.441 (2012))). For simplicity’s sake, the examples in this brief do not account for such replenishment because it does not affect the legal analysis.

³³ [APP162-63](#) [Tr. Ex. 12 at D000263-64] (AR 2.441 (2012)); *see also* [APP515-19](#) [IR-475 at 44:5-48:5] (Tr. Transcript Day 3 p.m.) (former Board member describing Board’s decision to take practical approach and allow continued pension spiking for sick leave already accrued, even though Board had determined pension spiking illegal under the Charter).

The snapshot's design ensures that employees who accrued sick leave under the old practice did not lose any benefit as a result of the City's error. All eligible hours accrued by an employee up to revised AR 2.441's effective date are still reported as part of the employee's pensionable compensation when she eventually retires, and employees can still accrue and cash out sick leave as before. The *only* change revised AR 2.441 makes is to exclude an employee's future unaccrued sick leave hours above the snapshot amount from the calculation of pension benefits.

VI. The superior court action.

Just as revised AR 2.441 was about to take effect, a group of employees and their labor organizations (collectively, "the members") sued the City of Phoenix, COPERS, and the COPERS Board³⁴ over the changes to the AR.³⁵ The members are several current City employees in Unit 2 (skilled trades workers), Unit 3 (clerical & pre-professional workers), or Unit 7 (administrative, supervisory, professional, and technical workers). Also named as plaintiffs were three labor organizations representing Unit

³⁴ References to "the City" refer to all Defendants/Appellants/Cross-Appellees collectively, unless otherwise specified.

³⁵ IR-1 (Complaint).

2, 3, and 7 employees: AFSCME³⁶ Local 2960 (Unit 2); AFSCME Local 2384 (Unit 3), and ASPTEA³⁷ (Unit 7).³⁸

The members argued that retirement payouts for accrued sick leave are “compensation” as defined in § 2.13 of the Charter, and thus the members have a vested right to include these amounts for purposes of computing their final average compensation under § 2.14 when calculating their pensions. The members sought a declaratory judgment that the revised AR 2.441 violates the Charter; Article XXIX, § 1(C) of the Arizona Constitution; and the contract clauses of the U.S. and Arizona constitutions. They also sought mandamus and injunctive relief to prohibit the City from enforcing AR 2.441.³⁹

³⁶ AFSCME stands for American Federation of State, County, and Municipal Employees.

³⁷ ASPTEA stands for Administrative, Supervisory, Professional, and Technical Employee Association.

³⁸ References to the “members” include all named plaintiffs and intervenors, including both individuals and the unions.

³⁹ IR-1.

A. The superior court held that the Charter does not require accrued sick leave payouts to be included in final average compensation.

The parties filed competing motions for summary judgment.⁴⁰

Although the superior court denied both motions, it ruled in favor of the City on the most important issue in this case.⁴¹

The superior court ruled that the members' fundamental claim – that the Charter requires sick leave payouts to be included in pension calculations as “compensation” under §§ 2.13 and 2.14 – was “plainly wrong.”⁴² In a footnote, however, the court noted that sick leave appeared to be the type of nonmonetary compensation that the City Council could fix the value of under § 2.13.⁴³

The superior court allowed the case to proceed on the alternative theory that the City had contractually obligated itself to treat sick leave payouts as pensionable in its collective bargaining agreements with the members.⁴⁴ The superior court found questions of fact regarding whether

⁴⁰ IR-96; IR-105.

⁴¹ [APP184](#) [IR-181 at 3].

⁴² *Id.*

⁴³ *Id.* n.1.

⁴⁴ [APP184](#) [IR-181 at 3].

the City agreed to treat sick leave payouts as pensionable in the parties' 2012-2014 contracts because in the past the City reported these amounts as pensionable compensation. The case proceeded to a bench trial on that issue.

B. The superior court ruled that the parties' labor contracts gave the members a two-year right to include accrued sick leave payouts in their pensionable compensation.

After a bench trial, the superior court ruled that the members' 2012-2014 labor contracts gave them the right to include sick leave payouts in their final average compensation for COPERS purposes.⁴⁵

The superior court concluded that sick leave is a form of nonmonetary compensation under § 2.13 of the Charter, the value of which the City Council can fix on the City Manager's recommendation.⁴⁶ Having determined that the Charter permitted the City to fix the value of accrued sick leave payouts by contract, the superior court reasoned that the evidence showed the parties understood sick leave payouts to be

⁴⁵ [APP227-28](#) [IR-372 at 42-43, ¶¶1-7] (Findings of Fact & Conclusions of Law).

⁴⁶ [APP195](#) [IR-372 at 10, ¶ 37].

pensionable when they entered their 2012-2014 contracts.⁴⁷ Accordingly, the court ruled that the City’s application of revised AR 2.441 to the members during the 2012–2014 contract term violated common law principles and Article XXIX, § 1(C) of the Arizona Constitution.⁴⁸ Because the trial related only to the 2012-2014 contracts, the court “express[ed] no opinion” as to revised AR 2.441’s application to any employees beyond 2014.⁴⁹ The court also did not address whether revised AR 2.441 violated the contract clauses of the Arizona or U.S. constitutions.

C. The superior court granted narrow injunctive relief and minimal damages.

After additional briefing on the proper scope of damages and equitable relief, the superior court ruled that the members were entitled to an injunction prohibiting the City from applying AR 2.441 to them during the 2012-2014 contract term only.⁵⁰ The court awarded about \$5,000 in damages to the eleven named intervenors who retired during the 2012-2014 contract term, but declined to award damages more broadly to all other

⁴⁷ *Id.*

⁴⁸ [APP227-28](#) [IR-372 at 42–43, ¶¶ 3–5].

⁴⁹ [APP228](#) [IR-372 at 43, ¶ 7].

⁵⁰ [APP235](#) [IR-415 at 3] (ruling re scope of relief); [APP242-43](#) [IR-459 at 1–2] (Judgment).

eligible retirees.⁵¹ The court ordered both sides to bear their own fees and awarded the members \$22,328.37 in costs.⁵²

The superior court entered a Rule 54(c) judgment, the City filed a timely notice of appeal, and the members cross-appealed.⁵³ This Court has jurisdiction under A.R.S. § 12-2101(A)(1).

STATEMENT OF THE ISSUE

Payments to COPERS participants are pensionable only if they meet the definition of “compensation” in the Charter. The Charter restricts “compensation” to “salary or wages paid [an employee] for personal services rendered.” [Charter ch. XXIV, art. II, § 2.13](#). Did the superior court err by concluding that sick leave payouts count as pensionable compensation under the Charter when they do not meet the predicate definition of compensation?

⁵¹ [APP234-35](#) [IR-415 at 2-3]; [APP243-44](#) [IR-459 at 2-3].

⁵² [APP240-41](#) [IR-458 at 4-5] (ruling re attorneys’ fees and costs); [APP244](#) [IR-459 at 3] (Judgment).

⁵³ [APP242](#) [IR-459] (Judgment); IR-462 (notice of appeal); IR-464 (notice of cross-appeal).

STANDARD OF REVIEW

After a bench trial, this Court reviews the superior court's legal conclusions de novo and the findings of fact for clear error. *Castro v. Ballesteros-Suarez*, 222 Ariz. 48, 51-52 ¶¶ 11-12 (App. 2009). The Court reviews de novo the interpretation the Charter of the City of Phoenix. See *City of Tucson v. State*, 191 Ariz. 436, 437 (1997).

ARGUMENT SUMMARY

The Charter limits what types of payments count as “compensation” for pension purposes. Under the plain text of the Charter, payouts for unused sick leave do not qualify as “compensation.” The Charter’s definition for “compensation” has two sentences. Sick leave payouts do not count as “compensation” because they do not satisfy the requirements from the first sentence, which restricts “compensation” to annual salary or wages for personal services rendered. (Argument §§ I.A-B.) The second sentence, which applies to compensation not paid in money, likewise excludes sick leave payouts because they are not “compensation” to begin with and in any event they are paid in money. (Argument § I.C.) In addition to the text, the structure and purpose of COPERS confirm that “compensation” does not include sick leave payouts. (Argument § II.)

The constitutional and common-law protections for pensions protect only the terms and benefits of the pension plan. Here, the members' rights to retirement benefits flow from the Charter. Because the Charter prohibits pension spiking, the members have no constitutional right to spike their pensions. ([Argument § III.](#)) For these and other reasons, the superior court erred in ruling that the members could spike their pensions during the 2012-2014 labor contract period. ([Argument § IV.](#))

ARGUMENT

- I. **Sick leave payouts do not qualify as “compensation” under the Charter’s definition.**
 - A. **The Charter’s plain text limits pensionable “compensation” to annual salary or wages paid to an employee for personal services rendered.**

The Charter is the City of Phoenix’s organic law, akin to a constitution. *Strode v. Sullivan*, [72 Ariz. 360, 365](#) (1951) (“this court has uniformly held that a city charter, when regularly adopted and approved, becomes the organic law of the city”). Therefore, courts apply principles of constitutional construction to interpret a charter’s text. *See Paddock v. Brisbois*, [35 Ariz. 214, 220–22](#) (1929). When interpreting a constitutional provision, the Court must “first examine the plain language of the provision” and “follow the text of the provision as written” unless it is

unclear. *Id.* (internal quotation marks and citation omitted). When terms are not defined within the Charter, they are given the meaning that is generally understood and used by the people. *McElhaney Cattle Co. v. Smith*, 132 Ariz. 286, 289–90 (1982). The Court cannot consider extrinsic evidence to vary the apparent meaning of the Charter’s terms. *Id.*; see also *Jett v. City of Tucson*, 180 Ariz. 115, 119 (1994) (“judicial construction is neither necessary nor proper”).

Under the Charter, an employee’s pension benefit depends solely on the employee’s years of service, final average compensation, and a multiplier. Charter ch. XXIV, art. II, § 19. The Charter defines both “final average compensation” and “final compensation” in terms of *annual* compensation:

“Final average compensation” means the average of the highest *annual compensations* paid a member for a period of 3 consecutive, but not necessarily continuous, years of his credited service contained within his 10 years of credited service immediately preceding the date of [sic] his City employment last terminates. . . .

“Final compensation” means a member’s *annual rate of compensation* at the time his City employment last terminates.⁵⁴

Id. §§ 2.14, 2.15 (emphases added).

The Charter, in turn, defines compensation as regular pay for personal services rendered:

“Compensation” means a member’s *salary or wages* paid him by the City *for personal services rendered* by him to the City. In case a member’s compensation is not all paid in money the City Council shall, upon recommendation of the City Manager, fix the value of the portion of his compensation which is not paid in money.

Id. § 2.13 (emphases added). Because the Charter does not further define “salary or wages,” those terms are given their ordinary meaning. *See Cross v. Elected Officials’ Ret. Plan*, 234 Ariz. 595, 603 ¶ 26 (App. 2014) (giving “salary” its ordinary meaning based on dictionary definition). The New Oxford American Dictionary describes both salary and wage as “a fixed regular payment.” Specifically, salary means “a fixed regular payment, typically paid on a monthly basis but often expressed as an annual sum, made by an employer to an employee, esp. a professional or

⁵⁴ Before 1973, the Charter used “average final compensation” instead of “final average compensation.” (*See* APP469 [Tr. Ex. 57 at D000284] (1953 version of Charter language); APP476 [Plfs.’ Tr. Ex. 59 at D000228] (1973 ballot proposing change to “final average compensation”).) Section 2.15’s use of “final compensation” reflects this earlier terminology.

white-collar worker.” New Oxford American Dictionary 1541 (3d ed. 2010) (copy at [APP522](#)). “Wage” means “a fixed regular payment, typically paid on a daily or weekly basis, made by an employer to an employee, esp. to a manual or unskilled worker.” *Id.* at 1942 (copy at [APP523](#)).

Similarly, the American Heritage Dictionary defines “salary” as “[f]ixed compensation for services, paid to a person on a regular basis” and “wage” as “[a] regular payment, usually on an hourly, daily, or weekly basis, made by an employer to an employee, especially for manual or unskilled work.” The American Heritage Dictionary of the English Language 1546, 1946 (5th ed. 2011) (copy at [APP526-27](#)). Moreover, salary and wages have been defined as regular, periodic pay since before Phoenix voters adopted the Charter’s definition of “compensation” in 1953.⁵⁵

The Court “must assign to the language its usual and commonly understood meaning unless the [voters] *clearly intended* a different

⁵⁵ For example, a 1946 dictionary defines “salary” as “the recompense or consideration paid, or stipulated to be paid, to a person at *regular intervals for services*, esp. to holder of official, executive or clerical positions” and “wages” as “[p]ay given for labor, usually manual or mechanical, *at short stated intervals*, as distinguished from salaries or fees.” Webster’s New International Dictionary of the English Language (2d ed. 1946) (emphases added) (copy at [APP529-31](#)).

meaning.” *Bilke v. State*, 206 Ariz. 462, 464–65 ¶ 11 (2003) (citation omitted; emphasis added). Nothing in the Charter suggests that the phrase “salary or wages” has some unusual meaning. Accordingly, the ordinary meaning of the Charter’s definition of compensation encompasses a fixed amount of money paid on a regular basis. And, therefore, “annual compensation” in the definition of final average compensation means the *regular, fixed* pay that an employee receives *each year* for *personal services rendered*.

B. Sick leave payouts do not qualify as “compensation” because they are not annual salary or wages for personal services rendered.

As the superior court correctly recognized, accrued sick leave payouts are not pensionable “compensation” under § 2.13 because they are not annual salary or wages for personal services rendered.

1. Retirement payouts for accrued sick leave are not regular annual salary or wages.

Accrued sick leave payouts do not qualify as annual salary or wages under the ordinary meaning of those terms because they are not *fixed, regular pay*. An employee may cash out accrued sick leave only once, if at

all.⁵⁶ Further, to even be eligible for a payout, an employee must have accrued over six years' worth of sick leave, so these amounts do not represent *annual* salary or wages.⁵⁷ For these reasons, this Court previously noted that “[a]lmost all courts that have addressed the issue have held that payments for accrued sick leave may not be included in a pension calculation.” *Cross*, [234 Ariz. at 604 ¶ 31](#).

In *Cross*, this Court held that lump-sum payouts at retirement for accrued sick leave and vacation leave do not count as part of an employee’s average yearly salary for purposes of the state’s Elected Officials’ Retirement Plan (“EORP”). [234 Ariz. at 605 ¶ 35](#). The EORP statute defined “average yearly salary” as “the result obtained by dividing the total salary paid to an employee during a considered period by the number of years . . . in which the salary was received.” *Id.* at 603 ¶¶ 27–28 (citation omitted). The Court reasoned that the term “salary” in the EORP pension statute includes amounts paid at regular intervals, which lump-sum

⁵⁶ [APP161](#) [Tr. Ex. 12 at D000262] (AR 2.441 (2012)); *see also* [APP184](#) [IR-181 at 3] (MSJ ruling).

⁵⁷ [APP184](#) [IR-181 at 3] (MSJ ruling).

payments at retirement for accrued sick and vacation leave are not. *Id.* at 604 ¶¶ 30–31.

Although *Cross* involved a unique factual scenario under the EORP, its analysis of sick leave payouts under the ordinary meaning of “salary” bears directly on the legal question here. The Charter defines pensionable compensation in terms of salary or wages, much like the EORP statute. The Court should give “salary” its ordinary meaning and restrict pensionable compensation to fixed amounts paid at regular intervals. The Charter’s use of “salary or wages,” versus EORP’s use of “salary,” does not change the result. (The difference likely results from the difference in membership between the plans; elected officials earn salaries, not wages.) As noted above, dictionaries define both salary and wages as fixed payments. Moreover, the Charter does not calculate pensions differently for wage-earners versus salary-earners.

Cases from other jurisdictions likewise confirm that one-time payouts are not regular annual salary or wages. The majority of jurisdictions that have considered whether payouts for accrued leave qualify as pensionable compensation agree with the reasoning and result of *Cross*. See, e.g., *Int’l Ass’n of Firefighters, Local No. 64 v. City of Kansas City*, 954 P.2d 1079, 1088

(Kan. 1998) (holding that “salary” means “periodic payments dependent upon time” and thus does not include lump-sum payments for unused sick or vacation leave); *Craig v. City of Huntington*, 371 S.E.2d 596, 600 (W. Va. 1988) (“Other courts that have considered this issue have *uniformly found* a lump sum payment upon retirement for accumulated benefits is not includable in the salary base for calculating pension benefits.” (emphasis added)); *Stover v. Ret. Bd. of St. Clair Shores Firemen & Police Pension Sys.*, 260 N.W.2d 112, 114 (Mich. Ct. App. 1977) (“Annual compensation received does not include unused sick or vacation payments because those payments are not made regularly during a worker’s tenure with the City.”).⁵⁸

The same well-established meaning of annual salary or wages as a fixed amount paid at regular intervals during the year applies here. Thus, the plain text of the Charter excludes one-time, lump-sum payouts for accrued sick leave from the definition of compensation.

⁵⁸ These holdings apply to the statutory interpretation question about the meaning of compensation, even if the constitutional provisions in those jurisdictions are different from Arizona’s.

2. Retirement payouts for accrued sick leave are not paid for personal services rendered.

In addition, retirement payouts for accrued sick leave cannot be compensation under the text of the Charter because they are not paid to an employee for personal services rendered. See [Charter ch. XXIV, art. II, § 2.13](#) (compensation is “a member’s salary or wages paid him by the City *for personal services rendered by him to the City*” (emphasis added)). First, employees cannot cash out unused sick leave until they retire—that is, when they *stop* providing personal services to the City. Further, payouts for unused sick leave at retirement cannot be regular pay for the services provided on days when an employee could have taken paid sick leave, because the employee has already received regular pay for that time.

The superior court correctly recognized that the timing and structure of sick leave payouts make them a type of retirement bonus, not pay for services rendered in the employee’s final years of work.⁵⁹ The court compared the payouts to a “gold watch” received at retirement, i.e., a benefit in recognition for the employee’s “body of work.”⁶⁰ Cf. [Stover](#), 260

⁵⁹ [APP184](#) [IR-181 at 3] (MSJ ruling).

⁶⁰ *Id.*

[N.W.2d at 114](#) (“payments [for unused sick or vacation leave] are properly viewed as a retirement bonus received at retirement and not as annual compensation received during a certain number of years immediately preceding the member’s retirement”).

In sum, accrued sick leave payouts do not qualify as compensation under the text of the Charter for two independent reasons. As nearly every court to address the issue (including this Court) has held, a one-time payout at retirement for unused sick leave does not fall within the ordinary meaning of the terms “compensation” or “salary.”

C. For the same reasons, retirement payouts for accrued sick leave cannot be “nonmonetary compensation” under the text of the Charter.

Because accrued sick leave payouts are not “compensation,” they cannot qualify as nonmonetary compensation under the terms of the Charter.

1. The Charter’s text limits nonmonetary compensation to compensation that is not paid in money.

Section 2.13 of the Charter contains two sentences. The first sentence defines “compensation.” The second sentence provides that if an employee receives nonmonetary “compensation,” the City Council and City Manager must set the value of that nonmonetary compensation:

“Compensation” means a member’s salary or wages paid him by the City for personal services rendered by him to the City. In case a member’s compensation is not all paid in money the City Council shall, upon recommendation of the City Manager, fix the value of the portion of his compensation which is not paid in money.

[Charter ch. XXIV, art. II, § 2.13](#) (emphasis added).

On a plain reading of the text, “compensation . . . not all paid in money” must still fit the first sentence’s definition of “compensation.” The second sentence of § 2.13 does not provide any other definition for “compensation” or for “compensation not all paid in money.” Instead, it describes nonmonetary compensation as a subset of compensation; i.e., as the “portion” of an employee’s compensation not paid in money. Thus, the definition of “compensation” in the preceding sentence must also apply to “compensation . . . not paid in money.”

The purpose of the nonmonetary compensation sentence in § 2.13 underscores that “compensation” means the same thing whether paid in money or in kind. As reflected in the City’s Pay Plan ordinances, this provision exists so that the City can fix the value of nonmonetary items such as lodging or utilities that are provided to the employee in lieu of a

higher salary.⁶¹ Because pensions are calculated based on employee compensation expressed in dollars and cents, employees who receive a nonmonetary benefit instead of a higher salary would be shortchanged under the pension formula if that value were excluded from their pay.

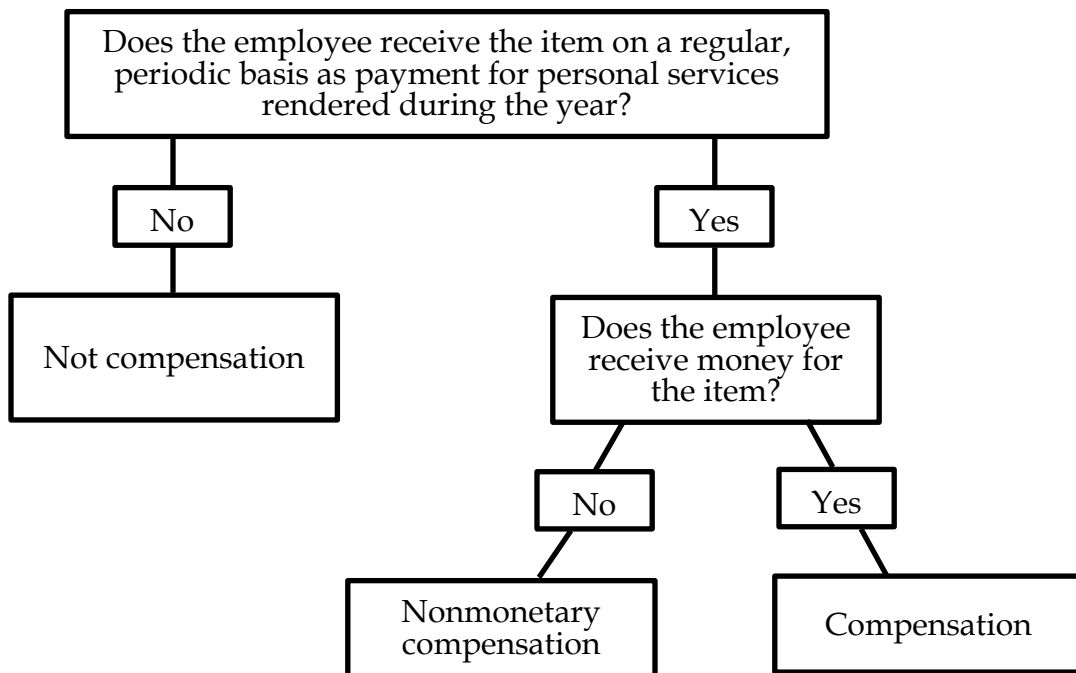
For example, suppose the pay ordinance sets the salary for park rangers at \$42,000. Instead of paying a park ranger \$42,000 in money, the ordinance allows the City to provide her \$30,000 in money plus free housing inside the park worth \$12,000/year. To ensure that the ranger's pension benefit reflects the true value of her compensation, the City can assign the housing its value of \$12,000 per year under § 2.13.

Importantly, although the City assigns a value to nonmonetary compensation, it does not actually pay the employee that value in money. If it did, the employee would be compensated twice for the same benefit. The second sentence thus functions as a form of "unit conversion." If some of an employee's compensation gets paid not in the familiar units of dollars

⁶¹ See, e.g., [APP462](#) [Tr. Ex. 51 at 3, § 8] (2010-2011 Pay Plan Ordinance) ("in the event any employee of the City of Phoenix receives non-monetary compensation in the form of *lodging, utilities or similar elements*, such compensation may be deducted from the bi-weekly rate for such classification") (emphasis added).

and cents, but rather in “units” of housing, then that portion must first be converted to dollars and cents before performing further calculations. The second sentence requires the City Council and City Manager to perform that conversion (to “fix the value”).

As the text and purpose of § 2.13 show, the Charter provides a single definition of pensionable compensation, whether paid in money or in kind: salary or wages paid to an employee for personal services rendered. If those salary or wages are paid in money, they are included in the employee’s pensionable compensation under the first sentence of § 2.13. If, however, they are not paid in money, the City may assign them a value for pension purposes under the second sentence of § 2.13.



2. Retirement payouts for accrued sick leave are not compensation, and they are paid in money.

Accrued sick leave payouts fail both of the Charter's requirements for nonmonetary compensation. As discussed above ([Argument §§ I.A-B](#)), retirement payouts for accrued sick leave are not compensation because they are not regular annual salary or wages paid to employees for personal services rendered. "Almost all courts" that have considered whether accrued sick leave payouts are salary or compensation for pension purposes, including this Court, agree that they are not. *Cross*, [234 Ariz. at 604 ¶ 31](#).

Nor do sick leave payouts meet the additional requirement that nonmonetary compensation not be paid in money. Employees who elect a payout receive money for their unused leave. The payouts cannot be "not paid in money" because they *are* paid in money. There are no units to convert to dollars and cents, and making the City Council and the City Manager "fix the value" of something already valued in dollars and cents simply makes no sense.

3. The limited history and interpretation of the nonmonetary compensation portion of the definition confirm this interpretation.

Although the bench trial focused on the second sentence of § 2.13, that provision is a relic of history and it is almost never (if ever) used today. That sentence has been in the Charter since 1953. Perhaps utilizing § 2.13 may have been more common in the 1950s when the voters initially enacted it,⁶² but current City personnel are not aware of it ever being used.⁶³

Likely for this reason, no Arizona court has addressed the meaning of the nonmonetary compensation sentence. The closest authority comes from another jurisdiction with a similar provision in its retirement plan. A court in that jurisdiction analyzed sick leave payouts without reference to

⁶² See [APP513](#) [IR-475 at 37:1-4] (Tr. Transcript Day 3 p.m.) (former City budget director and Retirement Board member Cathy Gleason: “It would be so unusual, especially in this day and age, I think this language is more appropriate in the 50s when it was first drafted.”).

⁶³ See, e.g., [APP512](#) [IR-475 at 36:14-22] (Tr. Transcript Day 3 p.m.) (former City budget director and Retirement Board member Cathy Gleason testifying that she was “not aware” of the City ever having fixed the value of nonmonetary compensation under the second sentence of § 2.13); IR-479 at 81 (former HR director Janet Smith testifying to the same); IR-481 at 45:7-46:7 (assistant to the City Manager Rick Naimark testifying similarly).

the nonmonetary provision, at least suggesting that sick leave payouts do not qualify as nonmonetary compensation.

In *West Virginia Consolidated Public Retirement Board v. Carter*, members of West Virginia's Public Employee Retirement System ("PERS") claimed that they were entitled to count payments for accrued vacation leave towards their final average salary when calculating their pensions. [633 S.E.2d 521, 525](#) (W. Va. 2006). Similar to COPERS, the PERS statute defined "final average salary" as the average of the employee's highest annual compensation over a three-year period. *Id.* at 526. The statute further defined "compensation" as:

[T]he remuneration paid a member by a participating public employer for personal services rendered by the member to the participating public employer. *In the event a member's remuneration is not all paid in money, his or her participating public employer shall fix the value of the portion of the remuneration which is not paid in money.*

[W. Va. Code Ann. § 5-10-2 \(West 2005\)](#) (emphasis added). Interpreting this language, the court reasoned that vacation leave payouts are not the type of regular salary contemplated by the text because they are not paid annually or in periodic installments. *Carter*, [633 S.E.2d at 526-27](#). Nowhere

in its analysis, however, did the court mention the nonmonetary remuneration provision in the statute. *See id.*

II. The structure and purpose of COPERS confirm that accrued sick leave payouts are not pensionable.

The structure and purpose of the retirement plan confirm the Charter means what it says: lump-sum payouts for accrued sick leave are not part of an employee's pensionable compensation. Phoenix taxpayers established COPERS to provide City employees with a form of deferred compensation to secure their retirement. *See Yeazell v. Copins*, 98 Ariz. 109, 114-15 (1965) (recognizing pensions as a form of deferred compensation offered as part of consideration for public employment). Hence, the Charter's pension formula gives City retirees a portion of their pre-retirement earnings each month. Adding lump-sum payouts for accrued sick leave conflicts with the structure and purpose of this deferred compensation model.

A. The voters chose to treat sick leave as a time factor for pensions, not a pay factor.

First, treating lump-sum payouts as compensation conflicts with the Charter's pension formula, which categorizes accrued sick leave as an element of credited service, not compensation.

Under the Charter's formula, an employee's pension depends on two factors: compensation (pay) and credited service (time). The Charter does not include unused sick leave as a factor in employee pay. Instead, the voters elected to treat unused sick leave as a time factor, providing in § 14.4 that members will receive *service credit* for unused sick leave. That service credit in effect creates a fiction that the employee worked longer than she really did.

The voters had the power to create that fiction. But crucially, the City could not have created that fiction on its own without approval from the voters. The voters likewise could have approved a different definition of "compensation" to give employees a boost on the pay factor rather than (or in addition to) the time factor. But they did not do so, and the Court should respect the voters' choice on how to treat unused sick pay for pension purposes. *Cf. Paddock v. Brisbois*, [35 Ariz. 214, 221, 225](#) (1929) (refusing to read charter as giving civil service commission power to discharge officers and employees where the people of the city vested that power in the city manager; "if it is desirable [to give the commission discharge authority,] the qualified electors can accomplish that result by amending the charter").

Cases from other jurisdictions confirm that differences between “pay” factors and “time” factors in a pension formula must be given appropriate weight. In *Santa Monica Police Officers’ Ass’n v. Board of Administration*, the court held that retirement payouts for unused, accrued sick leave could not be included as part of an employee’s “final compensation” for pension purposes. [137 Cal. Rptr. 771, 774](#) (Ct. App. 1977). It did so in part because the legislature chose to treat sick leave as a time factor under the pension formula. Like COPERS, the *Santa Monica* retirement plan provided a pension formula that used two factors, time and pay. [Id. at 773](#). And, like COPERS, the retirement plan provided service credit to employees with unused accrued sick leave at retirement, but made no mention of unused sick leave as a pay factor. [Id. at 773–74](#). Based on the plan’s provisions, the court concluded that the legislature intended to treat unused sick leave as a time factor for pensions, not as a compensation factor. [Id.](#)

The same reasoning applies to COPERS. Although the City can decide to offer money for unused sick leave, the Charter’s provisions control whether those amounts are pensionable. The Charter approved by Phoenix voters treats unused sick leave as credited service under the

Charter, not additional pay. Neither the City nor its employees may circumvent the voter-approved method for accounting for unused sick leave.

B. Pension spiking distorts the pay component of the pension formula.

Further, adding lump-sum amounts to an employee's final average compensation distorts the formula intended to capture an employee's actual rate of pay over the employee's career. Under the Charter, the retirement plan must use "annual compensation" over a three-year period as the basis for calculating the amount of deferred compensation an employee will receive each month as a pension. [Charter ch. XXIV, art. 2, § 2.14](#). But adding in lump-sum payments for sick leave necessarily pulls in items accrued over more than just three years because of the way the City's sick leave policies work.

Employees accrue 10 hours of sick leave per month, but they become eligible for a payout only if they have at least 750 hours' worth of unused leave.⁶⁴ That means that an employee must work for more than six years (with perfect attendance) before the employee becomes eligible for a

⁶⁴ [APP161](#) [Tr. Ex. 12 at D000262] (AR 2.441 (2012)).

payout. (See [Facts & Case § III](#), above.) Pulling in items from more than six years ago violates the Charter's limitation on counting only what happens in a three-year window when calculating an employee's final average compensation. And because the many years' worth of accrued sick leave get cashed out in one fell swoop, counting that payout in annual compensation results in an artificial "spike" in one year. That treatment likewise triggers a spike to the employee's pension benefit without any change in the employee's rate of pay, hence the label "pension spiking."

In addition, employees who accrue sick leave instead of using it end up being double-paid – they get paid for working the days they could have taken off had they been ill, and then get paid again at retirement for the sick leave they did not use on those same days. Although the City is free to run the sick leave system in that manner (within its authority under the Charter and relevant laws), COPERS is not designed to incorporate these one-off and sporadic payments into an employee's lifelong pension. Because retired employees receive pension benefits for the rest of their lives, even small "spikes" in employees' compensation at retirement rapidly cause the City's pension liability to balloon.

Take the following example of a fictional employee: Employee Smith retired on December 31, 2012 at age 53 after completing 32 years of service with the City. As is typical, Smith’s three highest consecutive years of salary were his final years of employment in 2010, 2011, and 2012. At retirement, he received a \$9,000 lump-sum payment for his accrued sick leave.⁶⁵ Life expectancy according to federal guidelines is 324 months.⁶⁶ Under the Charter, Smith’s benefit rate is 2% (based on 32 years of service). See [Charter ch. XXIV, art. II, § 19.1](#).

The chart below compares Smith’s pension benefits with and without pension spiking.

| | Without spiking | With spiking |
|--|---|---|
| Highest annual compensations paid over 3 consecutive years | <ul style="list-style-type: none"> • Year 1: \$54,000 (2010 salary) • Year 2: \$55,000 (2011 salary) • Year 3: \$56,000 (2012 salary) | <ul style="list-style-type: none"> • Year 1: \$54,000 (2010 salary) • Year 2: \$55,000 (2011 salary) • Year 3: \$65,000 (2012 salary + \$9,000 sick leave payout) |
| Final average compensation | $(\$54,000 + \$55,000 + \$56,000) / 36 \text{ mo.} = \mathbf{\$4,583.33/\text{mo.}}$ | $(\$54,000 + \$55,000 + \$65,000) / 36 \text{ mo.} = \mathbf{\$4,833.33/\text{mo.}}$ |
| COPERS Benefit | $\$4,583.33/\text{mo} \times 32 \times 2\% = \mathbf{\$2,933.33/\text{mo.}}$ | $\$4,833.33/\text{mo} \times 32 \times 2\% = \mathbf{\$3,093.33/\text{mo.}}$ |
| Lifetime cost | $324 \text{ mo.} \times \$2,933.33/\text{mo.} = \mathbf{\$950,398.92}$ | $324 \text{ mo.} \times \$3,093.33/\text{mo.} = \mathbf{\$1,002,238.92}$ |

⁶⁵ For employees retiring in 2009 and 2010, the average sick leave payout was \$9,923. (IR-224 (Joint Stipulated Facts) at 32, ¶ 150.)

⁶⁶ Social Security Administration Actuarial Life Table (2013), <https://www.ssa.gov/oact/STATS/table4c6.html>.

With pension spiking, what started out as a \$9,000 retirement bonus balloons into an extra \$51,000 cost to COPERS (and ultimately, the taxpayers) over Smith's lifetime. And with over 7,000 members, the plan-wide cost of pension spiking is orders of magnitude larger.

The City learned the consequences of improper pension spiking the hard way. Years of high investment returns masked the problems caused by spiking. Once investment returns dropped, however, the toll that years of spiking had taken on the plan was revealed. Between 2000 and 2012, COPERS' funding status dwindled from over 100% to less than 63%.⁶⁷

C. Pension spiking creates a lifetime disparity among otherwise equal employees.

Finally, treating accrued sick leave payouts as pensionable compensation would create a disparity between otherwise equal employees. Under the members' desired approach, employees with the same pay rate will receive unequal pensions for the rest of their lives simply because one took sick leave and the other did not. Courts have consistently refused to adopt interpretations of pension language that

⁶⁷ [APP498](#) [Tr. Ex. 303 at 106] (2003 City of Phoenix Comprehensive Annual Financial Report); [APP503](#) [Tr. Ex. 309 at 111] (2012 City of Phoenix Comprehensive Annual Financial Report).

would result in disparate treatment of plan members. *See, e.g., Int'l Ass'n of Firefighters*, 954 P.2d at 1087 (“lump sum payments should not be designated as wages because they would artificially inflate an employee’s final monthly salary and, thus, discriminate.”). One court identified the inequity and incongruity of that interpretation:

It seems incongruous that where two employees working side by side making the same rate of pay and one is sick more than the other, for him or her to receive less pension for the rest of his or her life (which would continue to the surviving spouse and minor children upon death). We do not believe the General Assembly intended such a result.

City of Covington v. Bd. of Trustees of Policemen's & Firefighters' Ret. Fund, 903 S.W.2d 517, 522–23 (Ky. 1995) (emphasis added). Likewise, there is no evidence that Phoenix voters intended to attribute a higher rate of pay to certain employees under the Charter simply because they were fortunate enough not to become sick. Had the framers or voters intended that result, they could have said so expressly, like they did for service credit.

In sum, the disconnect between the structure and purpose of COPERS and the consequences of interpreting the Charter to allow employees to spike their pensions with lump-sum payouts for accrued

leave demonstrate that lump-sum payouts do not qualify as pensionable compensation.

III. Because the Charter prohibits pension spiking, it cannot form the basis of a constitutional violation.

Any constitutional rights the members have depend on the terms of the pension plan itself (i.e., the Charter). Because the Charter prohibits pension spiking, the members cannot have a constitutionally protected right to that “benefit.”

A. Pension law protects only the terms and benefits of the Retirement Plan.

Under Arizona law, the right to receive a pension benefit, if offered to a public employee, is a contractual right. *Yeazell*, 98 Ariz. at 112–15 (holding that public employee benefits are contractual rights, not illegal gratuities). Article XXIX, § 1(C) of the Arizona Constitution provides that “[m]embership in a public retirement system is a contractual relationship that is subject to article II, § 25,” and “[p]ublic retirement system benefits shall not be diminished or impaired.”

Contract principles and the pension clause are not *independent* sources of any rights, however—they “only protect whatever pension rights [a plaintiff] has under applicable law.” *Cross*, 234 Ariz. at 599 ¶ 9.

Here, the members’ contractual rights to retirement benefits flow from the Charter. The Charter prohibits the members from spiking their pensions with sick leave payouts. The Pension Clause therefore does not protect pension spiking as a “public retirement system benefit.”

For that reason, the pension cases cited by the members below do not apply to this case.⁶⁸ In each of those cases, the retirement plan itself *expressly granted* the right the pensioners claimed had been impaired or diminished.

| Case | Controlling plan term at issue | Challenged change to the plan term |
|--|---|--|
| <i>Yeazell v. Copins</i> , 98 Ariz. 109, 111 (1965) | Police Pension Act of 1937 (currently codified at A.R.S. § 9-925) provided that police officer was entitled to pension at rate equal to half his average monthly compensation for one year before retirement. | Legislature amended statute to change pension rate to half of monthly compensation for five years before retirement. |
| <i>City of Phoenix v. Boerger</i> , 5 Ariz. App. 445, 448 (1967) | 1929 Firemen’s Relief and Pension Fund (currently codified at A.R.S. §§ 9-951 to -971) provided that fireman would receive a monthly pension equal to half his salary before retirement. | Legislature amended statutes to provide for monthly pension equal to half of fireman’s average monthly salary over five-year period before retirement, and set a maximum pension of \$250. |

⁶⁸ See, e.g., IR-96 (motion for summary judgment); IR-226 (proposed findings of fact and conclusions of law); IR-368 (closing argument).

| | | |
|---|--|--|
| <i>Thurston v. Judges' Ret. Plan</i> , 179 Ariz. 49, 50 (1994) | A.R.S. § 38-801(C) (1976) provided that surviving spouse of judge was entitled to monthly benefits equal to 1/3 of monthly benefit being paid to judge at death. | Legislature amended statute to increase surviving spouse monthly benefits to 2/3 of monthly benefit being paid to judge at death. |
| <i>Barnes v. Ariz. State Ret. Sys.</i> , CV2011-011638, at 2 (Maricopa Cnty. Sup. Ct. Feb. 1, 2012) ⁶⁹ | A.R.S. §§ 38-736 and 38-737 (1995) set employee share of required annual pension contributions at 50%. | Legislature amended statutes to increase employee share of annual pension contributions to 53%. |
| <i>Fields v. Elected Officials' Ret. Plan</i> , 234 Ariz. 214, 217 ¶ 9 (2014) | A.R.S. § 38-818 (1998) provided that elected officials were entitled to permanent benefit increases if investment returns exceeded 9%. | Legislature amended statute to require investment returns exceeding 10.5% before benefit increases would be paid. |
| <i>Hall v. Elected Officials' Ret. Plan</i> , 241 Ariz. 33, 35 ¶¶ 4, 8 (2016) ⁷⁰ | A.R.S. § 38-810 (1987) set employee share of required annual pension contributions at 7%. | Legislature amended statute to increase employee share of annual pension contributions to lesser of 13% of employee's gross salary or a variable rate. |

These cases might apply if, for example, the Charter *did* state that employees could spike their pensions using retirement payouts for unused leave and then the voters amended the Charter to eliminate spiking. But

⁶⁹ Copy available at IR-97.

⁷⁰ Because it had not yet been decided, the members did not rely on *Hall* during the merits phase below (although they did cite it in post-trial briefing). *Hall* nonetheless fits the same pattern as the other pension cases.

because the Charter prohibits spiking, the cases do not apply. The City cannot diminish or impair a right to pension benefits that the members do not legally have in the first place. *See Cross*, 234 Ariz. at 599 ¶ 9, 605 ¶ 13 (concluding that pensioner did not have vested contractual right to include lump-sum payout for accrued sick leave in calculation of pension benefits because the amounts did not qualify under statutory definition of pensionable pay).

Cases from states with similar constitutional provisions have reached the same result. In *Holland v. City of Chicago*, 682 N.E.2d 323, 328 (Ill. App. Ct. 1997), the court agreed with the plaintiffs that Illinois law required it to construe the relevant pension statute liberally in their favor, but explained that this general rule “does not permit this court, under the guise of statutory construction, to substitute different provisions or otherwise depart from the plain meaning of the words employed.” Because nothing in the statute’s text evidenced an intent to depart “from the generally accepted definition of ‘salary,’ *i.e.*, fixed compensation paid regularly for services,” the court ruled that items of compensation like holiday and vacation pay were not “annual salary” under the statute, “[i]rrespective of how the various components of a police officers’ total compensation are

treated in the City's annual appropriation ordinance or in the relevant labor contracts." *Id.* at 327. Finally, because the statute's text did not indicate an intention to include these items in "salary," the court observed that "there can be no claim that the City or pension board has somehow redefined a statutory term, thus diminishing an officer's benefits" in violation of the state constitution's pension clause. *Id.* at 329.

B. The City cannot designate something as pensionable compensation when doing so conflicts with the Charter.

The members argued below that the right to include sick leave payouts in pensionable compensation became a term of the retirement plan by virtue of the City's past practice and their collective bargaining agreements. But the Charter *is* the retirement plan, and it is the first and last word on what counts as compensation for COPERS purposes. *Cf. Mathews v. Chicago Transit Auth.*, 51 N.E.3d 753, 772 (Ill. 2016) ("the agreement that controls [public servants'] membership in a retirement system consist of the relevant provisions in the Pension Code that define the rights and obligations that arise from that membership").

Employees were regularly advised of the controlling nature of the Charter's provisions in retirement guides and employee handbooks. The

COPERS “Guide to Retirement” provided to employees states, “Every effort has been made to ensure accuracy; however, if any inconsistency exists between this document and the City Charter, the provisions of the City Charter, as interpreted by the COPERS Board, shall prevail. [¶] **The City Charter legally governs the operation of the Plan**”⁷¹ In some instances, this general rule was even explicitly incorporated into labor contracts. For example, the 2012-2014 MOA for Unit 7 employees states, “Retirement benefits are governed by the provision of the Phoenix City Charter as approved by the voters and are not subject to the provisions of this Agreement.”⁷²

This Court rejected a similar argument asserting extra-contractual rights in *Cross v. Elected Officials’ Retirement Plan*. There, the retirement plan (EORP) concluded that it erred by including a lump-sum payout for unused sick leave in the calculation of the retiree’s pension and sought to recoup the overpayment. [234 Ariz. at 598–99 ¶¶ 2–5](#). The retiree argued that he had a vested contractual right to the higher pension benefit because EORP had accepted his retirement application and represented to him that

⁷¹ See, e.g., [APP440](#) [Trial Ex. 38 at D000241] (emphasis in original).

⁷² See [APP388](#) [Tr. Ex. 34 at D001236].

his pension would be the higher amount. *Id.* at 599–600 ¶¶ 7–13. The Court explained that the Pension Clause and relevant caselaw (such as *Yeazell* and *Fields*) protected only the rights that the employee had under statutes in effect upon hiring or enacted during his tenure. Because lump-sum payouts for accrued leave did not qualify as pensionable salary under the relevant statute, the Court held that the retiree had no vested contractual right to that alleged benefit. *Id.* at ¶ 13.

As *Cross* indicates, the City cannot designate something as pensionable compensation, either explicitly by contract or implicitly by practice, when doing so conflicts with the Charter. *See also McElhaney Cattle Co. v. Smith*, 132 Ariz. 286, 290 (1982) (courts cannot consider extrinsic evidence to vary the apparent meaning of a charter’s terms); *Rose v. City of Hayward*, 179 Cal. Rptr. 287, 297 (Ct. App. 1981) (refusing to give legal significance to longstanding administrative interpretation of pensionability of holiday pay; “where there is no ambiguity in a statute and the administrative interpretation of it is clearly erroneous, even the fact that such administrative interpretation is a longstanding one does not give it legal sanction”).

Cases from other jurisdictions addressing the interaction between labor contracts and statutory retirement plans confirm that the statutes control. For example, in *Oden v. Board of Administrators*, several public agencies agreed in collective bargaining agreements to report certain items as pensionable compensation to the Public Employees' Retirement System ("PERS"). [28 Cal. Rptr. 2d 388, 392](#) (Ct. App. 1994). The PERS Board had gone along with the contracts and treated the amounts as pensionable. *Id.* The court nonetheless summarily rejected that the employees' contracts had anything to do with whether these amounts were actually "compensation" under the statutory definition, explaining that "public agencies are not free to define their employee contributions as compensation or not compensation under [the Public Employees' Retirement Law]—the Legislature makes those determinations. Statutory definitions delineating the scope of PERS compensation cannot be qualified by bargaining agreements." *Id.*

As *Oden* teaches, not even an express promise could alter the Charter's definition of "compensation." Here, the labor contracts do not even contain an express promise to treat sick leave payouts as pensionable. Like the AR itself, they provide only that the sick leave payouts will be

paid to eligible employees. The members' reliance on the labor contracts is thus misguided.

In sum, the Charter does not allow lump-sum amounts received for unused sick leave at retirement to be counted towards an employee's pension. Regardless of what the City did in the past, it cannot continue to violate the Charter. *See Cross*, 234 Ariz. at 600 ¶ 13 ("Whatever contract existed between Cross and the Plan, however, guaranteed him only the pension due under the law, not something more. *See Yeazell*, 98 Ariz. at 113 ('the laws of the state are part of every contract')."). Once the City realized that its past practice improperly allowed pension spiking in violation of the Charter, the City implemented a formal policy in AR 2.441 to eliminate the problem prospectively without punishing employees for the City's error. The City's approach is both legal and fair, and should be upheld.

IV. The superior court's ruling conflicts with the Charter and the applicable law, and would lead to absurd results.

Citing the Charter's definitions of final average compensation and compensation, the superior court correctly concluded that accrued sick leave payouts are not "compensation" under the first sentence of § 2.13.⁷³

⁷³ APP194 [IR-372 at 9, ¶ 36] (Findings of Fact & Conclusions of Law).

In reaching that conclusion, the superior court acknowledged three things. First, it recognized that “[n]one of the COPERS [i.e., Charter] terms expressly require amounts an employee is paid by the City for unused sick time to be included in final average compensation.”⁷⁴ Second, it recognized that the Charter accounts for unused sick leave by allowing the employee to “receiv[e] service credit.”⁷⁵ Third, the superior court correctly recognized that unused sick leave “is not ‘a member’s salary or wages paid to him by the City for personal services rendered by him to the City’ pursuant to Section 2.13.”⁷⁶

The superior court should have stopped there; those findings required it to rule in the City’s favor. But instead the superior court ruled that sick leave qualifies as nonmonetary compensation under the second sentence of § 2.13. In so doing, the superior court made several errors. The ruling must be reversed because it violates the plain text of the Charter, misapplies the law, and would lead to absurd results. Most fundamentally, the superior court erred by giving the City a power it does

⁷⁴ *Id.*

⁷⁵ *Id.*

⁷⁶ *Id.*

not have: the power to expand the scope of pensionable compensation beyond the limits of what the voters allowed when they established the retirement plan.

A. The superior court erroneously held that “compensation . . . not paid in money” need not satisfy the first sentence in the Charter’s definition of “compensation.”

By holding both that sick leave payouts do not satisfy the first sentence of § 2.13 but that sick leave payouts can satisfy the second sentence of § 2.13, the superior court implicitly held that “compensation . . . not paid in money” (the second sentence) need not satisfy the Charter’s definition of “compensation” in the first sentence.⁷⁷

But that implicit holding conflicts with the Charter’s text, which uses a single definition of pensionable compensation. Regardless of whether something is paid in money or in kind, it counts as pensionable compensation only if it consists of salary or wages (fixed periodic payments) paid to an employee for personal services rendered. (*See Argument §§ I-II*, above.) By concluding that sick leave payouts are not “compensation” under the first sentence of § 2.13, the superior court

⁷⁷ [APP184](#) [IR-181 at 3 & n.1] (MSJ ruling); [APP195](#) [IR-372 at 10, ¶ 37] (Findings of Fact & Conclusions of Law).

should have held then and there that sick leave payouts are not pensionable “compensation” at all.

B. The superior court erroneously held that sick leave payouts are “not paid in money.”

Even if the second sentence set forth an independent definition applicable to compensation “not paid in money,” the superior court erroneously concluded that sick leave payouts fit that definition. The second sentence applies only to “compensation . . . not paid in money.” The superior court ruled that “[s]ick leave is not paid for by the City in money.”⁷⁸ But the members do not seek to spike their pensions with sick leave itself, but rather with the *cash payouts* of unused, accrued sick leave. Because an employee receives the payout in money, the second sentence does not apply.

The distinction between sick leave itself and sick leave *payouts* is an important one. See *Santa Monica*, 137 Cal. Rptr. at 773–74 (distinguishing between retirement payouts for accrued, unused sick leave and sick leave used by an employee when holding that the retirement payouts are not part of an employee’s “final compensation” under retirement plan). An

⁷⁸ APP195 [IR-372 at 10, ¶ 37].

employee may use the sick leave she accrues at any time, but under AR 2.441, an employee may elect to receive a payout for unused sick leave only after accruing at least 750 hours' (over six years') worth. (See [Facts & Case § III](#), above.) And an employee may cash out sick leave only once. (*Id.*) These limitations show that an employee's sick leave *payout* is different from, and only indirectly related to, the accrual of sick leave itself.

The superior court seemed to think that because sick leave itself is not cash, then the payouts are not cash either.⁷⁹ But that makes no sense. A park ranger at South Mountain who gets City-provided housing receives "compensation . . . not paid in money," but a housing allowance paid in cash to the same ranger *is* "paid in money."

C. The superior court's conclusions conflict with the Charter's three-year window for computing pensionable compensation.

The superior court's holding also circumvents the Charter's temporal limitations on pensionable compensation. Under § 2.14 of the Charter, an employee's "final average compensation" must be calculated using the employee's highest annual compensations for the last three years. To be

⁷⁹ IR-478 (Tr. Transcript Day 5) at 184:19–21 ("Court: The fact that they turn it into money later doesn't mean that it was originally compensation not paid in money.").

eligible for a payout under AR 2.441, however, an employee must have accrued (at a minimum) over six years' worth of leave. (See [Facts and Case § III](#); [Argument §§ I.B.1](#), above.) The superior court's interpretation improperly includes in pensionable compensation payouts for leave accrued over a much longer period (at least double, and frequently much longer). This result (the source of the "spiking" moniker) demonstrates why the superior court's ruling violates the text and intent of the Charter. The Court may not adopt an interpretation of compensation and final average compensation that renders parts of the Charter void or contradictory. See *State v. Heinze*, [196 Ariz. 126, 132 ¶ 27](#) (App. 1999) ("A fundamental principle of statutory construction is to give each section meaning so that no part is rendered void, superfluous, contradictory or insignificant."). Permitting employees to include lump-sum payouts for sick leave accrued over more than six years in their final average compensation does just that.

When ruling on summary judgment, the court recognized that counting sick leave payouts would improperly pull in something that had been earned *years before* the three-year window:

Here, 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. The [sick leave] policies require 750 [hours] . . . of unused leave (depending on the employee) to cash out any sick leave--with sick leave accruing at 120 hours per year, *it takes 6.25 years of perfect attendance to accrue 750 hours of sick leave* it is obvious that this check constitutes a payment for far more than his work those final three years.⁸⁰

When the superior court issued its findings of fact and conclusions of law, however, it erroneously analyzed nonmonetary compensation under § 2.13 in a vacuum without considering the text, context, and structure in rest of the Charter.⁸¹ *See, e.g., Staples v. Concord Equities, L.L.C.*, [221 Ariz. 27, 29 ¶ 9](#) (App. 2009) (“[s]tatutes are to be construed as a whole, and related provisions in pari materia are to be harmonized if possible”) (alteration in original). Conspicuously, the 178-paragraph findings of fact and conclusions of law never examined the text of § 2.14 at all.⁸²

⁸⁰ [APP184](#) [IR-181 at 3 (footnote omitted)].

⁸¹ [APP194-95](#) [IR-372 at 9-10, ¶¶34-37]; [APP227](#) [*Id.* at 42, ¶ 2].

⁸² *See* [APP186-230](#) & [APP 194](#) [IR-372 at 1-41 & 9] (referencing § 2.14 only once, when quoting the definition of final average compensation at page 9).

D. The superior court erroneously assumed that the City could alter the scope of pensionable compensation through contracts and actions.

Having erroneously concluded that sick leave payouts are nonmonetary compensation under § 2.13, the superior court ruled that the City Council fixed the value of sick leave “by repeatedly approving Memoranda of Agreement/Understanding (and issuing/amending AR 2.441 consistent with the negotiations leading to those contracts) over more than a decade.”⁸³ Citing the City’s past practice, the superior court reasoned that the parties had understood that sick leave payouts would be included in pensionable compensation when they negotiated the labor contracts, and thus that the contracts must be interpreted in accordance with that “baseline understanding.”⁸⁴

Although the superior court correctly recognized that any right to retirement benefits must flow from the Charter,⁸⁵ it nevertheless focused on the parties’ labor contracts. (In fact, the superior court devoted only nine

⁸³ [APP227](#) [IR-372 at 42, ¶ 2].

⁸⁴ *Id.*

⁸⁵ *See id.*

paragraphs to analyzing the Charter's text and applicable law;⁸⁶ the remaining 169 paragraphs consisted of mostly undisputed factual findings about the City's past practice and the parties' prior labor contracts.)⁸⁷

But the labor contracts cannot alter the terms of the retirement plan set forth in the Charter. The City has no legal authority to alter the scope of pensionable compensation, through contract or otherwise. (See [Argument § III.B.](#)) Determining whether a particular payment counts as pensionable compensation or not falls outside the scope of what the parties may bargain for. Cf. *Oden*, 28 Cal. Rptr. 2d at 392 ("Statutory definitions delineating the scope of PERS compensation cannot be qualified by bargaining agreements."). Consequently, the labor contracts are legally irrelevant to making that determination.

Tellingly, the parties' labor contracts are completely silent on the topic. Although the City erroneously assumed that sick leave payouts counted as pensionable compensation, it never memorialized that assumption in a contract.

⁸⁶ [APP194-95](#) [IR-372 at 9-10, ¶¶ 36-37]; [APP227-28](#) [*Id.* at 42-43, ¶¶1-7].

⁸⁷ See generally [APP186-230](#) [IR-372 at 1-41].

The court thus exacerbated its legal error by relying not on any actual text or provision in the parties' labor contracts, but instead relying on "the parties' understandings of" the contracts.⁸⁸ If the City has no authority to expand the scope of pensionable compensation through an express, written term in a labor contract, then it certainly cannot do so without putting the term in the contract.

Finally, adopting the superior court's approach would effectively allow the City Council and City Manager to amend the Charter's definition of pensionable compensation every year in collective bargaining agreements. This is an absurd result that runs directly contrary to the terms of the Charter.⁸⁹ *See, e.g., Arnold Const. Co. v. Ariz. Bd. of Regents*, [109 Ariz. 495, 498](#) (1973) (applying construction to avoid absurd results).

⁸⁸ [APP227](#) [IR-372 at 42, ¶ 2].

⁸⁹ Moreover, if applied faithfully, the superior court's approach would mean that only employees covered by an MOU can negotiate the value of nonmonetary compensation under § 2.13. The City Council approves MOUs under the meet-and-confer ordinance, but it does *not* approve MOAs under the meet-and-discuss ordinance. Compare [Phoenix City Code § 2-218\(F\)](#) (requiring City Council approval of MOUs), with *id.* [§ 2-232\(B\)](#) (requiring only City Manager approval of MOAs). The City Council therefore cannot have "fixed" the value of nonmonetary compensation in MOAs.

E. The superior court erroneously expanded the scope of constitutional protections beyond the terms of the retirement plan.

The superior court further compounded the above errors by expanding the scope of constitutional protections under [Article XXIX, § 1\(C\)](#) of the Arizona Constitution.

In ruling that the parties' 2012-2014 contracts gave the members a right to continue pension spiking for two additional years, the superior court relied on the Constitution (Article XXIX, § 1(C)) and two cases (*Fields* and *Thurston*).⁹⁰ In particular, the superior court held that "in light of these contractual provisions, the City could not unilaterally revise AR 2.441 in 2012" ⁹¹

The superior court misapplied the relevant law. (See [Argument § III.A.](#)) Contract principles and the Pension Clause protect only those rights the members have under the terms of their retirement plan (here, the Charter). See *Cross*, [234 Ariz. at 599 ¶ 9](#) ("Article 29 and common-law contract principles, however, only protect whatever pension rights Cross has under applicable law."). Because the Charter prohibits pension

⁹⁰ [APP227-28](#) [IR-372 at 42-43, ¶¶ 3-5].

⁹¹ [APP228](#) [IR-372 at 43, ¶ 5].

spiking, the members have no constitutional claim for diminishment or impairment of that alleged right under the Pension Clause. *Cf., e.g., Cross*, 234 Ariz. at 600 ¶ 13; *Holland*, 682 N.E.2d at 329.

For that reason, cases like *Fields* and *Thurston* do not apply here. In both of those cases, the statutes governing the retirement plan gave employees an express right to a benefit that the legislature later changed. *Fields*, 234 Ariz. at 217 ¶¶ 9-10 (legislature amended statutory formula to reduce cost-of-living adjustments for retired judges); *Thurston*, 179 Ariz. at 50 (legislature amended statute to increase survivor benefits from one-third of spouse's monthly pension to two-thirds of monthly pension). Here, by contrast, the Charter prohibits the City from providing the members with a right to include sick leave payouts in their pensionable compensation. (*See Argument §§ I-II.*)

Accordingly, the superior court erred by holding that the City violated the Pension Clause when it revised AR 2.441. The City cannot diminish or impair a right that the members did not have under the retirement plan in the first place.

REQUEST FOR ATTORNEYS' FEES AND INTEREST

Under ARCAP 21, A.R.S. §§ 12-341, 12-341.01, and 12-342, Appellants request fees and costs incurred on appeal.

CONCLUSION

The Court should reverse the superior court's ruling that retirement payouts for accrued sick leave count as pensionable compensation under the 2012-2014 contracts.

RESPECTFULLY SUBMITTED this 31st day of March, 2017.

OSBORN MALEDON, P.A.

By /s/ Eric M. Fraser
Colin F. Campbell
Eric M. Fraser
Hayleigh S. Crawford
2929 North Central Avenue, Ste. 2100
Phoenix, Arizona 85012

Attorneys for Defendants/ Appellants/
Cross-Appellees

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| 309. | (PART 1 OF 3) ORIGINAL DEPOSITION OF LUIS SCHMIDT TAKEN 02/18/2015 | May. 11, 2015 |

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| 431. | PLAINTIFFS' AND INTERVENORS' STATEMENT OF COSTS AND EXPENSES AND NOTICE OF TAXATION OF COSTS | Jun. 10, 2016 |
| 432. | (PART 1 OF 2) NOTICE OF FILING FEE AGREEMENT RE: PLAINTIFFS' AND INTERVENORS' APPLICATION FOR ATTORNEYS' FEES AND COSTS | Jun. 16, 2016 |

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| 451. | (PART 2 OF 2) MOTION FOR LEAVE TO FILE LIMITED SURREPLY ADDRESSING PLAINTIFFS' SUPPLEMENTAL APPLICATION FOR FEES AND COSTS | Aug. 24, 2016 |
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| 455. | NOTICE OF LODGING AND FILING REVISED PROPOSED FORM OF RULE 54(C) JUDGMENT | Sep. 22, 2016 |
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| 457. | ME: MATTER UNDER ADVISEMENT [09/23/2016] | Sep. 27, 2016 |
| 458. | ME: UNDER ADVISEMENT RULING [09/26/2016] | Sep. 27, 2016 |
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APPEAL COUNT: 1

RE: CASE: UNKNOWN

DUE DATE: 11/23/2016

CAPTION: PICCIOLI, ET AL. VS CITY OF PHOENIX, ET AL.



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LOCATION ONLY: NONE

SEALED DOCUMENT: NONE

DEPOSITION(S): ORIGINAL DEPOSITION(S) INCLUDED IN INDEX

TRANSCRIPT(S): NONE

COMPILED BY: TERRYR001 on November 23, 2016; [2.4-12334.47]
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CERTIFICATION: I, MICHAEL K. JEANES, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the above listed Index of Record, corresponding electronic documents, and items denoted to be transmitted manually constitute the record on appeal in the above-entitled action.

The bracketed [date] following the minute entry title is the date of the minute entry.

CONTACT INFO: Clerk of the Superior Court, Maricopa County, Appeals Unit, 175 W Madison Ave, Phoenix, AZ 85003; 602-372-5375

CHARTER OF THE CITY OF PHOENIX*
(version in effect as of July 1, 2012)
***Excerpts**

...

PREAMBLE

We, the people of the City of Phoenix, a City incorporated under the name and style of “The Common Council of the City of Phoenix,” now having a population of more than three thousand five hundred (3500), acting in this behalf under the Constitution and laws of the State of Arizona, have framed, adopted and ordained, and do hereby frame, adopt and ordain, the following as the Charter of said City, which shall supersede, as provided in the Constitution of the State, the Charter of the said “The Common Council of the City of Phoenix,” and all laws amendatory thereof and supplementary thereto.

CHAPTER III. GOVERNMENT

1. Powers of City to be exercised by City Council; Mayor and Councilmen to be elected; City Manager to execute and administer laws; qualifications of Councilmen.

The municipal government provided for by this Chapter shall be known as the “Council-Manager” government. All powers of the City shall be vested in the Council to consist of the Mayor and eight (8) other members to be elected by the qualified electors of the City of Phoenix as follows:

(A) The Mayor shall be elected from the City at large, pursuant to the election procedure (primary and general elections) specified in ordinances which are adopted according to law.

(B) The eight other Council Members shall be elected from eight geographic districts within the City of Phoenix. Each district shall be substantially equal in population. Electors in each district shall vote only for the Council candidates nominated from the district in which the electors reside.

(C) Each candidate for one of the eight Council seats shall at the time of his nomination and during his tenure maintain his permanent residence within the district from which he is nominated.

(D) No candidate for the eight Council seats may run for more than one district in any regular election.

(E) The Members of the Council shall be qualified electors of the City of Phoenix and shall hold no other public office for which they shall receive compensation except that of a notary public, a member of the school board or member of the National Guard or Naval or Military Reserve; if a Councilman shall cease to possess any of these qualifications or violate any provisions of this Chapter or shall be convicted of a crime involving moral turpitude his office shall immediately become vacant.

The Council shall enact local legislation, adopt budgets, determine policies, and appoint the City Manager, who shall execute the laws and administer the government of the City. All powers of the City shall be exercised in the manner prescribed by the Charter, or if the manner has not been prescribed, then in such manner as may be prescribed by ordinance.

(Election of 12-1-1982; election of 11-1-1983)

2. The City Manager.

A. The City Manager shall be the chief administrative officer of the City. He shall be responsible to the Council for the proper administration of all affairs of the City; the City Manager shall be chosen by the Council solely on the basis of his executive and administrative qualifications with special reference to his actual experience in, or his knowledge of, accepted practice in respect to the duties of his office as set forth in this Charter;

The Manager need not when appointed be a resident of the City or State, except as may be otherwise provided by law, but must be a citizen of the United States. He shall, upon his appointment, become a resident of the City;

No Member of the Council shall, during the time for which he was elected or for one (1) year thereafter be eligible to hold the position of City Manager.

The Council shall appoint the City Manager for an indefinite term and may remove him without cause by the affirmative vote of two thirds of its members: provided, that for incompetence, malfeasance, misfeasance, or neglect of duty the City Manager may be removed by the affirmative vote of a majority of its members. At least thirty (30) days before the passage of a resolution for such removal, the Council shall by a majority vote of its members adopt a preliminary resolution of intention, and, if the removal is for cause, said resolution shall state the reason for removal. In either case the City Manager may within ten (10) days reply in writing and may request a public hearing which shall be held not earlier than twenty (20) days nor later than thirty (30) days from the passage of the aforesaid preliminary resolution. After such public hearing, if one be requested, and after full consideration, but not earlier than thirty (30) days after the passage of the preliminary resolution, the Council may adopt a final resolution of removal. By the preliminary resolution the Council may suspend the Manager from duty. If the removal is for cause the Council shall cause to be paid him any salary due him to the date of the preliminary resolution and suspension. Otherwise, the Manager shall be paid forthwith upon his removal without cause his salary for the next three (3) calendar months following the adoption of the preliminary resolution of removal.

The action of the Council in suspending or removing the Manager shall be final and conclusive on everyone, it being the intention of this Charter to vest all authority and fix all responsibility for such suspension and removal in the Council.

The Manager shall receive a salary to be fixed by ordinance.

To perform his duties during the temporary absence or disability of both the Manager and Assistant Manager, the Manager shall designate by letter filed with the City Clerk, a qualified administrative officer of the City. In the event of failure of the Manager to make such designation, the Council may by resolution appoint an officer of the City to perform the duties of the Manager until the Manager or Assistant Manager is able to perform those duties. In the event of a vacancy in the office of the City Manager the Council shall fill the same within sixty days after the vacancy occurs. The City Manager shall have the right to appoint his personal secretary and the assistant City Manager, neither of whom shall be subject to the civil service of the City of Phoenix.

The position of Assistant City Manager is hereby elevated to the “Office of Assistant City Manager” and he shall be the Deputy Chief Administrative Officer of the City of Phoenix. While the City Manager is exercising the prerogatives of his office, the Assistant City Manager shall perform such functions and have such duties and responsibilities as the City Manager may designate. In the absence of the City Manager, or when the City Manager is unable to perform the prerogatives of his office, or when the office of City Manager is vacant, the Assistant City Manager shall ascend to all of the powers and duties of the City Manager as set forth in this Charter.

B. Powers and duties of the City Manager. The City Manager shall have the following powers and duties:

(1) He shall appoint and when he deems it necessary for the good of the service, suspend or remove all City employees and appointive administrative officers except as otherwise provided by law or this Charter. He may authorize any administrative officer who is subject to his direction and supervision to exercise these powers with respect to subordinates in that officer’s department, office, or agency.

(2) He shall direct and supervise the administration of all departments, offices, and agencies of the City, except as otherwise provided by this Charter or by law.

(3) He shall attend all Council meetings, unless excused by the City Council, and if excused shall be represented by someone designated by him. He shall have the right to take part in discussion but may not vote.

(4) He shall, subject to the legislative and emergency powers of the Mayor and City Council, see that all ordinances, provisions of this Charter, and acts

of the Council are faithfully executed, through enforcement by him or by officers subject to his direction and supervision.

(5) He shall prepare and submit the proposed annual budget and the capital improvement program to the City Council.

(6) He shall first submit to the Council and thereafter make available to the public a complete report on the finances and administrative activities of the City as of the end of each fiscal year.

(7) He shall make such other reports as the Council may require concerning the operations of the City departments, offices, and agencies which are subject to his direction and supervision.

(8) He shall keep the Council fully advised as to the financial condition and future needs of the City and make recommendations to the Council concerning the affairs of the City.

(9) He shall perform such other duties as are specified in this Charter or required by the Council.

(Election of 11-4-1975)

...

9. Salaries generally.

A. The salaries applicable to all positions in the classified and unclassified civil service may be fixed, increased, decreased or modified by the Council only upon recommendation of the City Manager; provided, that the Council alone at the time it finally adopts the annual budget may fix, increase, decrease or modify the salaries applicable to any position in the classified or unclassified civil service, except the salaries of the Mayor and Members of the City Council, and except for those previously established by a duly executed and approved Memorandum of Understanding which does not exceed three years in duration.

B. No officer or employee shall be allowed any fees, perquisites, emoluments, rewards or compensation aside from the salary as fixed by law. All fees in connection with official duties shall be paid into the City Treasury daily.

(Election of 11-3-1981)

CHAPTER XXII. AMENDMENTS

1. Authority.

This charter, or any part or subdivision thereof, may be amended in the manner provided in the state constitution and this Charter:

1. By initiative petition of the people as herein provided;
2. By referral by affirmative vote of a majority of the Members of the City Council as herein provided;
3. By referral by affirmative vote of all Members of the City Council as provided in Section 3 hereof.

(Election of 11-9-1971)

2. Limitations.

No amendment shall be effective until approved by a majority vote of the qualified electors voting thereon at a regular or special election.

(Election of 11-9-1971)

3. Ballot form; vote by descriptive title and condensed statement.

If approved by a unanimous vote of all Members of the City Council, the form of ballot for such charter amendment election may state the various propositions and questions thereof by descriptive title expressing the purpose of the amendment by a true and impartial statement that fairly represents the content of such amendment. No descriptive title shall contain more than one subject matter and each individual proposition or question shall be so separately stated that a vote for or against each may be expressed. Immediately following the descriptive title and statement shall be printed the words "Shall the amendment (stating the descriptive title) be adopted?" and immediately thereafter the words "Yes" and "No" shall be printed on separate lines with voting squares.

(Election of 11-9-1971)

**CHAPTER XXIV. PHOENIX CITY EMPLOYEES' RETIREMENT LAW
OF 1953**

...

ARTICLE II. CITY OF PHOENIX EMPLOYEES' RETIREMENT PLAN

1. Short title.

1.1. This Article II may be cited as the City of Phoenix Employees' Retirement Law of 1953.

2. Definitions.

2.1. The following words and phrases as used in this Article, unless a different meaning is clearly required by the context, shall have the following meanings:

2.2. "City" means the City of Phoenix, Arizona.

2.3. "Retirement Plan" or "plan" means the City of Phoenix Employees' Retirement Plan continued in this Article.

2.4. "Retirement Board" or "board" means the Retirement Board provided in this Article.

2.5. "Employee" means any person, in the employ of the City on a full time basis, who is under the classified civil service, except as hereinafter excluded, and shall include appointive officials whose employment with the City is on a full time basis. For the purposes of this Article, "full time basis" means employment on a work schedule which consists of the number of full time hours per week designated for the class of employment for the employee's classification, and which work schedule is intended to be continuous over a period of 12 months at the aforementioned full time hours per week. The term "employee" shall not include (1) policemen and firemen who are covered by another retirement system or pension plan to which the City makes contributions; nor (2) any person who furnishes personal services to the City on a contractual or fee basis. The definition of "employee" shall not exclude from membership in the Retirement Plan any person in the employ of the City who was a member of the former system.

2.6. "Member" means any person who is included in the membership of the Retirement Plan.

2.7. "Service" means personal service rendered to the City by an employee of the City and shall include service rendered in any function or enterprise the City may engage in as a municipal corporation or may have heretofore acquired

through purchase or eminent domain, provided, however, that in the event a function or enterprise is hereafter acquired by the City through purchase or eminent domain the rights acquired by the employees thereof under this Retirement Plan shall be set forth and determined in a written agreement between the City, the Retirement Board, and a duly elected or appointed committee, recognized by the Board. authorized to represent said employees.

2.8. “Credited Service” means the number of years and months of service credited a member by the Retirement Board pursuant to the provisions of this Article.

2.9. “Retirant” means a member who retires with a pension payable by the Retirement Plan.

2.10. “Beneficiary” means any person, except a retirant, who is in receipt of, or who is designated to receive, a pension or other benefit payable by the Retirement Plan.

2.11. “Regular interest” means such rate or rates of interest per annum, compounded annually, as the Retirement Board shall from time to time adopt.

2.12. “Accumulated contributions” means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the employees’ savings fund, together with regular interest therein. It shall include such other amounts as the member may deposit or have transferred to his employees’ savings fund account, including regular interest thereon, as provided in this Article.

2.13. “Compensation” means a member’s salary or wages paid him by the City for personal services rendered by him to the City. In case a member’s compensation is not all paid in money the City Council shall, upon recommendation of the City Manager, fix the value of the portion of his compensation which is not paid in money.

2.14. “Final average compensation” means the average of the highest annual compensations paid a member for a period of 3 consecutive, but not necessarily continuous, years of his credited service contained within his 10 years of credited service immediately preceding the date of his City employment last terminates. If he has less than 3 years of credited service, his final average compensation shall be the average of his compensations for his total period of service. For the purposes of determining benefits based on

final average compensation, any compensation in excess of the limitations established by Section 401 (a) (17) of the Internal Revenue Code (including applicable adjustments), shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount which was allowed to be taken into account under the plan as in effect on July 1, 1993. For this purpose an eligible employee is an individual who was a member of the retirement plan before the first plan year beginning after December 31, 1995.

2.15. “Final compensation” means a member’s annual rate of compensation at the time his City employment last terminates.

2.16. “Retirement” means a member’s withdrawal from City employment with a pension payable by the Retirement Plan.

2.17. “Pension” means an annual amount payable by the Retirement Plan, in equal monthly installments, throughout the future life of a person, or for a temporary period, as provided in this Article.

2.18. “Pension reserve” means the present value of all payments to be made on account of any pension, and shall be computed upon the basis of such tables of experience, and regular interest, as the Retirement Board shall from time to time adopt.

2.19. “Former system” means the Phoenix City Employees’ Retirement System, created and established under Chapter XXIV of the Charter of the City of Phoenix, and repealed December 29, 1953.

2.20. “Workmen’s compensation period” means the period a person is in receipt of monthly payments of workmen’s compensation on account of a member’s disability or death arising out of and in the course of his City employment. If he is paid a single sum in lieu of future workmen’s compensation his “workmen’s compensation period” shall be the sum of (1) the period, if any, he was paid monthly payments of workmen’s compensation, plus (2) the period arrived at by dividing the said single sum by such monthly payment award.

2.21. “Nominee” means a partnership selected and authorized by a resolution of the Retirement Board to perform certain duties in connection with the buying, selling, holding and registration of securities on behalf of the board.

(Election of 11-13-1973; election of 10-3-1995)

3. Retirement plan continued.

- 3.1. The City of Phoenix Employees' Retirement Plan, heretofore created and established effective December 31, 1953, is hereby continued to provide for the retirement of employees of the City who become superannuated on account of age or total and permanent disability; to provide pensions to members and their eligible dependents; to provide that contributions be made to the Plan by the members and the City; and to provide for the administration of the Plan.

4. Retirement Board.

- 4.1. The authority and responsibility for the administration, management and operation of the Retirement Plan and for construing and carrying into effect the provisions of this Article, except as otherwise provided in this Article, are vested in a Retirement Board.

- 4.2. The Retirement Board shall consist of (9) Board Members as follows:

(a) Three employee board members, who all members of the Retirement Plan, each of whom shall have at least 10 years of credited service, to be elected by the members of the Plan for 3 year terms expiring after December 31, 1945. The elections shall be held under such rules and regulations as the Retirement Board shall from time to time adopt.

(b) Four ex-officio Board members consisting of the City Manager, City Treasurer, the Finance Director and Urban Manager or Department head to be selected by the City Manager. The City Manager shall have the right to delegate his responsibilities and powers as ex-officio Board Member to an employee who is a member of the Plan.

(c) A citizen Board Member, who is a resident of but not employed by the City, or receiving benefits from the Retirement Plan, who shall have at least five years experience in a responsible position with a private or public pension plan, to be elected by the other Board Members to a three-year term that is concurrent with the term of the elected employee members of the Retirement Board.

(d) One member who shall be a retired member to be elected by the employee Board members for a three-year term that is concurrent with the term of the elected employee members of the Retirement Board.

- 4.3. Upon the expiration of any term of employee Board member or citizen Board member a successor shall be elected for a term of three years. The office of Board member shall be deemed to be vacated by a Board member if prior to the expiration of his term he resigns from the Board, or dies, or leaves the employ of the City. In the event a vacancy occurs in the office of employee Board member, the vacancy shall be filled within 90 days after the date of the vacancy, for the unexpired portion of the term, by a member selected by the two remaining employee Board members and the citizen Board member. If a vacancy occurs in the office of a citizen Board member the vacancy shall be filled within 90 days after the date of the vacancy, for the unexpired portion of the term, in the same manner as the office was previously filled. If a vacancy occurs in the office of retired Board member the vacancy shall be filled within 90 days after date of vacancy, for the unexpired portion of the term, in the same manner as the office was previously filled.
- 4.4. Each Board member shall serve without remuneration or compensation whatsoever.
- 4.5. Within 10 days after his election or appointment a Board member shall take the oath prescribed for City officials and shall subscribe to and file same with the City Clerk.

(Election of 11-1-1983)

5. Retirement plan officers.

- 5.1. The Retirement Board shall elect from its own number a chairman and a vice-chairman.
- 5.2. The Retirement Board shall appoint an executive secretary who shall not be a Board member. His appointment shall be made in accordance with civil service rules and he shall have a civil service status of a full time classified employee. He shall perform such duties as are required of him in this Article and such other duties as the Board may from time to time prescribe.
- 5.3. The City Attorney shall be the legal advisor to the Retirement Board.
- 5.4. The City Treasurer shall be Treasurer of the Retirement Plan. The Treasurer shall be custodian of the assets of the Retirement Plan except as to such assets as the Retirement Board may from time to time place in the custody of an investment fiduciary.

5.5. Disability Assessment Committee. The Disability Assessment Committee shall consist of five members as follows:

(a) Two ex-officio members consisting of the personnel Safety Administrator and the Executive secretary to the Retirement Board.

(b) Two employee members, who are members of the Retirement Plan, each of whom shall have at least 5 years of credited service, to be nominated by the Disability Assessment Committee and approved by the Retirement Board.

(c) A citizen member who is a resident of Maricopa County and not employed by the City or receiving benefits from the Retirement Plan, who shall have at least 5 years experience in a responsible position in the health care field, to be nominated by the Disability Assessment Committee and approved by the Retirement Board.

The implementation of this Section 5.5, the length of the employee and citizen member terms, the effective date of said terms, and the establishment of policy and procedure of the Disability Assessment Committee shall be vested in the Retirement Board.

5.6. The Retirement Board shall appoint an actuary who shall be its technical advisor on matters regarding the operation of the Retirement Plan. He shall perform such other duties as are required of him in this Article.

5.7. The Retirement Board may employ investment counsel and such other services as it shall from time to time deem necessary in the proper operation of the Retirement Plan.

(Election of 10-6-1987)

6. Surety bonds.

6.1. The Retirement Board may require that a surety bond for the faithful performance of duty be furnished by any Board member and any officer of the Retirement Plan. The surety bonds shall be in such amounts as the Board shall from time to time determine and shall be subject to the approval of the City Manager and the City Attorney.

7. Records.

- 7.1. The executive secretary shall keep such data as shall be necessary for an actuarial valuation of the assets and liabilities of the Retirement Plan; and for determining benefits to which retirants, and beneficiaries are entitled.

8. Board meetings.

- 8.1. The Retirement Board shall hold meetings regularly, at least quarterly, and shall designate the time and place thereof. It shall adopt its own rules of procedure and shall keep a record of its proceedings, which shall be open to public inspection. All meetings of the Board shall be public.
- 8.2. Five Board members, of which at least two are not ex-officio members, shall constitute a quorum at any meeting of the Retirement Board. Each attending Board member shall be entitled to one vote on each question before the Board and at least three concurring votes shall be necessary for a decision by the Board at any of its meetings.

(Election of 11-1-1983)

9. Annual report.

- 9.1. The Retirement Board shall publish annually a report, certified to by a certified public accountant, showing the fiscal transactions of the Retirement Plan for the preceding fiscal year, and balance sheet of the Plan as of the preceding June 30.

10. Adoption of experience tables and regular interest.

- 10.1. The Retirement Board shall from time to time adopt such mortality and other tables of experience, and a rate or rates of regular interest, as are required in the operation of the Retirement Plan and for an actuarial valuation of its assets and liabilities.

11. Annual valuations.

- 11.1. The actuary shall annually make an actuarial valuation of the assets and liabilities of the Retirement Plan.

12. Membership.

- 12.1. Any person who becomes an employee as defined in this Article, shall become a member of the Retirement Plan beginning with the date of his first employment by the City.
- 12.2. All persons who are employees, as defined in this Article, shall become members of the Retirement Plan.
- 12.3. In any case of doubt as to who is a member of the Retirement Plan the Retirement Board shall decide the question.

13. Membership terminates.

- 13.1. Should any member leave City employment, for any reason except his retirement or death, he shall thereupon cease to be a member and his credited service in force at that time shall be forfeited by him except as otherwise provided in Section 15 or Section 20 of this Article. In the event he again becomes an employee of the City he shall again become a member. His credited service or a portion thereof last forfeited by him shall be restored to his credit; provided he returns to the employees' savings fund the amount, he withdrew therefrom or a portion thereof equal to the service sought to be credited together with regular interest from the date of withdrawal to the date of repayment. Payment of a portion of withdrawn contributions plus interest will restore that portion of credited service to the employee's account pursuant to policies established by the retirement board. Credited service shall not be restored to a member until he has returned to the employees' savings fund the full amount, including interest, herein before required of him in this section. In the event a member becomes a retirant or dies he shall thereupon cease to be a member.

(Election of 11-13-1973; election of 9-7-1999; election of 9-9-2003, eff. 10-1-2003)

14. Credited service.

- 14.1. The Retirement Board shall fix and determine by appropriate rules and regulations, consistent with the provisions of this Article, the amount of service to be credited any member; provided, that in no case shall less than 10 days of service rendered by a member in any calendar month be credited him as a month of service, nor shall less than 6 months of service rendered in any calendar year be credited as a year of service, nor shall more than one

year of service be credited any member for all service rendered by him in any calendar year.

14.2. Service rendered prior to December 29, 1953 shall be credited a member only if he deposits in the employees' savings fund of this Retirement Plan, by transfer or otherwise, less his share of accrued social security taxes:

(a) The amount of accumulated contributions standing to his credit in the annuity savings fund of the former system at December 29, 1953; said deposit to be made on or prior to July 1, 1954; and

(b) All amounts of accumulated contributions withdrawn by him from the annuity savings fund of the former system and not returned thereto; said deposit to be made on or prior to July 1, 1955; and

(c) The aggregate amount of contributions the said member would have made to the annuity savings fund of the former system for the period he was an employee after January 1, 1947 and prior to December 29, 1953 if he was not a member of the former system; said deposit to be made in a manner determined by the Retirement Board.

14.3. Service rendered prior to December 29, 1953 by a member who did not make a deposit as provided in Section 14.2 shall be credited a member as non-contributory service for the exclusive purpose of meeting the service requirement specified in Section 17.2 provided (1) the member remains in continuous employment by the City from December 29, 1953 to the date of his retirement, and (2) the member has attained age 55 years.

14.4. A member shall be granted unused sick leave credited service for the period of unused sick leave standing to the member's credit at time of retirement, death or termination of City employment. Unused sick leave credited service may be used only as credited service under the provisions of Section 17, Section 18, Section 20, Section 21 and Section 25 and further as provided in Section 19.1(a).

14.5. In the event a policeman or fireman employed by the City becomes a member of the Retirement Plan the service rendered by him in the employ of the police or fire department of the City may be credited him, pursuant to the provisions of this Article, under such conditions as the Retirement Board may from time to time determine; which shall include, but not be limited to, the following:

(a) He transfers to the employees' savings fund the aggregate amount of contributions made by him to the retirement system or pension plan covering the City's policemen and/or firemen, together with interest additions, if any; and

(b) In no case shall service credit be given by the Retirement Board for any period for which he is entitled or becomes entitled to a benefit payable by such retirement system or pension plan for the City's policemen and/or firemen.

14.6. In any case of doubt as to the amount of service to be credited a member of the Retirement Board shall have final power to determine the amount.

(Election of 11-13-1973; election of 10-6-1987)

15. Military service credit.

15.1. An employee who while employed by the City entered any armed service of the United States, or a member who entered or enters any armed service of the United States, and who has been or shall be on active duty during time of war or period of compulsory military service shall have such armed service credited him as City service in the same manner as if he had served the City uninterruptedly; provided, that (1) he shall have been or shall be re-employed by the City as an employee within one year from and after termination of such armed service actually required of him, (2) he returned to the employees' savings fund the amount, if any, he withdrew therefrom at the time he entered or while in such armed service, together with regular interest from the date of withdrawal to the date of repayment, and (3) in no case shall more than 5 years of City service be credited any member for all such armed service rendered by him. In any case of doubt as to the period of service to be so credited any member the Retirement Board shall have final power to determine such period. During the period of such armed service and until his re-employment by the City his contributions to the Retirement Plan shall be suspended and his balance in the employees' savings fund shall be accumulated at regular interest.

16. Crediting service.

16.1. The Retirement Board shall credit each member with the service to which he is entitled pursuant to the provisions of this Article.

17. Voluntary retirement.

- 17.1. Any member who has attained or attains age 60 years and has 10 or more years of credited service or attains age 62 years and has 5 or more years of credited service may retire upon his written application on filed with the Retirement Board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Upon his retirement he shall receive a pension provided in Section 19.1.
- 17.2. Any member of the former system who has acquired or acquires 25 or more years of credited service pursuant to the provisions of this Article, may retire prior to his attainment of age 60 years upon his written application filed with the Retirement Board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. If the member of the former system has attained age 55 years he may use both credited service and non-contributory service for the exclusive purpose of satisfying the 25 years required of the preceding service. Upon his retirement he shall receive a pension provided in Section 19.1.
- 17.3. Any member whose age and years of service, when added, equals 80 or more may retire upon the member's written application filed with the Retirement Board setting forth the date the member desires to be retired. Upon retirement the member shall be paid the pension provided in Section 19.1.

(Election of 11-13-1975; election of 11-1-1983; election of 10-6-1987; election of 10-3-1995)

18. Reserved.

Editor's note—An election held September 9, 2003, repealed this Charter Section 18 in its entirety. Formerly, said section pertained to normal retirement and derived from an election of November 13, 1973. It should be noted that the repeal of this section shall take effect October 1, 2003.

19. Pension.

- 19.1. The amount of a member's straight life pension, payable upon retirement as provided in this Article, shall, be the greater of the sum of subsections (a), (b), and (c), or the amount set forth in (d)(I) or (d)(ii):

- (a) 2.0 percent of the member's final average compensation multiplied by the sum of the member's credited service, subject to a maximum of 32.5 years, plus the member's unused sick leave credited service; and
- (b) 1.0 percent of the member's final average compensation multiplied by the portion, if any, of the member's credited service which is in excess of 32.5 years, subject to a maximum of 3 years; and
- (c) 0.5 percent of the member's final average compensation multiplied by the portion, if any, of the member's credited service which is in excess of 35.5 years;
- (d) (I) or \$500.00 per month if member has 15 or more years of credited service, or
 - (ii) \$250.00 per month if member has less than 15 years of credited service.
- (e) Unused sick leave shall not be included as credited service for computation of years of service under foregoing subsections 19.1(b), 19.1(c), and 19.1(d).

A member may elect, at any time prior to the date of the first payment of the member's pension is made, to be paid the pension under an optional form of payment provided in Section 24.1 in lieu of the straight life form of payment.

- 19.2. In the event a retirant dies before the aggregate amount of straight life pension payments received by him equals the accumulated contributions standing to his credit in the employee's savings fund at the time of his retirement, the difference between his said accumulated contributions and the said aggregate amount of pension payments received by him shall be paid from the pension reserve fund to such person or persons as he shall have nominated by written designation duly executed and filed with the Retirement board. In the event there be no such designated person surviving the retirant such difference, if any, shall be paid to his legal representative. No benefits shall be paid under this section on account of death of a retirant if he was receiving a pension under Options A Standard, A Pop-up, B Standard, B Pop-up, or C provided in Section 24.1.
- 19.3. The amount of each pension having an effective date prior to January 2, 1988 shall be redetermined and the redetermined amount shall be the basis of pension payments from and after June 1, 1988. The amount of the

redetermined pension provided in this section, shall be equal to the base amount of the pension multiplied by 80 percent of the average of the monthly consumer price indexes for calendar year 1987 and divided by the average of the monthly consumer price indexes for the calendar year containing the effective date of the pension. The base amount of a pension is the amount of pension that would have been paid for the month of June 1988 in the absence of all prior redeterminations. The effective date of a survival pension being paid the beneficiary of a deceased retiree who elected an optional form of payment provided in Section 24.1 shall be the effective date of the retiree's pension. Consumer Price Index means the Consumer Price for Urban Wage Earners as published by the United States Department of Labor. The minimum amount of redetermined pension shall be the greater of 101 percent of the amount of pension that would be payable for the month of June 1988 in the absence of the redetermination provided by this section and \$1,200 annually. Additional pension amounts payable pursuant to the redetermination provided by this section shall be financed in part by the positive difference between the Pension Reserve Fund and retired life liabilities which were effective prior to the redetermination.

- 19.4. A normal, voluntary or disability pension shall commence the first day of the month following retirement. A survivor pension shall commence the first day of the month following the date of the death resulting in the pension.
- 19.5. Termination of payment of a pension shall occur at the end of the month in which the event causing termination occurs. Payment shall be made for the full month of termination.
- 19.6. Tax equity adjustment. Any member of the City of Phoenix Employees' Retirement Plan who has retired prior to January 1, 1989, shall receive a 3% increase in benefits as a tax equity adjustment effective as of January 1, 1989. Any member retiring between January 1, 1989 and January 1, 1990, shall receive a 3% increase in benefits as a tax equity adjustment effective upon their date of retirement.
- 19.7. (a) Effective January 2, 2000, notwithstanding any other provision of the Charter, all retirees and surviving option beneficiaries pursuant to Sections 24 and 25.2(a), with 15 or more years of credited service shall receive a pension of at least \$500.00 per month.

(b) Effective January 2, 2000, notwithstanding any other provision of the Charter, all retirees and surviving option beneficiaries pursuant to Sections

24 and 25.2(a), with less than 15 years of credited service shall receive a pension of at least \$250.00 per month.

(Election of 11-13-1973; election of 10-6-1987; election of 10-3-1989; election of 9-7-1999)

20. Deferred pension.

20.1. Should any member who has five or more years of credited service leave City employment for any reason except his retirement or death he shall be entitled to a pension as provided in Section 19.1 as that section was in effect at the time he left City employment. His pension shall begin the first day of the calendar month next following the month in which his written application for same is filed with the Retirement Board on or after his attainment of age 62 years. In the event he withdraws his accumulated contributions from the Employees' Savings Fund, he shall thereupon forfeit his rights to a deferred pension as provided in this section. Except as otherwise provided in this Article, he shall not receive service credit for the period of his absence from City employment and his balance in the Employees' Savings Fund shall accumulate at regular interest.

(Election of 11-1-1983)

21. Disability retirement.

21.1. Entitlement to Benefits. Any member with ten (10) or more years of credited service who experiences total and permanent disability resulting in the inability to perform in the service of the City and/or in a termination of employment by the City shall be entitled to a benefit commencing at Disability Retirement Date computed in the manner set forth in Section 19.1 of this Plan.

21.2. Waiver of Service Requirement. The ten (10) or more years of service requirement contained in Section 21.1 shall be waived in the case of a member whose total and permanent disability is found by the Disability Assessment Committee to be the natural and proximate result of a personal injury or disease arising out of and in the course of his actual performance of duty in the employ of the City.

21.3 Disability Retirement Date. Shall mean the date upon the member's written application or the date upon which the application is approved by the disability assessment committee or the retirement board or upon the

application of his department head, filed with the Executive Secretary or, if later, the date upon which a member has exhausted any sick leave, vacation time and compensation time standing to the member's credit.

- 21.4. Minimum Benefit. In the event that a member has less than seven (7) years and six (6) months of credited service in determining his benefit in the manner set forth in Section 19.1 of this Plan, his credited service shall be increased to seven (7) years and six (6) months.
- 21.5. Benefit Limitation. The monthly benefit payable to a disability retiree during his workmen's compensation period shall not exceed the difference between his final monthly compensation as determined at the date of his disability and his monthly workmen's compensation award, if any.
- 21.6. Termination of Workmen's Compensation. Upon termination of a disability retiree's workmen's compensation period, if any, he shall be given credited service for the said period and his disability benefit shall be recomputed in the manner set forth in Section 19.1 of this Plan to include such additional credited service.

(Election of 10-6-1987; election of 9-9-2003, eff. 10-1-2003)

22. Form and duration of disability benefit payments.

- 22.1. Alternative modes of benefit payments are available pursuant to Section 24.1. Unless the member files a timely election in writing to receive benefits by an alternative mode, the following shall prevail with respect to benefits payable pursuant to Section 21:
 - (a) Members who are unmarried as of the date on which benefits first become payable pursuant to Section 21 shall receive payments in the form of a straight life pension.
 - (b) Participants who are married as of the date as of which benefits first become payable pursuant to Section 21 shall receive benefits in the form of Option A.
 - (c) Except to the extent that continued benefits may be payable by reason of the provisions of Option A or any alternative mode of benefit payment in force, benefits payable pursuant to this Section 22 shall be:

(1) Suspended in the event of the member's recovery from total and permanent disability with benefits to resume as retirement benefits at the later of

(i) Voluntary or Normal Retirement, or

(ii) The date of the actual retirement unless the member again suffers total and permanent disability prior to Voluntary or Normal Retirement (in which case benefits shall resume upon recurrence of total and permanent disability);

(2) Terminated in the event of the member's death.

(Election of 10-6-1987)

23. Determination of disability.

23.1. Determination of Total and Permanent Disability. The existence or continuance of a condition of total and permanent disability shall be determined by the Disability Assessment Committee on the basis of such medical evidence as the Disability Assessment Committee deems necessary by applying such criteria in making medical determinations in a uniform, consistent and non-discriminatory manner to all members in similar circumstances. Each person alleging a condition of total and permanent disability or the continuance of such condition shall be required to undergo any medical examinations required by the Disability Assessment Committee. Each person alleging the continuance of total and permanent disability shall not be required to undergo medical examinations more frequently than twice annually, and further provided that all such examinations shall be at the expense of the Plan. Any person claiming total and permanent disability or the continuance of such condition, and refusing to submit to any medical examination required by the Disability Assessment Committee, or refusing to authorize the release to the Disability Assessment Committee, of any medical information with respect to such condition, shall be presumed not to suffer total and permanent disability, for the purposes of this Plan.

Failure to qualify for disability benefits under this Plan shall not adversely affect any right the member may otherwise have to benefits under any other provision of this Plan.

23.2. Appeals of Denied Claims for Disability Benefits. In the event that any claim for benefits is denied in whole or in part, the member whose claim has

been so denied shall be notified of such denial in writing by the Executive Secretary. The notice advising of the denial shall specify the reason or reasons for denial, make specific reference to pertinent Plan provisions, describe any additional material or information necessary for the claimant to perfect the claim (explaining why such material or information is needed), and shall advise the member of the procedure for the appeal of such denial. All appeals shall be made by the following procedure:

(a) The member whose claim has been denied shall file with the Executive Secretary a notice of desire to appeal the denial. Such notice shall be filed within sixty (60) days of notification by the Executive Secretary of claim denial, shall be made in writing, and shall set forth all of the facts upon which the appeal is based. Appeals not timely filed shall be barred.

(b) The Executive Secretary shall, within thirty (30) days, of receipt of the member's notice of appeal, establish a hearing date on which the member may make an oral presentation to the Retirement Board in support of his appeal. The member shall be given not less than ten (10) days notice of the date set forth for the hearing.

(c) The Retirement Board shall consider the merits of the claimant's written and oral presentations, the merits of any facts or evidence in support of the denial of benefits, and such other facts and circumstances as the Retirement board shall deem relevant. If the claimant elects not to make an oral presentation, such election shall not be deemed adverse to his interest, and the Retirement Board shall proceed as set forth below as though an oral presentation of the contents of the claimant's written presentations had been made.

(d) The Retirement Board shall render a determination upon the appealed claim which determination shall be accompanied by a written statement as to the reasons therefore.

(Election of 10-6-1978; election of 10-6-1987)

24. Pension options.

24.1. (a) Prior to the date the first payment of his pension is made, but not thereafter, a member may elect to receive his pension as a straight life pension payable throughout his life and terminating at his death, or he may elect to receive the actuarial equivalent, computed as of the date of his retirement, of his straight life pension in a reduced pension payable

throughout his life, and nominate a beneficiary, in accordance with the provisions of Option A Standard, A Pop-up, B Standard, B Pop-up, or C set forth below:

(b) The normal option for members legally married at the time of retirement shall be Option A Standard (100% survivor). The normal option for members unmarried at the time of retirement shall be Straight Life.

(c) If a member, legally married at the time of retirement, selects an option other than Option A Standard (100% survivor), the spouse shall consent to the change at the same time. Such consent shall be in writing on the forms supplied by the Retirement Systems Office.

(d) Option A Standard—100 Percent Survivor Pension: Under Option A Standard upon the death of the retirant his reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Retirement Board prior to the date the first payment of his pension is made.

(e) Option A Pop-up—100 Percent Survivor Pension: Under Option A Pop-up upon the death of the retirant his reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Retirement Board prior to the date the first payment of his pension is made. Should the person nominated die before the retirant, the pension paid to the retirant shall be increased to equal a straight life pension for the remainder of his life.

(f) Option B Standard—50 Percent Survivor Pension: Under Option B Standard upon the death of the retirant, one-half of his reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Retirement Board prior to the date the first payment of his pension is made.

(g) Option B Pop-up—50 Percent Survivor Pension: Under Option B Pop-up upon the death of the retirant, one-half of his reduced pension shall be continued throughout the life of and paid to such person, having an insurable interest in his life, as he shall have nominated by written designation duly executed and filed with the Retirement Board prior to the date the first

payment of his pension is made. Should the person nominated die before the retirant, the pension paid the retirant shall be increased to equal a straight life pension for the remainder of his life.

(h) Option C—Pension 10 Years Certain and Life Thereafter: Under Option C the retirant shall receive a reduced pension payable throughout his life with the provision that if he dies before he has received 120 monthly pension payments the payments shall be continued for the remainder of the period of 120 months to such person or persons, in equal shares, as the retirant shall have nominated by written designation duly executed and filed with the Retirement Board. If there be no such designated person surviving the retirant such payments shall be continued for the remainder of the period of 120 months and paid to the estate of the survivor of the retirant and his last surviving designated beneficiary.

(Election of 10-3-1989)

25. Survivor pensions.

25.1. In the event a member with less than 10 years of credited service dies while in the employ of the City his credited service shall be increased to 10 years if the Retirement Board finds his death (1) is the result of causes arising out of and in the course of his employment by the City, and (2) is compensable under the Workmen's Compensation Act of the State of Arizona.

25.2. In the event a member with 10 or more years of credited service dies while in the employ of the City the applicable benefits provided in paragraphs (a), (b) and (c) of this Section shall be paid, subject to Sections 25.3 and 25.4.

(a) If the deceased member leaves a widow or a widower, the widow or widower shall be paid a pension computed in the same manner in all respects as if the member had (1) retired the day preceding the date of his death, notwithstanding that he might not have attained age 60 years, (2) elected the normal option in Section 24.1 that provides a widow or widower pension, and (3) nominated his widow or widower as beneficiary. Upon the death of the widow or widower his pension shall terminate.

(b) If the deceased member leaves an unmarried child or children under age 18 years, each such child shall receive a pension of \$200 per month. Upon a child's adoption, marriage, death, or attainment of age 18 years his pension shall terminate. It is also provided that any child pension in effect as of January 1, 2000 shall be increased to \$200 per month.

(c) If the deceased member leaves neither a widow or widower, nor children, eligible to pensions under paragraphs (a) or (b) of this Section, but he leaves a parent or parents whom the Retirement Board finds to be dependent upon him for at least 50 percent of their support due to absence of earning power because of physical or mental disability, each such parent shall receive a pension of an equal share of \$720 per annum. Upon a parent's remarriage or death his pension shall terminate.

- 25.3 During the workmen's compensation period arising on account of the death of a member the total of the pensions provided in Section 25.2 payable in a year shall not exceed the difference between the member's final compensation and the workmen's compensation, if any, converted to an annual basis. *See editor's note at the end of this section.
- 25.4 In the event the pensions, provided in Section 25.2, payable on account of the death of a member are terminated before there has been paid to the survivor beneficiary or beneficiaries an aggregate amount equal to the member's accumulated contributions standing to his credit in the employees' saving fund at the time of his death the difference between his said accumulated contributions and the said aggregate amount of pensions paid shall be paid in accordance with such rules and regulations as the Retirement Board shall from time to time adopt. *See editor's note at the end of this section.

(Election of 10-3-1989; election of 9-7-1999)

Editor's note—At the request of The Office of the City Attorney, Subsections 25.3 and 25.4 were added to Section 25. These Subsections had been inadvertently omitted from codification after the Election of November 13, 1973.

26. Return of accumulated contributions.

- 26.1. Any member who leaves the employ of the City before he has satisfied the age and service requirements for retirement provided in Section 17.1, for any reason except his death or retirement, he shall be paid his accumulated contributions standing to his credit in the employees' savings fund upon his request in writing filed with the Retirement Board.
- 26.2. Should any member die and leave no beneficiary entitled to a pension provided for in this Article, his accumulated contributions standing to his credit in the employees savings fund at the time of his death shall be paid to such person or persons as he shall have nominated by written designation

duly executed and filed with the Retirement Board. If there be no such designated person or persons surviving the said member, then his said accumulated contributions shall be paid to his legal representative.

26.3. Refunds of accumulated contributions as provided in this Article, may be made in installments according to such rules and regulations as the Retirement Board may from time to time adopt.

27. Employees' savings fund.

27.1. (a) The employees' savings fund is hereby continued. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members and from which shall be made transfers and refunds of accumulated contributions as provided in this Article.

(b) The contributions of a member to the Retirement Plan shall be 5 percent of his annual compensation. The officer or officers responsible for preparing the payroll shall cause the contributions provided herein to be deducted from the compensation of each member on each and every payroll, for each and every payroll period so long as he remains a member of the Retirement Plan. When deducted each of said amounts shall be paid to the Plan and shall be credited to the individual account in the employees' savings fund of the member from whose compensations said deductions were made.

(c) The contributions provided in Subsection (b) above shall be made notwithstanding that the minimum compensation provided by law for any member shall be thereby changed. Every member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of his compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him during the period covered by such payment, except as to benefits provided in this Article.

(d) In addition to the contributions hereinbefore provided in this Section, the repayment of any amounts pursuant to the provisions of Section 13.1 shall be deposited in the employees' savings fund and credited to the member's individual account. Repayments pursuant to the provisions of Section 13.1 may be made by a single contribution or by an increased rate of contribution as approved by the Retirement Board.

(e) The accumulated contributions transferred from the former system to the Retirement Plan and such other amounts as may be deposited by a member,

as provided in Sections 14.2 and 14.3, shall be credited to his individual account in the employees' savings fund.

(f) The accumulated contributions of a member standing to his credit in the employees' savings fund shall be transferred to the pension reserve fund upon his retirement, or upon his death if a pension becomes payable by the Retirement Plan on account of his death. At the expiration of a period of 2 years from and after the date an employee ceases to be a member any balance of accumulated contributions standing to his credit in the employees' savings fund, unclaimed by the member or his legal representative, shall be transferred to the income fund, except as otherwise provided in this Article.

(Election of 11-13-1973)

28. Pension accumulation fund.

28.1. (a) The pension accumulation fund is hereby continued. It shall be the fund in which shall be accumulated the contributions made by the City to the Retirement Plan, and from which shall be made transfers to the pension fund, as provided in this Section.

(b) Upon the basis of such mortality and other tables of experience, and regular interest, as the Retirement Board shall from time to time adopt the actuary shall annually compute (1) the pension reserves for pensions being paid retirants and beneficiaries, and (2) the pension reserves for service rendered and to be rendered by members. The pension reserves so computed, less applicable assets shall be financed by the City by annual contributions determined by the Retirement Board in accordance with the provisions of paragraphs (1), (2) and (3) below:

(1) The City's annual contribution for members' current service shall be a percent of their annual compensations which will be an amount which if paid annually by the City during their future service will be sufficient to provide the difference between (i) the pension reserves at the time of their retirements for the portions of the pensions to be paid them based upon their future service, and (ii) the present value of their future contributions.

(2) The City's annual contribution for members' accrued service shall be a percent of their annual compensations which will be an amount which if paid annually by the City over a period of years, to be determined by

the Retirement Board, will amortize at regular interest the unfunded pension reserves, if any, for the accrued service portions of the pensions to be paid them upon their retirements.

(3) The City's annual contribution for pensions being paid retirants and beneficiaries shall be a percent of the annual compensations of members which will be an amount which if paid annually by the City over a period of years, to be determined by the Retirement Board, will amortize at regular interest the unfunded pension reserves, if any, for pensions being paid retirants and beneficiaries.

(c) The Retirement Board shall, in each fiscal year, certify to the City Council the contributions determined in Subsection (b) of this Section and the City Council shall appropriate and the City shall pay, within the next fiscal year, the contributions so certified. When paid the contributions shall be credited to the pension accumulation fund.

(d) Should the balance in the pension reserve fund be insufficient to cover the pension reserve fund liabilities the amount of such insufficiency shall be transferred from the pension accumulation fund to the pension reserve fund.

(e) Upon the retirement of a member, or upon the death of a member if a pension becomes payable on account of his death, the pension reserve for the pension payable, less his balance in the employees' savings fund at the time of his retirement or death, shall be transferred from the pension accumulation fund to the pension reserve fund.

29. Pension reserve fund.

29.1. The pension reserve fund is hereby continued. It shall be the fund from which shall be paid all pensions payable pursuant to the provisions of this Article. In the case of a disability retirant who is returned to the employ of the City his pension reserve, computed as of the date of his return, shall be transferred from the pension reserve fund to the employees' savings fund and pension accumulation fund in the same proportion that his pension reserve, as of the date of his retirement, was transferred from the employees' savings fund and pension accumulation fund to the pension reserve fund. The amount transferred to the employees' savings fund shall be credited to his individual account therein.

30. Mortality reserve fund.

30.1. The mortality reserve fund is hereby discontinued. All pensions being paid from the mortality reserve fund of the City of Phoenix Employees' Retirement Law of 1953 shall hereafter be paid from the pension reserve fund. The pension reserves for pensions being paid from the mortality reserve fund shall be transferred to the pension reserve fund. Any excess balance in the mortality reserve fund shall be transferred to the pension accumulation fund.

31. Income fund.

31.1. The income fund is hereby continued. It shall be the fund to which shall be credited all interest, dividends and other income from investments of the Retirement Plan, all gifts and bequests, all unclaimed accumulated contributions as provided in this Article, and all other moneys the disposition of which is not specifically provided for in this Article. There shall be paid or transferred from the income fund all amounts required to credit regular interest to the various funds of the Plan as provided in this Article. Whenever the Retirement Board determines that the balance in the income fund is more than sufficient to cover current charges to the fund such excess may be transferred to the other funds of the plan to cover special needs of the funds, or such excess may be used to provide contingency reserves, as the Board shall determine. Whenever the balance in the income fund is found to be insufficient to cover the charges to the fund the amount of such insufficiency shall be transferred from the pension accumulation fund to the income fund.

31.2. A member's accumulated contributions which have been transferred to the income fund, as provided in this Article, shall be paid from the income fund to such person or persons making valid claim for same approved by the Retirement Board.

32. Allowance of regular interest.

32.1. At the end of each fiscal year the Retirement Board shall allow and credit regular interest to each member's account in the employees' savings fund; said interest for a member shall be computed on the mean balance in his account during the year. At the end of each fiscal year the Board shall allow and credit regular interest on the mean balances in the pension accumulation

fund and the pension reserve fund. The interest so allowed and credited shall be transferred from the income fund.

33. Expense fund.

33.1. The expense fund shall consist of all moneys provided by the City to pay the administration expenses of the Retirement Plan.

34. Fiscal management.

34.1. The Retirement Board shall be the trustees of the assets of the Retirement Plan. The Retirement Board shall have the power to contract for (1) investment advice, (2) safekeeping of securities, (3) handling of investments, (4) clearing of transactions, and (5) such other services it deems necessary for the proper and efficient handling of the monies and investments of the Retirement Plan. It shall have the power to register or re-register the investments of the Retirement Plan in the name of the Retirement Board as trustees of the Retirement Plan or in the name of its nominee. The Retirement Board shall develop, adopt, implement and maintain a statement of investment goals and guidelines spelling out clear investment parameters and policies for the fund consistent with their fiduciary duties as trustees of the plan. It shall have the power to invest and reinvest the monies of the Retirement Plan, purchase investments, hold, sell, assign, transfer and dispose of any of the securities and investments of the Retirement Plan subject to the following limitations:

(a) Bonds or other evidences of indebtedness of the United States of America or any of its agencies or instrumentalities when such obligations are guaranteed as to principal and interest by the United States of America or by any agency or instrumentality thereof.

(b) General obligation bonds, revenue bonds, improvement district bonds, or other evidences of indebtedness of any state of the United States, or any of the counties or incorporated cities, towns, or duly organized school districts in the State of Arizona which are not in default as to principal and interest.

(c) Investment grade corporate bonds, debentures, notes and other evidences of indebtedness issues [issued], assumed, or guaranteed by any solvent institution created or existing under the laws of the United States or of any state, district or territory thereof, which are not in default as to principal or interest.

(d) Preferred and common stock. The Retirement Board may invest in the following stocks, listed in the New York or American Stock Exchange or over the counter:

(1) Investment grade preferred or guaranteed stock or shares of any solvent institution created or existing under the laws of the United States or of any state, district, or territory thereof. The Retirement Board shall not invest more than five percent of the retirement system's assets in the preferred stock of any one issuing company, nor shall the aggregate of its investments under this paragraph exceed ten percent of the retirement system's assets.

(2) Nonassessable, except for taxes or wages, common stock or shares of any solvent institution, created or existing under the laws of the United States or of any states, district or territory thereof. The Retirement Board shall not, however, invest more than five percent of the retirement system's assets in common stock or capital stock of any one issuing company, nor shall the aggregate of its investments under the provisions of this paragraph, at cost, exceed sixty percent of the retirement system's assets.

(e) Money market funds and interest-bearing secured savings accounts or certificates of deposit, in banks, savings and loan institutions or credit unions doing business in Arizona, which have purchased depository insurance from a federal agency. If not otherwise fully secured by collateral, investments made in institutions which have purchased depository insurance from a federal agency shall not exceed the insured amount.

(f) The Retirement Board shall not have at any time any combination of investment in any one institution, corporation, or political in [sic] subdivision aggregating an amount exceeding ten percent of the assets of the retirement system, nor shall it have any combination of investments, in any one industry, other than the electric utility industry or the communications industry, exceeding twenty percent of the assets of the retirement system. The Retirement Board shall not have at any time any combination of investments in the electric utility industry or the communications industry, exceeding twenty-five percent of the assets of the retirement system. The restrictions in subsection (f) shall not apply to investments in direct obligations of the United States of America or agencies of the United States of America.

(g) Real property of any kind or description, improved or unimproved, provided that such real property shall not be purchased or acquired, directly or indirectly, from the State of Arizona, or its political subdivisions nor from any incorporated cities or towns.

(h) Any other investment category authorized by a two-thirds vote of the authorized membership of the Retirement Board exercising the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with these matters would use in the conduct of an enterprise of a like character and with like aims and consistent with the statement of investment goals and guidelines.

34.2. The Board may delegate its power to purchase or sell any of the securities and investments of the Retirement Plan to a member or committee of members of the Board.

(Election of 11-13-1973; election of 11-1-1983; election of 9-7-1999)

35. False statements.

35.1. Any person who knowingly makes any false statement or who falsifies or permits to be falsified any record of the Retirement Plan, in any attempt to defraud the Plan, shall be guilty of a misdemeanor and subject to a fine not exceeding \$300 or 90 days imprisonment in the City Jail, or both.

36. Errors.

36.1. In the event any change or error in the records of the Retirement Plan results in any person receiving from the Plan more or less than he would have been entitled to receive had the records been correct, the Retirement Board shall correct such error and, as far as practicable, shall adjust subsequent payments in such manner that the actuarial equivalent of the benefits to which the said person was correctly entitled shall be paid. In the event of overpayment to any person the Board may take legal action, if necessary, to recover such overpayment.

37. Exemption from taxation and execution.

37.1. The right of a person to a pension, to the return of accumulated contributions, and any other right accrued or accruing to any person under the provisions of this Article shall be unassignable and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or

insolvency law, or any other process of law whatsoever, except as is specifically provided in this Article. All benefits payable by the Retirement Plan and the cash and other assets of the Plan shall be exempt from all municipal taxes.

- 37.2. If a member or a beneficiary, excluding minors, is covered under a group insurance or prepayment plan participated in by the City, and should he or she be permitted to and elect to continue such coverage as a retirant or beneficiary, he or she may authorize the Retirement Board to have deducted from his or her pension the payments required to continue coverage under such insurance or pre-payment plan. The City shall have the right to set-off for any claim arising from theft or embezzlement by any member, retirant or beneficiary.

(Election of 11-1-1983)

38. Applicability of amendments.

- 38.1. The provisions of this Article in effect at the time a member retires, or at the time a pension becomes payable on account of his death before retirement, shall be applicable as to the payment of the pension arising on account of his retirement or death, except as is otherwise specifically provided in this Article.

39. Pension guarantee.

- 39.1. The pension payable to a retirant whose credited service includes service rendered prior to December 29, 1953 shall be not less than the pension portion of the retirement allowance to which he would have been entitled under the former system had the former system been in effect at the time of his retirement plus an annuity which is the actuarial equivalent of his accumulated contributions standing to his credit in the employees' savings fund of this Retirement Plan at the time of his retirement without offset or deduction of social security benefits he might receive.

40. Adjustment of pensions.

- 40.1. All members, spouses of deceased members, beneficiaries of deceased members named pursuant to Section 24 herein, who are receiving pensions at the time this section becomes effective shall receive an increase in benefits and pensions effective January 1, 1982 in accordance with the following:

(a) 5% per year for each year that benefits or pensions were paid prior to December 31, 1960;

(b) 4% per year for each year that benefits or pensions were paid from January 1, 1961 through December 31, 1964;

(c) 2% per year for each year that benefits or pensions were paid from January 1, 1965 through December 31, 1969;

(d) 1% per year for each year that benefits or pensions were paid from January 1, 1970 through December 31, 1981.

40.2. All retirees and surviving option beneficiaries pursuant to Sections 24 and 25.2(a) of deceased retirees named pursuant to Section 24 herein, who are receiving pensions at the time this subsection becomes effective shall receive a pension increase effective January 1, 2000 in accordance with the following:

(a) 17.4% of pension amount as it existed on December 31, 1991, if retired prior to January 1, 1988.

(b) 13.9% of pension amount as it existed on December 31, 1991, if retired during calendar year 1988.

(Election of 11-3-1981; election of 9-7-1999)

41. Post-retirement distribution benefit for City employees.

41.1. After the end of each fiscal year, the Retirement Board shall determine the rate of investment return earned on Retirement Plan assets during the fiscal year, based upon methods established by the Retirement Board.

41.2. At the end of each fiscal year, the Retirement Plan actuary shall determine the present value of pensions to be paid after the end of the fiscal year to retirants and pension beneficiaries, excluding minors, in receipt of pensions at the end of the fiscal year. The assumed interest rate used in the determination shall be the rate adopted by the Retirement Board for purposes of the annual actuarial valuation.

41.3. The distribution income at the end of each fiscal year shall be equal to the product of the present value of pensions determined in subsection 2 at the end of the previous fiscal year times the positive excess, if any, of the rate of

investment return determined in subsection 1 exceeding the assumed rate defined in subsection 2.

- 41.4. The distribution amount for an individual retirant or pension beneficiary, excluding minors, shall be determined in accordance with a formula adopted by the Retirement Board. In no case shall the ratio of the distribution amount to the annual pension amount for an individual retirant or pension beneficiary, excluding minors, exceed one-half of the increase in the Consumer Price Index during the preceding calendar year, or 3% of the retirant's or beneficiary's pension, whichever is less.
- 41.5. The distribution amount for each retirant or beneficiary shall be payable in the form of a supplemental payment prior to the seventh month after the end of the fiscal year. If a retirant dies before receipt of the retirant's distribution amount the payment shall be made to the retirant's pension beneficiary, if any. If a pension beneficiary dies before receipt of the pension beneficiary's distribution amount, no payment shall be made.
- 41.6. Notwithstanding Sections 41.3 and 41.4, the ratio of distribution amount under Section 41 shall not be less than one percent, to the extent that funds are available in the Pension Equalization Reserve Fund.

(Election of 11-1-1983; election of 10-3-1995)

42. Post-retirement pension benefits equalization program.

42.1. There is hereby established the City of Phoenix Post-Retirement Pension Benefits Equalization Program (the "Program") which shall provide, but only to the extent that there are available earnings as computed pursuant to the provisions of Subsection 42.3 and 42.4 hereunder; for additional pension benefits to be paid to Eligible Persons, as provided in this Section.

42.2. For the purposes of this Section, the following definitions shall apply:

Eligible Pension shall mean the annual benefit, if any, payable under this Section to Eligible Persons;

Eligible Persons shall mean persons who, on January 1, 1992 and on any January 1 thereafter, have been receiving benefits as a retirant and/or a beneficiary, where benefit payments based on such retirant's service have been made for the thirty-six (36) consecutive months immediately prior thereto.

Excess Earnings mean investment earnings in excess of the amount that would have been earned had the Retirement Plan earned eight percent (8%) on assets allocated to the Pension Reserve Fund.

Pension Equalization Reserve Fund (“Equalization Fund”) shall mean the fund created pursuant to this Section to provide the source of payments to be made to Eligible Persons under the Program.

- 42.3. The Equalization Fund shall be established on January 1, 1992. The Equalization Fund shall be increased each calendar year by the Excess Earnings computed for the immediately preceding calendar year. The rate of actual investment earnings used to determine Excess Earnings is the annual average of the time weighted rates of return, reported by the Plan’s investment performance monitoring service, for the immediately preceding five calendar years. The Equalization Fund shall be decreased each calendar year by the actuarial present value of the increase, if any, in pensions paid during the calendar year as the result of any adjustment made under the provisions of this Section; with such amounts being transferred to the Pension Reserve Fund; and further decreased as the result of any adjustments under Section 41 of this Article.
- 42.4. The Final Percentage Adjustment to each Eligible Pension payment shall be computed as follows. The Basic Percentage Adjustment shall be determined; which adjustment shall be the percentage increase, not less than zero, in the Phoenix area Consumer Price Index as determined by the Center for Business Research at Arizona State University, or if this index is not available, the Consumer Price Index of the Department of Labor. The Board shall then determine that percentage adjustment which increases the actuarial present value of pensions being paid (as reported in the last annual actuarial valuation of the Plan) by the balance in the Equalization Fund. The Final Percentage Adjustment shall be lower of the two percentages.
- 42.5. The final percentage adjustment, if any, as determined under Subsection 42.4, shall then be applied to each Eligible Person’s annual benefit and paid on a monthly basis, commencing in March of each year for which applicable, retroactive to January 1 of that year, and shall constitute a permanent adjustment to such pension benefit.
- 42.6. This Section shall be effective from and after January 1, 1992.

(Election of 10-1-1991)

CHAPTER XXV. PERSONNEL SYSTEM

1. Purpose and policy.

1. It is the purpose of this chapter to designate those City employees in the classified services; set forth the rights and privileges of those employees; and to state the City's obligations in establishing and maintaining a merit system.
2. The City has determined the necessity of establishing a merit system of personnel administration based on merit principles and professional methods governing the appointment, tenure, promotion, transfer, layoff, separation, discipline, and other incidents of employment relating to City employees. These merit principles include:
 - a. Recruiting, selecting and advancing employees on the basis of their relative ability, knowledge, and skills, including open consideration of qualified applications for initial appointment;
 - b. Providing equitable and adequate compensation;
 - c. Training employees, as needed, to assure high-quality performance;
 - d. Retaining employees on the basis of the adequacy of their performance, and separating employees whose inadequate performance cannot be corrected;
 - e. Assuring impartial treatment of applicants and employees in all aspects of personnel administration without regard to political affiliation, race, color, national origin, sex, religious creed or handicap, and with proper regard for their privacy and constitutional rights as citizens; and
 - f. Assuring that employees are protected against coercion for political purposes and are prohibited from using their official authority for the purpose of interfering with or affecting the result of an election or a nomination for office.

(Election of 11-3-1981)

2. Civil Service Board.

1. There is hereby created a Civil Service Board to consist of five (5) residents, citizens and electors of the City to be appointed by the City Council, to serve (3)-year staggered terms to be fixed by the Council.
2. In the event of a vacancy, the vacancy shall be filled through an appointment by the Mayor for the unexpired term, subject to the approval of the Council. Not more than three (3) of the members shall be adherents of the same political party, and no member shall hold any other salaried public office.
3. Three (3) Board members shall constitute a quorum for the transaction of Business. Any Board member who fails to attend meetings of the Board in accordance with attendance standards set by the Council for City boards and commissions may be removed from his/her membership by the Council.

(Election of 11-3-1981)

3. Powers and duties of the Board.

The Board shall:

1. Adopt such rules and hold such hearings as it finds necessary in order to perform the duties and responsibilities vested in it by this chapter.
2. Submit periodic advisory reports to the Council regarding the activities of the Board as they relate to the application of merit principles in City personnel management.
3. Notwithstanding the provisions of Chapter III, Section 2B(1) of this Charter the Board shall hear appeals from disciplinary demotions, discharges, and suspensions by classified employees who have completed the prescribed probationary period. The Board may delegate to hearing officers the authority to conduct hearings. The decisions of the Board shall be final and binding.
4. Administer oaths, compel attendance of and examine witnesses and compel production of and examine documents.
5. Hear appeals from classified employees from interpretations of the personnel rules approved by the Council.
6. Propose personnel rules and amendments thereto.

(Election of 11-3-1981)

4. Legal representation.

The Board may retain legal counsel as necessary to serve as an advisor to the Board. (Election of 11-3-1981)

5. City service.

1. The City positions exempt from classified service shall be comprised of:
 - a. Elected officials.
 - b. Personal secretary to the Mayor and such staff to the Mayor as may be authorized by ordinance.
 - c. City Judges.
 - d. City Manager.
 - e. Personal Secretary to the City Manager.
 - f. Assistant City Attorneys.
 - g. Interns.
 - h. All part time and temporary employees.
 - i. Assistant City Manager.
 - j. Department heads.
 - k. Urban Service Managers.
 - l. Street Transportation Administrator.
 - m. Executive Assistant to the Council.
 - n. Assistant to the City Manager.
 - o. Executive Assistant to the City Manager.
 - p. Special Assistant to the City Manager.

q. And such other positions designated by the City Manager that are consistent with items d. through p.

2. The classified service shall be comprised of all other positions in the employ of the City existing on the effective date of this chapter.

(Election of 11-3-1981)

6. Personnel Official.

The City Manager shall be the City's Personnel Official. The City Manager may delegate any of the powers and duties conferred upon him as Personnel Official to any other officer or employee of the City.

The Personnel Official shall:

1. Administer all the provisions of this chapter and of the personnel rules not specifically reserved to the Civil Service Board pursuant to Sec. 3 herein or to the City Council pursuant to Sec. 7 herein.
2. Propose and promulgate personnel rules and amendments thereto.
3. Enforce approved personnel rules.
4. Prepare a position classification plan.
5. Prepare and maintain a compensation plan covering all employees.
6. Provide recruitment and selection for positions in the classified and unclassified service.
7. Perform all other duties required to administer the City Personnel System.
(Election of 11-3-1981)

7. Action Required by Council.

The Council shall approve by ordinance, resolution or formal action the:

1. Personnel rules.
2. Position classification plan.
3. Compensation plan.

(Election of 11-3-1981)

8. Proposal and promulgation of personnel rules.

1. The Personnel Official or the Civil Service Board shall propose personnel rules. Subject to approval by the City Council the Personnel Official shall promulgate such rules after notice and opportunity for comments from affected parties are given.
2. The rules shall establish regulations, subject to the provisions of this chapter and related ordinances, governing the Personnel System including but not limited to the following:
 - a. Preparation, installation, revision and maintenance of a position classification plan covering all positions in the City service.
 - b. Preparation, installation, revision and maintenance of a compensation plan covering all positions in the City service.
 - c. Selection practices and procedures.
 - d. Establishment of probationary periods.
 - e. Evaluation of employees during the probationary and continuing periods of employment.
 - f. Appointment, transfer, promotion, demotion, reinstatement, disciplinary action and layoff and recall of employees in the City service.
 - g. Administration of sick, industrial and military leaves.
 - h. Separation of employees from the City service.
 - i. The establishment of adequate personnel records.
 - j. The establishment of appeal procedures concerning the administration of this chapter and any rules adopted hereunder.
 - k. Employee residence requirements.

(Election of 11-3-1981)

9. Equal employment opportunity.

The City shall administer the Personnel System in a manner consistent with federal, state and local laws, rules and regulations concerning equal employment opportunity and affirmative action.

(Election of 11-3-1981)

10. Employees to retain positions.

Notwithstanding the provisions of Section 5 above, all employees who were deemed as “classified” at the time this chapter takes effect shall remain as “classified” employees until discharged, demoted, or promoted in accordance with the provisions of this chapter, and the personnel rules governing same.

(Election of 11-3-1981)

11. Political activity.

1. No officer or employee of the City shall directly or indirectly solicit or receive or be in any manner concerned in soliciting or receiving any assessment, subscription or contribution on behalf of any candidate for City of Phoenix elective office from any person holding a position with the City.
2. No person holding a position with the City, except elected officials, shall take any part in political management, affairs or campaigns in any election for City of Phoenix elective office further than to vote and privately express opinions.

(Election of 11-3-1981)

12. Penalty.

Any person violating any provisions of this Chapter is guilty of a Class I misdemeanor. (Election of 11-3-1981)

13. Repeal.

Article VI entitled “Civil Service” of Chapter 2 of the Code of the City of Phoenix, 1969, is hereby repealed.

(Election of 11-3-1981)

14. Strikes and binding arbitration prohibited.

A. The continued availability of City facilities and services is essential to the health, safety, and general welfare of all of the residents of the City and decisions relating to them should be informed management choices which are neither coerced by strikes nor imposed by third parties.

B. An employee of the City of Phoenix shall not in any manner participate in any strike against the City of Phoenix or any of its agencies.

C. Violation of this section by an employee of the City of Phoenix shall constitute a voluntary resignation from City employment and such employee forfeits and is no longer entitled to civil service, seniority, merit system or other employment protection. Following resignation by participating in a strike against the City of Phoenix, such employee shall not be eligible for rehire except by specific determination by the City Manager. Any employee thus rehired shall be placed in the class from which he resigned and in a pay grade at least one step below the one occupied at the time of resignation, except that an employee rehired under this paragraph who was at the lowest pay step in his class at the time of his resignation may be rehired at the pay step occupied at that time. Any employee rehired under the terms of this paragraph shall receive no increase in wages, salary, or employer contribution to any other benefits for a period of 12 months following his rehire.

D. A classified employee may have his alleged violation of this section adjudicated in accordance with the procedures used for testing terminations under the City of Phoenix civil service system. The only issue to be thus adjudicated shall be whether or not the employee violated this section.

E. Definitions.

(1) "Employee" means any persons holding any position with the City of Phoenix, by hire or by appointment, and includes both classified and unclassified positions under the City's civil service system.

(2) "Strike" means the failure to report for duty, the absence from one's position, the stoppage or deliberate slowing down of work or the withholding, in whole or in part, of the full, faithful and proper performance of the duties of employment, in concerted or contemporaneous action with others, for the purpose of inducing, influencing or coercing a change in the conditions, hours, compensation, rights, privileges or obligations of employment by the City of Phoenix.

F. The City of Phoenix may not use or agree to a method or procedure for determining the compensation, hours and conditions of employment of its employees, including binding interest or grievance arbitration, which prohibits the City Council or the City Manager from disapproving or altering such determinations. Alteration or disapproval by the City Council shall be by a simple majority of those members of the Council present and voting. Nor shall the City be subjected to such methods or procedures by any other governmental entity.

G. Except for the prohibition contained in paragraph F., above, all other decisions regarding methods or procedures for determining the compensation, hours, and conditions of employment of City of Phoenix employees are reserved to and are to be made by the City Council or the City Manager.

H. If any of the provisions of these amendments, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these amendments which can be given effect without the invalid provision or application, and to this end, the provisions of these amendments are declared to be severable.

I. The provisions of this article shall be self-executing.

(Election of 11-1-1983)



City of Phoenix

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| ADMINISTRATIVE REGULATION | A.R. NUMBER 2.441 Revised |
| | FUNCTION Human Resources and Payroll Page 1 of 4 |
| SICK LEAVE PAYOUT | EFFECTIVE DATE July 8, 2012 |
| | REVIEW DATE |
| | |

INTRODUCTION

Transmittal Message

This AR has been revised to reflect a change in City policy as part of pension reform. Questions regarding this AR should be directed to the Human Resources Department at (602) 262-6608.

Summary of Changes

AR 2.441 was last revised in 2002. A new Section 5 was added to describe the sick leave snapshot established on July 1, 2012, which establishes the maximum amount of sick leave that can be included in an employee's Final Average Salary for the purposes of pension calculation. Language was also added to reflect that sick leave payout is part of the Special Pay Component of the City's 401(a) Defined Contribution Plan as described in Section 4E. More detailed information regarding the sick leave snapshot can be found under "Support Services" on the City's eCHRIS page at: <http://employee.phoenix.gov/hr/supportservices/sickleavesnapshot/index.html>.

1. Purpose

This Administrative Regulation establishes guidelines for the payment of accumulated sick leave hours at the time of retirement for employees in Unit I, II, III and in the Executive, Middle Management, Supervisory and Professional and Confidential Office and Clerical categories. In addition, this regulation describes the sick leave snapshot for the purposes of an employee's pension calculation.

2. Definitions

- A. Qualifying hours - the minimum number of accrued and unused sick leave credits, on the last day of service prior to retirement, needed to receive benefit.
- B. Base hours - the first 250 hours for Unit I, Unit II, Unit III, Confidential Office and Clerical and Supervisory and Professional of accrued and unused sick leave credits above which the City will pay the employee. There are no minimum base hours for Executive and Middle Management employees.
- C. Base rate of pay - the hourly pay rate paid the employee immediately prior to retirement excluding premium pay or any other form of additional compensation.

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| Exhibit 13 |
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| 1-30-15 |
| Carolyn T. Sullivan, RPR |

- D. Qualified Employee - an employee of the City of Phoenix who is eligible, under the terms of this Administrative Regulation, to receive a payout for a portion of their accrued, unused sick leave.

3. Eligibility and Benefit

- A. An individual classified as Unit I, Unit II, Unit III, Confidential Office and Clerical Supervisory/Professional or Executive, Middle Management at the time of retirement must have completed one full year in this category immediately prior to retirement, and have a minimum of 750 hours of accrued, unused sick leave in order to qualify for sick leave payout under this Administrative Regulation. Of these 750 hours, the first 250 will be considered base hours and will not qualify for payment (Executive and Middle Managers have no minimum base hours; all hours qualify). At the employee's election, employees in Unit I, Unit II, Unit III, Confidential Office and Clerical, and Supervisory/Professional may receive a payout, at the employee's base rate of pay for up to 25% of the hours above the base hours. At the employee's election, employees in the Executive and Middle Management categories may receive a payout at the employee's base rate of pay for up to 20% of the hours above the base hours.
- B. After making the determination described in Paragraph 4A, below, a qualified employee shall elect to either: (1) use 100% of accrued, unused sick leave in the calculation of total retirement service credit (if this option is elected there shall be no payout); or (2) receive a payout as described in Paragraph A, above, and, as a condition for such payout, waive the employee's right to have that amount of hours applied to retirement credited service. The remaining sick leave hours that are not paid, may be used for credited service.
- C. If an employee reports that he is too ill or injured to work safely, the absence must be recorded as sick leave (BI). Employees may not restore sick leave previously taken or change the leave code to vacation (or any other leave code) in order to qualify for, or enrich this benefit.

4. Administration

- A. The Support Services Division of the Human Resources Department, based upon information provided by the employee's department, shall determine the employee's eligibility and the amount of sick leave for which he will be eligible for payout under this Administrative Regulation. The employee will then verify in writing that the computations are correct. Any dispute arising out of the determination of eligibility or computation of benefit will be referred to the Human Resources Director for final and binding resolution.
- B. If a qualified employee decides to receive a payout out of a portion of his unused sick leave credits, these hours will be deducted from the total number of retirement service credit hours.

Example: Confidential Office and Clerical employee, at time of normal retirement, elects the Sick Leave Payout option, has a base hourly rate of \$20, and has 2,500 hours of accrued unused sick leave. Since the employee has over the required 750 hours of sick leave, the employee is eligible for the sick leave payout option.

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| 2,500 | hours of accrued unused sick leave |
| - 250 | base hours do not qualify |
| 2,250 | remaining eligible hours |
| x .25 | 25% (percentage eligible for compensation) |
| 562.50 | hours of accrued unused sick leave to be paid |
| x .20 | base hourly rate of pay |
| \$11,250 | |

This employee, selecting the sick leave payout at retirement would be paid \$11,250 (gross) at retirement.

The employee, having been compensated for 562.50 hours of accrued leave would then have 1937.50 hours of accrued sick leave hours remaining to be used in the calculation of total service credit toward retirement.

- C. To receive a payout for a portion of sick leave, a qualified employee and his/her spouse must sign a form to waive the right to include these hours in the retirement service credit calculation. The employee must also state the number of hours declared for each category.
- D. A qualified employee who fails, refuses or is unable to make the election described in Paragraph 3B, above, and/or to acknowledge same as required in Paragraph 4(C), above, shall be deemed to have elected to use 100% of accrued, unused sick leave in the calculation of total retirement service credit with no payout.
- E. Sick leave payout is part of the Special Pay Component of the City's 401(a) Defined Contribution Plan, along with vacation and compensatory time payouts. Upon retirement, the employee's total payout amount must be deposited to the employee's 401(a) account up to his allowable annual contribution limit. If the employee's payout exceeds this limit, the remainder will automatically be diverted to the employee's 457 account, up to the employee's allowable annual contribution limit for that Plan. Any payout amount that remains after the allowable contributions to the employee's 401(a) and 457 accounts are made will be paid out in cash and subject to taxation. An employee will only receive cash if he has exhausted his allowable annual contribution limits for both the 401(a) and 457 Plans.
- F. This AR shall not be deemed to modify or affect the applicability or provisions of AR 2.15 (Revised), "Severance Pay Executive Employees."

5. **Sick Leave Snapshot**

- A. The amount of sick leave eligible for inclusion in the calculation of an employee's Final Average Salary at the time of retirement is limited to the number of hours in an employee's sick leave bank on July 1, 2012.

- B. Employee has more than 750 hours in his sick leave bank on July 1, 2012.**
1. The snapshot of sick leave bank as of July 1, 2012 is the maximum sick leave allowed for a pensionable benefit.
 2. The formula used for determining the amount of sick leave that can be a pensionable benefit applied to his Final Average Salary calculation is described in Sections 2, 3 and 4 of this AR.
 3. Employee can replenish used sick leave with newly accrued sick leave up to the established pensionable-benefit maximum (i.e. snapshot amount.)
 4. This language limits the amount of sick leave payout that is pensionable; the total sick leave available for payout at retirement remains unchanged and is described in Sections 2, 3, and 4 of this AR.
- C. Employee has more than 250 hours and less than 750 hours in his sick leave bank on July 1, 2012.**
1. The snapshot of sick leave bank as of July 1, 2012 is the maximum sick leave allowed for a pensionable benefit.
 2. Employee must accrue at least 750 hours of sick leave in order for the snapshot of sick leave to be paid out and included in the pensionable benefit applied to his Final Average Salary calculation.
 3. Employee can replenish used sick leave with newly accrued sick leave in order to receive a pensionable-benefit equivalent to the amount of leave in the snapshot.
 4. This language limits the amount of sick leave payout that is pensionable; the total sick leave available for payout remains unchanged and is described in Section 2, 3, and 4 of this AR.
- D. Employee has fewer than 250 hours OR was hired or re-hired after July 1, 2012.**
1. Employee can be paid out sick leave in accordance with the formula described in Sections 2, 3, and 4 of this AR.
 2. Sick leave payout will not be factored in the employee's Final Average Salary calculation used to establish the employee's pension.

DAVID CAVAZOS, City Manager

By 
Lisa Takata
Deputy City Manager



City of Phoenix

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| ADMINISTRATIVE REGULATION | A.R. NUMBER 2.441 Revised |
| | FUNCTION Page 1 of 3 |
| SUBJECT SICK LEAVE PAYOUT | EFFECTIVE DATE July 8, 2002 |

INTRODUCTION

Transmittal Message

This AR has been revised to incorporate changes resulting from agreements with employee representatives. Questions regarding this AR should be directed to the Personnel Department at (602) 262-7552.

Summary of Changes

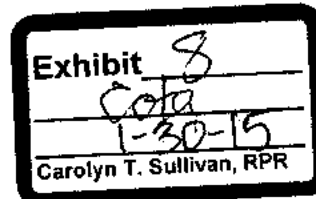
AR 2.441 was last revised in 2000. Under Section 2B, the base hours for employees designated as Unit I and Unit II changes from 500 hours to 250 hours to reflect the current practice and were included in Section 2B. Employees in Unit II, Unit III, Confidential Office and Clerical and Supervisory/Professional may have 25% of the hours above the base paid (previously 20%). Employees designated as Executive, Middle Management are added to Section 2B. All employee groups are now reflected in Section 3A. Previous Section 3B has been deleted and replaced by previous Section 3C.

1. Purpose

This Administrative Regulation establishes guidelines for the cash payment of accumulated sick leave hours at the time of retirement for employees in Unit I, II, III and in the Executive, Middle Management, Supervisory and Professional and Confidential Office and Clerical categories.

2. Definitions

- A. Qualifying hours - the minimum number of accrued and unused sick leave credits, on the last day of service prior to retirement, needed to receive benefit.
- B. Base hours - the first 250 hours for Unit I, Unit II, Unit III, Confidential Office and Clerical and Supervisory and Professional of accrued and unused sick leave credits above which the City will pay the employee. There are no minimum base hours for Executive and Middle Management employees.
- C. Base rate of pay - the hourly pay rate paid the employee immediately prior to retirement excluding premium pay or any other form of additional compensation.



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- D. Qualified Employee - an employee of the City of Phoenix who is eligible, under the terms of this Administrative Regulation, to receive a cash payout for a portion of their accrued, unused sick leave.

3. Eligibility and Benefit

- A. An individual classified as Unit I, Unit II, Unit III, Confidential Office and Clerical Supervisory/Professional or Executive, Middle Management at the time of retirement must have completed one full year in this category immediately prior to retirement, and have a minimum of 750 hours of accrued, unused sick leave in order to qualify for sick leave payout under this Administrative Regulation. Of these 750 hours, the first 250 will be considered base hours and will not qualify for payment (Executive and Middle Managers have no minimum base hours; all hours qualify). At the employee's election, employees in Unit II, Unit III, Confidential Office and Clerical, and Supervisory/Professional may have 25% of the hours above the base paid at the employee's base rate of pay. At the employee's election, employees in Unit I and Executive and Middle Management may have 20% of the hours above the base paid at the employee's base rate of pay.
- B. After making the determination described in Paragraph 4A, below, a qualified employee shall elect to either: (1) use 100% of accrued, unused sick leave in the calculation of total retirement service credit (if this option is elected there shall be no cash payout); or (2) receive a cash payout as described in Paragraph A, above, and, as a condition for such payout, waive the employee's right to have that amount of hours applied to retirement credited service. The remaining sick leave hours that are not paid, may be used for credited service.

4. Administration

- A. At the time of retirement, the Records Section of the Personnel Department, based upon information provided by the employee's department, shall determine the employee's eligibility and the amount of sick leave for which he/she will be eligible for cash compensation under this Administrative Regulation. The employee will then verify in writing that the computations are correct. Any dispute arising out of the determination of eligibility or computation of benefit will be referred to the Personnel Director for final and binding resolution.
- B. If a qualified employee decides to receive a cash payment out of a portion of his/her unused sick leave credits, these hours will be deducted from the total number of retirement service credit hours.

Example: Confidential Office and Clerical employee, at time of normal retirement, elects the Sick Leave Payout option, has a base hourly rate of \$20, and has 2,500 hours of accrued unused sick leave. Since the employee has over the required 750 hours of sick leave, the employee is eligible for the sick leave payout option.

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| 2,500 | hours of accrued unused sick leave |
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|---------------|---|
| 2,250 | remaining eligible hours |
| <u>x . 25</u> | 25% (percentage eligible for compensation) |
| 562.50 | hours of accrued unused sick leave to be paid |
| <u>x 20</u> | base hourly rate of pay |
| \$11,250 | |

This employee, selecting the sick leave payout at retirement would be paid \$11,250 (gross) at retirement.

The employee, having been compensated for 562 ½ hours of accrued leave would then have 1937.50 hours of accrued sick leave hours remaining to be used in the calculation of total service credit toward retirement.

- C. To receive a cash payment for a portion of sick leave, a qualified employee and his/her spouse must sign a form to waive the right to include these hours in the retirement service credit calculation. The employee must also state the number of hours declared for each category.
- D. The plan that provided \$20 per month toward medical insurance premiums based upon total sick leave accrued will be discontinued for those employees retiring on or after July 1, 1996.
- E. A qualified employee who fails, refuses or is unable to make the election described in Paragraph 3B, above, and/or to acknowledge same as required in Paragraph 4(C), above, shall be deemed to have elected to use 100% of accrued, unused sick leave in the calculation of total retirement service credit with no cash payout.
- F. This AR shall not be deemed to modify or effect the applicability or provisions of AR 2.15 (Revised), "Severance Pay Executive Employees."

FRANK FAIRBANKS, City Manager

By 

Lisa Takata
Assistant to the City Manager



Revised

City of Phoenix

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| ADMINISTRATIVE REGULATION | A.R. NUMBER |
| | 2.441 Revised |
| SUBJECT SICK LEAVE PAYOUT | FUNCTION |
| | Page 1 of 3 EFFECTIVE DATE |
| | July 1, 2000 |

INTRODUCTION

Transmittal Message

This AR has been revised to incorporate changes resulting from agreements with employee representatives. Questions regarding this AR should be directed to the Personnel Department at (602) 262-7552.

Summary of Changes

AR 2.441 was last revised in 1999. Under Section 2B, the base hours for employees designated as Unit I and Unit II changes from 500 hours to 250 hours. Employees designated as Unit I and Unit II are added to Section 3A. Employees designated as Unit III and Confidential Office and Clerical are covered under Section 3B.

Sections 2B and 3B also reflect changes effective July 1, 2001. The base hours for Unit III employees changes from 500 hours to 250 hours. The maximum accrued sick leave hours changes from 1000 hours to 750 hours.

1. PURPOSE

This Administrative Regulation establishes guidelines for the cash payment of accumulated sick leave hours at the time of retirement for employees in Unit I, II, III and in the Executive, Middle Management, Supervisory and Professional and Confidential Office and Clerical categories.

2. DEFINITIONS

- A. Qualifying hours - the minimum number of accrued and unused sick leave credits, on the last day of service prior to retirement, needed to receive benefit.
- B. Base hours - the first 500 hours (for Unit III and Confidential Office and Clerical employees) or the first 250 hours (for Executive, Middle Management, Supervisory and Professional, Unit I and Unit II employees) of accrued and unused sick leave credits above which the City will pay the employee. Effective July 1, 2001, the base hours for Unit III employees changes from 500 hours to 250 hours.
- C. Base rate of pay - the hourly pay rate paid the employee immediately prior to retirement excluding premium pay or any other form of additional compensation.

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| Exhibit <u>7</u> |
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| <u>1-30-15</u> |
| Carolyn T. Sullivan, RPR |

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- D. Qualified Employee - an employee of the City of Phoenix who is eligible, under the terms of this Administrative Regulation, to receive a cash payout for a portion of their accrued, unused sick leave.

3. ELIGIBILITY AND BENEFIT

- A. An individual classified as Executive, Middle Management, Supervisory/Professional, Unit I or Unit II at the time of retirement must have completed one full year in this category immediately prior to retirement, and have a minimum of 750 hours of accrued, unused sick leave in order to qualify for sick leave payout under this administrative Regulation. Of these 750 hours, the first 250 hours will be considered base hours and will not qualify for payment. At the employee's election, 20% of the hours above 250 may be paid at the employee's base rate of pay.
- B. An individual classified as Unit III or Confidential Office and Clerical at the time of retirement must have completed one full year in this category immediately prior to retirement and must have a minimum of 1,000 hours of accrued, unused sick leave in order to qualify for sick leave payout under this Administrative Regulation. Of these 1,000 hours, the first 500 hours will be considered base hours and will not qualify for payment. At the employee's election, 20% of the hours above 500, may be paid at the employee's base rate of pay. Effective July 1, 2001, the minimum hours for Unit III employee changes from 1000 hours to 750 hours. As stated in Section 2 B, the base hours changes to 250.
- C. After making the determination described in Paragraph 4A, below, a qualified employee shall elect to either: (1) use 100% of accrued, unused sick leave in the calculation of total retirement service credit (if this option is elected there shall be no cash payout); or (2) receive a cash payout as described in Paragraph A or B, above, and, as a condition for such payout, waive the employee's right to have that amount of hours applied to retirement credited service. The remaining sick leave hours that are not paid, may be used for credited service.

4. ADMINISTRATION

- A. At the time of retirement, the Records Section of the Personnel Department, based upon information provided by the employee's department, shall determine the employee's eligibility and the amount of sick leave for which he/she will be eligible for cash compensation under this Administrative Regulation. The employee will then verify in writing that the computations are correct. Any dispute arising out of the determination of eligibility or computation of benefit will be referred to the Personnel Director for final and binding resolution.
- B. If a qualified employee decides to receive a cash payment out of a portion of his/her unused sick leave credits, these hours will be deducted from the total number of retirement service credit hours.

Example: Confidential Office and Clerical employee, at time of normal retirement, elects the Sick Leave Payout option, has a base hourly rate of \$20, and has 2,500 hours of accrued unused sick leave. Since the employee has over the required 1,000 hours of sick leave, the employee is eligible for the sick leave payout option.

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|--------------|---|
| 2,500 | hours of accrued unused sick leave |
| <u>- 500</u> | base hours do not qualify |
| 2,000 | remaining eligible hours |
| <u>x 20</u> | 20% (percentage eligible for compensation) |
| 400 | hours of accrued unused sick leave to be paid |
| <u>x 20</u> | base hourly rate of pay |
| \$8,000 | |

This employee, selecting the sick leave payout at retirement would be paid \$8,000 (gross) at retirement.

The employee, having been compensated for 400 hours of accrued leave would then have 2,100 hours of accrued sick leave hours remaining to be used in the calculation of total service credit toward retirement.

- C. To receive a cash payment for a portion of sick leave, a qualified employee and his/her spouse must sign a form to waive the right to include these hours in the retirement service credit calculation. The employee must also state the number of hours declared for each category.
- D. The plan that provided \$20 per month toward medical insurance premiums based upon total sick leave accrued will be discontinued for those employees retiring on or after July 1, 1996.
- E. A qualified employee who fails, refuses or is unable to make the election described in Paragraph 3C, above, and/or to acknowledge same as required in Paragraph 4(C), above, shall be deemed to have elected to use 100% of accrued, unused sick leave in the calculation of total retirement service credit with no cash payout.
- F. This A.R. shall not be deemed to modify or effect the applicability or provisions of A.R. 2.15 (Revised), "Severance Pay Executive Employees."

FRANK FAIRBANKS, City Manager

By 
Lisa Takata
Assistant to the City Manager



City of Phoenix

Revised
7/1/00

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| ADMINISTRATIVE REGULATION | A.R. NUMBER 2.441 Revised |
| | FUNCTION Personnel and Payroll |
| SUBJECT SICK LEAVE PAYOUT | PAGE 1 OF 3 EFFECTIVE DATE Rev. July 1, 1999 |

1. PURPOSE

This Administrative Regulation establishes guidelines for the cash payment of accumulated sick leave hours at the time of retirement for employees in Units I, II, III, and in the Executive, Middle Management, Supervisory and Professional, and Confidential Office and Clerical categories.

2. DEFINITIONS

- A. Qualifying hours - the minimum number of accrued and unused sick leave credits, on the last day of service prior to retirement, needed to receive benefit.
- B. Base hours - the first 500 hours (for Units I, II, and III and Confidential Office and Clerical employees), or the first 250 hours (for Executive, Middle Management, and Supervisory and Professional employees) of accrued and unused sick leave credits above which the City will pay the employee.
- C. Base rate of pay - the hourly pay rate paid the employee immediately prior to retirement excluding premium pay or any other form of additional compensation.
- D. Qualified Employee - an employee of the City of Phoenix who is eligible, under the terms of this Administrative Regulation, to receive a cash payout for a portion of their accrued, unused sick leave.

3. ELIGIBILITY AND BENEFIT

- A. An employee classified as Executive, Middle Management or Supervisory/Professional at the time of retirement, must have completed one full year in this category immediately prior to retirement, and have a minimum of 750 hours of accrued, unused sick leave in order to qualify for sick leave payout under this Administrative Regulation. Of these 750 hours, the first 250 hours will be considered base hours and will not qualify for payment. At the employee's election, 20% of the hours above 250 may be paid at the employee's base rate of pay.

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| Exhibit |
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| <i>Cost</i> |
| <i>1-30-15</i> |
| Carolyn T. Sullivan, RPR |

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- B. All other COPERS-eligible employees must have a minimum of 1,000 hours of accrued, unused sick leave in order to qualify for sick leave payout under this Administrative Regulation. Of these 1,000 hours, the first 500 hours will be considered base hours and will not qualify for payment. At the employee's election, 20% of the hours above 500, may be paid at the employee's base rate of pay.
- C. After making the determination described in Paragraph 4A, below, a qualified employee shall elect to either: (1) use 100% of accrued, unused sick leave in the calculation of total retirement service credit (if this option is elected there shall be no cash payout); or (2) receive a cash payout as described in Paragraph A or B, above, and, as a condition for such payout, waive the employee's right to have that amount of hours applied to retirement credited service. The remaining sick leave hours that are not paid, may be used for credited service.

4. ADMINISTRATION

- A. At the time of retirement, the Records Section of the Personnel Department, based upon information provided by the employee's department, shall determine the employee's eligibility and the amount of sick leave for which he/she will be eligible for cash compensation under this Administrative Regulation. The employee will then verify in writing that the computations are correct. Any dispute arising out of the determination of eligibility or computation of benefit will be referred to the Personnel Director for final and binding resolution.
- B. If a qualified employee decides to receive a cash payment out of a portion of his/her unused sick leave credits, these hours will be deducted from the total number of retirement service credit hours.

Example: A Unit I, II, III or Confidential Office and Clerical employee, at time of normal retirement, elects the Sick Leave Payout option, has a base hourly rate of \$20, and has 2,500 hours of accrued unused sick leave. Since the employee has over the required 1,000 hours of sick leave, the employee is eligible for the sick leave payout option.

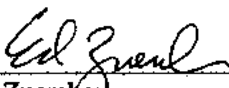
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| \$8,000 | |

This employee, selecting the sick leave payout at retirement would be paid \$8,000 (gross) at retirement.

The employee, having been compensated for 400 hours of accrued leave would then have 2,100 hours of accrued sick leave hours remaining to be used in the calculation of total service credit toward retirement.

- C. To receive a cash payment for a portion of sick leave, a qualified employee and his/her spouse must sign a form to waive the right to include these hours in the retirement service credit calculation. The employee must also state the number of hours declared for each category.
- D. The plan that provided \$20 per month toward medical insurance premiums based upon total sick leave accrued will be discontinued for those employees retiring on or after July 1, 1996.
- E. A qualified employee who fails, refuses or is unable to make the election described in Paragraph 3C, above, and/or to acknowledge same as required in Paragraph 4(C), above, shall be deemed to have elected to use 100% of accrued, unused sick leave in the calculation of total retirement service credit with no cash payout.
- F. This A.R. shall not be deemed to modify or effect the applicability or provisions of A.R. 2.15 (Revised), "Severance Pay Executive Employees."

FRANK FAIRBANKS, City Manager

By 
Ed Zuercher
Management Assistant III

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Revised
7/1/99

City of Phoenix

ADMINISTRATIVE REGULATION

A.R. NUMBER
2.441

FUNCTION Personnel and
Payroll

PAGE 1 OF 3

SUBJECT

SICK LEAVE PAYOUT

EFFECTIVE DATE
July 1, 1996

1. PURPOSE

This Administrative Regulation establishes guidelines for the cash payment of accumulated sick leave hours at the time of retirement for employees in the Executive, Middle Management, and Supervisory and Professional categories.

2. DEFINITIONS

- A. Qualifying hours - the minimum number of accrued and unused sick leave credits, on the last day of service prior to retirement, needed to receive benefit.
- B. Base hours - the first 500 hours of accrued and unused sick leave credits above which the City will pay the employee.
- C. Base rate of pay - the hourly pay rate paid the employee immediately prior to retirement excluding premium pay or any other form of additional compensation.
- D. Qualified Employee - an employee of the City of Phoenix who is eligible, under the terms of this Administrative Regulation, to receive a cash payout for a portion of their accrued, unused sick leave.

3. ELIGIBILITY AND BENEFIT

- A. An individual must be classified as Executive, Middle Management or Supervisory/Professional at the time of retirement and must have completed one full year in this category immediately prior to retirement.
- B. An employee must have a minimum of 1,000 hours of accrued, unused sick leave in order to qualify for sick leave payout under this Administrative Regulation. Of these 1,000 hours, the first 500 hours will be considered base hours and will not qualify for payment. At the employee's election, 20% of the hours above 500, may be paid at the employee's base rate of pay.

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 Carolyn T. Sullivan, RPR

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- C. After making the determination described in Paragraph 4A, below, a qualified employee shall elect to either: (1) use 100% of accrued, unused sick leave in the calculation of total retirement service credit (if this option is elected there shall be no cash payout); or (2) receive a cash payout as described in Paragraph B, above, and, as a condition for such payout, waive the employee's right to have that amount of hours applied to retirement credited service. The remaining sick leave hours that are not paid, may be used for credited service.

4. ADMINISTRATION

- A. At the time of retirement, the Records Section of the Personnel Department, based upon information provided by the employee's department, shall determine the employee's eligibility and the amount of sick leave for which he/she will be eligible for cash compensation under this Administrative Regulation. The employee will then verify in writing that the computations are correct. Any dispute arising out of the determination of eligibility or computation of benefit will be referred to the Personnel Director for final and binding resolution.
- B. If a qualified employee decides to receive a cash payment out of a portion of his/her unused sick leave credits, these hours will be deducted from the total number of retirement service credit hours.

Example: An employee, at time of normal retirement, elects the Sick Leave Payout option, has a base hourly rate of \$20, and has 2,500 hours of accrued unused sick leave. Since the employee has over the required 1,000 hours of sick leave, the employee is eligible for the sick leave payout option.

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This employee, selecting the sick leave payout at retirement would be paid \$8,000 (gross) at retirement.

The employee, having been compensated for 400 hours of accrued leave would then have 2,100 hours of accrued sick leave hours remaining to be used in the calculation of total service credit toward retirement.

- C. To receive a cash payment for a portion of sick leave, a qualified employee and his/her spouse must sign a form to waive the right to include these hours in the retirement service credit calculation. The employee must also state the number of hours declared for each category.
- D. The plan that provided \$20 per month toward medical insurance premiums based upon total sick leave accrued will be discontinued for those employees retiring on or after July 1, 1996.
- E. A qualified employee who fails, refuses or is unable to make the election described in Paragraph 3C, above, and/or to acknowledge same as required in Paragraph 4(C), below, shall be deemed to have elected to use 100% of accrued, unused sick leave in the calculation of total retirement service credit with no cash payout [Option 3C(1), above].
- F. This A.R. shall not be deemed to modify or effect the applicability or provisions of A.R. 2.15 (Revised), "Severance Pay Executive Employees."

FRANK FAIRBANKS, City Manager

By Marsha Wallace
Marsha Wallace
Executive Assistant to the City Manager

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RULE 15
LEAVES OF ABSENCE

15a - Requesting Leaves of Absence:

15a1 - All requests for leaves of absence with or without pay shall be made to the department head concerned for approval on forms approved by the Personnel Director. All requests shall be submitted in advance of the beginning date of the leave (except requests for unanticipated sick leave which shall be submitted for approval at the earliest possible time) and the duration and kind of leaves shall be recorded on the payroll. Paid leaves of absence are subject to available leave credits and the scheduling of vacations is subject to the control of the department head. All requests for leave of absence (excluding industrial leaves) without pay of over thirty working days shall be subject to the control of the department heads concerned and shall require the approval of the appointing authority and the Personnel Director.

The Personnel Director shall administer the leave program.

15a2 - Job Sharing Program: An employee in a job sharing position shall receive a pro-rata share of full-time leave credits in a manner determined by the Personnel Director.

15a3 - All leaves of absence for personal illness of the employee; for the birth, adoption, or foster placement of a child; or for the care of a spouse, child, or parent of the employee when those family members have a serious health condition shall be integrated with the leave requirements of the Family and Medical Leave Act of 1993.

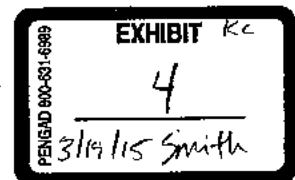
15a4 - Salaried employees exempt from the overtime provisions of the Fair Labor Standards Act shall not receive deductions from their compensation for absences from work of less than one full work day. Absences of less than one full work day will be rounded to full-day increments. If a salaried employee is absent for less than one-half of the work day, leave balances will not be reduced. If the employee is absent for one-half of the work shift or more, a full day of leave will be deducted.

15b - Vacation Leave With Pay:

15b1 - Eligibility and Vacation Allowances: Every full-time hourly employee who works a schedule at full-time fifty-two weeks of the year shall be credited with vacation credits for every completed calendar month of paid service according to the following schedule:

| | | |
|---|------------------------------------|-----------------------------------|
| A | Seven hours per month | Through five years of service |
| B | Eight hours per month | Through five years of service |
| | Ten hours per month beginning | 6th through 10th year of service |
| | Eleven hours per month beginning | 11th through 15th year of service |
| | Thirteen hours per month beginning | 16th through 20th year of service |
| | Fifteen hours per month beginning | 21st year of service & thereafter |

A For Police Unit and Field Unit I employees
B For all other hourly employees.



Salaried employees shall receive the following annual vacation accruals, prorated monthly based on an eight-hour day:

| | |
|-----------|-------------------------------------|
| 12 days | Through five years of service |
| 15 days | 6th through 10th year of service |
| 16.5 days | 11th through 15th year of service |
| 19.5 days | 16th through 20th year of service |
| 22.5 days | 21st year of service and thereafter |

An employee in the General Employee Retirement System who is receiving pension benefits as a result of retirement from the City under the Public Safety Retirement System shall be considered as a new employee in determining vacation credits.

Any absence without pay in excess of ten working days in any two consecutive pay periods shall not be allowed as creditable service for vacation benefits.

Leaves of absence compensated under the City of Phoenix Industrial Leave Program in excess of one year (2,080 hours, or 2,912 hours for 56-hour Fire employees) per injury or illness shall not be considered as paid service. While return to working status shall reinstate leave accrual, additional industrial leave for the same injury or illness shall not be considered paid service.

Eligibility to use vacation credits shall begin only after completion of six months of employment, with the following exceptions:

- A. A full-time certified employee, appointed from recall list, is eligible to use vacation credits as earned upon reemployment.
- B. Vacation credits, earned during the first six months of employment, may be used for sick leave, only if sick leave credits are not available.

15b2 - Accrual of Vacation Credits: Vacation credits shall not be allowed to accumulate in excess of an amount equal to two times the employee's current annual rate at the end of any calendar year, except on the recommendation of the employee's department head and approval of the appointing authority. Approved excess vacation carryover shall be subject to the provisions and limitations imposed by the City Manager. The City Manager may establish limits beyond which the employee shall not accumulate further leave credits and for which the employee shall not be compensated.

The written authority to carry over vacation credits in excess of an amount equal to two times the employee's current annual accrual rate shall be placed on file in the Personnel Department. Any unauthorized carryover of vacation credit in excess of an amount equal to two times the employee's current annual accrual rate becomes void at the end of the calendar year into which such excess credits are extended. Fire Department employees on a 56-hour schedule shall be allowed a carryover proportional to the amount allowed general service employees.

Employees with less than six years of service hired before July 1, 1981, will be allowed to accumulate vacation credits up to a maximum of 240 hours at the annual cutoff date.

15b3 - **Vacation Rate of Pay and Assessment:** The department head is responsible for the scheduling of vacations for employees regularly each year. Vacation is charged against the employee's credits in the amount equal to the number of regularly-scheduled working hours that the employee is on vacation leave. The full-time employee shall receive the same amount in vacation pay that he would receive if the employee worked his normal daily work schedule. Vacation leave in an amount of less than a day for a full-time hourly employee shall be charged to the nearest fifteen minutes involved in the leave.

Vacation leave for salaried employees shall be charged as stipulated in Rule 15a4.

For good reason, an employee may be allowed or required by the department head to forego part or all of his annual vacation. No employee shall be required to forego the use of vacation credits without the department head approving the carryover of credits in excess of an amount equal to two times the employee's current annual accrual rate.

15b4 - **Termination Pay of Vacation Credits:** Every employee who has vacation credits that do not exceed the limitations established by the City Manager shall have such credits paid at the time of leaving the City's employment, whether by resignation, retirement, layoff, dismissal, or death. No such payment shall be made unless the employee has completed six months of regular employment and no payment shall be made for hours in excess of limitations established by the City Manager.

15c - Sick Leave With Pay:

15c1 - **Entitlement and Allowance:** Every full-time hourly employee who works a schedule at full-time, fifty-two weeks of the year, shall accrue sick leave credits at the rate of ten hours for each month of paid service. Salaried employees shall accrue sick leave credits at the rate of a day and one-quarter for each month of paid service. Leaves of absence compensated under the City of Phoenix Industrial Leave Program in excess of one year (2,080 hours, or 2,912 hours for 56-hour Fire employees) per injury shall not be considered as paid service. Sick leave credits shall accrue without limitation. Any absence without pay of more than ten working days in any two consecutive pay periods shall not be allowed as creditable sick leave time. Upon reemployment within five years, 20% of sick leave credits at the time of termination shall be reinstated to the employee and be available for use after one month of reemployment. However, employees rehired from a layoff eligibility list shall have full sick leave credits and use of sick leave accumulated during previous employment. An employee who is receiving pension benefits as a result of retirement from the City under the Public Safety Retirement System and who received cash payment for accumulated sick leave at time of retirement, shall not be entitled to the 20% return of sick leave credits. Full-time employees who enter into job sharing may take up to 240 hours of accumulated sick leave into the job share employment. If this individual returns to full-time employment without a break in service, the remaining sick leave credits will be returned to the employee's record.

15c2 - Qualifications for Sick Leave:

Sick leave shall only be allowed when:

- A. The employee is too ill or injured to be able to work safely. Minor ailments which would not affect the safety of persons or property or endanger the health of other persons while performing job duties do not qualify an employee for sick leave. Department and division heads shall not approve applications for sick leave with pay in cases involving such minor ailments.

Employees may be allowed sick leave for examinations by a licensed physician or dentist, or medical treatments prescribed by a licensed physician or dentist, when it is not possible to arrange appointments on off-duty hours. Sick leave shall be denied an employee who refuses to follow the prescription of a licensed physician.

Employees may be allowed sick leave to provide the supplemental pay differential between industrial pay and regular net take-home pay under the provisions of Rule 15f1, after the one-year supplemental pay has been exhausted.

- B. An emergency occurs due to illness of a member in the employee's immediate family.

Duration of emergency leave shall be limited to the emergency situation and shall not exceed five working days. The amount of leave may vary from one hour to five days, depending on the emergency. Air travel time shall be allowed in addition to the approved amount of out-of-state family emergency illness.

"Member of the employee's immediate family" means the mother, father, husband, wife, child, step-child, brother, or sister of the employee. A relative who, because of family circumstances, has been a parent substitute to the employee may be considered as a substitute for mother or father in this definition. Under the Family and Medical Leave Act of 1993, brother and sister are not qualified as immediate family members.

- C. A police officer who has no other accumulated paid leave may use up to ten hours of accumulated sick leave per year for non-emergency home care or medical treatment of a member of the employee's immediate family, subject to operational and scheduling factors.

Sick leave shall not be allowed:

- D. For an absence as a result of a job injury or occupational disease while employed by someone other than the City of Phoenix.
- E. For home care of a family member due to illness not an emergency, except as provided in (C) above.

15c3 - Rate of Sick Leave Pay and Assessment: A full-time hourly employee while on sick leave shall be charged sick leave credits in the amount equal to the number of working hours he is absent. The rate of pay while on sick leave shall be the rate at which he is being paid when taking leave. Sick leave for salaried employees shall be charged as stipulated in Rule 15a4. In no event shall more than the regularly-scheduled daily work hours be allowed the full-time employee for each of the scheduled work days on which he is absent. Sick leave of less than a full day shall be charged to the full-time employee's sick leave credits to the nearest fifteen minutes involved in the leave. If sick leave occurs on an authorized holiday, and the employee was scheduled to work on that holiday, sick leave shall not be charged and the employee shall receive the appropriate holiday compensation as provided in City Administrative Regulations.

15c4 - Leave Authorization: Request for sick leave shall be in writing, signed by the employee, stating the reasons for the leave and have the approval of the supervisor who is authorized by the department head to approve sick leave. The department head may require a certificate of disability from the employee's physician (licensed) for an absence of over three days. Such certification may be required for absences of less than three days when the employee's sick leave record indicates excessive one- or two-day absences.

An employee, before returning to his duties from an illness over twelve working days, shall submit a statement from his physician qualifying him for his class of work. The department head may refer the employee to the City physician for examination at the time the employee reports for duty from an absence of over twelve working days.

An employee who is on extended sick leave shall submit to a medical examination or examinations made by the City physician, or a licensed physician designated by the City physician. Provided that if in the opinion of the City physician the nature and extent of the illness is such that no examination is necessary to determine that the employee is not able to work, such examination may be waived until such time as the City physician shall determine that an examination is again necessary. A report of his decision shall be forwarded to the department head and the Personnel Director indicating the approximate date when, in his opinion, an examination should be necessary. Such examination shall be made within five days following a period of thirty calendar days of sick leave with pay, and such additional periodic medical examinations shall be made at thirty calendar day intervals during the period the employee continues on sick leave.

The City physician shall report in writing to the employee's department head and the Personnel Director on the findings of each medical examination. The medical findings of the employee's physician shall also be considered and reported to the department head by the City physician. The department head involved, on receipt of the medical findings, shall either continue the employee on leave or order him to return to his duties. It shall be the responsibility of the department or division head of the employee who is on extended sick leave with pay to inform the City physician of the name and exact location of such employee and of the dates on which medical examinations shall be made.

The Personnel Director may require that a medical examination be made of such employee if he has not received a copy of the medical report on the employee after ten days from the date when such medical examination is required to be made.

15c5 - Appeal From the Medical Decision of the City Physician: When the medical opinion of the City physician results in the department head denying the petition of an employee to be absent or to return to work because of an illness or injury, the employee's licensed physician who concurs with the employee's request and the City physician shall select a third licensed physician to examine the employee. The majority opinion of these three physicians shall determine whether the employee shall be given sick leave or returned to his job. The cost of the services of the third physician shall be assumed equally by the employee and the City.

15c6 - Medical Examinations: Whenever, in the opinion of the department head, the work record or the attendance record, or both, of an employee indicates that he may have a health problem, the department head may direct that he be examined by the City physician.

Supervisors below the department head level shall immediately inform the department head of any undue lowering of the quality of work of any employee or any undue absences which may be a result of the employee's physical condition.

The results of each examination shall be used in counseling the employee to the end that he will get the best out of his health resources. The medical findings of each examination shall be transmitted to the employee and his physician when, in the opinion of the City physician, corrective steps should be taken. The medical findings of the City physician shall be made available to the employee's family physician upon request of the employee or his physician.

When the medical findings disclose a disability that limits the employee's ability to perform the essential functions of the job, the department shall investigate the reasonable accommodations that may be made to assist the employee. When, in the opinion of the City physician, a leave of absence is necessary for corrective treatment, the employee shall be entitled to such sick leave credits as stand to his account. In the event an employee is found to need a leave of absence to recover from his physical illness and would be required to take sick leave with or without pay, he shall have the right to appeal to a board composed of the City physician, the employee's physician, and a consulting physician selected by the two. The majority opinion of the three in writing shall be binding upon the employee to take or not to take a leave of absence with or without pay. The cost of the consulting physician shall be in accordance with the provisions of the preceding section as to this cost responsibility.

15c7 - Maternity: A leave of absence, as covered under 15c1, shall be granted for maternity purposes to female employees on the following basis:

- A. An employee who applies for maternity leave must submit her request in writing, indicating whether or not she intends to return to duty after delivery. She should attach thereto her physician's written certificate stating the approximate date on which she will be incapacitated for the full performance of her duties because of pregnancy, and stating the expected delivery date.
- B. An employee will be expected to work before delivery until she cannot adequately perform the duties of her job, or it is no longer safe for her to do so as certified by her attending physician. An employee who intends to return to duty after delivery will be expected to do so as soon as she is physically fit as certified by her physician.
- C. The use of paid sick leave for maternity shall be only for the period of time when the employee herself is physically disabled, and only to the extent that the employee has sick leave accumulated. Paid sick leave solely for the purpose of providing child care shall not be allowed. The maternity time and the time used for care of the new child shall comply with the Family and Medical Leave Act of 1993.
- D. The employee shall be responsible for providing any physician's statements as required by the department to determine the commencement and termination period of physical disability.
- E. An employee who has indicated that she does not intend to return to duty after delivery will be granted the use of any sick leave to her credit during the periods before and immediately after the actual delivery which can be supported by her physician's certificate. She will submit her resignation at the time she begins her maternity leave. When she has used the sick leave approved, she will be separated from the rolls.

15d - Military Leave:

15d1 - National Guard: Leave for National Guard shall be as specified in State law (ARS 26-168) and issued by Administrative Regulation.

15d2 - Military Reserve: Leave for Armed Services Reserve shall be as specified in State law (ARS 38-610) and issued by Administrative Regulation.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-010330

01/06/2014

HONORABLE MARK H. BRAIN

CLERK OF THE COURT
A. Melchert
Deputy

FRANK PICCIOLI, et al.

SUSAN MARTIN

v.

CITY OF PHOENIX, et al.

J MARK OGDEN

UNDER ADVISEMENT RULING

This matter came before the court on November 8, 2013 for argument on the parties' competing motions for summary judgment, as well as plaintiffs' renewed motion for class certification, all filed in April 2012. Having studied the parties' papers and considered their arguments, all of the motions are DENIED. By way of explanation, the court offers the following:

This case involves the City of Phoenix Employees' Retirement System (aka "COPERS"), which was established in the City Charter. Pensions for city employees are calculated under § 9.1--broadly speaking, an employee's credited service (i.e. "time") is multiplied by a percentage of the employee's "final average compensation." The City Charter contains the following definitions:

- 2.13. "*Compensation*" means a member's salary or wages paid him by the City for personal services rendered by him to the City. In case a member's compensation is not all paid in money the City Council shall, upon recommendation of the City Manager, fix the value of the portion of his compensation which is not paid in money.
- 2.14. "*Final average compensation*" means the average of the highest annual compensations paid a member for a period of 3 consecutive, but not necessarily

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continuous, years of his credited service contained within his 10 years of credited service immediately preceding the date of his City employment last terminates. If he has less than 3 years of credited service, his final average compensation shall be the average of his compensations for his total period of service. For the purposes of determining benefits based on final average compensation, any compensation in excess of the limitations established by Section 401 (a) (17) of the Internal Revenue Code (including applicable adjustments), shall be disregarded. The limitation on compensation for eligible employees shall not be less than the amount which was allowed to be taken into account under the plan as in effect on July 1, 1993. For this purpose an eligible employee is an individual who was a member of the retirement plan before the first plan year beginning after December 31, 1995.

- 2.15. "*Final compensation*" means a member's annual rate of compensation at the time his City employment last terminates.

According to plaintiffs, full time employees accrue ten hours of paid sick leave per month. *See* Plaintiff's Motion for Summary Judgment at p. 6 (the court was unable to locate a record cite for this proposition). Regarding unused sick leave, § 14.4 of the City Charter provides, in part, "A member shall be granted unused sick leave credited service for the period of unused sick leave standing to the member's credit at time of retirement, death or termination of City employment." Stated another way, unused sick leave has always counted towards "years of service." In 1996, the City enacted Administrative Regulation 2.441, which for the first time provided an additional cash payout for unused sick leave (the concept being that the employee could elect to trade additional "time of service," which would enhance the pension benefit, for cash). Regulation 2.441 has been amended on several occasions:

- The July 1, 1996 version provided that certain employees with 1000+ hours of unused sick leave could cash out 20% of the hours in excess of 500 at the rate of their base pay. This policy covered employees in the Executive, Middle Management, and Supervisory and Professional categories.
- The July 1, 1999 version provided that Executive/Middle Management/Supervisory/Professional employees with 750+ hours could cash out 20% of the hours in excess of 250 hours at the rate of his/her base pay. It added a cash out option allowing the remaining employees with 1000+ hours to cash out 20% of the hours in excess of 500 at the rate of their base pay.

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- The July 1, 2000 and July 8, 2002 versions made similar changes, each of which granted more liberal rights to employees.
- The July 8, 2012 version allowed employees to use previously accrued sick time as per prior policies, but essentially froze the right going forward (the court recognizes that this is a gross oversimplification, but it is good enough for present purposes).

Plaintiffs' main position is that the new policy directly violates the Charter because the pay for unused sick leave is compensation under § 2.13, and thus must be included in the computation under § 2.14. This is plainly wrong. Municipal ordinances are construed in the same manner as state statutes. *Douglass v. Gendron*, 199 Ariz. 593, 20 P.3d 1174 (App. 2001). Statutes are to be construed as a whole, to give effect to the legislative intent. *Staples v. Concord Equities, L.L.C.*, 221 Ariz. 27, 30, 209 P.3d 163, 166 (App. 2009); *Sierra Tucson, Inc. v. Lee ex rel. County of Pima*, 230 Ariz. 255, 258 282 P.3d 1275, 1278 (App. 2012). Here, 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. The policies require 750 or 1000 hours of unused leave (depending on the employee) to cash out any sick leave--with sick leave accruing at 120 hours per year, it takes 6.25 years of perfect attendance to accrue 750 hours of sick leave, and 8.33 years of perfect attendance to accrue 1000 hours of sick leave. If the employee received a gold watch at retirement for a job well done, no one would suggest that it was part of his final three years of compensation—it was for his body of work. Likewise, although the employee happens to receive a paycheck (if he so elects) for unused sick leave upon retirement, it is obvious that this check constitutes a payment for far more than his work those final three years.¹

Plaintiffs' secondary position is far more complicated. The City acknowledges that it has in the past included sick leave payouts in pension calculations. At least as to some of the unions, this appears to have been part of their contract for some time, and it appears that the revisions were part of the negotiations in 2012 which led to new memoranda of understanding. Those memoranda are themselves contracts, and must thus be interpreted to give effect to the parties' intent. *Taylor v. State Farm Mut. Auto.Ins. Co.*, 175 Ariz. 148, 854 P.2d 1134 (1993). Having considered the parties' papers and arguments, the court finds there are questions of fact regarding the parties' intentions as to whether the revised policies were incorporated into the new memoranda of understanding. Accordingly, summary judgment is inappropriate.

¹ In addition, "sick leave" is non-monetary compensation as it accrues—an employee accrues the right to miss work. Accordingly, this appears to be the type of compensation referred to in paragraph 2.13 of the Charter, which indicates that the City Counsel shall fix its value upon recommendation of the City Manager.

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Regarding the renewed motion for class certification, plaintiffs' proposed definition remains too broad. The new proposal is, "All Members of COPERS who were Members as of July 8, 2012 and who had not yet retired as of July 8, 2012 but excluding individuals who are members of Field Unit 1." But as noted above, unions and others not represented by unions could, consistent with the City Charter, enter into contracts which did not require unused sick leave to be included in the pension calculation. Because the inquiry appears to be contract-driven, such a class would be inappropriate. Moreover, in light of this conclusion, the court questions why it should even entertain certification of any class—several unions are in fact plaintiffs in this action, and one would think that they could litigate on behalf of their constituents without the burdens imposed by a class action.

Finally, in light of the court's conclusion that this matter boils down to contract interpretation, the court questions the propriety of this lawsuit. After all, no one has actually made a claim that they are currently entitled to pension benefits that are being withheld, and the contracts remain subject to renegotiation as time goes on. The court typically has broad discretion in deciding whether to exercise its special action jurisdiction under Rule 1, Rules of Procedure for Special Actions.² See *Bilagody v. Thorneycroft*, 125 Ariz. 88, 92, 607 P.2d 965, 969 (App. 1979). Likewise, the court has discretion with respect to exercising its jurisdiction in declaratory judgment actions. See A.R.S. § 12-1831; *Pena v. Fullinwider*, 124 Ariz. 42, 45, 601 P.2d 1326, 1329 (1979) (noting that the court can refuse to grant declaratory relief "where a declaration of rights would be unnecessary or improper at the time under all the circumstances").

IT IS ORDERED that the parties file briefs, no later than February 5, 2014 and limited to 15 pages in length (inclusive of caption and mailing certificate) setting forth why the court should exercise its jurisdiction in these circumstances, as opposed to waiting until a retired employee actually asserts a claim for unpaid pension benefits under a then-existing contract.

ALERT: The Arizona Supreme Court Administrative Order 2011-140 directs the Clerk's Office not to accept paper filings from attorneys in civil cases. Civil cases must still be initiated on paper; however, subsequent documents must be eFiled through AZTurboCourt unless an exception defined in the Administrative Order applies.

² Plaintiff has, at times, suggested that this is a "statutory special action," which would mean that the court did not have such discretion, but the court has been unable to locate a citation to any authority that so provides in the parties' voluminous papers.

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

| | | |
|--------------------------|---|---|
| Frank Piccioli et. al., |) | Case No.: CV2012-010330 |
| |) | |
| Plaintiffs, |) | FINDINGS OF FACT AND |
| v. |) | CONCLUSIONS OF LAW |
| |) | |
| City of Phoenix et. al., |) | (Assigned to the Hon. Mark H. Brain) |
| |) | |
| Defendants, |) | |
| |) | |
| v. |) | |
| |) | |
| Stuart Casey, et al., |) | |
| |) | |
| Intervenors. |) | |
| _____ |) | |

This matter came before the court for a bench trial in April and May, 2015. Having considered the evidence presented and the parties’ post-trial briefs and proposed findings, the court finds and concludes as follows.

PARTIES

1. Individual Plaintiffs and Intervenors (hereafter collectively referred to as “Plaintiffs”) are current employees and retirees of the City of Phoenix (“City”) who, on or before July 8, 2012, participated in the City of Phoenix Employees’ Retirement Plan (“COPERS” or “Retirement Plan”), a defined-benefit plan established pursuant to Chapter XXIV of the Charter of the City of Phoenix (“Charter”).

2. Plaintiff Frank Piccioli is an employee of the City of Phoenix and a member of Unit 3. Mr. Piccioli worked for the City from in or around 1999 through 2000 and began working for the City again in or around 2002 and has continuously worked for the City since that date. Mr. Piccioli is an “Employee” of the City and a “Member” of the Retirement Plan as those terms are defined in the Retirement Plan and is entitled to pension benefits under the Retirement Plan upon his retirement or eligibility for a deferred pension.

3. Plaintiff Debra Novak-Scott is an employee of the City of Phoenix and a member of Unit 3. Ms. Novak-Scott began working for the City in or around April 1984 and has continuously worked for the City since that date. Ms. Novak-Scott is a Member of the Retirement Plan and is entitled to pension benefits under the Retirement Plan upon her retirement or eligibility for a deferred pension.

4. Plaintiff Luis Schmidt is an employee of the City of Phoenix and a member of Unit 2. Mr. Schmidt began working for the City in or around August 1998 and has continuously worked for the City since that date. Mr. Schmidt is a Member of the Retirement Plan and is entitled to pension benefits under the Retirement Plan upon his retirement or eligibility for a deferred pension.

5. Ronald Ramirez is an employee of the City of Phoenix and a member of Unit 7. Mr. Ramirez began working for the City in or around 1986 and has continuously worked for the City since that date. Mr. Ramirez is a Member of the Retirement Plan and is entitled to pension benefits under the Retirement Plan upon his retirement or eligibility for a deferred pension.

6. Plaintiff AFSCME Local 2960 is a voluntary nonprofit labor organization affiliated with the American Federation of State, County and Municipal Employees, AFL-CIO International Union, which is the largest labor organization representing public employees in the United States. AFSCME Local 2960 is the certified Meet and Confer bargaining representative

for Unit 3 employees within the City of Phoenix Meet and Confer Ordinance. Unit 3 employees include clerical and pre-professional City of Phoenix employees. Local 2960 has entered into a series of binding and enforceable Memoranda of Understanding with the City of Phoenix pursuant to the City's Meet and Confer Ordinance that covers wages, hours and working conditions. Local 2960 also handles grievances and issues involving wages, hours and working conditions for City of Phoenix Unit 2 employees. Plaintiff Frank Piccioli is the current President of AFSCME Local 2960. Plaintiff Debra Novak-Scott is the current Vice-President of AFSCME Local 2960.

7. Plaintiff AFSCME Local 2384 is a voluntary nonprofit labor organization affiliated with the American Federation of State, County and Municipal Employees, AFL-CIO International Union, which is the largest labor organization representing public employees in the United States. AFSCME Local 2384 is the certified Meet and Confer bargaining representative for Unit 2 employees within the City of Phoenix Meet and Confer Ordinance. Field Unit 2 employees are skilled trades workers employed by the City of Phoenix. Local 2384 has entered into a series of binding and enforceable memoranda of understanding with the City of Phoenix pursuant to the City's Meet and Confer Ordinance that covers wages, hours and working conditions. Local 2384 also handles grievances and issues involving wages, hours and working conditions for Unit 2 employees. Plaintiff Luis Schmidt is the current President of AFSCME Local 2384.

8. Plaintiff ASPTEA is a voluntary nonprofit labor organization. ASPTEA is the representative for Unit 7 employees within the City of Phoenix Meet and Discuss Ordinance. ASPTEA has entered into a series of binding and enforceable memoranda of agreement with the City of Phoenix pursuant to the City's Meet and Discuss Ordinance that covers wages, hours and working conditions. Plaintiff Ronald Ramirez was the President of ASPTEA during the 2012 negotiations. Charlene Limbeck was on the ASPTEA Board of Directors from either 1994 or

1995, became the Board Secretary in 1999 and served as ASPTEA Board Secretary until her retirement in 2013. Jason Stokes is the current President of ASPTEA. Prior to his current position as ASPTEA, Mr. Stokes was Chief Representative and on the Board of Directors of ASPTEA beginning in 2007.

9. Intervenor Stuart Casey was an employee of the City of Phoenix from on or about February 11, 1985 through on or about November 26, 2012 and was employed in Unit 7 at the time of his retirement. Mr. Casey was and is a “Member” of the Retirement Plan. Mr. Casey retired from the City on or about November 26, 2012 and is currently receiving pension benefits under the Retirement Plan.

10. Intervenor Virginia Cota was an employee of the City of Phoenix from on or about January 19, 1981 through on or about November 26, 2012 and was employed in Unit 7 at the time of her retirement. Ms. Cota was and is a “Member” of the Retirement Plan. Ms. Cota retired from the City on or about November 30, 2012 and is currently receiving pension benefits under the Retirement Plan.

11. Intervenor Paul F. Enniss was an employee of the City of Phoenix from in or around March 1987 through on or about September 30, 2013 and was employed in Unit 2 at the time of his retirement. Mr. Enniss was and is a “Member” of the Retirement Plan. Mr. Enniss retired from the City on or about October 1, 2013 and is currently receiving pension benefits under the Retirement Plan.

12. Intervenor Vivian Escobar was an employee of the City of Phoenix from on or about June 9, 1980 through on or about November 27, 2013 and was employed in Unit 7 at the time of her retirement. Ms. Escobar was and is a “Member” of the Retirement Plan. Ms. Escobar retired from the City on or about November 27, 2013 and is currently receiving pension benefits under the Retirement Plan.

13. Intervenor John F. Estes was an employee of the City of Phoenix from on or about December 15, 1987 through in or around November 2012 and was employed in Unit 3 at the time of his retirement. Mr. Estes was and is a “Member” of the Retirement Plan. Mr. Estes retired from the City in or around November 2012 and is currently receiving pension benefits under the Retirement Plan.

14. Intervenor Philip Koda was an employee of the City of Phoenix from in or around April 1995 through on or about November 25, 2013 and was employed in Unit 3 at the time of his retirement. Mr. Koda was and is a “Member” of the Retirement Plan. Mr. Koda retired from the City on or about November 25, 2013 and is currently receiving pension benefits under the Retirement Plan.

15. Intervenor John Lay was an employee of the City of Phoenix from on or about May 18, 1998 through on or about March 25, 2013 and was employed in Unit 2 at the time he terminated employment. Mr. Lay was and is a “Member” of the Retirement Plan. Mr. Lay retired from the City in or around June 2013 and is currently receiving pension benefits under the Retirement Plan.

16. Intervenor Louis Matamoros was an employee of the City of Phoenix from in or around 1985 through on or about October 19, 2012 and was employed in Unit 7 at the time of his retirement. Mr. Matamoros was an “Employee” of the City and was and is a “Member” of the Retirement Plan. Mr. Matamoros retired from the City on or about October 19, 2012 and is currently receiving pension benefits under the Retirement Plan.

17. Intervenor David Meiner was an employee of the City of Phoenix from on or about January 11, 1988 through on or about November 26, 2012 and was employed in Unit 2 at the time of his retirement. Mr. Meiner was and is a “Member” of the Phoenix Retirement Plan. Mr.

Meiner retired from the City on or about November 26, 2012 and is currently receiving pension benefits under the Retirement Plan.

18. Intervenor Joan Olson was an employee of the City of Phoenix from on or about September 25, 1988 through on or about December 11, 2013 and was employed in Unit 7 at the time of her retirement. Ms. Olson was and is a “Member” of the Retirement Plan. Ms. Olson retired from the City on or about December 11, 2013 and is currently receiving pension benefits under the Retirement Plan.

19. Intervenor Willie R. Price, Jr. was an employee of the City of Phoenix from on or about September 19, 1988 through on or about November 13, 2013 and was employed in Unit 7 at the time of his retirement. Mr. Price was and is a “Member” of the Retirement Plan. Mr. Price retired from the City on or about November 13, 2013 and is currently receiving pension benefits under the Retirement Plan.

20. Intervenor David Robinson was an employee of the City of Phoenix from on or about February 5, 2001 through on or about November 27, 2013 and was employed in Unit 2 at the time of his retirement. Mr. Robinson was and is a “Member” of the Retirement Plan. Mr. Robinson retired from the City on or about November 27, 2013 and is currently receiving pension benefits under the Retirement Plan.

21. All Intervenors were active City employees and Members of the Retirement Plan prior to and after July 8, 2012.

22. Plaintiffs and Intervenors are “Members” of the Retirement Plan who have both vested and contractual rights to retirement benefits under the terms of the Retirement Plan.

23. Defendant, City of Phoenix, at all times relevant was and is a political subdivision of the State of Arizona and the public employer of Individual Plaintiffs and the former employer of Intervenors.

24. Defendant, City of Phoenix Retirement System is a named defendant in this action and a real party in interest.

25. Defendant, City of Phoenix Retirement Systems Board (“Retirement Board,” or “Board”) is the nine-member board established under the Retirement Plan and is a real party in interest.

COPERS

26. The City of Phoenix Employees’ Retirement Plan¹ is a statutory defined benefit plan established in the Charter of the City of Phoenix (“City Charter”). Article II of Chapter 24 of the City of Phoenix Charter, the City of Phoenix Retirement Law of 1953, as amended from time to time, sets forth the provisions of the Retirement Plan including provisions regarding the retirement benefits to which individual Plaintiffs are entitled. The Plan was created to provide retirement, survivor and disability benefits to general City employees. Any active, permanent, full-time City employee, other than public safety personnel, is a “member” or “participant” in COPERS.

27. COPERS is administered by the Board. Section 4.1 of the Plan grants the Board full discretionary power and authority to administer COPERS, stating: “The authority and responsibility for the administration, management and operation of the Retirement Plan and for construing and carrying into effect the provisions of this Article, except as otherwise provided in this Article, are vested in a Retirement Board.” Section 36 of COPERS allows the Board Discretion to develop a practical solution for errors in the administration and operation of the Plan.

¹ The court will refer to this as the Retirement Plan or the Plan.

28. Upon meeting the eligibility criteria for a particular type of retirement under COPERS, actually retiring, and proper application for a COPERS' pension, a participant in the Plan will receive a pension benefit calculated pursuant to a formula set forth in the Plan. The amount of a participant's pension benefit is calculated by multiplying the participant's "final average compensation" by the relevant "benefit rate" or "multiplier factor" set forth in the Plan, and then multiplying this product by the relevant portion of a participant's "credited service."

29. Members who meet the Retirement Plan's eligibility criteria, retire and properly apply for a pension can elect various pension options, including a straight life annuity pension or a reduced pension which provides that his/her beneficiary will receive benefits in the event of the Member's death. Retirement Plan §§ 19, 24.1.

30. The Charter provides for deferred vested pension benefits for Members who, *inter alia*, leave employment with more than 5 years of service, and disability pension benefits for Members with more than 10 years of credited service who become disabled. Retirement Plan §§ 20, 21.

31. Any member who has at least 5 years of service with the City and meets the eligibility criteria for retirement including the attainment of a specified age or combination of age and years of service, who files a proper application for a pension and who actually retires can elect to retire with a defined benefit pension calculated pursuant to the formula set forth in the Retirement Plan. § 17.

32. Since 1953, all Members who meet the eligibility criteria, who retire, and who properly apply for a pension have been entitled to defined benefits at retirement or their eligibility date or a deferred pension based on pension benefit formulas that take into account each Member's final average compensation and credited service. ST ¶ 30.

33. Under § 2.7 of the Retirement Plan, "Service" means personal service rendered to the City by an employee of the City and shall include service rendered in any function or enterprise the City may engage in as a municipal corporation or may have heretofore acquired through purchase or eminent domain. Under § 2.8 of the Retirement Plan, "Credited Service" means "the number of years and months of service credited a member by the Retirement Board[.]"

34. Section 2.14 of COPERS defines "final average compensation," in relevant part, as follows:

"Final average compensation" means the average of the highest annual compensations paid a member for a period of 3 consecutive, but not necessarily continuous, years of his credited service contained within his 10 years of credited service immediately preceding the date his City employment last terminates. If he has less than 3 years of credited service, his final average compensation shall be the average of his compensations for his total period of service.

35. Section 2.13 of COPERS defines "compensation" as follows:

"Compensation" means a member's salary or wages paid him by the City for personal services rendered by him to the City. In case a member's compensation is not all paid in money the City Council shall, upon recommendation by the City Manager, fix the value of the portion of his compensation which is not paid in money.

36. Sections 14.4 and 19.1(a) of COPERS provide that a Member will be granted service credit for all unused sick leave standing to his or her credit at retirement, death or termination of City employment. None of the COPERS terms expressly require amounts an employee is paid by the City for unused sick time to be included in final average compensation (as opposed to receiving service credit for the unused sick leave pursuant to these provisions). Specifically, "sick leave" is not "a member's salary or wages paid to him by the City for personal services rendered by him to the City" pursuant to Section 2.13.

37. Sick leave does fall within the second sentence of Section 2.13. Sick leave is not paid for by the City in money. Indeed, it is the right to take a paid day off if one is sick without penalty (i.e., non-monetary compensation).² Unused sick leave, therefore, is the type of compensation which the City Council shall, upon recommendation by the City Manager, “fix the value of.”

38. The Retirement Board is an entity established pursuant to the Retirement Plan and is assigned the responsibility for the administration, management and operation of the Retirement Plan and for construing and carrying into effect its provisions. It consists of nine (9) members enumerated in the Retirement Plan. Three Board members who are active City employees who are also Members of the Retirement Plan, are elected by Members of the Retirement Plan. Two Board members consist of a retired City employee who is a Member of COPERS, who is elected by the employee Board members, and a private citizen, who is elected by the other Board members. Four ex-officio, voting Board Members consist of the City Manager or his designee, the City Treasurer, the City Finance Director and an appointed department head, (historically, the Personnel Director – later renamed the Human Resources Director). Historically, the City Manager has appointed a Deputy City Manager to stand in the shoes of the City Manager on the Board. During the relevant time period, Retirement Plan had and continues to have a Retirement Plan Administrator who serves as the chief operating officer of the Retirement Plan, fulfills the function of Executive Secretary set forth under § 5.2 of the Retirement Plan and reports directly to the Board. In 1996 and 1997, the Retirement Plan Administrator was Duamel Vellon. From in or around May 2001 to in or around February 2013, the Retirement Plan Administrator was Donna

² At times, various witnesses suggested that non-monetary compensation was limited to things like the provision of living quarters for a park ranger. The court sees no principled distinction between such forms of compensation and sick leave.

Buelow. All Retirement Board members and the Retirement Plan Administrator have fiduciary duties. The Retirement Plan is not a department of the City of Phoenix. Under the Charter, neither the Mayor, City Council nor City Manager have independent authority or responsibility for the operation or administration of the Retirement Plan.

MEET AND CONFER/DISCUSS ORDINANCES AND PRACTICES

39. During the relevant time period, the City of Phoenix has had a Meet and Confer Ordinance in force which requires the City to bargain with certain groups of its employees and their representatives concerning compensation, wages, work hours and other terms and conditions of employment. The Meet and Confer Ordinance sets forth a process by which the City and representatives of various employee groups (including Units 1, 2 & 3) negotiate, bargain and reach agreements on compensation, wages, work hours and other terms and conditions of employment.

40. During the relevant time period, the City of Phoenix has had a Meet and Discuss Ordinance in force which requires the City to meet and discuss with certain of its employees and their representatives (namely, Units 7 & 8) concerning compensation, wages, work hours and other terms and conditions of employment. The Meet and Discuss Ordinance sets forth a process by which the City and representatives of Units 7 & 8 negotiate, bargain and reach agreements on compensation, wages, work hours and other terms and conditions of employment.

41. Unit 1 is not a party to this lawsuit. Unit 1 is a bargaining unit recognized by the City of Phoenix under the Meet and Confer Ordinance and consists principally of unskilled laborers and related entry level positions. During the relevant time, Unit 1 employees have been represented by the Labors International Union of North America (“LIUNA”), Local 777. Ex. 1, D001049. Neither LIUNA Local 777 nor any Unit 1 City employee is a plaintiff in this lawsuit.

42. Unit 2 is a bargaining unit recognized by the City of Phoenix under the Meet and Confer Ordinance and consists principally of skilled laborers and building trades employees. AFSCME Local 2384 is the certified Meet and Confer bargaining representative for Unit 2 employees. All City of Phoenix employees who fall within the definition of Unit 2 employees are covered by the Memorandum of Understanding (“MOU”) between Local 2384 and the City of Phoenix in force and applicable to Unit 2 employees.

43. Unit 3 is a bargaining unit recognized by the City of Phoenix under the Meet and Confer Ordinance and consists principally of office, clerical and pre-professional employees. AFSCME Local 2960 is the certified Meet and Confer bargaining representative for Unit 3 employees. All City of Phoenix employees who fall within the definition of Unit 3 employees are covered by the Memorandum of Understanding (“MOU”) between Local 2960 and the City of Phoenix in force and applicable to Unit 3 employees.

44. Unit 7 is a bargaining unit recognized by the City of Phoenix under the Meet and Discuss Ordinance and consists principally of supervisory and professional employees. ASPTEA is the certified Meet and Discuss bargaining representative for Unit 7 employees. *Id.* at FP003332.

45. Until 2006, the City’s Meet and Discuss Ordinance, City of Phoenix Ord. G-1536, Phoenix City Code §2-223 *et. seq.*, Ex. 312, there were no written MOAs. Rather, the City Manager had authority to meet and discuss with ASPTEA representatives on matters relating to wages and fringe benefits and to make recommendations to the City Council for approval of agreements reached during that process. City of Phoenix Ord. G-1536, Ex. 312, at §§ 2-223, 2-229 & 2-231.

46. For a period of time, certain confidential employees within Unit 8 have also been covered by the same MOA as Unit 7 employees.

47. Prior to 2006 and before the first MOA, many of the terms and conditions of employment for Unit 7 & 8 employees reached through the meet and discuss process were memorialized in various documents including, but not limited to, administrative regulations, memoranda from the City Manager and letter agreements.

48. In 2006, the City's Meet and Discuss Ordinance was amended and ASPTEA first began entering into written MOAs with the City which are approved by the City Manager pursuant to authority from City Council under the Meet and Discuss Ordinance for two year terms.

49. Negotiations between the City and ASPTEA typically take place between a negotiating team of ASPTEA and representatives from the City's labor relations, personnel and other departments.

50. In advance of the first negotiation session, ASPTEA presents the City with written proposals of terms and conditions ASPTEA would like to see added to or changed in the existing MOA, which are typically the results of surveys of ASPTEA members.

51. After receiving ASPTEA's proposals, the City puts forth its proposals which it provides to the ASPTEA's negotiating team.

52. The City identifies each proposal as "Clarification," "Work Rule," "Economic" or some combination thereof. Any item identified as "Economic" is recognized as having a financial impact on the City budget for the related fiscal year(s) of the MOA should the proposal be agreed upon and adopted.

53. The City's Budget and Research Department attempts to "cost" each economic proposal – a process referred to by both labor and management during the negotiating process as "costing." Costing is an attempt to determine (or estimate as best one can, recognizing the vagaries involved) the dollar amounts necessary to finance a particular proposal if incorporated

into the MOA. Costing information is prepared in written form and is presented to both the City and labor organization or association negotiating teams to be used during the meet and confer process.

54. Costing is important because it allows both the City and the labor associations to determine overall costs associated with the various proposals put forth during negotiations and how those costs may be allocated among the total financial resources the City is willing to commit for a the MOA term. This overall cost is commonly referred to by the parties during the meet and discuss negotiations as the financial “package” the City is willing to commit to for a particular MOA term being negotiated.

55. The meet and discuss process is not unlike collective bargaining in the private labor sector where the parties negotiate how the “package” will be allocated among wages, benefits, terms and conditions of employment for the contract (MOA) term and is a “give-and-take” process covering multiple bargaining sessions.

56. When agreements are reached as a result of this process, they are memorialized by a Tentative Agreement (“TA”) which is signed by a member of the ASPTEA and the City’s negotiating teams.

57. After an agreement is reached during the meet and discuss process, ASPTEA must immediately submit the written agreement to the Unit 7 employees for approval. The City Manager must also approve the MOA before the MOA can be effective. Phoenix City Code §2-232.

58. Similar to the meet and discuss process for ASPTEA, the meet and confer sessions are conducted in the first part of the calendar year so that agreements reached can be implemented at the beginning of the fiscal year on July 1st. Unit 2 and Unit 3 negotiations, however, usually commence weeks before Unit 7 & 8 negotiations and Local 2384 and Local 2960 are thus well

into their respective negotiations with the City before ASPTEA commences its first session with the City negotiating team. *Id.*

59. Separate negotiations take place between a negotiating team of each union (Local 2384 on behalf of Field Unit 2 employees; Local 2960 on behalf of Unit 3 employees) and representatives from the City's labor relations, personnel and other departments. In advance of the first negotiating session, the unions each present the City with their respective written proposals of terms and conditions each would like to see added to or changed in the existing MOU for their unit. After the receiving a union's proposals, the City puts forth its counter-proposals which it provides to the union negotiating teams.

60. The City follows the same procedures as it does in the meet and discuss process with ASPTEA by identifying each proposal as "Clarification," "Work Rule," "Economic" or some combination thereof and "costing" economic items through the Budget and Research Department.

61. Costing information for Units 2 & 3 negotiations is equally important and also prepared in written form for presentation and use to both the City and union negotiating teams for use during the meet and confer process.

62. The meet and confer process is also a "give-and-take" process covering multiple bargaining sessions during which the parties negotiate how the "package" will be allocated among wages, benefits, terms and conditions of employment for the contract (MOU) term.

63. When Tentative Agreements ("TA") are reached, they are signed by the representatives of the union and the management negotiating team. They are then incorporated into a written MOU which must be made available for public comment and must be approved by members of the respective units and the City Council before becoming a part of the terms and conditions of employment for the respective Unit 2 and Unit 3 employees.

64. An MOU covers a period of two years and coincides with the City's fiscal year beginning on July 1st and ends two years later on June 30th. Like an MOU, since 2006, the MOAs have covered a period of two years and coincide with the City's fiscal year beginning on July 1st and end two years later on June 30th.

ADMINISTRATIVE REGULATION 2.441 AND CASHING

OUT UNUSED SICK LEAVE

65. Beginning in 1996, the City allowed certain employees to cash out a portion of their unused sick leave at retirement, subject to various limitations and conditions. This practice was captured in Administrative Regulation 2.441 (as amended from time to time). The principal purpose for instituting Administrative Regulation 2.441 was to encourage City employees not to abuse their sick leave during their employment by taking sick leave when they were not actually sick (which was an obvious benefit to the City). Additionally, saving sick leave provided a potential benefit to the employees, because the City does not have a short term disability plan.

66. Since its inception, Administrative Regulation 2.441 included specific requirements an employee must meet in order to qualify for a sick leave cash-out. An employee must complete one full year of service in an eligible category of employment prior to retirement in order to be eligible for the payout of any unused sick leave. Further, an employee must accrue a minimum number of unused sick leave hours prior to retirement in order to be eligible for a sick leave cash-out. Additionally, there are a number of "base hours" of unused sick leave that are not eligible for payout.

67. If an employee meets the eligibility criteria for a sick leave cash-out, the choice to receive one is voluntary. Any accrued sick leave that an employee does not cash out is credited to the employee as service credit for pension calculation purposes under COPERS.

68. *The various historical versions of Regulation 2.441 are silent regarding the use of cashed-out sick leave as a part of a member's final average compensation for purposes of a pension calculation.*³ *Nonetheless, and as set forth more fully below, from the time that Regulation 2.441 was instituted until 2012, it was commonly, widely and uniformly understood that the sick-leave payouts would be included in final compensation for purposes of pension calculations. Indeed, there was no evidence that anyone ever believed otherwise. And, its contents were part of the negotiations which led to the various memoranda of understandings, which were approved by the Council upon recommendation of the City Manager.*

THE NEGOTIATIONS

69. Prior to the 1996 negotiations between the City and ASPTEA, ASPTEA learned that the bargaining units covering police and fire personnel had a program which allowed for the payout of accumulated, unused sick leave. At the time, Unit 7 & 8 employees could not receive any payment for accumulated, unused sick leave. It could only be used at the time of retirement for service credits under the Retirement Plan Retirement Plan.

70. ASPTEA sought to bargain with the City during the 1996 meet and discuss negotiating process to allow retiring employees in Unit 7 & 8 who met certain criteria to convert a portion of their accumulated, unused sick leave to cash payments as additional compensation.

71. Phil Kundin and Don Walsh were members of the bargaining team which negotiated agreements with ASPTEA on behalf of the City, including the 1996 agreement.

72. Effective July 1, 1996, following meet and discuss negotiations with ASPTEA, the City agreed to allow eligible Unit 7 & 8 employees to convert a portion of their accumulated,

³ The Regulation (in its various revisions), does provide that any hours which are “cashed out” will not be used in the “length of service” portion of the pension calculation.

unused sick leave at retirement into pay at retirement and began paying a portion of the accrued and unused sick leave at retirement.

73. The City notified Supervisory & Professional Employees of the Sick Leave Payout Program through a letter dated May 15, 1996 from Carlos Arauz, the City Personnel Director and also a Member of the Retirement Board. The letter stated, in relevant part:

The City Manager has recommended, and the City Council has endorsed, the following changes in wages and benefits for supervisory and professional employees:

A program to pay a portion of an employee's accumulated sick leave at the time of retirement will begin for those employees who retire on or after July 1, 1996. To qualify, the employee must have a minimum of 1,000 hours of accumulated sick leave. The first 500 hours of leave do not qualify for payment. Of the remaining hours, 20% will be paid at the employee's base hourly rate of pay. An individual must be classified as "supervisory/professional" at the time of retirement and must have completed one full year in this category immediately prior to retirement. Sick leave is currently used in the Retirement System to calculate total service. With the institution of this sick leave payout program, the service credit will be reduced by the total number of hours compensated. Also, with the introduction of this new payout program, the plan that provided \$20 per month toward health insurance premiums based upon total sick leave accrued will be discontinued for those employees retiring on or after July 1, 1996.

Ex. 7.

74. The City also advised Unit 7 & 8 employees in 1996 that “[w]ith the institution of this sick leave payout program, the [COPERS] service credit will be reduced by the total number of hours compensated.” *Id.*

75. The fiscal year 1996-1997 Pay Ordinance, S23753, passed by City Council June 26, 1996 effective July 1, 1996 provided, in relevant part:

(x) The City Manager is hereby authorized to issue an administrative regulation providing for payment of retiree's health insurance premiums for certain groups of employees. Such payment may be to the retiree, to the insurer, or to a trust fund established for that purpose. For persons retiring on or after July 1, 1996, such payments shall not include the \$20 per month supplement for unused sick leave.

(uu) The City Manager is hereby authorized to issue an administrative regulation establishing guidelines for the cash payment of a portion of accumulated sick leave hours at retirement for Executives, Middle Managers, and Professional and Supervisory employees.

Ex. 47, at Section 12(x), (uu).

76. The City's Pay Plan in the fiscal year 1996-1997 Pay Ordinance provided, in relevant part, under "Sick Leave Payout at Retirement" in the "1996-97 Compensation and Benefits Reference Guide" for Meet and Discuss/City Manager Represented Units:

Effective July 1, 1996, upon retirement employees with a minimum of 1,000 hours of accrued and unused Sick leave, excluding the first 500 hours, will be paid for 20% of the remaining hours at base hourly wage.

ST ¶ 45; Ex. 47, p. 186.

77. Consistent with the agreement reached during the meet and discuss process, the Pay Ordinance and applicable provisions of the Meet and Discuss Ordinance in effect at the time, the City Manager, with the approval of the City Council, issued Administrative Regulation ("AR") 2.441 with an effective date of July 1, 1996.

78. Administrative Regulation 2.441 ("AR 2.441") effective July 1, 1996 was the first City Administrative Regulation ("AR") governing the payment of accrued and unused sick leave at the time of retirement for professional and supervisory employees. ST ¶ 46.

79. AR 2.441, dated July 1, 1996, provided that if a supervisory and professional employee had a minimum of 1,000 hours of accrued but unused sick leave at retirement, the first 500 hours were "base hours" (that could not be paid out) but that an employee could elect to be paid 20% of his or her accrued and unused sick leave hours in excess of 500 at the employee's base rate of pay at the time of retirement. Ex. 8. The AR further provided that if the employee elected to receive a cash payment of his unused, accrued sick leave, those hours would be deducted from the total number of retirement service credit hours. Ex. 8, at p. 2 ¶4(B). In other words, any accumulated unused sick leave that was converted to compensation at retirement and

included in final average compensation was deducted from the unused sick leave bank for that Member. *Id.* Only the sick leave remaining after the conversion of a portion of unused sick leave for cash was available for and used to calculate additional service credit for the pension benefit calculation under the Retirement Plan. *Id.*

80. During the July 1996 Retirement Board meeting, Deputy City Manager Manion represented to the Retirement Board that “the new sick leave plan was part of labor negotiations and that the actuarial impact was covered in the City’s budget through employer contributions.” Ex. 70 at p. 70-6. During the same meeting, Mr. Arauz, City Personnel Director and Retirement Board Member, indicated that the Retirement Plan’s actuary had been consulted and provided an estimate of the impact to the System and that the “City has budgeted this amount to be available to Finance to be put in the Pension Plan.” *Id.* Mr. Manion further advised the Retirement Board that “the cost of the sick leave program was calculated into the benefit package” and that “100% of the cost would be reimbursed to the retirement fund” and that “this included both employer and employee contributions.” *Id.* Assistant Personnel Director Don Walsh and Phil Kundin, who together negotiated contracts with ASPTEA on behalf of the City, including the 1996 agreement, also attended the July 1996 Retirement Board meeting in which the sick leave payout at retirement was discussed. Ex. 71.

81. Effective July 1, 1996, the City began paying unused sick leave at retirement to employees in the Executive, Middle Management, and Supervisory and Professional categories and the Retirement Plan included all payments of unused sick leave at retirement in the calculation of compensation and final average compensation used for calculating retirement benefits under the Retirement Plan. ST ¶¶ 37, 43, 46-47; Ex. 8.

82. From 1996 to 2012, the only changes made to the sick leave payment at retirement provisions in the agreements were to increase the amount of sick leave that could be paid at retirement and to expand the employees who were eligible for a payout of unused sick leave.

83. AR 2.441 was revised for fiscal years beginning 1999, 2000 and 2002, in part and as relevant to this litigation, as a result of agreements reached during collective bargaining negotiations between the City, AFSCME Local 2384, AFSCME Local 2960 and ASPTEA. Ex. 9-11.

84. In each such instance, the revisions to AR 2.441 increased the amount of accumulated, unused sick leave that employees were eligible to receive as pay at time of their retirement, lowered the number of accumulated hours needed to be eligible for payment of accumulated sick leave at retirement and/or to expanded the categories of employees eligible for payment of unused sick leave to include all City employees who were Members of COPERS. Ex. 9-11

85. In or around 1998, then aware of the agreement obtained by ASPTEA for payment of a portion of unused sick leave at retirement and inclusion of the payment in final average compensation by COPERS, AFSCME 2960 and AFSCME 2384 likewise negotiated and reached agreement with the City for payment of accumulated and unused sick leave at retirement for Unit 3 and Unit 2 employees in their respective 1998-2000 Memoranda of Understanding with the City covering the period of July 1, 1998 to June 30, 2000 to be effective at the commencement of the second year of their respective MOUs.

86. Article 31 of the 1998-2000 MOU between AFSCME 2960 and the City provided, in relevant part:

SICK LEAVE CONVERSION AT RETIREMENT

Effective July 12, 1999, a unit member who has accumulated a minimum of one thousand (1,000) 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 (20%) of his base hourly rate for all hours in excess of five hundred (500) hours.

Ex. 33.

87. Article 39 of the 1998-2000 MOU between AFSCME 2384 and the City provided, in relevant part:

SICK LEAVE CONVERSION AT RETIREMENT

Effective at the beginning of the first pay period in July, 1999, (July 12, 1999) the following benefits shall apply:

Upon retirement, bargaining unit employees with a minimum of 1,000 hours of accrued and unused sick leave, excluding the first 500 hours, will be paid for 20% of the remaining hours as base hourly wage.

Ex. 25.

88. The 1998-2000 MOUs were approved by City Council on May 20, 1998. Ex. 63-64.

89. In 1999, the Unit 7 employees represented by ASPTEA also received an increased amount of sick leave payout at retirement. Instead of being entitled to a payout if they had 1,000 hours and being paid for 20% for all hours above 500 hours, effective July 1, 1999 ASPTEA employees could now receive a payout of sick leave at retirement if they had a minimum of 750 hours and could receive 20% of all hours above 250 hours as opposed to the previous 500 hour requirement. Ex. 48, at p. 173.

90. City's Pay Plan and Pay Ordinance effective July 1, 1999 (the second year of each of these MOUs) provided, in relevant part:

(zz) The City Manager is hereby authorized to issue an administrative regulation establishing guidelines for the cash payment of a portion of accumulated sick leave hours at retirement for employees excluding sworn Public Safety personnel.

ST ¶ 56; Ordinance No. S-26270 Section 12(zz)

91. The City’s Pay Plan and Pay Ordinance effective July 1, 1999 also provided, in relevant part, under “Sick Leave Payout at Retirement” in the “1999-2000 Benefits Reference Guide” for Meet and Discuss/City Manager Represented Units under “Retirement” that “[c]redited service for unused sick leave will exclude any sick leave hours compensated through the Sick Leave Payout Program (see below).” ST ¶ 57.

92. The City’s Pay Plan and Pay Ordinance for fiscal year 1999 provided, in relevant part, in the fiscal year 1999-2000 Benefits Reference Guide for Meet and Confer Units under “Sick Leave Payout at Retirement” that, for Unit 2 and Office & Clerical employees:

20% of base wage for all accrued and unused sick leave over 500 hours if 1,000 hour trigger is met. Eff. 7/12/99.

Ex. 48; ST ¶ 60.

93. Below the language in the “Sick Leave Payout at Retirement” section in the fiscal year 1999-2000 “Benefits Reference Guide” for Meet and Discuss/City Manager Represented Units for Confidential Office & Clerical employees, the City’s Pay Plan and Pay Ordinance for fiscal year 1999 provided:

Effective 7/1/99, upon retirement: employees with a minimum of 1,000 hours of accrued and unused sick leave, excluding the first 500 hours, will be paid for 20% of the remaining hours at base hourly wage (A.R. 2.441)

Ex. 48, ST ¶ 58.

94. Effective July 1, 1999, following the collective bargaining changes to sick leave, AR 2.441 was revised to provide for payments of unused, accumulated sick leave hours at time of retirement to employees in Units 1, 2 and 3 as well as employees in the Executive, Middle Management, Supervisory and Professional, Confidential Office and Clerical categories. ST ¶ 61. The revised AR 2.441 effective July 1, 1999 set forth the increased amount of sick leave payout for ASPTEA employees and the amounts that were agreed to in the MOUs for “*All other*

COPERS-eligible employees” including Field Unit 2 and Unit 3. Ex. 9, at p. 2 ¶3(B) (emphasis supplied).

95. AR 2.441 Revised, effective as of July 1, 1999, provided that employees in Units 2 and 3 could elect to receive a payout at retirement of 20% of their base wage for all accumulated and unused sick leave in excess 500 hours if the employee had at least 1,000 hours of accrued and unused sick leave at retirement. ST ¶ 62.

96. AR 2.441 Revised, effective as of July 1, 1999, provided that Executive, Middle Management, and Supervisory and Professional employees with a minimum of 750 hours of accumulated and unused sick leave at the time of retirement could receive payment 20% of such hours at their base hourly wage, excluding the first 250 hours at the time of retirement. ST ¶ 63.

97. The amount of sick leave that could be paid out at retirement increased as a result of negotiated changes for employees represented by ASPTEA and Unit 2 effective July 1, 2000 and increased for employees represented by Unit 3 effective July 1, 2001. Ex. 24 Art. 39; Ex. 32 Art. 31; ST ¶ 64.

98. Article 31 of the 2000-2002 MOU between AFSCME 2960 and the City provided, in relevant part:

SICK LEAVE CONVERSION AT RETIREMENT

Effective July 12, 1999, a unit member who has accumulated a minimum of one thousand (1,000) 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 (20%) of his base hourly rate for all hours in excess of five hundred (500) hours.

Effective July 9, 2001, 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 (20%) of his base hourly rate for all hours in excess of two hundred and fifty (250) hours.

Ex. 32.

99. Article 39 of the 2000-2002 MOU between AFSCME 2384 and the City provided, in relevant part:

SICK LEAVE CONVERSION AT RETIREMENT

Effective July 10, 2000, the following benefits shall apply:

Upon retirement, bargaining unit employees with a minimum of 750 hours of accrued and unused sick leave, excluding the first 250 hours, will be paid for 20 % of the remaining hours as base hourly wage.

Ex. 24.

100. The respective 2000-2002 Memoranda of Understanding between the City and AFSCME 2384 and AFSCME 2960 were each approved by the City Council on May 10, 2000.

ST ¶ 67.

101. The City's Pay Plan and Pay Ordinance, effective July 1, 2000 provided, in relevant part:

(zz) The City Manager is hereby authorized to issue an administrative regulation establishing guidelines for the cash payment of a portion of accumulated sick leave hours at retirement for employees excluding sworn Public Safety personnel.

ST ¶ 68; Ordinance No. S- 27252, Section 12(III).

102. The City's Pay Plan and Pay Ordinance effective July 1, 2000 provided, in relevant part, under "Sick Leave Payout at Retirement" in the 2000-2001 Benefits Reference Guide for Meet and Discuss/City Manager Represented Units under "Retirement" that "[c]redited service for unused sick leave will exclude any sick leave hours compensated through the Sick Leave Payout Program (see below)." ST ¶ 69.

103. Below the language in the Sick Leave Payout at Retirement section in the 2000-2001 Benefits Reference Guide for Meet and Discuss/City Manager Represented Units for Confidential Office & Clerical employees, the City's Pay Plan and Pay Ordinance provided:

Upon retirement: employees with at least 1,000 hours of accrued and unused sick leave, excluding the first 500 hrs, will be paid for 20% of the remaining hours at base hrly wage. (A.R. 2.441)

ST ¶ 70.

104. The Sick Leave Payout at Retirement section in the 2000-2001 Benefits Reference Guide for Meet and Discuss/City Manager Represented Units provided that for Supervisory & Professional, Middle Management and Executive employees:

Upon retirement: employees with at least 750 hours of accrued and unused sick leave, excluding the first 250 hrs, will be paid for 20% of the remaining hrs at base hrly wage. (A.R. 2.441).

ST ¶ 71..

105. The City's Pay Plan and Pay Ordinance for 2000-2001 provided, in relevant part, in the 2000-2001 Benefits Reference Guide for Meet and Confer Units under "Sick Leave Payout at Retirement" for Unit 2 employees:

Eff. 7/1/00, upon retirement, employees with a minimum of 750 hours of accrued and unused sick leave, excluding the first 250 hrs, will be paid for 20% of the remaining hrs at base hourly wage. (Art. 33) (AR 2 441)

ST ¶ 72.

106. The City's Pay Plan and Pay Ordinance for 2000-2001 provided, in relevant part, in the 2000-2001 Benefits Reference Guide for Meet and Confer Units under "Sick Leave Payout at Retirement" for Office & Clerical employees:

Eff. 7/12/99, upon retirement, employees with a minimum of 1000 hours of accrued and unused sick leave, excluding the first 500 hrs, will be paid for 20% of the remaining hrs at base hourly wage. (Art. 31) (AR 2 .441)

ST ¶ 73.

107. Effective July 1, 2000, AR 2.441 was again revised "to incorporate changes resulting from agreements with employee representatives" to provide that a Unit II employee who had at least 750 hours could be paid all hours in excess of 250 hours: "base hours for employees designated as ... Unit II changes from 500 to 250 hours." ST ¶ 74

108. AR 2.441 Revised, effective as of July 1, 2000, also reflected changes to the 2000-2002 MOU between AFSCME 2960 and the City by providing that effective July 1, 2001, Unit 3 employees who had accrued at least 750 hours of unused sick leave at retirement could be paid 20% of all hours in excess of 250 hours at their base rate of pay. ST ¶ 75.

109. The amount of sick leave that could be paid out at retirement increased again as a result of negotiated changes for employees represented by ASPTEA, Unit 2 and Unit 3 effective July 1, 2002. Ex. 23 Art. 39; Ex. 31, at FP006869.

110. Just as in 1996 and 1998 and 1999, 2000 and 2001 following the negotiated changes that were effective in 2002, the City's Pay Ordinances and Pay Plans were revised and AR 2.441 was revised to reflect the negotiated changes. Ex. 10, 11, 50, 51.

111. The City's Pay Plan and Pay Ordinance effective July 1, 2002 provided, in relevant part:

(sss) The City Manager is hereby authorized to issue an administrative regulation establishing guidelines for the cash payment of a portion of accumulated sick leave hours at retirement for employees excluding sworn Public Safety personnel.

ST ¶ 80; Ordinance No. S- 29256, Section 12(sss).

112. . The City's Pay Plan and Pay Ordinance effective July 1, 2002 provided, in relevant part, under "Sick Leave Payout at Retirement" in the 2002-2003 Benefits Reference Guide for Meet and Discuss/City Manager Represented Units under "Retirement" that "[c]redited service for unused sick leave will exclude any sick leave hours compensated through the Sick Leave Payout Program (see below)." ST ¶ 81.

113. Below the language in the "Sick Leave Payout at Retirement" provision in the 2002-2003 Benefits Reference Guide for Meet and Discuss/City Manager Represented Units for Confidential Office & Clerical and Supervisory & Professional employees, the City's Pay Plan and Pay Ordinance for fiscal year beginning July 1, 2002 provided:

Upon retirement: employees with at least 750 hrs of accrued and unused sick leave, excluding the first 250 hrs, will be paid for 25% of the remaining hours at base hrly wage. (A.R. 2.441)

ST ¶ 82.

114. The “Sick Leave Payout at Retirement” provision in the 2002-2003 Benefits Reference Guide for Meet and Discuss/City Manager Represented Units provided that for Middle Management and Executive employees:

Upon retirement: employees with a minimum 750 hrs of accrued and unused sick leave will be paid for 20% of the remaining hrs at base hrly wage. (A.R. 2.441)

ST ¶ 83.

115. The City’s Pay Plan and Pay Ordinance for fiscal year 2002-2003 provided, in relevant part, in the 2002-2003 Benefits Reference Guide for Meet and Confer Units under “Sick Leave Payout at Retirement” for Field Unit 2 and Office & Clerical employees:

Eff. 7/8/02, upon retirement, employees with a minimum of 750 hrs of accrued and unused sick leave, excluding the first 250 hrs, will be paid for 25% of the remaining hrs at base hourly wage.... (AR 2 441)

ST ¶ 84.

116. From July 2002 until the Pay Ordinance for fiscal year 2012-2013, effective July 1, 2012, there were no changes to the sick leave payout provisions at retirement other than to change the Pay Ordinance to reflect the fact that the City began requiring all sick leave payouts at retirement to be made to the City’s 401(a) Deferred Compensation Plan (“DCP”) as follows:

The City Manager is authorized to establish guidelines to have a portion of accumulated sick leave hours at retirement converted to service credit under the City of Phoenix Employees’ Retirement Plan or converted to an employer contribution to the 401 (a) Defined Contribution Plan.

ST ¶ 88.

117. In 2002, AFSCME 2960 and AFSCME 2384 and the City again negotiated and agreed upon an increase in the value of the accrued, unused sick leave that could be paid out at

retirement for Unit 3 and Unit 2 employees in the 2002-2004 MOUs between the City and AFSCME 2960 and AFSCME 2384. ST ¶ 76.

118. Whereas, prior to 2002 employees meeting the hours threshold were only eligible to receive payment at 20% of their base rates of pay for all hours eligible for payment, beginning in 2002 the City agreed with AFSCME 2960 and AFSCME 2384 to fix the value of the portion of an employee's unused sick leave eligible to be paid at retirement at 25% of an employee's base rate of pay. Accordingly, Article 31 of the 2002-2004 MOU between AFSCME 2960 and the City provided, in relevant part:

SICK LEAVE CONVERSION AT RETIREMENT

Effective July 8, 2002, 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.

Ex. 31, at FP006869.

119. Article 39 of the 2002-2004 MOU between AFSCME 2384 and the City provided, in relevant part:

SICK LEAVE CONVERSION AT RETIREMENT

Effective July 8, 2002, the following benefits shall apply:
Upon retirement, bargaining unit employees with a minimum of 750 hours of accrued and unused sick leave, excluding the first 250 hours, will be paid twenty five percent 25 % of the remaining hours as base hourly wage.

Ex. 23.

120. The 2002-2004 MOU between the City and AFSCME 2384 and the 2002-2004 MOU between the City and AFSCME 2960 were each approved by City Council on June 26, 2002. ST ¶ 79.

121. Effective July 8, 2002, AR 2.441 was again revised to “incorporate changes resulting from agreements with employee representatives.” ST ¶ 85.

122. AR 2.441 Revised, effective as of July 8, 2002, reflected “the current practice of Unit II” to change the “base hours” from 500 to 250 hours and provided, in relevant part, that employees in Units 2 and 3, Confidential Office and Clerical and Supervisory/Professional employees “may have 25% of the hours above the base paid (previously 20%).” ST ¶ 86.

123. No further changes to sick leave payouts at retirement or retirement benefits were negotiated or agreed to between the City and Locals 2384, 2960 and ASPTEA after July 2002. Ex. 18-27, 26-29, 34-36, 77.

124. From July 2002 until the City’s 2012 unilateral revision to AR 2.441 Revised effective July 8, 2012, there were no changes to AR 2.441 Revised. ST ¶ 87.

125. The employee’s “compensation” and “base rate” of pay and “wages” were and are words negotiated and used in the MOUs and MOAs and have a “clear and well understood” meaning and have “been consistently interpreted and understood by all concerned for decades” to mean the rates “set forth in the pay ordinance Schedule II.” Ex. 62, at ¶ 1, 2, 85-87; Ex. 18, Art. 3; 19, Art. 3; 20, Art. 3; 21, Art. 3; 22, Art. 3; 23, Art. 11; 25, Art. 11; 26, Art. 3; 27, Art. 3; 28, Art. 3; 29, Art. 3; 30, Art. 3; 31, Art. 10; 33, Art. 10; 34, Art. 3; 35, Art. 3; 36, Art. 3; 37, Art. 3.

126. The agreements also used the language “base hourly rate” and “base hourly wage” which was the same language used in the Pay Ordinances, Pay Plans, Administrative Regulations governing sick leave payouts and also in the Administrative Regulations governing other forms of compensation paid to City employees which, at the time of this litigation, have consistently been included in the calculation of compensation and final average compensation under the Retirement Plan benefit formulas, including vacation payouts, holiday payouts, out-of-class pay, longevity pay, shift differential, tool allowance, overtime pay and show-up-time pay. See Ex. 62, ¶87.

127. The language “base rate” of pay is used in Administrative Regulations governing sick leave payouts and also in Administrative Regulations governing other forms of compensation paid to City employees which, at the time of this litigation, have consistently been included in the calculation of compensation and final average compensation under the Retirement Plan benefit formulas, including vacation pay, holiday pay, out-of-class pay, longevity pay, shift differentials, tool allowance, overtime pay and show-up-time pay. Ex. 62, ¶ 87.

128. Similarly, all categories of pay under the relevant MOUs and MOAs that use the terms compensation, wages, base hourly wage, regular rate of pay, base hourly rate of pay, applicable rate of pay, etc., have at all relevant times been included in the calculation of final average compensation under the Retirement Plan benefit formula.

129. Likewise, all of the following categories of pay listed under the MOU between the City and Local 2960 have been included in the computation of final average compensation under the Retirement Plan benefit formula: compensation, wages, base hourly wage, regular rate of pay, base hourly rate of pay and applicable rate of pay. The same holds true for ASPTEA’s Memoranda of Agreement. Ex. 37-39.

**THROUGH JULY 2012, CASHED OUT SICK LEAVE WAS
COMMONLY UNDERSTOOD TO BE A COMPONENT OF FINAL
AVERAGE COMPENSATION IN A VARIETY OF CONTEXTS**

130. Following the July 24, 1996 Retirement Board Meeting, effective July 1, 1996, when the City began paying the unused sick leave at retirement to employees in the Executive, Middle Management, and Supervisory and Professional categories, and through July 8, 2012, the Retirement Board consistently included all payments of unused accrued sick leave at retirement in the determination of compensation and final average compensation for purposes of calculating retirement benefits under the Retirement Plan system.

131. From July 1, 1996 when payment of accrued sick leave at retirement for certain Retirement Plan members commenced, until July 8, 2012, if a Member was eligible and elected to be paid his or her unused sick leave at retirement, all paid sick leave was included in the calculation of compensation under the Retirement Plan benefit formula.

132. From the outset, the Retirement Board determined that the impact of inclusion of payments of unused sick leave at retirement in final average pay should be included in the determination of the benefit liabilities and corresponding contribution obligations under the Retirement Plan and, in fact, the Board made certain that the impact was calculated by Retirement Plan actuaries and included in the annual certifications of the City's required contributions to COPERS. Ex. 7, 70-71.

133. The first record of the Retirement Board's official notice that the City had negotiated for and agreed to the sick leave payments to commence on July 1, 1996 is reflected in the minutes of the June 26, 1996 Retirement Board meeting. Ex. 70. There, in response to a question from Board Member Warren, Board Member and Deputy City Manager Pat Manion, (the City Manager's Retirement Board designee), admitted that the sick leave payments, as agreed to in the ASPTEA negotiations were intended to be included in the retirement benefit formula. *Id.* at 70-6. The minutes (p.6) state that Mr. Manion "noted the new sick leave plan was part of labor negotiations and the actuarial impact was covered in the City's budget, through employer contributions." *Id.*

134. At the very next meeting of the Retirement Board held on July 24, 1996, the City's agreement to sick leave payout at retirement was on the agenda and the program was reviewed by Personnel Director and Board Member Carlos Aruaz. Ex. 71. This meeting was attended by 8 of the 9 Retirement Board members and others including, *inter alia*: Carlos Aruaz, the City's Personnel Director and Retirement Board Member; Deputy City Manager and Retirement Board

Member Pat Manion; Kevin Keogh, the City's Finance Director and Retirement Board Member; Barbara Alvarez, the City Treasurer and Retirement Board Member; Duamel Vellon, the Retirement Plan Retirement Program Administrator and several additional representatives from the Personnel Department, City Auditor Department, Finance Department and Law Department along with a representative from ASPTEA. Ex. 71, 70-1.

135. At the July 24, 1996 Retirement Board meeting, referencing the discussion at the June 1996 meeting, the Retirement Plan Administrator Duamel Vellon stated: "[T]he sick leave program payments *are intended* to be included only in the final average salary calculation" and went on to explain that in such instance the hours paid would not count for service credit. Ex. 71, 71-2. (Emphasis supplied). When asked if the benefit package for the sick leave payout program was reviewed by the Retirement Plan actuary, the City responded that the "Retirement Plan actuary was consulted on this, and provided an estimate."

136. Consistent with the testimony of Plaintiffs' witnesses that during negotiations for the sick leave payout at retirement, the wage and benefits packages presented to the Unions and ASPTEA had included the City's anticipated costs of including the sick leave payments at retirement in final average pay under the Retirement Plan, Deputy City Manager and Retirement Board Member Pat Manion explained that "the cost of the sick leave cash out program was calculated into the benefit package" and that "100% of the cost would be reimbursed to the retirement fund," and that the costs "included both employer and employee contributions."

137. In *Baldwin v. City of Phoenix, et. al.* No. CV 96-22584, the plaintiff sued the City and the Retirement Plan claiming, *inter alia*, that the value of *all* amounts expended on the plaintiff's behalf including the value of sick leave not paid in cash at retirement (but rather used to increase the plaintiff's sick leave credited service) and the value of premiums for health, life, and

dental insurance, and Medicare and old age taxes, etc., should have been included in the calculation of the plaintiff's Final Average Compensation under the Retirement Plan. Ex. 62.

138. Both Retirement Program Administrator Vellon and City Assistant Personnel Director Walsh, who attended both the June 1996 and July 1996 Retirement Board meetings submitted sworn declarations in Baldwin.

139. The sworn statements, *inter alia*, recited the Retirement Plan provisions for compensation and final average compensation and stated that amounts “not paid in cash to, or for, the employee” have not been included in compensation, salary or wages, but that accrued unused sick leave that the employee elected to be paid at retirement was included in final average compensation under the Retirement Plan. Ex. 61, at ¶¶ 4, 5, 16, 18, 30, 32, 45, 47-51; Ex. 62, at ¶¶ 8, 9, 16, 34, 77.

140. The Retirement Plan declaration submitted by Mr. Vellon in or around March 1997 stated that:

In calculating final average compensation, the [COPERS] Board includes in the last year any lump-sum payments received for unused sick leave and unused vacation time. These can be very substantial amounts, and generally significantly increase the FAC, and hence the monthly pension benefits.

Ex. 61, ¶ 30.

141. Mr. Walsh, the Assistant Personnel Director also submitted a sworn declaration. The sworn statements, *inter alia*, recited the Retirement Plan provisions for compensation and final average compensation and stated that amounts “not paid in cash to, or for, the employee” have not been included in compensation, salary or wages, but that accrued unused sick leave that the employee elected to be paid at retirement was included in final average compensation under the Retirement Plan. Ex. 61, at ¶¶ 4, 5, 16, 18, 30, 32, 45, 47-51; Ex. 62, at ¶¶ 8, 9, 16, 34, 77.

142. Mr. Vellon's sworn declaration also stated that the plaintiff in that case, a Retirement Plan Member and City employee who retired in December 1996, “received lump-sum

payments for unused vacation and sick leave hours upon his retirement, which payments were included in his 1996 compensation for pension calculation purposes.” Ex.61, ¶ 4.

143. The Board included in service credit calculations, for purposes of the Retirement Plan retirement benefits formula, only those amounts of accumulated unused sick leave that were not paid out to the employee as compensation at time of retirement. ST ¶ 41. In other words, any accumulated unused sick leave that was converted to compensation at retirement and included in final average compensation was deducted from the unused sick leave bank for that Member. *Id.* Only the sick leave remaining after the conversion of a portion of unused sick leave for cash was available for and used to calculate additional service credit for the pension benefit calculation under the Retirement Plan. *Id.*

144. In October 2002, the Retirement Board adopted Policy 173, which defines for purposes of sick leave service credit, what constitutes the “unused service credit” which distinguishes between the sick leave that is paid out at retirement and is compensation (or “eligible payment”) and the unused sick leave that must be included in Retirement Plan service credit. The policy provides that unused sick leave under the Retirement Plan is the amount of sick leave as to which the individual has not elected to receive any payment. Ex. 41, at D001000. TR 04/30/2015 (PM) (Donna Buelow), p. 106:118-p.107:25.

145. From July 1, 1996 when payment of accrued and unused sick leave at retirement commenced, sick leave paid at retirement was used in the calculation and determination of the City’s funding obligations under Retirement Plan for the payment of benefits for Members of the Retirement Plan.

146. Since the City first began paying employees unused sick pay at retirement in 1996, Retirement Plan actuaries have consistently included the value of the payments to Members of accrued, unused sick leave at retirement in determining COPERS’ benefit obligations and have

included this value in their actuarial valuations and reports of their actuarial valuations. Ex. 52, 53, 54; ST ¶ 25.

147. The Annual Actuarial Valuations included in the Retirement Plan's Comprehensive Annual Financial Reports which are used to certify to the City Council the amounts to be appropriated and paid to the Retirement Plan contain a "Summary of Plan Provisions" prepared by the Retirement Plan. On the first page of each Summary of Plan Provisions, the reports explain Final Average Compensation and state clearly, as a term of the Retirement Plan, that unused sick leave paid at retirement is included in Final Average Compensation: "Inclusion of the sick leave payout in the calculation of final average compensation began in 1996." Ex. 52, p. 68; 53, p. 68; 54, p. 66; 69, p. 68.

148. The City Council has consistently paid the City's share of all required contributions as determined by the Retirement Plan actuaries and as certified by the Retirement Board and City Finance Director. ST ¶ 26.

149. It is undisputed that from July 1, 1996 until July 8, 2012 the City and Retirement Plan repeatedly communicated to Members in multiple types of communications their agreement and practice of including the payment at retirement of unused sick leave in compensation and final average compensation to Members in multiple ways.

150. The Retirement Plan's Comprehensive Annual Financial Reports required under the Charter including the required actuarial report that consistently and repeatedly have stated that "[i]nclusion of the sick leave payout in the calculation of final average compensation began July 1, 1996" is a "Plan Provision." On the first page of each Summary of Plan Provisions, the reports explain Final Average Compensation and state clearly, as a term of the Retirement Plan, that unused sick leave paid at retirement is included in Final Average Compensation: "Inclusion of the sick leave payout in the calculation of final average compensation began in 1996." Ex. 52, p. 68;

53, p. 68; 54, p. 66; 69, p. 68. These reports are provided annually to City Council and were and are also published. ST ¶ 24.

151. At all relevant times, the Retirement Plan Comprehensive Annual Financial Reports have reflected the combined efforts of Retirement Plan staff and the City Finance Department and were intended to provide accurate information as a means for making management decisions, complying with statutory provisions and demonstrating responsible stewardship for the assets of the Retirement Plan Retirement Plan.

152. The Retirement Plan’s summary plan descriptions, titled “A Guide to Retirement,” which are established to advise employees about their retirement benefits, reported that the Retirement Plan includes sick leave in compensation and final average compensation and that:

Any applicable lump sum payments for vacation, compensatory time, etc., will be added to your last three years before comparison with other periods of payment....

They further state:

Also, Pat will have the option of receiving compensation for a portion of unused sick leave. The vacation and sick pay is added to Pat’s highest 36 months of wages when figuring her FAS. Her vacation and sick pay increased her three-year average.

Pat’s FAS is calculated as follows:

| | |
|-----------|-------------------------|
| \$51,000 | 2004 Salary |
| \$52,000 | 2005 Salary |
| \$53,000 | 2006 Salary |
| \$5,700 | VACATION PAY & SICK PAY |
| \$161,700 | TOTAL |

The total for the past three years will then be divided to calculate her monthly FINAL AVERAGE SALARY.

\$161,700.00 divided by 36 equals \$4,491.67 per month.

Thus, Pat’s FAS is \$4,491.67 per month.

Ex. 38, first page and pp. 7-8 (D000247); Ex. 39, first page and pp. 6-7.

153. All of the reports, counseling sessions, seminars as well as new orientation sessions referenced in the summary plan descriptions (until a few months prior to July 2012 when

the sick leave snapshot was effective) provided the same information with respect to unused sick leave payments made at the time of retirement - all of those payments would be included in final average compensation if the last year of retirement was one of their highest years.

154. The information presented by the City in training sessions advising that sick leave payouts at retirement were included in final average compensation and final average salary was, in fact, accurate and consistent with how these payments were actually handled and factored into retirement benefits calculations.

155. In or around 2002 and 2003, the City considered whether to move the City's 911 dispatchers out of the Retirement Plan and into the Arizona Correction Officers' Retirement Plan ("CORP"). In connection with the City's consideration of whether to move the City's 911 dispatchers out of the Retirement Plan and into CORP, the Retirement System embarked on a series of educational meetings and presentations for the City's 911 dispatchers. In comparing the Retirement Plan Retirement Plan and the CORP Plan, the City advised the City's 911 dispatchers of the differences between final average compensation under the two plans, in part, as follows:

Final Average Compensation

- Phoenix [COPERS]- Includes payment at retirement for unused vacation and sick time. Includes most payroll items.
- CORP – Does NOT include payments for unused vacation and sick time. Includes base pay, shift differential pay and holiday pay, excludes overtime.

156.

157. The presentations given by the City and Retirement Plan staff included, *inter alia*, the following information:

Final Average Compensation (FAC)

If high 36 months is last 36 months we include all retirement applicable payouts at retirement including sick leave, vacation and comp-time.

Increasing Your Final Average Compensation

- Comp Time Payout

- Sick Leave Payout
- Vacation Payout

Ex. 79, D4905-06.

158. There were multiple other Retirement Plan presentations all uniform in their message to employees that they could increase their final average compensation by saving up their sick leave and receiving a payout at retirement. *And, there were no examples of information to the contrary. Everyone understood this is how it works.*

**The Pension Reform Task Force, Subsequent Negotiations,
and the Imposition of Revised Regulation 2.441**

159. The City created a Pension Reform Task Force in December 2010 “to examine the pension system” and “review and recommend any changes necessary.” The Pension Reform Task Force came up with a series of recommendations, which included recommendations to change the pensionable nature of sick leave payments at retirement with respect to new City employees only. ST ¶ 144.

160. Beginning in or around January 2012, in connection with the collective bargaining negotiations for the 2012-2014 MOU for Units 1, 2 and 3, and Memorandum of Agreement for Unit 7, the City attempted to negotiate an economic change to the collective bargaining agreements by proposing to establish a new limit on the inclusion of sick leave payouts at retirement in final average compensation for Retirement Plan pension calculation purposes during several collective bargaining negotiation sessions with AFSCME 2384, AFSCME 2960, ASPTEA and with Laborers' International Union of North America, Local 777, AFL-CIO ("LIUNA Local 777"), a labor organization that is not a party to this litigation and that represents the City's Unit 1 employees.

161. The City's proposal to establish a new maximum on the “pensionability” of sick leave payouts (or “sick leave snapshot”) was a proposal put forth by the City to change the

collective bargaining agreements by limiting the amount of sick leave payout at retirement that could be used in the calculation of final average compensation under Retirement Plan retirement benefits.

162. Local 777 signed a Tentative Agreement Form agreeing to the change the MOU covering Unit 1 employees, agreeing to a maximum or ceiling on the amount of unused sick leave paid out at retirement that could be included in calculations of final average compensation by limiting or “capping” the total amount of unused sick leave hours that could accumulate to those sick leave hours that a Unit 1 employee had accrued as of July 1, 2012. This Agreement was ultimately encompassed in a binding Memorandum of Understanding regarding Local 777.

163. In the 2012 negotiations, the City also presented AFSCME 2960 with a sick leave snapshot TA similar to the sick leave snapshot TA the City presented to Local 777. AFSCME 2960 rejected the City’s sick leave snapshot proposal. The City withdrew the 2012 sick leave snapshot bargaining proposal it made to AFSCME 2960, although the City threatened to unilaterally impose it. Accordingly, the snapshot concept was not incorporated into the final agreement with AFSCME 2960.

164. Although in the 2012 negotiations, the City presented AFSCME 2384 with a sick leave snapshot TA similar to the sick leave snapshot TA that the City presented to Local 777, AFSCME 2384 rejected the proposal. The City withdrew the 2012 sick leave snapshot proposal it made to AFSCME 2384, although the City threatened to unilaterally impose it. Accordingly, the snapshot concept was not incorporated into the final agreement with AFSCME 2348.

165. Likewise, although in early 2012 the City discussed with ASPTEA the City’s sick leave snapshot proposal, ASPTEA told the City during a negotiating session that it would not agree to such a proposal and, in fact, never agreed to the proposal. The City never formally presented a sick leave snapshot TA to ASPTEA.

166. The City sick leave snapshot proposed to AFSCME 2384, AFSCME 2960 and ASPTEA was intended to limit the amount of unused and accrued sick leave paid at retirement that could be used in the calculation of final average compensation based on the amount of unused sick leave hours that an employee had accrued as of July 1, 2012.

167. To sum up, AFSCME 2384, AFSCME 2960 and ASPTEA rejected the City's sick leave snapshot proposal to limit the amount of unused and accrued sick leave paid at retirement that could be used in the calculation of final average compensation. Local 777 (which is no longer a plaintiff) was the only labor association that agreed to change the existing sick leave pay out program.

168. After collective bargaining negotiations were concluded, the City drafted AR 2.441 Revised, to be effective July 8, 2012, and for the first time purported to establish "the maximum amount of sick leave that can be included in an employee's Final Average Salary for the purposes of pension calculation."

169. The City first published AR 2.441 Revised effective July 8, 2012, to City employees in July 2012. It purports to limit the amount of accrued yet unused sick leave that can be included in the calculation of final average compensation under the Retirement Plan.

170. The implementation of the sick leave snapshot did in fact reduce and diminish the pension benefits of Plaintiffs. Each of the Intervenors retired after July 8, 2012 and received payment for accrued unused sick leave at retirement that was not included in their final average compensation for purposes of calculating their individual retirement benefits under the Retirement Plan.

171. Exhibit 314 accurately sets out the monthly difference in pension payments that the intervenors have lost. They range from the relatively trivial (80 cents per month for Mr. Matamoros) to several hundred dollars a year (\$22.55 per month for Ms. Escobar). The Court

notes in passing that the amounts are likely to grow for those who retire later—all else being equal, the amount of the payment lost is related to the length of time between the City’s unilateral imposition of revised AR 2.441 and a member’s retirement.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of the parties under Rule 3 of the Rules of Procedure for Special Actions which provides that a special action is appropriate to determine if Defendants are proceeding or “threatening to proceed without or in excess of jurisdiction or legal authority.” *See, e.g., Book Cellar, Inc. v. City of Phoenix*, 139 Ariz. 332, 335 (App. 1983). This Court also has jurisdiction under the Arizona Constitution Article 6 § 14 and Ariz. Rev. Stat. §§12-123, 12-1801, 12-1831 and 12-2021.

2. As noted above, unpaid sick leave is the type of non-monetary compensation that can be fixed by the City Council upon recommendation by the City Manager pursuant to Section 2.13 of the City Charter. The City Council did so by repeatedly approving Memoranda of Agreement/Understanding (and issuing/amending AR 2.441 consistent with the negotiations leading to those contracts) over more than a decade. The Court rejects the City’s argument that the statute of frauds has anything to do with this case; those contracts are in writing, and the interpretation of those contracts is set by the parties’ understandings of them when they were entered. *See Taylor v. State Farm Mut. Auto Ins. Co.*, 175 Ariz. 148 (1993). And, as noted above, in the decade leading up to 2012, it was uniformly, widely and commonly understood that payouts for unpaid sick leave were to be included in final average compensation. The Memoranda of Understanding/Agreement were uniformly negotiated with that baseline understanding.

3. Pursuant to Arizona law, a public employee has a common law and an Arizona Constitutional “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.” *Fields v. Elected Officials' Ret. Plan*, 234 Ariz. 214, 220, (2014); *Thurston v. Judges' Ret. Plan*, 179 Ariz. 49, 51, (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”).

4. The Arizona Constitution provides further protections for public retiree benefits by providing, *inter alia*, that:

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

Article 29 of the Arizona Constitution, §1(C).

5. In light of these contractual provisions, the City could not unilaterally revise AR 2.441 in 2012, and those revisions were not applicable to the intervenors, who are entitled to have their pensions calculated under the prior version of that Regulation.

6. Plaintiffs and the Intervenors are entitled to a judgment in their favor that the 2012 revision to A.R. 2.441 was not applicable to them for their 2012-2014 contracts.

7. The Court notes that no one put on any evidence regarding what happened during the 2014 negotiations (and, by the time they occurred, revised A.R. 2.441 was “on the books,” so it is at least arguable that it became effective at that point if not formally carved out in the contracts which were ultimately reached). Accordingly, the Court expresses no opinion regarding whether revised A.R. 2.441 currently applies against plaintiffs and the intervenors.

Dated: July ____, 2015.

Hon. Mark H. Brain

eSignature Page 1 of 1

Filing ID: 6738382 Case Number: CV2012-010330
Original Filing ID: 6634445

Grant with New Order



/S/ Mark H. Brain Date: 7/19/2015
Judicial Officer of Superior Court

APP229

ENDORSEMENT PAGE

CASE NUMBER: CV2012-010330

SIGNATURE DATE: 7/19/2015

E-FILING ID #: 6738382

FILED DATE: 7/21/2015 8:00:00 AM

DANIEL L BONNETT

JOHN F ESTES
NO ADDRESS ON RECORD

J MARK OGDEN

LOUIS MATAMOROS
NO ADDRESS ON RECORD

JENNIFER KROLL

PAUL ENNISS
NO ADDRESS ON RECORD

KRISTIN R CULBERTSON

PHILIP KODA
NO ADDRESS ON RECORD

RAVI PATEL

STUART CASEY
NO ADDRESS ON RECORD

SUSAN MARTIN

VIRGINIA COTA
NO ADDRESS ON RECORD

DAVID MEINER
NO ADDRESS ON RECORD

VIVIAN ESCOBAR
NO ADDRESS ON RECORD

DAVID ROBINSON
NO ADDRESS ON RECORD

WILLIE R PRICE JR.
NO ADDRESS ON RECORD

JOAN OLSON
NO ADDRESS ON RECORD

JOHN LAY
NO ADDRESS ON RECORD

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-010330

09/01/2015

HONORABLE MARK H. BRAIN

CLERK OF THE COURT
T. Springston
Deputy

FRANK PICCIOLI, et al.

SUSAN MARTIN

v.

CITY OF PHOENIX, et al.

J MARK OGDEN

DANIEL L BONNETT
RAVI PATEL

RULING

Despite judicial rotations, Judge Brodman properly referred Plaintiffs' and Intervenors' Motion to Amend and Supplement Court's Findings of Fact and Conclusions of Law (filed July 28, 2015) to this judge for review. Having considered the parties' papers, the motion is DENIED. By way of brief explanation, the Court notes as follows.

One supposes that the effect of the various 2014-2016 memoranda of understanding, as well as the contract negotiations leading to them, could have been introduced at the evidentiary hearing. They were not. Plaintiffs' and Intervenors' suggestion that the Court should now take judicial notice of the memoranda of understanding is clearly contrary to the Court's ruling in this matter—that the memoranda of understanding are contracts which must be interpreted in light of the parties' understandings and negotiations leading up to them (for which the Court received no evidence regarding the latest negotiations).

In retrospect, perhaps the reason that no one thought to include such evidence at the earlier trial is that it is plainly beyond the scope of the claims in this lawsuit. Plaintiffs' most fundamental claim in the complaint was that the inclusion of sick leave payout in final compensation was absolutely required by the City of Phoenix Charter. Plaintiffs lost that claim, all as set forth in the Minute Entry dated January 6, 2014. The secondary position, that the City

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MARICOPA COUNTY

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09/01/2015

had a contractual obligation given the negotiations and understandings in the 2012 and prior negotiations remained pending.

In the January 6, 2014 minute entry, the Court expressed doubt that it should further exercise its jurisdiction given the posture of the case at that time, noting, "After all, no one has actually made a claim that they are currently entitled to pension benefits that are being withheld, and the contracts remain subject to renegotiation as time goes on." In response, a number of people intervened, and all of them share one common: they all retired before the 2014-2016 memoranda of agreement became effective. Plaintiffs/intervenors ended up prevailing on the secondary position noted above following the evidentiary hearing. But the intervenors have no interest in anything that happened during the 2014-2016 negotiations because it does not, and cannot, affect them; the calculation of their pension benefits became set in stone upon their respective retirements. Accordingly, the intervenors do not have a stake in that issue. Likewise, plaintiffs never filed a supplemental pleading to raise those negotiations.

At this juncture, this judge believes that it has resolved all of the matters presented in this litigation except for claims to costs and fees. The Court is aware that at least some of the parties believe otherwise, and that Judge Brodman has scheduled a status conference for October 9, 2015 to discuss that issue. Judge Brodman is, of course, free to do as he will (including identifying an issue that I have overlooked, allowing a supplemental pleading pursuant to Rule 15(d), or allowing more interventions). But, at the conference on October 9, 2015 (or later, if he so chooses), this Judge requests that Judge Brodman set a briefing schedule for the applications for fees and costs (and he may continue to delegate the resolution of those matters to me as noted in his August 13, 2015 Minute Entry or change his mind as he thinks best).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-010330

05/16/2016

HONORABLE MARK H. BRAIN

CLERK OF THE COURT
L. Stogsdill
Deputy

FRANK PICCIOLI, et al.

SUSAN MARTIN

v.

CITY OF PHOENIX, et al.

BROOKE D PFLEEGER

DANIEL L BONNETT
J MARK OGDEN
RAVI PATEL
MICHAEL NAPIER
SUSAN HOFFMAN
COLIN F CAMPBELL
WESLEY E. STOCKARD
JUDGE BRODMAN

RULING

The Court has before it Plaintiffs' and Intervenors' Motion to Set Damages and Appropriate Equitable Relief and Memorandum of Points and Authorities in Support Thereof (filed February 19, 2016), as well as the related papers (including errata, supplements, objections to forms of judgment by both sides, and a motion to strike thrown in for good measure). Each side has requested oral argument, but the matters are sufficiently briefed. Oral argument would not be helpful, so the matters raised will be determined on the papers to expedite the business of the Court pursuant to Rule 7.1(c)(2). But first a few words about the status of the case.

It is a shame that the attorneys have continued spending their time and their clients' money on proceedings in the trial court. In fact, what *everyone* involved in this case needs is a simple judgment along the lines proposed by defendants, which is then battle-tested to finality in

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the appellate courts. Although the parties disagree sharply about the law, this Court has no doubt that the professionals at COPERS can and will properly calculate pension benefits once they have final rulings on issues which this Court has already decided—after all, they have been doing it for decades.

The Court was surprised to learn that plaintiffs/intervenors seek what amounts to an award of money damages class-wide for union membership. They appear to base this claim on a sentence from the Court's ruling of January 6, 2014, in which the Court wrote, "[S]everal unions are in fact plaintiffs in this action, and one would think that they could litigate on behalf of their constituents without the burdens imposed by a class action." It should go without saying, but context is important. The context of this statement was a *declaratory judgment action* in which: (1) the prayer for relief contains no request for damages;¹ (2) the Court had already rejected plaintiff's interpretation of COPERS; and (3) the Court had found an issue of fact related to the contracts the Unions negotiated with the City.² To resolve that issue of fact, the existing parties plus a couple of retirees added as intervenors (see January 6, 2014 Minute Entry at P. 4, second paragraph) was a perfect cast of characters.

In fairness, paragraph E of the prayer for relief of Intervenor's Complaint (attached to the Motion to Intervene filed February 5, 2014) does seek an order that defendants "recalculate Intervenor's retirement benefits and to pay all benefits wrongfully reduced and withheld and to make Intervenor whole for all losses including pre-judgment and post-judgment interest." That claim for relief appears to be limited to the named intervenors. Setting aside questions about the appropriate interest rate (discussed below), this issue should be easily resolved, as the dates of retirement and amounts of sick-leave claimed by the intervenors were noted at trial and not materially disputed in the Court's recollection.³ Although plaintiffs/intervenors have tacitly admitted that they failed to submit statements of claim under A.R.S. § 12-821.01, defendants have waived that defense as to the intervenors (who did make a timely claim for damages in their pleadings) by failing to timely raise it. Accordingly, the intervenors are entitled to an award of damages. The Court finds that the intervenors' claims are liquidated (they are the subject of a purely mathematical calculation), and the appropriate rate of prejudgment interest is 10% per annum.⁴

¹ Rule 8(a) requires a complaint to contain a "demand for judgment for the relief the pleader seeks." The closest the Complaint filed July 2, 2012 comes is the generic request for "such other and further relief the Court deems just and proper."

² The fact that the complaint contained claims for mandamus and other equitable relief does not change the fact that it sought, at its heart, a declaration of the parties' rights under COPERS and their agreements.

³ In that regard, the Court found that Exhibit 314 accurately set forth the additional monthly amounts due intervenors. See Findings of Fact and Conclusions of Law at paragraph 171.

⁴ Prejudgment interest will begin to accrue separately on each payment (e.g. \$15 plus interest from January 1, 2012, \$15 plus interest from February 1, 2012, \$15 plus interest from March 1, 2012...).

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Notwithstanding plaintiffs' failure to request damages in the complaint, plaintiffs/intervenors claim that a money judgment is appropriate under A.R.S. § 12-1838, the section of the Uniform Declaratory Judgments Act titled "Supplemental Relief." That section provides:

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by complaint or appropriate pleading to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

One problem, of course, is that plaintiffs have not yet obtained a declaratory judgment or decree; as noted above, the case still lingers in the trial court. This section is obviously discretionary ("may be granted"), and it is premature to enter such awards (or additional injunctive relief) at this juncture.⁵ To the extent plaintiffs/intervenors believe the Court's prediction (above) regarding COPER's willingness and ability to comply with a final judgment is overly rosy, they may seek supplemental relief from a *final* judgment in due course.⁶

IT IS ORDERED as follows:

- With the exception of damages for the intervenors, the Motion to Set Damages and Appropriate Equitable Relief is DENIED.
- Defendants' Motion to Strike is deemed MOOT.
- The Court adopts the proposed form of judgment submitted by defendants (with the exception of Rule 54(b) language). But, that form is incomplete. The parties are instructed to submit such a judgment with Rule 54(c) language and blanks for any claims for attorneys' fees and costs along with their fee applications.
- The Intervenors may submit an additional form of judgment (or incorporate it into defendants' judgment) which sets forth their damages incurred to date. As noted above, prejudgment interest will accrue at 10% per annum on each installment due each

⁵ Even injunctive relief probably won't become effective for several years; it appears that defendants are entitled to appeal this matter without posting a supersedeas bond under Rule 7(a), Arizona Rules of Civil Appellate Procedure.

⁶ The potential fly in the ointment, of course, is that the parties chose not to litigate the effect of the 2014-2016 memoranda of understanding in the bench trial. See Minute Entry dated September 1, 2015. Whether that omission matters will undoubtedly be driven in part by the appellate court's conclusions in this matter (but it should not affect the pensions of those who retired before the new agreements took effect).

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intervenor up to the date of judgment, and at the statutory rate upon the entry of judgment (the Court suggests the parties leave the space for that rate blank, as it is subject to change).

- Notwithstanding any prior orders or stipulations, the parties shall submit any fee applications and statements of costs no later than **June 10, 2016**.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2012-010330

09/26/2016

HONORABLE MARK H. BRAIN

CLERK OF THE COURT
M. King/A. Quintana
Deputy

FRANK PICCIOLI, et al.

SUSAN MARTIN

v.

CITY OF PHOENIX, et al.

J MARK OGDEN

DANIEL L BONNETT
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MICHAEL NAPIER
COLIN F CAMPBELL
WESLEY E. STOCKARD

UNDER ADVISEMENT RULING

This matter came before the court for oral argument on September 23, 2016 on the parties' dueling applications for attorneys' fees, as well as plaintiffs' statement of costs. The court has entered a final judgment, but thought it wise to briefly explain its thinking.

At the beginning of the hearing, the court inquired about the parties' competing forms of judgment. The parties indicated that there was a slight disagreement about the amounts due intervenors which they believed was due to some unknown difference in the interest calculation used. In light of the modest amounts involved, defendants volunteered that the court could use plaintiffs' slightly higher numbers.¹

Plaintiffs seek attorneys' fees under A.R.S. § 12-2030. *Fields v. Elected Officials Retirement Plan*, 234 Ariz. 214 (2014), held:

¹ Except where it might matter, the court will refer to plaintiffs and intervenors collectively as plaintiffs.
Docket Code 926

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Fields sought to compel EORP to calculate benefit increases according to § 38-818's formula rather than that of S.B. 1609. Although Fields characterized the action as one for mandamus, the complaint alleges that the Board did not use the correct formula to calculate the benefit increases, not that it refused to calculate the benefit at all. Therefore, Fields did not seek mandamus relief. *See Stagecoach Trails*, 231 Ariz. at 370 ¶ 21, 295 P.3d at 947 (holding that an action contending that an officer "either misapplied or misinterpreted the regulations" did not seek relief in the nature of mandamus). We thus deny Fields' request for attorneys' fees pursuant to § 12-2030.

234 Ariz. at 222 ¶ 40. That holding is directly on point, which is presumably why plaintiffs make no effort to distinguish *Fields* (instead, their reply essentially ignores it). A fee award is not available under § 12-2030.

Plaintiffs also seek a fee award pursuant to A.R.S. § 12-341.01, claiming that the case "arises out of a contract."² As defendants note, two of my colleagues have concluded that such claims do not arise out of a contract and the issue is currently before the Supreme Court in the *Hall* case. *See Defendants' Fee Application* at p. 2, footnote 1. The logic of this conclusion is that the claims arise out of the constitutional protections rather than a contract. I disagree. In my view, the action arises out of a contract because Article 29, Section 1(C) of the Arizona Constitution says it does ("Membership in a public retirement system is a contractual relationship . . ."). This conclusion is supported by *Pendergast v. Arizona State Retirement Systems*, 234 Ariz. 535 (App. 2014) (awarding fees pursuant to § 12-341.01 in a similar case, although admittedly without setting forth an analysis of the issue).

An award pursuant to A.R.S. § 12-341.01 is highly discretionary. First, the court has a great deal of discretion in determining the "successful party" in a two-party case. *Schwartz v. Farmers Ins. Co. of Ariz.*, 166 Ariz. 33, 38 (App. 1990). And then, having done so, the court has a great deal of discretion in determining the amount of fees to award. *Associated Indem. Corp. v. Warner*, 143 Ariz. 567 (1985) sets forth a non-exclusive list of factors to consider. The amount ultimately awarded need not equal the amount incurred, but it must be reasonable and it cannot exceed the amount actually paid or agreed to be paid. *Schweiger v. China Doll Restaurant, Inc.*, 138 Ariz. 183 (App. 1983).

The question of which side is the successful party in this case actually involves a close call. Plaintiffs *sought* a ruling that paid sick leave (that is, non-monetary compensation that individual workers acquired over their decades of service) which was monetized at retirement

² Defendants disagree, but filed a defensive fee application related to what could be considered "phase one" of this litigation—the period leading up to the court's rejection of plaintiffs' principal position and the addition of the intervenors.

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necessarily became part of a worker's "annual compensation" during the last three years for purposes of boosting the worker's pension under the City Charter as a matter of law. Such a ruling would cover everyone involved in COPERS, now and forever (the complaint alleged COPERS has over 8000 active member, and the court suspects that number is fairly steady). Plaintiffs ultimately *got* a ruling that the treatment of sick leave is subject to negotiation during the collective bargaining sessions which occur every two years (that is, the City could not unilaterally change Administrative Regulation 2.441). Accordingly, according to plaintiffs' numbers, it appears that defendants have wrongfully reduced the retirement benefits of roughly 550 people who retired between July 8, 2012 and June 30, 2015, with the monthly damage being \$179,355 and the total damages (present and future) being roughly \$2 million.³ See Supplemental Report filed on March 21, 2016. On balance, the court concludes that plaintiffs were the successful parties, although their success was modest in light of their original claims.

Plaintiffs claim over \$1.2 million in fees (as set forth in the Supplement filed on August 17, 2016), even though plaintiffs paid far less, based on a fee agreement which provided,

Our fees for this service are the greater of our attorneys' fees awarded by the Court or by way of settlement or our reduced hourly litigation rate, plus all fees and expenses. The reduced hourly litigation rate is a blended rate of \$275 per hour for all attorneys . . . and \$85 for law clerk/paralegal time plus all reasonable expenses.

Plaintiffs claim that they are entitled to enforce such a contract under *Moedt v. General Motors Corp*, 204 Ariz. 100 (App. 2003), which allowed a modest \$715 in attorney's fees in a "lemon law" case. *Moedt* is an outlier among cases involving attorneys' fees contracts and arises out of special circumstances (the "lemon law" has a specific fee-shifting provision). But even setting aside those issues, the court need not determine whether *Moedt* applies because it cannot in good conscience find reasonable even the amounts actually paid for legal services by plaintiffs.

Plaintiffs top three attorneys in the case claim compensation as follows: Ms. Martin seeks 467 hours at \$550 per hour, Mr. Bonnet seeks 366 hours at \$550 per hour, and Ms. Krull seeks 1198 hours at \$405 per hour, for a total of over \$943,000.⁴ Even using the blended rate of \$275 per hour, those fees total over \$550,000. This litigation, if properly managed, should not have cost even that much, and an award exceeding \$550,000 would be unreasonable. At bottom,

³ It is unclear why June 30, 2015 was used as the end point for the report; as the court noted in its minute entry dated September 1, 2015, the effect of the 2014-2016 memoranda of understanding was not litigated. See also Findings of Fact and Conclusions of Law at p. 43, ¶ 7 (filed July 21, 2015).

⁴ These numbers, which are rounded, are taken from Ms. Martin's declaration, which was Exhibit D to the fee application.

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this should have been a simple action for a declaratory judgment. The court perceives no need for classes to be certified, nor preliminary injunctions to be sought.⁵ The court finally ended up hosting a multi-day trial at which the material facts were largely, if not entirely, undisputed (with witnesses repeating the same undisputed testimony on direct and cross-examination). No one came close to meeting the page limitations imposed by the rules on many of the substantive motions. At times, the parties' papers were replete with trivial objections. Plaintiffs' objection from the following passage is one example.

DSOF ¶ 24: Finally, Section 2.15 of COPERS defines "final compensation" as follows: "Final compensation" means a member's annual rate of Compensation at the time his City Employment last terminates." *Id.* § 2.15.

RESPONSE: Plaintiffs object and move to strike the word "[f]inally" as argument and not part of a factual statement. Moreover, the word "finally makes no sense because Section 2.14 is far from the final Charter provision. Subject to and without waiving Plaintiffs' objections, Plaintiffs do not dispute that Defendants have accurately quoted the definition of "final compensation" in the Charter.

See Plaintiffs' Response to Defendants' Statement of Facts (filed June 3, 2013) at pp. 8-9. That Statement of Facts (as well as the reply to defendants' response to plaintiffs' statement of facts filed on June 24, 2013), were full of such comments (plaintiffs also moved to strike defendants' section headings, which were obviously included in an effort to assist people in finding things). A mindset that produces such objections is bound to generate excessive fees.⁶ And, it is fair to note that plaintiffs prolonged and expanded the litigation through the Motion to Amend and Supplement Court's Findings of Fact and Conclusions of Law (filed July 28, 2015) and the further proceedings regarding damages, causing both sides to incur additional fees.

Turning to the *Warner* factors, defendants prevailed on the principal claim (whether inclusion of the sick leave payout in final compensation was required by the City Charter, now and forever), so it obviously had a meritorious defense to a substantial issue in the litigation. It is doubtful that the claims could have been avoided, and although a settlement along the lines of the final judgment would have been appropriate, there is no real evidence that either side

⁵ The court views such motions as excessive tactics, not merely unsuccessful legal theories which can be included in a fee award. If anything, a court should be less willing to award fees in such a case because the opponent has already borne more fees than it should.

⁶ The reader should not gather that plaintiffs' attorneys alone are guilty of such conduct. For example, when plaintiffs added emphasis to language in various documents in an effort to call the court's attention to specific provisions, defendants felt compelled to repeatedly note that "the bolded text in this statement of fact is not bolded in the [quoted document]." *See* Defendants' Controverting Statement of Facts (filed June 3, 2013) at p. 5.

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considered it.⁷ Defendants' efforts were far from superfluous. The court senses no real hardship to either side, regardless of how it rules on the request for fees. The legal questions, while discrete, were novel. And a substantial award could discourage others from litigating tenable claims. On balance, the court believes each side should bear its own attorneys' fees.

Finally, regarding costs, plaintiffs are entitled to recover reasonably incurred taxable costs. The court takes no issue with the filing fees (\$1,295), service fees (\$1040.50), deposition fees (\$19,949.07), or witness fees (\$43.80). Plaintiffs have, however failed to satisfactorily explain their request for \$622.50 in certification and copying fees. Likewise, the \$16,256.00 in expert witness fees appear to have been spent in connection with plaintiffs' efforts to expand the litigation to include a "class-wide damages claim" which was not asserted in the pleadings, and thus was not reasonably incurred. Accordingly, the court will award costs in the amount of \$22,328.37.

⁷ Plaintiffs vaguely claim they attempted to settle the litigation (*see* Martin declaration at ¶¶ 34-35), but offer nothing about the substance of the negotiations. Had the City offered to settle by dropping its claim that it could unilaterally modify the regulations and instead leave the treatment of unused sick leave to collective bargaining (a natural position to consider after the court issued the minute entry dated January 6, 2014), the court would have concluded that defendants were the successful parties under the second sentence of A.R.S. § 12-341.01(a).

Grant with New Order

See eSignature page

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IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

| | | |
|--------------------------|---|----------------------------------|
| FRANK PICCIOLI, et al., |) | Case No.: CV2012-010330 |
| |) | |
| Plaintiffs, |) | JUDGMENT |
| v. |) | |
| |) | (Assigned to the Honorable Judge |
| CITY OF PHOENIX, et al., |) | Mark H. Brain) |
| |) | |
| Defendants. |) | |
| _____ |) | |
| |) | |
| STUART CASEY, et al., |) | |
| |) | |
| Intervenors |) | |
| _____ |) | |

The Court, after a bench trial, issued Findings of Fact and Conclusions of Law. Based upon this ruling and the record herein:

IT IS HEREBY ORDERED, ADJUDGED and DECREED that judgment is entered in favor of Plaintiffs and Intervenors against Defendants as follows:

1. It is hereby declared that the July 2012 revisions to City of Phoenix Administrative Regulation 2.441 (“AR 2.441”), which limit the amount of pay for unused sick leave that may be included in the calculation of an employee’s final average compensation for pension benefit purposes under the City of Phoenix Employees’ Retirement Plan (“COPERS”), are not applicable to Plaintiffs and Intervenors employed by the City in Units 2, 3, or 7 during the term of the 2012-2014 Memoranda of Understanding between the City and AFSCME Local 2384 and AFSCME

1 Local 2960 and the 2012-2014 Memorandum of Agreement between the City and ASPTEA, from
2 July 1, 2012 to June 30, 2014.

3 2. Intervenor are City employees in Units 2, 3 or 7 who: (1) retired between July 1,
4 2012 and June 30, 2014; (2) are entitled to a pension from COPERS; (3) for which the
5 employee's last year of employment was one of the three highest years of compensation used to
6 calculate the employee's final average compensation for purposes of his or her COPERS pension;
7 and (4) by operation of the July 2012 revisions to AR 2.441, had less than the full amount of pay
8 they received for unused sick leave included in their final average compensation calculation for
9 purposes of their COPERS pension.

10 3. Defendants are enjoined and prohibited from using the July 2012 revisions to City
11 of Phoenix Administrative Regulation 2.441 ("AR 2.441") in calculating COPERS pension
12 benefits for the Intervenor.

13 4. Intervenor shall have judgment against Defendants City of Phoenix, City of
14 Phoenix Employee Retirement System and City of Phoenix Retirement System Board, jointly and
15 severally, and in favor of Intervenor with damages including benefits and interest at the rate of
16 10% per annum in the following amounts:¹

- 17 A. Intervenor Stuart Casey is entitled to judgment in the amount of \$ 349.30;
- 18 B. Intervenor Virginia Cota is entitled to judgment in the amount of \$314.09;
- 19 C. Intervenor Vivian Escobar is entitled to judgment in the amount of \$878.48;
- 20 D. Intervenor Paul F. Enniss is entitled to judgment in the amount of \$725.85;
- 21 E. Intervenor John F. Estes is entitled to judgment in the amount of \$128.17;
- 22 F. Intervenor Philip Koda is entitled to judgment in the amount of \$629.54;
- 23 G. Intervenor John Lay is entitled to judgment in the amount of \$234.32;
- 24 H. Intervenor Louis Matamoros is entitled to judgment in the amount of \$160.74;

25
26
27 ¹ By way of clarification, monthly pension payments are made on the first of each month. The
28 amounts set forth in paragraphs 4(a) through 4(f) encompass unpaid payments (with prejudgment
interest at 10 percent per annum) inclusive of the payment which should have been made on
September 1, 2016. They do not include the payments due October 1, 2016 or thereafter.

- I. Intervenor David Meiner is entitled to judgment in the amount of \$156.77;
- J. Intervenor Joan Olson is entitled to judgment in the amount of \$772.69;
- K. Intervenor Willie R. Price, Jr. is entitled to judgment in the amount of \$758.10;
- L. Intervenor David Robinson is entitled to judgment in the amount of \$373.99.

5. IT IS FURTHER ORDERED, ADJUDGED and DECREED that Plaintiffs and Intervenor shall have judgment against Defendants City of Phoenix, City of Phoenix Employee Retirement System and City of Phoenix Retirement System Board, jointly and severally, in attorneys' fees and costs for the following amounts:

Attorneys' Fees: Each party shall bear its own attorneys' fees.

Taxable Costs: \$22,328.37.

Other Costs: none.

for a total amount to Plaintiffs and Intervenor and against Defendants in attorneys' fees, taxable and other costs of \$22,328.37.

6. IT IS FURTHER ORDERED, ADJUDGED and DECREED that interest shall accrue on the total amounts due including amounts due Intervenor as of the date of judgment and all attorneys' fees and costs at the rate of 4.5% per annum as set forth in Ariz. Rev. Stat. § 44-1201(B) from the date of this judgment until paid in full.

7. Pursuant to Ariz. R. Civ. P. 54(c), the Court determines that no further matters remain pending and expressly directs that this judgment is entered as a final, appealable judgment.

DATED this _____ day of _____, 2016

Honorable Judge Mark H. Brain

eSignature Page 1 of 1

Filing ID: 7754769 Case Number: CV2012-010330
Original Filing ID: 7747189

Grant with New Order



/S/ Mark H. Brain Date: 9/26/2016
Judicial Officer of Superior Court

APP245

ENDORSEMENT PAGE

CASE NUMBER: CV2012-010330

SIGNATURE DATE: 9/26/2016

E-FILING ID #: 7754769

FILED DATE: 9/28/2016 8:00:00 AM

COLIN F CAMPBELL

DANIEL L BONNETT

J MARK OGDEN

MICHAEL NAPIER

RAVI PATEL

SUSAN MARTIN

WESLEY E. STOCKARD

MEMORANDUM OF UNDERSTANDING

2012 - 2014

CITY OF PHOENIX

AND

AMERICAN FEDERATION OF STATE,

COUNTY

AND MUNICIPAL EMPLOYEES

LOCAL 2384, AFL-CIO

COVERING

FIELD UNIT II

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PREAMBLE

WHEREAS the well-being and morale of the 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 of Phoenix except as expressly and lawfully modified herein; and

WHEREAS the parties agree that the Phoenix Employment Relations Board (P.E.R.B.) 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 II.

NOW therefore, the City of Phoenix, hereinafter referred to as "the City," and Local 2384, as an affiliate of the American Federation of State, County, and Municipal Employees, 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 body resolve to adopt its terms.

ARTICLE 1: Rights

Section 1-1: Gender

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.

Section 1-1A: Recognition

- A. The City recognizes the Union as the sole and exclusive meet and confer agent pursuant to the Meet and Confer Ordinance as amended, for the purpose of representation regarding wages, hours, and other conditions of employment for all employees in positions constituting Field Unit II, as certified or as may be modified by the Phoenix Employment Relations Board (P.E.R.B.).

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 unilateral and exclusive right to operate, administer, and manage its municipal services and work force performing those services in all respects subject to this Memorandum.
- B. The City Manager and Department Heads have and will continue to retain exclusive decision-making authority on matters not expressly modified by specific provisions of this Memorandum 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 Memorandum, 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 Section 5 of the Meet and Confer Ordinance.

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 City 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 City 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 2384 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 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 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 detailed in this agreement.

1. Full-Time Release Positions

Three full-time release positions, 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 full-time release positions agree to comply with all City rules and regulations. 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 their regular city duties, the Unit employee shall be reinstated to their original position, location, and schedule by seniority.

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 pay the President of the Union two hundred eight (208) hours of straight time in his/her compensatory time bank. Each of the other two full-time Union release positions will receive eighty (80) hours of straight time in each of their compensatory time banks each MOU year.

The Union, subject to departmental operation and scheduling factors and reasonable advance notice, shall be allowed a total of one hundred and fifty (150) hours of paid leave to attend Union seminars, lectures, and conventions. In addition, 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.**

2. Union Stewards

The Union may designate up to fifty-five (55) site stewards, twenty-six (26) chief stewards, and seventeen (17) lead stewards to serve as Union representatives. Such designations shall be made from amongst employees regularly working at the job sites as specified in Attachment "A" and such stewards shall service grievances at said job sites to which they are regularly assigned, in accordance with Attachment "A" hereto. Chief Stewards may substitute for job site stewards in the assigned area of jurisdiction as shown in Attachment "A."

The Labor-Management Committee will discuss the job site allocation of stewards upon request by either party (Attachment A) and will consider the deletion or addition of stewards in the event of reorganization or expansion of Unit II departments.

- a. The Union shall notify the Labor Relations Division of the Human Resources Department, in writing, of its designations and re-designations of stewards and chief stewards.
 - b. There shall be no obligations on the City, nor shall the City change or adjust employees' permanent regular work schedules or assignments solely as a result of such designations.
 - c. One such steward **from the Grievant's home department** and the grievant may, after the grievant and the supervisor were unable to resolve the matter informally (Article 2, Section 2-1) when the Union is designated by a grievant as his representative, attend mutually scheduled grievance meetings with City of Phoenix department representatives without loss of pay or benefits. **One steward working in the same department as a unit member under investigation may also attend investigative meetings without loss of pay or benefits. Stewards not from the same department as the grievant or employee under investigation may provide representation, however the total time spent on representation will be requested from and charged to the bank of hours as outlined in 1-3 A 3.**
 - d. City employees who are on duty, either witnesses or grievants and the shop steward representing an employee, may attend Civil Service meetings and Phoenix Employment Relations Board (P.E.R.B.) meetings on City time.
 - e. The Union will be allowed subject to operational and scheduling factors and fourteen (14) calendar days advance notice, up to one day of paid release time for authorized stewards to attend a one-time contract orientation session conducted by the Union in each year of the contract.
3. Bank of Union Release Hours

The Union will be allowed, subject to operational and scheduling factors and seventy two (72) hours advance notice in each instance, a unit total of five thousand seven hundred (5,700) 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.

With the exception of the ten elected union officials, only one representative may be released from the same work group/shop 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 Union release hours must be approved by the Labor Relations Administrator and the AFSCME Local 2384 President. 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 8,325 hours.

B. Unpaid Release Time for Unit Related Activity

Union members may be authorized in advance in writing to engage in lawful Union activities during City work hours on a non-paid basis at the unrestricted discretion of the City Manager or designee consistent with the purpose of this Memorandum.

A member selected by the Union to do Unit representative work which takes the employee from his employment with the City shall, at the written request of the Union, and subject to Civil Service Rules, be granted an unpaid leave of absence. The leave of absence shall be in increments of no less than three (3) months and shall not exceed one (1) year, but it may be renewed or extended for a similar period upon the request of the Union.

C. The Union will be allowed one (1) hour each orientation session to talk to and recruit new Unit members into the Union and to explain the rights and benefits under the M.O.U. This time will be allotted in addition to new employee orientation, at the departments that have new employee orientation, in the Aviation, Public Works, and Water Services Departments. The content of such information shall not be political in nature, or abusive of any person in City employment. This time shall be considered *de minimus* time.

D. Prior to the termination of the current Memorandum and subject to operational and scheduling factors, each designated Union representative, which is defined as the elected Executive Board, will be allowed up to one day of paid release time to facilitate the familiarization of the terms of the successor Memorandum.

E. There shall be no use of official time for Union related activities except as expressly authorized under the aforesaid sections.

F. International and Union Representatives

Accredited International and appropriately designated Local representatives shall be admitted to the buildings and grounds of the City during working hours for legitimate Union purposes including providing representation to employees, so long as such will not 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 to the safety regulations of the work site.

G. Payroll Deduction

1. The City shall deduct from the first pay warrant of Union members, in each month, the regular periodic membership dues and regular periodic Union sponsored insurance premiums 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 deduction shall be made only when the Union member's earnings for a pay period are sufficient after other legally required deductions are made.
2. Authorization for membership dues deduction herein under 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.
3. 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 Memorandum. At each scheduled Labor Management Committee meeting, the City shall provide to the Union a list of any exceptions to this provision arising from transfers between any other Unit.
4. It is agreed that the City assumes no liability except for its gross negligence on account of any actions taken pursuant to this section. The City will 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.

H. Facilities and Services

1. The Union through its designated representative, may distribute materials on the City premises (buildings and grounds) before and after scheduled working hours or in non-work areas during scheduled work hours provided that both the employee distributing and the employee receiving such materials are on non-work periods.
2. The City shall provide the Union with accessible bulletin boards at mutually agreed upon locations. The City shall grant sole and exclusive use of such bulletin boards to the Union.

3. Materials which are abusive of any person or organization, which conflict with laws regulating the political activities of City employees, and which are disruptive of the City's operations may not be posted or distributed.
4. The Union may grieve any refusal by the City to approve posting or distributing of materials. The City will not arbitrarily disapprove materials.
5. **Upon the Union's filing of a Third Party Data Sharing Agreement with the Labor Relations Division, the City shall provide the Union, upon request, a listing of Unit employees indicating name, address, job classification, department number, and/or a seniority list by job classification.**
6. The City will endeavor to maintain remote computer access to the City's intranet for the Union Office.

I. Contracting Out

The City will comply with the provisions of Management Procedure Number 5.501, dated February 7, 1994, and notify the Union, in writing, of the City's intent to contract with a private agency for the provision of municipal services. The Union may, within seven (7) calendar days of this notification, request a Labor-Management Committee meeting for the purpose of discussing the potential contract. It is understood by all parties that the Union's exercise of rights granted by this Article shall in no way delay the process outlined in Management Procedure 5.501, nor impede the City's authority to enter into a contractual agreement with a private agency.

For the 2012 – 2014 contract, compliance with Management Procedure 5.501, dated February 7, 1994, is suspended.

The City will provide the union, upon request, with a listing in electronic format of unit employees' name, home address, date of employment, and department. The City will also provide mailing information of all Unit 2 employees at the request of the Union.

The City shall provide the Union a list of all Unit 2 vacancies monthly.

Section 1-4: Rights of Unit Employees

It is understood by the parties that the benefits granted by this Article shall not be interpreted or applied as requiring the City 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 City 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. All Unit employees have the right to have the Union serve as their "meet and confer" representative as set forth in the Meet and Confer Ordinance without discrimination based on membership or non-membership in the Union or any other organization.

- B. Unit employees have the right to be represented by the Union in dealings with the City concerning grievances, and if personally requested by the employee 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 department work rules or regulations. Prior to the employee being interviewed, a supervisor will advise the employee of the right to a representative. An interview becomes investigatory when facts or evidence sought by management may result in any disciplinary action against the employee being interviewed. The employee shall be entitled to receive a copy of any statement that the employee is instructed to sign. A Unit member that is under investigation for any discipline, and who is interviewed or requested to respond in writing, will be given a written statement informing the employee of the nature of the investigation and the allegations against the employee. The written statement will also notify the Unit member that the employee has the right to have a representative attend the investigatory meeting. The employee and/or representative may ask for a caucus during the meeting. Prior to the conclusion of the meeting the member or representative will have the opportunity to make a closing statement. An employee under investigation will be notified in writing every three (3) months as to the current status of the investigation. This will include a brief description of the number of known witnesses still to be interviewed and other investigative processes remaining to be completed, as well as an estimated date of completion. The employee shall have a minimum of seventy-two (72) hours excluding weekends (N days) to respond to requests for information concerning an investigation. The employee shall have a right to know if his or her accuser is a city employee or citizen/customer, and all allegations against the employee.

If 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 Union Steward will receive overtime compensation for actual time held over or a minimum of one (1) hour if called in from home.

If any Unit member is instructed not to speak to anyone regarding an investigation, this restriction does not apply to speaking to the Union Steward or the Union President or his designee.

- C. Unit employees have the right to present their own grievance, in person or by legal counsel.
 - 1. Any Unit member covered hereunder or his representative designated on a written form signed by the employee shall, on request and by appointment, be

permitted to examine his departmental personnel file, in the presence of an appropriate supervisory official of the Department.

2. No Unit member shall have any adverse comments entered into a departmental personnel file without the member being informed by a supervisor. The Unit member shall be asked to date and sign such material solely as evidence of being advised of its existence, not as indicating agreement. If the Unit member requests, he shall receive a copy of the adverse comment.
 3. Unit members may, at their discretion, attach rebuttal statements to any material contained in their departmental personnel file, which may be adverse in nature.
- D. The City will comply with provisions of A.R.S. Section 12-2506, paragraph D, subparagraph 1, and assume responsibility for actions of any Unit II employee in a legal proceeding for personal injury, property damage, or wrongful death, when it is demonstrated that the employee was performing his regularly assigned duties without malice or any degree of negligence.
- E. **All unit employees may request that their home department personnel files 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 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.**

Purging requests apply to all files, in all formats, in all locations, with the exception of the "Inactive" section of the Central HR Department personnel file.

Upon request, performance evaluations over 10 years old will be purged from a unit member's personnel file after 10 (ten) years as an active employee.

If an employee receives a written reprimand during the rating period, the supervisor will document the improvement required in the employee's performance evaluation without documenting the issuance of discipline.

Upon request, a unit member may have documents related to disciplinary actions, which are over ten (10) years old, removed from the home department personnel file and moved to a section marked "Inactive" in the Central HR Department personnel file when there have been no incidents or problems of a similar nature within the ten year period immediately preceding the request. The term "disciplinary actions" is defined as follows:

Any discipline given a unit member that resulted in a suspension of eighty (80) hours or less and, 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, 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.

In the event documentation that is eligible for purging from the home department personnel file is not purged, it will not be considered in future disciplinary matters. Discipline over five years old will not be considered in any process.

- F. The City shall post on employee bulletin boards any new policies and/or revision in City or written department policies and procedures affecting Unit II employees. Notice shall remain posted for not less than twenty-one (21) working days. Review of policy and procedure revisions shall be included in employee meetings and shift briefings when appropriate and practical to do so. The City will notify employees of new or revised written City or Department policies affecting Unit employees as soon after release as possible.
- 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 file for both positive and negative incidents. 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 above the line the statement: "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 after no more than a maximum of one (1) year from the incident, provided no further incidents of a similar nature occur during this one (1) year period.

- H. If an employee is not given his/her PMG by the annual review date, the employee's merit increase will be processed within twenty-one (21) calendar days following the above due date and be retroactive to the PMG annual review date. (If PMG is an overall "met").
- I. All unit members have the right to be treated in a manner which is fair and impartial.

Section 1-5: Prohibition of Strike and Lockouts

- A. The provisions of Section 2(17) and Section 13 of the Meet and Confer Ordinance are expressly incorporated herein.
- B. There shall be no "lockout" by the City during the term hereof.

Section 1-6: New Positions/Classifications

- A. 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 City shall notify the Union, in writing, of the results of any Unit II reclassification study no less than ten (10) calendar days prior to that study being presented to the Personnel Committee. When the Personnel Committee agenda is sent to the involved department(s), a copy will also be sent to the Union.
- 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 the Phoenix Employment Relations Board for appropriate action.
- C. The City agrees that it **shall** notify the Union **thirty (30) days** in advance in writing when significant changes will be made in the duties, responsibilities, training, or experience qualifications in position classification standards resulting in classification changes **or resulting in positions being removed from the unit.**
- D. Requests for Studies
 - 1. The Union may submit written requests for job classification studies to the Labor-Management Committee.
 - 2. 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.
 3. 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 in that respect.
 4. The City will inform the Union when Union requested classification studies commence and will inform the Union of progress on the study at sixty (60) day intervals at the scheduled Labor Management Committee meetings.
- E. In the 2011 Segal Pay and Benefits Study, the classifications of Electricians, Airport Security Guard, Equipment Mechanics, Tradeshelpers, and Heavy Equipment Mechanics were studied for appropriate compensation. The City has been in a classification study moratorium since 2008. In the event it is lifted, the Human Resources Department agrees to include the study of Equipment Mechanics (assigned to Fire Shop) to its Class and Comp Work Plan.**

ARTICLE 2: Grievance/Arbitration/Labor Management

Section 2-1: Grievance Procedure

It is understood by the parties that the benefits granted by this Article shall not be interpreted or applied as requiring the City 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 City 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

The parties agree that the first attempt to resolve employee complaints arising under this M.O.U. will be an informal discussion between the employee and his immediate non-Unit supervisor only.

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-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 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 employee, submitted as herein specified, claiming violation(s) of the specific express terms of this Memorandum for which there is no Civil Service or other specific 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 employee 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 immediate (non-Unit) supervisor within fifteen (15) calendar days of the initial commencement of the occurrence being grieved or when the employee had 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 immediate non-Unit supervisor shall, within ten (10) calendar days of having received the written grievance or such meeting, whichever is later, submit his response thereto in writing to the grievant and the grievant's representative, if any.

Step II

If the written response of the immediate non-Unit supervisor does not result in a resolution of the grievance, the grievant may appeal the grievance by signing and completing the City form and presenting it to second level of review within ten (10) calendar days of the grievant's receipt of supervisor's 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 appeal the grievance by signing and completing the City form and presenting it to the third level of review, the Department Head or his designee, within ten (10) calendar days of the grievant's receipt of the level two

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 third level of review shall submit his response to the grievance to the grievant and the grievant's representative, if any.

Step IV

If the response of the third level of review does not result in resolution of the grievance, the grievant and Union may, within ten (10) calendar days of having received the Step III response, appeal the grievance by signing and completing the City form and presenting it 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 President of the Local or the President's designee.

At the beginning of each contract year, the Union and the City will each select three 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.

This Grievance Committee composition is a **continuing** pilot program for the **2012-2014** 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 President of the Local or designees on June 30, **2014**.

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 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 the written notice to the Labor Relations Division within ten (10) calendar days of having received the Step III response. If the grievant and the

Union so elect in writing within the above time limit, in lieu of such Grievance Committee hearing, the grievance may be reviewed by an arbitrator.

The parties or their designated representatives shall agree on an arbitrator, and if they are unable to agree on an arbitrator within a reasonable time, either party may request the Federal Mediation and Conciliation Service 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 the 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 Memorandum or of Departmental rules and regulations in considering any issue properly before him.
2. The arbitrator shall be expressly confined to the precise issues submitted and shall have no authority to consider any other issue.
3. The arbitrator shall be bound by applicable State and City Law.

The arbitrator shall submit his findings and advisory recommendations to the grievant and the City Manager, or their designated representatives. The costs of the arbitrator and any other mutually incurred costs shall be borne equally by the parties.

Step V

The City Manager shall, within ten (10) calendar days of the receipt of the arbitrator's written findings and recommendations, make the final determination of the grievance and submit it in writing to the grievant and 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 the specific terms of Article 1, Section 1-3 of this Memorandum. The Union shall file such grievance at Step III of the procedure. All other grievances must be filed and signed by Unit employees subject to the provisions of this Article.

E. Group Grievance

When more than one Unit employee claims the same violation of the same rights allegedly accorded by this Memorandum, 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 employees. Such group grievances shall be filed at the step of this procedure which provides the lowest level of common supervision having authority over all named grievants. Each Unit employee that is a party grievant must be named and must sign such group grievance.

F. Time Limits

Failure of the City Management representatives to comply with time limits specified in Section 2-1 C shall entitle the grievant to appeal to the next level of review; and 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.

G. Notice to Union of Grievance Resolution

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 Memorandum.

The City will ensure that a copy of every MOU grievance filed by a Unit member, including the response from management, is forwarded to the Union at each step of the process.

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

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 President or any Officer of the Union within ten (10) calendar days of the occurrence prompting the grievance, or within ten (10) calendar days of the date upon which the employer became aware of the situation prompting the grievance. The President, or 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 arbitration pursuant to Step IV herein; provided that the employer shall bear the cost of the services of the arbitrator.

J. After the department head's decision, but prior to review by the Grievance Committee, the parties involved may mutually agree to submit the grievance to the Labor Relations Administrator. The grievance as originally written and the attached response from the department head must be submitted to the Labor Relations Division within ten (10) calendar days of receipt of the department head's answer. The Labor Relations Administrator shall meet with the department head, the employee, and his/her representatives, if any, in an attempt to resolve the

grievance within ten (10) calendar days. The Labor Relations Administrator shall then submit written recommendations for resolution to the employee, his/her representatives, if any, and department head within ten (10) calendar days of the meeting.

If the parties are unable to resolve the grievance in accordance with this section, the employee may appeal the grievance to Step IV within ten (10) calendar days from receipt of the Labor Relations Administrator's response.

The Union and the City agree to meet at regular intervals (as defined in Article 2 Section 2-2 Labor/Management Committee) to find ways to improve the grievance procedures.

Section 2-2: Arbitration

A. Independent Arbitrator

Any Unit member who is a classified employee having completed the prescribed probationary period who has received a disciplinary demotion, suspension, or discharge, and has a right to appeal that disciplinary action pursuant to the Personnel Rules, may under the provisions of this article request the Civil Service Board appoint as a hearing officer an independent arbitrator selected pursuant to the procedures described in Section 2-1 C below.

B. Appeal

The Union, on behalf of the employee, may request the selection of an independent arbitrator as the hearing officer for a Civil Service Board appeal of a disciplinary action. Such request must be made within fourteen (14) calendar days after the date of service of notice of the order of suspension, demotion, or dismissal on him personally, or twenty-one (21) calendar days from the date of mailing by certified mail the notice of the order of suspension, demotion, or dismissal. The request must be in writing and must state specific allegations in the discipline notice with which the employee disagrees. The request must be personally delivered to the Board or deposited in the United States mail, certified return receipt requested, postage prepaid, addressed to the office of the Civil Service Board, within the above-stated time.

The Union, on behalf of the employee, shall also immediately thereafter file copies thereof with the complainant department head and the City Attorney. At the time the Union files the request for hearing, it shall set forth whether the hearing will be public or private.

C. Selection of Arbitrator

If the request for an independent arbitrator to be appointed as a hearing officer is approved by the Civil Service Board, the Labor Relations Administrator or his designated representative on behalf of the City and the Union president or his designated representative on behalf of the employee shall agree on an independent arbitrator within ten (10) calendar days after approval and appointment by the Board of the appeal request. If an agreement on an independent arbitrator cannot be reached within said ten (10) calendar days, either party may request that the Federal Mediation and Conciliation Service (FMCS) or the American Arbitration Association (AAA) provide a list with the names of seven (7) arbitrators with public sector experience. In requesting such lists, the parties shall stipulate that arbitrators should be from within Arizona.

The parties shall, within seven (7) calendar days of the receipt of the list, select the arbitrator by striking names alternately until one-name remains. The remaining name shall be designated as the independent arbitrator appointed by the Civil Service Board as the hearing officer for the appeal. The parties shall jointly communicate with the chosen arbitrator to advise him of the appointment.

In the event that the chosen arbitrator is unable to accept the appointment as hearing officer, the parties shall either select another independent arbitrator from a new list in the same manner as described above, or if mutually agreeable select another independent arbitrator from the original list. The independent arbitrator chosen shall be designated as the hearing officer appointed by the Civil Service Board for the appeal.

D. Time for Hearing

When possible the hearing date shall be set within thirty (30) calendar days from the request. Delays may be granted by mutual agreement of the parties. However, any such delay occurring at the request of the Union, shall automatically be excluded from any calculations of back pay to the employees, if any, as determined by the Civil Service Board.

E. Hearing Procedures

The hearing procedures will be the same as the procedures set forth in Rule 22d, Personnel Rules of the City of Phoenix. In the conduct of the hearing, the hearing officer shall not be bound by the technical rules of evidence, nor shall informality in any of the proceedings or in the manner of taking testimony invalidate any order, decision, rule, or regulation made or approved by the Civil Service Board.

F. Witnesses

An employee appellant, or an employee subpoenaed as a witness, shall be granted a leave of absence from his/her regularly assigned duties during his/her regularly assigned work hours without loss of pay for the time.

At the request of either party, the arbitrator shall order that any witness who will testify during the hearing be excluded from the hearing room until such time as they testify. The City and the Union may exclude from the operation of this provision one representative each of the City and the local Union.

G. Proposed Findings; Objections to Report

Either party may file with the hearing officer written proposed findings of fact and conclusions within seven (7) calendar days of the conclusion of the hearing. A copy of such proposed findings and conclusions shall be served on the other party at the same time as filing with the hearing officer.

No later than two (2) calendar days before the Civil Service Board meeting where the appeal has been scheduled for hearing either party may file with the Civil Service Board written objections to the hearing officer's report. A copy of such objections shall be served on the other party at the same time as filing with the Civil Service Board. No post-hearing evidence shall be submitted.

H. Requirements

The independent arbitrator selected by the parties and appointed by the Civil Service Board pursuant to this article shall be bound by the following:

1. The independent arbitrator shall neither add to, detract from, nor modify the language of this Memorandum of Understanding.
2. The independent arbitrator shall be expressly confined to the precise issues submitted and shall have no authority to consider any other issue.
3. The independent arbitrator shall be bound by applicable Federal, State, and City laws.

I. Report

Within two (2) weeks of the conclusion of the hearing, the hearing officer shall forward all records and the report containing a statement of the findings of fact, conclusions, and recommendations concerning the appeal to the Civil Service Board and send a copy of the report to the parties. The hearing officer may recommend to the Civil Service Board the discipline be upheld or modified, or rescinded pursuant to Personnel Rule 22 (e).

J. Costs

The cost of the independent arbitrator and other costs related to obtaining said arbitrator shall be borne equally by the parties. Each party will be responsible for its own costs incurred in the hearing process, including but not limited to costs for legal services, service of subpoenas, and expert witnesses.

K. Civil Service Board

It is expressly understood that this article shall not impinge on the powers and duties of the Civil Service Board as provided for in Section 3 of Chapter XXV, Phoenix City Charter and Rule 22, Personnel Rules of the City of Phoenix.

L. Representation

The parties agree that for the purpose of this article the City will be represented by the Labor Relations Administrator for the City of Phoenix or designee and the employee will be represented by the President of AFSCME, Local 2384 or designee.

Section 2-3: Labor-Management Committee

It is understood by the parties that the benefits granted by this Article shall not be interpreted or applied as requiring the City 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 City 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 two (2) representatives of the Union and two (2) representatives of the City. The purpose of the Committee is to facilitate improved labor-management relationships by providing a forum for the free discussion of mutual concerns and to attempt to resolve problems brought to its attention.
- B. The Committee shall meet bi-monthly or at other mutually scheduled times.
- C. The Chair of the committee shall be rotated between the members. The members shall, in advance of a meeting, provide the meeting's chair with proposed agenda items, and the chair shall provide the members with the meeting agenda in advance of the meeting.
- D. Representatives of the Union on the committee who are employees shall not lose pay or benefits for meetings mutually scheduled during their duty time.

- E. The Union shall be advised of management recommendations for contracting of work presently being performed by Unit employees which would directly result in a reduction in the number of permanent Unit positions during the term of this agreement. The Union may request an opportunity to discuss these recommendations in the Labor-Management Committee prior to any final recommendation to the City Council. Failure by the City to notify the Union under this Article may be subject to the Grievance Procedure of this Memorandum.

The Management recommendations, and final decision thereon by the City, shall not be subject to the Grievance Procedure (Article 2 Section 2-1) of this Memorandum.

- F. The Union and Management agree to meet to attempt to resolve outstanding issues related to duty and off-duty time for Civil Service Board/Phoenix Employment Relations Board meetings/hearings.

The Union and Management agree to meet concerning the issues of providing prescription safety glasses to Unit employees, as well as an increase in safety boot vouchers.

The issue of employee parking at Sky Harbor Airport Terminal buildings will be discussed.

The Union and Management agree to meet concerning the following issues: work schedules and shifts, uniforms and personal protective equipment, and call out and show up pay.

Any signed/dated written Labor/Management agreements with the signatures of both parties and the Chairperson will be binding on the parties for the remaining term of the M.O.U.

Section 2-4: Health and Safety Committee

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. 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.

A Unit employee may file, without fear of discipline, retaliation, or discrimination, a grievance (Article 2 Section 2-1) when, in his best judgment, the City has failed to comply with specific safety and health standards promulgated by local, state, and federal regulations.

The City will continue its practice of providing personal protective equipment to protect employees from recognized safety and health hazards.

- 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 chair shall rotate among the members.
- C. The committee shall meet quarterly or at other mutually scheduled times 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. In the discharge of its function, 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. Union members assigned to the Health and Safety Committee shall be permitted to attend Department Health and Safety Committee meetings.

ARTICLE 3: Compensation/Wages

Section 3-1: Wages

- 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, the 1% wage concession is restored.

Third, the employer deferred compensation contribution is restored by 0.95%.

All other 2010-2012 concessions remain in effect through the first year of this agreement including 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. For the contract year 2013-2014, the 2012-2013 economic concessions will continue, unless the Stability Indicators in Attachment B are met. Full restoration of economic concessions includes compensatory time conversion, 12 hour rule, fifty percent (50%) vacation sell-back, 1.95% deferred compensation, and 0.03% pay increase.**
- C. 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.**
- D. Unit II Employees required by the City to maintain a Commercial Drivers License (CDL) as a secondary part of their regular position duties shall receive twenty cents (\$.20) in addition to their base hourly rate. This pay is not applicable to all positions in classifications which hold CDLs, nor is it applicable to positions in classification in which driving is a primary function of the position.**
- E. 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 principles.**
- F. The term "Pay Schedule" shall mean the schedule computed and published by the Human Resources Department for payroll purposes.**

Section 3-1A: Longevity-Performance Pay

Longevity-Performance Pay

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

A. Pay Benefit:

In November of each calendar year (paid the first pay period in the month of December of each calendar year), and May of each calendar year (paid the second pay period in the month of June of each calendar year), unit members who have completed at least six (6) years of continuous full-time service and who meet the additional qualifications specified in this section shall qualify for one hundred and three dollars (\$103.00) for the completion of each year of continuous full-time service in excess of five (5) years, up to an annual maximum of three thousand five hundred and two dollars (\$3,502) at the completion of 22 years of continuous full time service.

In November of each calendar year (paid the first pay period in the month of December of each calendar year), and May of each calendar year (paid the second pay period in the month of June of each calendar year), unit members who have completed twenty three (23) years or more of continuous full-time service and who meet the additional qualifications specified in this section shall qualify for one hundred thirty-eight dollars and eighty-nine cents (\$138.89) for the completion of each year of continuous full-time service in excess of five (5) years, up to annual maximum of six thousand one hundred twelve dollars (\$6,112) at the completion of twenty-seven (27) years.

B. Qualifications:

1. An employee must have completed at least one year of continuous full-time service at the top step in his classification.

Qualifications for longevity pay are made in the base class and will not be affected by movement into or out of assignment positions. As well, longevity will not be affected by movement to positions within the same pay range.

When a position is reclassified to a higher classification, or when a classification is assigned to a higher pay range, incumbents who are receiving longevity pay shall be moved to that step of the new range which corresponds to the closest to their combined base pay and previous longevity amount (incumbent's last semi-annual payment times two), and which does not result in a decrease from that combined amount. The placement in the new range will be limited to the maximum step in the range. If the reclassification or pay range change results in only a maximum possible one-range increase and the incumbent is receiving longevity pay, he/she will be moved to the top step and continue to be eligible for longevity pay.

2. An employee must have completed six (6) years of continuous full-time service.
3. An employee must have received an overall performance rating of "meets standards" or better on his latest scheduled performance evaluation on file in the Human Resources Department.

4. 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. Payments will be made within thirty (30) days of the qualifying date.
2. Employees who separate from City employment after the qualifying date but prior to the payment date shall receive the payment in their termination pay.
3. The longevity payment will be included in the regular paycheck instead of being paid in a separate warrant.

D. Longevity Program Evaluation

During the first twelve months of this agreement, the Union agrees to actively participate as a member of a task force consisting of (but not limited to) representatives from the City Manager's office, the Human Resources Department and the Alliance for Innovation to explore and develop alternatives to the Longevity Pay program.

Section 3-2: Overtime

- A. Overtime is defined as time assigned and worked beyond the regularly scheduled workweek or daily work shift; it being understood that 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 including paid meal periods. In addition, when an employee is assigned and works two (2) eight (8) hour shifts, and/or two (2) ten (10) hour shifts, or any combination of the two shifts, the second of which commences less than twelve (12) hours after the regularly scheduled conclusion of the first, that amount of time falling within said twelve (12) hour period is deemed overtime for purposes of Section 3-2 D below, except, however, that such twelve (12) hour rule does not apply to regular shift change situations, relief positions, and positions in the classification of Event Services Worker at the Phoenix Convention Center. The twelve (12) hour rule also does not apply if an employee works less than a full shift either before or after his/her regular shift.

This twelve (12) hour rule was suspended in the 2010 – 2012 concession agreement. This suspension remains in effect through the 2012 – 2014

agreement unless the conditions in attachment B are met for second year restoration.

- B. For the 2012 – 2014 M.O.U. contract 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.

- C. Overtime shall be worked and shall be allowed if assigned by the non-Unit supervisor or other authorized representative of the City.
- D. Overtime work will be compensated at one and one-half (1 1/2) times the regular rate, which will be computed in accordance with provisions of the Fair Labor Standards Act. Such payment will commence after the first seven (7) minutes.
- E. In lieu of cash payment, a Unit member may request compensatory time credits up to a maximum accumulation of two hundred and ten (210) hours effective July 1, 2008; increase to two hundred and fifteen (215) hours effective July 1, 2009. Authorized overtime hours worked in excess of the maximum accumulation shall be paid in cash. The request for compensatory time credit must be made at the time the overtime is worked. The Department Head shall make the final determination on the method of payment (either cash or compensatory time). Use of compensatory time off shall be subject to departmental approval and scheduling.
- F. Compensatory Time Conversion

A unit member may convert accumulated compensatory time credits to cash twice per MOU year, up to a maximum of seventy (70) hours by notifying the Department Head in writing of such intent either July and/or November. Payment will be made on or before August 31 or November 30. Payment can be made in a separate warrant if requested by the employee.

This compensatory time conversion benefit was suspended in the 2010 – 2012 concession agreement. This suspension remains in effect through the 2012 – 2014 agreement unless the conditions in attachment B are met for second year restoration.

- G. The City shall endeavor to distribute the opportunity for non-standby overtime equally between employees or crews of employees within the same classification and work location.

Records of overtime worked by employees shall be **provided to the designated Union Steward, to be** posted on a quarterly basis on Union bulletin boards. In **areas where no Steward is available, the list will be sent electronically to the Union Hall general email address: afscme2384@afscme2384.com.** In addition, records of overtime worked by Unit members shall be made available for inspection by an authorized representative of the Union upon advance request and at reasonable times.

- H. Overtime shall be voluntary, except however, the City reserves the right to assign overtime in the event insufficient employees volunteer, or to avoid inadequate staffing, or to ensure service delivery, or to conduct mandatory training.
- I. Where a ten (10) hour, four (4) day workweek schedule is implemented, overtime is defined as time assigned and worked beyond ten (10) hours a day or forty (40) hours a week.

Section 3-2A: Call Out Pay

The eight (8) hour period before the start of a Unit employee's regular shift is to be called "rest time." If an employee is called out during this time, the employee shall be allowed to adjust their work hours up to 4 hours (flex time) to allow the employee to have proper rest before the start of the employee's shift, whenever possible at the supervisor's discretion. Example: An employee starts at 6 am, and is allowed to start at up to 10 am to 8 pm.

An employee shall have a minimum of three (3) hours' pay at overtime rates when called out for work after going home from a shift, or when called out for overtime work while on standby pay.

Overtime for this call-out shall begin when employees report to the place where they are instructed to report and shall terminate forty-five (45) minutes after being relieved from duty. These forty-five (45) minutes travel time shall be included in the minimum guarantee and shall be paid only if the total work and allowed travel time exceed the minimum.

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.

Provisions of this section shall be interpreted in a manner which complies with the Fair Labor Standards Act.

Section 3-3: Out-of-Class Pay

A Unit employee who is 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 employee 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 will be credited to the qualifying period. The days of out-of-class assignment need not be consecutive. Once this qualification is satisfied, no additional re-qualification will be required. In addition, out-of-class credit shall be given for out-of-class work for five (5) hours work for a ten (10) hour shift and for four (4) hours work for an eight (8) hour shift.
- B. Temporary assignments out-of-class shall be recorded only in full shift units. A Unit employee working out-of-class for five (5) hours for a ten (10) hour shift or four (4) hours for an eight (8) hour shift shall be credited with working out-of-class for the entire shift.
- C. To qualify for out-of-class pay, a Unit employee must be given the assignment in writing by a non-Unit supervisor or other authorized management representative of the City.
- D. Time worked in a higher class shall not earn credits toward the completion of probationary requirements in the higher class. Such time, however, shall be submitted by the employee as creditable experience in promotional examinations for 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 classification.

Section 3-4: Sick Leave Conversion at Retirement

Effective July 8, 2002, the following benefits shall apply:

Upon retirement, bargaining Unit employees with a minimum of 750 hours of accrued and unused sick leave, excluding the first 250 hours, will be paid for 25% of the remaining hours as base hourly wage.

Section 3-4A: Sick Leave Payout

All accumulated sick leave hours on the city's official file at the time of the member's death will be paid. Payment will be based upon the member's base hourly rate at the time of death.

Section 3-5: Shift Differential Pay

Unit employees shall receive ninety cents (\$0.90) per hour in addition to their regular rate of pay when working a night shift which ends at or after 9:00 p.m., and before midnight, and one dollar and twenty-five cents (\$1.25) per hour in addition to their regular rate of pay when working a night shift which includes work during the period after midnight to 4:00 a.m.

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

Shift premium pay shall continue to be paid at the rate of the regular shift for any additional hours worked following the regular shift. Effective July 1, 1999, night shift premium pay applies to regular part-time employees.

Section 3-5A: Weekend Shift Differential Pay

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

Effective July 10, 2006, a Unit member shall receive forty cents (\$0.40) per hour in addition 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 to be available for call-out outside the employee's regular work schedule, the member shall be compensated for such assigned stand-by hours at two dollars (\$2.00) per hour. Starting in the first pay period in July 2007, stand by pay shall increase to two dollars and fifty cents (\$2.50) per hour. Employees 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 for work as scheduled, shall be paid for at least four (4) hours at the 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. 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 regular rate of pay, beginning at release, or to the end of the scheduled work shift, whichever occurs first.

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, "Stand-By Pay" hereof). An employee shall have the option of using either vacation time or compensatory time for the balance of his regular shift. Employees called back to work shall be entitled to their regular pay only and not any premium for work performed during the balance of their regularly scheduled shift.

Section 3-8: Jury Duty

A Unit employee called for jury duty or subpoenaed by a court as a witness shall be granted a leave of absence from municipal duties without loss of pay for the time actually required for such service and reasonable travel time and shall, if he chooses, retain jury or witness pay, except where such testimony or witness duty is the result of an employee's official duties as a City employee.

To be eligible for paid leave for jury or witness duty, an employee must present verification of his call to jury duty or witness duty.

Paid witness leave shall not be allowed when the Unit employee is the defendant or plaintiff in a court action.

Section 3-9: Deferred Compensation Program

The City will contribute 3.6% of the annual base wage to a deferred compensation fund for each Unit employee for each year of the M.O.U.

The Deferred Compensation Program benefit was reduced by 2.9% to .7% in the 2010-2012 concession agreement and restored by 0.95% in the 2012-2014 agreement. The balance of the 1.95% reduction remains in effect through the 2012 – 2014 agreement unless the conditions in attachment B are met for a full or partial second year restoration.

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. The work week shall only consist of a schedule of consecutive work days in a seven (7) calendar day pre-established work period, except in the Equipment Management Division of Public Works Department. Any changes to the consecutive workday schedule will be made by mutual agreement between AFSCME 2384 and the City on the 4 day, 10 hour work shift.
- C. Within a five (5) day work schedule, the work day will consist of eight (8) hours of work within any twenty-four (24) hours in a pre-established work schedule, excluding relief positions. Within a four (4) day work schedule, the work day will consist of ten (10) hours of work within any twenty-four (24) hours in a pre-established work schedule, excluding relief positions.

The City and the Union recognize that no regularly scheduled shift lengths, other than those outlined in Article 4, shall be observed in Field Unit II.

D. Relief Crews

At the 91st Avenue and 23rd Avenue Wastewater Treatment Plants, there may be one (1), but no more than one (1), relief crew per plant as determined by management.

- E. Permanent regular work schedules showing the employees' shifts, workdays, and hours shall be posted on appropriate department bulletin boards.
- F. 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 affected employees and the Union **Hall**, not less than fourteen (14) calendar days in advance and will notify the Union of such changes, prior to actual implementation.

In emergency situations, temporary work schedules may be adopted without the fourteen (14) calendar days notice to the affected employees. "Emergency" shall mean unforeseen operational circumstances.

- G. Summer hours shall begin no later than the last Monday in April and shall terminate no earlier than the second Monday in September 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 in the year than specified in this section, or terminated later in the year than specified in this section.
- H. The City may implement ten (10) hours per day, four (4) days per week work schedules when it is determined by the City that such scheduling is beneficial to City operations.

Section 4-2: Rest and Lunch Periods

Scheduled work shifts shall include meal periods to be observed as follows:

5 DAY WORK WEEK

MEAL PERIOD

- | | |
|-------------|---|
| 8 hours | Under normal conditions, no less than 30 minutes on the job, paid at straight time. |
| 8-1/2 hours | No less than 30 minutes, unpaid. |
| 9 hours | No less than 60 minutes, unpaid. |

4 DAY WORK WEEK

MEAL PERIOD

- | | |
|--------------|---|
| 10 hours | Under normal conditions, no less than 30 minutes on the job, paid at straight time. |
| 10 1/2 hours | No less than 30 minutes, unpaid. |
| 11 hours | No less than 60 minutes, unpaid. |

Two (2) non-work periods of fifteen (15) minutes during the above scheduled work shifts shall be permitted to promote the health, safety, and efficiency of employees on the job.

Activities of employees during those non-work periods shall not be subject to any unreasonable restrictions.

When work demands permit, with a supervisor's approval, a Unit member may combine their thirty (30) minute meal period with one of his fifteen (15) minute rest periods to achieve a forty-five (45) minute meal period. This paid leave time counts as hours worked.

When a unit member works overtime of two (2) hours or more in addition to their daily work shift, they shall be entitled to an additional fifteen (15) minute break. Every additional two (2) hours of overtime will entitle an employee to an additional fifteen (15) minute break.

After four (4) consecutive hours of overtime, a unit member shall be entitled to a paid meal break of thirty (30) minutes, but in no event shall a unit member be entitled to more than one such break for every eight (8) consecutive hours of overtime.

Employees shall be allowed reasonable time, as necessary, for personal clean up prior to the commencement of the lunch and break periods.

Section 4-3: Clean-Up Time

Unit 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.

Section 4-4: Seniority

- A. The City shall provide the Union with a list of Unit members showing each Unit member's City employment date and class employment date.
- B. Seniority shall be by length of service within a class. If seniority within the 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 training, work assignments, vacation schedules, and in the determination of layoffs.

Section 4-5: Bump/Bid Procedure Equipment Management Division

Policy: To provide an equitable system for employee selection of shift, days off, and area location, the Union and the City recommend that departments considering the

implementation of a bump/bid policy for a designated group of Unit II employees use this article as a guideline in the development of their policy.

A. General Guidelines

1. Annual Bump/Bid

There will be a full Bump/Bid each fiscal year, in December, which will become effective the first pay period in January.

2. Interim Bump/Bid

A layoff, a transfer of a vacant position number to another shift or shop, the addition of a permanent position number, a promotion, demotion, dismissal, resignation, or retirement will be filled subject to the in-class Bump/Bid. This means that any time positions become vacant within a particular classification, an open sign-up will be held. Vacant positions will be filled according to the seniority ranking of interested employees within a class.

3. Exceptions

a. The specialties listed below will be exempt from the general Bump/Bid procedure. Employees in these specialties will Bump/Bid only within their specialty and/or section.

- 1) Motorcycle Mechanics
- 2) Heavy Equipment Mechanics in the following assignments:
 - Fire shop
 - Off-road equipment
 - Aerial equipment**
 - 91st Ave. Treatment Plant
 - Landfills
- 3) Police substations-
 - Auto **Technicians** (master)
 - Fire Shop Auto **Technicians**
 - Equipment Service Worker II
- 4) Leads
- 5) Temporary, new hire and promoted employees*
- 6) Rovers
- 7) Make-ready shop (all personnel)
- 8) Service writers
- 9) Auto Parts Clerk III (annual bump for this class will be held after the physical inventory each year).
- 10) **Engine diagnostic specialist**
- 11) **Auto Mechanic at the 91st Ave. Treatment Plant**

- * Management reserves the right to place new employees on any shift and location for a six (6) month period for training and evaluation purposes. These employees become subject to the Bump/Bid procedure upon completion of six (6) months' employment. The day after the due date shown on their six (6) month performance rating will be the effective date.

At the end of the six (6) months, the position occupied by the temporary, new, or promoted employee will become available to the most senior employee who has signed up within the class. The two employees will then "switch" positions until the next Bump/Bid.

- b. Positions of employees who have been on long-term industrial leave or light duty, or personal illness, for at least one hundred (100) days, at the time of the annual bump/bid will be excluded from the process. Upon return to regular, full-time employment, management will assign the employee to an available shift and location until the next Bump/Bid. Employees must return to work seven (7) days prior to the original bump/bid posting to be included in the bump/bid.

4. Annual Bump/Bid Completion

All personnel shall be frozen into the position selected, except to bid for openings created as outlined in Section 4-5 A (2) "Interim Bump/Bid."

5. Delegation of Authority

Employees may delegate/select a representative to participate in the bump/bid in their absence. This may be done by completing the official Bump/Bid Authorization Form and presenting it at the designated sign-up time. This form must be signed by the delegating employee and the employee performing the selection. The actual Bump/Bid Sign-up Sheet will be annotated by the employee's representative printing the employee's last name and initialing the entry.

6. Official Notification

The annual bump/bid will be posted, in its entirety, for a minimum of fourteen (14) calendar days prior to the official sign-up date. A copy of the document will be posted at all Equipment Management Division Facilities.

B. Seniority

Seniority within classification will be the principal factor for bumping and/or bidding.

1. Determination of Seniority

Seniority constitutes length of certified status within a class of the City service. When two or more employees have the same length of time in the class, the employee with the longest certified City employment time shall be senior. If a tie still exists, the employee with the least amount of leave of absence without pay (excluding leave of absence due to sickness, injury, or military service) shall have the greater amount of seniority.

2. Dispute Resolution of Seniority

Any disputes concerning the calculation of seniority length will be resolved by the Public Works Department Human Resources Officer using the guidelines identified in the above "Determination of Seniority."

ARTICLE 5: Benefits

Section 5-1: Health Insurance and Employee Assistance

The City will continue to offer health insurance plans for Unit members.

A. Medical and Dental Insurance

1. Effective August 1, 2004, the City and the Union agree to maintain the current split for the health insurance monthly contribution for both single and family coverage. If there is a rate increase or decrease, the City will pay 80% of the new monthly contribution and the employee will pay 20%.
2. It is understood between the City and the Union that any changes in health insurance benefits or rates shall be effective on or about August 1, and that the City's monthly contributions will not, under any circumstances, exceed the actual premium cost.

B. Employee Assistance Program

The City will continue the Employee Assistance Program, which 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.

- C. 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 Local 2384.

Section 5-2: Dental Insurance

The current dental split will also remain the same. 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.

The City agrees to contribute 100% of the cost to provide dental insurance for single employee coverage, and 75% of the cost for family coverage.

The City agrees to 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 dollars (\$4,000) 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.

Section 5-3: Life Insurance

The City will provide at no cost to Unit employees off-the-job and on-the-job life and dismemberment insurance with a face value equivalent to the employee's annual base salary rounded up to the next one thousand dollars (\$1,000.00) or twenty-five thousand dollars (\$25,000.00), whichever is greater; in addition, the City will also provide death in the line of duty insurance with a face value of seventy-five thousand dollars (\$75,000.00). It is understood between the City and the Union that any change in life insurance benefits shall be effective on or about August 1. 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 base hourly rate of pay at the time of death. The beneficiary shall be that person 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 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 (12) consecutive months are eligible for long term disability coverage**. After an established **ninety (90) calendar day** qualifying period, the plan will provide up to **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 Leave

A. 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 | Third Monday in January |
| President's Day | Third Monday in February |
| Cesar Chavez's Birthday | March 31 |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | First Monday in September |

| | |
|-------------------------|---|
| Veteran's Day | November 11 |
| Thanksgiving Day | Fourth Thursday in November |
| Thanksgiving Day | Friday after Thanksgiving Day |
| Christmas Eve | Four (4) hours on December 24 |
| Christmas Day | December 25 |
| 24 Personal Leave Hours | After completion of six (6) months' service |

1. Personal leave hours are added to an employee's vacation leave bank to be used as such.
2. When a holiday named herein falls on Sunday, it shall be observed on the following Monday, and when a holiday named herein falls on a Saturday, it shall be observed on the preceding Friday, except that the Library Department may observe such holidays on Saturday, and in the case of continuous and/or seven (7) day operations, holidays shall be observed only on the calendar days on which they actually fall. This paragraph shall not apply to Christmas Eve which shall be granted only when it falls on the employee's regular scheduled workday.

A Unit employee working in continuous and/or seven (7) day operation, whose regularly scheduled day off falls on a holiday specified above, who is not on standby (Article 3 Section 3-6), and who is scheduled to work a regular shift on such holiday and scheduled day off, shall be compensated as follows: eight (8) hours pay for the holiday plus pay at time and one-half (1 1/2) the regular rate for each hour assigned and worked to a maximum of eight (8) hours.

B. Vacation Accumulation

Vacation accrual, carryover, and separation pay-out shall be governed by the following table:

| <u>SERVICE</u> | <u>MONTHLY ACCRUAL</u> |
|----------------|------------------------|
| 0-5 years | 8 hours |
| 6-10 years | 10 hours |
| 11-15 years | 11 hours |
| 16-20 years | 13 hours |
| 21+ years | 15 hours |

MAX. CARRYOVER

MAX. PAYOUT

192 Hours

240 Hours

240 Hours

300 Hours

264 Hours

330 Hours

312 Hours

390 Hours

360 Hours

450 Hours

Unit members shall be allowed “vacation **sell-back**” twice per calendar year, on the last paycheck of November and/or May. The total annual buy out is up to a maximum of eighty (80) hours taken in no more than forty (40) hour increments, after the employee has accumulated a minimum of one hundred twenty (120) hours of vacation leave. The employee must take a minimum of forty (40) hours of vacation/comp-time during the calendar year to qualify for these payments.

The May vacation sell-back benefit (40 hours) was suspended in the 2010 – 2012 concession agreement. This suspension remains in effect through the 2012 – 2014 agreement unless the conditions in attachment B are met for second year restoration.

Unit members may contribute accrued vacation or compensatory time to other employees in accordance with City policy governing contribution of leave for serious illness 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. Child is defined as a biological, adopted, foster or stepchild, legal ward, or a child of a person standing in place of a parent. Or a brother, sister, grandparent, or in-law who are living with the employee and under his/her care. Requests to receive such leave contributions will require a completed doctor’s certification.

The parties agree that on the following specified holidays starting in July 2009, all unit members whose regularly assigned work week consists of four (4) ten-hour (10) shifts, shall not be required to submit documentation for two (2) hours of paid leave on the following holidays:

1. Independence Day, July 4
2. Labor Day, September, First Monday
3. Veterans Day, November 11
4. Thanksgiving Day, November, Fourth Thursday
5. Friday after Thanksgiving Day
6. Christmas Day, December 25
7. Memorial Day (effective May 2010)

Section 5-6: Uniforms

- A. Airport Security Guards (Class Code 24000) uniforms will be supplied by the Aviation Department.
- B. On the effective date of this Memorandum, the City will assume responsibility for the weekly cleaning/laundrying of uniforms issued to those Unit members who are employees of the Equipment Management Division of the Public Works Department.

Section 5-7: Parking

Employees regularly assigned to the Airport Terminal buildings shall be provided parking facilities without charge at a location at the airport to be specified by the Director of Aviation.

Effective July 8, 2002, all employees who pay for parking will be charged half price at any downtown City owned parking garage if they park a motorcycle.

All regular full-time and regular part-time Unit employees will receive, upon request, a City issued bus pass at no cost to the employee.

Section 5-8: Tool Allowance

- A. Unit employees in the following eligible classifications will receive a tool maintenance allowance of three hundred dollars (\$300.00) per annum.

Payment for tool allowance will be made on or about September 1.

Classification

User Technology Specialist U2

Instrumentation and Control Specialist

Trades Helper, Assigned U2

Equipment Service Worker I

Electrician Helper

Electrician Apprentice

Electrician

Electrician, Assigned Lead

Traffic Signal Technician

Telecommunications Specialist

Welder, Assigned U2

Building Equipment Operator I, assigned U2

Building Equipment Operator II, assigned U2

Building Maintenance Worker, Assigned U2

Locksmith

- B. Unit employees in the following eligible classifications will receive a tool maintenance allowance of six hundred dollars (\$600.00) per annum.

Payment for tool allowance will be made on or about September 1.

Equipment Service Worker II

Automotive Technician and all assignments

Heavy Equipment Mechanic and all assignments

Equipment Repair Specialist

Body Repair Specialist

Helicopter Mechanic

Section 5-9: Parental Leave

- A. 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.

- B. 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. 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).

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. Child is defined as a biological, adopted, foster or stepchild, legal ward, or a child of a person standing in place of a parent. Or a brother, sister, grandparent, or in-law who are living with the employee and under his/her care.

ARTICLE 6: Miscellaneous

Section 6-1: Saving Clause

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.

Section 6-2: Copies of Memorandum

Within sixty (60) days of the date that this Memorandum is adopted by the City Council, the Union will arrange for printing of jointly approved copies of it for furnishing one to

every Unit employee, Unit supervisor, and to management personnel. The cost of such duplication and distribution will be borne equally by the Union and the City.

Printing vendors secured by the Union shall comply with Ordinance G-1372 (Affirmative Action Supplier's Ordinance), as may be amended, and Ordinance G-1901 (Affirmative Action Employment by Contractors, Subcontractors and Suppliers), as may be amended.

Section 6-3: Apprenticeship Programs

The City will make available to the Union copies of all existing apprenticeship agreements affecting Unit II employees.

Section 6-4: Part-Time Employees

- A. 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 vacation credits of four (4) hours per month. Vacation credits shall be calculated and paid in cash, by separate voucher, in December and June.

Continuation of this entitlement 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 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.

- B. Hourly paid employees, excluding seasonal employees, may be considered for advancement from pay step 1 to pay step 2 after completing 1,040 hours of work at step 1. Advancement from pay step 2 to pay step 3 and each subsequent step in a range may be considered after working 2,080 hours in each step.
- C. No full-time or part-time permanent employees in the City Civic Plaza Department shall be displaced or their hours reduced by the utilization of temporary employees, unless the issue has been discussed by the parties in a Labor/Management meeting and the City has complied with the provisions of Management Procedure 5.501, dated February 7, 1994.

For the 2012 – 2014 contract, compliance with Management Procedure 5.501, dated February 7, 1994, is suspended.

Section 6-5: Department Certifications and Required Licenses

The City will reimburse Unit members of the Water Services Department for expenses incurred as a result of acquiring and maintaining certification required by the State of Arizona.

Employees will be allowed City time to renew their CDL license and/or related endorsements and will be reimbursed for such renewal fees which include the HAZMAT background screening fee.

The City will provide reimbursements to Unit members for CDL endorsements.

Section 6-6: Safety Manual

The parties agree that, during the term of this memorandum, the City will publish a Safety Manual covering all citywide safety issues.

The Health and Safety Committee established in Article 2 Section 2-3 of this Memorandum will be given the opportunity to review and to offer input on the manual while it is in draft form and before its final publication.

Once published, there will be no changes made in the manual without the review of the Health and Safety Committee.

Employees are entitled to exercise the rules under OSHA by relating to the competent person assigned that the situation is unsafe and in conflict with OSHA rules.

Section 6-7: Term and Effect of Memorandum

- A. This Memorandum shall remain in full force and effect commencing July 1, 2012 up to June 30, 2014, and thereafter shall continue in effect year by year unless one of the parties notifies the other in writing no later than **December** first of its request(s) to modify or terminate it.
- B. Except as expressly provided in this Memorandum, 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.

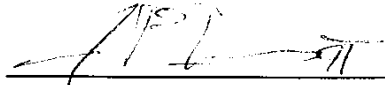
However, the parties will continue to meet with affirmative willingness to resolve grievance and disputes relating to wages, hours and working conditions without effecting the terms of this agreement.

- C. If any section or provision of this Memorandum violates existing Federal, State, or City law, then such law shall supersede such provision or section.
- D. The lawful provisions of this Memorandum are binding upon the parties for the term thereof. The Union having had an opportunity to raise all matters in connection with the meet and confer proceedings resulting in this Memorandum 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.
- E. The provisions of this Memorandum apply to all Unit employees, except that entitlement to health, life, and long term disability insurance; holiday, overtime, and show-up time benefits for regular hourly employees shall continue in accordance with present practice and policy.

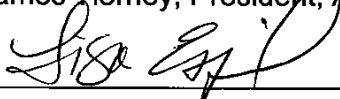
Permanent employees shall not be laid off from City employment and replaced by the hiring of part-time employees solely for the purpose of eliminating the cost of existing full-time benefits received by permanent employees.

- F. This Memorandum constitutes the total and entire agreements between the parties and no verbal statement shall supersede any of its provisions.

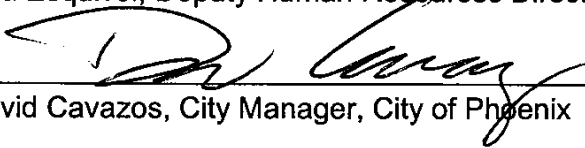
IN WITNESS WHEREOF, the parties have set their hands this
23rd day of April, 2012



James Tierney, President, AFSCME Local 2394

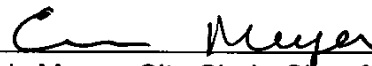


Lisa Esquivel, Deputy Human Resources Director, City of Phoenix



David Cavazos, City Manager, City of Phoenix

ATTEST:



Cris Meyer, City Clerk, City of Phoenix



APPROVED TO FORM:



ACTING City Attorney, City of Phoenix

AFSCME 2384 Team:

James Tierney, President
Luis Schmidt, Vice President
Bill Cusimano, Treasurer
Dan Ramirez, Recording Secretary
John Tyrrell, Aviation
Joe Garcia, Public Works
Robert Ayala, Water Services
Luis Feliciano, Water Services
Delores Henderson, Water Services

City of Phoenix Team:

Lisa Esquivel, Deputy HR Director
Lashieki Clark, Sr HR Analyst (HR)
Joe Giudice, Public Works
Laura Kaino, HR Supv (Water Svcs)
Kevin Mattingly, Convention Center
Ron Serio, Water Services
Rhonda Wilson, HR Supv (Aviation)

Addendum - Allocation of Stewards

The allocation of new steward positions under Article 1 will be referred to the Labor-Management Committee for appropriate action.

Guidelines for designation of new stewards shall include:

1. A designated steward must be one from amongst employees regularly working at a specified job site.
2. The designation of job site stewards shall take into consideration the following:
 - a. proportional representation of approximately 1-30,
 - b. organizational structure of department,
 - c. avoidance of duplicating service,
 - d. crew size of work unit divisions.

ATTACHMENT A
(Subject to Reallocation)

Site Steward Allocations

| <u>Department/Division</u> | <u>Site</u> |
|--|---|
| Aviation/Bldg. Ops. General Aviation | Sky Harbor Airport Deer Valley Airport Goodyear Airport |
| Maint/Air. Sect. Op./Custodians Electrical Maint. Op./Security Event Services Housing/Conventional Elderly Public Works Bldg Maint Equipment Mgmt. | Sky Harbor Airport All Term.-Sky Harbor Electrical Shop Phoenix Convention Center Phoenix Convention Center All Conventional Sites All Elderly Sites 2631 S. 22 nd Ave. 22 nd Ave. Service Center Fire Operations Salt River Service Center Union Hills Service Center Glenrosa Service Center Okemah Service Center |
| Fire Operations Center Street Trans./Materials/Insp. Street Trans./Survey Street Trans./Operations Waste/Wastewater Treatment | 150 S. 12 th St. 1034 E. Madison 1034 East Madison 2141 E. Jefferson 23 rd Ave. & Durango 91 st Ave. Plant |
| Water Pollution Control Wastewater Collection | 52 nd St. & Thomas Northwest Service Center North Yard |
| Water Customer Service | A.1-2525 E. Hess A.2-2002 E. Maryland A.3-16201 N. 21 st Ave. A.4-2301 W. Durango A.5-138 E. Union Hills |
| Water Production | Verde Plant Deer Valley Plant Squaw Peak Plant Union Hills Plant Val Vista Plant 52 nd St. & Thomas Phoenix Wells West |

ATTACHMENT A - CONTINUED

(Subject to Reallocation)

Site Steward Allocations

| | |
|-----------------------------------|--|
| Water Distribution | 3045 S. 22 nd Ave. 52 nd St. & Thomas Corona Yard Deer Valley Yard Morten Yard Paradise Valley Yard Heavy Maint. Yard Heavy Maint. Yard |
| Water/Wastewater Specialized Svcs | Electricians Heavy Maint. Light Maint. (O&M) Instrument & Control Specialist |

Chief Steward Allocations

| <u>Department</u> | <u>Division</u> |
|--|-----------------------------|
| Aviation Sky Harbor | All (4) |
| Police/Fire/Street Trans. | All (3) |
| Public Works | All (2) |
| Housing | All (2) |
| Water/Wastewater | |
| Wastewater Treatment – 23 rd Avenue | 91 st Avenue (3) |
| Wastewater Collections | All (2) |
| Water Customer Services | All (2) |
| Water Pollution Control | All |
| Water Production | All (3) |
| Water Distribution | All (2) |
| Specialized Services | All (2) |

Lead Steward Allocations

| <u>Department</u> |
|-------------------------------|
| Aviation (3) |
| Public Works (2) |
| Street Transportation |
| Phoenix Convention Center (2) |
| Fire |
| Housing |
| Police |
| Water Services (6) |

ATTACHMENT B - STABILITY INDICATORS

Required Stability Indicators to Achieve Concession Restoration in 2013-14

In 2013-14, the remainder of the 2010-2012 3.2% compensation concession level not restored in 2012-13 will be restored, if all six indicators below are met.

1. Additional direct services are provided to the community in the 2013-14 General Fund (GF) Budget equal the same dollar amount, or higher, as General Fund direct services to the community, as recommended in the 2012-13 Trial Budget.
2. City maintains its AAA bond rating.
3. Actual 2012-13 GF revenue collections equal at least the amount in the adopted 2012-13 GF Budget.
 - a. If the City Council takes any action subsequent to the adoption of the 2012-13 Budget that negatively affects revenue collected in 2012-13, then for purposes of this section, the corresponding amount of decreased revenue will be subtracted from the 2012-13 GF budgeted revenue.
4. No direct service reductions are necessary to close a budget shortfall for 2013-14 GF budget.
5. No cuts to state-shared GF revenue formulas.
6. *City achieves \$5 million or more in additional innovation & efficiency (I & E) cost savings in 2012-13.

*The matrix below will be followed if indicators 1-5 are achieved, but indicator 6 is not fully realized:

| Indicators Achieved in Addition to Achievement of Indicators 1-5 | Restoration Level |
|--|---|
| 2012-13 additional I & E cost savings is \$4 million or more but less than \$5 million | Restoration of 1.83% of deferred compensation |
| 2012-13 additional I & E cost savings is \$2.5 million or more but less than \$4 million | Restoration of 1.22% of deferred compensation |
| 2012-13 additional I & E cost savings is \$1 million or more but less than \$2.5 million | Restoration of 0.61% of deferred compensation |

The amount of restoration available will be reduced by the total compensation value to the unit of any increase in 2013-14 city health insurance premiums over 3%.

Required Stability Indicators for wage increase:

Beyond full restoration of the 2010-2012 3.2% compensation concession level, the achievement of the indicators below are necessary for any wage increase in 2013-14.

The matrix below will be used to determine the level of wage increase in 2013-14:

| Indicators Achieved | Wage Increase |
|---|---|
| <ul style="list-style-type: none"> • All indicators necessary to attain full compensation restoration are achieved. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is between 6.0% and 8.0%. | 0.2% wage increase |
| <ul style="list-style-type: none"> • All indicators above are achieved. • 2012 Community Attitude Survey results show Phoenix residents' <u>overall satisfaction with City performance</u> does not decrease by a statistically significant amount as compared to 2010 results. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is above 8.0% and less than 9.0%. | One-quarter of the percentage increase for the 2012 annual Western Region Consumer Price Index ¹ as provided by the US Department of Labor- Bureau of Labor Statistics, up to a maximum 2.5% wage increase |
| <ul style="list-style-type: none"> • All indicators above are achieved. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is 9.0% or above. | One-half of the percentage increase for the 2012 annual Western Region Consumer Price Index ¹ as provided by the US Department of Labor- Bureau of Labor Statistics, up to a maximum 2.5% wage increase |

¹The 2011 annual increase to the Western Region Consumer Price Index as provided by the US Department of Labor- Bureau of Labor Statistics was 2.8%.

MEMORANDUM OF UNDERSTANDING

2012 - 2014

CITY OF PHOENIX

AND

AMERICAN FEDERATION

OF STATE, COUNTY

AND MUNICIPAL EMPLOYEES,

LOCAL 2960 AFL-CIO

COVERING UNIT III

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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 of Phoenix, except as expressly and lawfully modified herein; 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 other terms and conditions of employment of employees of Unit III;

NOW, THEREFORE, the City of Phoenix, hereinafter referred to as the "City" and Local 2960, as an affiliate of the American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the "Union," having reached this complete agreement concerning wages, hours, and other terms and conditions for the term specified, the parties submit this Memorandum to the City Council of the City of Phoenix with their joint recommendation that body resolve to adopt its terms.

ARTICLE 1: Rights

Section 1-1: Purpose/Gender

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.

A. Recognition

The City recognizes the Union as the sole and exclusive Meet and Confer agent, pursuant to the Meet and Confer Ordinance as amended, for the purpose of representation regarding wages, hours, and other conditions of employment for all regular full time and regular part time employees in positions constituting Unit III, as certified May 22, 1978, or as may be modified by the Phoenix Employment Relations Board (PERB).

If a court of competent jurisdiction (defined as Arizona Supreme Court or U. S. Supreme Court) determines that "fair share" does not violate Arizona State Law, then the Union and the City of Phoenix shall open up the contract to bargain in good faith on this issue.

If any conflict exists between the language in an A.R. or employment/ department rule and the language of the negotiated M.O.U., the M.O.U. shall prevail.

Section 1-2: City and Department Rights

The Union recognizes that the City has and will continue to retain, whether exercised or not, the unilateral and exclusive right to operate, administer and manage its municipal services and work force performing those services in all respects subject to this Memorandum.

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 Memorandum of Understanding, and such decision making shall not be in any way, directly or indirectly, subject to the grievance procedure contained herein.

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 Memorandum of Understanding to direct its employees, to take disciplinary action for just cause, to terminate or reassign 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 preclude the City from being in compliance with the Americans with Disabilities Act.

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 full-time 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.

2. Union Stewards

The Union may designate 52 stewards including five (5) Chief Stewards and fourteen (14) Lead Stewards to serve as employee representatives. Such designation shall be made from amongst employees regularly working at the job sites as specified in Attachment "A" hereto. The Labor-Management Committee will discuss the job site allocation of the 52 stewards upon request by either party (Attachment A). Employees must have completed the initial City probationary period of one (1) year to be eligible for designation as a steward.

The Union shall notify Labor Relations in writing of its designations and re-designations of stewards.

There shall be no obligation on the City, nor shall the City change or adjust employees' permanent regular work schedules or assignments solely as a result of such designations.

One such steward from the Grievant's home department and the Grievant may, after the Grievant and the supervisor were unable to resolve the matter informally (Article 2, Section 2-l), when the Union is designated by the Grievant as his representative, attend mutually scheduled grievance meetings with department representatives without loss of pay or benefits during City time. One steward working in the same department as a unit member under investigation may also attend investigative meetings without loss of pay or benefits during City time. Stewards not from the same department as the grievant or employee

under investigation may provide representation, however the total time spent on representation will be requested from and charged to the bank of hours as outlined in 1-3 A 3.

Stewards with assigned City vehicles who are on duty and actively working, and are scheduled to return to duty at the conclusion of the meeting, may use the City vehicle to attend mutually scheduled grievance and/or labor-management meetings with department representatives.

The unit will be allowed, subject to operational and scheduling factors and fourteen (14) calendar days advance notice, up to one shift (either 8 or 10 hours depending upon their regular schedule) of paid release time for authorized stewards to attend a one-time contract orientation session conducted by the Union in each year of the contract.

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.

B. Unpaid Time

Unit members may be authorized in advance in writing to engage in lawful unit-related activities during City work hours on a non-paid basis by the City Manager or his designee in his unrestricted discretion according to the applicable Personnel Rules. A member selected by the Union to do unit representation work which takes the employee from his employment with the City shall, at the written request of the Union, and subject to Civil Service rules and the approval of the Personnel Official, be granted an unpaid leave of absence. The leave of absence shall be in increments of no less than three (3) months and shall not exceed one (1) year, but it may be renewed or extended for a similar period upon the request of the Union.

C. There shall be no use of official time for unit related activities except as expressly authorized under the aforesaid sections. The City reserves the right to deny approval of requests for use of official time for activities not expressly authorized under this Memorandum.

D. International and Local 2960 Union Representatives

Accredited A.F.S.C.M.E. International, and designated Local 2960 Chief Steward and Lead Stewards shall be admitted to the buildings and grounds of the City during working hours for assisting in the adjustment of grievances, so long as such will not interfere with any work operation or the safety and security of any work site. Such representatives will check in with the supervisor involved and will be required to conform to the safety regulations of the work site.

E. Payroll Deduction

1. The City shall deduct from the first and second pay warrants of Union members, in each month, the regular periodic Union membership dues and regular periodic Union sponsored insurance premiums 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 (14) 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 deduction shall be made only when the Union member's earning for a pay period are sufficient after other legally required deductions are made.
2. Authorization for membership dues deduction herein under shall remain in effect during the term hereof unless revoked in writing by the employee. Revocation of deductions shall be accepted by the City only during the first week of July or January of each year of the term of this memorandum to be effective the following payroll period. The City will notify the Union of any revocations submitted to it.
3. The City shall not make dues deductions for unit members on behalf of any other employee organization (as defined in the Meet and Confer Ordinance) during the term of this Memorandum.
4. It is agreed that the City assumes no liability except for its gross negligence on account of any actions taken pursuant to this section. The City will, however, as promptly as technically possible, implement changes brought to its attention.
5. The City shall, at the written request of the Union during the term of this agreement, make changes in the amount of dues deduction hereunder for the general membership, provided costs for implementing such changes shall be reimbursed by the Union at actual cost incurred by the City.

F. Facilities and Services

The Union may distribute material on the City's premises (buildings and grounds) before and after scheduled working hours or in non-work areas during scheduled work

hours provided that both the person distributing and the employee receiving such material are on their own time.

The Union's web page shall be listed as a link on the City's Intranet home page as one of the City's Employee Resources.

The City shall provide the Union with bulletin boards for its use in communicating with its members at mutually agreeable locations. The City shall grant sole and exclusive use of such bulletin boards to the Union. The City will provide glass-enclosed, locking bulletin boards (standard to be set by the City) for any new City facility where five or more Unit 3 employees will be assigned. The Union may request that two existing bulletin boards be replaced with glass-enclosed, locking bulletin boards (standard to be set by the City) each contract year, provided at least five Unit 3 employees are assigned to the requested locations. Lost keys will be replaced with the full expense charged to the party that lost them (meaning City or Union). Damaged bulletin boards will be replaced with the cost split equally between the City and the Union.

Material which is not abusive of any person or organization, which complies with laws regulating the political activities of City employees, 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. The City will not arbitrarily disapprove submitted material.

The Union shall have the right to meet with each new unit member for one (1) hour during the scheduled Human Resources Department's new employee orientation before or after lunch for the purpose of informing each such new employee of the Union and of that member's right to have Union dues deducted from his pay warrant.

Where possible, Unit III becomes a participant in the appropriate electronic distribution lists for promotions, seamless service, City Connections and/or educational opportunities.

- 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.

Section 1-4: Rights of Unit Members

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. 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 or any other organization. All unit members have the right to be treated in a manner which is fair and impartial in any matter associated with the rights of unit members under the specific express terms of this Memorandum of Understanding.
- B. Union members shall have freedom of choice regarding representation or non-representation in dealings with the City concerning grievances and matters pertaining to their individual employment rights and obligations. Unit members in all City departments, have the right to representation, during the conduct of a management initiated investigatory interview when it becomes apparent that facts or evidence sought by management will result in disciplinary action against the employee being interviewed. Prior to the employee being interviewed, a supervisor will advise the employee of the right to a representative. The employee will be allowed to seek advice and counsel from their representative during caucus and after conclusion of the interview. Prior to the conclusion of the meeting, the member, or representative on behalf of the employee, will have the opportunity to make a closing statement. In addition, Police Department employees are also covered by provisions in Section 1-4 (F) of this article.

A unit member identified only as a witness will be given the opportunity to consult with a Union representative to discuss their rights and obligations prior to the City interview. If 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 Union Steward will receive overtime compensation for actual time held over or a minimum of one (1) hour if called in from home.

Intent: City management can continue with the current practice that allows management the right to contact a Union steward who is on duty to represent the employee.

A Unit member under investigation for a disciplinary matter that may lead to a written reprimand, suspension, demotion or discharge and who is interviewed, will be given a brief written statement informing him/her of the nature of the investigation and the allegations involved in the interview of the Unit member. If the department requires a written statement at an investigatory meeting, the employee will be given up to one hour of City time to write the statement. Additional time may be granted at the sole discretion of the department.

An immediate supervisor is strongly encouraged to discuss and attempt to resolve concerns with an employee without issuing a Notice of Inquiry (NOI). Should information be made known during this discussion that could result in discipline for that employee, the meeting should be stopped and the NOI process utilized. Only paperwork pertaining to any completed NOI investigation resolved as sustained will be kept in an employee's Personnel files.

An employee under investigation will be notified in writing every ninety (90) calendar days as to the current status of the investigation. Every thirty (30) days, an employee under investigation may request a status update. At management's discretion, the status will be provided either verbally or in writing. This will include a brief description of the number of known witnesses still to be interviewed and other investigative processes remaining to be completed, as well as an estimated date of completion.

- C. Any unit member covered hereunder shall, on his request and by appointment, be permitted to examine his personnel file, in the presence of an appropriate supervisory official of the Department. The employee is entitled to designate one (1) person of his choosing (lawyer, union representative, close friend, etc.) to accompany him in reviewing his file. The employee, however, must be present at the review. In addition, the unit member may, at his discretion, attach rebuttal statements to any material contained in his personnel file, which may be of a derogatory nature. No unit member shall have any adverse statements entered into his personnel file without the member being informed by a supervisor. The employee shall be requested to date and sign such adverse material, not as an indication of agreement, but solely as evidence of being advised of its existence. If the unit member requests, he shall receive a copy of the material in question. Medical information should be maintained in a separate confidential file.
1. The City will establish a logging system within the department and central personnel file. The log will identify the date, name of the person (other than Human Resources staff) that examined the file, and purpose.
 2. If an employee is not given his/her PMG by the annual review date the employee's merit increase will be processed within twenty-one (21) calendar days following the above due date and be retroactive to the PMG annual review date. (If PMG is an over all "met").

All unit employees may request that all their **departmental** personnel files 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 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 departmental 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.

Purging requests apply to all files, in all formats, in all locations, **with the exception of the Inactive section of the Central HR Department personnel file.**

Upon request, performance evaluations over 10 years old will be purged from a unit member's personnel file after 10 (ten) years as an active employee.

If an employee receives a written reprimand during the rating period, the supervisor will document the **improvement required** in the employee's performance evaluation **without documenting the issuance of discipline**.

Upon request, a unit member may have documents related to disciplinary actions, which are over ten (10) years old, removed from **all departmental personnel files and moved to a section marked "Inactive" in the Central HR Department personnel file** when there have been no incidents or problems of a similar nature within the ten year period immediately preceding the request. The term "disciplinary actions" is defined as follows:

Any discipline given a unit member that resulted in a suspension of eighty (80) hours or less and, 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, 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.

In the event documentation that is eligible for purging **from all departmental personnel files** is not purged, it will not be considered in future disciplinary matters. Discipline over five years old will not be considered in any process.

- D. The City will comply with provisions of A.R.S. Sec. 12-2506, paragraph D, subparagraph 1, and assume responsibility for the actions of any Unit III employee in a legal proceeding for personal injury, property damage, or wrongful death, when it is demonstrated that the employee was performing his regularly assigned duties without malice or any degree of negligence.
- E. A coaching is a verbal discussion or meeting with an employee to actively discuss problems with the employee's performance. 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 file. A coaching is to be one-on-one. When two (2) or more supervisors are present at the coaching, the employee will be allowed a representative at the employee's request. 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 and credibility. The supervisory counseling shall be initialed or signed by the unit member within two (2) weeks of being advised that the counseling has been issued.

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 above the line the statement: "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 after one (1) year provided no further incidents of a similar nature occur during this one (1) year period.

Documents or notes maintained in a supervisor's file will not be used in future disciplinary actions (Grievances or Civil Service Board) unless the unit member has been previously made aware of the existence of the performance/conduct concerns.

A unit member who receives a written reprimand will be provided a copy of the investigative summary (if any exists) supporting the written reprimand at the time the unit member receives the reprimand.

An employee who receives a written reprimand or suspension may request a copy of the information upon which the written reprimand or suspension was based.

If a unit employee is suspended, it is understood that a suspension day is defined as eight (8) hours. For employees working a 4-10 schedule, the other two hours of the work day would be accounted for at the sole discretion of management.

Unit members may serve suspensions of more than forty (40) hours on an alternating weekly schedule.

After a separation notice has been signed by the appropriate authorities, and if the unit member is given the opportunity to resign, the unit member will have two hours to consult with a representative.

Unit members are entitled to representation if a "Not Met" PMG is appealed and is at the Executive Level (Assistant Director or Director) or when management has more than one representative at the meeting to discuss the appeal of the PMG.

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

F. Rights and Disciplinary Matters (Police Department)

1. Unit members of the Police Department have the right to appear before the Departmental Disciplinary Review Board when disciplinary matters are brought before the Board involving the unit member which may lead to demotion, suspension or discharge.

a) The purpose of such appearance is to give the unit member an opportunity to respond to the assertions made against him.

- b) The Department shall notify the unit member ten (10) calendar days prior to such opportunity to respond to the Board. The notification shall contain the date, time, violation(s) and basis of each violation that has been partially or wholly sustained. In addition, the unit member, if he chooses, may meet with his immediate supervisor along with his second level supervisor, or the unit member's bureau/precinct commander for the purpose of discussing the basis of each violation to be reviewed by the DRB. If the immediate supervisor conducted the investigation, the unit member, if he chooses, may meet with the next supervisor in his chain of command.

Such request shall be made in writing to the unit member's immediate supervisor. Also, the unit member, if he chooses, may be accompanied by a unit representative at either meeting.

At the pre-DRB meeting, the unit member shall be afforded a reasonable opportunity to review the written investigation.

Realizing that in some cases there may be information that would be detrimental to the department's ability to conduct misconduct investigations, that information may be deleted. However, all other information will be available for review.

The unit members under investigation may request an edited copy of the DRB packet at no cost to the unit member. The City has seven (7) calendar days from the date of request to provide above-mentioned packet. If this information is provided to the unit member, there shall be no pre-DRB meeting.

The unit member may, at his discretion, appear before the Board with a unit representative of his choosing, and may state his reasons why the proposed action is unjustified.

The unit member may submit relevant written matter in support of his position.

2. Any unit member under investigation by Professional Standards or a Police Department Supervisor for a disciplinary matter, and who is interviewed or interrogated shall be given a written notice of investigation (Form 80-58DB) informing him of the nature of the investigation and his status in the investigation. In addition, the unit member and/or the Police Department supervisor/internal affairs representative may mechanically record such interview/interrogation. Should any mechanical recordings take place, the department reserves the right to transcribe any such interview/interrogation for the purpose of verifying the accuracy of the interview/interrogation and, if requested, the unit member shall sign the transcription if it is accurate.

The unit member may request a copy of the above tape. In order to receive this copy, the unit member must provide Professional Standards with a blank standard cassette tape. The unit member shall not receive additional pay for picking up or dropping off this tape.

The employee shall be given the above-mentioned written notice of investigation at the onset of the misconduct interview and prior to the employee being requested to prepare a written statement. If the employee is requested to prepare a written statement, the employee may request one (1) hour to contact his Union representative prior to making the written statement. When a unit member is given a written notice of investigation (Form 80-58DB), other than the investigating supervisor/s, the only persons the unit member may speak to concerning the investigation are their attorney, minister, unit representative, or spouse not involved in the investigation. When the investigation is completed, the accused employee will be notified in writing of the findings.

A Professional Standards Bureau investigator will make available for review by the unit member and the representative any video, audio, or photographs that are being used as the basis for an allegation of misconduct. The investigator will not intentionally misrepresent any fact or material issue to the unit member.

3. Unit members have the right to representation in dealings with the City concerning grievances and investigatory interviews with a Police Department supervisor in a disciplinary matter which may lead to suspension, demotion or termination. The representative must be a bargaining unit member. The bargaining unit representative will be the most readily available unit representative and will attend the above meeting as a non-participating passive observer only. The employee will be allowed to seek advice and counsel from their representative during caucus and after conclusion of the interview. Prior to the conclusion of the meeting, the member, or representative on behalf of the employee, will have the opportunity to make a closing statement. If a unit member is called to an investigatory interview with a Police Department supervisor for a disciplinary matter which may lead to a Written Reprimand, the conversation shall be mechanically recorded by the supervisor and, if requested, the unit member shall receive a copy of the recording. Further, if personally requested by the unit member, representation will be allowed during a Professional Standards investigatory interview/interrogation concerning allegations focused on the unit member which may result in disciplinary action against him for violation(s) of the City or department work rules and regulations. The representative must be a bargaining unit member. The representative will be the most readily available unit representative and will attend the above meeting as a non-participating, passive observer only. The employee will be allowed to seek advice and counsel from their representative during caucus and after conclusion of the interview. Prior to the conclusion of the meeting, the member, or representative on behalf of the employee, will have the opportunity to make a closing statement.

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 above the line the statement, 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," will be included. 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.

Only paperwork pertaining to any completed N.O.I. Investigation resolved as sustained will be kept in an employee's file.

Attendance at the Police Department Disciplinary Review Board (DRB) is optional. An employee may attend or not attend; it is his or her individual choice. If an employee declines to appear before the DRB, comments made during deliberations of the Board will not be presented to the Civil Service Board and the fact that the employee did not appear before the DRB will not be held against the employee. The employee may, at his or her discretion, appear before the Board with a representative of his or her choosing and may state his or her reasons why the proposed action is unjustified. The employee and his or her representative may passively observe all presentations made to the Board and all responses made to questions by Board members. The employee and non-board members will be excluded from the room during Board deliberations. In addition, a representative from Labor Relations will be present as a passive observer at the DRB at the union's request.

If a Polygraph examination is required of a unit member, a unit representative may monitor the audio/video-taped examination from the monitoring room.

Section 1-5: Prohibition of Strike and Lockouts

- A. The Union pledges to maintain unimpaired municipal services as directed by the City and neither the Union nor any of its agents will authorize, institute, engage in a slowdown, work stoppage, or strike against the City. During the term of this Memorandum, neither the City nor its agents shall authorize, institute, aid or promote any lockout of unit members covered by this Memorandum.
- B. The provisions of Section 2(17) and Section 13 of the Meet and Confer Ordinance are expressly incorporated herein.

Section 1-6: New Positions and Classifications

- A. The City shall give notice to the Union within ten (10) working days whenever a reclassification study relating to Unit III is undertaken and 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 the results of any Unit III reclassification study thirty (30) days prior to that study being presented to the Personnel Committee.

The City shall notify the Union in writing, thirty (30) calendar days prior to any new position or classification being placed permanently into Unit III.

- B. The parties agree to consult on the inclusion or exclusion of new classification(s) in the bargaining unit and may thereafter refer any such matter, jointly or individually, to the Phoenix Employment Relations Board (PERB) for appropriate action.
- C. The City agrees that it shall notify the Union thirty (30) days in advance in writing when significant changes will be made in the duties, responsibilities, training or experience qualifications in position classification standards resulting in classification changes or resulting in positions removed from the unit.
- D.
 - 1. The Union may submit written requests for job classification studies to the Human Resources Department. The Union will get at least one of their prioritized job reclassification studies started each year in order of their ranking. In addition, the Union will be allowed to meet with the person conducting the job study of a group or work unit prior to the preparation of any report or recommendations.
 - 2. 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.
 - e) The City will endeavor to complete such studies six (6) months of start of audit.
 - 3. 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 in that respect.
 - 4. **Due to the continuing moratorium on classification and compensation studies and the recent citywide pay and benefits study which included a substantial number of Unit 3 job classifications, this provision (1-6 D 1-3 above) has been suspended for the 2012 – 2014 MOU. The parties will revisit this provision during the next Meet and Confer process.**
- E. **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) of this MOU.**
- F. **Upon the Union's filing of a Third Party Data Sharing Agreement with the Labor Relations Division, the City will provide the union with information in electronic format of unit employees' name, home address, date of employment, and department. This shall be provided upon the request of the Union.**

Upon the Union's filing of a Third Party Data Sharing Agreement with the Labor Relations Division, the City will also provide mailing labels of all Unit 3 employees at the request of the Union. The Union will bear the cost of providing the mailing labels.

Upon the Union's filing of a Third Party Data Sharing Agreement with the Labor Relations Division, the City shall provide the Union on a semiannual (February 1 and August 1) basis, at actual cost, with a listing of unit members indicating name, address, job classification, department number, position number, and geographic payroll locator code. This listing shall be in a format compatible with the Union's computer.

The City shall provide the Union a list of all Unit III vacancies monthly.

ARTICLE 2: Grievance/Arbitration/Labor Management

Section 2-1: Grievance Procedure

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. Informal Resolution

As a matter of good labor-management relations a unit member who believes that he has a bona fide grievance must discuss and attempt to resolve it with his immediate non-unit supervisor. The unit member and the immediate supervisor shall be the only participants in the informal meeting.

If such informal discussion does not resolve the problem to the unit member's satisfaction, 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 Memorandum for which there is no Civil Service or other specific 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 the second line supervisor designated by the City or City designee within fifteen (15) calendar days of the initial commencement of the occurrence being grieved or when the employee had 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 second line supervisor shall, within ten (10) calendar days of having received the written grievance or such meeting, whichever is later, submit his response thereto in writing to the Grievant and the Grievant's representative, if any. The time period for an appeal begins when a fax is sent to the Grievant's representative. (Fax 602-716-9337. It is recommended that the fax is sent when the copy is given to employee).

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 signing and completing the City form and presenting it 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 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. The time period for an appeal begins when a fax is sent to the Grievant's representative. (Fax 602-716-9337. It is recommended that the fax is sent when the copy is given to employee).

Step III

If the response of the second level of review does not result in resolution of the grievance, the Grievant and the Union may, within ten (10) calendar days of having received the Step II response, appeal the grievance by signing and completing the City form and presenting it to the Grievance Committee. The time period for an appeal begins when a fax is sent to the Grievant's representative. (Fax 602-716-9337. It is recommended that the fax is sent when the copy is given to employee).

The Grievance Committee **will consist** of:

Chairman: A City of Phoenix Department Director or a member of the City Manager's Executive Staff or a retired City Manager's Executive Staff (at no cost) as selected jointly by the Labor Relations Administrator and the Union President through a pre-established list.

Secretary: The Labor Relations Administrator or the Administrator's designee.

Member: The President of the Local or the President's designee.

At the beginning of each MOU year, the Union and the City will each select five (5) Department Directors or members of current or retired City Manager's Executive Staff to serve on the Grievance Committee. No selected Department Director or Executive Staff member will serve as a committee member when the grievance involves his/her assigned department. Staff support to the Committee during the hearing will be provided by Human Resources Department staff.

Before each Grievance Committee, the Labor Relations Administrator and the Union President will either mutually agree upon one of the names, or the parties will take turns striking names and the final name will be selected. Labor Relations staff will then schedule the Grievance Committee meeting.

This Grievance Committee composition is a pilot program for the 2012 – 2014 MOU only. Both parties must mutually agree to adopt this Grievance Committee composition beyond the term of this agreement, otherwise the Grievance Committee composition reverts to the previous composition of a member of the City Manager's Officer designated by the City Manager, Labor Relations Administrator or designee and President of the Local or designee with no ability for the parties to mutually select the committee chair.

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. A Grievance Committee meeting shall be held within sixty (60) calendar days of receipt of the appeal. The Grievance Committee shall, within ten (10) calendar days of the conclusion of the hearing, make 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 having received the Step II response. If the Grievant and the Union so elect in writing within the above time limit, in lieu of such Grievance Committee hearing, the grievance may be reviewed by an arbitrator.

The parties or their designated representatives shall agree on an arbitrator, and if they are unable to agree on an arbitrator within a reasonable time, either party may request the Federal Mediation and Conciliation Service to submit to them a list of seven (7) arbitrators who have had experience in the public sector. The parties shall, within ten (10) 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:

The arbitrator shall neither add to, detract from nor modify the language of the Memorandum or of departmental rules and regulations in considering any issue properly before him.

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.

The arbitrator shall be bound by applicable State and City Law.

The arbitrator shall submit his findings and advisory recommendations to the Grievant and the City Manager, or their designated representatives. The costs of the arbitrator and any other mutually incurred costs shall be borne equally by the parties.

Step IV

The City Manager shall, within ten (10) calendar days of the receipt of the Grievance Committee's or arbitrator's written findings and recommendations, make the final determination of the grievance and submit it in writing to the Grievant and his 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 or unit employee by the specific terms of this Memorandum. The Union shall file such grievance at Step II of the Procedure.

E. Group Grievance

When more than one unit member claims the same violation of the same rights allegedly accorded by this Memorandum, 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 of this Procedure which provides the lowest level of common supervision having authority over all named Grievant's. Each unit member that is a party Grievant must be named and must sign such group grievance.

F. Time Limits

If the City fails to answer a grievance within the time limits specified in Section 2-1(C), it shall be deemed to have been denied and may be appealed to the next step under the Article. If the Grievant or the Union fail to comply with said time limits, the grievance shall be deemed to have been withdrawn without prejudice. The parties may extend time limits by mutual written agreement in advance.

G. Notice to Union of Grievance Resolution

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 Memorandum.

The City will ensure that a copy of every M.O.U. grievance filed by a unit member, including the response from management, is forwarded to the Union at each step of the process.

- H. The City will not discriminate against employees because of their exercise of rights granted by this Article.
- I. **Regular full-time and regular part-time employees are covered by this grievance procedure.**
- J. 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 president or any officer of the Union within ten (10) days of the occurrence prompting the grievance, or within ten (10) days of the date upon which the employer became aware of the situation prompting the grievance. The President, or his designee shall in each case provide a written answer within ten (10) days from receipt of the grievance.

Unresolved employer grievances may be submitted to arbitration pursuant to Step IV herein, provided that the employer shall bear the costs of the services of the arbitrator.

- K. It is understood concerning the administration of this grievance procedure in the Municipal Court, specifically Steps III and IV that the designated "Department Head" is the Executive Court Administrator, and the "City Manager's Office" or "City Manager" shall mean the Presiding Judge, or his designee as provided in the procedure.
- L. Within six (6) months after the Human Resources Department implementation of the City's new Human Resources management system, or six (6) months prior to the expiration of this M.O.U., whichever comes first, the union shall be an active participant with the City in the design of a new grievance form.
- M. The City will be responsible for notifying the Grievant of any grievance meeting and will send **by mail**, to the Grievant's home address, the date, time, and place of any grievance committee hearing. If a City representative or if the Grievant does not appear at the Grievance Committee hearing, the party not appearing shall lose the grievance.
- N. Arbitration

1. Independent Arbitrator:

Any unit member who is a classified employee having completed the prescribed probationary period who has received a disciplinary demotion, suspension, or discharge, and has a right to appeal that disciplinary action pursuant to the Personnel Rules, may under the provisions of this article request the Civil Service Board appoint as a hearing officer an independent arbitrator selected pursuant to the procedures described in Section 3 below.

2. Appeal:

The Union, on behalf of the member, may request the selection of an independent arbitrator as the hearing officer for a Civil Service Board appeal of a disciplinary action. Such request must be made within fourteen (14) calendar days after the date of service of notice of the order of suspension, demotion, or dismissal on him personally, or twenty-one (21) calendar days from the date of mailing by certified mail the notice of the order of suspension, demotion or dismissal. The request must be in writing and must state specific allegations in the discipline notice with which the employee disagrees. The request must be personally delivered to the Board or deposited in the United States mail, certified return receipt requested, postage prepaid, addressed to the office of the Civil Service Board, within the above-stated time.

The Union on behalf of the employee will also immediately thereafter file copies thereof with the complainant department head and the City Attorney. At the time the Union files the request for hearing, it shall set forth whether the hearing will be public or private.

3. Selection of Arbitrator:

Once an independent arbitrator is requested for a hearing, the Labor Relations Administrator or his designated representative on behalf of the City and the Union president or his designated representative on behalf of the member will agree on an independent arbitrator within ten (10) calendar days after approval and appointment by the Board of the appeal request. If an agreement on an independent arbitrator cannot be reached within said ten (10) calendar days, either party may request that the Federal Mediation and Conciliation Service (FMCS) or the American Arbitration Association (AAA) provide a list with the names of seven (7) arbitrators with public sector experience. In requesting such lists, the parties will stipulate that arbitrators should be from within Arizona.

The parties will, within seven (7) calendar days of the receipt of the list, select the arbitrator by striking names alternately until one name remains. The remaining name will be designated as the independent arbitrator appointed by the Civil Service Board as the hearing officer for the appeal. The parties will jointly communicate with the chosen arbitrator to advise him of the appointment.

In the event that the chosen arbitrator is unable to accept the appointment as hearing officer, the parties will either select another independent arbitrator from a new list in the same manner as described above, or if mutually agreeable select another arbitrator from the original list. The independent arbitrator chosen will be designated as the hearing officer appointed by the Civil Service Board for the appeal.

4. Time for Hearing:

When possible, the hearing date will be set within thirty (30) calendar days from the request. Delays may be granted by mutual agreement of the parties. However,

any such delay occurring at the request of the Union, will automatically be excluded from any calculations of back pay to the employees, if any, as determined by the Civil Service Board.

5. Hearing Procedures:

The hearing procedures will be the same as the procedures set forth in Rule 22d, Personnel Rules of the City of Phoenix. In the conduct of the hearing, the hearing officer will not be bound by the technical rules of evidence, nor will informality in any of the proceedings or in the manner of taking testimony invalidate any order, decision, rule or regulation made or approved by the Civil Service Board.

6. Witnesses:

An employee appellant, or an employee subpoenaed as a witness, will be granted a leave of absence from his/her regularly assigned duties during his/her regularly assigned work hours without loss of pay for the time.

At the request of either party, the arbitrator will order that any witness who will testify during the hearing be excluded from the hearing room until such time as they testify. The City and the Union may exclude from the operation of this provision one representative each of the City and the local Union.

7. Proposed Findings: Objections to Report:

Either party may file with the hearing officer written proposed findings of fact and conclusions within seven (7) calendar days of the conclusion of the hearing. A copy of such proposed findings and conclusions will be served on the other party at the same time as filing with the hearing officer.

No later than two (2) calendar days before the Civil Service Board meeting where the appeal has been scheduled for hearing either party may file with the Civil Service Board written objections to the hearing officer's report. A copy of such objections will be served on the other party at the same time as filing with the Civil Service Board. No post-hearing evidence will be submitted.

8. Requirements:

The independent arbitrator selected by the parties pursuant to this article will be bound by the following:

The independent arbitrator will neither add to, detract from, nor modify the language of this Memorandum of Understanding.

The independent arbitrator will be expressly confined to the precise issues submitted and will have no authority to consider any other issue.

The independent arbitrator will be bound by applicable Federal, State, and City laws.

9. Report:

Within two (2) weeks of the conclusion of the hearing, the hearing officer/arbitrator will forward all records and his report containing a statement of the findings of fact, conclusions, and recommendations concerning the appeal to the Civil Service Board and send a copy of the report to the parties. The hearing officer/arbitrator may recommend to the Civil Service Board, the discipline be upheld or modified, or rescinded pursuant to Personnel Rule 22 (e).

10. Costs:

The cost of the independent arbitrator and other costs related to obtaining said arbitrator will be borne equally by the parties. Each party will be responsible for its own costs incurred in the hearing process, including but not limited to costs for legal services, service of subpoenas, and expert witnesses.

11. Civil Service Board:

It is expressly understood that this article will not impinge on the powers and duties of the Civil Service Board as provided for in Section 3 of Chapter XXV, Phoenix City Charter and Rule 22, Personnel Rules of the City of Phoenix.

12. Representation:

The parties agree that for the purpose of this article, the City will be represented by the Labor Relations Administrator for the City of Phoenix or his designee and the member will be represented by the President of AFSCME Local 2960 or his designee.

Section 2-2: Labor-Management Committee

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.

There shall be a Labor-Management Committee consisting of a maximum of six (6) representatives of the Union and five (5) representatives of the City in addition to the Labor Relations Administrator who shall be Chairman. The purpose of the Committee is to facilitate improved labor-management relationships by providing an informal forum for the free discussion of mutual concerns and problems.

The Committee shall meet no more than six (6) times per MOU year, or more often by mutual agreement, at mutually agreed upon times.

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.

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.

Representatives of the Union on the Committee who are employees shall not lose pay or benefits for meetings mutually scheduled during their duty time up to a maximum of four (4) hours per employee per meeting.

Section 2-3: Health and Safety Committee

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.

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. Supervisors and employees are committed to working together to ensure a healthy and safe work environment.

A Unit employee may file, without fear of discipline, retaliation or discrimination, a grievance when in his best judgment; the City has failed to comply with specific safety and health standards promulgated by local, state and federal regulations. The City will continue its practice of providing personal protective safety equipment to employees to protect them from recognized safety and health hazards.

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 members appointed by the Union and two (2) City representatives as designated by the City Manager. The chairpersons shall rotate among the members.

The Committee shall meet quarterly at mutually scheduled times 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.

In the discharge of its function, 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.

The Union may review and suggest improvements to existing City building evacuation plans and the City Safety Program.

Employee members of the Committee shall not lose pay or benefits for meetings mutually scheduled during their duty time up to a maximum of four (4) hours per employee per meeting.

ARTICLE 3: Compensation/Wages

Section 3-1: Wages

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.

B. For the contract year 2013-2014, the remaining balance, or a portion of the remaining balance, of the 2010-2012 economic concessions may be restored under the conditions outlined in attachment B. In addition, attachment B outlines revenue triggers that could result in compensation increases above full restoration of the 2010 – 2012 concessions.

C. 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.

D. 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.

E. Longevity Pay

In recognition of continuous service and overall performance, the City agrees to implement effective January 1987, the following Longevity-Performance pay formula for unit members:

1. Pay Benefits:

On **July 9, 2012** (paid **July 27, 2012**) and **November 26, 2012** (paid **December 14, 2012**), and **July 8, 2013** (paid **July 26, 2013**) and **November 25, 2013** (paid **December 13, 2013**), unit members who have completed at least six years (6) but no more than nineteen (19) years of continuous full-time service and who meet the additional qualifications specified in this section shall qualify for one hundred (\$100) for the completion of each year of continuous full-time service in excess of five (5) years, up to an annual maximum of \$2,800 at the completion of nineteen (19) years of continuous full time service.

On **July 9, 2012** (paid **July 27, 2012**) and **November 26, 2012** (paid **December 14, 2012**), and **July 8, 2013** (paid **July 26, 2013**) and **November 25, 2013** (paid **December 13, 2013**), unit employees who have completed twenty (20) years or more of continuous full-time service and who meet the additional qualifications specified in this section shall qualify for one hundred twenty five dollars (\$125) for the completion of each year of continuous full time service in excess of five years, up to an annual maximum of \$6,000 at the completion of twenty-nine (29) years of continuous full time service.

2. Qualifications:

- a) An employee must have completed at least one year of continuous full-time service at the top step in his pay range. Qualifications for longevity pay are made in the base class and will not be affected by movement into or out of assignment positions. Longevity will not be affected by movements to positions within the same pay range.

When a position is reclassified to a higher classification, or when a classification is assigned to a higher pay range, incumbents who are receiving longevity pay shall be moved to that step of the new range which corresponds the closest to their combined base pay and previous longevity amount (incumbent's last semi-annual payment times two), and which does not result in a decrease from that combined 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 longevity pay, he/she will be moved to the top step and continue to be eligible for longevity pay.

- b) An employee must have completed six (6) years of continuous full-time service.
- c) An employee must have achieved the overall performance rating of "meets standards" or better on his latest scheduled performance evaluation on file in the Human Resources Department.
- d) 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.
- e) For those employees who are otherwise eligible for longevity, an employee who receives a below "meets standards" evaluation shall receive another evaluation within ninety (90) days to one hundred twenty (120) days, and if that evaluation is "meets standards" or better, he will be eligible to receive the next scheduled longevity payment.

3. Terms of Payment:

- a) Payments will be made within thirty (30) days of the qualifying date.
- b) Employees who separate from City employment after the qualifying date, but prior to the payment day, shall receive the payment in their termination check.
- c) The longevity payment will be included in the regular paycheck instead of being paid in a separate warrant.

4. Longevity Program Evaluation

During the first twelve months of this agreement, the Union agrees to actively participate as a member of a task force consisting of (but not limited to) representatives from the City Manager's office, the Human Resources Department and the Alliance for Innovation to explore and develop alternatives to the Longevity Pay program.

G. Linguistic Pay

This provision is written to provide guidelines for paying Unit 3 members who are authorized, certified, and required by management to utilize a language other than English to conduct official City business.

1. Pay Benefits:

Effective July 5, 2004, a unit member who meets the linguistic skills qualification as determined by a management review panel and becomes certified shall be paid a premium of fifty dollars (\$50) per month.

The linguistic skills benefit was reduced by 50% in the 2010-2012 concession agreement. This reduction remains in effect through the 2012 – 2014

agreement unless the conditions in attachment B are met for a full or partial second year restoration.

Section 3-2: Overtime

- A. Overtime is defined as time assigned and worked beyond the regularly scheduled work week or daily work shift; it being understood that overtime for all 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 including paid meal breaks.

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

There will be a minimum of twelve (12) hours off between shifts for unit members working a 4/10 and 5/8 schedules. If this is not possible, the unit member will receive overtime compensation at his regular rate of pay for each full hour worked within the described twelve (12) hour period for a 4/10 or 5/8 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 twelve (12) hour rule does not apply.

The 12-hour rule benefit was suspended in the 2010 – 2012 concession agreement. This suspension remains in effect through the 2012 – 2014 agreement unless the conditions in attachment B are met for a full or partial second year restoration.

- B. **Except for paid sick leave, all duly authorized paid leave time shall be considered as time worked for the purposes of the regularly scheduled work week, (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 banks will be charged only for the difference between the scheduled daily work shift and the hours actually worked that day.

If an employee is made to work mandatory overtime, they will be compensated at the overtime rate regardless of sick leave taken.

Excluding paid sick leave as time worked for the purposes of calculating overtime will be a pilot program for the term of this Memorandum of Understanding (MOU). Both parties must mutually agree to extend this provision beyond the term of this MOU. During the pilot program, the parties

agree to meet in Labor – Management Committee to address problems or concerns that may arise.

- C. Overtime work shall be compensated at one and one-half (1 ½) times the regular rate, or compensatory time at one and one-half (1 ½) times up to a maximum accumulation of two hundred (200) hours of compensatory time, exclusive of any premium or bonus pay. Authorized overtime hours worked in excess of two hundred (200) hours shall be paid in cash. There shall be no compounding or pyramiding of overtime pay with regular or premium pay.

Requests for use of compensatory time shall be subject to approval of supervision based upon operational and scheduling factors. Guidelines for administration of compensatory time or cash payment of overtime are contained in this Memorandum of Understanding in Attachment "C."

A unit member may convert accumulated compensatory time credits to cash, up to a maximum of one hundred and twenty (120) hours in no more than two, sixty (60) hour increments, by notifying the Department Head in writing of such intent no later than November 1 (payment will be made on or before December 15) and no later than July 31 (payment will be made on or before August 31). Those departments previously observing more frequent conversion and payment during a calendar year, pursuant to written authorization from the City Manager's office, may continue to do so during the term of this agreement. Payment can be made in a separate warrant if requested by the employee.

This compensatory time conversion benefit was suspended in the 2010 – 2012 concession agreement. This suspension remains in effect through the 2012 – 2014 agreement unless the conditions in attachment B are met for a full or partial second year restoration.

- D. Call-Out Pay

An employee shall have a minimum of three (3) hours pay at overtime rates when called out for work after leaving City facilities at a time other than his regularly assigned shift, or when he is called out for overtime work while on stand-by pay.

Overtime for this call-out shall begin when employees report to the place where they are instructed to report and shall terminate forty-five (45) minutes after being relieved from duty. This forty-five (45) minutes travel time shall be included in the minimum guarantee and shall be paid only if the total work and allowed travel time exceed the minimum. Where employees are assigned take-home transportation, they will not be allowed the forty-five (45) minutes travel time. 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 hours.

Provisions of this section shall be interpreted in a manner which complies with the Fair Labor Standards Act.

At times when employees are required to work scheduled overtime, they will receive a minimum of three hours, at 1 1/2 (time and one half), providing said overtime is not immediately preceding or following his regular work hours.

- E. Cash compensation for all overtime will be at one and one-half (1 1/2) times the regular rate after the first seven (7) minutes assigned and worked beyond the end of an employee's regularly scheduled shift, calculated to the nearest quarter hour. There shall be no compounding or pyramiding of overtime pay with other regular or premium pay except as required under Fair Labor Standards Act.

F. Off Duty Physician Appointments

When, at the direction of the immediate non-unit supervisor, unit members being treated by the authorized and designated City physician at times they are not scheduled to be on duty nor are on paid leave or disability benefit status, shall be entitled to overtime compensation in accordance with Article 3 hereof. This compensation shall be at a minimum of one hour or based on actual check-in and check-out time recorded by health center staff.

- G. 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 work history, 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. Overtime shall be voluntary, except however, the City reserves the right to assign overtime in the event insufficient employees volunteer, or to avoid inadequate staffing, or to insure timely service delivery, or to conduct mandatory training.

When a unit member is off duty or on leave and is contacted by telephone by his supervisor for purposes other than callout or a supervisor approves of the making or receiving of the call, the unit member will be paid at time and one-half his regular rate of pay for each quarter hour calculated to the nearest quarter hour (over seven (7) minutes goes to the next quarter hour). There will be no compensation for calls under seven (7) minutes.

A unit member has the option of donating accrued vacation or compensatory time to another City employee in accordance with Administrative Regulation 2.144.

Section 3-3: Out-of-Class Pay

A unit member who is 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. Once this qualification is satisfied, no additional re-qualification will be required. The unit member must be specifically designated in writing to perform out-of-class duties.
- B. Temporary assignments out-of-class shall be recorded only in full shift units. A unit employee working out-of-class for six (6) hours 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 six (6) 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
- D.
 1. Time worked in a higher class shall not earn credits toward the completion of probationary requirements in the higher class.
 2. When authorized, time worked out-of-class may earn experience only credit toward completion of experience requirements in lieu of existing experience requirements for promotion to those classifications where such out-of-class work was performed in a certified position.
- 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 salary ranges, a one-step differential shall be paid for out-of-class assignments. 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 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 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.

Section 3-5: Shift Differential Pay

Unit members shall receive sixty cents (\$.60) per hour in addition to their hourly rate of pay when working a night shift which ends at or after 10:00 p.m. (9:00 p.m. in the Library Division) and before midnight, and eighty cents (\$.80) per hour in addition to their hourly rate of pay when working a night shift which includes work during the period after midnight to 3:00 a.m.

Employees shall receive night shift pay differential only for hours scheduled and worked, and not while on paid leave time. If an employee works a 2nd or 3rd shift for six (6) hours or more, they will receive a shift differential.

Employees participating in a 4/10 work schedule shall receive sixty cents (\$.60) per hour in addition to their hourly rate of pay when working a night shift which ends between 10:00 p.m. and 3:00 a.m., inclusive; and eighty cents (\$.80) per hour in addition to their hourly rate of pay when working a regular night shift which ends after 3:00 a.m.

Section 3-6: Stand-By Pay

When a unit member is required to be available for immediate emergency call-back at times when the member is not otherwise on duty, the member shall be compensated for such stand-by hours at three dollars (\$3.00) per hour. 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 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, at the City's discretion, assign the employee substitute work.

Employees who start work and are later compelled to stop because of inclement weather or other conditions beyond their control shall be paid for the hours they work, but they shall be paid for not less than four (4) hours at the straight time rate.

Employees released hereunder prior to the end of their regular shift may be required to stand-by and keep themselves available for immediate call-back during the balance of their regular shift (for which time they shall be entitled to stand-by pay under Article 3, section 3-6, "STAND-BY PAY" hereof). An employee may request the use of any accrued leave time, exclusive of sick leave, to cover the balance of his regular scheduled work shift. Employees called back to work shall be entitled to their hourly rate of pay for the balance of their regularly scheduled shift.

Section 3-8: Jury Duty Pay

Pursuant to A.R. 2.24, as amended, a unit member called for jury duty or subpoenaed by a court as a witness shall be granted a leave of absence from municipal duties without loss of pay for the time actually required for such service and may retain jury or witness pay, except where such testimony or witness duty is the result of a unit member's official duties as a City employee.

To be eligible for paid leave for jury or witness duty, an employee must present verification of his call to jury duty or witness duty.

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

Subject to operational and scheduling needs, unit members whose regular work shift is worked after 5 p.m. and prior to 8 a.m. may be allowed by management to be assigned to the day shift during the period of jury duty service. The member will be responsible to notify their supervisor as soon as they are notified for jury duty by a court.

Call Out Pay for Court Time:

When, as a result of his official duties, a Unit member is required to appear as a witness at a time that the employee is not otherwise on duty, the employee will receive a minimum of three (3) hours pay at time and one-half (1 ½) his regular rate of pay, except that an employee shall not be eligible for additional compensation during that three (3) hour period.

Court Time Stand-By:

When a Police Department Assistant or Commercial Vehicle Inspector receives a subpoena or other notice requiring him to stand-by to appear in court to testify concerning the performance of his official duties at a time other than his regularly scheduled shift, he shall be compensated the greater of either twenty-five dollars (\$25.00) per day for each day the subject court proceeding is in session and the Unit member is subject to call, or in accordance with the current provisions of the Fair Labor Standards Act for the term of this agreement or for so long as the Act is applicable.

Section 3-9: Deferred Compensation Program

The City shall continue to contribute 0.1% of each Unit member's monthly base wages to the City Deferred Compensation Plan.

This Deferred Compensation Program benefit was suspended in the 2010 – 2012 concession agreement. This suspension remains in effect through the 2012 – 2014 agreement unless the conditions in attachment B are met for a full or partial second year restoration.

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. Unit members may sign individual statements waiving the provisions of this section concerning consecutive days. Signed waivers shall continue in effect per M.O.U. year, unless there is an emergency of long-term duration affecting the employee. In which case, the employee will give the City at least ten calendar days notice in order to revoke the waiver.

The regular work day and regular work week shall consist of five (5) consecutive days of eight (8) hours or four (4) consecutive days of ten (10) hours of work excluding unpaid meal periods in a seven (7) calendar day pre-established work period, except in those departments performing normal services regularly on Saturday and/or Sunday, with the following exceptions:

1. To the extent that Library schedules do not conform to the above provision, it is not intended nor shall this section change such scheduling practices in the Library Division.

It is the intention of the parties that they shall discuss alternatives in Library weekend and holiday scheduling. Such discussions will be within the context of the Labor-Management Committee, Article 2, section 2-2.

2. The shift schedule for unit members in the Fire Dispatch Operation shall be subject to change during the term of this Memorandum, when such is conducive to efficient operations in the judgment of department management. The Union shall be advised of such changes in advance in the Labor-Management Committee (Article 2, section 2-2).

- B. Regular work schedules showing the employees' shifts, work days, and hours shall be posted where accessible to employees.

- C. Except for emergency situations, permanent regular work schedules shall not be changed without notice of at least fourteen (14) calendar days to the affected employee(s). "Emergency" hereunder shall mean unforeseen operational circumstances.

When used in the context of this article, operational circumstances will be defined as service demands or other required actions performed to accomplish the mission of the department. These actions may be routine (anticipated) or emergency (unanticipated). For routine operational actions, fourteen (14) calendar days notice will be given to change schedules. For emergency operational actions, unit members will be provided as much advance notice and information as the situation will allow.

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 within seven (7) calendar days notice.

Employees may request to be changed to another work schedule, and when a position on such schedule becomes vacant and available, shall be so reassigned on a seniority preferred basis when qualifications and experience are deemed to be equal by the City. (See Article 4, section 4-4 Seniority)

- D. Employees engaged in continuous operations are defined as being any employee or group of employees engaged in an operation for which there is regularly scheduled employment for twenty-four (24) hours a day, seven (7) days a week.

The work week for employees engaged in continuous operations shall consist of five (5) consecutive days of eight (8) hours of work or four (4) consecutive days of ten (10) hours of work, excluding unpaid meal periods. This provision shall not apply to relief positions.

Section 4-2: Rest and Lunch Periods

- A. Scheduled work shifts shall include meal periods to be observed as follows:

5 DAY WORK WEEK

8 hours
8-1/2 hours
9 hours

MEAL PERIOD

30 minutes on the job, paid at straight time
30 minutes, unpaid
60 minutes, unpaid

4 DAY WORK WEEK

10 hours
10-1/2 hours
11 hours

MEAL PERIOD

30 minutes on the job, paid at straight time
30 minutes, unpaid
60 minutes, unpaid

Schedules for Police Assistants and Police Aides, in the Police Department shall include a paid straight-time meal period of one-half (1/2) hour on the job.

Two (2) paid non-work periods of fifteen (15) minutes during the above scheduled work shifts shall be permitted to promote the health, safety and efficiency of employees on the job. The City may experiment with flextime schedules. In the event such schedules are inconsistent with this Article, the parties will resolve the problems raised thereby in the context of the Labor Management Committee, Article 2, section 2-2. A unit member may request a flextime schedule. If work demands preclude a unit member from taking an unpaid lunch period, they will receive compensatory time at time and one-half (1 ½ x) for the missed meal period, provided they have received prior authorization from their supervisor for working through the lunch period and they have worked more than forty (40) hours that week. When a Unit member does not receive a paid meal period, his meal period shall be uninterrupted and duty-free.

When work demands permit, with a supervisor's approval, a Unit member may combine their thirty (30) minute meal period with one of his fifteen (15) minute rest periods to achieve a forty-five (45) minute meal period. This paid leave time counts as hours worked.

- B. Activities of employees during above non-work periods shall not be subject to any unreasonable restrictions.
- C. When a Unit member works overtime of two (2) hours or more in addition to their daily work shift, they shall be entitled to an additional fifteen (15) minute break. Every additional two (2) hours of overtime will entitle an employee to an additional fifteen (15) minute break.

After four (4) consecutive hours of overtime a unit member shall be entitled to a paid meal break of thirty (30) minutes but in no event shall a unit member be entitled to more than one such break for every eight (8) consecutive hours of overtime.

Section 4-3: Clean-up Time

Unit 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.

All departments shall provide field employees with the appropriate clean up kits/ materials, upon request.

Employees shall be allowed reasonable time, as necessary, for personal cleanup prior to the commencement of lunch and break periods.

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 more healthy 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 employment date.
- B. Seniority shall be by length of service within a class. If seniority within the 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 lay-offs.

ARTICLE 5: Benefits

Section 5-1: Health Insurance

- A. Effective August 1, 2002, the City and Union agree to maintain the current 80/20 split for health insurance for both single and family coverage. If there is a rate increase or decrease in 2003, 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 from the City and a Local 2960 representative.
- C. It is understood between the City and the Union that any changes in health insurance benefits and/or rates shall be effective on or about August 1, and that the City's monthly contributions will not, under any circumstances, exceed the actual premium cost.
- D. Effective August 1, 1988, the City will implement an Employee Assistance Program which will provide confidential individual and family counseling to all unit members and their eligible dependents. These services will be furnished by an independent contract agency to be chosen by the City.
- E. Employees in positions in classifications 320 and below will receive a health insurance supplement allowance of \$66.50 two (2) times a year to be paid in August and February. Regular bargaining unit employees must be enrolled in current City Health Insurance Program to receive this benefit.
- F. Commencing July 1994, all Unit III Police employees will be included in coverage of the Police Officers Assistance Program.
- G. **The following chart reflects the MERP benefits for unit employees eligible to receive MERP as determined on August 1, 2007. It is understood the MERP amounts listed are not subject to modification through contract negotiations.**

| | |
|--|-----------------|
| Retiree with less than 5 years of active City credited service. | \$117 per month |
| Retiree with at least 5 years but less than 15 years of active City credited service. | \$135 per month |
| Retiree with at least 15 years but less than 25 years of active City credited service. | \$168 per month |
| Retiree with 25 or more years of active City credited service. | \$202 per month |

- H. An additional Medical Expense Reimbursement Plan (MERP) supplement of \$100 will be paid to unit employees who retire on or after July 1, 2007 and are within 15 years of becoming retirement eligible as of August 1, 2007 and who choose the City's family coverage. This additional MERP amount will be paid until retirees reach age 65. Any

unit employee who retires after July 1, 2009, and is eligible to receive MERP, as determined on August 1, 2007, will receive this additional MERP amount for either family or single coverage until age 65. This credit is applied directly to the retiree's premium deduction.

Section 5-2: Dental Insurance

Effective August 1, 2002 the City shall pay the full premium costs for single coverage.

Effective August 1, 2002 the City shall pay seventy-five percent (75%) of the premium costs for family coverage for a City dental plan.

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 two thousand five hundred dollars (\$2,500) 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.

Effective August 1, 2003 the orthodontia benefit shall be four thousand (\$4000) dollars.

Section 5-3: Life Insurance

The City will provide at no cost to unit employees off-the-job and on-the-job life and dismemberment insurance with a face value equivalent to the employee's gross annual salary rounded up to the next one thousand dollars (\$1,000) or twenty-five thousand dollars (\$25,000), whichever is greater; in addition, the City will also provide death-in-the-line-of-duty insurance with a face value of seventy-five thousand dollars (\$75,000).

It is understood between the City and the Union that any changes in life insurance benefits shall be effective on or about August 1. 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 base hourly rate of pay at the time of death. The beneficiary shall be that person 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 members 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.

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.

Accumulated sick leave hours on the city's official file at the time of an active unit member's death will be paid. Payment will be based upon the member's base hourly rate at the time of death.

The City will contribute six (\$6) dollars per month per full-time employee (based on 2,473 full-time employees) to the union for establishing and offering a life/long term care insurance benefit to unit employees. These funds will be transferred to the union monthly and in a separate warrant. The union shall oversee the funds and administration of the program.

The number of full-time employees will be updated each contract based on the figures used in the Wage and Benefit Projection. The resulting charge or credit will be applied to the costing of the contract.

The Union and the City will jointly develop guidelines for this life/long term care insurance benefit by September 30, 2012. Starting with the quarter ending December 31, 2012, the Union will submit quarterly statements to the City that provide information on all the expenses associated with this program. The Union agrees to return any payments to the fund that are not in compliance with the mutually agreed upon guidelines.

Section 5-4: Long-Term Disability

The City will offer a long term disability benefit for all full time, regular unit employees pursuant to A.R. 2.323 as may be amended (providing that such amendments shall not be in conflict with 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 66 2/3% of the employee's basic monthly salary at the time disability occurs and continue up to age 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.

Employees participating in the long term disability benefit as of June 30, 2012 will continue under the previous benefit rules until they return to work or achieve the maximum age of 80 for benefits.

Section 5-5: Holidays and Vacations

A. The City agrees to incorporate into the Memorandum the benefits provided under Administrative Regulation 2.11, as amended, 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 - Third Monday in January
- President's Day - Third Monday in February
- Cesar Chavez's Birthday - March 31
- Memorial Day - Last Monday in May
- Independence Day - July 4
- Labor Day - First Monday in September
- Veteran's Day - November 11
- Thanksgiving Day - Fourth Thursday in November
- Friday after Thanksgiving Day
- Eve of the Christmas holiday - Four (4) hours
- Christmas Day - December 25
- Two vacation days - After completion of six months of full-time employment added to vacation bank of hours

When a holiday named herein falls on Sunday, it shall be observed on the following Monday, and when a holiday herein falls on a Saturday, it shall be observed on the preceding Friday, except that **in the case of six (6) day operations and in the Library Department such holidays may be observed** on Saturday, and in the case of continuous operations and seven day operations, holidays shall be observed only on the calendar days on which they actually fall. This paragraph shall not apply to the Eve of Christmas holiday, which shall only be granted when it falls on the employees' regular scheduled work day.

A unit member working in a continuous operation, whose regularly scheduled day off falls on a holiday specified above, and who is **scheduled or called in by management** to work a regular shift on such holiday and scheduled day off, shall be compensated as follows: eight (8) hours pay for the holiday plus pay at time and one half (1 1/2) the regular rate for each hour assigned and worked, plus compensatory time credit for each hour assigned and worked to a maximum of eight (8) hours.

B. Vacation accrual, carryover, and separation payout shall be governed by the following table:

| SERVICE YEARS | MONTHLY ACCRUAL | MAXIMUM CARRYOVER | PAYOUT |
|---------------|-----------------|-------------------|-----------|
| 0-5 | 8 hours | 192 hours | 240 hours |
| 6-10 | 10 hours | 240 hours | 300 hours |

| | | | |
|-------|----------|-----------|-----------|
| 11-15 | 11 hours | 264 hours | 330 hours |
| 16-20 | 13 hours | 312 hours | 390 hours |
| 21 + | 15 hours | 360 hours | 450 hours |

Unit members shall be allowed vacation buy out twice per calendar year, on the last paycheck of November and/or May. The total annual buy out is up to a maximum of eighty (80) hours taken in no more than forty (40) hour increments, after the employee has accumulated a minimum of one hundred twenty (120) hours and has used forty (40) hours of vacation/comp-time during the calendar year.

This vacation buy out benefit was suspended in the 2010 – 2012 concession agreement. Effective July 9, 2012 the November buy out period will be restored. Employees may buy out up to 40 hours of vacation each November. The suspension of the May buy out period remains in effect through the 2012 – 2014 agreement unless the conditions in attachment B are met for a second year restoration.

Unit members may contribute accrued vacation or compensatory time to other employees in accordance with City policy governing contribution of leave for serious illness of an employee or their immediate family member.

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

Section 5-6: Uniforms

A. Uniform Allowance

Unit members employed by the Police Department or Fire Department who are required to purchase, wear and maintain uniforms pursuant to Police or Fire Department rules and regulations shall be entitled to an annual uniform allowance in the below listed amounts for the appropriate listed classifications:

| <u>Job Classification</u> | <u>Allowance</u> |
|---|--|
| Police Assistant* | \$725 per annum |
| Police Aide | \$725 per annum |
| Police Communications Operator | \$725 per annum |
| Fire Prevention Specialist Trainee | \$725 per annum |
| Fire Prevention Specialist | \$725 per annum |
| Fire Communications Operator/EMD/Lead** | \$725 per annum |
| Municipal Security Guard* | \$725 per annum (Part-time employees receive 80% of full-time allowance (\$580) in Library Dept only) |

*The City will issue a one-time \$200 winter uniform jacket allowance to Police Assistants at the time they are assigned to the Parking Enforcement Detail and also to Municipal Security Guards and Police Assistants in Police Transit for outdoor work.

**The Fire Department will continue to contribute \$100 per annum toward uniforms for Fire Communications Operators/EMD's/Leads for a total uniform allowance of \$825.

1. Payment of the annual allowance will be made on or about August 1 of the fiscal year and shall be for the period of July through June, and is intended to cover the cost of uniforms, maintenance, and cleaning of such uniforms.
2. New employees will receive the entire annual uniform allowance within thirty (30) days of the time they are directed to wear and maintain a uniform.

The second uniform allowance, received at the start of the next fiscal year, will be equal to one-twelfth (1/12) of the annual uniform allowance for each month of the preceding fiscal period, starting with the first month the employee was directed to wear and maintain a uniform, to the start of the new fiscal year.

3. Unit members who leave City employment shall repay to the City the uniform allowance equal to one-twelfth (1/12) for each month remaining in the fiscal year after the last day of the month in which the separation occurs. Provided, however, that unit members who retire will not be required to repay any uniform allowance.

The family or beneficiary of a unit member who dies while in the employment of the City shall not have to pay back any uniform allowance.

4. A unit member who has been on extended leave (paid or unpaid) of two (2) months or longer shall have the next annual uniform allowance reduced by one-twelfth (1/12) of the annual amount for each month of extended leave.
5. An employee who has received an allowance under this agreement and is subsequently promoted or transferred into a Public Safety Retirement System position shall have his allowance adjusted to accommodate the difference but shall not be entitled to both allowances.

6. Reimbursement Schedule

The City agrees to reimburse all unit members for the repair or replacement of uniform items and for other personal property damaged in the course of employment and performance of their assigned duties without fault or negligence on the part of employees, other than normal wear and tear in accordance with the schedule of items and maximum amounts authorized for reimbursement outlined below:

Uniform Boots/Shoes - Full Cost
Uniform Trousers - Full Cost
Uniform Shirt - Full Cost

Uniform Jacket - Full Cost
Glasses - Prescription \$130.00
Watches - \$52.00
Jewelry - \$44.00
Flashlight - \$21.00
Sun Glasses - \$17.00 Non-Prescription
Safety Vest - Full Cost

Reimbursement for full, 3/4, 1/2, 1/4, value are based on the supervisor's evaluation and recommendations of the article's condition and age. Items not listed above are not covered by the policy.

The option to repair or replace damaged items, and to determine whether replaced property will be returned to the employee, rests with the City.

The provisions of this policy shall not apply if the employee has concealed or misrepresented any material fact or circumstances concerning the subject of the loss, his interests therein, or in the case of any fraud or false statements by the employee relating thereto.

Any item not specifically mentioned may be discussed in a meeting of the Labor-Management Committee.

7. Prior to changing or modifying current uniforms, the City will notify the Union, in writing, of its intent. The Union may, within ten (10) calendar days following receipt of the notice, request a meeting of the Labor-Management Committee to discuss the proposed changes/modifications.

Section 5-7: Tuition Reimbursement

- A. Unit members who participate in the Tuition Assistance Program shall be eligible for tuition reimbursement pursuant to the following provisions:
 1. The maximum sum reimbursable to unit members **each MOU year** shall be **\$6,500**. **For the 2012 – 2014 MOU, an employee may submit tuition expenses incurred in the first fiscal year in the second fiscal year to a maximum total reimbursed during the MOU of \$13,000.**
 2. To be eligible for any reimbursement, unit members must have successfully completed academic or training courses approved by the department head and the Human Resources Director as provided in existing regulations.
- B. Tuition reimbursement in accordance with this Article will be made in the event an employee's approved course of instruction is terminated solely and directly as a result reimbursement shall not occur in the event of any other voluntary or involuntary change in job assignment or employment status.

- C. The City will reimburse unit members for expenses incurred as a result of requiring and maintaining certification required by the City for Building Inspectors, Construction Permit Specialists, and Operation Assistants Air side once they pass the test, on a one time basis only.
- D. Unit classifications at pay range 324 and above shall be allowed to utilize up to \$150 to attend one-day, in-state, city-related seminars/training and city-related memberships.

Section 5-8: Car Insurance, Mileage Allowance, Bus Pass and Parking

- A. Where, with respect to the below listed classifications, the City expressly requires as a condition of employment that the employee own and utilize his personal automobile in performing assigned duties, such employees shall be compensated twelve dollars (\$12.00) per month toward automobile insurance expenses upon submission and resubmission as may be required by the City of such insurance expenses being incurred by the employee:

- Community Worker I
- Community Worker II
- Caseworker I
- Caseworker Aide
- Cook
- Senior Center Assistant

Employees required and authorized to use their private vehicle on City business and who have provided proof of appropriate insurance as required by City regulations shall be compensated at the IRS regulated rate per mile.*

*Refer to A.R. 6.21

- B. Employees regularly assigned to the airport terminal buildings shall be provided parking facilities without charge at a location at the airport to be specified by the Director of Aviation.
- C. All regular full-time and part time bargaining unit employees will receive, upon request, a City issued bus/transit pass at no cost to be used only by the employee.
- D. If parking rates are increased, the City will notify the union prior to the increase taking place.
- E. Parking rates for employees who drive motorcycles to work shall be reduced by fifty percent (50%) when they park at the 305 garage or Adams Street Garage.
- F. The City will provide two (2) parking cards to the Union.

Section 5-9: Unpaid Parental Leave / Family Leave

- A. The City will, as a matter of general policy, authorize up to three (3) months of unpaid leave for any unit member who is the parent of newly born, legally adopted child, or any unit member who needs to care for an ill family member. Family members include spouse, **qualified domestic partner**, children (natural, adopted, foster or stepchildren) brother, sister, parents, and grandparents. Approval and use of this leave shall be subject to existing Personnel Rules. The employees' immediate family member does not have to live in the employees' household to be covered by this section.
- B. Employee may use up to (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. 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.)

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 of the above mentioned leaves, (sick leave, vacation, and compensatory leave) the employee will not have these leaves be considered a negative factor **under A.R. 2.30**, 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.

Immediate family is defined as the following persons: spouse, **qualified domestic partner**, child, step-child, brother or sister of the employee or the parent of the employee or spouse, a relative who, because of family circumstances, has been a parent substitute to the employee may be considered as a substitute for mother or father in this definition.

ARTICLE 6: Miscellaneous

Section 6-1: Saving Clause

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 and endeavor to agree on a substitution provision or that such a substitute provision is not indicated.

It is recognized by the parties that this MOU shall be administered in compliance with appropriate provisions of the Fair Labor Standards Act as may be amended.

Section 6-2: Copies of Memorandum

- A. Within sixty (60) days of the date that this Memorandum is adopted by the City Council, the City will arrange for printing of jointly approved copies of it for furnishing one to every unit employee, unit supervisor and to management personnel.
- B. Printing vendors secured by the Union shall comply with Ordinance G-1372 (Affirmative Action Supplier's Ordinance), as may be amended, and Ordinance G-1901 (Affirmative Action Employment by Contractors, Subcontractors, and Suppliers), as may be amended.

Section 6-3: Term and Effect of Memorandum

- A. This Memorandum shall remain in full force and effect July 1, **2012** through June 30, **2014** and thereafter shall continue in effect year-by-year unless one of the parties notifies the other in writing no later than **December** 1st, of its request(s) to modify or terminate it.
- B. Except as expressly provided in this Memorandum, 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. If any section or provision of this Memorandum violates existing Federal, State or City law, then such law shall supersede such provisions or section.
- D. The lawful provisions of this Memorandum are binding upon the parties for the term thereof. The Union having had an opportunity to raise all matters in connection with the meet and confer proceedings resulting in this Memorandum 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.
- E. The City may change the terms and conditions of Administrative Regulations during the term of this Memorandum. The City will consult the Union concerning changes affecting existing compensation provided for under the following Administrative Regulations:
 - 2.16 Political Activity Time Off to Vote
 - 2.241 Compensation for Interpreting and Translation by Personnel in City Courts
 - 2.27 Employee Suggestion Program
 - 2.28 Reimbursement for Specified Expenses Incurred by Personnel on City Business
 - 2.34 Placement of Temporarily or Permanently Disabled Employees

3.41 Travel Authorization and Travel Expense Allowances

- F. The provisions of this Memorandum apply to all unit members, except that entitlement to health, life and long-term disability insurance, holiday, overtime and show-up benefits for regular hourly employees shall continue in accordance with present practice and policy. The City shall not lay off from City employment full-time employees for the sole purpose of replacing them with hourly employees, and will not alter the status of incumbent full-time employees to hourly employees.
- G. This Memorandum constitutes the total and entire agreements between the parties and no verbal statement shall supersede any of its provisions.

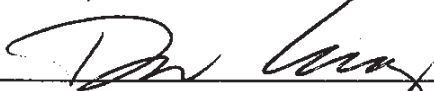
IN WITNESS WHEREOF, the parties have set their hands this
24th day of April, 2012



Frank Piccioli, President, AFSCME Local 2960




Lori Steward, Labor Relations Administrator, City of Phoenix



David Cavazos, City Manager, City of Phoenix

ATTEST:



Cris Meyer, City Clerk, City of Phoenix



APPROVED TO FORM:



ACTING . City Attorney, City of Phoenix

AFSCME 2960 Team
Frank A. Piccioli, President
Angie Hernandez
Rae Kell
Sandra Long
Lee Moothery
Debra Novak-Scott
Louisa Pedraza
Russell Pedraza
Chris Radoian
Karen Van Hook

City of Phoenix Team:
Lori Steward, Labor Relations Administrator
Moises Gallegos, Human Services
Cynthia Luck, Public Works
Julia Quinones, Aviation
Kevin Robinson, Police
Christine Smith, Public Works
P. Jay Strebeck, Fire

ATTACHMENT A

A.F.S.C.M.E. STEWARDS LOCAL 2960

| | |
|---|----------------|
| Aviation Sky Harbor | Administration |
| Aviation Sky Harbor | Communications |
| Aviation Sky Harbor | Communications |
| Aviation Sky Harbor | Operations |
| Aviation Sky Harbor | Operations |
| City Clerk 920 E. Madison | Print Shop |
| City Hall 200 W. Washington | Administration |
| Development Services 200 W. Washington | Clerical |
| Development Services 200 W. Washington | Field |
| Development Services 200 W. Washington | Field |
| Development Services 200 W. Washington | Field |
| Development Services 200 W. Washington | Field |
| Development Services 200 W. Washington | Technical |
| Development Services 200 W. Washington | Technical |
| Finance 251 W. Washington | Clerical |

| | |
|---|----------------|
| Finance 251 W. Washington | Clerical |
| Fire 150 S. 12th Street | Communications |
| Fire 150 S. 12th Street | Communications |
| Fire 150 S. 12th Street | Communications |
| Fire 150 S. 12th Street | Communications |
| Housing 830 E. Jefferson | Administration |
| Human Services | Administration |
| Human Services | Field |
| Information Technology 251 W. Washington | Communications |
| Information Technology 200 W. Washington | Technical |
| Information Technology 251 W. Washington | Technical |
| Law City Prosecutor's Office | Clerical |
| Library 1221 N. Central | Clerical |
| Municipal Court 300 W. Washington | Clerical |
| Municipal Court 300 W. Washington | Technical |
| Municipal Court 300 W. Washington | Technical |
| Neighborhood Services 200 W. Washington | Clerical |

| | |
|--|----------------|
| Neighborhood Services 200 W. Washington | Technical |
| Parks | Clerical |
| Police 620 W. Washington | Callback |
| Police 620 W. Washington | Callback |
| Police 100 E. Elwood | Communications |
| Police 100 E. Elwood | Communications |
| Police 100 E. Elwood | Communications |
| Police 100 E. Elwood | Communications |
| Police 100 E. Elwood | Communications |
| Police 6180 W. Encanto Blvd. | Maryvale |
| Police 100 E. Elwood | Property |
| Police 620 W. Washington | Records |
| Police 620 W. Washington | Records |
| Public Works 101 S. Central | Clerical |
| Public Works | Field |
| Public Works | Technical |
| Public Works | Technical |

Water
305 W. Washington

Customer Service

Water
305 W. Washington

Customer Service

Water
305 W. Washington

Customer Service

(Call Ext. 262-6607 to obtain employer verification of union steward designation)

ATTACHMENT B

Required Stability Indicators to Achieve Concession Restoration in 2013-14

In 2013-14, the remainder of the 2010-2012 3.2% compensation concession level not restored in 2012-13 will be restored, if all six indicators below are met. Full restoration will also result in an additional 0.1% wage increase. The six indicators are:

1. Additional direct services are provided to the community in the 2013-14 General Fund (GF) Budget equal the same dollar amount, or higher, as General Fund direct services to the community, as recommended in the 2012-13 Trial Budget.
2. City maintains its AAA bond rating.
3. Actual 2012-13 GF revenue collections equal at least the amount in the adopted 2012-13 GF Budget.
 - a. If the City Council takes any action subsequent to the adoption of the 2012-13 Budget that negatively affects revenue collected in 2012-13, then for purposes of this section, the corresponding amount of decreased revenue will be subtracted from the 2012-13 GF budgeted revenue.
4. No direct service reductions are necessary to close a budget shortfall for 2013-14 GF budget.
5. No cuts to state-shared GF revenue formulas.
6. *City achieves \$5 million or more in additional innovation & efficiency (I & E) cost savings in 2012-13.

*The matrix below will be followed if indicators 1-5 are achieved, but indicator 6 is not fully realized:

| Indicators Achieved in Addition to Achievement of Indicators 1-5 | Restoration Level |
|--|--|
| 2012-13 additional I & E cost savings is \$4 million or more but less than \$5 million | Restoration of 75% of remaining concessions including 0.3% wage, 24 hours of furlough, .1% Deferred Compensation, the "12-hour rule" for overtime compensation, and linguistic pay partially restored to \$40.25/month |
| 2012-13 additional I & E cost savings is \$2.5 million or more but less than \$4 million | Restoration of 50% of remaining concessions including 0.3% wage and 16 hours of furlough |
| 2012-13 additional I & E cost savings is \$1 million or more but less than \$2.5 million | Restoration of 25% of remaining concessions including 0.15% wage and 8 hours of furlough |

The amount of restoration available will be reduced by the total compensation value to the unit of any increase in 2013-14 city health insurance premiums over 3%.

Required Stability Indicators for wage increase:

Beyond full restoration of the 2010-2012 3.2% compensation concession level, the achievement of the indicators below are necessary for any wage increase in 2013-14. The matrix below will be used to determine the level of wage increase in 2013-14:

| Indicators Achieved | Wage Increase |
|---|---|
| <ul style="list-style-type: none"> • All indicators necessary to attain full compensation restoration are achieved. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is between 6.0% and 8.0%. | 0.2% wage increase |
| <ul style="list-style-type: none"> • All indicators above are achieved. • 2012 Community Attitude Survey results show Phoenix residents' <u>overall satisfaction with City performance</u> does not decrease by a statistically significant amount as compared to 2010 results. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is above 8.0% and less than 9.0%. | One-quarter of the percentage increase for the 2012 annual Western Region Consumer Price Index ¹ as provided by the US Department of Labor- Bureau of Labor Statistics, up to a maximum 2.5% wage increase |
| <ul style="list-style-type: none"> • All indicators above are achieved. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is 9.0% or above. | One-half of the percentage increase for the 2012 annual Western Region Consumer Price Index ¹ as provided by the US Department of Labor- Bureau of Labor Statistics, up to a maximum 2.5% wage increase |

¹The 2011 annual increase to the Western Region Consumer Price Index as provided by the US Department of Labor- Bureau of Labor Statistics was 2.8%.

ATTACHMENT C

GUIDELINES FOR ADMINISTRATION OF COMPENSATORY TIME/CASH PAYMENT OF OVERTIME

The following understanding is intended to serve as guidelines for employees and supervisory and management personnel when administering the compensatory time provisions of this Memorandum of Understanding.

Subject to the limitations set forth herein, the following shall apply:

Employees shall have the choice of requesting either compensatory time or cash payment for overtime authorized and worked, if an overtime appropriation has been included in the department budget for the departmental work unit in which the employee works.

Employees will specify the type of payment (cash or compensatory time) at the time the overtime is worked.

An employee's choice of type of payment shall be subject to supervisory approval. Once agreement has been reached between the employee and the supervisor, the type of payment agreed upon shall be honored.

This understanding regarding employee choice shall not apply under the following circumstances:

Where no overtime appropriation has been included in the department budget for the work unit in which the employee works.

Where budgetary, staffing, or grant limitations have been placed on the authorization, use, disbursement or payment of such funds by the City Manager, Department Head or their designated representatives, or where the terms and conditions for the receipt and/or utilization of any federal, state, or local government grants impose such limitations.

The City will make reasonable efforts to notify the Union when changes in departmental overtime policies regarding the type of payment occur. Provided, however, that failure to notify the Union shall not prevent or prohibit the department from implementing such change.

AGREEMENT

2012 – 2014

CITY OF PHOENIX

&

**ADMINISTRATIVE, SUPERVISORY
PROFESSIONAL & TECHNICAL EMPLOYEES
ASSOCIATION (ASPTEA)**

REPRESENTING UNIT 7 EMPLOYEES

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PREAMBLE

The parties, through their designated representatives, met and discussed in good faith pursuant to the Meet and Discuss Ordinance, Phoenix City Code section 2-223, et seq., issues related to salaries and fringe benefits for the Administrative, Supervisory, Professional, & Technical Employees Association (ASPTEA) hereinafter referred to as the Association, representing Unit 7 employees.

As part of good management practices, the parties have discussed other items, not to be considered part of the Meet and Discuss process, and have reached mutual agreement on those items. These items shall not be diminished except by mutual consent of the parties. Further, the parties agree to be bound by the terms of the items.

The parties acknowledge that this Meet and Discuss Agreement contains items not previously obtained through discussion and agreement. These items are identified in the Agreement by the phrase as “a benefit provided by the City and remain within the authority and discretion of the City Manager. “

If any conflict exists between the language of this Agreement and the language of applicable documents, e.g. Administrative Regulations, Personnel Rules, Pay Ordinance, etc., the language of the applicable document shall prevail for those items identified as “a benefit, provided by the City, remains within the authority and discretion of the City Manager”. The parties agree to discuss mutually any changes to these documents that affect this agreement prior to the effective date of the changes. These items are included merely as a reference tool.

ARTICLE 1: RIGHTS

SECTION 1-1: PURPOSE

It is the purpose of this Agreement to continue and maintain harmonious relations, cooperation and understanding between the City and its employees. The parties reached this Agreement as the result of meeting and discussing in good faith, items regarding salaries and fringe benefits, which the parties intend to jointly submit and recommend for approval and implementation to the City Manager.

SECTION 1-2: RECOGNITION

The City recognizes ASPTEA as the sole and exclusive authorized employee Association Meet and Discuss agent, pursuant to Phoenix City Code, section 2-226, for the purpose of representation regarding salaries and fringe benefits for all Unit 7 employees.

SECTION 1-3: RIGHTS OF THE CITY

The Association 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 agreement.

The City Manager and City department heads have and will continue to retain exclusive decision-making authority on matters not officially and expressly modified by specific provisions of this Agreement.

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 Agreement to direct its employees, to take disciplinary action, to terminate or reassign 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.

SECTION 1-4: RIGHTS OF THE ASSOCIATION

The President, Vice President and a third position designated by the Association shall be on full time release to engage in activities consistent with this agreement. The officers on full-time release agree to follow City rules, regulations and policies. The City will pay the employees' full time salaries and fringe benefits. Upon return to their regular City duties, the Association officers shall be reinstated to their original positions, locations, and schedules.

The City shall deduct from the first pay warrants of Association members, in each month, the regular periodic Association membership dues, pursuant to the City's deduction authorization form duly completed and signed by the employee and transmit such deductions monthly to the Association. Such deductions shall be made only when the Association member's earnings for a pay period are sufficient after other legally required deductions are made.

Authorization for membership dues deduction herein under shall remain in effect during the term of this Agreement unless revoked in writing by the member at any time during the year. The City shall, at the written request of the Association, make changes in the amount of dues deduction for the general membership.

The City shall provide the Association with bulletin boards for its sole and exclusive use for posting of official Association literature that is not political in nature, abusive of any

person or organization, or disruptive of the organization's operations at mutually agreeable locations. There are currently two (2) locations, one at City Hall and one at the Calvin Goode Building.

The Association shall have access to the City's intranet for purposes of accessing policies, and regulations necessary to conduct Association business.

The Association shall have the right to meet with each new Unit 7 employee for one (1) hour during the scheduled Human Resources Department's new employee orientation for the purpose of informing each new employee about the values of the Association and the City of Phoenix.

Upon the Association's filing of a Third Party Data Sharing agreement with the HR Department, the City shall provide electronically, at no cost, a list of data elements on a monthly basis. The Association agrees to use this information solely for the purpose of understanding and communicating with Unit 7 employees and will not share this information with other individuals or organizations.

Association Release Hours

The unit will be allowed, subject to departmental approval based on operational and scheduling factors and **three (3)** working days advance notice to the Labor Relations Division, a total of one thousand five hundred hours (1,500) paid release time hours. Use of such time for any single employee of eight hundred (800) hours or more will be subject to notification by July 1st of each year to Labor Relations to allow for coordination with the department for release of the employee for the designated hours. Salaried employees **will be charged for each hour of release time with the one exception that salaried employees who are members of the ASPTEA Board of Directors will not be required to use release hours for attendance at monthly board meetings scheduled for one half of a work day or less (assuming the employee works the other half of the work day).**

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

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 Association include:

- **For Executive Board members to attend meetings of the Executive Board, meetings of the general membership, and for preparation for wage and benefit discussions.**

- **For authorized representatives to attend 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.**

Any hours used in excess of the bank of Association release hours must be approved by the Labor Relations Administrator and the President of ASPTEA. The number of hours used in excess of the allowable Association release hours at the end of the two-year agreement will be deducted from the Association release hours available for the following year. A surplus of hours will be carried over into the next year to a maximum total Association release of 2250 hours.

SECTION 1-5: RIGHTS OF UNIT 7 EMPLOYEES

It is understood by the parties that the benefits granted by this section 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 section.

A. Representation

All Unit 7 employees have the right to have the Association serve as their meet and discuss representative without discrimination based on membership or non-membership in the Association or any other organization.

All Unit 7 employees shall have freedom of choice regarding representation or non-representation in dealings with the City concerning grievances, investigations, discipline, and matters pertaining to their individual employment rights and obligations.

All Unit 7 employees have the right to request and be granted representation during a management initiated investigatory interview when the employee is subject of the investigation and the employee is told by management that it could lead to disciplinary action. The City and the Association will obtain the most readily available Association representative. The Association representative will make every reasonable attempt to arrive within one hour of notification.

B. Notice of Inquiries (NOI)

The following process remains within the authority and discretion of the City Manager.

As a matter of good Association-Management relations when management believes that it has a bona fide employment concern with a Unit 7 employee, the immediate supervisor can discuss and attempt to resolve the concern with the Unit 7 employee without issuing a Notice of Inquiry (NOI).

Should information be made known during this discussion that could result in discipline, the meeting should be stopped and the NOI process utilized. The Unit members have the right to request and be granted representation during the NOI process, as noted in 1-5A.

C. Written Reprimands & Suspensions

The following process remains within the authority and discretion of the City Manager.

An employee who receives a written reprimand or suspension may request a copy of the information upon which the written reprimand or suspension was based.

If an employee receives a written reprimand during the rating period, the supervisor will document the improvement required in the employee's performance evaluation without using the term "discipline" or "reprimand."

D. Records Retention

The following is a City process that remains within the authority and discretion of the City Manager.

All unit 7 employees shall have the right to examine their personnel files. No Unit 7 employee shall have any adverse statements entered into their personnel file without being notified in writing. The employee shall be requested to date and sign such adverse material, not as an indication of agreement, but solely as evidence of being advised of its existence and shall be given a copy.

A unit 7 employee may request that their **home department** personnel files be purged of adverse and positive documents, **and disciplinary documents moved to a section marked "Inactive" in the Central HR Department personnel file** as outlined in accordance with the public records laws. The request to purge must be submitted in writing to the department head. It is recognized that personnel files include the Department/Division Personnel Files and the Human Resources Department Files.

Letters or memos of counseling (i.e. Supervisory Counseling) – Documents are to be kept in supervisor's file only and shall be purged after one (1) year from the incident

provided no further incidents of a similar nature occur during this one (1) year period from the incident.

Written Reprimand – Upon the employee’s written request, The City will purge any written reprimands over 3 years old **from the employee’s home department personnel file and move them to a section marked “Inactive” in the Central HR Department personnel file** if there have been no disciplinary actions for a three-year period preceding the request.

Suspension:(80 hours or less) - Upon the employee’s written request, The City will purge any discipline notices from the employee’s **home department personnel file and move them to a section marked “Inactive” in the Central HR Department personnel file** for suspensions of 80 hours or less, that are 10 years old if there have been no disciplinary actions during the period preceding the request.

Suspension (over 80 hours or involving violence, sexual harassment or criminal conduct regardless of conviction), Demotion, or Termination – These documents are exempt from purging and shall be retained in accordance with the City record retention schedule.

In the event documentation that is eligible for purging is not purged, it will not be considered in future disciplinary matters. Discipline over five (5) years old will not be considered in any process.

E. Performance Management Guide

The following process remains within the authority and discretion of the City Manager.

Upon an employee’s written request, performance evaluations over 10 (ten) years old will be purged from that employee’s personnel file after 10 (ten) years as an active employee.

Provided the PMG is an over all “MET”, if an employee is not given her/his PMG by the annual review date the employee’s merit increase will be processed within twenty-one 21 calendar days following the above due date and be retroactive to the PMG annual review date.

SECTION 1-6: NEW POSITIONS/CLASSIFICATIONS

The Association may submit written requests for job classification studies to the Human Resources Department.

- A. Written requests for classification studies will be prioritized by the Association for consideration by the Human Resources Department for inclusion in an annual classification study plan.

- B. At least one (1) classification study request submitted by the Association shall be included in the overall Human Resources Department annual work plan.
- C. The results of the audit of any classification study shall be subject to review by the City's **Human Resources** Committee in accordance with the provisions of Phoenix City Code and City procedures.
- D. The City will inform the Association when Association requested classification studies are begun and will inform the Association of progress of the study.
- E. **Due to the continuing moratorium on classification and compensation studies and the recent citywide pay and benefits study which included a substantial number of Unit 7 job classifications, this provision (1-6 B above) has been suspended for the 2012 – 2014 MOA. The parties will revisit this provision during the next Meet and Discuss process.**

ARTICLE 2: GRIEVANCE/ASSOCIATION - MANAGEMENT

SECTION 2-1: GRIEVANCE PROCEDURE

A Unit 7 employee may file a complaint in accordance with Administrative Regulation 2.61 concerning the interpretation or application of rules or regulations governing human resources practices, departmental work rules, working conditions, or alleged improper treatment of an employee, or violations of this Agreement, which has not been resolved satisfactorily in an informal manner between the supervisor and his immediate superior. This City process remains under the authority and discretion of the City Manager.

SECTION 2-2: ASSOCIATION-MANAGEMENT COMMITTEE

There shall be an Association-Management Committee consisting of representatives of the Association and representatives of the City. The purpose of the Committee is to facilitate improved Association-Management relationships by providing a forum to discuss concerns and problems and to provide resolution or recommendations to potential issues or concerns.

- A. The Committee shall meet a minimum of 6 times per MOA year (Bi-Monthly) or at other mutually scheduled times.
- B. The chair of the committee shall be rotated between the members. The members shall, in advance of a meeting, provide the meeting's chair with proposed agenda items, and the chair shall provide the members with the meeting agenda in advance of the meeting.

- C. Representatives of the Association on the committee who are employees shall not lose pay or benefits for meetings mutually scheduled during their duty time.

ARTICLE 3: COMPENSATION

The following sections are detailed in various documents including the pay ordinance and/or administrative regulations.

SECTION 3-1: RATES OF PAY

- 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, the number of furlough days unit members have agreed through the Meet and Discuss process to take is reduced from three (3) to one (1) 8-hour unpaid furlough day (total of 8 hours).

Third, 50% of the vacation sell-back benefit is restored.

Fourth, the employer's contribution to the 401(A) defined contribution plan is reduced by 0.84%.

Fifth, the 1% wage concession is restored.

All other 2010 – 2012 concessions remain in effect through the first year of this agreement including one furlough day, a total .94% reduction in the deferred compensation benefit, and the suspension of 50% of the annual vacation sell-back benefit.

- B. **For the contract year 2013-2014, the remaining balance, or a portion of the remaining balance, of the 2010-2012 economic concessions may be restored under the conditions outlined in attachment B. In addition, attachment B outlines revenue triggers that could result in compensation increases above full restoration of the 2010 – 2012 concessions.**

- C. 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 principles.

SECTION 3-2: LONGEVITY-PERFORMANCE PAY

In recognition of continuous service and overall performance, the City agrees to implement the following Longevity-Performance pay formula for Unit 7 employees as outlined in AR 2.19:

- A. Pay Benefit:

In July of each calendar year (paid the second pay period in the month of July of each calendar year), and November of each calendar year (paid the first pay period in the month of December of each calendar year), unit members who have completed at least seven years of continuous full-time service and who meet the additional qualifications of this section shall qualify for a semi-annual payment of one hundred dollars (\$100) for each full year of continuous full-time service in excess of five (5) years, up to a semi-annual maximum of one thousand four hundred dollars (\$1,400) and an annual maximum of two thousand eight hundred dollars (\$2,800), at the completion of nineteen years (19) years.

In July of each calendar year (paid the second pay period in the month of July of each calendar year), and November of each calendar year (paid the first pay period in the month of December of each calendar year), unit members who have completed twenty (20) years or more of continuous full time service shall qualify for one hundred twenty dollars (\$120) for each full year of continuous full-time service in excess of five (5) years, up to a semi-annual maximum of three thousand dollars (\$3,000) and an annual maximum of six thousand dollars (\$6,000) at thirty years.

- B. Qualifications:

The Performance Based-Longevity Program is described in AR 2.19, including the qualifications and payment schedule. An employee must have completed at least one (1) year of continuous full-time service at the top step in their pay range. Qualifications for longevity pay are made in the base class and will not be affected by movement into or out of assignment positions. Longevity will not be affected by movements to positions within the same pay range.

When a position is reclassified to a higher classification, or when a classification is assigned to a higher pay range, incumbents who are receiving longevity pay shall be moved to that step of the new range which corresponds the closest to their combined base pay and previous longevity amount (incumbent's last semi-annual payment times two), and which does not result in a decrease from that combined 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 longevity pay, he/she will be moved to the top step and continue to be eligible for longevity pay.

An employee must have completed seven (7) years of continuous full-time service.

An employee must have achieved the overall “Met” performance rating on their latest scheduled performance evaluation on file in the Human Resources Department. For those employees who are otherwise eligible for longevity that receive an overall “Not Met” evaluation, will receive another evaluation typically within ninety (90) days to one hundred twenty (120) days, and if that evaluation is an overall “Met”, they will be eligible to receive the next scheduled longevity payment. An employee who receives an overall “Not Met” may appeal the evaluation up to the department head.

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:

Payments will be made within thirty (30) days of the qualifying date.

Employees who separate from City employment after the qualifying date, but prior to the payment day, shall receive the payment in their termination check.

The longevity payment will be included in the regular paycheck instead of being paid in a separate warrant.

SECTION 3-3: OVERTIME (HOURLY EMPLOYEES)

The City’s overtime policy is governed by and compliant with the Fair Labor Standard Act.

Overtime does not apply to Unit 7 employees that are salaried (exempt). AR 2.21 describes the overtime policy.

Overtime is defined as time assigned and worked in excess of forty (40) hours in a seven (7) day work week. **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.

Hourly (non-exempt) employees required to work over forty (40) hours per work week shall be paid by City payroll warrant at the rate of one and one-half times the regular rate of pay. With department head approval, employees may request to be paid by compensatory time off at one and one-half times the regular rate up to the maximum accumulation hours of compensatory time. Authorized overtime hours worked in excess of the maximum accumulation hours shall be paid in cash.

Department heads shall make the final decision on the method of payment, subject to the budgetary limitations and staffing needs. Such decisions must be made prior to the end of the work period in which the overtime was worked.

SECTION 3-4: COMPENSATORY TIME (HOURLY EMPLOYEES)

Maximum accumulation of compensatory time shall be 190 hours.

Compensatory time shall not be allowed to accumulate past the specified maximum. All overtime worked shall be compensated with cash payment when an employee has the maximum compensatory time on the record.

A Unit 7 employee may be paid for accumulated compensatory time credits.

Employees who are promoted into a salaried (exempt) class shall not be allowed to accumulate any additional compensatory time from the date of such promotion and may not carry over any previously accumulated compensatory time after the end of the calendar year in which they are promoted. In accordance with AR 2.21, they must either request to be paid for compensatory time remaining in their compensatory leave banks or use this time by the end of the current calendar year. If cash payment is approved for any of this accumulated compensatory time, it shall be paid at the hourly rate the employee was receiving just prior to promotion.

Any compensatory time remaining after the end of the current calendar year may be converted to vacation. If the employee's vacation leave bank is at the maximum allowable amount, time will be converted to sick leave.

SECTION 3-5: CALL OUT PAY (HOURLY EMPLOYEES)

In accordance with AR 2.21, an eligible employee who is called out for work after going home from a shift, or who is called out for overtime work while on standby pay, shall be compensated with or receive call-out pay according to the following:

Three hours of pay at overtime rates plus 45 minutes of travel time.

Overtime for call-out shall begin when employees report to work and shall terminate after being relieved from duty. Where applicable, the travel time shall be included in the minimum guarantee and shall be paid only if the total work and allowed travel time

exceed the minimum. 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 hours (if beyond 40 hours/week).

Provisions of this section shall be interpreted in a manner which complies with the Fair Labor Standards Act.

SECTION 3-6: OUT OF CLASS PAY

A Unit 7 employee who is 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 AR 2.20.

- A. To be eligible for the additional compensation, the Unit 7 employee 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. Once this qualification is satisfied, no additional re-qualification will be required. The Unit 7 employee must be specifically designated in writing to perform out-of-class duties.
- B. Temporary assignments out-of-class shall be recorded only in full shift units. A unit employee working out-of-class for six (6) hours 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 the minimum (6) hours in any given shift.

SECTION 3-7: SICK LEAVE CONVERSION AT RETIREMENT

A Unit 7 employee 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 retirement shall be eligible for payment of an amount of compensation equal to twenty five (25%) of their base hourly rate for all hours in excess of two hundred and fifty (250) hours, in accordance with AR 2.441.

SECTION 3-8: NIGHT SHIFT DIFFERENTIAL

In accordance with AR 2.21, Hourly (non-exempt) Unit 7 employees shall receive one dollar thirty cents (\$1.30) per hour in addition to their hourly rate of pay when their regular work schedule includes a night shift which ends at or after 9:00 p.m. (2nd shift) or works hours between midnight and 3:00 a.m. (3rd shift).

Salaried (exempt) Supervisory/Professional employees shall receive a night shift differential premium of fifty-two dollars (\$52) per week when their regular work schedule includes a minimum of three (3) scheduled night shifts a week.

Regular work schedule: set in advance of the scheduled work week and is expected to last at least two (2) pay periods. Any changes in work schedules lasting less than 2 pay periods will not qualify for the shift differential.

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

SECTION 3-9: WEEKEND SHIFT DIFFERENTIAL

In accordance with AR 2.21, hourly (non-exempt) unit 7 employees shall receive sixty cents (\$0.60) per hour in addition to the base hourly rate of pay and any other shift differential or any other evening or night shift differential they may be receiving for a regular work schedule which includes a weekend shift.

Salaried (exempt) unit 7 employees shall receive four dollars and eighty cents (\$4.80) per shift in addition to the base hourly rate of pay and any other evening or night shift differential they may be receiving for working a regularly scheduled weekend shift.

Regular work schedule: set in advance of the scheduled work week and is expected to last at least two (2) pay periods. Any changes in work schedules lasting less than 2 pay periods will not qualify for the shift differential.

A designated weekend shift is defined as any shift that starts on or after 2:00 p.m (noon for ten (10) hour shifts), on Friday, and continuing through any shift that starts on or before, but not after 11:59 p.m., on Sunday. Employees 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. Weekend shift differential does not apply to employees working a part-time shift.

SECTION 3-10: STAND-BY PAY (HOURLY EMPLOYEES)

In accordance with AR 2.21, when an hourly (non-exempt) Unit 7 employee is required to be available for immediate emergency call-back at times when the employee is not otherwise on duty, the employee shall be compensated for such stand-by hours that they remained available at three dollars and twenty-five cents (\$3.25) per hour.

Salaried (exempt) employees shall not be eligible for stand-by pay.

SECTION 3-11: SHOW-UP TIME (HOURLY EMPLOYEES)

This benefit, provided by the City, remains within the authority and discretion of the City Manager.

In accordance with AR 2.23; except in emergencies, an hourly employee who is scheduled to report for work, has not been notified to the contrary, and presents himself 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 their control, the City may, at the City's discretion, assign the employee substitute work.

Hourly (non-exempt) employees who start work and are later compelled to stop because of inclement weather or other conditions beyond their control shall be paid for the hours they work, but they shall be paid for not less than four (4) hours at the straight time rate. Employees may request the use of accumulated compensatory or vacation leave time to cover the balance of their regular scheduled work shift.

SECTION 3-12: JURY AND WITNESS DUTY PAY

This benefit, provided by the City, remains within the authority and discretion of the City Manager.

In accordance with AR 2.24; an employee that is called to serve as a juror or witness in any court action shall be allowed a paid leave of absence for the time actually required for such service and may retain jury or witness pay. Authorization for such leave shall be granted by the employee's department or division head upon examination of the subpoena or summons calling the employee to service. Paid witness leave shall not be allowed when the employee appears as an expert witness for a fee, if such appearance is not as a result of official duties with the City. Paid witness leave shall not be allowed when the employee is the defendant, plaintiff or voluntary character witness in a court action.

Employees subpoenaed to appear as a witness in court as a result of their official duties or their status as a City employee shall return all fees tendered for such service to the City of Phoenix through their department or division head.

Subject to operational and scheduling needs, Unit 7 employees whose regular work shift is worked after 5 p.m. and prior to 8 a.m. may be allowed by management to be assigned to the day shift during the period of jury duty service.

SECTION 3-13: 401(A) DEFINED CONTRIBUTION PLAN AND 457 DEFERRED COMPENSATION

The City will contribute a percentage of the employee's base annual salary to the City sponsored 401 (a) Defined Contribution Plan as follows:

6.10% effective July 1, 2009.

This Defined Contribution Plan benefit was reduced by .1% to 6.0% in the 2010 – 2012 concession agreement. Effective July 9, 2012, this Defined Contribution Plan benefit is reduced by an additional .84% to 5.16%. This .94% concession remains in effect through the first year of the 2012 – 2014 agreement and will be restored in the second year of the agreement if the conditions in attachment B are met for a full or partial second year restoration.

The administration of this benefit is consistent with DCP Board directives and relevant IRS code.

If contributions from all other sources exceed the annual federal maximum allowed for a defined contribution plan in a given calendar year, the excess City contributions for such an employee will automatically be contributed to the City-sponsored 457 Deferred Compensation Plan if the annual federal maximum allowed for a deferred compensation plan for a given calendar year has not yet been reached by that employee. If the annual federal maximum for a given calendar year is reached by an employee in both of these plans prior to the end of a given calendar year, those excess City contributions will be converted to taxable wages for the remainder of that calendar year.

SECTION 3-14: VACATION SELL BACK

Unit seven (7) employees may be paid twice per year up to a maximum of 80 hours of accumulated vacation time each year, to be paid on the last paycheck of May or November, contingent upon their using a minimum of 80 hours of vacation/compensation time during the same calendar year. **Hours can be paid either 40 each in May and November or 80 in November. Employees must use 40 hours of vacation in order to be eligible for the May payment.**

For the 2012-2014 Agreement, Unit seven (7) employees may be paid once per year up to a maximum of 40 hours of accumulated vacation time each year, to be paid on the last paycheck of November, contingent upon their using a minimum of 40 hours of vacation/compensation time during the same calendar year. This represents a 50% restoration of the vacation sell-back benefit. This benefit will remain partially suspended, unless the conditions are met for a full or partial restoration in the 2nd year of the agreement.

ARTICLE 4: WORK SCHEDULES

SECTION 4-1: HOURS OF WORK

This benefit, provided by the City, remains within the authority and discretion of the City Manager.

- 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 Section 3-3.
- B. The work week for regular full-time Unit 7 employees shall consist of five (5) consecutive work days in a seven (7) day pre-established work period, except in those operations utilizing an alternative work schedule.
- C. Departments may develop variable working hour plans, in accordance with AR 2.14, which provide the greatest service to the public and best meet departmental operating requirements.
- D. The City will endeavor to provide advance notice to employees when changes to permanent work schedules are made.

SECTION 4-2: REST & LUNCH PERIODS

This benefit, provided by the City, remains within the authority and discretion of the City Manager.

- A. In accordance with AR 2.14, two (2) paid non-work periods of fifteen (15) minutes during the above scheduled work shifts shall be permitted, whenever operationally feasible, to promote the health, safety and efficiency of employees on the job.
- B. Employees shall be allowed to cease work for a lunch period to be specified by department heads and shall not be paid for that time. The lunch period will ordinarily last for 30 minutes or one hour. Activities of hourly employees during non-work lunch periods shall not be subject to any unreasonable restrictions.

ARTICLE 5: BENEFITS

SECTION 5-1: HEALTH INSURANCE

- A. The City and Association agree to 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 Care Task Force for the purpose of studying existing plans and to explore alternative plans. The Committee shall include representatives from the City and various employee groups including one ASPTEA representative.
- C. See Section 5-10C for MERP information.
- D. In accordance with AR 2.451, in the event of a “Line of Duty” or Commuting death, the City will pay 100% of the Family Medical premium for the surviving spouse, domestic partner, and/or children.

SECTION 5-2: DENTAL INSURANCE

The City shall pay the full the premium costs for single coverage. The City shall pay seventy-five percent (75%) of the premium costs for family coverage for a City dental plan.

SECTION 5-3: LIFE INSURANCE

- A. In accordance with AR 2.43, the City will provide at no cost to Unit 7 employees on-the-job and off-the-job life and dismemberment insurance with a face value equivalent to the employee's base annual salary rounded up to the next one thousand dollars (\$1,000) or twenty-five thousand dollars (\$25,000), whichever is greater; in addition, the City will also provide death-in-the-line-of-duty insurance with a face value of seventy-five thousand dollars (\$75,000).
- B. The City will provide to each Unit 7 employee an additional \$200,000 death benefit covering the Unit 7 employee's commute to and from their City work location. (Commuter Policy) This policy will cover the Unit 7 employee's commute for up to two hours before their shift begins, and two hours after their shift concludes.
- C. In accordance with AR 2.45, the designated beneficiary of a Unit 7 employee 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 7 employee and payment will be based upon the Unit 7 employee's base hourly rate of pay at the time of death. The beneficiary shall be that person 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.

SECTION 5-4: LONG TERM DISABILITY INSURANCE

In accordance with AR 2.323, the City will **offer a long-term disability benefit** for all **regular** full-time unit employees. **Employees who have been continuously employed**

and working on a full-time basis for twelve consecutive months are eligible for long term disability coverage. The benefit will provide up to sixty-six and two-thirds percent of the employee's basic monthly salary at the time disability occurs and continuing until age seventy-five (75) for employees who have been employed full-time for 36 months and one day. 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.

The administration of this benefit and eligibility determination remains within the authority and discretion of the City Manager.

SECTION 5-5: HOLIDAYS

A. The City agrees to incorporate into the Agreement the benefits provided under AR 2.11, as amended, 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 | Third Monday in January |
| President's Day | Third Monday in February |
| Cesar Chavez Birthday | March 31 |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | First Monday in September |
| Veteran's Day | November 11 |
| Thanksgiving Day | Fourth Thursday in November |
| Friday after Thanksgiving Day | |
| Christmas Eve | Four (4) hours* |
| Christmas Day | December 25 |
| Personal Leave Days | 3 days/24 hours (see section 5-9J) |

* THE CHRISTMAS EVE HOLIDAY IS GRANTED ONLY WHEN DECEMBER 24TH FALLS ON THE EMPLOYEES REGULARLY SCHEDULED WORK DAY.

B. When a holiday listed above falls on Sunday, it shall be observed on the following Monday, and when a holiday herein falls on a Saturday, it shall be observed on the preceding Friday, except that the Library Department may observe such holidays on Saturday. In the case of continuous or seven day operations, holidays shall be observed only on the calendar days on which they actually fall.

- C. Hourly (non-exempt) employees shall receive additional compensation at one and one-half times the regular rate of pay for each hour worked on a holiday, to a limit of eight hours worked, in addition to their regular pay for eight hours.

An hourly employee working in a continuous operation whose regularly scheduled day off falls on a holiday and who volunteers to work a regular shift shall be compensated eight hours for the holiday, plus time and a half for each hour worked. An hourly employee working in a continuous operation whose regularly scheduled day off falls on a holiday and they are called in to work or scheduled to work a **mandatory** regular shift, they shall be compensated eight hours for the holiday, plus time and a half for each hour worked, plus compensatory time for each hour worked to a maximum of eight hours.

- D. Salaried (exempt) employees shall receive no cash payment, or compensatory credit when required to work on a holiday. Employees will be given a substitute holiday when directed to work a full shift on a holiday. Substitute holidays must be taken in full shifts.

SECTION 5-6: UNIFORM ALLOWANCE

- A. The City will provide uniforms for Unit 7 employees in designated departments identified in AR 2.71 and to Unit 7 employees who are currently being issued City uniforms at no cost as of the date of this Agreement.
- B. Unit 7 employees of the Fire Department who are directed by the Fire Chief to maintain a prescribed uniform shall be entitled to an annual allowance of six hundred twenty-five dollars (\$625) to seven hundred twenty five dollars (\$725) depending on assignment in accordance with A.R. 2.261.
- C. Full-time Municipal Security Guards designated as Unit 7/Supervisory and Professional, shall receive an annual uniform allowance of seven hundred twenty-five dollars (\$725) in accordance with A.R. 2.261.
- D. Payment of the annual uniform allowance will be made on or about August 1 and shall be for the period of July through June.
- E. New Unit 7 employees will receive the initial uniform allowance equal to one-twelfth of the annual allowance for each month, starting with the first month in which they are directed to wear and maintain a uniform to the end of the fiscal year. This payment will be made in a lump sum within sixty days of the date the employee is directed to maintain the uniform.
- F. Employees who leave City employment shall repay to the City the uniform allowance equal to one-twelfth of the annual allowance per month for each month remaining in the fiscal year after the last day of the month in which the

separation occurs. Provided, however, that the employee who retires during the period from the end of February through the end of the fiscal year will not be required to repay the uniform allowance.

- G. An employee who has been on extended leave (paid or unpaid) of two months or longer shall have the next annual uniform allowance reduced by one-twelfth of the annual allowance for each month of extended leave.

SECTION 5-7: EDUCATIONAL REIMBURSEMENT

A. Tuition Reimbursement

This benefit, provided by the City (Section 5-7A Tuition Reimbursement), remains within the authority and discretion of the City Manager.

In accordance with AR 2.51, the maximum amount reimbursable for tuition in a fiscal year is **\$6,500. For the 2012 – 2014 MOA, an employee may submit tuition expenses incurred in the first fiscal year in the second fiscal year to a maximum total reimbursed during the MOA of \$13,000.**

B. Seminars, Workshops and Professional Memberships

Employees may use \$1,000 of their educational reimbursement benefit for department-approved, job-related professional memberships, or to attend job-related seminars/workshops in accordance with A.R. 2.51.

1. Employees may use \$175 of their tuition reimbursement benefit for required books, media and lab fees.
2. With Human Resources Department approval, payment can be made directly to a vendor for a seminar/workshop registration, airfare, and/or professional membership, if the total cost is \$100 or more.

SECTION 5-8: MILEAGE AND TRANSPORTATION RELATED BENEFITS

- A. All regular full-time and part-time Unit 7 employees will receive, upon request, a City issued bus pass (100% subsidy) at no cost to the employee.
- B. Employees required and authorized to use their private vehicle on City business and who have provided proof of appropriate insurance as required by City regulations shall be compensated at the federal Internal Revenue Service regulated rate per mile or as determined by the City Manager pursuant to A.R. 6.21.

- C. Cab vouchers will be provided under the Emergency Ride Home Program for employees who ride the bus, carpool, vanpool, bike, or walk to and from work at least one day a week.

SECTION 5-9: LEAVES OF ABSENCE

General Requirements

These benefits, provided by the City, remain within the authority and discretion of the City Manager.

The City’s leave policies and benefits are outlined in detail in AR 2.30 and Personnel Rule 15. Employees should refer to these documents for additional information.

Employees must attend work on a regular basis. Attending work is an essential function of every job. An acceptable record of no more than six unscheduled absences in any twelve-month period will meet City attendance standards. Employees are responsible for managing their leave time (sick and vacation leave banks) appropriately and for communicating with their supervisors about absences.

Salaried employees exempt from the Fair Labor Standards Act (FLSA), are not eligible for overtime compensation, and generally do not incur deductions from their compensation for absences from work of less than one full work day unless the absence is covered by the Family Medical Leave Act. If a salaried employee is absent for less than half of the work day, leave balances are not reduced. If the employee is absent for one half of the work shift or more, a full day of leave is deducted from the employee’s leave bank. As with all absences, supervisory approval is required in advance whether or not leave banks are reduced.

All leaves of absence for personal illness of the employee; for the birth, adoption, or foster placement of a child; or for the care of a spouse, child, or parent of the employee when those family members have a serious health condition shall be integrated with the leave requirements of the Family and Medical Leave Act of 1993.

A. Vacation Leave

In accordance with Personnel Rule 15, vacation accrual, carryover, and separation payout shall be governed by the following table:

| <u>YEARS SERVED</u> | <u>MONTHLY ACCRUAL</u> | <u>MAXIMUM CARRYOVER</u> | <u>PAYOUT</u> |
|----------------------------|-------------------------------|---------------------------------|----------------------|
| 0-5 | 8 hrs/1day | 192 hrs/24 days | 240 hrs/30 days |
| 6-10 | 10 hrs/1.25 days | 240 hrs/30 days | 300 hrs/37.5 days |
| 11-15 | 11 hrs/1.375days | 264 hrs/33days | 330 hrs/41.25 days |

| | | | |
|-------|-------------------|------------------|--------------------|
| 16-20 | 13 hrs/1.625 days | 312 hrs/39* days | 390 hrs/48.75 days |
| 21+ | 15 hrs/1.875days | 360 hrs/45 days | 450 hrs/56.25 days |

** In the table above, hourly (non-exempt) employee time is reflected by hours. Salaried (exempt) employee time is reflected by days.

Unit 7 employees may contribute accrued vacation and compensatory time to other employees in accordance with City policy governing contributions of leave for serious illness or injury of employee or their immediate family member.

B. Bereavement Leave

In accordance with Personnel Rule 15g, a full-time employee may be allowed paid leave time for the purpose of attending to family needs that arise in connection with the death of a member of the employee's immediate family. Refer to Personnel Rule 15g for the definition of "immediate family".

The duration of the paid bereavement leave shall not exceed three working days. Additional air travel time shall be allowed when the burial occurs out of state and the employee travels to that location.

C. Family Leave

Dependent Care – Unit 7 Employees shall be allowed to use vacation or compensatory time for up to five dependent care incidents per calendar year, not to exceed a total of 40 hours within that calendar year, without this leave being considered a negative factor when evaluating attendance and job performance.

Unit 7 Employees may use up to one shift (8 to 10 hours) of accumulated and authorized sick leave for home care of an immediate family member due to non-emergency illness or injury (BO).

Emergency Family Care - Unit 7 Employees may use up to one shift (8 to 10 hours) of accumulated and authorized sick leave for the employee to make arrangements for the care of an immediate family member who experiences a sudden illness or accident, which is non-life threatening, if that person is dependent on the employee for care (BN).

An employee may use up to five days or 40 hours of sick leave per incident for the life threatening illness or injury (BN) of an immediate family member.

Members of the immediate family are defined as: mother, father, spouse, child, stepchild, brother, or sister of the employee, or qualified / registered domestic partner. A relative, who, because of family circumstances has been a parent substitute to the employee, may be considered a substitute for mother or father in this definition.

Employees shall be limited to a maximum of seven incidents per calendar year of the combination of (EXCLUDING FMLA):

- Dependent care absences (vacation or comp time)
- Family emergency absences (BN – sick leave)
- Absences for the home care or medical treatment of an immediate family member (BO – sick leave)

For all of 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.

D. Jury Duty Leave

In accordance with AR 2.24, an employee that is called to serve as a juror or witness in any court action shall be allowed a paid leave of absence for the time actually required for such service and may retain jury or witness pay. Authorization for such leave shall be granted by the employee's department or division head upon examination of the subpoena or summons calling the employee to service. Paid witness leave shall not be allowed when the employee appears as an expert witness for a fee, if such appearance is not as a result of official duties with the City. Paid witness leave shall not be allowed when the employee is the defendant, plaintiff or voluntary character witness in a court action.

E. Military Leave

In accordance with The Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) and the Arizona Revised Statutes (ARS 26-168) an employee with competent written military orders shall be granted paid leave up to a maximum of 30 scheduled work days (equivalent to 240 hours) in any 24 consecutive months. All employees shall be placed on a five (5) consecutive eight (8) hour work days during the period of military leave, paid or unpaid to ensure equality of treatment city-wide.

The employee returning from military leave shall be reinstated to his position upon his request and presentation of his military termination papers to the Human Resources Director if he is physically fit to perform the duties of his former position. If his former position is no longer in existence, he shall be entitled to such employment or reinstatement rights as his seniority and performance rating entitle him. He shall be allowed ninety days to report to his department head for duty after the date of his discharge or proper release from the Armed Services.

Employees on military leave of absence may be awarded a merit increase, provided they have completed probation and had a record of meeting job performance standards prior to their military leave of absence. Additional benefits and requirements are as identified under AR 2.39.

F. Sick Leave

In accordance with Personnel Rule 15 and A.R. 2.30, sick leave shall be allowed when an employee is too ill or injured to be able to work safely. Minor ailments, which would not affect the safety of persons or property or endanger the health of other persons while performing job duties, do not qualify an employee for sick leave.

Every full-time hourly employee who works a schedule at full-time, fifty-two weeks of the year shall accrue sick leave credits at the rate of ten hours for each month of paid service. Salaried employees shall accrue sick leave credits at the rate of a day and one-quarter for each month of paid service. Sick leave credits shall accrue without limitation.

G. Voting Time Off

In accordance with AR 2.16, employees who are registered voters may be allowed time off to vote in city and state elections. This does not apply to elections that are limited to bond issues, referenda, or similar issues. The maximum paid time off allowed will be the time necessary to provide three consecutive free hours between the opening of the polls and the start of work, or the end of work and the closing of the polls. Employees must request permission for the time off from their supervisor at least three days prior to the day of the election.

H. Family Medical Leave

The Family and Medical Leave Act (FMLA) enacted 1993, entitles employees up to 12 weeks of leave per calendar year for specific family and medical reasons provided they have met the eligibility requirements. The City's obligations under FMLA are subject to specific federal regulations. Employees are encouraged to seek guidance from their department Human Resources Officer, the Human Resources Department, or their supervisor. In addition they can read about the City's policy in A.R. 2.143.

The City and Association have discussed and agreed upon the following items within this section:

I. Educational Leave

All Unit 7 employees shall be entitled to receive 2 days or 16 hours of annual educational leave. This time will be added to the employee's vacation accrual at the beginning of the first pay period in July. For record keeping purposes, this time will be subject to the restrictions and authorization requirements of the vacation rules.

J. Personal Leave

Employees designated as hourly (non-exempt) Supervisory/Professional shall have a total of 24 hours of Personal Leave each calendar year. Employees designated as salaried (exempt) Supervisory/Professional, shall have a total of three (3) Personal Leave days each calendar year.

This leave time is converted to vacation leave banks. This time does not alter the maximum carryover of vacation hours outlined in AR 2.18.

An employee's personal leave days may be taken on any day of the employee's choosing after completion of six (6) months' service, subject to operational and scheduling factors.

SECTION 5-10: RETIREMENT PROGRAM

- A. Retirement benefits are governed by the provision of the Phoenix City Charter as approved by the voters and are not subject to the provisions of this Agreement. The Phoenix City Charter provisions should be reviewed for the specific retirement benefits provided to City employees.

Pension Benefits for Unit 7 Employees shall be those benefits defined in City of Phoenix Charter that are applicable to full time General City employees. For City retirement, employee contributes 5% of total wages, while City's contribution is based on actuarial need. To qualify: age 60 with 10 or more years of service; age 62 with 5 or more years of service; combined age and credited service equals 80 ("rule of 80"); or if totally and permanently disabled after 10 years of service (no minimum service requirement if duty-related). Employees may purchase service credits in other public retirement systems to be used towards City of Phoenix retirement. (Eligible public retirement systems include U.S. federal, state, county, city; and U.S. governmental agencies, instrumentalities, and possessions).

The pension is calculated on highest 3 consecutive years of the last 10 years salary, and total time of service. The benefit increment is 2% for each year up to 32 ½ years of credited service and for all unused sick leave. The benefit increase for credited service in excess of 32 ½ years is at a lesser rate of 1% each year between 32 ½ and 35 ½ and ½ % each year thereafter.

- B. Credited service for unused sick leave will exclude any sick leave hours compensated through the Sick Leave Payout Program, A.R. 2.441.
- C. The City shall provide the Basic Medical Reimbursement Plan (MERP) benefits to MERP eligible Unit retirees and to those employees who are hired before August 1, 2007 and are eligible to retire no later than August 1, 2022 (the date of

an individual's retirement eligibility was determined on August 1, 2007), at no less than \$202.00 (two hundred and two dollars) per month.

Employees hired on or after August 1, 2007, regardless of years of service, may qualify for a Post Employment Health Plan (PEHP) account.

An additional MERP supplement of \$100 will be paid to unit employees who retire on or after July 1, 2007 and are within 15 years of becoming retirement eligible as of August 1, 2007 and who choose the City's family coverage. This additional MERP amount will be paid until there is a reduction in premium as the result of Medicare eligibility for the retiree or any covered family member.

Any unit employee who retires on or after July 1, 2009, and is eligible to receive MERP, as determined on August 1, 2007, will receive this additional MERP amount for either family or single coverage until there is a reduction in premium as the result of Medicare eligibility for the retiree or any covered family member. Changes from family to single coverage for retirees who retired prior to July 1, 2009 are not eligible for the additional \$100 MERP supplement. The additional MERP supplement is a credit applied directly to the retiree's premium deduction.

SECTION 5-11: MISCELLANEOUS BENEFITS

These benefits, provided by the City, remain within the authority and discretion of the City Manager.

Unit 7 employees are eligible for other benefits such as but not limited to: counseling, career consultation, job information, mortgage assistance, service awards, and employee suggestion program. More information regarding these benefits can be found in the City of Phoenix Pay Plan, Benefits Reference Guide, or online in the Employment Section of the city's web site, Phoenix at your Fingertips.

Additional policy information can be accessed through the intranet, on the Inside Phoenix page, Employment/ Supervisor Services / Personnel Policy Reference List.

SECTION 5-12: CDL RENEWAL

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.

ARTICLE 6: MISCELLANEOUS

SECTION 6-1: SAVING CLAUSE

If any Article or Section of this Agreement 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 Agreement shall not be affected thereby; and upon issuance of such final decree, the parties, upon request of either of them, shall meet and discuss and endeavor to agree on a substitution provision or that such a substitute provision is not indicated.

It is recognized by the parties that this agreement shall be administered in compliance with appropriate provisions of the Fair Labor Standards Act as may be amended.

SECTION 6-2: COPIES OF AGREEMENT

Within sixty (60) days of the Agreement date, the Association will arrange for printing of jointly approved copies. The cost of such duplication and distribution will be split between the Association and the City.

SECTION 6-3: TERM AND EFFECT OF AGREEMENT

- A. This Agreement shall remain in full force and effective July 1, **2012** - June 30, **2014. In compliance with the Meet and Discuss Ordinance (Phoenix City Code Chapter 2, Article XVII, Division 2), as may be amended, the parties will comply with Section 2-233 (Failure to reach agreement; procedure) and the City Manager will take such action as he deems is in the public interest prior to the expiration of this agreement.**
- B. Except as expressly provided in this Agreement, the City shall not be required to meet and discuss concerning any matter, whether covered or not covered herein, during the term or extensions thereof.
- C. If any section or provision of this Agreement violates existing Federal, State or City law, then such law shall supersede such provisions or section.
- D. The lawful provisions of this Agreement are binding upon the parties for the term thereof. The Association having had an opportunity to raise all matters in connection with the meet and discuss proceedings resulting in this Agreement is precluded from initiating any further meeting and discussing for the term thereof relative to matters under the control of the City Council or the City Manager.
- E. This Agreement constitutes the total and entire agreements between the parties and no verbal statement shall supersede any of its provisions.

ATTACHMENT A

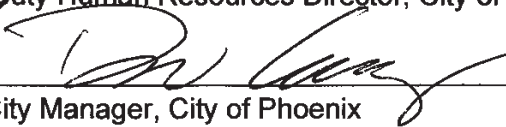
IN WITNESS WHEREOF, the parties have set their hands this
26 day of April, 2012



Ron Ramirez, President, ASPTEA



Lisa Esquivel, Deputy Human Resources Director, City of Phoenix



David Cavazos, City Manager, City of Phoenix

ATTEST:



Cris Meyer, City Clerk, City of Phoenix



APPROVED TO FORM:



ACTING City Attorney, City of Phoenix

ASPTTEA Team:
Ron Ramirez, President
Colleen Lockwood, Vice President
Jason Stokes, Chief Rep
Charlene Limbeck, Secretary

City of Phoenix Team:
Lisa Esquivel, Deputy HR Director
Kathy Haggerty, Deputy HR Director
Inger Erickson, Deputy Parks & Rec Director
Jill Celaya, Police Mgmt Services Admin
Tiana Roberts, HR Mgmt Assistant II
Annette Medina, Sr. HR Analyst

ATTACHMENT B: STABILITY INDICATORS

Required Stability Indicators to Achieve Concession Restoration in 2013-14

In 2013-14, the remainder of the 2010-2012 3.2% compensation concession level not restored in 2012-13 will be restored, if all six indicators below are met.

1. Additional direct services are provided to the community in the 2013-14 General Fund (GF) Budget equal the same dollar amount, or higher, as General Fund direct services to the community, as recommended in the 2012-13 Trial Budget.
2. City maintains its AAA bond rating.
3. Actual 2012-13 GF revenue collections equal at least the amount in the adopted 2012-13 GF Budget.
 - a. If the City Council takes any action subsequent to the adoption of the 2012-13 Budget that negatively affects revenue collected in 2012-13, then for purposes of this section, the corresponding amount of decreased revenue will be subtracted from the 2012-13 GF budgeted revenue.
4. No direct service reductions are necessary to close a budget shortfall for 2013-14 GF budget.
5. No cuts to state-shared GF revenue formulas.
6. *City achieves \$5 million or more in additional innovation & efficiency (I & E) cost savings in 2012-13.

*The matrix below will be followed if indicators 1-5 are achieved, but indicator 6 is not fully realized:

| Indicators Achieved in Addition to Achievement of Indicators 1-5 | Restoration Level |
|--|---|
| 2012-13 additional I & E cost savings is \$4 million or more but less than \$5 million | Restoration of 8 hour furlough, 25% vacation sellback, and 0.88% of deferred compensation |
| 2012-13 additional I & E cost savings is \$2.5 million or more but less than \$4 million | Restoration of 8 hours furlough and 0.72% of deferred compensation |
| 2012-13 additional I & E cost savings is \$1 million or more but less than \$2.5 million | Restoration of 0.58% of deferred compensation |

The amount of restoration available will be reduced by the total compensation value to the unit of any increase in 2013-14 city health insurance premiums over 3%.

Required Stability Indicators for wage increase:

Beyond full restoration of the 2010-2012 3.2% compensation concession level, the achievement of the indicators below are necessary for any wage increase in 2013-14. The matrix below will be used to determine the level of wage increase in 2013-14:

| Indicators Achieved | Wage Increase |
|---|---|
| <ul style="list-style-type: none"> • All indicators necessary to attain full compensation restoration are achieved. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is between 6.0% and 8.0%. | 0.2% wage increase |
| <ul style="list-style-type: none"> • All indicators above are achieved. • 2012 Community Attitude Survey results show Phoenix residents' <u>overall satisfaction with City performance</u> does not decrease by a statistically significant amount as compared to 2010 results. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is above 8.0% and less than 9.0%. | One-quarter of the percentage increase for the 2012 annual Western Region Consumer Price Index ¹ as provided by the US Department of Labor- Bureau of Labor Statistics, up to a maximum 2.5% wage increase |
| <ul style="list-style-type: none"> • All indicators above are achieved. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is 9.0% or above. | One-half of the percentage increase for the 2012 annual Western Region Consumer Price Index ¹ as provided by the US Department of Labor- Bureau of Labor Statistics, up to a maximum 2.5% wage increase |

¹The 2011 annual increase to the Western Region Consumer Price Index as provided by the US Department of Labor- Bureau of Labor Statistics was 2.8%.

MEMORANDUM OF UNDERSTANDING

2012-2014

BETWEEN

LABORERS' INTERNATIONAL UNION

OF NORTH AMERICA,

LOCAL 777, AFL-CIO

AND

CITY OF PHOENIX

COVERING

FIELD UNIT I

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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

- 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.

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 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.

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.

Secretary - The Labor Relations Administrator or his designee.

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

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) representatives of the Union and five (5) representatives of the City in addition to the Labor Relations Administrator 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, no more than six (6) times per MOU year, or more often by mutual agreement, at mutually agreed upon times. The Committee will also meet to discuss 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.

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

Section 3-1. Wages

- 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. These restorations will be effective July 9, 2012, which is the start of the new pay period, 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, the 1% wage concession is restored.

Third, rates of pay shall be increased by 0.94% over and above the restoration.

For the contract year 2012-2013, economic concessions will continue as follows:

Deferred compensation contribution is reduced by 2.4%

- B. For the contract year 2013-2014, the 2012-2013 economic concessions will continue, unless the Stability Indicators in Attachment A are met.**
- C. 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.
- D. 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.

- E. 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.
- F. 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. Longevity-Performance 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 (paid the first pay period in the month of December of each calendar year), and May of each calendar year (paid the second pay period in the month of June of each calendar year), unit members who have completed at least six (6) years of continuous full-time service and 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 a semi-annual maximum of seven hundred dollars (\$700.00), annual maximum of fourteen hundred dollars (\$1,400.00) at nineteen (19) years.

In November of each calendar year (paid the first pay period in the month of December of each calendar year), and May of each calendar year (paid the second pay period in the month of June of each calendar year), unit members who have completed at least twenty (20) years of continuous 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 a semi-annual maximum of nine hundred ten dollars (\$910.00), 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 longevity pay are made in the base class and will not be affected by movement into or out of assignment positions. As well, longevity will not be affected by movements to positions within the same pay range.
- 2) An employee must have completed six (6) years of continuous full-time service.

- 3) An employee must have received a performance rating of overall "Met" on his latest scheduled performance evaluation on file in the Human Resources Department. For employees who are otherwise eligible for longevity, 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 receive the next scheduled longevity payment. A unit member who receives an overall "Not Met" rating may appeal by memo through his chain of command to the Department Head.
- 4) 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) Payments will be made within thirty (30) days of the qualifying date.
- 2) Employees who separate from City employment after the qualifying date but prior to the payment day shall receive the payment in their termination pay.
- 3) The longevity payment will be included in the regular paycheck instead of being paid in a separate warrant.
- 4) When a position is reclassified to a higher classification, or when classification is assigned to a higher pay range, incumbents who are receiving longevity pay shall be moved to that step of the new range which corresponds the closest to their combined base pay and previous longevity amount (incumbent's last semiannual payment times two), and which does not result in a decrease from that combined 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 longevity pay, he/she will be moved to the top step and continue to be eligible for longevity pay.

D. Longevity Program Evaluation:

During the next twelve months, the Union will participate in Labor-Management efforts to study options to the longevity pay program.

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 ½) 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.

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 employee shall not be paid in cash in lieu of a substitute holiday except that in extraordinary circumstances the City Manager's office may approve payment in cash at a straight-time rate. The substitute holiday shall not be granted when an employee is on paid industrial leave.

A unit member whose regular scheduled day-off falls on a holiday specified in this Article, and who is called in to work a regular shift on such holiday and scheduled day off, shall be compensated at time and one-half (1-1/2) the regular rate for each hour assigned and worked in addition to the substitute holiday provided above.

B. Vacation Accumulation

Vacation accrual and carryover shall be governed according to the following table:

| <u>SERVICE</u> | <u>MONTHLY ACCRUAL</u> | <u>MAXIMUM CARRYOVER</u> |
|----------------|------------------------|--------------------------|
| 0-5 years | 8 hours | 192 hours |
| 6-10 years | 10 hours | 240 hours |
| 11-15 years | 11 hours | 264 hours |
| 16-20 years | 13 hours | 312 hours |
| 21+ years | 15 hours | 360 hours |

C. The parties agree that on the following specified holidays, unit members whose regularly assigned work week consists of four (4) ten-hour (10) shifts, shall not be required to submit documentation for two (2) hours of paid leave:

- | | |
|------------------------------|---------------------------|
| 1. Memorial Day | May, Last Monday |
| 2. Independence Day | July 4 |
| 3. Labor Day | September, First Monday |
| 4. Veterans Day | November 11 |
| 5. Thanksgiving Day | November, Fourth Thursday |
| 6. Friday after Thanksgiving | |
| 7. Christmas Day | December 25 |

Unit members shall be allowed a vacation buyout twice per calendar year, by notifying the Department head in writing of such intent during the month of either October or April, to be paid on the last paycheck of November and May. The total annual buyout is up to a maximum of eighty (80) hours taken in no more than forty (40) hour increments, after the employee has 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.

ARTICLE 6: MISCELLANEOUS

Section 6-1. Saving Clause

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.

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

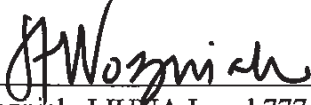
September, his/her participation shall continue for the period November through January. A similar review and qualification will be required for October, November and December; January, February and March; and April, May and June. If the employee separates from City employment, the participation will 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 **2012**, up to the beginning of the first regular pay period July **2014**. **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, 2013, 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.

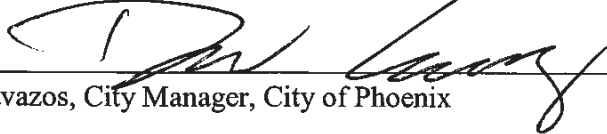
IN WITNESS WHEREOF, the parties have set their hands this
25th day of April, 2012



Jennifer Wozniak, LIUNA Local 777 Representative

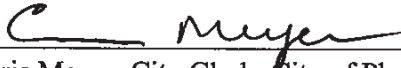


Kathleen Haggerty, Deputy Human Resources Director, City of Phoenix



David Cavazos, City Manager, City of Phoenix

ATTEST:



Cris Meyer, City Clerk, City of Phoenix



APPROVED TO FORM:



ACTING City Attorney, City of Phoenix

LIUNA Local 777 Team:
Bill Higgins, Chapter Business Agent
Paul Bechely, LIUNA Rep
Jennifer Wozniak, LIUNA Rep
Richard Murillo, Parks & Rec
John Heredia, Public Works
Robert Donahue, Public Works
Frankie Hernandez, Parks & Rec
Joe Mendez, Parks & Rec
Rufino Uribe, Public Works
Jim Hardy, Parks & Rec
Joe Medina, Parks & Rec
Connie Cordova, Public Transit

City of Phoenix Team:
Kathleen Haggerty, Deputy HR Director
Ken Vonderscher, Parks & Rec
Tony Miano, Public Works
Jenny Grote, Street Transportation
Corina Madruga, Parks & Rec
Erin Bobo, Public Works

Attachment A

Unit 1 Required Stability Indicators to Achieve Concession Restoration in 2013-14

In 2013-14, the remainder of the 2010-2012 3.2% compensation concession level not restored in 2012-13 will be restored, if all six indicators below are met. For Unit 1, this includes restoration of 2.4% deferred compensation.

1. Additional direct services are provided to the community in the 2013-14 General Fund (GF) Budget equal the same dollar amount, or higher, as General Fund direct services to the community, as recommended in the 2012-13 Trial Budget.
2. City maintains its AAA bond rating.
3. Actual 2012-13 GF revenue collections equal at least the amount in the adopted 2012-13 GF Budget.
 - a. If the City Council takes any action subsequent to the adoption of the 2012-13 Budget that negatively affects revenue collected in 2012-13, then for purposes of this section, the corresponding amount of decreased revenue will be subtracted from the 2012-13 GF budgeted revenue.
4. No direct service reductions are necessary to close a budget shortfall for 2013-14 GF budget.
5. No cuts to state-shared GF revenue formulas.
6. *City achieves \$5 million or more in additional innovation & efficiency (I & E) cost savings in 2012-13.

*The matrix below will be followed if indicators 1-5 are achieved, but indicator 6 is not fully realized:

| Indicators Achieved in Addition to Achievement of Indicators 1-5 | Restoration Level |
|--|--|
| 2012-13 additional I & E cost savings is \$4 million or more but less than \$5 million. | Restoration of 2.0% deferred compensation |
| 2012-13 additional I & E cost savings is \$2.5 million or more but less than \$4 million. | Restoration of 1.5% deferred compensation |
| 2012-13 additional I & E cost savings is \$1 million or more but less than \$2.5 million. | Restoration of 1.0% deferred compensation |

The amount of restoration available will be reduced by the total compensation value to the unit of any increase in 2013-14 city health insurance premiums over 3%.

Required Stability Indicators for wage increase:

Beyond full restoration of the 2010-2012 3.2% compensation concession level, the achievement of the indicators below are necessary for any wage increase in 2013-14. The matrix below will be used to determine the level of wage increase in 2013-14:

| Indicators Achieved | Wage Increase |
|---|---|
| <ul style="list-style-type: none"> • All indicators necessary to attain full compensation restoration are achieved. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is between 6.0% and 8.0%. | <p>0.2% wage increase</p> |
| <ul style="list-style-type: none"> • All indicators above are achieved. • 2012 Community Attitude Survey results show Phoenix residents' <u>overall satisfaction with City performance</u> does not decrease by a statistically significant amount as compared to 2010 results. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is above 8.0% and less than 9.0%. | <p>One-quarter of the percentage increase for the 2012 annual Western Region Consumer Price Index¹ as provided by the US Department of Labor- Bureau of Labor Statistics, up to a maximum 2.5% wage increase</p> |
| <ul style="list-style-type: none"> • All indicators above are achieved. • Growth in actual 2012-13 GF revenue over the actual 2011-12 GF revenue is 9.0% or above. | <p>One-half of the percentage increase for the 2012 annual Western Region Consumer Price Index¹ as provided by the US Department of Labor- Bureau of Labor Statistics, up to a maximum 2.5% wage increase</p> |

¹The 2011 annual increase to the Western Region Consumer Price Index as provided by the US Department of Labor- Bureau of Labor Statistics was 2.8%.

A Guide to Retirement

IMPORTANT! BILINGUAL SERVICES (SPANISH/ENGLISH) ARE AVAILABLE IN THE COPERS OFFICE UPON REQUEST.

¡IMPORTANTE! COPERS OFRECE SERVICIOS EN ESPAÑOL SI USTED LO SOLICITA.

This document can be made available in an alternate format (Braille, large print, tape or compact disk) upon request. Contact Lollita Cordova, ADA Liaison in the Retirement Office at 602-534-4400/voice or 602-534-5500/City TTY Relay if you would like any of these services.

This document provides you with important information regarding the City of Phoenix Employees' Retirement System ("COPERS"). This document is a summary of certain provisions of Chapter XXIV of the City of Phoenix Code, the Phoenix City Employees' Retirement Law of 1953 (the "Retirement Law") and the administrative policies and procedures adopted by the COPERS Board in accordance with the Charter. Every effort has been made to ensure accuracy; however, if any inconsistency exists between this document and the City Charter, the provisions of the City Charter, as interpreted by the COPERS Board, shall prevail.

The City Charter legally governs the operation of the Plan; please refer to the City Charter for a full statement of the applicable rules. If you cannot find an answer to a question about the Plan in this summary or in the Charter, contact the City of Phoenix Employees' Retirement Systems Office at (602) 534-4400.

Highlights

Your City of Phoenix Employees' Retirement System ("COPERS" or "Plan") benefits start accumulating at the beginning of your regular, full-time employment with the City of Phoenix ("City"). The Plan provides you with the following benefits:

- Monthly pension for life starting at age 60, with ten or more years of service credit; age 62 with five or more years of service credit; or where age and service credits equal 80.
- Income protection for your spouse after your death, if you were an active employee with 10 or more years of service.
- Income protection for your spouse (or designated survivor) following your death after retirement, under certain available pension options.
- Income protection in case of total and permanent disability (requires 10 years of credited service if non-duty related).
- Refund or rollover of member contributions upon:
 1. End of employment.
 2. Your death as an active employee if you had fewer than 10 years of service (refund or rollover to your designated beneficiary).
 3. Your death as an active employee with more than 10 years of service, when leaving no surviving spouse, eligible parent, or child (refund or rollover to your designated beneficiary).

4. Your death as a retiree/surviving option beneficiary if COPERS has not paid at least an amount equal to your member contributions balance at the time of your retirement (refund or rollover to your designated beneficiary).
- Ability to transfer service credits (portability) when you move to (or from) a position covered by the Arizona State Retirement System ("ASRS").
 - Ability to transfer service credits when you move to (or from) a position covered by the Arizona Public Safety Personnel Retirement System ("PSPRS").
 - Ability to purchase service credits from other governmental entities in the country, under certain conditions.
 - Ability to obtain/purchase up to five years of service credits for military service, under certain conditions.
 - Ability to purchase service credits due to prior full-time temporary and job-share employment with the City of Phoenix, under certain conditions.
 - Ability to buyback forfeited COPERS service credits due to refund. Previous requirement purchases be completed within five years of board approval has been eliminated.
 - Ability to "rollover" your member contributions into a qualified tax-deferred account upon termination of employment, consistent with the Internal Revenue Service ("IRS") regulations.
 - Ability to "rollover" from a qualified tax-deferred account as part of your buyback or purchase of service credits consistent with IRS regulations, and COPERS Board Policies.

PURPOSE OF PLAN AND ADMINISTRATION

What is the purpose of the Plan?

The City of Phoenix Employees' Retirement Plan was created to provide retirement, survivor and disability benefits to general City employees. COPERS is a defined benefit plan, qualified under the Internal Revenue Service ("IRS") rules.

COPERS' does not cover elected City officials or sworn police and fire employees. They are covered under the Elected Officials Retirement Plan ("EORP"), and the Public Safety Personnel Retirement System ("PSPRS"), respectively, provided by the Arizona Revised Statutes.

How is the Plan administered?

The COPERS Board, as trustee of the Plan, administers the Charter provisions.

The Board is composed of nine members:

- Three members elected from and by the active employee members of COPERS every three years. These members must have at least 10 years of credited service. All members of COPERS receive voting materials. **Your participation in these elections is important, PLEASE VOTE.**

- Four ex-officio members: the City Manager or his/her delegate, the City Treasurer, the Finance Director, and an Urban Manager or Department Head selected by the City Manager.
- One member is a public citizen. He or she must be a resident of the City of Phoenix but cannot be a City employee or a COPERS retiree. This member must have at least five years experience in retirement administration.
- One COPERS retiree, elected by the three elected employee Board members.

The Retirement Program Administrator handles the daily management of COPERS.

The Board holds monthly meetings open to the public. All agendas are posted on the City Clerk's bulletin board and the last 12 months are available for viewing on the COPERS website: www.phoenix.gov/phxcopers.html.

City of Phoenix Charter can only be changed by the voters of the City of Phoenix in an election.

MEMBER AND EMPLOYER CONTRIBUTIONS TO THE PLAN

How much do I contribute to the Plan?

As a general City employee, you must contribute five percent of your compensation.

Do I get interest credited to my Employee Contributions Account?

Yes. If you are an active employee, or if you terminate your COPERS membership after five or more years of service and leave your contributions on account, interest is credited to your account every fiscal year. The COPERS Board sets the rate of interest to be credited.

If I terminate membership in COPERS due to resignation or other reasons, with less than five years of COPERS service, am I entitled to receive interest credits as long as I keep my contributions in COPERS?

No. If you terminate COPERS membership with COPERS before vesting (five years required for vesting), you will not be eligible for annual interest credit. If you are not vested and do not apply for a refund of your contributions within two years of your termination of employment, your contribution account will be closed and the money will be sent to the State under applicable laws.

Does the City contribute to the Plan?

Yes. The City makes employer contributions to the Plan to provide sufficient reserves for future benefit payments. A certified actuary determines the amount the City contributes to the Plan each year, based on assumptions adopted by the Board. Visit COPERS' website to view the Actuarial Valuation Report which shows the City's current and past contributions.

What happens to my retirement contributions if I leave City employment?

If you leave City employment with five or more years credited service, you will be considered "vested" and eligible for a deferred pension payable at age 62. To be eligible you must not have taken a refund of your member contributions. Your deferred pension is calculated in the same way as a regular pension.

You may leave City employment and you (or your dependents) may not be eligible for a COPERS pension. If this happens, your contributions, plus interest, will be returned to you after requesting a refund in writing on COPERS' prescribed application. In the event of your death as an active or terminated employee, your contributions will be distributed to your designated beneficiary or to your legal representative, provided no surviving pension benefits are payable to an eligible individual.

REFUND OF MEMBER CONTRIBUTIONS, TAXES AND BUYBACK RIGHTS

If I leave City employment and want a refund of my accumulated member contributions, what is the process?

You must complete an application for a refund of contributions. The form is available in the COPERS office. You will be able to select a direct refund or a "rollover" to a qualified retirement program. With a direct refund, you will be subject to a withholding tax, currently a 20 percent federal tax and a 5 percent Arizona State tax. You may want to consult your tax advisor or the IRS for information about your options.

If you became a member of COPERS before 1985 and/or you purchased prior service credits, you may have made after tax contributions to the Plan. You already paid federal taxes on this portion of your accumulated contributions; however, Arizona State taxes may be owed. Consult the IRS, your State Department of Revenue or your tax advisor for more details on the taxability of your refunded contributions.

If I apply for a refund of my member contributions and interest, do I also receive the employer contributions paid by the City?

No, in the event of a refund of your "member" contributions, the employer contributions remain in the Plan.

What if I had paid additional contributions and interest to purchase prior service credits or buy back forfeited service, am I entitled to receive a refund of such?

Yes, you can receive a refund of such contributions and interest upon termination of your employment, or in the event of your death and no survivor option is payable, your designated beneficiary will receive a refund or rollover.

Are Federal or State taxes withheld from my refund of contributions?

Yes, 20 percent of your "pre-tax" contributions to the Plan will be withheld for federal taxes; 5 percent of all your contributions are withheld for Arizona State taxes. You can avoid tax withholding if you choose to "rollover" your contributions to qualified retirement program.

Are there any income tax consequences for the early withdrawal of my member contributions?

Yes, as of the date of this publication you will be subject to a 10 percent federal tax penalty on the refund of your "pre-tax" contributions. This penalty does not apply if you are age 59 ½ or older at the time of your refund or if you "rollover" your contributions. In addition to the penalty, you may also be responsible for regular taxes on your refund. Consult the IRS or your tax advisor for more information.

Do I forfeit my credited service if I apply for a refund of my contributions?

Yes, in the event of a refund of your contributions you forfeit your credited service and all your rights under the Retirement Law.

If after receiving a refund of my contributions I am rehired by the City to fill a position covered by COPERS, can I regain my forfeited credited service?

Yes, it is possible to regain your forfeited service credit under certain circumstances. This is referred to as "buy-back" rights.

Contact the COPERS office for more information on your buy-back rights.

RETIREMENT, CREDITED SERVICE AND BENEFITS

When must I retire?

The City does not have a mandatory retirement age or date.

When can I retire?

As an active employee, you may retire if you meet one of the following conditions:

1. Age 60 with 10 or more years of credited service
2. Age 62 with five or more years of credited service
3. Your age and credited service equal 80 ("Rule of 80")

What is meant by "unused sick leave" credit?

COPERS permits you to convert your unused sick leave upon meeting certain accumulated hours, at the time of your retirement, into credited service. This credit will be used to compute your eligible total service and the amount of your monthly pension. You will be given one month credited service toward your retirement for every 173 hours of unused sick leave.

What is total credited service?

Total credited service is the number of years and months of service credited to you as a member of COPERS. Credited service includes your total City employment period; in most cases, your credited service will match your service with the City. Exceptions include breaks in service due to resignation and re-employment, layoffs, leave without pay, service credit transferred from the Arizona State Retirement System ("ASRS"), or the Public Safety Personnel Retirement System ("PSPRS"), purchase of prior service credits and/or buy-back of forfeited service.

Any unused sick leave is added to your credited service if you die or terminate City employment.

If you were employed by the City in a part-time/temporary position prior to 1982, you may be eligible to obtain service credit for this period. Also, if you were employed by the City in a full-time/temporary or job-share position you may be eligible to purchase service credit for this period. Contact our office for more information.

Example of Total Credited Service:

Assume Pat has 32 years and 6 months of credited service and 1,038 hours of unused sick leave (1,038/173 hours = 6 months).

Pat's Total Credited Service is calculated as follows:

| | <u>Actual</u> | |
|--------------------------|---------------|-----------------|
| Credit Service | 32 years | 6 months |
| Unused Sick Leave Credit | | <u>6 months</u> |
| Total Credited Service | 33 years | 0 months |

Thus, Pat's Total Credited Service under the Plan is 33 years and 0 months.

Note: If you withdraw your contributions after your termination from City employment and return to the City to a position covered by COPERS, you may be eligible to restore your forfeited service. Contact our office for more information.

What is the formula for computing my pension?

Three basic components are multiplied together to calculate the amount of your retirement benefit:

1. Final Average Salary ("FAS")
2. Total Credited Service
3. Benefit Rate:
 - Two percent for your sick leave credit (if applicable) and for your first 32.5 years of service.
 - One percent for your next three years of service.
 - One-half percent for any service over 35.5 years.

What is Final Average Salary ("FAS")?

FAS is the average of your highest annual salary amounts for three consecutive years of service. These three years must be during your last ten years of service immediately before the date you retire. In most cases, the last three years of employment are those with the highest salary. However, COPERS will use a period other than your last three years if this would result in a higher FAS. In this situation, your prior work history must show a higher salary than your last three years of employment. Any applicable lump sum payments for vacation, compensatory time, etc., will be added to your last three years before comparison with other periods of payment. Any salaries prior to the last 10 years of employment will not be used for the FAS, even if they produce a higher FAS than more recent years.

Example of Final Average Salary

Assume Pat's retirement date is December 31, 2006. We will look at Pat's salary history from January 1, 1997 to December 31, 2006 to find her highest consecutive 36 months during the past 10 years.

In addition, unused vacation time (up to the maximum accrual that can be compensated at separation) is paid to Pat's 457/401a account, upon retirement. Also, Pat will have the option of receiving compensation for a portion of unused sick leave. The vacation and sick pay is added to Pat's highest 36 months of wages when figuring her FAS. Her vacation and sick pay increased her three-year average.

Pat's FAS is calculated as follows:

| | | |
|-----------------|------|------------------------------------|
| \$ 51,000 | 2004 | Salary |
| \$ 52,000 | 2005 | Salary |
| \$ 53,000 | 2006 | Salary |
| <u>\$ 5,700</u> | | <u>VACATION PAY & SICK PAY</u> |
| \$161,700 | | TOTAL |

The total for the past three years will then be divided by 36 to calculate her monthly FINAL AVERAGE SALARY.

\$161,700.00 divided by 36 equals \$4,491.67 per month.

Thus, Pat's FAS is \$4,491.67 per month.

RETIREMENT BENEFIT CALCULATION

What is the benefit rate?

The benefit rate is the defined formula or percentage factor used to compute your benefits:

- Two percent for each year of credited service up to the first 32 ½ years (also two percent for all unused sick leave credit, regardless of credited service).
- One percent for each year of credited service from 32 ½ years to 35 ½ years.
- One-half percent for each year of credited service after 35 ½ years.

How is my maximum retirement benefit determined?

Use the following formula to determine your maximum benefit:

(FINAL AVERAGE SALARY) X (TOTAL CREDITED SERVICE) X (BENEFIT RATE) =
(MAXIMUM RETIREMENT BENEFIT)

Pat's MAXIMUM RETIREMENT BENEFIT is calculated as follows:

- (1) Final Average Salary = \$4,491.67 per month
- (2) Total Credited Service = 32 years, 6 months of employment service plus 6 months of unused sick leave = 33 years, 0 months
- (3) Benefit Rate = 2%

(\$4,491.67/month) X (33 years) X (2%) = \$2,964.50 per month

Thus, Pat's MAXIMUM RETIREMENT BENEFIT is \$2,964.50 per month.

(Note: Although Pat had greater than 32 ½ years of credited service, the additional 6 months of service were unused sick leave, which always provides two percent, regardless the amount of other years of credited service)

MILITARY SERVICE

Can I obtain retirement service credit for my "intervening" military service?

Yes. Up to five years of "intervening" military service credit can be granted toward your retirement. To receive this credit, you must have served in the uniform services of the United States while employed by the City. To receive this credit, you must be re-employed by the City within one year after your honorable military discharge.

Can I obtain service credits if I served in the military prior to my City of Phoenix COPERS membership?

Currently COPERS Board Policies provide for the purchase of military service credits. Please refer to the highlights of the purchase of service program.

TRANSFER BETWEEN RETIREMENT SYSTEMS

Can I transfer service credit to/from another public retirement plan within the State?

Yes, transfers to and from the Arizona State Retirement System ("ASRS") and COPERS are permitted. Should you move to/from a position covered by ASRS, you may want to explore this option before you apply for a refund of your contributions from either system.

Additionally, transfers to and from COPERS and the Public Safety Personnel Retirement System ("PSPRS") are permitted.

PURCHASE OF SERVICE PROGRAM

Can I obtain service credits towards COPERS retirement for my governmental employment outside of the State of Arizona, even if I have forfeited such service due to the refund of my contributions?

Yes, you can obtain service credits for your governmental employment if you were covered by an out-of-state public retirement system and meet the eligibility conditions.

If I qualify for purchase of in-state/out-of-state governmental service and never received a refund of my contributions from my former public retirement plan, can I rollover such contributions to COPERS to satisfy part of my cost?

You may be eligible to rollover contributions.

If I qualify for the purchase of in-state/out-of-state service but received a refund of my contributions from my former public retirement plan and rolled over such funds into a qualified tax-deferred account, can I rollover such contributions to COPERS to satisfy part of my cost?

Yes, under most situations you can rollover the funds to purchase service or buy-back previously forfeited service.

Am I permitted to use funds from my City of Phoenix deferred compensation account to pay for an approved purchase of service or buy-back?

Yes. COPERS Policy allows for rollovers from the City of Phoenix deferred compensation plan for the amount outstanding, which is not designated under a "pre-tax" payment plan. COPERS' payment options are described below.

HIGHLIGHTS OF SERVICE PURCHASE PROGRAM

You may want to consider purchase of service credits under the following programs:

- Purchase of government service, if you were previously covered by a public retirement system.
- Purchase non-intervening military service (prior to your COPERS membership).
- Purchase intervening military service (during COPERS membership at no cost to you).
- Purchase of City of Phoenix full-time temporary or job-share employment.

To apply for the Purchase of Service Program you must:

- Not be eligible to receive either now or in the future, any benefits (excluding Social Security and Military Pensions) for the service credits you are requesting.
- Purchase a maximum of five years of non-intervening military service and/or five years of intervening military service.

You may wish to pay for your approved purchase of service by one of the following methods:

- Choose from a lump sum payment or sign up for a payment plan through payroll deduction(s). After-tax and pre-tax payment plans are available (pre-tax payment plans are irrevocable).
- Request a rollover from a qualified plan. Please contact our office for more information on eligible rollovers.

Partial payments are allowed.

DEFERRED BENEFITS

Can I receive a deferred retirement?

If you leave City employment before reaching age 62, after completing five or more years of credited service, you become eligible for a deferred pension. You will be eligible for a deferred benefit when you are age 62 and you must not have withdrawn your accumulated contributions from COPERS. Your accumulated contributions will continue to earn interest.

If you are eligible for a deferred retirement benefit, but pass away before reaching age 62, your named beneficiary will receive the funds you paid into COPERS plus interest. No further benefits will be paid, regardless of your years of service credits.

Should you terminate City employment, and are eligible for a deferred retirement; you must contact the COPERS office for any address changes. You will receive an annual statement showing the balance in your member contributions account, including interest.

DISABILITY BENEFITS

What are the requirements and qualifications for a Disability Benefit?

A disability must totally and permanently prevent you from working. The COPERS disability program is separate from the City's Long-Term Disability ("LTD") program.

If you believe you have a job related disability, you can apply at any time. If you have a disability which is not job related, you must have at least ten years of retirement service credit in order to apply.

Who can file an application for disability benefits on my behalf?

You or your department head may file an application.

Who makes a final determination regarding my application for disability retirement?

The Disability Assessment Committee ("DAC") is responsible for the approval or denial of disability applications. The DAC is composed of five members: two of them are ex-officio members, (the Retirement Program Administrator and the Personnel Safety Administrator) and three are appointed by the COPERS Board.

If my disability application is denied by the DAC, can I appeal?

Yes. You can appeal before the COPERS Board within 60 days of the denial notice. You can represent yourself in an appeal or choose to be represented by an attorney, friend, family member or any other person.

How will my pension be affected if I am disabled?

A disability pension is computed the same way as a regular service retirement pension. If your disability was the result of the actual performance of your duties, the 10 years of service requirement will be waived. Pensions granted to members, disabled in the performance of duty, will not be less than 15 percent of their final average salary.

If my disability application is approved, am I subject to annual re-examinations?

Yes. You would be subject to annual re-examinations for the first five years and every other year thereafter until age 60.

Do I have the same retirement options under disability retirement as in a regular retirement?

Yes, you have the same options.

What happens if my disability benefits are terminated due to my recovery?

If the DAC finds you are no longer disabled, your benefits cease. This information is provided to the Personnel Department for possible placement. The unused portion in your member contributions account is restored to your credit. Your service credit is also restored; if you return to active service, you can accumulate additional service credit.

Do my disability retirement benefits affect my eligibility for the Long-Term Disability ("LTD") program administered by the Personnel Department?

Yes, any retirement benefits received from COPERS will be offset (by the Benefits Office of the Personnel Department) against any eligible LTD benefits. Please contact the Benefits Office of the Personnel Department at (602) 262-4777 for more specific and current information regarding your LTD benefits.

DOCUMENTS NEEDED AT RETIREMENT

What documents will be required by COPERS at the time of my retirement?

The following documents will be required at the time of your retirement:

| DOCUMENTATION | SERVICE RETIREMENT | DISABILITY RETIREMENT |
|---|---------------------------|------------------------------|
| COPERS Application Forms | YES | YES |
| Attending Physician Statement | Not Applicable | YES |
| Original Social Security Card | YES | YES |
| Certified Birth Certificate | YES | YES |
| Marriage Certificate | YES | YES |
| Consent form if married and not selecting the 100% survivorship option (Option A Standard) | YES | YES |
| Evidence of name changes (including spouse if applicable) if name on birth certificate is different from current name | YES | YES |
| Direct Deposit Form (if desired) and blank voided check | YES | YES |
| Spouse's Certified Birth Certificate | YES | YES |
| Spouse's Social Security Card | YES | YES |
| Domestic Relations Order ("DRO") if applicable | YES | YES |

Start gathering your required documentation early. Some documents may be difficult to obtain on short notice. All original documents will be returned after being copied by COPERS' staff.

HEALTH, DENTAL AND LIFE INSURANCE COVERAGE

Who determines my eligibility for health (medical and dental), and life insurance coverage as a retired employee?

The Benefits Office, within the City's Personnel Department, determines your eligibility for health, dental and life insurance benefits. You are strongly encouraged to contact this office at (602) 262-4777 before you retire.

DEFERRED COMPENSATION

Your deferred compensation account with the City is subject to complex rules. You must contact the City's deferred compensation vendor. For information on the current vendor, please call personnel benefits at (602) 262-4777 or COPERS at (602) 534-4400.

SOCIAL SECURITY

Can I collect Social Security benefits while I am retired from the City?

Yes. Your retirement benefits under the Plan are independent of your Social Security benefits. You can receive both benefits if you meet all eligibility criteria.

Would my Social Security benefits be affected by my retirement benefits resulting from my purchase of public service credits (in-state or out-of-state) towards COPERS retirement, if such service took place during a non-Social Security covered position?

You need to consult with your local Social Security Administration office for details on this subject.

LONG TERM DISABILITY ("LTD")

If I become eligible for Long Term Disability ("LTD") benefits administered by the City's Personnel Department, how would this affect my disability retirement benefit under the City's Retirement Plan?

If you become eligible for LTD benefits, your disability pension under the Retirement Plan would not be affected. It should be noted however, your LTD benefits will be reduced by any disability benefits you may receive from COPERS, Social Security and/or industrial pay. For more details about the City's coordination of these two distinct and separate benefits, contact the Personnel Department's Benefits Office.

OPTIONAL FORMS OF RETIREMENT

What are the optional forms of pension payment?

Generally, you can choose from SIX OPTIONS to calculate your pension. You should select the one fitting your retirement needs best. Per City Charter if you are married, you must select "Option A Standard," unless your spouse consents to your selection of a different option. You will need to select an optional form of payment before retirement. Once you have received your first payment, you cannot change your option.

Benefits payable to your designated survivor/beneficiary vary, depending on the option selected. Except for "Option C," your designated beneficiary must be a person having an insurable interest in your life. The following are presumed to have an insurable interest in a retiree's life:

- Spouse
- Domestic Partner (requires evidence of partnership through completion of "Affidavit of Domestic Partnership" form available from COPERS)
- Parent
- Child
- Sibling
- Grandparent
- Grandchild
- Father/Mother-in-law
- Stepchild
- Brother/Sister-in-law
- Fiancé/Fiancée

Your options are as follows:

(1) Straight Life Option

Maximum retirement benefit available

Monthly pension for life for retiree

Payments cease upon death of retiree

If at the time of your death, you had not received payments equal to the total member contributions at retirement, the difference would be available for a refund/rollover to your beneficiary of record.

EXAMPLE:

Assume:

Pat retires December 31, 2006

Pat is married to Harold

Pat selects the Straight Life Option (after Harold signs a written consent form)

Result:

| | |
|-----------------------------------|----------------------|
| Pat receives for life | \$2,964.50 per month |
| Upon Pat's death, Harold receives | \$ 0.00 per month |

(2) Option A Standard

Continuing survivorship option

Less than the Straight Life Option

Monthly pension for lifetime of retiree

Designated survivor will receive 100 percent of pension benefit for lifetime upon death of retiree.

ACCORDING TO CITY CHARTER OPTION A STANDARD IS THE MANDATORY OPTION FOR MARRIED MEMBERS.

To select a different option, married members must obtain spousal consent on forms available at COPERS.

EXAMPLE:

Assume:

Pat, age 60, retires December 31, 2006

Pat designates Harold, age 60, as survivor

Pat's Straight Life Option benefit is \$2,964.50

Pat elects Option A Standard

Therefore, Pat's monthly benefit is reduced to \$2,498.63

Result:

| | |
|---|------------|
| Pat receives for life | \$2,498.63 |
| In the event of Pat's death, Harold receives for life | \$2,498.63 |
| If Harold dies before Pat, Pat continues to receive | \$2,498.63 |

(3) Option A Pop-Up

Monthly pension for lifetime of retiree

Continuing survivorship option

Designated survivor will receive 100% of pension benefit for lifetime upon death of retiree

If designated survivor predeceases you, your pension will increase (pop-up) to equal your maximum benefit as calculated under the Straight Life Option.

EXAMPLE:

Assume:

Pat, age 60, retires December 31, 2006
Pat designates Harold, age 60, as survivor
Pat's Straight Life Option benefit is \$2,964.50
Pat elects Option A Pop-Up
Pat's monthly benefit is, therefore, reduced to \$2,454.67

Result:

| | |
|--|-------------|
| Pat receives for life | \$2,454.67 |
| Upon Pat's death, Harold receives for life | \$2,454.67 |
| If Harold dies before Pat, Pat receives for life | \$2,964.50* |

*Same amount as under Straight Life Option

(3) Option B Standard

Continuing survivorship option

Monthly pension for lifetime of retiree

Less than Straight Life Option

Designated survivor will receive 50% of your pension benefit for the remainder of his or her lifetime

EXAMPLE:

Assume:

Pat, age 60, retires December 31, 2006
Pat designates Harold, age 60, as survivor
Pat's Straight Life Option benefit is \$2,964.50
Pat elects Option B Standard

Pat's monthly pension is reduced to \$2,711.69

Result:

| | |
|---|------------|
| Pat receives for life | \$2,711.69 |
| Upon Pat's death, Harold receives for life (50%) | \$1,355.84 |
| If Harold dies before Pat, she continues to receive | \$2,711.69 |

(4) Option B Pop-Up

Monthly pension for lifetime of retiree

Continuing survivorship option

Designated survivor will receive 50% of pension benefit for the remainder of his or her lifetime

If designated survivor predeceases you, your pension will increase (pop-up) to equal your maximum benefit as calculated under the Straight Life Option.

EXAMPLE:

Assume:

Pat, age 60, retires December 31, 2006
Pat designates Harold, age 60, as survivor
Pat's Straight Life Option benefit is \$2,964.50
Pat elects Option B Pop-Up
Pat's monthly pension is, therefore, reduced to \$2,685.60

Result:

| | |
|---|-------------|
| Pat receives for life | \$2,685.60 |
| Upon Pat's death Harold receives for life (50%) | \$1,342.80 |
| If Harold dies before Pat she receives for life | \$2,964.50* |

*Same amount as under Straight Life Option

(5) Option C

"Ten Years Certain and Life"

Monthly pension for lifetime of retiree

Guarantees a minimum of 120 monthly payments (10 years) paid to retiree or designated beneficiary

Unlike Options A or B, you can change your designated survivor at any time, as well as nominate more than one person to share the monthly benefit. If you live more than 10 years after your retirement, monthly pension payments will cease at your death.

EXAMPLE:

Assume:

Pat, age 60, retires December 31, 2006
Pat designates Harold as survivor
Pat's Straight Life Option benefit is \$2,964.50
Pat elects Option C naming Harold as the designated survivor
Pat's monthly benefit is reduced to \$2,852.68

Result:
Pat receives for life \$2,852.68
If Pat's death occurs before receiving
120 monthly payments, Harold receives
the remaining payments for up to 120 months* \$2,852.68
(If Harold dies before Pat receives 120 payments,
she can designate another beneficiary)
If Pat's death occurs after receiving
120 monthly payments, Harold receives \$ 0.00

*If Pat dies after receiving three years of pension payments, Harold becomes eligible for seven years of pension payments. If Pat dies after receiving nine years of pension payments, Harold becomes eligible for one year of pension payments. Harold's pension stops automatically once 120 payments have been paid to retiree and survivor.

What personal circumstances should I (we) consider before choosing an optional form of retirement?

Remember, your choice is personal. You should carefully consider your financial situation with your family members, if applicable. You may also want to consult with your financial advisor, accountant, attorney or other knowledgeable person(s) you trust.

QUESTIONS TO CONSIDER BEFORE SELECTING AN OPTION

Here are some questions you may want to consider before making any irrevocable selections:

- a. Will your survivor need the monthly payments resulting from the continuation of your pension should you die? Or do you have enough life insurance or income-producing assets to provide your survivor with future financial security?

As you gather the information to help answer this question, do not overlook other pensions you or your survivor will be entitled to receive from other employment and/or Social Security.

- b. If additional income protection is needed, can you provide it in a different way, other than by taking a reduction in your monthly pension?
- c. Have you considered your health status and that of your designated survivor? What about the longevity of your family members versus your designated survivor's family?
- d. Are you taking care of elderly parents and/or do you anticipate college costs for your child's/children's education?

DEATH BENEFITS AND DESIGNATION OF BENEFICIARIES

If I die after retirement, would my designated beneficiaries receive the refund of my contributions?

Yes, however, the balance of your contributions will be reduced by any pension payments made to you. If there is a survivor beneficiary eligible for a continued pension, then no contributions are paid until your designated survivor dies.

Would there be a payment to my designated beneficiary if the pension payments to me (and/or my spouse in the event of my death) exceeded the balance in my contributions account?

Possibly. If you were a primary retiree, married at the time of your death, and no pension payments will continue to your spouse, based on your retirement option selected, your last pension check is automatically paid to your spouse. If there is no surviving spouse, the last check is paid to your designated beneficiary. Also, if you receive pension benefits as a survivor of a primary retiree, your last check is payable to your designated beneficiary (or automatically to your spouse if you were married at the time of death).

If I do not designate a beneficiary of my contributions balance and die with no survivor pension payable, who receives this payment?

The applicable payment generally goes to your estate. Also, if your designated beneficiary dies before you and you do not file a new designation form and die, any refund of your contributions will be paid to your estate.

Who can I name as a designated beneficiary of my contributions (or last pension check if retired)?

You can name any person or persons of your choice. The name of the person you designate must be specifically spelled out in the forms. If you designate more than one person, you should state the percentages payable to each of them.

If a valid Domestic Relations Order ("DRO") exists designating my former spouse ("alternate payee") as beneficiary of a portion of my contributions in the event of my death, and subsequent to such order I name certain beneficiaries through the appropriate COPERS forms, what would happen?

Any DRO on record, designating a former spouse as beneficiary of a portion of your contributions, upon your death, supercedes any "Change of Beneficiary forms" you may have submitted. Upon your death your former spouse's portion of contributions is calculated and your other designated beneficiaries will receive the remaining balance in your "member contributions" account.

If I pass away while an active employee, are there survivor benefits?

If you have fewer than 10 years of credited service and pass away from non-employment related causes, your designated beneficiaries will receive a refund of your contribution balance.

If you have 10 or more years of credited service and pass away (regardless of circumstances) while employed by the City; your eligible dependents will receive benefits. If you have fewer than 10 years of credited service and die from employment-related causes, your credited service will automatically be increased to 10 years.

If you die as a member with 10 or more years credited service:

- YOUR SURVIVING SPOUSE will receive the same lifetime pension as if you had retired the day before you passed away and elected Option A Standard.
- YOUR DEPENDENT CHILDREN under age 18 will receive a pension of \$200 (each).
- If single, your designated beneficiary will receive a refund of contributions.

How can I designate a beneficiary for the refund of my retirement contributions in the event of my death?

Employees generally complete a COPERS "Designation of Beneficiary" form upon employment. Should you desire to change your named beneficiaries and/or the method of distribution, you can request a new form from the COPERS office or visit the COPERS website.

When or why would I consider changing my "Designation of Beneficiary" form?

Whether you are active or retired, over the years your personal situation may change due to marriage, birth of children, divorce, death in the family, etc. The financial condition of your dependents may also change over the years.

MONTHLY PENSION DEDUCTIONS AND TAXES

Are pension benefits subject to monthly deductions?

Yes. Your pension benefits are subject to deductions. These include health insurance premiums, state taxes and federal taxes (upon election).

Are pensions subject to state and federal taxes?

Yes. Your pension is subject to federal and state taxes. After your retirement, you will have the option to have federal tax withheld. State tax withholding is a percentage of your federal tax amount. If you choose not to have taxes withheld, you will still be responsible for your tax liability upon filing your tax returns.

"After-tax" contributions to the Plan were generally made prior to 1985. Some members who paid contributions to COPERS for prior governmental/military service purchases or buyback of forfeited service may have "after-tax" contributions. Those member contributions are exempt from federal tax.

As a retiree a portion of your benefit may be excluded from taxation. You will receive this information (excludable amount) upon your retirement for use in preparing your tax returns.

Since tax laws change over time, we strongly recommend you consult the Internal Revenue Service ("IRS"), your state of residence Department of Revenue and/or your tax advisor for the most current information on this or other tax matters.

ASSIGNMENT, PROTECTION OF BENEFITS

Are pension benefits subject to assignment, attachment or garnishment?

No. Your retirement benefits cannot be assigned. Neither can they be subject to attachment, garnishment, execution, the operation of bankruptcy, nor any other process of law.

Please note, however, a court order regarding divorce settlements may be enforceable against your pension benefits upon your retirement, as may be Internal Revenue Service ("IRS") tax levies. The City of Phoenix also has the right to collect from your contributions or pension to cover certain claims arising from theft or embezzlement.

DIRECT DEPOSITS

Can I have my monthly pension deposited directly into my bank account?

Yes. You can have your monthly pension deposited in the bank of your choice. These deposits are made electronically. All you need to do is complete the appropriate forms available at COPERS.

PENSION INCREASES

Are there post retirement increases to my pension?

Possibly. Each year, based upon a predetermined formula and investment returns, a distribution for each eligible retiree or survivor/beneficiary may be paid as a supplement. This payment is generally made during December, based on the fiscal year ended June 30. It is known as the "13th Check".

The distribution amount is limited to one-half the increase in the Phoenix-Mesa metro area Consumer Price Index for all Urban Consumers ("CPI-U") developed by the Bureau of Labor Statistics of the U.S. Department of Labor or three percent whichever is less, times your annualized pension. This rate cannot be less than one percent, provided funds are available in the reserve. Your 13th Check payment is pro-rated if, as of June 30 of the year in question you were not retired a full year.

Another possible pension increase is provided under the Pension Equalization Program ("PEP"). The PEP provides for permanent pension increases, not to exceed the Department of Labor Consumer Price Index. Increases apply if the average return of COPERS investments exceeds the assumed actuarial rate of return (currently eight percent) over a five-year period. Eligible retirees/survivors must have received 36 pension payments as of January 1st of the year being considered.

The PEP is not a cost-of-living adjustment ("COLA"), since it is subject to investment performance in excess of eight percent. Periods may occur where investment performance may not support an increase. Investment earnings in excess of eight percent, not used to finance the PEP in any given year, will be carried over and may be used to finance a future PEP adjustment.

Unlike the "13th Check," the adjustments under the PEP are permanent; therefore, they increase your future monthly payments. The PEP, if any, is paid with your April 1st check, retroactive to January 1st of the year of the adjustment.

DIVORCE AND DOMESTIC RELATIONS ORDERS

Are benefits provided by COPERS considered marital property and therefore subject to distribution in the case of a divorce?

Yes, your pension benefits are considered marital property, subject to distribution in case of a divorce.

What type of information is available during a divorce?

Your own attorney is the best source for retirement information during a divorce. Attorneys are trained to obtain any pertinent data to protect your interest, whether you are the employee member or the spouse.

Generally, the individuals representing the parties in a divorce work closely with COPERS staff to ensure COPERS requirements are met in the ultimate court order issued. The COPERS Board has approved certain detailed requirements for Domestic Relations Orders ("DRO").

RETIREMENT INFORMATION

How can I obtain information about the financial condition of COPERS?

Audited Certified Annual Financial Reports ("CAFR") are published every year. All active employees receive a Popular Annual Financial Report ("PAFR") with their annual service statements. The PAFR is a summary of the CAFR and is intended to provide the reader with an understanding of COPERS' overall financial position at the end of every fiscal year. Copies of both reports are available in our office and on the COPERS website.

How can I get information about my retirement benefits?

The City Personnel Department, in coordination with COPERS, organizes a number of presentations every year. These programs cover many benefits, including retirement, health insurance, social security and deferred compensation. Contact the Personnel Department/Employee Development Section or your department training liaison for information about the next scheduled presentation.

The COPERS office also offers counseling sessions. Contact our office to schedule an appointment if you are planning on retiring.

ORDINANCE S-37212

AN ORDINANCE REPEALING EXISTING PAY
ORDINANCE S-36305 AND ADOPTING A NEW
ORDINANCE FOR NEW RATES AND
COMPENSATION.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as

follows:

SECTION 1. Ordinance S-36305 being an Ordinance which adopted a "Gross Pay Schedule" of all employees of the City of Phoenix, and all amendments thereto be, and the same are repealed as of the effective date of this Ordinance.

SECTION 2. On and after July 12, 2010, the effective date of this Ordinance, all compensation to be paid to employees of the City of Phoenix shall be computed from Schedule II attached hereto as Exhibit A and by this reference incorporated herein. Schedule II, attached, includes those compensation changes set forth in Section 5 hereof.

SECTION 3. The City Manager is authorized to provide a benefits program for City employees as described by various administrative regulations and the benefits reference guide.

SECTION 4. On and after the effective date of this Ordinance, employees of the City of Phoenix shall be compensated on a bi-weekly schedule in accordance with Schedule II and in accordance with those certain Memoranda of Understanding, to wit:

Memorandum of Understanding 2010-2012 by and between the City of Phoenix and the Laborers International Union of North America, Local 777, AFL-CIO, covering Field Unit 1.

Memorandum of Understanding 2010-2012 by and between the City of Phoenix and the American Federation of State, County and Municipal Employees, Local 2384, AFL-CIO, covering Field Unit 2.

Memorandum of Understanding 2010-2012 by and between the City of Phoenix and the American Federation of State, County and Municipal Employees, Local 2960, AFL-CIO, covering Office and Clerical Unit 3.

Memorandum of Understanding 2010-2012 by and between the City of Phoenix and Phoenix Law Enforcement Association, covering Police Officers Unit 4.

Memorandum of Understanding 2010-2012 by and between the City of Phoenix and Phoenix Firefighters Association, Local 493, IAFF, covering Unit 5.

and shall work a schedule of hours in accordance with applicable administrative regulations and ordinances and consistent with the determination of work hours by the City, based on the needs of the City.

SECTION 5. Compensation

The compensation schedules set forth in Schedule II of the 2010-2011 Pay Plan shall be effective and/or modified in accordance with the following:

- (a) Effective July 12, 2010, Unit 1 pay grades shall be decreased by 1.0%.
- (b) Effective July 12, 2010, Unit 2 pay grades shall be decreased by 1.0%.
- (c) Effective July 12, 2010, Unit 3 pay grades shall be decreased by 1.0%.

- (d) Effective July 12, 2010, Unit 4 pay grades shall be decreased by 1.0%.
- (e) Effective July 12, 2010, Unit 5 pay grades shall be decreased by 1.0%.
- (f) Effective July 12, 2010, Unit 6 (Police supervisors) pay grades shall be decreased by 1.0%.
- (g) Effective July 12, 2010, Confidential Office and Clerical pay grades shall be decreased by 1.0%.
- (h) Effective July 12, 2010, Supervisory and Professional pay grades shall be decreased by 1.0%.
- (i) The compensation schedules set forth in Schedule II of the 2009-2010 Pay Plan for all Middle Manager and Executive pay ranges shall remain unchanged for fiscal year 2010-2011.

SECTION 6. On and after the effective date of this Ordinance, the pay rate for an employee of the City of Phoenix shall be that shown in Schedule II, except that employees designated as Executive and Middle Management shall have a salary set by the City Manager which shall be at or between the minimum and maximum rates assigned to that classification as shown in Schedule II.

SECTION 7. On and after the effective date of this Ordinance, no overtime work shall be authorized, unless it shall have first been approved as provided by administrative regulation.

SECTION 8. In the event any employee of the City of Phoenix receives non-monetary compensation in the form of lodging, utilities, or similar elements, such compensation may be deducted from the bi-weekly rate for such classification, due consideration being given by the City Manager for the convenience to the City, which is served by having such employee available in a particular location.

SECTION 9. New Hire Salary

On and after the effective date of this Ordinance, new employees shall be hired at the beginning step of the established grade for each classification, provided however, that in the event labor market requirements or unusual qualifications of a candidate for employment make it necessary, a new employee may be entered at not more than three steps above the entry step of the pay grade with permission of the City Manager. Following approval by the Human Resources Director, approval of the City Council shall be required to hire new employees at more than three steps above the entry step in any pay grade, or in the case of Executive or Middle Management personnel, higher than the designated mid-point of their assigned pay grade. Except that:

- (a) The provisions of this paragraph do not apply to hiring rates necessitated by the provisions of Section 21. (Promotion)
- (b) Candidates for information technology positions (i.e., Information Technology Analyst/Programmer and User Technology Specialists) may be entered at up to Step 7 of the pay grade, with permission of the City Manager and Human Resources Director.
- (c) Police Recruit employees may be entered at up to Step 5 of the pay grade to attract qualified applicants and to remain competitive with other law enforcement agencies. Police Recruits may be promoted to Step 3 of the Police Officer pay grade upon graduation from the police academy.
- (d) Police officers designated as "lateral hires," as determined by the Human Resources Director, may be hired at up to Step 7 of the Police Officer pay grade to attract qualified, experienced applicants, with permission of the City Manager and Human Resources Director.

SECTION 10. Anniversary Dates

For the purpose of this ordinance, anniversary date refers to the salary review date.

- (a) All employees appointed or entered at the beginning step of the pay grade of a classification in Schedule II, upon successful completion of six (6) months of full-time employment, may be advanced to the next step in the pay grade for their respective classifications, and this shall become the anniversary date for additional pay increases. The provisions of this paragraph do not apply to Executive and Middle Management employees.
- (b) The anniversary date of employees hired at a step above the beginning step shall be the date on which they were hired.
- (c) The effective date for merit increases for employees covered under (a) and (b) shall be on the anniversary date.
- (d) An employee on a continuous leave of absence of thirty (30) working days or longer, whether such leave is paid or unpaid, shall have the anniversary date adjusted to account for the period of absence from the thirtieth day until the employee's return to work. This provision does not apply when the leave involved is military leave, unless the employee is probationary and has been on probation for less than nine months.
- (e) Anniversary dates shall be adjusted upon the granting of a special merit pay increase pursuant to section 11(r).

SECTION 11. Merit Increases

In recognition of continued meritorious service, full-time employees become eligible to be considered for a merit pay increase on each anniversary date until they have advanced to the maximum step in their pay grade. Employees eligible for merit increases shall be advanced one step in the pay grade in accordance with this section only upon approval of the department head or the City Manager. Except that:

- (a) Employees designated as Executive and Middle Management and assigned to executive and middle management compensation grades may be advanced within their assigned pay grade by the City Manager based upon periodic review of the individual employee's work performance.
- (b) Sworn employees in the classification of Police Officer paid at Step 3 upon entry into the classification shall be considered for a merit pay increase six months after graduation from the academy; and this shall become the anniversary date for additional pay increases.

ORDINANCE NO. 5572

AN ORDINANCE DIRECTING AND CALLING A SPECIAL ELECTION FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED ELECTORS OF THE CITY OF PHOENIX A PROPOSED AMENDMENT TO THE CHARTER OF THE CITY OF PHOENIX BY REPEALING SECTIONS 1 TO 32, INCLUSIVE, CHAPTER XXIV OF THE CHARTER OF THE CITY OF PHOENIX, BEING THE ENTIRE PHOENIX CITY EMPLOYEES RETIREMENT LAW OF 1945, SETTING UP FUNDS AND METHODS OF PROTECTING THE INTEREST ACQUIRED BY EMPLOYEES UNDER SAID RETIREMENT LAW OF 1945, AND PROVIDING FOR A CHAPTER XXIV OF THE CHARTER OF THE CITY OF PHOENIX ESTABLISHING A RETIREMENT SYSTEM FOR THE EMPLOYEES OF THE CITY OF PHOENIX OTHER THAN EMPLOYEES OF THE POLICE AND FIRE DEPARTMENTS; SETTING UP DEATH BENEFITS AND DISABILITY AND RETIREMENT FUNDS AND PRESCRIBING THE METHOD AND RATES OF CONTRIBUTION THERETO BY THE CITY OF PHOENIX AND THE EMPLOYEES COVERED THEREBY; PROVIDING FOR THE ADMINISTRATION THEREOF AND FOR THE PAYMENT OF PENSIONS, ANNUITIES AND OTHER BENEFITS THEREFROM TO THOSE ENTITLED THERETO; PROVIDING FOR TRANSFER OF ASSETS AND LIABILITIES; PROVIDING FOR RETROACTIVE EMPLOYER SOCIAL SECURITY TAXES; ORDERING A SPECIAL ELECTION TO BE HELD FOR THE PURPOSE OF SUBMITTING TO THE QUALIFIED ELECTORS THE QUESTION OF THEIR APPROVAL OR DISAPPROVAL OF SAID REPEAL AND AMENDMENT; AND DECLARING AN EMERGENCY.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF PHOENIX as

follows:

SECTION 1. That a special election of the qualified electors of the City of Phoenix be, and the same is hereby ordered and called to be held according to law on the 22nd day of December 1953, for the purpose of determining whether the Charter of the City of Phoenix shall be amended in the manner herein specified.

SECTION 2. There shall be submitted to the qualified electors of the City of Phoenix for their determination the proposition hereinafter stated to be voted upon by said electors,

wit:

SHALL CHAPTER XXIV OF THE CHARTER OF THE CITY OF PHOENIX BE AMENDED TO READ AS FOLLOWS:

CHAPTER XXIV

PHOENIX CITY EMPLOYEES' RETIREMENT LAW OF 1953

Article I

REPEAL OF PHOENIX CITY EMPLOYEES' RETIREMENT SYSTEM LAW OF 1945

Section 1. Chapter XXIV of the Charter of the City of Phoenix, being the Phoenix City Employees' Retirement System Law of 1945, is repealed as of December 29, 1953, subject to the following conditions:

1.1. Any person who retired for age or service or age and service under the said Chapter XXIV and who is in receipt of or is entitled to receive benefits thereunder prior to its repeal shall continue to receive the said benefits or shall continue to be entitled to receive the said benefits to the same extent and in the same manner in all respects as if the said Chapter XXIV has not been repealed. If such retirant shall have elected one of the actuarially equated options provided for in the said Chapter XXIV his duly designated beneficiary shall, upon the retirant's death, receive the same benefit to which the said beneficiary was entitled under the said Chapter XXIV.

1.2. Any person who retired for disability under the said Chapter XXIV and who is in receipt of or is entitled to receive benefits thereunder prior to its repeal shall, subject to the conditions set forth in the said Chapter XXIV, continue to receive the same benefits or shall continue to be entitled to receive the said benefits to the same extent and in the same manner in all respects as if the said Chapter XXIV had not been repealed. At such time as he shall cease to meet such conditions his benefits shall cease and as to him the said Chapter XXIV shall have no further application. If any such person shall have elected one of the actuarially equated options provided for in the said Chapter XXIV, his duly designated beneficiary shall, upon the retirant's death, receive the same benefit to which the said beneficiary was entitled under the said Chapter XXIV.

1.3. Any beneficiary of a deceased retirant or member who is in receipt of or is entitled to receive benefits under the said Chapter XXIV prior to its repeal shall continue to receive the said benefits or shall continue to be entitled to receive the said benefits to the same extent and in the same manner in all respects as if the said Chapter XXIV had not been repealed.

1.4. Any person who, as of the date the said Chapter XXIV is repealed, meets the requirements for retirement under the said Chapter XXIV, but has not applied for retirement, may make such application and retire on or before June 30, 1954, in the same manner in all respects as if the said XXIV had not been repealed. He, or his duly designated beneficiary, if any, shall thereafter receive benefits to the same extent and in the same manner in all respects as if the said Chapter XXIV had not been repealed, provided any such benefits shall be based upon accumulated contributions, average final compensation and service credit as of the date of the repeal of Chapter XXIV.

1.5. If any member dies after the repeal of the said Chapter XXIV but on or before June 30, 1954, and leaves beneficiaries entitled to receive benefits under the said Chapter XXIV, his said beneficiaries shall receive benefits to the same extent and in the same manner in all respects as if the said Chapter XXIV had not been repealed, provided said benefits shall be based upon his final compensation as of the date of the repeal of Chapter XXIV.

1.6. If any member becomes disabled after the repeal of the said Chapter XXIV but prior to July 1, 1954, he shall be entitled to receive disability benefits provided for in the said Chapter XXIV, subject to all conditions pertaining to disability beneficiaries and disability benefits contained in the said Chapter XXIV, to the same extent and in the same manner in all respects as if the said Chapter XXIV had not been repealed, provided said disability benefits shall be based upon his accumulated contributions, average final compensation and service credit as of the date of repeal of Chapter XXIV.

1.7. Interest on members' accumulated contributions credited to their Chapter XXIV annuity savings fund accounts shall cease as of December 1, 1953. The said accumulated contributions shall be set aside and held in a trust fund, called Chapter XXIV employees trust fund, which is hereby created for the purpose of refunding the said accumulated contributions to the respective members or their beneficiaries entitled to same. The rights of any person to such refund, or the trust fund itself, shall not be subject to attachment, garnishment, the operation of bankruptcy or insolvency law, or any other process except as is provided in this Chapter. The accumulated contributions of any member entitled to benefits under sections 1.4 and 1.6 of this Article shall be transferred to the Chapter XXIV retirement fund provided for in section 1.9 of this Article.

1.8. Prior to July 1, 1954 the accumulated contributions held in the Chapter XXIV employees trust fund shall be returned to the respective persons entitled to same, less one and one-half per cent of the total amount of his salary not to exceed \$3600.00 per annum earned since January 1, 1951 to be paid for retroactive coverage for coverage under the Federal Old Age & Survivor's Insurance Program, unless the member shall, in writing, direct the Chapter XXIV retirement board to otherwise dispose of same. In the event a member dies before his accumulated contributions have been disposed of, his said accumulated contributions shall be treated in the same manner in all respects as if the said Chapter XXIV had not been repealed, except that there shall be deducted for payment to the State contribution fund one and one-half per cent of the total amount of his salary not to exceed \$3600.00 per annum earned since January 1, 1951.

1.9. The balance of the assets of the said Phoenix City Employees Retirement System, after providing for the Chapter XXIV employees trust fund, shall be set aside and held in a trust fund, called Chapter XXIV retirement trust fund, which is hereby created for the purpose of disbursing the said assets for the purposes for which they were accumulated under the said Chapter XXIV.

1.10. The assets credited to the Chapter XXIV employees trust fund and the Chapter XXIV retirement trust fund shall be held in one account.

1.11. Until their successors have been elected or appointed and have qualified, the retirement board of the Phoenix City Employees' Retirement System, and the responsibilities of officers and employees of the City of Phoenix engaged in the administration of said Retirement System, are continued to administer and carry into effect the provisions of this Article.

Section 2. This Article 1 shall be in force and effect December 29, 1953.

Article II

CITY OF PHOENIX EMPLOYEES' RETIREMENT PLAN

Section 1. Short Title

1.1. This Article II may be cited as the City of Phoenix employees retirement law of 1953.

Section 2. Definitions

2.1. The following words and phrases as used in this Article, unless a different meaning is plainly required by the context, shall have the following meanings:

2.2. "City" means the City of Phoenix, Arizona.

2.3. "Retirement plan" or "plan" means the City of Phoenix employees retirement plan created in this Article.

2.4. "Retirement board" or "board" means the retirement board provided for in this Article.

2.5. "Employee" means any person in the employ of the city on a full time basis who is under the classified civil service, except as hereinafter excluded, and shall include appointive officials whose employment with the City is on a full-time basis. For the purposes of this Article, full time basis means employment on a work schedule which consists of the number of full time hours per week designated for the class of employment for the employee's classification, and which work schedule is intended to be continuous over a twelve (12) month period at the aforementioned full time hours per week. The term "employee" shall not include (1) policemen and firemen who are covered by another retirement system or pension plan to which the city makes contributions; and (2) any person who furnishes services to the city on a contractual or fee basis. The definition of employee shall not exclude from membership in the retirement plan any person who was a member of the former system prior to the effective date of this Article.

2.6. "Member" means any person included in the membership of the retirement plan.

2.7. "Service" means service rendered to the city by a person as an officer or employee of the city and shall include service rendered in any function or enterprise the city may engage in as a municipal corporation or may have heretofore acquired through purchase or eminent domain; provided, however, that in the event a function or enterprise is hereafter acquired by the city through purchase or eminent domain the rights acquired by the employees thereof under this retirement plan shall be set forth and determined in a written agreement between the city, the retirement board, and a duly elected or appointed committee authorized to represent the said employees.

2.8. "Prior service" means service rendered prior to January 1, 1946 to the extent credited under section 14 of this Article.

2.9. "Membership service" means service rendered on or after January 1, 1946 to the extent credited under section 14 of this Article.

2.10. "Credited service" means the sum of the prior service and membership service credited to a member's service account.

2.11. "Original member" means any member with prior service credited to his service account.

2.12. "New member" means any member without prior service credited to his service account.

2.13. "Retirant" means a member who retires with a pension or retirement allowance payable from funds of the retirement plan.

2.14. "Beneficiary" means any person, other than a retirant, who is in receipt of a pension or retirement allowance payable from funds of the retirement plan.

2.15. "Regular interest" means such rate or rates of interest per annum, compounded annually, as the retirement board shall from time to time adopt: Provided, that said regular interest shall be neither less than 2 per cent nor more than 4 per cent per annum, compounded annually.

2.16. "Accumulated contributions" means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the employees savings fund, together with regular interest thereon; and it shall include such other amounts as the member may deposit or have transferred to his employees savings fund account, including regular interest thereon, as provided in this Article.

2.17. "Compensation" means a member's salary or wages paid to him by the city for service rendered by him to the city. In case a member's compensation is not all paid in money, the City Manager shall recommend and the City Council shall fix the value of that part of his compensation not paid in money.

2.18. "Average final compensation" means the average of the highest annual compensations received by a member for a period of five (5) consecutive but not necessarily continuous years of service contained within his ten (10) years of service immediately preceding his retirement. In the event a member has less than five (5) years of credited service his average final compensation shall be the average of his annual compensations received for his total years of credited service.

2.19. "Final compensation" means a member's annual rate of compensation at the time of termination of his last employment with the city.

2.20. "Retirement" means withdrawal from service with a pension or retirement allowance payable from funds of the retirement plan.

2.21. "Pension" means an annual amount payable in equal monthly instalments for the life of an individual.

2.22. "Pension reserve" means the present value of all payments to be made on account of any pension, computed upon the basis of such table or tables of experience and regular interest as the retirement board shall from time to time adopt.

2.23. "Former system" means the Phoenix City Employees Retirement System, created and established under Chapter XXIV of the Charter of the City of Phoenix, and repealed in Article I of this Charter.

2.24. "Social security benefit" means a benefit provided under the old-age and survivors' insurance program of the Federal Social Security Act. In the event a retirant or beneficiary does not qualify for or loses his social security benefit, to which he is entitled, because of failure to apply for same, entering or continuing in covered employment, or otherwise, he shall nevertheless, for the purposes of this Article, be considered to be in receipt of said social security benefits.

2.25. The masculine gender shall include the feminine, and words of the singular number with respect to persons shall include the plural number and vice versa.

Section 3. Retirement Plan Created

3.1. The City of Phoenix employees retirement plan is hereby created to provide for the retirement of employess of the city on account of superannuation, or total and permanent disability; provide retirement allowances to members and their dependents; provide that contributions be made to the plan by the members and the city; and provide for the administration of the plan.

Section 4. Retirement Board

4.1. There is hereby created a retirement board in whom is vested the authority and responsibility for the administration, management and operation of the retirement plan, and for construing and carrying into effect the provisions of this Article, except as is otherwise provided in this Article.

4.2. The retirement board shall consist of seven (7) members, as follows:

(a). Three members of the retirement plan, each of whom shall have at least ten (10) years of credited service, to be elected by the members of the retirement plan for three (3) year terms expiring from and after December 31, 1945; said elections to be held under such rules and regulations as the retirement board shall from time to time adopt.

(b) The City Manager, City Treasurer and Finance Director, or in the event the office of Finance Director has been abolished the City Auditor, shall be ex-officio members.

Section 40. Effective Date

40.1. This Article II shall be in force and effect December 31, 1953.
and thereafter

Article III

Transfer of Assets and Liabilities

Section 1.1. The assets credited to the Chapter XXIV employees trust fund, created in Article I of this Chapter, shall be transferred to the employees savings fund, created in Article II of this Chapter.

1.2. The assets credited to the Chapter XXIV retirement trust fund, created in Article I of this Chapter, equal to the pension reserve liabilities of the mortality reserve fund, created in Article II of this Chapter, shall be transferred to the said mortality reserve fund. The remainder of the assets credited to the Chapter XXIV retirement trust fund shall be transferred to the pension accumulation fund, created in Article II of this Chapter.

Section 2. The City of Phoenix employees' retirement plan, created and established in Article II of this Chapter, shall assume liability for all benefits payable and to be payable under the repealed Chapter XXIV system as provided for in Article I of this Chapter.

Section 3. All records, books and papers, office equipment, supplies and other property belonging to the repealed Chapter XXIV system shall be transferred to and become the property of the City of Phoenix employees' retirement plan.

Section 4. All securities belonging to the Phoenix City employees' retirement system registered in the name of the Phoenix City employees' retirement system may continue to be so registered until disposed of.

Section 5. This Article III shall be in force and effect December 31, 1953.

Article IV

Retroactive Employer Social Security Taxes

Section 1. The City Council is hereby authorized to pay to the Treasurer of the State of Arizona such portion of the funds appropriated in the City of Phoenix budget for the fiscal year beginning July 1, 1953, as are required to pay the employer social security taxes accrued on and after January 1, 1951, and to July 1, 1954, in accordance with the agreement entered into between the Federal Security Administrator and the State of Arizona.

Section 2. This Article IV shall be in force and effect December 30, 1953.

SECTION 5. Immediately following said proposition so to be submitted to the qualified electors of the said City as aforesaid, the words "YES" and "NO" shall be printed on each ballot in such manner that the electors of said city may clearly express their approval or disapproval thereof and in the manner substantially as required in Section 6, Chapter XV of the Charter of the City of Phoenix.

Section 6. The City Clerk is hereby directed to post at

least five (5) copies of this notice of special election in five (5) public places within the City of Phoenix at least twelve (12) days prior to the date of election hereby called and directed to be held and to post a copy of this ordinance and notice of special election at each regular voting place as may hereafter be provided for said election and that in addition to the posting of said ordinance and notice of special election, he shall publish this ordinance three (3) times before the date of such election in the Arizona Weekly Gazette, the official newspaper of the City of Phoenix, one publication of which shall be deemed to be the publication required as to ordinances adopted by the City Council, and said publications shall take the place of printing and mailing the ordinance or proposition and of the sample ballot as required by Chapter XV, Section 5, of the Charter of the City of Phoenix and he shall fully comply with the laws governing elections.

SECTION 7. WHEREAS, the immediate operation of the provisions of this ordinance is necessary for the preservation of the public peace, health and safety, an EMERGENCY is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage by the Council, approval by the Mayor and publication and posting as required by law, and is hereby exempted from the referendum clause of the City Charter.

PASSED by the Council of the City of Phoenix this 30 day of November, 1953.

APPROVED by the Mayor this 30 day of November, 1953.

Robert Foster Mayor

ATTEST:
John E. Butler City Clerk

APPROVED AS TO FORM:
Lawrence H. H. H. H. City Attorney

REVIEWED BY:
Ray H. Williams City Manager

Published through Gazette - 12/1/53 - 12-8-53 - 12-15-53

History of City Charter Changes Regarding COPERS

| Election Date | Election Type | Prop # | Proposition Title | Yes Votes | Yes % | No Votes | No % |
|---------------|----------------------------|--------|---|-----------|--------|----------|--------|
| 9/9/2003 | Mayor and Council Election | 2 | Disability Retirement Date | 78,822 | 86.05% | 12,777 | 13.95% |
| | | 3 | Repay Retirement Fund to Restore Credited Service | 74,273 | 80.62% | 17,859 | 19.38% |
| | | 4 | Repeal Mandatory Retirement Age | 65,799 | 73.32% | 23,949 | 26.68% |
| 9/7/1999 | Mayor and Council Election | 104 | Prudent Investment Rule | 66,708 | 74.18% | 23,225 | 25.82% |
| | | 105 | Retirees Pension Adjustment | 63,261 | 72.59% | 23,865 | 27.41% |
| | | 107 | Retirement Buy-Back Amendment | 54,695 | 63.41% | 31,559 | 36.59% |
| 10/3/1995 | Mayor and Council Election | 4 | Compliance with IRS Requirements | 81,241 | 77.18% | 18,105 | 22.82% |
| | | 5 | Rule of 80 (Retirement Eligibility) | 56,640 | 75.15% | 18,828 | 24.95% |
| | | 6 | Retirees (13th Check) | 51,522 | 65.47% | 27,179 | 34.53% |
| 10/1/1991 | Mayor and Council Election | 101 | Retirement Investment | 27,249 | 36.56% | 47,283 | 63.44% |
| | | 102 | Post Retirement Pension Benefit Equalization | 49,198 | 62.38% | 29,675 | 37.62% |
| 10/3/1989 | Mayor and Council Election | 100 | Retirement Options | 77,604 | 53.18% | 68,335 | 46.82% |
| | | 101 | Retiree Tax Equity Adjustment | 77,708 | 54.49% | 64,900 | 45.51% |
| 10/6/1987 | Mayor and Council Election | 101 | Pension Increments | 50,890 | 58.19% | 36,634 | 41.81% |
| | | 102 | Early Retirement | 45,217 | 51.41% | 42,737 | 48.59% |
| | | 103 | Pension Purchase Power | 51,094 | 58.53% | 36,197 | 41.47% |
| | | 104 | Pension Investment | 55,808 | 64.57% | 30,618 | 35.43% |
| | | 105 | Disability Assessment Committee | 60,525 | 70.38% | 25,476 | 29.62% |
| 11/5/1985 | Primary/Special Election | 102 | Inclusion of Elected Officials into the Retirement Plan | 18,097 | 23.72% | 58,184 | 76.28% |
| 11/1/1983 | Primary/Special Election | 104 | Expand the Retirement Board | 83,277 | 68.85% | 37,673 | 31.15% |
| | | 105 | Early Retirement | 91,326 | 74.86% | 30,667 | 25.14% |
| | | 106 | Deferred Pension | 91,395 | 75.67% | 29,392 | 24.33% |
| | | 107 | Retirement Investment | 92,115 | 77.19% | 27,228 | 22.81% |
| | | 108 | Pension Increase | 83,758 | 69.52% | 36,714 | 30.48% |
| 11/3/1981 | Primary/Special Election | 105 | Administrative Changes in Retirement Plan | 27,544 | 40.11% | 41,122 | 59.89% |
| | | 106 | Retirement with 25 Yr/Age 55 | 32,947 | 46.09% | 38,523 | 53.91% |
| | | 107 | Adjusting Current Pension | 39,530 | 56.55% | 30,371 | 43.45% |
| 11/13/1973 | Primary | 8 | Employee Retirement Plan Amended | 29,598 | 63.20% | 17,231 | 36.80% |
| 12/9/1969 | General | | City of Phoenix Employees' Retirement Plan | 18,084 | 69.93% | 7,777 | 30.07% |
| 11/9/1965 | Primary | 4 | City Employee Retirement Compensation | 13,336 | 35.30% | 24,442 | 64.70% |
| 12/22/1953 | Special Election | | Phoenix City Employees' Retirement Law of 1953 | 1,483 | 87.29% | 215 | 12.71% |

R:\Strudel\Person\Retain Task Force\Meetings\Meeting 2 Mar 22 2011\3.9 History of Charter Changes Regarding COPERS

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Pfirs' Trial Exh 59-1

D000196

CITY OF PHOENIX, ARIZONA
CHARTER AMENDMENTS
INFORMATION PAMPHLET
1973

containing copies and summaries of the
PROPOSED AMENDMENTS TO THE CITY CHARTER
to be submitted to the qualified electors
of the City of Phoenix
for their approval or rejection
at the
PRIMARY - SPECIAL ELECTION
to be held on Tuesday
THE 13th DAY OF NOVEMBER, 1973



Issued by the Office of the
City Clerk of Phoenix



CITY CLERK DEPARTMENT — ELECTION SECTION
Room 410, Municipal Building
251 West Washington
Phoenix, Arizona 85003

BULK RATE
U. S. POSTAGE
PAID
PERMIT NO. 18
PHOENIX, ARIZONA

PROPOSITION NO. 7

31 SHALL CHAPTER XIX, SECTION 2, BE AMENDED TO READ:
45

"Section 2. Progressive payments; limitations on payments to be made prior to completion of work.

Any contract may provide for progressive payments. But no progressive payments can be provided for or made at any time, which with prior payments, if there have been such, shall exceed in amount ninety per cent of the value of the labor done and the materials used up to that time, and no contract shall provide for or authorize or permit the payment of more than ninety per cent of the contract price before the completion of the work done under said contract and the acceptance thereof by the proper officer, department or board."

YES

NO

SUMMARY

The present Charter provision provides that to permit progressive payments on contracts, the authorization must be contained in an ordinance authorizing the contract as well as in the contract itself. This now requires the adoption of an extra ordinance since construction contracts are normally awarded by formal action, not by ordinance. The progressive payment provision would be contained in the contract itself and an ordinance would not be required if the amendment passes.

PROPOSITION NO. 8

SHALL CHAPTER XXIV, ARTICLE 2, SECTIONS 2, 13, 14, 17, 18, 25, 27 AND 34, "THE CITY OF PHOENIX EMPLOYEES' RETIREMENT PLAN," BE AMENDED TO INCORPORATE THE FOLLOWING VISIONS AND CHANGES:

Section 2 changes the definitions of "final average compensation" and "nominee"; Section 13 provides for restoration of service credits for employees re-entering City employment within 2 years from date of last termination; Section 14 provides for service credit towards retirement for members that have been continuously employed since December 29, 1967; Section 15 provides for credit for unused sick leave in computation of an employee's monthly pension; Section 17 provides for retirement of employees who have attained the age of 62 years and have had five or more years of credited service; Section 18 provides for the period of credited service; Section 19 provides for an increased monthly pension to those already retired; Section 20 provides for a maximum pension of 85% of an employee's final average compensation; Section 21 provides for death pension benefits after five years credited service; Section 25 provides for survivor benefits for a widower; Section 27 increases the employee's contribution to 5% of compensation; Section 34 provides the retirement board with the power to contract for investment advice, safe-keeping of securities, handling of investment and clearing of transactions, and other services deemed necessary; and setting forth certain limitations as to types of investments the retirement board may make.

SHALL THE AMENDMENTS TO CHAPTER XXIV, ARTICLE 2, "THE CITY OF PHOENIX EMPLOYEES' RETIREMENT PLAN," BE ADOPTED?

YES

NO

SUMMARY

This proposition would make the following changes in the City of Phoenix Employees' Retirement Plan, as recommended by the City of Phoenix Employees' Retirement Board:

- (1) Pensions would increase for those retired before July 1, 1973, for every year in which they have been retired.
- (2) Pensions would increase for employees retiring in the future per year of service, based on a three-year average pay, up to a maximum 85% of his or her final average salary. Unused sick leave would be used in the computation of years of service. (At present, the maximum increase is 1 1/2% per year on a five-year average, with no limit on the maximum increase.)

32 of 44 pension, and unused sick leave time saved is not figured in the computation.)

- (3) Employees would contribute a straight 5% of their salary to the retirement fund. (At present, this share is figured as 3% of the salary subject to Social Security and 5% of the rest.)
- (4) At present pension benefits are given only to those retiring employees who have ten or more years service, payable on or after age 60 — unless they left City employment before 60, in which case benefits are payable at age 62. This provision would not change.
- In addition, benefits would now be extended to retiring employees 62 years or older who have five or more years service. Also, persons under 62 leaving City employment after five years service would be able to leave their contributions in the pension fund and receive benefits at age 62.
- (5) Employees who withdrew contributions from the pension plan on December 31, 1953 (when the system was changed), but started anew on January 1, 1954, and have been continuously employed since then, would be able to count total employment service years to qualify for retirement, but their pension amount would be based only on the service years after the latter date.
- (6) Widowers will receive the same survivor benefits as widows.
- (7) The Retirement Board would be given specific investment authority, not restricted only to those investments authorized by state law for the Arizona State Employees' Retirement System.

These changes apply to all employees of the City of Phoenix except policemen and firemen, who are covered under the State Public Safety Employees' Retirement System.

The Retirement Board's consulting actuary estimated the annual additional cost of the above benefits at \$1.4 million, of which \$900,000 would come from increased employee contributions, and \$500,000 from the City.

(The full text of the proposed changes to the retirement plan follows.)

SHALL CHAPTER XXIV, ARTICLE 2, SECTIONS 2, 13, 14, 17, 18, 19, 20, 21, 22, 23, 24, 25 (SUBSECTIONS 25.1 AND 25.2), 27 AND 34 (SUBSECTION 34.1) BE AMENDED TO READ:

Section 2

"SECTION 2. DEFINITIONS

2.1. The following words and phrases as used in this Article, unless a different meaning is clearly required by the context, shall have the following meanings:

2.2. 'City' means the City of Phoenix, Arizona.

2.3. 'Retirement Plan' or 'plan' means the City of Phoenix Employees' Retirement Plan continued in this Article.

2.4. 'Retirement Board' or 'board' means the Retirement Board provided in this Article.

2.5. 'Employee' means any person, in the employ of the City of Phoenix on a full time basis, who is under the classified civil service, except as hereinafter excluded, and shall include appointive officials whose employment with the City is on a full time basis. For the purposes of this Article, 'full time' means employment on a work schedule which consists of the number of full time hours per week designated for the class of employment and the employee's classification, and which work schedule is intended to be continuous over a period of 12 months at the aforementioned full time hours per week. The term 'employee' shall not include (1) policemen and firemen who are covered by another retirement system or pension plan in which the City makes contributions; nor (2) any person who furnishes services to the City on a contractual or fee basis. The definition of 'employee' shall not exclude from membership in the Retirement Plan any person in the employ of the City who was a member of the former plan.

2.6. 'Member' means any person who is included in the membership of the Retirement Plan.

2.7. 'Service' means personal service rendered to the City by an employee of the City and shall include service rendered in any function or enterprise the City may engage in as a municipal corporation or municipality, heretofore acquired through purchase or eminent domain; provided, however, that in the event a function or enterprise is hereafter acquired by the City through purchase or eminent domain the rights acquired by the employees thereof under this Retirement Plan shall be set forth and determined in a written agreement between the City, the Retirement Board, and a duly elected or appointed committee, recognized by the Board, authorized to represent said employees.

2.8. 'Credited Service' means the number of years and months of service credited a member by the Retirement Board pursuant to the provisions of this Article.

2.9. 'Retirant' means a member who retires with a pension payable by the Retirement Plan.

2.10. 'Beneficiary' means any person, except a retirant, who is in receipt of, or who is designated to receive, a pension or other benefit payable by the Retirement Plan.

2.11. 'Regular interest' means such rate or rates of interest per annum, compounded annually, as the Retirement Board shall from time to time adopt.

2.12. 'Accumulated contributions' means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the employees' savings fund, together with regular interest therein. It shall include such other amounts as the member may deposit or have transferred to his employees' savings fund account, including regular interest thereon, as provided in this Article.

2.13. 'Compensation' means a member's salary or wages paid him by the City for personal services rendered by him to the City. In case a member's compensation is not all paid, in money the City Council shall, upon recommendation of the City Manager, fix the value of the portion of his compensation which is not paid in money.

2.14. 'Final average compensation' means the average of the highest annual compensations paid a member for a period of 3 consecutive, but not necessarily continuous, years of his credited service contained within his 10 years of credited service immediately preceding the date of his City employment last terminates. If he has less than 3 years of credited service his final average compensation shall be the annual average of his compensation for his total period of service.

2.15. 'Final compensation' means a member's annual rate of compensation at the time his City employment last terminates.

2.16. 'Retirement' means a member's withdrawal from City employment with a pension payable by the Retirement Plan.

2.17. 'Pension' means an annual amount payable by the Retirement Plan, in equal monthly installments, throughout the future life of a person, or for a temporary period, as provided in this Article.

2.18. 'Pension reserve' means the present value of all payments to be made on account of any pension, and shall be computed upon the basis of such tables of experience, and regular interest, as the Retirement Board shall from time to time adopt.

2.19. 'Former system' means the Phoenix City Employees' Retirement System created and established under Chapter XXIV of the Charter of the City of Phoenix and repealed December 29, 1953.

2.20. 'Workmen's compensation period' means the period a person is in receipt of monthly payments of workmen's compensation on account of a member's disability or death arising out of and in the course of his City

employment. If he is paid a single sum in lieu of future workmen's compensation his 'workmen's compensation period' shall be the sum of the period, if any, he was paid monthly payments of workmen's compensation plus (2) the period arrived at by dividing the said single sum by the monthly payment award.

2.21. 'Nominee' means a partnership selected and authorized by resolution of the Retirement Board to perform certain duties in connection with the buying, selling, holding and registration of securities on behalf of the board."

Section 13

"SECTION 13. MEMBERSHIP TERMINATES

13.1. Should any member leave City employment, for any reason, his retirement or death, he shall thereupon cease to be a member. His credited service in force at that time shall be forfeited by him except otherwise provided in Section 15 or Section 20 of this Article. In the event he again becomes an employee of the City he shall again become a member. His credited service last forfeited by him shall be restored to him as provided (1) within 6 months of his return to the City employment or enters into an agreement with the Retirement Board to return, or subsequently does return to the employees' savings fund the amount he withdrew therefrom, together with regular interest from the date of withdrawal to the date of repayment, and (2) he returned to City employment within a period of 5 years from and after the date he last separated from City employment if his last separation occurred prior to January 1, 1954, or he acquires at least 2 years of credited service for service rendered by him after the date he was last re-employed by the City if his last separation from City employment occurred after December 31, 1953 but prior to January 1, 1974, or he returned to City employment within a period of 2 years from and after the date he last separated from City employment if his last separation occurred after December 31, 1973. Credited service shall not be restored to a member until he has returned to the employees' savings fund the full amount, including interest, hereinbefore required by him in this section. In the event a member becomes a retirant or dies he shall thereupon cease to be a member."

Section 14

"SECTION 14. CREDITED SERVICE

14.1. The Retirement Board shall fix and determine by appropriate rules and regulations, consistent with the provisions of this Article, the amount of service to be credited any member; provided, that in no case shall less than 10 days of service rendered by a member in any calendar month be credited him as a month of service, nor shall less than 60 days of service rendered in any calendar year be credited as a year of service, nor shall more than one year of service be credited any member for service rendered by him in any calendar year.

14.2. Service rendered prior to December 29, 1953 shall be credited a member only if he deposits in the employees' savings fund of this Retirement Plan, by transfer or otherwise, less his share of accrued social security taxes:

- (a) The amount of accumulated contributions standing to his credit in the annuity savings fund of the former system at December 29, 1953; said deposit to be made prior to July 1, 1954; and
- (b) All amounts of accumulated contributions withdrawn by him from the annuity savings fund of the former system and not returned thereto; said deposit to be made prior to July 1, 1955; and
- (c) The aggregate amount of contributions the said member would have made to the annuity savings fund of the former system for the period he was an employee after January 1, 1947 and prior to December 29, 1953 if he was not a member of the former system; said deposit to be made in a manner determined by the Retirement Board.

14.3. Service rendered prior to December 29, 1953 by a member who did not make a deposit as provided in Section 14.2 shall be credited a member as non-contributory service for the exclusive purpose of meeting the service requirement specified in Section 17.2 provided (1) the member remains in continuous employment by the City from December 29, 1953 to the date of his retirement, and (2) the member has attained age 55 years.

14.4. A member who retires as provided in Section 17 or Section 18 shall be credited with unused sick leave service for the exclusive purpose of computing the amount of his pension under Section 19.1.

14.5. In the event a policeman or fireman employed by the City becomes a member of the Retirement Plan the service rendered by him in the employ of the police or fire department of the City may be credited him, pursuant to the provisions of this Article, under such conditions as the Retirement Board may from time to time determine; which shall include, but not be limited to, the following:

- (a) He transfers to the employees' savings fund the aggregate amount of contributions made by him to the retirement system or pension plan covering the City's policemen and/or firemen, together with interest additions, if any; and
- (b) In no case shall service credit be given by the Retirement Board for any period for which he is entitled or becomes entitled to a benefit payable by such retirement system or pension plan for the City's policemen and/or firemen.

14.6. In any case of doubt as to the amount of service to be credited a member of the Retirement Board shall have final power to determine the amount."

Section 17

"SECTION 17. VOLUNTARY RETIREMENT

17.1. Any member who has attained or attains age 60 years or 10 or more years of credited service or who has attained or attains 25 years and has 5 or more years of credited service may retire upon his written application filed with the Retirement Board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. Upon his retirement he shall be paid a pension as provided in Section 19.1.

17.2. Any member of the former system who has acquired or 25 or more years of credited service, pursuant to the provisions of Article, may retire prior to his attainment of age 60 years upon his application filed with the Retirement Board setting forth at what time, not less than 30 days nor more than 90 days subsequent to the execution and filing thereof, he desires to be retired. If the member of the system has attained age 55 years he may use both credited service and non-contributory service for the exclusive purpose of satisfying the years required of the preceding service. Upon his retirement he shall be paid a pension as provided in Section 19.1."

Section 18

"SECTION 18. NORMAL RETIREMENT

18.1. Any member shall be separated from City employment on the first day of the calendar month next following the month in which he attains age 65 years, except as provided in Section 18.2.

18.2. Any member may be continued in City employment for a period beyond his attainment of age 65 years, but not beyond his attainment of age 70 years; provided, that his continuance in City employment is requested by him in writing, (2) approved by his department head, and (3) approved by the City Manager.

18.3. If a member who separated from City employment as provided in Section 18.1 or 18.2 has 5 or more years of credited service he may be retired and he shall be paid a pension as provided in Section 19.1. Upon the first payment of his pension is made he shall be considered to be a member notwithstanding that he has separated from City employment."

Section 19

"SECTION 19. PENSION

19.1. Upon his retirement, as provided in this Article, a member shall be paid a straight life pension equal to 2.0 percent of his final compensation multiplied by the number of years, and fraction of a year, of his credited service and his unused sick leave service. In no case shall the amount of straight life pension based on his credited service, exclusive of his unused sick leave service, exceed 65 percent of his final salary."

compensation. Prior to the date the first payment of his pension is made he may elect to be paid his pension under an option as provided in Section 24.1, in lieu of a straight life pension.

19.2. In the event a retirant dies before the aggregate amount of straight life pension payments received by him equals his accumulated contributions standing to his credit in the employees' savings fund at the time of his retirement, the difference between his said accumulated contributions and the said aggregate amount of pension payments received by him shall be paid from the pension reserve fund to such person or persons as he shall have nominated by written designation duly executed and filed with the Retirement Board. In the event there be no such designated person surviving the retirant such difference, if any, shall be paid to his legal representative. No benefits shall be paid under this section on account of death of a retirant if he was receiving a pension under option A, B or C provided in Section 24.1.

19.3. Upon the written application of the retirant or the beneficiary, the amount of each retirement allowance on the rolls January 1, 1974 and having an effective date prior to July 1, 1973 shall be redetermined January 1, 1974 and such redetermined amount shall be the basis of payments from and after the later of (1) January 1, 1974 and (2) the first day of the calendar month next following receipt of the retirant's or the beneficiary's written application for a redetermined pension. The redetermined amount of pension shall be equal to the amount of pension otherwise payable multiplied by the sum of (1) 1.00, and (2) .020 for each period of 6 complete calendar months between the effective date of the pension and January 1, 1974. In the case of a pension payable to a beneficiary upon the death of a retirant who elected an option provided in Section 24.1, the effective date of the pension shall be the effective date of the deceased retirant's pension. As used in this Section 'the amount of pension otherwise payable' means the amount of pension which would be paid without application of the provisions of this Section."

Section 20

"SECTION 20. DEFERRED PENSION

20.1. Should any member who has 6 or more years of credited service leave City employment before his attainment of age 60 years, for any reason except his retirement or death he shall be entitled to a pension as provided in Section 19.1 as the Section was in effect at the time he left City employment. His pension shall begin the first day of the calendar month next following the month in which his written application for same is filed with the Retirement Board on or after his attainment of age 62 years. In the event he withdraws his accumulated contributions from the employees' savings fund he shall thereupon forfeit his rights to a deferred pension as provided in this Section. Except as otherwise provided in this Article, he shall not receive service credit for the period of his absence from City employment and his balance in the employees' savings fund shall be accumulated at regular interest."

Section 25

"SECTION 25. SURVIVOR PENSIONS

25.1. In the event a member with less than 10 years of credited service dies while in the employ of the City his credited service shall be increased to 10 years if the Retirement Board finds his death (1) is the result of causes arising out of and in the course of his employment by the City (2) is compensable under the Workmen's Compensation Act of the State of Arizona.

25.2. In the event a member with 10 or more years of credited service dies while in the employ of the City the applicable benefits provided in paragraphs (a), (b) and (c) of this Section shall be paid, subject to the provisions 25.3 and 25.4.

- (a) If the deceased member leaves a widow or a widower, the widow or widower shall be paid a pension computed in the same manner as if the member had (1) retired the day prior to the date of his death, notwithstanding that he might not have attained age 60 years, (2) elected option A provided in Section 24.1, and (3) nominated his widow or widower as beneficiary. Upon the death or remarriage of the widow or widower the pension shall terminate.
- (b) If the deceased member leaves an unmarried child or children under age 18 years, each such child shall receive a pension of \$360 per annum. If there be more than 2 such surviving children each such child shall receive a pension of an equal share of the total per annum. In no case shall the pension payable to any such child be less than \$120 per annum. Upon a child's adoption, marriage, death, or attainment of age 18 years his pension shall terminate and there shall be a redistribution by the Retirement Board of the member's remaining eligible children under age 18.
- (c) If the deceased member leaves neither a widow or widower nor children, eligible to pensions under paragraphs (a) or (b) of this Section, but he leaves a parent or parents whom the Retirement Board finds to be dependent upon him for at least 50 percent of their support due to absence of earning power because of physical or mental disability, each such parent shall receive a pension of an equal share of \$720 per annum. Upon a parent's remarriage or death his pension shall terminate."

Section 27

"SECTION 27. EMPLOYEES' SAVINGS FUND

27.1. (a) The employees' savings fund is hereby continued. It shall be the fund in which shall be accumulated, at regular interest, the contributions deducted from the compensations of members and from which the Retirement Board made transfers and refunds of accumulated contributions as provided in this Article.

(b) The contributions of a member to the Retirement Plan shall be 5 percent of his annual compensation. The officer or officers responsible for preparing the payroll shall cause the contributions provided herein to be deducted from the compensation of each member on each and every payroll, for each and every payroll period so long as he remains a member of the Retirement Plan. When deducted each of said amounts shall be paid to the Plan and shall be credited to the individual account in the employees' savings fund of the member from whose compensations said deductions were made.

(c) The contributions provided in Subsection (b) above shall be made notwithstanding that the minimum compensation provided by law for any member shall be thereby changed. Every member shall be deemed to consent and agree to the deductions made and provided for herein. Payment of his compensation less said deduction shall be a full and complete discharge and acquittance of all claims and demands whatsoever for services rendered by him during the period covered by such payment, except as to benefits provided in this Article.

(d) In addition to the contributions hereinbefore provided in this Section, the repayment of any amounts pursuant to the provisions of Section 13.1 shall be deposited in the employees' savings fund and credited to the member's individual account. Repayments pursuant to the provisions of Section 13.1 may be made by a single contribution or by an increased rate of contribution as approved by the Retirement Board.

(e) The accumulated contributions transferred from the former system to the Retirement Plan and such other amounts as may be deposited by a member, as provided in Sections 14.2 and 14.3, shall be credited to his individual account in the employees' savings fund.

(f) The accumulated contributions of a member standing to his credit in the employees' savings fund shall be transferred to the pension reserve fund upon his retirement, or upon his death if a pension becomes payable by the Retirement Plan on account of his death. At the expiration of a period of 2 years from and after the date an employee ceases to be a member any balance of accumulated contributions standing to his credit in the employees' savings fund, unclaimed by the member or his legal representative, shall be transferred to the income fund, except as otherwise provided in this Article."

Section 34

"SECTION 34. FISCAL MANAGEMENT

34.1. The Retirement Board shall be the trustees of the assets of the Retirement Plan. The Retirement Board shall have the power to contract for (1) investment advice, (2) safekeeping of securities, (3) handling of investments, (4) clearing of transactions, and (5) such other services it deems necessary for the proper and efficient handling of the monies and investments of the Retirement Plan. It shall have the power to register

or re-register the investments of the Retirement Plan in the name of the Retirement Board as trustees of the Retirement Plan or in the name of any nominee. It shall have the power to invest and reinvest the monies of the Retirement Plan, purchase investments, hold, sell, assign, transfer, and dispose of any of the securities and investments of the Retirement Plan subject to the following limitations:

- (a) Bonds or other evidences of indebtedness of the United States of America or any of its agencies or instrumentalities which are obligations guaranteed as to principal and interest by the United States of America or by any agency or instrumentality thereof.
- (b) General obligation bonds, revenue bonds, improvement bonds, or other evidences of indebtedness of any state of the United States, or any of the counties or incorporated cities or duly organized school districts in the State of Arizona, which are not in default as to principal and interest.
- (c) Investment grade corporate bonds, debentures, notes and other evidences of indebtedness issues, assumed, or guaranteed by a solvent institution created or existing under the laws of the United States or of any state, district or territory thereof, which are not in default as to principal or interest.
- (d) Preferred and common stock. The Retirement Board may invest in the following stocks which, except for bank and insurance stocks, must be listed in the New York or American Stock Exchange.
 - (1) Investment grade preferred or guaranteed stock or shares of any solvent institution created or existing under the laws of the United States or of any state, district, or territory thereof. The Retirement Board shall not invest more than five percent of the retirement system's assets in the preferred stock of any one issuing company, nor shall the aggregate of its investments under this paragraph exceed ten percent of the retirement system's assets.
 - (2) Nonassessable, except for taxes or wages, common shares of any solvent institution, created or existing under the laws of the United States or of any states, district or territory thereof. The Retirement Board shall not, however, invest more than five percent of the retirement system's assets in the common stock or capital stock of any one company, nor shall the aggregate of its investments under the provisions of this paragraph, at cost, exceed sixty percent of the retirement system's assets.
- (e) Interest bearing secured savings accounts or certificates of deposit in banks doing business in Arizona.

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(f) The Retirement Board shall not have at any time any combination of investments in any one institution, corporation, or political subdivision aggregating an amount exceeding ten percent of the assets of the retirement system, nor shall it have any combination of investments, in any one industry, other than the electric utility industry or the communications industry, exceeding twenty percent of the assets of the retirement system. The Retirement Board shall not have at any time any combination of investments in the electric utility industry or the communications industry, exceeding twenty-five percent of the assets of the retirement system. The restrictions in sub-section (f) shall not apply to investments in direct obligations of the United States of America or agencies of the United States of America."

YES

NO



City of Phoenix

PENSION REFORM TASK FORCE

Recommendations to City Council Adopted December 6, 2011

This document has been prepared by Segal for the benefit of the City of Phoenix Pension Reform Task Force. This document should not be shared, copied or quoted, in whole or in part, without the consent of Segal, except to the extent otherwise required by law.

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Doc# 5238263_1



 **SEGAL**

Final Recommendation – Changes Affecting New Hires

- Model the following changes to *new hires* as part of Final Recommendation
 - Modify retirement eligibility
 - Eliminate Rule of 80 and other current age/time worked retirement provisions
 - Establish Normal Retirement Age of 63 with a minimum of 10 years of service
 - Establish an Early Retirement Age of at least 55 with 10 years of service
 - » Early retirement benefit amount would be actuarially reduced from age 63
 - Change the pension multiplier to a graduated multiplier based on years of service. These are cumulative multipliers applying to all prior years of service.
 - Up to 14.99 years of service: 1.85%
 - 15 to 19.99 years of service: 1.90%
 - 20 to 24.99 years of service: 1.95%
 - 25 to 29.99 years of service: 2.00%
 - 30 or more years of service: 2.10%

Final Recommendation – Changes Affecting New Hires *continued*

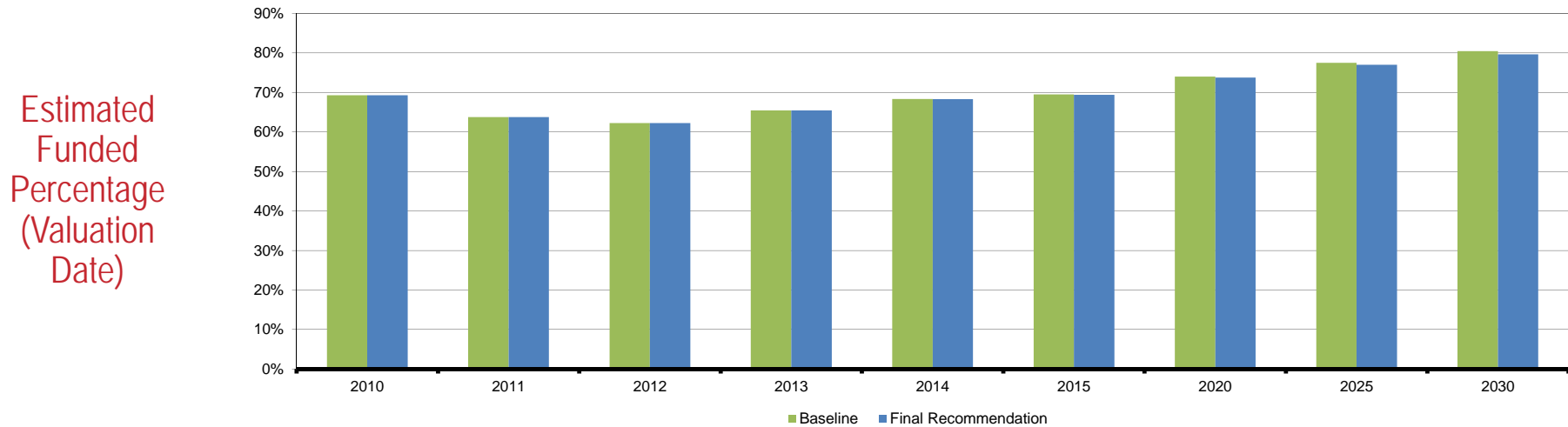
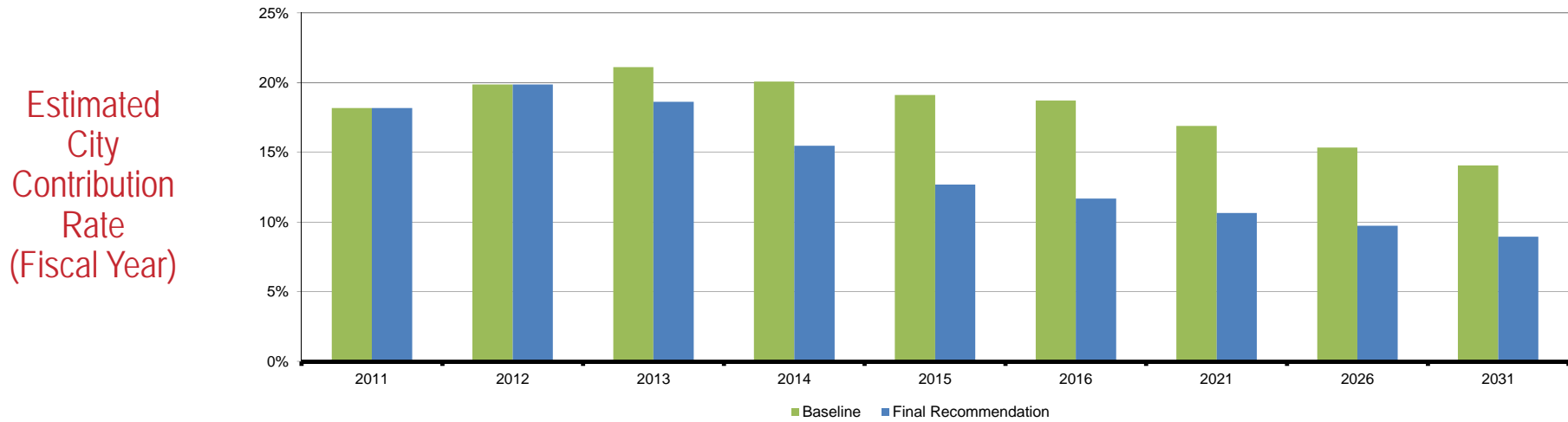
- Vacation and Sick payments made at retirement cannot be used in pension Final Average Compensation
- Final Average Compensation for pension calculations will exclude travel, communications, and technical allowances
- Time of service calculations shall reflect actual service time with 20 days of service required before a month of service is credited and 240 days of service required before a year of service is credited
- Minimum Pension: Terminate any existing minimum pension requirements

Final Recommendation – Changes Affecting New Hires and Current Employees

- Model the following change to *new hires* and *current employees* as part of Final Recommendation
 - Institute a floating contribution rate for all new and existing employees
 - No grandfather group for existing employees
 - Actuarially determined rate shall be split evenly between employees and the City as determined officially each year
 - The City/employee rate will vary as the determined rate varies, but will be split evenly
 - New rate implemented immediately for new employees and would be phased-in for existing employees beginning with the effective date
 - Existing employee group rate will initially rise no more than 2% of salary per year until the 50:50 split is achieved
 - » Once split rate is achieved, the rate for the existing employee group will equal the rate for the new hire group

Projection of City Contribution Rate and Funded Percentage Reflecting Final Recommendation

➤ Impact of benefit and contribution changes referred to as Final Recommendation



Projection of Savings in City Contribution Dollars Under Final Recommendation

- Projection of savings in City contribution amounts under Final Recommendation

| Fiscal Year: | Final Recommendation | |
|--------------|----------------------|--------------|
| | Savings | Cumulative |
| 2012 | \$0 | \$0 |
| 2013 | -\$15,900 | -\$15,900 |
| 2014 | -\$30,400 | -\$46,300 |
| 2015 | -\$44,000 | -\$90,300 |
| 2016 | -\$50,000 | -\$140,300 |
| 2021 | -\$54,500 | -\$403,200 |
| 2026 | -\$60,900 | -\$693,700 |
| 2031 | -\$69,600 | -\$1,023,500 |

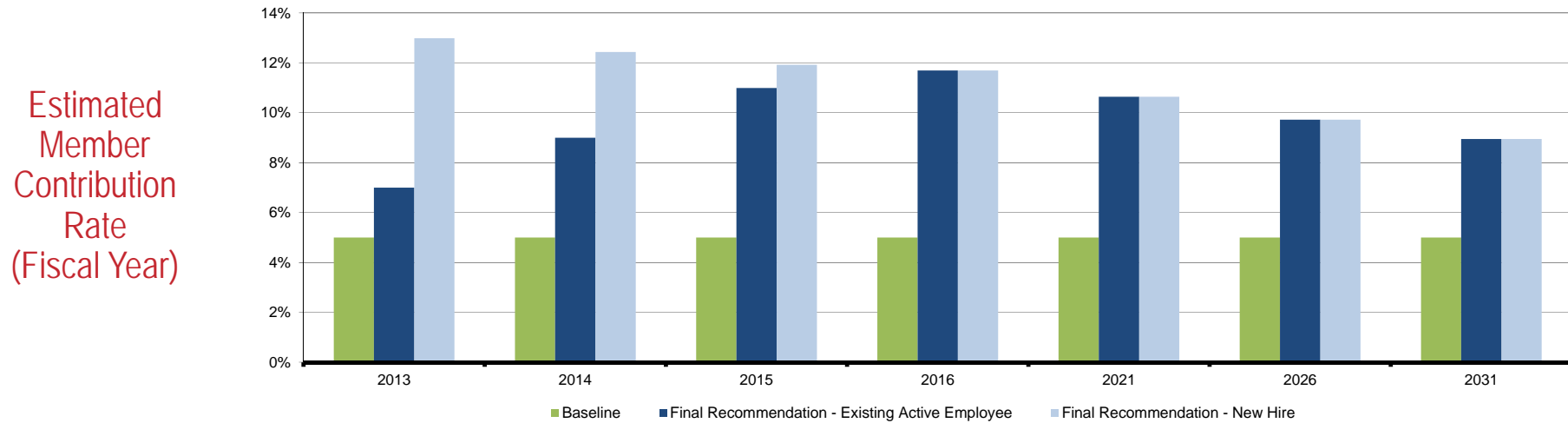
in \$1,000's

Estimated City Contribution Savings Amount (Fiscal Year)

Note: Dollar amounts are based on 2010 actuarial valuation

Projection of Member Contribution Rate Under Final Recommendation

Comparison of member contribution rate under Final Recommendation



Straw Employee Comparison Under Final Recommendation

➤ Comparison of projected replacement ratios and monthly benefit amounts for new hires under Final Recommendation using the following parameters:

- Retirement at age 63
- Employment commencement at ages 40 and 30
- Annual compensation levels of \$40,000 and \$60,000

| | Hire Age | Retirement Age | Years of Service | Annual Compensation | Before Changes | | Final Recommendation | |
|-----------------|----------|----------------|------------------|---------------------|----------------|---------|----------------------|---------|
| Straw Employees | | | | | | | | |
| Sample 1: | 40 | 63 | 23 | \$40,000 | 46% | \$1,517 | 41% | \$1,370 |
| Sample 2: | 40 | 63 | 23 | \$60,000 | 46% | \$2,275 | 41% | \$2,056 |
| Sample 3: | 30 | 63 | 33 | \$40,000 | 65% | \$2,160 | 64% | \$2,117 |
| Sample 4: | 30 | 63 | 33 | \$60,000 | 65% | \$3,240 | 64% | \$3,176 |

Notes: Monthly benefit amounts are shown in today's dollars

Replacement ratios do not include Social Security component

Appendix

- Summary of projection assumptions and methods

Actuarial Assumptions and Methods

- Actuarial assumptions are the same as those used in the **July 1, 2010 valuation** performed by Rodwan Consulting, except as noted below:
 - The estimated market value of assets used as of June 30, 2011 is \$1.82B
 - The amortization of unfunded actuarial liability is determined using a 4% payroll growth assumption beginning in the 2012 projection year
- Employee contribution rates under Final Recommendation are assumed to be effective coincident with the actuarial valuation date/beginning of fiscal year.
- The calculations are based upon the results of the July 1, 2010 valuation prepared by Rodwan Consulting. Segal has reproduced the July 1, 2010 valuation to within a range of reasonableness and determined the financial impact of alternative models by applying the changes in liability under the Segal valuations and applying those changes to the Rodwan Consulting valuation results.

Projections, by their nature, are not a guarantee of future results. The modeled projections are intended to serve as estimates of future financial outcomes that are based on the information available to us at the time the modeling is undertaken and completed, and the agreed-upon assumptions and methodologies described herein. Emerging results may differ significantly if the actual experience proves to be different from these assumptions or if alternative methodologies are used. Actual experience may differ due to such variables as demographic experience, the economy, stock market performance and the regulatory environment.

171943

CITY COUNCIL REPORT CITY CLERK DEPT.

POLICY AGENDA 2012 FEB 10 AM 7: 51

TO: David Cavazos
 City Manager

AGENDA DATE: February 14, 2012

FROM: Rick Naimark
 Deputy City Manager

ITEM:5

SUBJECT: PENSION REFORM TASK FORCE RECOMMENDATIONS

This report transmits the recommendations of the Pension Reform Task Force to the Mayor and City Council.

THE ISSUE

The Pension Reform Task Force was appointed by the Mayor and City Council in January of 2011 to work with management, outside consultants, and other stakeholders to review and recommend changes to the City of Phoenix Employees' Retirement System (COPERS). The 16-member Task Force included public members of the City Manager's Innovation and Efficiency Task Force, additional members of the public, and members representing employees, retirees, and the COPERS' Board. Independent actuarial and legal consultants provided support to the Task Force. The Task Force met 13 times between February and December of 2011 to complete its review, and sunset on December 31, 2011. This report reviews the Task Force's process and presents its recommendations.

OTHER INFORMATION

COPERS is a defined benefit plan established in the City Charter by a vote of the residents of Phoenix in 1947 and revised in 1953. Since that time various changes to COPERS have been approved by voters. COPERS includes classified civil service employees and full-time appointed employees, except public safety employees and elected officials who are enrolled in retirement systems administered by the State of Arizona. COPERS membership is comprised of 8,569 active members, 680 inactive members, and 5,191 retirees. The average annual pension as of June 30, 2010, was \$28,042. The City Charter requires the City to contribute an actuarially determined amount each year, which ensures the financial solvency of COPERS.

The Task Force recommended, and the City Council approved, the issuance of a Request for Qualifications (RFQ) for pension consulting services to study COPERS, conduct actuarial analyses, and evaluate alternative plan options. On May 5, 2011, a selection committee comprised of City staff and several members of the Task Force recommended The Segal Company to serve as the pension consultant for the Task Force. On June 1, 2011, the City Council authorized the City Manager to enter into a contract with The Segal Company for this purpose.

The Law Department procured legal consulting services for the Task Force from an existing Qualified Vendors List (QVL). A panel comprised of City staff and Task Force members interviewed selected respondents from the QVL and chose the firm Littler Mendelson, P.C. to advise the City on the legal issues related to the pension system and its potential reform. Littler Mendelson will continue to advise the Mayor and Council throughout the potential reform process.

The Task Force reviewed comprehensive information on the pension system including:

- prior studies and audits of COPERS,
- City Charter investment restrictions,
- annual financial reports,
- the 2010 Actuarial Valuation report,
- a history of changes to the City Charter pertaining to COPERS,
- examples of sick leave and vacation leave impact on pension benefits,
- a benefit formula overview,
- retirement eligibility and subsidies,
- annual benefit payments,
- Arizona constitutional provisions pertaining to public pension systems,
- benefit provisions of the Arizona State Retirement System and the Public Safety Personnel Retirement System, and
- recent changes to public pension systems from across the country.

After considering the most populous cities in the U.S., several Fortune 500 companies headquartered in Phoenix, as well as the top employers in Phoenix, the Task Force asked the consultant team to prepare a pension systems survey. The survey compared:

- demographics of the membership,
- actuarial methods and assumptions,
- retirement eligibility criteria,
- benefits and benefit calculation formulas,
- post-retirement benefit increases,
- funded percentage (i.e., ratio of actuarial assets to actuarial liabilities), and
- employer and employee contributions.

The public pension plans included in the survey were Los Angeles, Houston, Philadelphia, Phoenix, San Antonio, San Diego, Tucson, San Jose, Jacksonville, and the Arizona State Retirement System. These cities include three of the top five largest cities, plus the next five largest cities that follow Phoenix to create a balance between geographic diversity and cities comparable in size to Phoenix.

The Task Force also reviewed comprehensive information on private sector retirement plans, including information published by the U.S. Department of Labor Employee Benefits Security Administration and Bureau of Labor Statistics, the S&P 500, Morgan Stanley, Towers Watson, the Employee Benefit Research Institute, the Center for State & Local Government Excellence, the Center for Retirement Research at Boston College, and Kiplinger's Personal Finance.

Following a goal setting process facilitated by the actuarial consultant, The Segal Company, the Task Force conducted a comprehensive review of COPERS components and numerous actuarial projections of possible plan changes for future and existing employees. The analysis modeled the impact of possible changes on the estimated City contribution rate and plan funded percentage. Pension Reform Task Force agendas, minutes, reports, and consultant analyses are available to the public at phoenix.gov/pensionreform.

RECOMMENDATION

On December 6, 2011, the Pension Reform Task Force recommended that the City Council adopt the following changes to COPERS:

New Hires Only:

1. Modify retirement eligibility:
 - Eliminate Rule of 80 and other current age/time worked retirement provisions
 - Establish Normal Retirement Age of 63 with a minimum of 10 years of service
 - Establish an Early Retirement Age of at least 55 with 10 years of service (Early Retirement benefit amount would be actuarially reduced from Age 63)
2. Change the pension multiplier to a graduated multiplier based on years of service. These are cumulative multipliers applying to all prior years of service.
 - Up to 14.99 years of service: 1.85%
 - 15-19.99 years of service: 1.90%
 - 20-24.99 years of service: 1.95%
 - 25-29.99 years of service: 2.00%
 - 30 or more years of service: 2.10%
3. Vacation and Sick payments made at retirement cannot be used in Final Average Compensation for pension calculations.
4. Final Average Compensation for pension calculation purposes will exclude travel, communications, and technical allowances.
5. Time of service calculations shall reflect actual service time with 20 days of service required before a month of service is credited and 240 days of service required before a year of service is credited.
6. Minimum Pension: Terminate any existing minimum pension requirements.

New Hires and Existing Employees:

Institute a floating contribution rate for all new and existing employees with no grandfathered group. The actuarially determined rate shall be split evenly between employees and the City as determined officially each year. The City/employee rate will vary as the determined rate varies, but will be split evenly. The new rate would be implemented immediately for new employees, and would be phased-in for existing employees beginning with the effective date, with the employee rate rising no more than 2 percent of salary per year until it reaches the equal split amount.

The Pension Reform Task Force recommended implementation of its recommendations on July 1, 2012, or the earliest legal effective date. Based on an analysis conducted by The Segal Company, if implemented on July 1, 2012, the recommendations proposed by the Task Force would result in an estimated cumulative savings in City contribution

amounts of approximately \$140 million by 2016 and by slightly more than \$1 billion by 2031. The City's estimated contribution rate would decrease to approximately 12 percent of employee payroll by 2016 and to approximately 8 percent by 2031. Without any changes to COPERS, the City's estimated contribution rate would be approximately 19 percent in 2016 and approximately 14 percent in 2031. Segal's analysis was based upon the results of the 2010 actuarial valuation. The proposed recommendations do not significantly impact the COPERS estimated funded percentage, which is projected to increase to approximately 80 percent by 2030. Currently, COPERS members contribute 5 percent of salary into the system. Under the recommendations of the Pension Reform Task Force, by 2016 City employees are projected to contribute just under 12 percent of salary and by 2031 approximately 9 percent of salary.

On February 1, 2012, a ruling was issued in the Maricopa County Superior Court finding that increasing current employee retirement contribution rates violates the Arizona State Constitution. In order to comply with this ruling, if the City moves forward with the Task Force recommendations without applying them to current employees, the cumulative savings in City Contribution by 2016 would be just over \$33 million and just under \$600 million by 2031. Any changes to COPERS tied to the City Charter must be referred to the ballot for approval by Phoenix voters.

This item is for information and discussion.

City of Phoenix, Arizona



Comprehensive Annual Financial Report
For the Fiscal Year Ended June 30, 2003

City Council

Skip Rimsza, Mayor
Dave Siebert, District 1
Peggy Neely, District 2
Peggy Bilsten, District 3
Jessica Florez, District 4
Claude Mattox, District 5
Greg Stanton, Vice-Mayor, District 6
Doug Lingner, District 7
Michael Johnson, District 8

Administrative Staff

Frank Fairbanks, City Manager
Sheryl Sculley, Assistant City Manager

Prepared By

Finance Department
Kevin Keogh, Director

3 1730 03501 7016

Pltfs' Trial Exh 303-3

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APP495

Notes to the Financial Statements

(Continued)

17. Pension Plans

Plan Descriptions

Substantially all full-time employees and elected officials of the City are covered by one of three contributory pension plans. In addition to normal retirement benefits, all of the plans also provide for disability and survivor benefits, as well as deferred pensions for former employees. Pension benefits vest after five years for general City employees and elected officials and after ten years for public safety employees.

The City of Phoenix Employees' Retirement Plan ("COPERS") is a single-employer defined benefit pension plan for all full-time classified civil service general City employees. Members are eligible for retirement benefits upon meeting one of the following age and service requirements:

1. Age 60 years, with ten or more years of credited service.
2. Age 62 years, with five or more years of credited service.
3. Any age, which added to years of credited service equals 80 (Rule of 80).

The Plan is authorized by and administered in accordance with Chapter XXIV of the Charter of the City of Phoenix. Authority to make amendments to the plan rests with City voters. The Plan is administered by a nine-member Retirement Board. COPERS has been included as part of the City's reporting entity as a pension trust fund. Copies of the separately issued COPERS financial report, which includes financial statements and required supplemental information, may be obtained from COPERS, Barrister Place, 101 South Central Avenue, Suite 600, Phoenix, Arizona 85004.

The Arizona Public Safety Personnel Retirement System ("APSPRS") is an agent multiple-employer defined benefit pension plan for all sworn police officers and fire fighters. Members are eligible for normal retirement benefits after 20 years of service or at age 62 with completion of 15 years of service. It is authorized by and administered in accordance with Arizona Revised Statutes Title 38, Chapter 5, Article 4, Section 38.841-855. Authority to make amendments rests with the Arizona State Legislature. The Plan is administered by local boards consisting of the City Mayor, two members elected by employees and two citizens appointed by the mayor and approved by the City Council. The same board administers both the Fire Fighters and Police pension plans for the City.

The Elected Officials' Retirement Plan of Arizona ("EORPA") is a cost-sharing multiple-employer defined benefit pension plan for all elected officials of the City. Members are eligible for retirement benefits upon meeting one of the following age and service requirements:

1. Age 60 years, with 25 or more years of credited service.
2. Age 62 years, with ten or more years of credited service.
3. Age 65 years, with five or more years of credited service.
4. Age 50 years, with ten or more years of credited service (reduced pension).

Benefits are based on 4% of the member's final annual salary multiplied by the years of credited service. The maximum is 80% of the member's final annual salary. Benefits for early retirees (option 4 above) are reduced by 3/12 of 1% for each month that early retirement precedes age 65. EORPA is authorized by and administered in accordance with Arizona Revised Statutes Title 38, Chapter 5, Article 3, Section 802 as amended. The authority to make amendments rests with the Arizona State Legislature. The Plan is administered by the Arizona Public Safety Personnel Retirement System.

Copies of the publicly available financial reports for the APSPRS and EORPA may be obtained from Arizona Public Safety Personnel Retirement System, 1020 East Missouri, Phoenix, Arizona 85014-2613.

Notes to the Financial Statements
(Continued)

Funding Policy and Annual Pension Cost (Unaudited)

The City contributes an actuarially determined amount to COPERS to fully fund benefits for active members and to amortize any unfunded actuarial liability as a level percent of projected member payroll over an open period of 20 years from July 1, 2003. The employee contribution rate is 5% of compensation.

In addition to funding the plan for benefits, the City pays the administrative costs of the plan as a City expense. Investment expenses are paid by the plan from investment earnings.

Contribution rates for APSPRS are specified by State statute, with a 7.65% employee share and an employer's share equal to a level percent of compensation to fund normal cost and unfunded accrued liability over an open period of 20 years from July 1, 2003. Optionally, the employer may increase its contributions in order to lower the employees' share.

Contribution rates for EORPA are specified by State statute, with a 7% employee share and an employer's share equal to a level percent of compensation to fund normal cost and unfunded accrued liability over an open period of 20 years from July 1, 2003.

The City's annual pension costs for the current year and related information for each plan is as follows:

| | COPERS | APSPRS | | EORPA |
|---|--|--|--|--|
| | | Police | Fire | |
| Contribution Rates: | | | | |
| City | 6.86% | 2.58% | 3.39% | 6.97% |
| Plan Members | 5.00% | 7.65% | 7.65% | 7.00% |
| Annual Pension Costs (thousands) (1) | \$ 27,820 | \$ 4,351 | \$ 447 | \$ 27 |
| Contributions Made (thousands) | \$ 27,820 | \$ 4,351 | \$ 447 | \$ 27 |
| Actuarial Valuation Date | 6/30/03 | 6/30/02 | 6/30/02 | 6/30/02 |
| Actuarial Cost Method | Entry Age, Normal Cost | Entry Age, Normal Cost | Entry Age, Normal Cost | Entry Age, Normal Cost |
| Amortization Method | Level Percentage of Payroll, Open | Level Percentage of Payroll, Open | Level Percentage of Payroll, Open | Level Percentage of Payroll, Open |
| Remaining Amortization Period | 20 years | 20 years | 20 years | 20 years |
| Asset Valuation Method | 4-year smoothed market | 4-year smoothed market | 4-year smoothed market | 4-year smoothed market |
| Actuarial Assumptions: | | | | |
| Investment Rate of Return | 8.0% | 9.0% | 9.0% | 9.0% |
| Projected Salary Increases * | 5.0 - 9.0% | 6.5 - 9.5% | 6.5 - 9.5% | 7.0% |
| * Includes Inflation at | 4.5% | 5.5% | 5.5% | 5.5% |
| Cost-of-Living Adjustments | - | - | - | - |

(1) A fire premium tax levied by the State is credited toward the City's contribution.

Notes to the Financial Statements
(Continued)

Three-year trend information follows:

| | Fiscal Year Ending | Contributions Required and Contributions Made | | |
|----------------------------------|--------------------|---|-------------------------------|------------------------|
| | | Annual Pension Cost (APC) | Percentage Of APC Contributed | Net Pension Obligation |
| General City Employees | 6/30/03 | \$ 27,819,507 | 100 % | N/A |
| | 6/30/02 | 28,294,889 | 100 | N/A |
| | 6/30/01 | 22,329,387 | 100 | N/A |
| Public Safety Employees - Police | 6/30/03 | \$ 4,351,071 | 100 % | N/A |
| | 6/30/02 | 3,264,728 | 100 | N/A |
| | 6/30/01 | 5,032,488 | 100 | N/A |
| Public Safety Employees - Fire | 6/30/03 | \$ 2,885,365 | 100 % | N/A |
| | 6/30/02 | - | 100 | N/A |
| | 6/30/01 | 2,276,410 | 100 | N/A |
| Elected Officials | 6/30/03 | \$ 26,575 | 100 % | N/A |
| | 6/30/02 | 24,015 | 100 | N/A |
| | 6/30/01 | 35,155 | 100 | N/A |

Schedule of Funding Progress (in thousands)

| | Actuarial Valuation Date | Funding Value of Assets (a) | Actuarial Accrued Liability (AAL) Entry Age (b) | Unfunded AAL (UAAL) (b - a) | Percent Funded (a/b) | Annual Covered Payroll (c) | UAAL as a Percentage of Covered Payroll (b - a)/(c) |
|----------------------------------|--------------------------|-----------------------------|---|-----------------------------|----------------------|----------------------------|---|
| General City Employees | 6/30/02 | \$ 1,330,584 | \$ 1,504,125 | \$ 173,541 | 88.5 % | \$ 416,472 | 41.7 % |
| | 6/30/01 | 1,273,731 | 1,390,273 | 116,542 | 91.6 | 404,414 | 28.8 |
| | 6/30/00 | 1,291,338 | 1,259,584 | (31,774) | 102.5 | 376,913 | N/A |
| Public Safety Employees - Police | 6/30/02 | \$ (1) | \$ (1) | \$ (1) | (1) % | \$ (1) | (1) % |
| | 6/30/01 | 1,075,571 | 938,886 | (136,685) | 114.6 | 161,091 | N/A |
| | 6/30/00 | 1,082,395 | 842,990 | (239,405) | 128.4 | 161,300 | N/A |
| Public Safety Employees - Fire | 6/30/02 | \$ (1) | \$ (1) | \$ (1) | (1) % | \$ (1) | (1) % |
| | 6/30/01 | 616,332 | 537,155 | (79,177) | 114.7 | 86,243 | N/A |
| | 6/30/00 | 614,674 | 489,794 | (124,880) | 125.5 | 89,345 | N/A |

(1) Information not available

City of Phoenix, Arizona Comprehensive Annual Financial Report

FOR THE FISCAL YEAR ENDED JUNE 30, 2012

.....



Efficient delivery of outstanding public services

.....

Notes to the Financial Statements

(Continued)

19. Pension Plans

Plan Descriptions

Substantially all full-time employees and elected officials of the City are covered by one of three contributory pension plans. In addition to normal retirement benefits, all of the plans also provide for disability and survivor benefits, as well as deferred pensions for former employees. Pension benefits vest after five years for general City employees and elected officials and after ten years for public safety employees.

The City of Phoenix Employees' Retirement Plan ("COPERS") is a single-employer defined benefit pension plan for all full-time classified civil service general City employees. Members are eligible for retirement benefits upon meeting one of the following age and service requirements:

1. Age 60 years, with ten or more years of credited service.
2. Age 62 years, with five or more years of credited service.
3. Any age, which added to years of credited service equals 80 (Rule of 80).

The Plan is authorized by and administered in accordance with Chapter XXIV of the Charter of the City of Phoenix. Authority to make amendments to the plan rests with City voters. The Plan is administered by a nine-member Retirement Board. COPERS has been included as part of the City's reporting entity as a pension trust fund. Copies of the separately issued COPERS financial report, which includes financial statements and required supplemental information, may be obtained from COPERS, 200 West Washington, 10th Floor, Phoenix, Arizona 85003.

The Arizona Public Safety Personnel Retirement System ("APSPRS") is an agent multiple-employer defined benefit pension and health insurance premium subsidy plan for all sworn police officers and fire fighters. Members are eligible for normal retirement benefits and a health insurance premium subsidy after 20 years of service or at age 62 with completion of 10 years of service. It is authorized by and administered in accordance with Arizona Revised Statutes Title 38, Chapter 5, Article 4, Section 38.841-859. Authority to make amendments rests with the Arizona State Legislature. Benefits are projected based on benefit levels and cost-sharing arrangements as of the date of valuation and do not explicitly reflect the potential effects of legal or contractual funding limitations. The Plan is administered by local boards consisting of the City Mayor or designee, two members elected by employees and two citizens appointed by the mayor and approved by the City Council. The same board administers both the Fire Fighters and Police pension plans for the City.

The Elected Officials' Retirement Plan of Arizona ("EORPA") is a cost-sharing multiple-employer defined benefit pension plan for all elected officials of the City. Members are eligible for retirement benefits, including a health insurance premium subsidy, upon ceasing to hold office and meeting one of the following age and service requirements:

1. Any age, with twenty or more years of credited service.
2. Age 62 years, with ten or more years of credited service.
3. Age 65 years, with five or more years of credited service.
4. Early retirement, with five years of service and ceasing to hold office (reduced pension).

Notes to the Financial Statements

(Continued)

Benefits are based on 4% of the member's final annual salary multiplied by the years of credited service. The maximum is 80% of the member's highest average annual salary. Benefits for early retirees (option 4 above) are reduced by 3/12 of 1% for each month that early retirement precedes normal retirement age. EORPA is authorized by and administered in accordance with Arizona Revised Statutes Title 38, Chapter 5, Article 3, Section 802 as amended. The authority to make amendments rests with the Arizona State Legislature. The Plan is administered by the Arizona Public Safety Personnel Retirement System.

Copies of the publicly available financial reports for the APSPRS and EORPA may be obtained from Arizona Public Safety Personnel Retirement System, 3010 East Camelback Road, Phoenix, Arizona 85016 or on the internet at www.psprs.com.

Funding Policy and Annual Pension Cost

The City contributes an actuarially determined amount to COPERS to fully fund benefits for active members and to amortize any unfunded actuarial liability as a level percent of projected member payroll over an open period of 20 years from July 1, 2011. The employee contribution rate is 5% of compensation. In addition to funding the plan for benefits, the City pays the administrative costs of the plan as a City expense. Investment expenses are paid by the plan from investment earnings.

In fiscal year 2011-12, members of the APSPRS contributed 7.65% of compensation. However, on April 29, 2011, the Governor signed into law Senate Bill 1609 ("SB 1609") which gradually increases the member contribution rate from 9.55% in fiscal year 2012-13 to 11.65% in fiscal year 2015-16 and thereafter. The City contributes normal cost less a credit (spread over an open period of twenty years) for the amount by which valuation assets exceed the actuarial accrued liability or plus a debit (spread over a closed period of twenty-four years) for the amount by which the actuarial accrued liability exceeds the valuation assets.

Three-year trend information for the City's single employer and the agent multiple employer defined benefit pension plans follows:

| | Contributions Required and Contributions Made | | | |
|-------------------------------|--|----------------------------------|--------------------------------------|-------------------------------|
| | Fiscal Year Ending | Annual Pension Cost (APC) | Percentage Of APC Contributed | Net Pension Obligation |
| General City Employees | 6/30/12 | \$ 106,483,325 | 100 % | N/A |
| | 6/30/11 | 92,145,262 | 100 | N/A |
| | 6/30/10 | 86,591,498 | 100 | N/A |
| APSPRS Employees (1): | | | | |
| Police Pension | 6/30/12 | 59,887,847 | 100 | N/A |
| Police Health | 6/30/12 | 2,624,897 | 100 | N/A |
| Police Pension | 6/30/11 | 55,905,758 | 100 | N/A |
| Police Health | 6/30/11 | 2,680,707 | 100 | N/A |
| Police Pension | 6/30/10 | 61,977,622 | 100 | N/A |
| Police Health | 6/30/10 | 2,433,457 | 100 | N/A |
| Fire Pension | 6/30/12 | 29,679,259 | 100 | N/A |
| Fire Health | 6/30/12 | 1,575,259 | 100 | N/A |
| Fire Pension | 6/30/11 | 27,584,206 | 100 | N/A |
| Fire Health | 6/30/11 | 1,541,703 | 100 | N/A |
| Fire Pension | 6/30/10 | 30,617,992 | 100 | N/A |
| Fire Health | 6/30/10 | 1,388,600 | 100 | N/A |

Contribution rates for EORPA are specified by State statute, with a 7% employee share and an actuarially determined employer's share equal to a level percent of compensation to fund normal cost and unfunded accrued liability over a closed period of 30 years from July 1, 2006. SB 1609 will increase the member contribution rate to 11.5% in fiscal year 2012-13 and to 13% in fiscal year 2013-14 and thereafter.

Notes to the Financial Statements
(Continued)

Below is three-year contribution trend information for the Elected Officials' cost-sharing multiple-employer retirement plan:

| Contributions Required and Contributions Made | | | | | |
|--|---------------|----|-------------------|--------------------|-------------------|
| | Fiscal | | Annual | Percentage | Net |
| | Year | | Pension | Of APC | Pension |
| | Ending | | Cost (APC) | Contributed | Obligation |
| Elected Officials | | | | | |
| Pension | 6/30/12 | \$ | 169,988 | 100 % | N/A |
| Health | 6/30/12 | | 9,753 | 100 | N/A |
| Pension | 6/30/11 | \$ | 145,978 | 100 | N/A |
| Health | 6/30/11 | | 9,221 | 100 | N/A |
| Pension | 6/30/10 | | 125,896 | 100 | N/A |
| Health | 6/30/10 | | 9,768 | 100 | N/A |

The City's annual pension costs for the current year and related information for each plan is as follows:

| | (3) | APSPRS | | EORPA |
|------------------------------------|--|--|--|--|
| | | (3) | Police (1) | |
| | COPERS | Pension/Health | Pension/Health | Pension/Health |
| Contribution Rates: | | | | |
| City | 18.18% | 24.21%/1.42% | 24.35%/1.41% | 31.2%/1.79% |
| Plan Members | 5.00% | 7.65% | 7.65% | 7.00% |
| Annual Pension Cost (in thousands) | \$ 106,483 | \$59,888/\$2,625 | \$29,679/\$1,575 | \$170/\$10 |
| Contributions Made (in thousands) | \$ 106,483 | \$59,888/\$2,625 | \$29,679/\$1,575 | \$170/\$10 |
| Actuarial Valuation Date | 6/30/12 | 6/30/12 | 6/30/12 | 6/30/12 |
| Actuarial Cost Method | Entry Age, Normal | Entry Age, Normal | Entry Age, Normal | Entry Age, Normal |
| Amortization Method | | | | |
| | Level Percentage of Payroll, Open | Level Percentage of Payroll, Closed | Level Percentage of Payroll, Closed | Level Percentage of Payroll, Closed |
| Remaining Amortization Period | 20 years | 24 years | 24 years | 24 years |
| Asset Valuation Method | 4-year smoothed market | 7-year smoothed market | 7-year smoothed market | 7-year smoothed market |
| Actuarial Assumptions: | | | | |
| Investment Rate of Return | 8.0% | 8.0% | 8.0% | 8.0% |
| Projected Salary Increases * | 5.0 - 8.8% | 5.0 - 9.0% | 5.0 - 9.0% | 4.75% |
| * Includes Inflation at | 4.5% | 5.0% | 5.0% | 4.5% |
| Cost-of-Living Adjustments | - | - | - | - |

- (1) Contribution rates for APSPRS pension and health are based on actuarial estimates. Actual contributions for the health subsidy are based on actual expenses for the year with the balance of the required rate applied to the pension requirement
- (2) A fire premium tax levied by the State is credited toward the City's contribution for firefighters employed by the City of Phoenix. The amount reported above is before the fire insurance premium tax credit allowance of \$3,125,711.
- (3) COPERS' amount includes \$801,000 allocated to the Excess Benefit Arrangement.

Notes to the Financial Statements
(Continued)

Funded Status and Funding Progress (as of the most recent valuation)

| Schedule of Funding Progress (in thousands) | | | | | | | |
|--|--------------------------------------|--|--------------------------------------|----------------------------|-------------------------------------|---|---------|
| Actuarial Valuation Date | Funding Value of Assets (a) | Actuarial Accrued Liability (AAL) Entry Age (b) | Unfunded AAL (UAAL) (b - a) | Percent Funded (a/b) | Annual Covered Payroll (c) | UAAL as a Percentage of Covered Payroll (b - a)/(c) | |
| General City | | | | | | | |
| Employees | 6/30/12 | \$ 1,827,528 | \$ 2,939,374 | \$ 1,111,846 | 62.2 % | \$ 506,017 | 219.7 % |
| APSPRS | | | | | | | |
| Police - Pension | 6/30/12 | \$ 1,252,168 | \$ 2,115,506 | \$ 863,338 | 59.2 % | \$ 241,080 | 358.1 % |
| Police - Health | 6/30/12 | 0 | 50,913 | 50,913 | 0.0 | 241,080 | 21.1 |
| APSPRS | | | | | | | |
| Fire - Pension | 6/30/12 | \$ 704,733 | \$ 1,153,074 | \$ 448,341 | 61.1 % | \$ 120,264 | 372.8 % |
| Fire - Health | 6/30/12 | 0 | 26,643 | 26,643 | 0.0 | 120,264 | 22.2 |

A schedule for funding progress immediately following the notes to the financial statements presents multi-year trend information about whether the actuarial value of plan assets is increasing or decreasing over time relative to the actuarial accrued liability for benefits.

20. Other Postemployment Benefits (OPEB)

Postemployment Healthcare

The City provides certain postemployment health care benefits for its retirees. Retirees meeting certain qualifications are eligible to participate in the City's health insurance program along with the City's active employees. As of August 1, 2007, separate rates have been established for active and retiree health insurance.

Medical Expense Reimbursement Plan

Employees eligible to retire in 15 years or less from August 1, 2007, will receive a monthly subsidy from the City's Medical Expense Reimbursement Plan (MERP) when they retire, as current retirees do. The MERP is a single-employer, defined benefit plan. Contributions by the City (plus earnings thereon) are the sole source of funding for the MERP.

The purpose of the monthly subsidy is to reimburse retirees for qualified medical expenses. The subsidy varies with length of service or bargaining unit, from \$117 to \$202 per month. Retirees may be eligible for additional subsidies depending on their bargaining unit, retirement date, or enrollment in the City's medical insurance program. Current and future eligible retirees who purchase health insurance through the City's plan during retirement will receive an additional subsidy to minimize the impact of unblending health insurance rates for active and retired employees.

The City established the City of Phoenix MERP Trust to fund all or a portion of the City's share of liabilities incurred in providing the benefits as reflected in Administrative Regulation 2.42 – Medical Expense Reimbursement Plan for Retirees and Eligible Surviving Spouses or Qualified Domestic Partners. A five-member Board of Trustees has been delegated responsibility for fiduciary oversight of the MERP Trust, subject to oversight of the City Council.

The City's annual other postemployment benefit (OPEB) expense is calculated based on the annual required contribution (ARC), an amount actuarially determined in accordance with the parameters of GASB Statement 45. The ARC represents a level of funding that, if paid on an ongoing basis, is projected to cover normal cost each year and amortize any unfunded actuarial liabilities over a period not to exceed 30 years.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

FRANK PICCIOLI, DEBRA NOVAK-SCOTT, LUIS)
SCHMIDT, RONALD RAMIREZ, on behalf of)
themselves and all others similarly)
situated and AMERICAN FEDERATION OF)
STATE COUNTY AND MUNICIPAL EMPLOYEES,)
AFL-CIO, LOCAL 2960; AMERICAN)
FEDERATION OF STATE COUNTY AND)
MUNICIPAL EMPLOYEES, AFL-CIO, LOCAL)
2384, ADMINISTRATIVE SUPERVISORY)
PROFESSIONAL & TECHNICAL EMPLOYEES)
ASSOCIATION.)

Plaintiffs,)

vs.)

No. CV2012-010330)

CITY OF PHOENIX; CITY OF PHOENIX)
EMPLOYEE RETIREMENT SYSTEM; CITY OF)
PHOENIX RETIREMENT SYSTEM BOARD.)

Defendants.)

vs.)

STUART CASEY; VIRGINIA COTA; PAUL F.)
ENNISS; VIVIAN ESCOBAR; PHILIP KODA;)
JOHN LAY; LOUIS MATAMOROS; DAVID)
MEINER; DAVID ROBINSON.)

Intervenors.)

BEFORE THE HONORABLE MARK BRAIN

TRIAL - DAY THREE

April 29, 2015

REPORTED BY:
Jovanna Roman, RPR,
Certified Reporter
Certificate No. 50725

PREPARED FOR:
Littler Mendelson
(Copy)

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A P P E A R A N C E S

FOR PLAINTIFF AND INTERVENORS:

MARTIN & BONNETT, P.L.L.C.

By: Ms. Susan Martin
Mr. Daniel L. Bonnett
Ms. Jennifer Kroll
1850 North Central Avenue, Suite 2010
Phoenix, Arizona 85004

FOR DEFENDANTS:

LITTLER MENDELSON, P.C.

By: Ms. Kristin R. Culbertson
Camelback Esplanade
2425 East Camelback Road, Suite 900
Phoenix, Arizona 85016

LITTLER MENDELSON, P.C.

By: Mr. Wesley E. Stockard
(Admitted pro hac vice)
3344 Peachtree Road N.E., Suite 1500
Atlanta, Georgia 30326

I N D E X

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1 but I'm trying to set up some testimony that I think is
2 important and very relevant about how her opinion when it
3 came to be and also historically did she hold that same
4 opinion. So if I could ask for just a little bit of
5 latitude, I would appreciate it.

6 MR. BONNETT: Again, Your Honor, I want to
7 interpose an objection here because the testimony was very
8 clear on direct that that was not this witness's opinion
9 up until the time the AR change -- let me finish.

10 That it was very clear that up until
11 July 8th of 2012 her opinion was that it was correctly
12 included in final average compensation.

13 THE COURT: Well, see, I didn't even think
14 she said that. Truth be told I thought what she said was
15 when she got there this is how they were doing it. She
16 didn't think twice about it. She assumed they knew what
17 they were doing and off they went.

18 MR. BONNETT: And she understood that it was
19 included.

20 THE COURT: Well, she understood that that
21 had been the practice and never questioned it is what I
22 understood. Maybe I'm -- isn't that the answer?

23 THE WITNESS: Yes.

24 THE COURT: Okay.

25 MR. BONNETT: Then my objection would be

1 that only relevant testimony would be if she changed her
2 opinion sometime after --

3 MR. STOCKARD: She didn't state she had an
4 opinion.

5 THE COURT: All right. I understand the
6 objection.

7 Go ahead, Mr. Stockard.

8 BY MR. STOCKARD:

9 Q. Okay. Can you please tell me whether or not, as
10 you sit here today, you have an opinion as to whether the
11 payouts for unused sick leave to general city employees
12 meet the definition of compensation within the Charter.

13 A. No, and can I maybe give a little -- okay.

14 So in 2011, I think it was 2011, the City
15 was looking -- because the pension contributions were
16 going through the roof and so the City, city council,
17 executives, we were looking at what could we do to try to
18 control costs in that area, and we weren't alone. A lot
19 of pension plans were doing the same thing.

20 The mayor created a pension reform task
21 force that looked at all the different aspects of the
22 pension plan and tried to determine were they things they
23 could do without going to the voters or were there things
24 they had to go to the voters for.

25 Had we -- had we ever really done an

1 analysis of what -- of what the practice was was correct
2 and so my understanding is the City went back and looked
3 at all of the records from before -- before '96 and then
4 in '96 and on and couldn't find no documents where they
5 had ever actually determined did this payout meet the
6 definition of compensation in the Charter.

7 And when the City told the board that this
8 was the direction they were looking at taking, I
9 understand that the board did the same -- not the board,
10 but the COPERS staff did the same thing and went and
11 looked at all of our documents related to this issue and
12 could find nowhere where the board had actually looked at
13 the definition of compensation in the Charter and made
14 that determination.

15 What I think happened is that the finance
16 department, who issues the paychecks and reports
17 compensation to the COPERS office, included it as
18 compensation, just like everything else employees were
19 paid, and it was sort of done by default. It wasn't an
20 intentional -- I don't -- I wasn't there in '96 so I don't
21 know that this happened, but based on what I do know my
22 guess is that nobody in a position to have done it
23 actually looked at the definition of compensation and made
24 a determination that it was either within that definition
25 or not, and it wasn't until the change in 2012 that me, as

1 a board member, became aware this was even an issue.

2 Q. So if I can try and help pinpoint in time, when
3 is the first time that you recall looking at the question
4 of whether or not those payouts for unused sick leave fell
5 within the definition of compensation in COPERS?

6 A. It was during my time in 2012 when I was back on
7 the board, and I couldn't tell you what month, but it was
8 while the City was going through this process with the
9 task force, and that's the first time I looked at the
10 definition and was surprised that it was much narrower
11 than the common layman's understanding of the term
12 compensation.

13 Q. Prior to that time had you ever considered the
14 question of whether or not these unused sick leave
15 payments fell under the COPERS definition of compensation?

16 A. No.

17 Q. Are you aware of any other COPERS board member
18 that prior to that time in 2012 had considered the
19 question of whether or not those unused sick leave payouts
20 fell within the plan's definition of compensation?

21 A. Not that I'm aware of.

22 Q. Ms. Gleason, during your time working for the
23 City, did you become familiar with the City's pay
24 ordinances and pay plans?

25 A. Yes.

1 1996 when that program first started.

2 A. Yes.

3 Q. Based on what you know today, do you have an
4 understanding as to why they were included?

5 A. I think they were included because they fit the
6 common layperson's understanding of compensation, and that
7 administratively the compensation gets reported from the
8 finance department who issues the paychecks to the COPERS
9 office and they just process it. I don't think anyone
10 stopped to consider whether those payments fit the
11 definition of compensation that's in the Charter.

12 Q. The Charter definition of compensation, if you
13 could look back at it in Exhibit No. 1, there's a second
14 sentence that defines compensation.

15 Actually, why don't you just read the second
16 sentence for me so it's clear what we're talking about.

17 A. In case a member's compensation is not all paid
18 in money, the city council shall, upon recommendation of
19 the city manager, fix the value of the portion of his
20 compensation which is not paid in money.

21 Q. Ms. Gleason, do you think that those lodging and
22 utilities elements that were referred to in the sections
23 of the pay plans we just looked at are appropriate
24 subjects for the city manager to fix a value for under
25 that second set of compensation?

1 A. Yes.

2 Q. And do you think that the -- it would be
3 appropriate for the city manager to fix a value of
4 compensation for unused sick leave payments under that
5 sentence?

6 A. No.

7 Q. Can you explain to me why you feel that way?

8 A. Well, because unused sick leave it's -- it's
9 always paid in money so immediately it doesn't fit within
10 the second sentence because this is talking about
11 nonmonetary or compensation that's not paid in money, and
12 sick leave -- unused sick leave is always paid in money so
13 it just doesn't -- it doesn't apply here.

14 Q. Are you ever -- during your time working for the
15 City of Phoenix and as a member of the board, have you
16 ever been aware of a situation where the city manager has
17 fixed a value for -- or, the city manager has recommended
18 to the city council and the city council has fixed a value
19 for something nonmonetary to be included in compensation
20 under that second sentence of the definition of
21 compensation in the plan?

22 A. I'm not aware of that ever happening.

23 Q. As a board member do you think you would have
24 been aware of that if it had occurred?

25 A. I don't know that I would have been aware of it.

1 It would be so unusual, especially in this day and age, I
2 think this language is more appropriate in the 50s when it
3 was first drafted. That was probably more likely to have
4 occurred then than it would be to occur now.

5 I may have been aware of it, but I don't
6 know for certain that I would have been told.

7 Q. You testified a little bit earlier about the fact
8 that there was a change in 2012 to the inclusion of unused
9 sick leave payouts in final average compensation
10 calculations under the retirement plan; correct?

11 A. Yes.

12 Q. Can you tell me what changed?

13 A. Basically what changed -- the City -- it's
14 commonly called a snapshot so whatever sick leave amounts
15 had been earned up to that date, and it's July -- I don't
16 know the specific date in 2012, July sometime in 2012 that
17 it went into effect, anything earned up to that date would
18 still be treated as it had been treated in the past, and
19 anything accrued in the future after that date would no
20 longer be counted as pensionable compensation.

21 Q. Was that snapshot approach written down anywhere?

22 A. Yes.

23 Q. Where?

24 A. I believe it was in AR 2.441.

25 Q. I'm going to show you Exhibit No. 12. Do you

1 THE COURT: That's okay.

2 BY MR. STOCKARD:

3 Q. Ms. Gleason, I may have missed your answer I
4 think because I wanted to make sure the judge was with us,
5 can you tell me again, for the record, what is this
6 policy.

7 A. This is a policy acknowledging the City's -- it's
8 acknowledging the City of Phoenix regulation regarding
9 pensionable nature of sick leave payout at retirement and
10 it was adopted by the board in May of 2012 is what this
11 says.

12 Q. And that May 17th, 2012 adoption date, that is
13 before the changes to administrative regulation 2.441 in
14 2012 became effective, right?

15 A. Yes.

16 Q. Those became effective on what date?

17 A. They were July 1st, but the AR was updated
18 July 8th.

19 Q. Ms. Gleason, this policy -- this was adopted
20 pursuant to formal action by the Retirement Board, right?

21 A. Yes.

22 Q. Prior to this time, are you aware of the
23 Retirement Board ever taking specific action to make a
24 determination of whether unused sick leave payouts were
25 required to be included in final average compensation

1 calculations for COPERS pension purposes?

2 A. No.

3 THE COURT: Can I ask a question?

4 MR. STOCKARD: Yes, you may.

5 THE COURT: Now I'm confused. I thought a
6 few minutes ago you said you come to the conclusion that
7 unused sick leave payments could not be included in the
8 definition of compensation, but you've approved this that
9 says we're going to do it anyway.

10 So do you think this now authorizes it to be
11 in there or do you think this is still a mess, still
12 legally wrong in your opinion?

13 THE WITNESS: I think it doesn't fit the
14 definition of compensation, but I think the City was
15 trying to split the baby in not harming employees who may
16 have had an expectation, who clearly had an expectation
17 that this would be included, and so up until the day they
18 changed it, all sick leave hours earned were still
19 included.

20 THE COURT: So you think -- but when your
21 board then approved this -- and I think it was your board?

22 THE WITNESS: It was.

23 THE COURT: You think this is still in
24 violation of the technical terms of the City Charter as it
25 relates to compensation?

1 THE WITNESS: I think -- I think it doesn't
2 meet the terms of compensation, but in the Charter it does
3 say, you know, when we discover an error that we can do
4 what's practicable to fix it, and I think part of being
5 practicable was to be fair.

6 THE COURT: Okay.

7 BY MR. STOCKARD:

8 Q. And maybe, Ms. Gleason --

9 THE COURT: Where is that language?

10 BY MR. STOCKARD:

11 Q. -- to help us --

12 MR. STOCKARD: Yeah.

13 THE WITNESS: Practicable?

14 THE COURT: Yeah.

15 BY MR. STOCKARD:

16 Q. Can you turn to the section in the City Charter,
17 Exhibit No. 1, that you're referring to?

18 A. I'll have to look for the number, but it's the
19 error section.

20 Q. I think I may be able to help you there if you
21 turn to --

22 THE COURT: It's got to be at the end. It's
23 the kind of thing that's always at the end.

24 THE WITNESS: It's always at the end, yeah.
25 It's always the last place you look, right.

1 BY MR. STOCKARD:

2 Q. It is section 34 -- or, 36, I'm sorry. It
3 appears I believe on page D 170.

4 A. Yes, and it says: In the event any change or
5 error in the records of the Retirement Plan results in any
6 person receiving from the plan more or less than he would
7 have been entitled to receive had the records been
8 correct, the Retirement Board shall correct such error
9 and, as far as practicable, shall adjust subsequent
10 payments, and so on.

11 And obviously if they included an errors
12 clause, they knew the people running this board and the
13 plan were human and we would occasionally make a mistake,
14 and this is -- this is an administrative default error
15 that, you know, unfortunately no one who was on the board
16 at the time or in other positions in the City that should
17 have looked and made sure that this payment was
18 pensionable, they did not.

19 And so now that we know in 2012 that it
20 doesn't meet the definition of compensation, how do we fix
21 it. And it didn't seem -- because if you're going to say
22 it's not -- we're going to take it away from all current
23 employees, well then the next logical step is we have to
24 make all the retirees who got that benefit pay that pack.
25 Some of those retirees are dead. Some of those retirees

1 have such a small pension they couldn't possibly pay any
2 of it back or even live on a reduced pension. So it
3 seemed the most practicable to pick a day in time to stop
4 the accrual of that benefit and move forward from there.

5 Q. And at the time that the board took the action to
6 approve the policy we were just talking about, the board
7 was acting, in your mind, pursuant to this section 36?

8 A. Yes.

9 Q. And do you view that action as consistent overall
10 with the terms of the retirement plan?

11 A. Yes.

12 Q. Can you explain to us -- elaborate as to why you
13 say that.

14 A. Don't want just a yes?

15 Maybe you can ask me in a different way. I
16 don't know what you're trying to get at.

17 Q. Sure. I believe you testified earlier that you
18 felt like you were acting pursuant to this exhibit -- or,
19 this section 36 of Exhibit 1.

20 A. Right.

21 Q. Is that why you believe that you -- the board was
22 acting consistently with the overall terms of the
23 retirement plan?

24 A. Yes, yes because -- I mean, we -- we had never
25 interpreted the compensation language, and allowing people

1 to get -- to have those payments be pensionable was an
2 error. And so once that is brought to the board's
3 attention, then it's what is the most practicable way to
4 fix it, and so that's what I think the City and the board
5 did at that time.

6 Q. Ms. Gleason, I'm going to hand you now
7 Exhibit 52. Do you recognize that document?

8 A. This is the Comprehensive Annual Financial Report
9 for the COPERS plan for the fiscal year end -- fiscal year
10 end 2010 and 2009.

11 Q. Did the board have a role in the preparation of
12 this financial statement?

13 A. No, not really. I mean, we might have reviewed
14 some sections, but it wasn't an active role at all.

15 Q. Who principally put together this financial
16 statement?

17 A. The COPERS staff in conjunction with some finance
18 staff, I believe.

19 Q. And but you, as a board member, you did get to
20 review these documents from time to time; is that right?

21 A. Yes.

22 Q. And what would the occasion be where you would
23 review the financial statements?

24 A. You know the staff would typically let us know
25 when it was completed and they often won -- there's a

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APP520

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APP521

—ORIGIN early 16th cent. (in the sense 'escort (a ship)'): back-formation from obsolete *wafter* 'armed convoy vessel,' from Low German and Dutch *wachter*, from *wachten* 'to guard.' A sense 'convey by water' gave rise to the current use of the verb.

wag¹ /wɑːɡ/ ▶ v. (wags, wagging, wagged) (with reference to an animal's tail) move or cause to move rapidly to and fro: [no obj.] *his tail began to wag* | [with obj.] *the dog went out, wagging its tail*. ■ [with obj.] move (an upward-pointing finger) from side to side to signify a warning or reprimand: *she wagged a finger at Elinor*. ■ [no obj.] (used of a tongue, jaw, or chin, as representing a person) talk, esp. in order to gossip or spread rumors: *this is a small island, and tongues are beginning to wag*.

▶ n. a single rapid movement from side to side: a *chirpy wago* / *the head*.
—PHRASES **how the world wags** dated how affairs are going or being conducted. **the tail wags the dog** see **TAIL**.

—ORIGIN Middle English (as a verb): from the Germanic base of Old English *wagian* 'to sway.'

wag² ▶ n. dated a person who makes facetious jokes.
—ORIGIN mid 16th cent. (denoting a young man or mischievous boy, also used as a term of endearment to an infant): probably from obsolete *waghalter* 'person likely to be hanged' (see **WAG**, **HALTER**).

wage /wɑːʒ/ ▶ n. (usu. wages) a fixed regular payment, typically paid on a daily or weekly basis, made by an employer to an employee, esp. to a manual or unskilled worker: *we were struggling to get better wages*. Compare with **SALARY**. ■ (wages) Economics the part of total production that is the return to labor as earned income, as distinct from the remuneration received by capital as unearned income. ■ the result or effect of doing something considered wrong or unwise: *the wages of sin is death*.

▶ v. [with obj.] carry on (a war or campaign): *it is necessary to destroy their capacity to wage war*.

—ORIGIN Middle English: from Anglo-Norman French and Old Northern French, of Germanic origin; related to **GAGE** and **WEO**.

wage drift ▶ n. finance the tendency for the average level of wages actually paid to rise above wage rates through increases in overtime and other factors.

wager /'wɑːʒə/ ▶ n. & v. (more formal term for **BET**).
—ORIGIN Middle English (also in the sense 'solemn pledge'): from Anglo-Norman French *wageure*, from *wager* 'to wage.'

wage slave ▶ n. informal a person wholly dependent on income from employment, typically employment of an arduous or menial nature.
—DERIVATIVES **wage slav-er-y** n.

wag-ger-y /'wɑːʒəri/ ▶ n. (pl. **waggeries**) dated waggish behavior or remarks; jocularity. ■ archaic a waggish action or remark.

wag-gish /'wɑːʒɪʃ/ ▶ adj. dated humorous in a playful, mischievous, or facetious manner: *a waggish riposte*.

—DERIVATIVES **wag-gish-ly** adv., **wag-gish-ness** n.

wag-gle /'wɑːɡəl/ ▶ v. informal move or cause to move with short quick movements from side to side or up and down: [no obj.] *his arm waggled* | [with obj.] *Mary waggled a glass at them*. ■ [with obj.] swing (a golf club) loosely to and fro over the ball before playing a shot.

▶ n. an act of waggling.
—ORIGIN late 16th cent.: frequentative of **WAG**.

wag-gle dance ▶ n. a waggling movement performed by a honeybee at the hive or nest, to indicate to other bees the direction and distance of a source of food.

wag-gly /'wɑːɡ(ə)li/ ▶ adj. moving with quick short movements from side to side or up and down: *a waggly tail*.

Wag-ner¹ /'wɑːgnər/, Honus (1874–1955), US baseball player and coach; full name *John Peter Wagner*; known as the Flying Dutchman. Joining the National League in 1897 and playing shortstop for the Pittsburgh Pirates 1900–1917, he was noted for hitting, stealing bases, and speed. Baseball Hall of Fame (1936).

Wag-ner² /'vɑːgnər/, Richard (1813–83), German composer; full name *Wilhelm Richard Wagner*. He developed an operatic genre that he called music drama, synthesizing music, drama, verse, legend, and spectacle. Notable works: *The Flying Dutchman* (1841), *Der Ring des Nibelungen* (1847–74), *Tristan and Isolde* (1859), and the *Siegfried Idyll* (1870).

Wag-ne-ri-an /'vɑːne(ə)rjən/ ▶ adj. of, relating to, or characteristic of the operas of Richard Wagner. ■ having the enormous dramatic scale and intensity of a Wagner opera: *a strategic predicament of positively Wagnerian proportions*.

▶ n. an admirer of Wagner or his music.

Wag-ner tu-ba ▶ n. a brass instrument of baritone pitch with an oval shape and upward-pointing bell, combining features of the tuba and the French horn and first used in Wagner's *Der Ring des Nibelungen*.

wag-on /'wɑːɡən/ (Brit. also **waggon**) ▶ n. a vehicle used for transporting goods or another specified purpose: *a coal wagon* | *an ammunition wagon*. ■ a four-wheeled trailer for agricultural use, or a small version of this for use as a child's toy. ■ a horse-drawn vehicle, esp. a covered wagon used by early settlers in North America and elsewhere. ■ a wheeled cart or hut used as a food stall. ■ a small cart or wheeled table used for serving drinks or food. ■ a vehicle like a camper used by gypsies or circus performers. ■ informal short for **STATION WAGON**. ■ Brit. a railroad freight car.

—PHRASES **fix someone's wagon** bring about a person's downfall or spoil their chances of success. **hitch one's wagon to a star** see **HITCH**. **off the wagon** (of an alcoholic) drinking after a period of abstinence: *she fell off the wagon two days after making a resolution to quit*. **on the wagon** informal (of an alcoholic) abstaining from drinking: *Agnes was thinking of going on the wagon again*.

—ORIGIN late 15th cent.: from Dutch *wagon*; related to **WAIN**.

wag-on-er /'wɑːɡənər/ (Brit. also **waggoner**) ▶ n. the driver of a horse-drawn wagon.
—ORIGIN mid 16th cent.: from Dutch *wagenaar*, from *wagen* (see **WAGON**).

wag-on-ette /'wɑːɡənət/ (Brit. also **waggonette**) ▶ n. a four-wheeled horse-drawn pleasure vehicle, typically open, with facing side seats and one or two seats arranged crosswise in front.

wag-on-lit /'vɑːɡən'leɪ/ ▶ n. (pl. **wagons-lits** pronunc. same) a sleeping car on a European railroad.
—ORIGIN from French *wagon* 'railroad car' + *lit* 'bed.'

wag-on-load /'wɑːɡən'lɒd/ ▶ n. an amount of something that can be carried in one wagon: *a wagonload of food*.

wag-on-train ▶ n. historical a convoy or train of covered horse-drawn wagons, as used by pioneers or settlers in North America.

wag-tail /'wɑːɡ,təl/ ▶ n. a slender Eurasian and African songbird with a long tail that is frequently wagged up and down, typically living by water. ■ Family Motacillidae: two genera, in particular *Motacilla*, and several species.

Wag-yu /'wɑːɡjuː/ ▶ n. (often as modifier) a breed of Japanese cattle. ■ the tender beef obtained from such cattle, typically containing a high percentage of unsaturated fat.
—ORIGIN Japanese, from *wa* 'Japanese' + *gyu* 'cattle, beef.'

Wah-ha-bi /wə'hæbi,wə-/ (also **Wahabi**) ▶ n. (pl. **Wahhabis** /-bɒz/) a member of a strictly orthodox Sunni Muslim sect founded by Muhammad ibn Abd al-Wahhab (1703–92). It advocates a return to the early Islam of the Koran and Sunna, rejecting later innovations; the sect is still the predominant religious force in Saudi Arabia.
—DERIVATIVES **Wah-ha-bism** /-bɪzəm/ n., **Wah-ha-bite** n. & adj.

wa-hi-ne /wə'hɛnə/ ▶ n. 1 a Polynesian woman or wife, esp. in Hawaii or New Zealand. 2 a young woman surfer.
—ORIGIN Hawaiian or Maori.

wa-hoo¹ /'wə,hʊo, wə'hʊo/ ▶ n. (also **wahoo elm**) another term for **WINGED ELM**.
—ORIGIN perhaps from Creek *ahá-hwa* 'walnut.'

wa-hoo² ▶ n. a North American burning bush. ■ *Euonymus atropurpurea*, family Celastraceae.
—ORIGIN from Dakota.

wa-hoo³ ▶ n. a large predatory tropical marine fish of the mackerel family, prized as a game fish. ■ *Acanthocybium solanderi*, family Scombridae.
—ORIGIN early 20th cent.: of unknown origin.

wa-hoo⁴ ▶ exclamation, another term for **YAHOO**.
—ORIGIN 1940s: probably a natural exclamation.

wah-wah /'wə wə/ (also **wa-wa**) ▶ n. a musical effect achieved on brass instruments by alternately applying and removing a mute and on an electric guitar by controlling the output from the amplifier with a pedal. ■ a pedal for producing such an effect on an electric guitar.
—ORIGIN 1920s: imitative.

waif /wəf/ ▶ n. 1 a homeless and helpless person, esp. a neglected or abandoned child: *she is foster-mother to various waifs and strays*. ■ an abandoned pet animal. 2 Law a piece of property thrown away by a fleeing thief and held by the state in trust for the owner to claim.
—DERIVATIVES **waif-ish** adj.

—ORIGIN late Middle English: from an Anglo-Norman French variant of Old Northern French *gaif*, probably of Scandinavian origin. Early use was often

in *waif and stray*, as a legal term denoting a piece of property found and, if unclaimed, falling to the lord of the manor.

Wai-ka-to /wɪ'kɑːtə, -'kɑːtə/ a river in New Zealand that flows north-west for 270 miles (434 km) from the center of North Island to the Tasman Sea, the country's longest river.

Wai-ki-ki /wɪ'ki:kə/ a beach resort, a suburb of Honolulu, on the island of Oahu in Hawaii.

wail /wəɪ/ ▶ n. a prolonged high-pitched cry of pain, grief, or anger: *Christopher let out a wail*. ■ a sound resembling this: *the wail of an air-raid siren*. ▶ v. [no obj.] give such a cry of pain, grief, or anger: *Tina ran off wailing* | [with direct speech] *'But why?' she wailed*. ■ make a sound resembling such a cry: *the wind wailed and buffeted the timber structure*. ■ [with obj.] literary manifest or feel deep sorrow for; lament: *she wailed her wretched life*.

—DERIVATIVES **wailer** n., **wail-ful** /-fʊl/ adj. (literary) **wail-ing-ly** adv.

—ORIGIN Middle English: from Old Norse; related to **WOE**.

Wai-ling Wall /'wɑɪlɪŋ/ another name for **WESTERN WALL**.

Wai-mea Can-yon /wɪ'meə/ a deep canyon in western Kauai Island in Hawaii. Also called **Grand Canyon of the Pacific**.

Wain /wɛɪn/, John (Barrington) (1925–94), English writer and critic. One of the Angry Young Men of the early 1950s, he was later professor of poetry at Oxford 1973–78.

wain /wɛɪn/ ▶ n. archaic a wagon or cart. ■ (the **Wain**) short for **CHARLES'S WAIN**.

—ORIGIN Old English *wæg(e)n*, of Germanic origin; related to Dutch *wagen* and German *Wagen*, also to **WAY** and **WEIGH**.

wain-scot /'wɛɪn,skɒt, -skət, -skɑɪ/ ▶ n. (in Sing.) an area of wooden paneling on the lower part of the walls of a room. ■ Brit. historical imported oak of fine quality, used mainly to make paneling.

▶ v. (**wainscots**, **wainscoting**, **wainscoted** or **wainscots**, **wainscoting**, **wainscotted**) [with obj.] line (a room or wall) with wooden paneling.
—ORIGIN Middle English: from Middle Low German *wagenschot*, apparently from *wagen* 'wagon' + *schot*, probably meaning 'partition.'

wain-scot-ting /'wɛɪn,skɒtɪŋ, -skɑɪ/ (also **wainscoting**) ▶ n. wooden paneling that lines the lower part of the walls of a room. ■ material for such paneling.

Wain-wright /'wɛɪn,rɪt/, Jonathan Mayhew (1883–1953), US army officer. The general in charge of all US troops on the Philippine Islands from March 1942, he was forced to surrender at Corregidor in May and was held as a prisoner of war by the Japanese until 1945.

wain-wright /'wɛɪn,rɪt/ ▶ n. historical a wagon builder.

Wai-pa-hu /wɪ'pɑːhʊ/ a city in Hawaii, on southern Oahu Island, west of Pearl City; pop. 33,108 (2000).

WAIS /wɑɪs/ ▶ abbr. Computing wide area information service, designed to provide access to information across a computer network.

waist /wɑɪst/ ▶ n. the part of the human body below the ribs and above the hips. ■ the circumference of this: *her waist is 28 inches*. ■ a narrowing of the trunk of the body at this point: *the last time you had a waist was around 1978*. ■ the part of a garment encircling or covering the waist. ■ the point at which a garment is shaped so as to narrow between the rib cage and the hips: *a jacket with a high waist*. ■ a blouse or bodice. ■ a narrow part in the middle of anything, such as a violin, an hourglass, the body of wasp, etc. ■ the middle part of a ship, between the fore-castle and the quarter-deck.
—DERIVATIVES **waist-ed** adj. [in combination] *high-waisted*, **waist-less** adj.

—ORIGIN late Middle English: apparently representing an Old English word from the Germanic root of **WAX**.

waist-band /'wɑɪst(b)ænd/ ▶ n. a strip of cloth forming the waist of a garment such as a skirt or a pair of trousers.

waist cloth ▶ n. a loincloth.

waist-coat /'wɑɪst(ɪ)kəʊt, 'veskəʊt/ ▶ n. Brit. a vest, esp. one worn by men over a shirt and under a jacket. ■ historical a man's quilted long-sleeved garment worn under a doublet in the 16th and 17th centuries.

waist-deep ▶ adj. & adv. of or to a depth to reach the waist: [as adj.] *the waist-deep water* | [as adv.] *Ellenwood stood waist-deep in the water*.

waist-high ▶ adj. & adv. of or to a height to reach the waist: [as adj.] *a ruin surrounded by waist-high grass* | [as adv.] *weeds grew waist-high*.

waist-line /'wɑɪst(ɪ)liːn/ ▶ n. an imaginary line around a person's body at the waist, esp. with respect to its size: *eliminating inches from the*

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Saint Vincent and the Grenadines

Saint Vincent, Cape A promontory at the southwest extremity of Portugal. Prince Henry the Navigator established (c. 1420) a residence nearby that served as a base for the explorational voyages that he sponsored.

Saint Vincent and the Grenadines (grēn'ə-dēnz') An island country in the central Windward Islands of the West Indies. It comprises St. Vincent Island and the northern islets of the Grenadines. Part of the West Indies Federation from 1958 to 1962, the country gained self-governing status in 1969 and full independence in 1979. Kingstown, on St. Vincent, is the capital.

Saint Vi-tus' dance also **Saint Vi-tus's dance** (vī'təs, -tə-sīz) *n.* See Sydenham's chorea. [After *Saint Vitus*, third-century AD Christian martyr.]

Sai-pan (si-pān', -pān', sī'pān) The largest island of the Northern Mariana Islands in the western Pacific Ocean. It was held by Spain, Germany, and Japan before being captured by US troops in July 1944 during World War II. It was part of the US Trust Territory of the Pacific Islands from 1947 to 1978 and now serves as the capital of the Northern Marianas. —**Sai'pa-nesē'** (-nēz', -nēs') *adj. & n.*

sai-th (sēth, sē'th) *v. Archaic* A third person singular present tense of say.

Sai-va (sī'və, shī'v-) *n. Hinduism* One who worships Shiva. [Sanskrit *śaiva*, belonging to Shiva < *Sivali*, Shiva.] —**Sai'va** *adj.* —**Sai'vism** *n.*

Sa-ja-ma (sə-hā'mə) An extinct volcano, 6,542 m (21,463 ft) high, in the Andes of western Bolivia near the Chilean border. It is the highest mountain in Bolivia.

Sa-kai (sā'kī) A city of southern Honshu, Japan, on Osaka Bay south of Osaka. It was a leading port from the 15th to the 17th century.

Sak-a-ka-we-a (sāk'ə-kə-wē'ə), **Lake** A reservoir in west-central North Dakota. It is a widening of the Missouri River and was created in 1956 when the Garrison Dam was completed.

sake¹ (sāk) *n.* 1. Purpose; motive: a quarrel only for the sake of argument. 2. Advantage; good: for the sake of his health. 3. Personal benefit or interest; welfare: for her own sake. [Middle English, lawsuit, guilt < Old English *sacn*; see *sāg* - In App. I.]

sa-ke² also **sa-ki** (sā'kē, -kē) *n.* A Japanese liquor made from fermented rice. [Japanese.]

sa-ker falcon (sā'kər) *n.* A Eurasian falcon (*Falco cherrug*) having brown plumage and often trained for falconry. [Middle English *sacre* < Old French < Arabic *saqr*, probably < Turkic **soyqur*, falcon.]

Sa-kha-lin (sāk'hə-lēn', -lan, sā-khə-lyēn') An island of southeast Russia in the Sea of Okhotsk north of Hokkaido, Japan. Colonized by Russia and Japan in the 1700s and 1800s, it passed under Russian control in 1875.

Sa-kha-rov (sā'kə-rēf', sāk'hə-, sā'kha-rōf), **Andrei Dmitrievich** 1921–1989. Soviet physicist and dissident who helped develop the first Soviet hydrogen bomb. An outspoken advocate of human rights and nuclear disarmament, he won the 1975 Nobel Peace Prize and was banished to Gorky (now Nizhny Novgorod) from 1980 to 1986.

sa-ki¹ (sā'kē, -kē) *n.* Variant of *sake*².

sa-ki² (sā'kē) *n., pl. -kīs* Any of several small omnivorous arboreal monkeys of the genera *Pithecia* and *Chiropotes* of northern and central South America, having long legs and a long bushy nonprehensile tail. [French, shortening (given as a name to a species of *saki* by Georges Louis Leclerc de Buffon) of English *sakee winkee*, *sakivinski*, ultimately < Tupi *sagui* or a kindred Tupi-Guarani source.]

Sa-ki (sā'kē) See Hector Hugh Munro.

Sa-ki-shi-ma (sā'kē-shē'mā, sā-kē-shē-mā') An island group of Japan in the southern Ryukyu Islands east of Taiwan. The islands were heavily bombed by the Allies in April–June 1945.

Sak-ka-ra (sə-kār'ə) See Saqqara.

sāl (sāl) *n.* Salt. [Middle English < Old French < Latin *sāl*; see *sal* - In App. I.]

sa-laam (sə-lām') *n.* 1. A ceremonious act of deference or obeisance, especially a low bow performed while placing the right palm on the forehead. 2. A greeting in various Muslim cultures. *tr. & intr.v.* -laamed, -laam-ing, -laams To greet with or perform a salaam. [Arabic *salām*, peace, salaam < *salima*, to be safe; see *šlm* in App. I.]

sal-a-ble also **sale-a-ble** (sāl'ə-bəl) *adj.* Offered or suitable for sale; marketable. —**sal'a-ble-ty**, **sal'a-ble-ness** *n.* —**sal'a-bly** *adv.*

sa-la-cious (sə-lā'shəs) *adj.* 1. Appealing to or stimulating sexual desire: *salacious reading material*. 2. Characterized by or indicating sexual desire; lustful: *a salacious witik*. [*<* Latin *salāx*, *salāc*-, fond of leaping, lustful < *salire*, to leap; see *sel* - In App. I.] —**sa-la'ciously** *adv.* —**sa-la'cious-ness**, **sa-lac'i-ty** (sə-lās'ī-tē) *n.*

sal-ad (sāl'əd) *n.* 1a. A dish of raw leafy green vegetables, often tossed with pieces of other raw or cooked vegetables, fruit, cheese, or other ingredients and served with a dressing. b. The course of a meal consisting of this dish. 2. A cold dish of chopped vegetables, fruit, meat, fish, eggs, or other food, usually prepared with a dressing, such as mayonnaise. 3. A green vegetable or herb used in salad, especially lettuce. 4. A varied mixture: "The Declaration of Independence was ... a salad of illusions" (George Santayana). [Middle English *salade* < Old French, possibly < Old Provençal *salada* < Vulgar Latin **salata* < feminine past participle of **salāre*, to salt < Latin *sāl*, salt; see *sal* - In App. I.]

+WORD HISTORY Salt was and is such an important ingredient in salad dressings that the very word *salad* is based on the Latin word for "salt." Vulgar Latin had a verb **salāre*, "to salt," from Latin *sāl*, "salt," and the past participle form of this verb, **salāta*, "having been salted," came to mean "salad." The Vulgar Latin word passed into languages descending from it, such as Portuguese (*salada*) and Old Provençal (*salada*). Old

French may have borrowed its word *salade* from Old Provençal. Medieval Latin also carried on the Vulgar Latin word in the form *salata*. As in the case of so many culinary delights, the English borrowed the word and probably the dish from the French. The Middle English word *salade*, from Old French *salade* and Medieval Latin *salata*, is first recorded in a cookbook composed before 1399. • Salt is of course an important ingredient of other foods and condiments besides salad dressings, as is evidenced by some other culinary word histories. The words *sauce* and *salsa*, borrowed into English from French and Spanish, respectively, both come ultimately from the Latin word *salsus*, meaning "salted." Another derivative of this word was the Late Latin adjective *salsicius*, "prepared by salting," which eventually gave us the word *sausage*.

salad bar *n.* A counter in a restaurant from which customers may serve themselves a variety of salad ingredients and dressings.

salad days *pl. n.* A time of youth, innocence, and inexperience; "my salad days." / *When I was green in judgment, cold in blood* (Shakespeare). [Coined by William Shakespeare.]

salad dressing *n.* A sauce, such as one made of mayonnaise or of oil and vinegar, that is served on salad.

sa-lade ni-çoise (sā-lād' nē-swāz') *n.* A salad of tomatoes, anchovies, black olives, green beans, tuna, and hard-boiled eggs. [French: *salade*, salad + *niçoise*, fem. of *niçois*, of Nice.]

Sa-la-din (sāl'ə-dīn) Full name Salah ad-Dīn Yusuf ibn Ayyub, 1137–1193, Sultan of Egypt and Syria who captured (1187) Jerusalem and defended it during the Third Crusade (1189–1192).

Sa-la-do also **Sa-la-do del Nor-te** (sə-lā'dō dēl nōr'tē, sē-) A river of northern Argentina rising in the Andes and flowing about 2,010 km (1,250 mi) southeast to the Paraná River.

salad oil *n.* An edible vegetable oil, such as corn oil or olive oil, that can be used in salad dressings.

Sa-la-fi (sāl'ə-fē) *n., pl. Salafi or -fis* An adherent of Salafism, a Salafist. *adj.* Of or relating to Salafism. [Arabic *salafi*, of the forebears of the predecessors < *salaf*, forebears, predecessors; see *šlp* in App. I.]

Sa-la-fism (sāl'ə-fīz'm, sə-lā'fīz'am) *n.* A school of Sunni Islam that condemns theological innovation and advocates strict adherence to shari'a and to the social structures existing in the earliest days of Islam [*<* SALAFI.] —**Sa'la-fist** *adj. & n.*

sa-lal (sə-lāl') *n.* A small evergreen shrub (*Gaussia shallon*) in the heath family, native to the Pacific coast of North America, having white or pink flowers clustered in racemes and edible purple-black berries. [Chinook Jargon *sallal* < Chinook *sālat*.]

Sa-lam (sā-lām'), **Abdus** 1926–1996. Pakistani theoretical physicist who shared a 1979 Nobel Prize for helping to develop the theory of the electroweak force, unifying two of the four fundamental forces of nature: the electromagnetic force and the weak force.

Sa-la-man-ca (sāl'ə-māng'kə, sāl'lə-māng'kə) A city of west-central Spain west-northwest of Madrid. Founded by Celts and subsequently held by Carthaginians, Romans, Visigoths, and Moors, after the Reconquista it became the site of one of Spain's first universities (founded 1218).

sa-la-mander (sāl'ə-mān'dər) *n.* 1. Any of various small, tailed amphibians of the order Caudata, having porous scaleskin and usually two pairs of limbs of equal size, found chiefly in northern temperate regions. 2a. A mythical creature, generally resembling a lizard, believed capable of living in or withstanding fire. b. In the occult philosophy of Paracelsus, a being having fire as its element. 3. An object, such as a poker, used in fire or capable of withstanding heat. 4. *Metallurgy* A mass of solidified material, largely metallic, left in a blast-furnace hearth. 5. A portable stove used to heat or dry buildings under construction. [Middle English *salamandre* < Old French < Latin *salamandra* < Greek.] —**sal'et man'drine** (-drīn) *adj.*

sa-la-mi (sə-lā'mē) *n., pl. -mīs* Any of various highly spiced and salted sausages, made from beef or a mixture of pork and beef. [Italian, pl. of *salame*, *salami* < Vulgar Latin **salāmen* < **salāre*, to salt < Latin *sāl*, salt; see *sal* - In App. I.]

Sa-la-mis¹ (sāl'ə-mīs, sāl'lə-mēs') An island of Greece in the Saronic Gulf east of Athens. In an important naval battle off the island's north-east coast the Greeks, led by Themistocles, defeated the Persian fleet in 480 bc.

Sa-la-mis² (sāl'ə-mīs, sāl'lə-mēs') An ancient city of eastern Cyprus. According to tradition, it was founded c. 1180 bc by Teucer, a hero of the Trojan War, and was visited by Saint Paul during his first missionary journey. The city was abandoned after ad 648.

sal ammoniac *n.* See ammonium chloride. [Middle English *sal ammoniak* < Latin *sāl ammoniacus*, salt of Amen: *sāl*, salt; see *sal* & *ammoniacus*, of Amen; see AMMONIA.]

sa-la-ry (sāl'ə-rē, sāl'rē) *n., pl. -rīes* Fixed compensation for services paid to a person on a regular basis. [Middle English *salarte* < Anglo-Norman < Latin *salarium*, money given to Roman soldiers to buy salt < neuter of *salārius*, pertaining to salt < *sāl*, salt; see *sal* - In App. I.] —**sal'a-ried** *adj.*

sa-la-ry-man (sāl'ə-rē-mān', sāl'rē-) *n.* A Japanese corporate businessman. [Anglicization of Japanese *sarurīman*, salaried man: English SALARY + English MAN.]

salary reduction plan *n.* See 401(k).

Sa-la-zar (sāl'ə-zār', sāl'ə-) , **Antônio de Oliveira** 1889–1970, Portuguese dictator (1932–1968) known for his programs of fiscal austerity and his attempts to repress growing opposition in Portugal's African colonies.

sal-but-a-mol (sāl-byū'd'ə-mōl', -mōl') *n.* See albuterol [sal'icyl], the radical of salicylic acid (< French *salicyle*; see SALICYLIC ACID) + BUT(YL) + AM(INE) + -OL'.



salamander
fire salamander
Salamandra salamandra



waffleweave

waf·fle·weave (wăf'əl-wēv') *n.* A textile weave having a pattern of small raised squares or hexagons, used to produce a soft absorbent fabric.

waft (wăft, wāft) *v.* **wafted, wafting, wafts** —*tr.* To cause to go gently and smoothly through the air or over water: *The breeze wafted the fog through the fields.* —*intr.* To float easily and gently, as on the air; drift: *The smell of soup wafted from the kitchen.* ♣ *n.* 1. Something, such as an odor, that is carried through the air: *a waft of perfume.* 2. A light breeze; a rush of air: *felt the waft of the sea breeze.* 3. The act or action of fluttering or waving: *the waft of her dress.* 4. Nautical A flag used for signaling or indicating wind direction. Also called *waif*. [Back-formation < *wafter*, convoy ship, alteration of Middle English *waughte* < Middle Dutch or Middle Low German *wachter*, a guard < *wachten*, to guard; see *weg-* in App. I.] —**waft'er** *n.*

wag¹ (wăg) *v.* **wagged, wag-ging, wags** —*intr.* 1. To move briskly and repeatedly from side to side, to and fro, or up and down: *The dog's tail wagged.* 2. To move rapidly in talking. Used of the tongue. 3. *Archaic* To be on one's way; depart. —*tr.* To move (a body part) rapidly from side to side or up and down, as in playfulness, agreement, or admonition: *wagged his finger at the giggling students.* ♣ *n.* The act or motion of wagging: *a farewell wag of the hand.* [Middle English *waggen*; see *wegh-* in App. I.] —**wag'ger** *n.*

wag² (wăg) *n.* A humorous or droll person; a wit. [Perhaps < *wag*¹.]
wage (wāj) *n.* 1. A regular payment, usually on an hourly, daily, or weekly basis, made by an employer to an employee, especially for manual or unskilled work. 2. *wages* The price of labor in an economy. 3. *often wages* (used with a *sing.* or *pl. verb*) A fitting return; a recompense: *the wages of sin.* ♣ *tr.v.* **waged, wag-ing, wages** To engage in (a war or campaign, for example). [Middle English < Old North French, of Germanic origin.]

wage earner *n.* 1. One who works for wages. 2. One whose earnings support or help support a household.

wager (wā'jər) *n.* 1a. An agreement under which each bettor pledges a certain amount to the other depending on the outcome of an unsettled matter. b. A matter bet on; a gamble. 2. Something that is staked on an uncertain outcome; a bet: *a wager of \$20.* 3. *Archaic* A pledge of personal combat to resolve an issue or case. ♣ *v.* **-gered, -ger-ing, -gers** —*tr.* To risk or stake (an amount or possession) on an uncertain outcome; bet. —*intr.* To make a bet. [Middle English < Anglo-Norman *wageure* < Old North French *wagier*, to pledge < *wage*, pledge; see *wagē-* in App. I.] —**wag'er-er** *n.*

wage scale *n.* The scale of wages paid to employees for the various jobs within an industry, factory, or company.

wage slave *n.* *Informal* A wage earner whose livelihood is completely dependent on the wages earned.

wage-work-er (wāj'wŭr'kər) *n.* A wage earner.

wag-ger-y (wăg'gə-rē) *n., pl.* -les 1. Waggish behavior or spirit; drollery. 2. A droll remark or act.

wag-gish (wăg'gish) *adj.* Characteristic of or resembling a wag; jocular or witty. —**wag-gish-ly** *adv.* —**wag-gish-ness** *n.*

wag-gle (wăg'gl) *v.* **-gled, -gling, -gles** —*tr.* To move (an attached part, for example) with short, quick motions: *waggled her foot impatiently.* —*intr.* To move shakily; wobble: *waggled down the steps.* ♣ *n.* A wobbling motion. [Middle English *wagelen*, frequentative of *waggen*; see *wag*¹.] —**wag-gly** *adj.*

wag-gon (wăg'gən) *n.* & *v.* Chiefly British Variant of *wagon*.

Wagner (wăg'nər), *Honus* 1874–1955. American baseball player who during his 21-year career (1897–1917) was consistently among the National League's best batters.

Wagner, *Richard* 1813–1883. German composer known especially for his romantic operas, often based on Germanic legends. Among his works are *Tannhäuser* (1845) and the tetralogy *Der Ring des Nibelungen* (1853–1876).

Wagner-i-an (wăg-nir'ē-ən) *adj.* Of, relating to, or characteristic of Richard Wagner, his music dramas, or his theories. ♣ *n.* also **Wagner-ite** (wăg'nō-rīt') An admirer or disciple of Richard Wagner.

wag-on (wăg'ən) *n.* 1. A four-wheeled, usually horse-drawn vehicle with a large rectangular body, used for transporting loads. 2a. A light automotive transport or delivery vehicle. b. A station wagon. c. A police patrol wagon. 3. A child's low, four-wheeled cart hauled by a long handle that governs the direction of the front wheels. 4. A small table or tray on wheels used for serving drinks or food: *a dessert wagon.* 5. *Wagon* The Big Dipper 6. Chiefly British An open railway freight car. ♣ *tr.* & *intr.v.* **-oned, -on-ing, -ons** To transport or undergo transportation by wagon. —**idioms:** **off the wagon** *Slang* No longer abstaining from alcoholic beverages. **on the wagon** *Slang* Abstaining from alcoholic beverages. [Middle English *waggen* < Middle Dutch *wagen*; see *wegh-* in App. I.]

wag-on-er (wăg'ə-nər) *n.* 1. One who drives a wagon. 2. *Wagoner* Auriga.

wagon-lit (wăg'gŏn-lit') *n., pl.* **wa-gons-lits** or **wa-gon-lits** (wăg'gŏn-lit') A sleeping car on a European railroad train. [French: *wagon*, railroad car (< English *WAGON*) + *lit*, bed (< Old French < Latin *lectus*; see *legn-* in App. I.)]

wag-on-load (wăg'ən-lŏd') *n.* The amount that a wagon can hold.

wagon train *n.* A line or train of wagons traveling cross-country.

wagon vault *n.* See *barrel vault*.

Wa-gram (wă'grām') A town of northeast Austria northeast of Vienna. Napoleon defeated the Austrians here in July 1809.

wag-tail (wăg'tāl') *n.* Any of various chiefly Eurasian or African insectivorous birds of the family Motacillidae, having a slender body with a long tail that constantly wags.

Wah-ha-bi or **Wa-ha-bi** (wă-hă'bē) *n., pl.* **-bis** A member of a Muslim sect founded by Abdul Wahhab (1703–1792), known for its strict

observance of the Koran and flourishing mainly in Arabia. —**Wah-ha-bism** (-biz'əm) *n.*

wa-hi-ne (wă-hē'nē, -nā') also **va-hi-ne** (vā-) *n.* 1. *Hawaii* A Polynesian woman. 2. *Slang* A woman surfer. [Hawaiian < Proto-Polynesian **ʻafine*.]

wa-hoo¹ (wă-hōō', wă'hōō) *n., pl.* **-hooos** A deciduous shrub or small tree (*Euonymus atropurpureus*) of eastern North America, having small purplish flowers, pink fruit containing scarlet arils, and red foliage in the autumn. [Dakota *wahhu*: *wah*, arrow + *hu*, leg, stock or stem of a plant (< the use of its straight, slender shoots and branches to make arrow shafts).]

wa-hoo² (wă-hōō', wă'hōō) *n., pl.* **-hooos** See *winged elm*. [Origin unknown.]

wa-hoo³ (wă-hōō', wă'hōō) *n., pl.* **wahoo** or **-hooos** A large marine food and game fish (*Acanthocybium solandri*) of subtropical and tropical waters, having a pointed snout, narrow body, and long dorsal fin. [Perhaps of West Indian origin.]

wa-hoo⁴ (wă'hōō') Chiefly *Western US interj.* Used to express exuberance. ♣ *n., pl.* **-hooos** An exuberant cry: *He let out a wahoo.* Also called regionally *rebel yell*.

Wah-pe-ku-te (wă'pə-kŏō'tē) *n., pl.* **Wahpekute** or **-tes** A member of a Native American people of the Santee branch of the Sioux, with present-day populations in Nebraska and Montana.

wah-wah also **wa-wa** (wă'wă') *n.* 1. A wavering sound resembling the vowels of human speech, produced by alternately covering and uncovering the bell of a trumpet or trombone with a mute. 2. A similar sound produced by means of an electronic attachment, as on an electric guitar, operated by a foot pedal. [Imitative.] —**wah'-wah'** *adj.*

Wai-a-le-a-le or **Wai'ale'ale** (wī-ā'lā-ā'lā) A mountain, 1,569 m (5,148 ft) high, of central Kauai in Hawaii. Its summit is one of the rainiest spots on earth.

Wai-a-na-e Range (wī-ā-nā'ē) A mountain range of western Oahu, Hawaii, rising to 1,231 m (4,040 ft).

waif¹ (wāf) *n.* 1a. A homeless person, especially a forsaken or orphaned child. b. An abandoned young animal. 2. A person, especially a young woman, who is thin or gaunt. 3. Something found and unclaimed, as an object cast up by the sea. [Middle English, ownerless property, stray animal < Anglo-Norman, probably of Scandinavian origin; see *weip-* in App. I.]

waif² (wāf) *n.* *Nautical* See *waft* (sense 4). [Probably of Scandinavian origin; see *weip-* in App. I.]

Wai-ka-to (wī-kā'tō) A river of New Zealand rising in central North Island and flowing about 425 km (265 mi) northwest to the Tasman Sea. It is the longest river in the country.

Wai-ki-ki (wī'ki-kē') A famous beach and resort district in Hawaii on the southern shore of Oahu.

wail (wā) *v.* **wailed, wailing, wails** —*intr.* 1. To make a long, loud, high-pitched cry, as in grief, sorrow, or fear. See *Synonyms* at *cry*. 2. To make a prolonged, high-pitched sound suggestive of a cry: *The wind wailed through the trees.* —*tr.* *Archaic* To lament over; bewail. ♣ *n.* 1. A long, loud, high-pitched cry, as of grief or pain. 2. A long, loud, high-pitched sound: *the wail of a siren.* 3. A loud, bitter protest: *A wail of misery went up when new parking restrictions were announced.* [Middle English *wailen*, probably of Scandinavian origin; akin to Old Norse *vála*, *væla*.] —**wail'er** *n.* —**wail'-ing-ly** *adv.*

wail-ful (wā'fəl) *adj.* 1. Resembling a wail; mournful. 2. Issuing a sound resembling a wail. —**wail'-ful-ly** *adv.*

Wailing Wall (wā'ling) *n.* See *Western Wall*.

Wai-me-a Bay (wī-mā'ē) An inlet of the Pacific Ocean on the north shore of the island of Oahu in Hawaii.

Waimea Canyon A deep gorge on the eastern part of Kauai in Hawaii.

wain (wān) *n.* A large open farm wagon. [Middle English < Old English *wēn*, *wægn*; see *wegh-* in App. I.]

Wain (wān) *n.* The Big Dipper.

wain-scot (wān'skŏt, -skŏt', -skŏt') *n.* 1. A facing or paneling, usually of wood, applied to the walls of a room. 2. The lower part of an interior wall when finished in a material different from that of the upper part; ♣ *tr.v.* **-scot-ed, -scot-ing, -scots** or **-scot-ted, -scot-ting, -scots** To line or panel (a room or wall) with wainscoting. [Middle English < Middle Dutch *waghenscot*: perhaps *waghen*, *wagon*, wagon (from the quality of wood used for carriage-work); see *wag-on* + *scot*, partition; see *skeud-* in App. I.]

wain-scot-ing or **wain-scot-ting** (wān'slŏk-tīng, -skŏt'īng, -skŏt'īng) *n.* 1. A wainscoted wall or walls; paneling. 2. Material, such as wood, used for wainscoting.

wain-wright (wān'rit') *n.* One that builds and repairs wagons.

waist (wāst) *n.* 1a. The part of the human trunk between the bottom of the rib cage and the pelvis. b. The narrow part of the abdomen of an insect. 2a. The part of a garment that encircles the waist of the body. b. The upper part of a garment, extending from the shoulders to the waistline, especially the bodice of a woman's dress. c. *Archaic* A blouse. 3. The middle section or part of an object, especially when narrower than the rest. 4. *Nautical* The middle part of the upper deck of a ship between the forecabin and the quarterdeck. [Middle English *wāst*, perhaps < Old English **wast*, growth, size; see *aug-* in App. I.] —**waist'/less** *adj.*

waist-band (wāst'bānd') *n.* A band of material encircling and fitting the waist of a garment, such as trousers or a skirt.

waist-cloth (wāst'klŏth', -klŏth') *n.* A loincloth.

waist-coat (wēs'kŏt, wāst'kŏt') *n.* 1. A garment formerly worn by men under a doublet. 2. Chiefly British A short, sleeveless, collarless garment worn especially over a shirt and often under a suit jacket; a vest. —**waist'coat'ed** *adj.*



Richard Wagner
1883 portrait by Giuseppe
Tivoli (1845–?)

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distinction to the proletariat.

sal'a-ried (säl'ä-rīd), *adj.* Receiving a salary; paid by a salary; having a salary attached; as, a *salaried* officer; a *salaried* office; *salaried* employees.

|| **sa'la-rie'go** (sä'lä-ryä'gō), *n.* [Sp.] In medieval Spain, land held by the nobles.

Sal'a-ri'no (säl'ä-rē'nō), *n.* A character in Shakespeare's *Merchant of Venice*.

sal ar-mo'ni-ac (är-mō'nī-äk) or **ar-mo'ni-ak**. = SAL AMMONIAC.

sal'a-ry (säl'ä-rī), *n.*; *pl.* -RIES (-rīz). [AF. *salarie*, OF. *salair*, fr. L. *salarium* pension, stipend, orig., salt money, the money given to the Roman soldiers for salt, which was a part of their pay, fr. *salarium* pertaining to salt, fr. *sal* salt. See SALT.] 1. The recompense or consideration paid, or stipulated to be paid, to a person at regular intervals for services, esp. to holders of official, executive, or clerical positions; fixed compensation regularly paid, as by the year, quarter, month, or week; stipend — now often distinguished from *wages*.
2. Compensation; recompense; reward; also, a remuneration for services given, as a fee or honorarium. *Obs.*
O, this is hire and *salary*, not revenge. *Shak.*

Syn. — Pay, hire, allowance. See WAGES.

sal'a-ry (säl'ä-rī), *v. t.*; -RIED (-rīd); -RY-ING (-rī-ŷng). [Cf. F. *salarier*.] To pay a salary to, as an employee; to attach a salary to, as a post; to provide salaries for those employed in, as a business; — chiefly in past participle.

sal'a-ry (säl'ä-rī). Dial. var. of CELERY.

sa-lat' (sä-lät'), *n.*; *pl.* SALAWAT (sä-lä'wät). [Ar. *ṣalāt*.] The ritual prayer of Mohammedans, made five times daily, in a standing position alternating with inclinations and prostrations, the worshiper facing toward Mecca.

Sa-la'thi-el (sä-lä'thī-ēl). 1. Successor of Jehoiachin. *Bib.*
2. a A name sometimes given to the Wandering Jew.
b The title and hero of a novel (1829) by George Croly.

|| **sal At'ti-cus** or **At'ti-cum** (ät'tī-kūs, -kūm). [L.] Attic salt.

|| **sal'band'** (zäl'bänt'), *n.* [G. *salband*, *sahlband*, lit., self end (cf. SELVAGE). See SELF; END.] *Petrog.* The border of a dike or other igneous mass, usually characterized by a finer grain or even glassy texture produced by the chilling of the molten rock by the cold country rock.

|| **sal ca-thar'ti-cus** (kä-thär'tī-kūs). [NL.] Epsom salt.

|| **sal cu'li-na'ri-us** (kü'lī-nä'rī-ūs; 79). [L.] *Old Chem.* Common salt. See SALT, *n.*, 1.

|| **sal de du'o-bus** (dē dū'ō-būs). [NL.] *Old Chem.* Potassium sulphate; — erroneously supposed to be composed of two salts, one acid and one alkaline.

sale (säl), *n.* [Late AS. *sala*, fr. ON. *sala*. See SELL, *v.*; cf. HANDSEL.] 1. *Law.* Act of selling; a contract whereby the absolute, or general, ownership of property is transferred from one person to another for a price, or sum of money, or, loosely, for any consideration; also, a contract for such transfer of ownership in the future or upon the future fulfillment of some condition (this latter being by some differentiated as an *agreement to sell*). The word *sale* is often specifically used of the sale of personal property, as usually in the phrase *the law of sales*. Cf. GIFT, *n.*, 7 b.
2. Opportunity of selling or being sold; demand; market.
Where gingerbread wives have a scanty *sale*. *Keats.*
3. The purpose, end, or fact, of selling, being sold, or being offered for purchase; exhibition for selling; also, the status of being purchasable; — chiefly in phrases, as the obsolete *of sale*, *set to sale*, and *to sale*, and the current *on sale*, *to put up for sale*, and *for sale*. Hence, *for sale*, to be sold. "One who sets his services to *sale*." *Dryden*. "Still is *for sale*, next June, that same *château*." *Browning*.
4. Public disposal to the highest bidder: auction.
5. A selling off of surplus, shopworn, or other stock, at bargain prices; an advertised disposal of marked-down goods. — *on sale or return*. On approval. See APPROVAL, 2.

sale, *adj.* 1. Orig., intended for selling rather than home use; as, *sale* milk or bread; later, produced or raised in large quantities for the trade; as, *sale* lambs; sometimes, esp. in

wa'gang' (wā'gāng'), *n.* Also **wa'gang'**, **wa'-gang'**. Departure; leave-taking; death. *Scot.*

wag at, or by, the wall. A hanging clock with pendulum and weights exposed. *Oxf. E. D. Chiefly Scot. & N. of Eng.*

wag'beard' (wāg'berd'), *n.* One who wags his beard, as in gossip, criticism, derision, etc. — **wag'beard', adj.**

wage (wāj), *v.*; **WAGED** (wājd); **WAG'ING** (wāj'ing). [*ME. wagen, fr. ONF. wagner (OF. gager, F. gager); cf. ML. vadum a pledge. See 2d & 3d GAGE.*] *Transitive:* 1. To pledge; gage; to put down as a security; hence, to hazard on the event of a contest or undertaking; to stake; bet; lay; wager. *Archaic, Dial., or Hist.*
 My life I never held but as a pawn
 To wage against thy enemies. *Shak.*

2. To bind oneself to; to engage to abide the event of; as, to *wage* battle or trial by battle; to *wage* one's law (see **WAGER OF LAW**). *Obs. exc. Hist.*

3. To expose oneself to, as a risk; to incur, as a danger; to venture; hazard; attempt. *Obs.*
 To wake and *wage* a danger profitless. *Shak.*

4. To engage in, as a contest, as if by previous gage or pledge; to carry on, as a war.
 I *wage* not any feud with death. *Tennyson.*

5. To adventure, or let out, for hire or reward; to hire out. *Obs.* "*Wage* thy works for wealth." *Spenser.*

6. To put upon wages; to engage; hire; employ; to pay wages to. *Chiefly Dial. Eng.*
 You won't be able to *wage* them, like you *wage* hands, at sixteen shillings a mon. *Masefield.*

7. To influence by bribery; to bribe. *Obs.*

8. *Ceramics.* = **WEDGE**, *v. t.*, 5.

—, *Intransitive:* 1. To put oneself under pledge; to serve as a pledge; to engage. *Obs. exc. Hist.*

2. To engage in, or carry on, war; to contend. *Rare.*

3. To come to an agreement in the matter of wages. *Obs.*

4. To be equivalent as a stake. *Obs.*
 The commodity *wages* not with the danger. *Shak.*

wage (wāj), *n.* [*ME., fr. ONF. wage (OF. gage) guarantee, engagement. See WAGE, v., 2d GAGE.*] 1. A gage; pledge; a pledge or security that one will do something or will abide by the result of something, as a duel or combat. *Obs. exc. Hist.*

2. State of being pledged; pledge; pawn; as, to lay one's life in *wage*. *Obs.*

3. In general, that which is given as a recompense or reward; usually, a reward. *Obs.*
 I shall thee give to thy *wage*
 A mantle white so [as] milk. *Sir Beues of Hamtoun.*
 For with the hook he wounded is so sore,
 That he his *wages* hath for evermore. *Chaucer.*

4. That which is pledged or paid for work or other services; hire; pay; — now chiefly in the *pl.* See **WAGES**.
 Churchmen, in whose esteem their blessed employ
 Is odious, and their *wages* all their joy. *Cowper.*
 Pay them a *wage* in advance, and guarantee them a share in the future profits. *J. Morley.*

5. Figuratively, produce; yield.
 Till harvest come in with his greater *wage*. *Palladius.*
 The niggard *wages* of the earth. *Shelley.*

6. Money paid for use of something, as property; hire; rent. *Obs.*

☞ The plural form *wages* was formerly often, and is still sometimes, construed as a singular; as, "The *wages* of sin is death." *Rom. vi. 23.*

☞ **PHRASES are:**

| | | |
|--------------|-------------|--------------|
| wage earning | wage labor | wage slave |
| wage fixing | wage paying | wage slavery |

wage board. *a* A board established by law to investigate wage rates. *b* A board created by the joint action of employer and employees to adjust wage rates and fix new rates from time to time.

wage capital. *Econ.* Food to support labor, as distinct from tools to assist it (*auxiliary capital*).

waged (wājd), *adj.* Receiving wages; hired; also, *Obs.*, bribed.
 I see very decent cottages everywhere, with large plots of ground at economic rents, and decently *waged* people paying them. *Galsworthy.*

wage earner. One who works for wages, particularly in industry.

wage, or, wages, fund. That part of the capital of the community which is destined for the support of laborers.

wage'-fund', or wag'es-fund', the'o-ry. A theory generally held by economists from 1830 to 1870, that the rate of wages depended on the ratio between the amount of capital available and the number of laborers. It has been abandoned because an amount of capital divided by a number of laborers cannot, in the nature of things, give a rate of wages.

wage level. The approximate position of wages at any given time in any occupation or trade, or more frequently, in industry at large.

wa'gen-boom' (vā'gēn-bōōm'), *n.* [*D., lit., wagon tree.*]

Wagling

bet.] Act of gaging, or giving a pledge, to do something or to abide the event of something; as, *wager* of battle (see TRIAL BY BATTLE); *wager* of law (see WAGER OF LAW). *Obs. exc. Hist.*

wa'ger (wā'jēr), *v. t.*; **WA'GERED** (-jērd); **WA'GER-ING**. To hazard on the issue of a contest, or on some question that is to be decided, or on some casualty; to risk; venture; also, to stake; bet; to lay as a gamble.

And *wagered* with him
Pieces of gold 'gainst this which then he wore. *Shak.*

— *v. i.* To make a bet; to lay a wager.

wag'er (wāj'ēr), *n.* One who or that which wagers, or engages in a contest or competition; competitor.

The great numbers of these fish show that they are successful *wagers* of life. *William Beebe.*

wage rate. The amount of wages paid per unit of time for a particular job or class of jobs.

wa'ger-er (wā'jēr-ēr), *n.* One who wagers.

wa'ger-ing (-īng), *adj.* Hazarding; pertaining to the act of one who wagers; betting.

wager of battle. *Law*. Trial by battle. *Hist.*

wager of law. *Early Eng. Law*. The act of a party having the negative, usually the defendant, in an action in giving a pledge, or in binding himself, to resort to and abide the event of an attempt to prove his case by the oath of himself and the required number of oath helpers, or compurgators. In early times various causes civil and criminal were so settled, and the required number of oath helpers varied both with the rank of the parties and the nature of the offense or default. The procedure survived into modern times as a peculiarity of the actions of detinue and debt. It was abolished in England by 3 & 4 Wm. IV, c. 42, § 13, having already been long practically obsolete.

wager policy. See 3d **POLICY**, 1.

wag'es (wāj'ēz; -īz; 119), *n., pl.* of **WAGE**, *n.* (see **WAGE**, *n.*, *Note*). 1. Pay given for labor, usually manual or mechanical, at short stated intervals, as distinguished from salaries or fees.

2. *Theoretical Econ.* The share of the annual product or national dividend which goes as a reward to labor, as distinct from the remuneration received by capital in its various forms. This economic or technical sense of the word *wages* is broader than the current sense, and includes not only amounts actually paid to laborers, but the remuneration obtained by those who sell the products of their own work, and the *wages of management*, or *superintendence* (called also *earnings of management*), which are earned by skill in directing the work of others. See **REAL WAGES**, 1st **EARNING**, 2.

Syn. — **WAGES**, **HIRE**, **SALARY**, **STIPEND**, **PAY**, **EMOLUMENT**. **WAGES** and **HIRE** (the latter somewhat archaic in this sense) denote the price paid for labor, esp. by the day or week; as, a day laborer's, carpenter's, cook's *wages*; "The laborer is worthy of his *hire*" (*Luke* x. 7). **SALARY** and **STIPEND** denote a fixed compensation, commonly paid at longer intervals than *wages*, for services (often professional) which require training or ability; as, the *salary* of a minister, a teacher, a bank president, a consul. **PAY**, which is often general in its sense, may be equivalent esp. to *wages* (as in *payday*, *pay roll*, etc.); more specifically, it is used with reference to soldiers; as, an officer on half *pay*. **EMOLUMENT** applies to whatever profits arise from office or employment; as, "the *emoluments* of a profession" (*Gibbon*); "A worthier successor wears his dignity and pockets his *emoluments*" (*Hawthorne*). Cf. **PAY**.

wage scale. 1. A series of rates of wages paid for related tasks.

2. The level of wages paid by an individual employer.

wages fund. = **WAGE FUND**.

wag'es-man' (wāj'ēz-mān'; -īz; 119), *n.*; *pl.* -**MEN** (-mēn'). A wageworker. *Rare.*

wage system. *Econ.* An industrial system in which free laborers are hired by capitalists to do a large part of the productive work of society; — contrasted with slavery or serfdom on the one hand, and small proprietorship on the other.

wage'work' (wāj'wŭrk'), *n.* Work done for wages.

wage'work'er (-wŭr'kēr), *n.* One who works for wages. — **wage'work'ing**, *adj.* & *n.*

wag'gel (wäg'ēl), *n.*, or **waggel gull**. A black-backed gull in immature plumage. *Local, Eng.*

wag'ger (wäg'ēr), *n.* One who or that which wags.

wag'ger-y (wäg'ēr-ī), *n.*; *pl.* **WAGGERIES** (-īz). [From **WAG**.] 1. The manner or action of a wag; mischievous merriment; pleasantry; jocularity; waggishness.

2. A bit of foolery; a jest, esp. a practical joke.

wag'gle, **wag'gy** (wäg'ī), *n.* [See **WAG**, *v.*] A wagtail; esp., the pied wagtail. *Local, Brit.*

wag'gish (-ish), *adj.* 1. Like, or characteristic of, a wag; sportively or good-humoredly mischievous or frolic.