

ARIZONA COURT OF APPEALS

DIVISION ONE

AMERICAN FEDERATION OF STATE
COUNTY AND MUNICIPAL EMPLOYEES
AFL-CIO LOCAL 2384, et al.,

Plaintiffs/ Appellants,

v.

CITY OF PHOENIX, et al.,

Defendants/ Appellees.

Court of Appeals
Division One
No. 1 CA-CV 18-0027

Maricopa County
Superior Court
No. CV2014-011778

**DEFENDANTS/APPELLEES'
ANSWERING 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@omlaw.com
efraser@omlaw.com
hcrawford@omlaw.com

Attorneys for Defendants/ Appellees

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	5
INTRODUCTION	11
STATEMENT OF FACTS AND CASE.....	12
I. Background legal principles.....	12
A. The Arizona and U.S. Constitutions protect, but do not provide, a contractual right to public pension benefits.....	12
B. The Charter provides the terms and benefits of membership in the City’s retirement plan.....	13
C. The Charter gives the City Council and City Manager authority to set pay and fringe benefits for public employees.	15
II. The City’s vacation-leave policies.	17
A. Historical vacation-leave policies.	17
1. Past spiking practices.	18
2. Practical consequences.	21
B. Current vacation-leave policies.....	22
III. The superior court action.....	26
STATEMENT OF THE ISSUES	28
STANDARD OF REVIEW	29
ARGUMENT SUMMARY	29

ARGUMENT.....30

I. The superior court correctly held that vacation cash-outs at retirement are not pensionable “compensation” under the Charter.....30

A. The Charter’s plain text limits pensionable compensation to regular, annual pay for services rendered.....31

B. The members’ interpretation of pensionable “compensation” conflicts with the Charter’s text, structure, and purpose.....36

1. The members’ overbroad reading of “wages” in § 2.13.....37

2. The members misread “annual compensations paid” in § 2.14.43

C. A one-time vacation cash-out cannot be included in pensionable compensation.....49

1. A one-time vacation cash-out at retirement is not regular, annual pay for services rendered.49

2. Nearly every court to address the issue has held that one-time cash-outs cannot be included in pension calculations.....51

3. The members’ authorities do not support their argument.53

D. For the same reasons, vacation cash-outs cannot be nonmonetary compensation under § 2.13’s second sentence.....57

E. Past practice cannot vary the terms of the Charter adopted by the voters.59

F.	The superior court correctly held that no constitutional violation occurred.....	62
1.	Pension Clause.....	62
2.	Contracts Clause.....	65
G.	The superior court correctly held that the City’s prospective-only change in practice did not impair any vested rights.	66
1.	The City has no authority to contract around the Charter.	67
2.	No binding authority gives the City the right to contract around the plan terms.....	69
3.	Revised AR 2.18 protects whatever vested rights exist.....	72
	(a) The members have not vested in future leave or the right to accrue future leave under an old rule.	72
	(b) The snapshot approach protects the pensionability of accrued leave.	74
II.	The superior court acted well within its discretion in awarding attorneys’ fees.....	76
A.	The superior court had broad discretion to determine whether to award fees.....	76
B.	Contrary to the members’ argument, the superior court did not abuse its discretion.	78
	REQUEST FOR ATTORNEYS’ FEES	80
	CONCLUSION	80
	APPENDIX.....	CAPP087

TABLE OF AUTHORITIES

	<u>Page</u>
Cases	
<i>Abbott v. City of Tempe</i> , 129 Ariz. 273 (App. 1981).....	passim
<i>Anderson v. Pension & Ret. Bd. of City of Milford</i> , 355 A.2d 283 (Conn. 1974)	54
<i>Arnold Constr. Co. v. Ariz. Bd. of Regents</i> , 109 Ariz. 495 (1973).....	39
<i>Associated Indem. Corp. v. Warner</i> , 143 Ariz. 567 (1985).....	77, 78
<i>Bank of Lowell v. Cox</i> , 35 Ariz. 403 (1929).....	67, 68
<i>Bennett v. Beard</i> , 27 Ariz. App. 534 (1976).....	72, 75
<i>Bilke v. State</i> , 206 Ariz. 462 (2003).....	31, 33, 35
<i>Bowles v. Wash. Dep’t of Ret. Sys.</i> , 847 P.2d 440 (Wash. 1993).....	53, 70, 71
<i>Coates v. Unemployment Comp. Bd. of Review</i> , 676 A.2d 742 (Pa. Commnw. Ct. 1996).....	42
<i>Craig v. City of Huntington</i> , 371 S.E.2d 596 (W. Va. 1988).....	52
<i>Cross v. Elected Officials’ Ret. Plan</i> , 234 Ariz. 595 (App. 2014).....	passim
<i>Dessauer v. Arizona Dep’t of Econ. Security</i> , 141 Ariz. 384 (App. 1984).....	45, 46

<i>Elder v. Islam</i> , 869 So. 2d 600 (Fla. App. 2004)	42
<i>Ernst v. Indus. Comm'n</i> , 16 N.W.2d 867 (Wis. 1944).....	40
<i>Felt v. Bd. of Trs. of Judges Ret. Sys.</i> , 481 N.E.2d 698 (Ill. 1985).....	64
<i>Fields v. Elected Officials' Ret. Plan</i> , 234 Ariz. 214 (2014).....	64, 69
<i>Fulton Homes Corp. v. BBP Concrete</i> , 214 Ariz. 566 (App. 2007).....	79
<i>Gilliam v. Nevada Power Co.</i> , 488 F.3d 1189 (9th Cir. 2007).....	41
<i>Green Cross Med., Inc. v. Gally</i> , 242 Ariz. 293 (App. 2017).....	29
<i>Guzman v. Guzman</i> , 175 Ariz. 183 (App. 1993).....	37, 38
<i>Hale v. Amphitheater Sch. Dist. No. 10 of Pima Cty.</i> , 192 Ariz. 111 (App. 1998).....	78
<i>Hall v. Elected Officials' Ret. Plan</i> , 241 Ariz. 33 (2016).....	69, 75
<i>Holland v. City of Chicago</i> , 682 N.E.2d 323 (Ill. App. Ct. 1997).....	passim
<i>In re Cardona & Castro</i> , 316 P.3d 626 (Colo. 2014)	42
<i>Int'l Ass'n of Firefighters, Local No. 64 v. City of Kansas City</i> , 954 P.2d 1079 (Kan. 1998)	52, 54, 57
<i>Kennedy v. S.C. Ret. Sys.</i> , 549 S.E.2d 243 (S.C. 2001).....	54

<i>Kranker v. Levitt,</i> 327 N.Y.S.2d 259 (Sup. Ct. 1971).....	53, 70
<i>Long v. Dick,</i> 87 Ariz. 25 (1959).....	59, 60
<i>Long v. Injured Workers' Ins. Fund,</i> 138 A.3d 1225 (Md. App. 2016).....	42
<i>Massachusetts v. Morash,</i> 490 U.S. 107 (1989)	55, 56
<i>Matthews v. Chicago Transit Auth.,</i> 51 N.E.3d 753 (Ill. 2016).....	63
<i>Naches Valley Sch. Dist. No. JT3 v. Cruzen,</i> 775 P.2d 960 (Wash. App. 1989).....	53
<i>Norton v. Ariz. Dep't of Pub. Safety Local Ret. Bd.,</i> 150 Ariz. 303 (1986).....	74
<i>Oden v. Bd. of Admin.,</i> 28 Cal. Rptr. 2d 388 (Ct. App. 1994)	68
<i>Orfaly v. Tucson Symphony Soc'y,</i> 209 Ariz. 260 (App. 2004).....	29, 76
<i>Paddock v. Brisbois,</i> 35 Ariz. 214 (1929).....	15
<i>Purdie v. Jarrett,</i> 152 S.E.2d 749 (Ga. 1966).....	55
<i>Rose v. City of Hayward,</i> 179 Cal. Rptr. 287 (Ct. App. 1981)	68
<i>Rudinsky v. Harris,</i> 231 Ariz. 95 (App. 2012).....	79
<i>San Carlos Apache Tribe v. Maricopa Cty.,</i> 193 Ariz. 195 (1999).....	43

<i>Smith v. City of Phoenix</i> , 175 Ariz. 509 (App. 1992).....	65
<i>Stambaugh v. Killian</i> , 242 Ariz. 508 (2017).....	35, 42, 59, 70
<i>State v. Korzep</i> , 165 Ariz. 490 (1990).....	39
<i>Stover v. Ret. Bd. of St. Clair Shores Firemen and Police Pension Sys.</i> , 260 N.W.2d 112 (Mich. Ct. App. 1977).....	52
<i>Vortex Corp. v. Denkewicz</i> , 235 Ariz. 551 (App. 2014).....	76
<i>W. Va. Consol. Public Ret. Bd. v. Carter</i> , 633 S.E.2d 521 (W. Va. 2006).....	52, 57
<i>Wash. Ass’n of Cty. Officials v. Wash. Pub. Emp. Ret. Sys. Bd.</i> , 575 P.2d 230 (Wash. 1978).....	70
<i>Wassef v. Ariz. St. Bd. of Dental Examiners</i> , 242 Ariz. 90 (App. 2017).....	29
<i>Wilcox v. Waldman</i> , 154 Ariz. 532 (App. 1987).....	77, 78
<i>Wistuber v. Paradise Valley Unified Sch. Dist.</i> , 141 Ariz. 346 (1984).....	78
<i>Wyatt v. Wehmueller</i> , 167 Ariz. 281 (1991).....	33, 47
<i>Yeazell v. Copins</i> , 98 Ariz. 109 (1965).....	12, 69, 75
Constitutional & Charter Provisions	
Ariz. Const. art. II, § 25.....	12, 62, 65
Ariz. Const. art. XXIX	12, 62

Phoenix City Charter ch. III, § 9	15
Phoenix City Charter ch. XXII, § 2.....	15
Phoenix City Charter ch. XXIV, § 4.1	15
Phoenix City Charter ch. XXIV, art. II.....	13, 16
Phoenix City Charter ch. XXIV, art. II, § 2.13.....	passim
Phoenix City Charter ch. XXIV, art. II, § 2.14.....	passim
Phoenix City Charter ch. XXIV, art. II, § 2.15.....	47, 48
Phoenix City Charter ch. XXIV, art. II, § 3.....	14
Phoenix City Charter ch. XXIV, art. II, § 19.....	14
Phoenix City Charter ch. XXIV, art. II, § 25.3.....	48
Phoenix City Charter ch. XXIV, art. II, § 28.1.....	14
Phoenix City Charter ch. XXIV, art. II, § 36.....	76
Phoenix City Charter ch. XXV, § 6.....	15, 16
Phoenix City Charter ch. XXV, § 7.....	16
U.S. Const. art. I, § 10, cl. 1.....	65
Statutes & Codes	
A.R.S. § 12-2101	28
A.R.S. § 12-341	80
A.R.S. § 12-341.01	76, 78, 80
A.R.S. § 12-342	80
A.R.S. § 23-350	57
A.R.S. § 38-711	43

A.R.S. § 38-842	43
Laws 1983, Ch. 293, § 1	43
Laws 1983, Ch. 300, § 4.....	43
Phoenix City Code § 2-209.....	16
Phoenix City Code § 2-218.....	16, 35
Phoenix City Code § 2-231.....	16, 35
Wis. Stat. § 108.02.....	40

Other Authorities

Administrative Regulation 2.18	passim
American Heritage Dictionary (5th ed. 2011)	33
Black’s Law Dictionary (10th ed. 2014).....	passim
COPERS Popular Annual Financial Report for the Fiscal Year Ended June 30, 2013.....	23
New Oxford American Dictionary (3d ed. 2010)	33
The Concise Oxford Dictionary of Current English (1st ed. 1919)	32
Webster’s New International Dictionary of the English Language (2d ed. 1946).....	32

INTRODUCTION

This case concerns who controls the terms of the City of Phoenix Employees' Retirement Plan ("COPERS")—elected officials and administrators, or the voters. The City of Phoenix and the City of Phoenix Employees' Retirement Plan Board (collectively, "the City") respectfully submit that the voters control the City's pension plan. After all, it is the voters who adopted it, and who must pay for it.

As the superior court correctly recognized, the retirement plan adopted by the voters does not count all forms of pay given to an employee as part of pensionable "compensation." Instead, it limits pensionable compensation to an employee's regular annual salary or wages, averaged over a three-year period. Because a one-time cash-out at retirement for unused vacation leave is not part of an employee's regular annual salary or wages, it cannot be included in the calculation of an employee's pension under the Charter's plain text.

STATEMENT OF FACTS AND CASE*

This case involves the City's revision to an administrative regulation ("AR") dealing with paid vacation leave for City employees, AR 2.18. Plaintiffs/Appellants (the "members") claim that the revisions diminish or impair their pension benefits in violation of the City of Phoenix Charter, and, by extension, the Arizona and U.S. Constitutions.

I. Background legal principles.

A. The Arizona and U.S. Constitutions protect, but do not provide, a contractual right to public pension benefits.

Under Arizona law, public employment is a contractual relationship protected by common-law contract principles and the Constitution's contracts clause. [Ariz. Const. art. II, § 25](#); *Yeazell v. Copins*, [98 Ariz. 109, 112-15](#) (1965) (holding that public employee benefits are contractual rights). The contractual nature of public retirement benefits also is codified in [Article XXIX, § 1](#) of the Arizona Constitution, which provides that "[m]embership in a public retirement system is a contractual relationship that is subject to

* Selected record items cited are included in the Appendix attached hereto, cited by page numbers (e.g., [CAPP168](#)), which also function as clickable links to the corresponding PDF page. Other record items are cited with "IR-" followed by the record number.

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 protect only the rights that public employees otherwise have under the law. *See, e.g., Cross v. Elected Officials’ Ret. Plan*, [234 Ariz. 595, 599, ¶ 9](#) (App. 2014). And under Arizona law, a vested contractual right to benefits exists only when the employee has already earned those benefits in accordance with the employee’s contract of employment. *E.g., Abbott v. City of Tempe*, [129 Ariz. 273, 279](#) (App. 1981).

B. The Charter provides the terms and benefits of membership in the City’s retirement plan.

All parties agree that the City of Phoenix Charter (the “Charter”) defines the terms of membership in the City’s retirement plan. In 1953, Phoenix voters repealed the City’s previous retirement plan and established the City of Phoenix Employees’ Retirement Plan (commonly referred to as “COPERS”) by adding Chapter XXIV, article II to the

Charter.¹ COPERS is a defined benefit retirement plan because it provides City employees a fixed pension benefit for life. [Charter ch. XXIV, art. II, §§ 3, 19](#). Employer and employee contributions fund the plan. Each employee contributes 5% of annual compensation; the City's contributions fluctuate each year to ensure sufficient contributions to fund future pension liabilities. [Id. § 28.1](#).

Benefits are based on an employee's final average compensation and years of service. [Id. § 19.1\(a\)](#). Specifically, COPERS multiplies together an employee's final average compensation, years of service, and a benefit ratio (2% for the first 32.5 years of service, and less thereafter):

$\text{COPERS Benefit} = (\text{Final Average Compensation}) \times (\text{Credited Service}) \times (2\%)$

[Id.](#) So, for example, an employee who retires after 32 years with the City will receive a monthly pension equal to 64% of his monthly pre-retirement pay, for life (32 years \times .02 = 64%).

The Charter defines the term "final average compensation" and "compensation" as follows:

¹ Citations to Chapter XXIV of the Charter in this brief generally refer to the July 1, 2014 version, [CAPP091-CAPP128](#). Phoenix voters have amended Chapter XXIV twice since then, but the changes are not relevant here.

“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. 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. . . .

“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.

Id. §§ 2.14, 2.13 (emphases added).

Per the Charter, the Retirement Board administers the retirement plan, *id.* § 4.1, but in doing so it must follow the Charter. Because the Charter operates as the City’s constitution, *see Paddock v. Brisbois*, 35 Ariz. 214, 221 (1929), these terms and benefits can be changed only by a vote of qualified Phoenix electors. *Id.* ch. XXII, § 2.

C. The Charter gives the City Council and City Manager authority to set pay and fringe benefits for public employees.

Unlike the retirement plan’s fixed terms, 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 and City Council set employee salaries, wages, and benefits each year in a “Pay Plan” ordinance.² See *id.* ch. XXV, §§ 6-7. During that process, the City Manager negotiates labor agreements with union-represented employees to set their salaries, wages, and fringe benefits. [Phoenix City Code § 2-218](#) (meet-and-confer process); [§ 2-231](#) (meet-and-discuss process). For non-union employees, the City Manager unilaterally sets salaries, wages, and benefits. See [Charter ch. XXV, § 6](#). These terms (negotiated and non-negotiated) are then incorporated into a comprehensive “Pay Plan” ordinance for City Council approval. See *id.* § 7.

Although this process gives the City Council and City Manager significant discretion over the terms of public employment, as noted above, that discretion does not extend to the terms of the retirement plan. The terms and benefits of COPERS are fixed by the Charter and not subject to negotiation. See *id.* ch. XXIV, art. II (establishing the terms of the public employment retirement contract in COPERS, without any reservation of discretion to City officials); see also [Phoenix City Code § 2-209](#) (obligating

² See, e.g., [CAPP210-CAPP215](#) [IR-124, Ex. 3 (2012 Pay Plan Ordinance)].

City to enter discussions with employee representatives “relating to wages, hours, and working conditions,” but not retirement benefits).

II. The City’s vacation-leave policies.

The City has exercised its discretion to offer paid vacation leave to employees under AR 2.18 since at least 1979.³ In addition, the City offers three related benefits: (1) the ability to **accrue** and **carry over** vacation leave year-to-year; (2) the option to **sell back** a portion of unused vacation leave accrued during the year; and (3) the option to receive a **one-time cash-out** at separation or retirement from the City for unused accrued vacation.⁴

This case concerns only the vacation cash-outs at separation or retirement.

A. Historical vacation-leave policies.

The 1979 version of AR 2.18 provided for paid vacation but did not permit vacation sell-backs or cash-outs.⁵ The City later expanded AR 2.18’s vacation-leave policy to allow employees to accrue and carry over

³ [CAPP263](#) [IR-157 at ¶ 34].

⁴ [CAPP263-CAPP264](#) [IR-157 at ¶¶ 35-37].

⁵ [CAPP204-CAPP205](#) [IR-124, Ex. 1u].

additional hours, sell back excess vacation accrued during the year, and cash out accrued vacation at separation or retirement.⁶

Immediately before the revisions at issue, AR 2.18 provided the following vacation leave rules for employees in Units 2, 3, and 7:⁷

Units 2, 3, and 7 vacation leave accrual, carryover, cash-out & sell-back				
Years of service	Accrual per month	Max carryover	Max accrual paid at retirement⁸	Max buyback/year
0-5	8 hours	232 hours	240 hours	Unit 2: 80 hours after accruing 120 hours, contingent on using 35 hours of vacation time during same year. Unit 3: 80 hours after accruing 120 hours, contingent on using 40 hours of vacation time during same year. Unit 7: 40 hours, contingent on using 40 hours of vacation time during same year.
6-10	10 hours	280 hours	300 hours	
11-15	11 hours	304 hours	330 hours	
16-20	13 hours	352 hours	390 hours	
21+	15 hours	400 hours	450 hours	

1. Past spiking practices.

Although AR 2.18 spells out the specific rules for using, accruing, selling back, and cashing out vacation leave, until the revisions at issue, the

⁶ See [CAPP261, CAPP263-CAPP264](#) [IR-157 at ¶¶ 22-23, 37].

⁷ [CAPP199-CAPP202](#) [IR-124, Ex. 1c at 2-5].

⁸ Cash-outs for accrued vacation leave at separation or retirement are paid at the employee’s current rate of pay, regardless of when the leave was accrued. [CAPP261](#) [IR-157 at ¶ 24].

AR said nothing about whether vacation-related payments qualify as pensionable “compensation” under the Charter.⁹ The members’ collective-bargaining agreements likewise said nothing about the pensionability of such payments.¹⁰

In practice, however, City staff defaulted to reporting an employee’s compensation to COPERS administrators as a single sum, which included all amounts received for vacation (whether from using, selling back, or cashing out vacation leave).¹¹ The City reported these amounts to COPERS without distinguishing between money received while taking paid vacation, money received for vacation “sold back” during the year, and one-time vacation cash-outs at retirement.¹² Amounts paid to an employee for using or selling back vacation in a particular year were added to the employee’s annual salary or wages for the year in which they were paid.

⁹ *E.g.*, [CAPP262](#) [IR-157 at ¶ 26] (“Prior to 2013, none of the City’s Personnel Rules or Administrative Regulations expressly stated whether payments for accrued vacation at separation or retirement would be included in the calculation of an employee’s final average compensation.”).

¹⁰ [CAPP268-CAPP269](#), [CAPP272-CAPP273](#) [IR-157 at ¶¶ 45, 50, 58-59].

¹¹ [CAPP208](#) [IR-124, Ex. 2 at ¶¶ 11-13].

¹² *See* [CAPP208](#) [IR-124, Ex. 2 at ¶ 13].

Amounts paid to an employee at retirement for unused vacation accrued over a series of years were added to annual salary or wages in the employee's retirement year.¹³

The City does not dispute that it provided employees with information describing how these payments were then being treated for pension purposes – indeed, the City stipulated to that fact.¹⁴ That is all the materials referenced by the members (at 11, 24-28) do – *describe* the then-existing practice of including one-time vacation cash-outs in pension calculations.¹⁵ None of these documents state or suggest that pension spiking is a Plan term under the Charter, however.¹⁶

¹³ See *id.*

¹⁴ [CAPP262-CAPP263](#) [IR-157 at ¶¶ 28-32].

¹⁵ See, e.g., [CAPP265](#), [CAPP268-CAPP269](#), [CAPP272-CAPP273](#) [IR-157 at ¶¶ 39, 45, 50, 58-59]; [CAPP208](#) [IR-124, Ex. 2 at ¶¶ 11-13]; [CAPP350](#) [IR-186, Ex. 18 at 44:14-21]; [CAPP354-CAPP355](#) [IR-186, Ex. 19 at 9:13-10:14]; [CAPP363-CAPP364](#) [IR-186, Ex. 20 at 25:8-26:3]; [CAPP368](#) [IR-186, Ex. 21 at 14:1-10]; [CAPP372](#) [IR-186, Ex. 22 at 30:8-25]; [CAPP377-CAPP381](#) [IR-186, Ex. 23 at 44-48] (former Board member Cathy Gleason describing how Defendants came up with snapshot approach once they determined that retirement cash-outs for accrued vacation did not meet the Charter's definition of compensation).

¹⁶ [CAPP295-CAPP296](#) [IR-186 at ¶ 47].

2. Practical consequences.

Lumping one-time retirement cash-outs in with regular salary and wages artificially boosts employees' compensation in their final year of employment, thus skewing (read: spiking) the employees' final average compensation. And because COPERS pensions are paid for life, even relatively small increases in an employee's final average compensation end up dramatically increasing the City's pension liability.

Consider this hypothetical: Employee Smith retired on December 31, 2012 at age 52 after 32 years of service. His three highest consecutive years of salary were his final years of employment (2010-2012). At retirement, he received a \$8,000 lump-sum payment for accrued vacation.¹⁷

$$\text{Benefit} = (\text{Final Average Compensation}) \times (\text{Total Credited Service}) \times (2\% \text{ Benefit Rate})$$

Without spiking, Smith's final average compensation would be about \$3,833/month, giving him a monthly pension of \$2,453 for life. If he lived his expected 393 more months (from federal guidelines), the lifetime cost of Smith's pension benefit should be \$964,159. With spiking, however, Smith's

¹⁷ The cash-out amount used in this example is conservative. For employees retiring between January 2011–August 2013, the average vacation cash-out was \$8,875. [CAPP253](#) [IR-134, Ex. 15 at D017865].

final average compensation increases to \$4,056/month, giving him a monthly pension of \$2,596. This increases the lifetime cost of Smith's pension benefit to \$1,020,055.

	Without spiking	With spiking
Highest annual compensations over 3 years	<ul style="list-style-type: none"> • Year 1: \$45,000 (2010 salary) • Year 2: \$46,000 (2011 salary) • Year 3: \$47,000 (2012 salary) 	<ul style="list-style-type: none"> • Year 1: \$45,000 (2010 salary) • Year 2: \$46,000 (2011 salary) • Year 3: \$55,000 (2012 salary + \$8,000 vacation cash-out)
Final average compensation	$(\$45k + \$46k + \$47k) \div 36 \text{ mo.} = \mathbf{\$3,833.33/\text{mo.}}$	$(\$45k + \$46k + \$55k) \div 36 \text{ mo.} = \mathbf{\$4,055.56/\text{mo.}}$
COPERS Benefit	$\$3,833.33/\text{mo.} \times 32 \times 2\% = \mathbf{\$2,453.33/\text{mo.}}$	$\$4,055.56 \text{ mo.} \times 32 \times 2\% = \mathbf{\$2,595.56/\text{mo.}}$
Lifetime cost	$393 \text{ mo.} \times \$2,453.33 = \mathbf{\$964,158.69}$	$393 \text{ mo.} \times \$2,595.56 = \mathbf{\$1,020,055.08}$
Lifetime difference	\$55,896.39	

With spiking, what started out as an \$8,000 retirement bonus balloons into an almost \$56,000 cost to COPERS, and ultimately, the taxpayers. Multiplied across several thousand COPERS members, the plan-wide cost of pension spiking is orders of magnitude larger.

B. Current vacation-leave policies.

The last economic downturn led to serious funding problems for public pensions nationwide. Despite the City making all of its required contributions, COPERS's funding ratio fell from 102.5% in 2001 to only

64.2% in 2013.¹⁸ During the same period, the City's contribution rate more than tripled, from 6.13% to over 20%.¹⁹

In 2011, the Mayor and City Council created the Pension Reform Task Force to work with management, consultants, and stakeholders to study and recommend reforms to ensure COPERS's financial future.²⁰ Over the next two years, the Task Force recommended several Charter amendments, which the voters approved, as well as several new administrative policies adopted by the Mayor and City Council.²¹ During this time, the City revised the AR governing sick leave, which (like AR 2.18 governing vacation leave) allows employees to accrue and "cash out" unused leave at retirement, to make clear that lump-sum cash-outs at retirement for accrued sick leave were not pensionable compensation under the Charter.²²

¹⁸ [CAPP222](#) [IR-133, Ex. 8 at 17] (2001 funding); COPERS Popular Annual Financial Report for the Fiscal Year Ended June 30, 2013 ("2013 Annual Financial Report"), at 4, <https://www.phoenix.gov/coperssite/Documents/CurrentPAFR.pdf> (2013 funding).

¹⁹ [CAPP223](#) [IR-133, Ex. 8 at 18].

²⁰ [CAPP225](#) [IR-133, Ex. 9 at 1].

²¹ [CAPP227-CAPP228](#) [*Id.* at 3-4].

²² [CAPP237-CAPP240](#) [IR-133, Ex. 10].

The Task Force's work led to increased scrutiny of pension spiking. In 2013, the Mayor formed the Pension Fairness and Spiking Elimination Ad Hoc City Council Subcommittee.²³ The Subcommittee examined several fringe benefits, including vacation-leave cash-outs, and determined that retirement cash-outs for unused vacation should not be included in the calculation of final average compensation for COPERS purposes.²⁴ In light of the City's past practice of including these amounts in final average compensation, however, the Subcommittee recommended that this change operate prospectively only.²⁵ The Mayor and City Council approved the recommendation.²⁶

The City Manager revised AR 2.18 to implement the new vacation-leave policy effective July 1, 2014.²⁷ The 2014 revisions to AR 2.18 clarified that amounts paid to an employee at retirement for accrued vacation do not qualify as pensionable compensation for purposes of calculating the

²³ [CAPP242](#) [IR-133, Ex. 11 at 1].

²⁴ [CAPP242-CAPP244](#) [*Id.* at 1-3].

²⁵ *See id.*

²⁶ [CAPP248-CAPP250](#) [IR-133, Ex. 12 at 22-24].

²⁷ [CAPP188-CAPP189](#) [IR-124, Ex. 1a at 5-6]. The vacation-leave snapshot went into effect for executives and middle managers six months earlier, on December 31, 2013. [CAPP195](#) [IR-124, Ex. 1b at 5].

employee’s COPERS benefits. But, the revised AR 2.18 also allows all vacation accrued by employees as of the revised AR’s effective date to count as pensionable compensation when those employees eventually retire.²⁸ In other words, the AR takes a “snapshot” of an employee’s accrued vacation leave as of June 30, 2014, and grandfathers it into the new policy.

The snapshot works like this:

Status on 6/30/14	Hours accrued as of 6/30/14	Hours accrued after 6/30/14	Illustration
Retiree	All included in final average compensation	N/A, because already retired	Employee cashed out 200 hours of accrued vacation leave at retirement on 6/30/14. Entire amount included in final average compensation.
Current Employee	All included in final average compensation	Can receive lump-sum cash-out, but not included in final average compensation	Employee has 200 hours of accrued vacation as of 6/30/14, accrues an additional 100 hours before retirement. Can cash out entire 300 hours, but only 200 hours’ worth (the “snapshot” amount) included in final average compensation.
Future Employee	N/A, because not yet hired	Can receive lump-sum cash-out, but not included in final average compensation	Employee accrues 200 hours of vacation leave as of retirement date. Can cash out all 200 hours, but lump-sum cash-out not included in final average compensation.

²⁸ [CAPP188-CAPP189](#) [IR-124, Ex. 1a at 5-6].

The snapshot ensures that employees who accrued vacation under the old practice do not lose any benefit due to the City's error. Employees may still accrue, carry over, sell back, and cash out vacation leave, and amounts received for vacation leave *used* or *sold* in a given year will still be counted as compensation in the year earned. Revised AR 2.18 changes only one thing: cash-outs for accrued vacation at retirement no longer count as "compensation" for pension purposes going forward. The snapshot is estimated to save the City more than \$70 million over the next 25 years.²⁹

III. The superior court action.

After the City revised AR 2.18, the members sued the City, COPERS, and the COPERS Board.³⁰ The members are several current City employees in Unit 2 (skilled trades workers), Unit 3 (clerical & pre-professional workers), and Unit 7 (administrative, supervisory, professional, and technical workers). Also named as plaintiffs were three labor organizations representing Unit 2, 3, and 7 employees.³¹

²⁹ [CAPP257](#) [IR-134, Ex. 16 at D008494].

³⁰ IR-1.

³¹ References to the "members" include all named Plaintiffs/Appellants, including both individuals and the unions, unless otherwise noted.

The members alleged that the Charter requires lump-sum cash-outs for accrued vacation at retirement to be included in an employee's final average compensation for pension purposes, and therefore that revised AR 2.18 diminishes and impairs their vested rights to pension benefits.³² They sought declaratory, injunctive, and mandamus relief.³³

After stipulating to the relevant facts,³⁴ the parties filed competing summary judgment motions focused on the proper interpretation of the Charter's text.³⁵ In a thorough and well-reasoned minute entry, the superior court (Judge Brodman) "agree[d] with the City's position that vacation cash-outs at retirement are not annual salary and wages as those terms are defined in the City Charter,"³⁶ granted the City's motion for summary judgment, and denied the members' motion.³⁷

³² IR-99 at ¶¶ 37-43.

³³ IR-99 at ¶¶ 53-61.

³⁴ See [CAPP168](#) [IR-201 at 1] ("The parties agree that there are no determinative disputes of fact."); [CAPP258-CAPP275](#) [IR-157 (Joint Stipulated Facts)].

³⁵ IR-136; IR-179-80.

³⁶ [CAPP170](#) [IR-201 at 3].

³⁷ [CAPP174](#) [IR-201 at 7].

The superior court subsequently awarded the City \$141,986.70 in attorneys' fees – half of its request.³⁸

The members appealed from the final judgment.³⁹ This Court has jurisdiction under [A.R.S. § 12-2101\(A\)\(1\)](#).

STATEMENT OF THE ISSUES

1. The Charter restricts pensionable compensation to annual “salary or wages paid [an employee] for personal services rendered.” [Charter ch. XXIV, art. II, §§ 2.13–2.14](#). A one-time cash-out at retirement for accrued vacation is not annual salary or wages paid to an employee for personal services rendered. Did the superior court correctly determine that a vacation-leave cash-out does not qualify as pensionable compensation under the Charter’s plain text?

2. Revised AR 2.18 operates prospectively only so that members receive the full benefit of any vacation leave accrued in reliance on the City’s erroneous past practice. Did the superior court correctly hold that revised AR 2.18 does not violate any of the members’ vested or constitutional rights?

³⁸ [CAPP177](#) [IR-231 at 3].

³⁹ [CAPP179](#) [IR-232]; IR-233.

3. Did the superior court act within its discretion by awarding the City 50% of the attorneys' fees it incurred?

STANDARD OF REVIEW

This Court “review[s] a grant of summary judgment de novo.” *Green Cross Med., Inc. v. Gally*, 242 Ariz. 293, 295, ¶ 5 (App. 2017). The Court “will affirm if there are no disputed issues of material fact and the prevailing party is entitled to judgment as a matter of law, viewing the facts in the light most favorable to the party against whom summary judgment was entered.” The Court reviews questions of statutory interpretation and constitutional issues de novo. *Id.* (statutory interpretation); *Wassef v. Ariz. St. Bd. of Dental Examiners*, 242 Ariz. 90, 93, ¶ 11 (App. 2017) (constitutional issues).

“An award of attorney fees is left to the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion.” *Orfaly v. Tucson Symphony Soc’y*, 209 Ariz. 260, 265, ¶ 18 (App. 2004).

ARGUMENT SUMMARY

The Charter controls the terms of the retirement plan. Under the Charter’s plain text, pensionable compensation includes only regular, annual pay for services rendered. ([Argument §§ I.A–I.B.](#)) As nearly every

court has held, one-time cash-outs at retirement of things like accrued vacation leave are not regular, annual pay for services rendered and consequently cannot be included as pensionable compensation. (Argument §§ I.C–I.D.) Past practice does not justify departing from the controlling terms of the City Charter. (Argument § I.E.)

Because the Charter does not permit pension spiking, ending pension spiking does not violate the relevant constitutional provisions, which protect only those rights provided by the plan’s own terms. (Argument § I.F.) Similarly, it does not violate the members’ vested rights. (Argument § I.G.)

The superior court acted well within its discretion in awarding 50% of the City’s requested fees, to be paid only by the institutional plaintiffs. (Argument § II.)

This Court should affirm.

ARGUMENT

I. The superior court correctly held that vacation cash-outs at retirement are not pensionable “compensation” under the Charter.

All parties in this case ask the Court to interpret the Charter’s plain text. (*See, e.g.*, Opening Br. at 18 (alleging that the superior court “failed to

apply the plain meaning of the terms ‘wages’ and ‘salary’ in § 2.13 and the plain meaning of the word ‘annual’ in the clause ‘highest annual compensations paid a member’ in § 2.14.”.) Because the superior court correctly held that a one-time cash-out at retirement for accrued vacation leave is not pensionable “compensation” under the Charter’s plain terms, this Court should affirm.

A. The Charter’s plain text limits pensionable compensation to regular, annual pay for services rendered.

The Charter mandates that COPERS pension benefits be calculated based on a member’s final average compensation, which § 2.14 defines as “the average of the highest **annual compensations** paid a member for a period of 3 consecutive . . . years of his credited service contained within his 10 years of credited service immediately preceding the date of [sic] his City employment last terminates.” [Charter ch. XXIV, art. II, § 2.14](#) (emphasis added). Meanwhile, § 2.13 defines “Compensation” as “a member’s **salary or wages paid him by the City for personal services rendered by him to the City.**” [Id. § 2.13](#) (emphasis added).

The Court must construe the Charter’s text to fulfill the intent of the voters who adopted it. *See Bilke v. State*, [206 Ariz. 462, 464-65, ¶ 11](#) (2003).

Because the Charter does not define “salary or wages,” those terms generally must be given their plain and ordinary meaning. *Id.* (citation omitted). The members (at 32-36) agree this rule applies, and also agree that the Court should look to dictionary definitions to infer the plain and ordinary meaning of these terms.

Both before and after the voters adopted the definition of “compensation” in 1953, dictionaries have defined “salary” and “wages” as fixed, regular payments made periodically:

Dictionary ⁴⁰	“Salary”	“Wages” or “Wage”
The Concise Oxford Dictionary of Current English (1st ed. 1919)	Fixed periodical payment made to person doing other than manual or mechanical work (<i>cf.</i> wages).	Amount paid periodically, esp. by the day or week or month, for time during which workman or servant is at employer’s disposal.
Webster’s New International Dictionary of the English Language (2d ed. 1946)	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; fixed compensation regularly paid, as by the year, quarter, month, or week	Pay given for labor , usually manual or mechanical, at short stated intervals , as distinguished from salaries or fees.

⁴⁰ Copies at [CAPP131-CAPP142](#). Emphases added.

Dictionary ⁴⁰	"Salary"	"Wages" or "Wage"
New Oxford American Dictionary (3d ed. 2010)	[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 white-collar worker	[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
American Heritage Dictionary (5th ed. 2011)	Fixed compensation for services, paid to a person on a regular basis.	A regular payment, usually on an hourly, daily, or weekly basis , made by an employer to an employee, especially for manual or unskilled work.

Nothing in the Charter’s text or design hints at giving the phrase “salary or wages” an unusual meaning. *See Bilke*, 206 Ariz. at 464-65, ¶ 11. Thus, § 2.13’s definition of compensation encompasses money paid on a regular, periodic basis.

Section 2.14, meanwhile, sets an annual time frame for pensionable pay. Specifically, § 2.14 provides that final average compensation is calculated based on an average of the employee’s “highest **annual compensations.**” (Emphasis added.) “A court also should interpret two sections of the same statute consistently, especially when they use identical language.” *Wyatt v. Wehmuller*, 167 Ariz. 281, 284 (1991). When construing § 2.13 consistently with § 2.14, the Charter’s plain text limits pensionable

“compensation” to amounts an employee receives as **regular, annual pay for personal services rendered.**

This Court’s decision in *Cross v. Elected Officials’ Ret. Plan*, 234 Ariz. 595 (App. 2014), supports this interpretation. *Cross* held that lump-sum cash-outs at retirement for accrued vacation leave and sick leave do not count as part of an employee’s yearly salary under the terms of the Elected Officials’ Retirement Plan (“EORP”). *Id.* 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). Looking to the *Black’s Law Dictionary* definition of salary, the Court reasoned that “salary” means amounts paid at regular intervals, which one-time cash-outs at retirement for accrued vacation and sick leave are not. *Id.* at 604, ¶¶ 30-31.

Although *Cross* involved a unique factual scenario under the EORP, its analysis of lump-sum cash-outs under the ordinary meaning of “salary” bears directly on the issue here because COPERS has a comparable structure and benefit formula. Like EORP, COPERS calculates benefits as a percentage of an employee’s highest average pay over three years, and

defines pensionable pay in terms of “annual” salary or wages. [Charter ch. XXIV, art. II, § 2.14](#). Thus, the same well-established meaning of annual salary as regular pay for services rendered each year applies here.

The Charter’s use of “salary or wages,” versus EORP’s use of “salary,” does not change the result. The difference likely resulted from the fact that all EORP members are salaried employees, whereas COPERS also covered hourly employees. But the Charter applies the same calculations for final average compensation and pension benefits to both wage-earners and salary-earners.⁴¹

COPERS’s provisions must be given their plain meaning and construed “in light of their place in the statutory scheme.” [Bilke, 206 Ariz. at 464-65, ¶ 11](#); *see also Stambaugh v. Killian, 242 Ariz. 508, 511, ¶¶ 16-17* (2017) (finding statute unambiguous “based on the statute as a whole and its context within the statutory scheme”). In light of the definitional overlap between the two terms, and their identical treatment under the Charter, the

⁴¹ Finding “no meaningful distinction” between “salary” and “wages” in § 2.13 also is consistent with the meet-and-confer and meet-and-discuss ordinances. *See* [CAPP171 \[IR-201 at 4 n.2\]](#). The ordinances refer to “salary” in connection with salaried employees in Unit 7, and “wages” in connection with hourly employees in Units 2 and 3. [Phoenix City Code §§ 2-218, 2-231](#).

superior court rightly concluded that “wages refer to compensation paid on an hourly or daily basis, while salary is fixed compensation over a longer period of time.”⁴²

B. The members’ interpretation of pensionable “compensation” conflicts with the Charter’s text, structure, and purpose.

The members, meanwhile, urge the Court to conclude that the Charter’s plain terms guarantee employees a perpetual right to inflate their pensions with accrued leave cash-outs. They make two primary arguments for why the plain text of the Charter does not limit pensionable “compensation” to regular, annual pay. First, they argue that the definition of “wages” in *Black’s* provides the plain meaning of the phrase “salary or wages” in § 2.13’s definition of compensation. Second, they argue that “annual compensations paid” in § 2.14’s definition of final average compensation refers to *all* remuneration for services paid to an employee in a year. The plain text and design of the Charter undercut both of these arguments, as does the relevant caselaw.

⁴² [CAPP171](#) [IR-201 at 4 n.2].

1. The members' overbroad reading of "wages" in § 2.13.

The members assert that the Charter's plain terms make pension spiking a guaranteed, perpetual right. They argue (at 33-40) that the plain meaning of the phrase "salary or wages" in § 2.13 encompasses "all moneys paid directly to employees for services rendered," regardless of the basis for payment. Citing *Black's Law Dictionary*, the members contend that "wages" means "[e]very form of remuneration payable for a given period to an individual for personal services," and that this sweeping definition controls over any narrower construction of "salary." The Court should reject this expansive view of "salary or wages" because it violates fundamental canons of statutory construction and conflicts with the Charter's plain text and structure.

First, despite acknowledging the rule that no words in a statute should be "rendered superfluous, void, contradictory or insignificant" (Opening Br. at 39 (quoting *Guzman v. Guzman*, [175 Ariz. 183, 187](#) (App. 1993))), the members invite the Court to construe "wages" in a manner that does just that. They assert (at 34) that "wages" includes "[e]very form of remuneration payable for a given period to an individual for personal

services, *including salaries.*” (Emphasis added.)⁴³ By definition, this reading of “wages” entirely subsumes “salary,” thus making § 2.13’s reference to salary redundant. The Court should not adopt a reading of § 2.13 that renders half of the phrase “salary or wages” useless. *Guzman*, 175 Ariz. at 187. A broad dictionary definition of “wages” cannot override this fundamental canon of statutory interpretation. (See Opening Br. at 35 & App.74-78.)

Second, the members’ proposed definition of “wage” cannot be reconciled with “salary.” Like the other dictionaries cited above, *Black’s* defines “salary” as regular, periodic pay: “An agreed compensation for services—esp. professional or semiprofessional services—usu. paid at regular intervals on a yearly basis, as distinguished from an hourly basis.” *Black’s Law Dictionary* at 1537 (10th ed. 2014). If “wage” is construed to mean “[e]very form of remuneration payable . . . for personal services,” as

⁴³ The members’ argument (at 39) that the superior court failed to give effect to each word in the statute because “COPERS’ deliberate use of the terms ‘salary *or* wages’ in the definition of Compensation evinces a clear intent to capture all moneys paid directly to employees for services rendered” fails for the same reason. If “wages” already encompasses any salary paid, as the members contend, there would be no need to include the term “salary” in § 2.13. Instead, as explained above ([Argument § I.A](#)) “salary or wages” merely includes both salary-earners and wage-earners.

the members urge, then vacation cash-outs at retirement qualify as pensionable “compensation” for wage-earners but not for salary-earners. The Charter’s text does not support this absurd result. *See Arnold Constr. Co. v. Ariz. Bd. of Regents*, 109 Ariz. 495, 498 (1973) (requiring courts to interpret statutory language to avoid absurd results).

The members also ignore this Court’s interpretation of the term “salary” in the public pension context. Minimizing *Cross*, they argue (at 36 n.19) that *Black’s* says only that salary is “usually paid at regular intervals on a yearly basis,” not that it *has* to be paid at regular intervals on a yearly basis. (Emphasis added.) But as they acknowledge elsewhere, the question here is the “usual and commonly understood meaning” of salary or wages, not whether those terms *ever* could refer to something other than regular, periodic pay. (See Opening Br. at 33 (quoting *State v. Korzep*, 165 Ariz. 490, 493 (1990)) (emphasis added).) As this Court already held in *Cross*, the usual and commonly-understood meaning of “salary” refers to regular, periodic pay. (See [Argument § I.A](#), above.)

Third, the authorities cited by the members do not support their proposed interpretation of the City’s retirement plan. For one thing, the members rely not on the actual definition of “wages” from *Black’s*, but on a

usage note showing one example of a statutory definition using the term. See [Black's Law Dictionary at xxxii](#) (10th ed. 2014) (text after a bullet includes "information that is not purely definitional, . . . such as encyclopedic information or usage notes"); *id.* at 1811 ("wage").⁴⁴

In addition to being non-definitional, this usage note is irrelevant here. The text the members quote (at 34) stating that "wages" includes "[e]very form of remuneration payable for a given period to an individual for personal services, including . . . vacation pay" is a direct quote from a 1944 Wisconsin statute providing for unemployment benefits.⁴⁵ The Wisconsin legislature's express inclusion of vacation pay in the statutory definition of "wages" for *unemployment* purposes does not illuminate what Phoenix voters meant to include as pensionable "wages" under the Charter.

⁴⁴ Excerpted at [CAPP143-CAPP146](#).

⁴⁵ This usage note first appeared in the 1951 edition of *Black's* (excerpted at [CAPP147-CAPP150](#)) with a citation to *Ernst v. Indus. Comm'n*, [16 N.W.2d 867](#) (Wis. 1944). *Ernst*, in turn, quoted it directly from Wis. Stat. § 108.02(6) (1943), which provided: "'Wages' means every form of remuneration payable for a given period . . . to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses, [and any other 'advantages'.]" [16 N.W.2d at 867 n.1](#).

In fact, this reading of wages would dramatically expand the meaning of pensionable “compensation” beyond its current scope. If “salary or wages” means “payment for labor or services without restriction,” as the members claim (at 35), then ostensibly *any* money paid to an employee relating to employment would be included. But many work-related payments to employees do not count as pensionable compensation precisely because they are not “salary or wages” (e.g., uniform allowances, sick leave cash-outs in the event of an employee’s death, and reimbursements for travel expenses).

The cases the members cite (at 35-38) confirm this note’s limited relevance. Most are not pension cases, and *none* addresses whether retirement cash-outs for unused vacation leave are “wages” under the plain terms of a public retirement plan.⁴⁶ For example:

⁴⁶ The only case involving retirement benefits the members cite is *Gilliam v. Nevada Power Co.*, [488 F.3d 1189](#) (9th Cir. 2007), a case addressing the terms of a company-sponsored private retirement plan. But *Gilliam* arises in the ERISA context, and the members omit key qualifying language from the excerpt quoted (at 35): “the ordinary and common meaning of ‘wages and salary,’ as used in the NPC Plan, is remuneration for services.” *Gilliam*, [488 F.3d at 1196](#) (emphasis added).

- *In re Cardona & Castro*, 316 P.3d 626, 629-30, ¶¶ 10-13 (Colo. 2014), concerned whether accrued sick and vacation leave were “property” for purposes of the **Uniform Dissolution of Marriage Act**.
- *Elder v. Islam*, 869 So. 2d 600, 602 (Fla. App. 2004), interpreted an **attorneys’ fee statute for unpaid wage claims**; the court concluded that an employee who sued for royalties and stock options could recover fees.
- *Coates v. Unemployment Comp. Bd. of Review*, 676 A.2d 742, 745 (Pa. Commnw. Ct. 1996), involved **unemployment benefits** under a statute expressly defining “wages” broadly as “all remuneration . . . paid by an employer to an individual with respect to his employment.”
- *Long v. Injured Workers’ Ins. Fund*, 138 A.3d 1225, 1245-47 (Md. App. 2016), determined whether, for sole proprietors who do not receive “wages,” net profits or gross profits should be used as an analog for “gross wages” under a **worker’s compensation statute**.

The purpose, structure, and intent of public retirement plans differ from the purpose, structure, and intent of things like unemployment and worker’s compensation statutes. These cases are not relevant to determining the plain meaning of COPERS’s terms. *Cf. Stambaugh*, 242 Ariz. at 509, ¶ 7 (“In construing a specific provision, . . . we may also consider statutes that are *in pari materia*—of the same subject or general purpose—for guidance”).

Finally, the members suggest (at 38-39) that this Court can presume Phoenix voters intended compensation to refer broadly to all remuneration

for services because the voters did not expressly exclude vacation-leave cash-outs from the Charter’s definition, like the state Legislature did in the statutes governing the Arizona State Retirement System, [A.R.S. § 38-711](#), and Public Safety Personnel Retirement System, [A.R.S. § 38-842](#). Not so. Phoenix voters adopted § 2.13’s definition of “compensation” in 1953—thirty years before the Legislature adopted the definitions noted above, and before the City began offering vacation cash-outs under AR 2.18.⁴⁷ Cf. *San Carlos Apache Tribe v. Maricopa Cty.*, [193 Ariz. 195, 209-10, ¶ 31](#) (1999) (rejecting that 1995 legislation could be used to interpret the meaning of statutes enacted in the 1970s).

2. The members misread “annual compensations paid” in § 2.14.

Section 2.14 of the Charter defines “final average compensation” in relevant part as “the average of the highest annual compensations paid a member for a period of 3 consecutive, but not necessarily continuous, years

⁴⁷ See [CAPP261](#) [IR-157 at ¶ 22]; Laws 1983, Ch. 293, § 1 (amending § 38-711); Laws 1983, Ch. 300, § 4 (amending statute subsequently renumbered as § 38-842). Moreover, unlike the Legislature, which presumably knows of its *own* laws and intends them to operate compatibly, there is no presumption that the Phoenix voters were aware of and considered a statute governing an entirely different retirement plan when adopting and amending the Charter.

of his credited service” Focusing on the words “annual” and “paid,” the members make various arguments (at 41-43) as to why “annual compensations paid” must refer to any and all amounts actually paid out to a member in a given year. But these arguments conflict with COPERS’s text and overall structure.

The members first contend (at 41) that “annual” merely delineates “the period of service to be included in the average.” To the contrary, in § 2.14, the phrase “annual compensations” describes which payments count, not the period of service. The *next* phrase in § 2.14 (“a period of 3 consecutive, but not necessarily continuous, years”) defines the period of service to be included in the average.

Continuing this flawed premise, the members next argue that the second sentence of § 2.14 (which applies to members who have worked for the City less than 3 years) uses “average of his compensations” instead of “average of his *annual* compensations.” But of course the “compensations” in that sentence are the imputed annual compensations; it wouldn’t make sense to average anything else.

The members also say (at 42) that the plural “compensations” suggests multiple “classification[s]” of pay. Not so. The plural “annual

compensations” merely reflects that three years’ worth of “annual compensations” are being averaged (like, for example, saying “the average of your three lowest weights”).

Next, citing *Dessauer v. Arizona Dep’t of Econ. Security*, [141 Ariz. 384](#) (App. 1984), the members (at 42-43) say that the superior court ignored the word “paid” and instead limited pensionable compensation to what was “earned.” But under the superior court’s ruling, only amounts “paid” during the three-year period count towards pensionable compensation; the City has never disputed that the Charter looks at the annual salary or wages *paid* to an employee. The pensionability of a particular payment depends on (1) whether the item is part of an employee’s annual compensations (i.e., annual salary or wages paid to an employee for personal services rendered); and if so, (2) whether the year in which that item was paid is one of the highest three years of compensation within the employee’s last ten years of service. The members’ argument ignores the first step and would improperly include essentially *anything* “paid” to a member during that period.

The superior court did not conflate “paid” with “earned,” nor does the City. Indeed, the ruling does not even use the word “earned” except as

to the issue of vesting (an issue unrelated to statutory construction). Simply put, this issue is a red herring, and *Dessauer* addresses an issue not in dispute.

The 1953 change in the Charter from “annual earnable compensation” to “annual compensations paid” is likewise irrelevant. The previous definition came from an entirely different retirement plan, which COPERS replaced. The definition merely shows that under an earlier retirement plan, “earnable compensation” counted even if it was not actually paid, such as when an employee took “a leave of absence [due] to ill health.”⁴⁸

This Court’s decision in *Cross* also undercuts the members’ argument. Like § 2.14 of the Charter, the pension statute in *Cross* provided that an employee’s average yearly salary must be calculated based on the “salary paid to an employee during the considered [three-year] period.” [234 Ariz. at 603, ¶ 27](#) (emphasis added) (citation omitted). The Court reasoned that accrued-leave cash-outs at retirement did not qualify as pensionable

⁴⁸ [CAPP130](#) (1951 Charter).

“salary” because they were not “paid at regular intervals,” even though they were “paid” during the three-year period. *Id.* at 604, ¶ 31.

Moreover, this view of “annual compensations paid” is more consistent with COPERS’ other provisions and the plan’s overall purpose than the members’ interpretation. Other COPERS provisions that refer to compensation conceive of “annual” compensation as a rate of pay, not the total of any and all payments an employee happens to receive in a given year. Section 2.15 of the Charter, for example, defines “final compensation” as an employee’s “*annual rate of compensation at the time his City employment last terminates.*” (Emphasis added.) The Court must interpret COPERS’s provisions consistently, “especially when they use identical language.” *Wyatt*, 167 Ariz. at 284. Section 2.15’s definition of “final compensation” thus informs the meaning of words like “annual” and “compensation” in the Charter.

Although the members argue (at 15 n.7) that “final compensation” is unrelated to the term “final average compensation,” the Charter’s text shows just the opposite. Like the limits on “final average compensation” in § 2.14, § 2.15 ensures that pension benefits serve their intended purpose— i.e., to provide retirees with a consistent revenue stream based on the

annual salary or wages they earned while employed. See [Charter ch. XXIV, art. II, § 2.15](#). Specifically, the Charter sets the maximum annual pension benefit payable to a surviving beneficiary at “the difference between the member’s *final compensation* [i.e., the annual rate of compensation] and the workmen’s compensation, if any, converted to an *annual basis*.” [Id. § 25.3](#) (emphasis added).

The fact that vacation cash-outs are *paid* only one time, and not regularly or periodically, is precisely why they cannot count towards pensionable compensation. The members therefore miss the mark by arguing (at 42) that other “non-uniform, irregular payments” count as pensionable compensation. Because the Charter sets an annual timeframe for determining compensation includable in final average compensation, the relevant question is whether the payment is available to an employee in an ordinary year (regardless of whether a particular employee actually received it every year). See [Cross, 234 Ariz. at 604, ¶¶ 30-31](#). Overtime, compensatory time, longevity, shift differentials, and stand-by pay are available in ordinary years to employees eligible for them, not just in their year of retirement. (See Opening Br. at 42.)

In sum, the text, structure, and purpose of the Charter’s retirement plan and Arizona cases confirm that “annual compensations” refers to an employee’s regular, annual salary or wages paid for personal services rendered.

C. A one-time vacation cash-out cannot be included in pensionable compensation.

1. A one-time vacation cash-out at retirement is not regular, annual pay for services rendered.

The superior court correctly ruled that “[a] lump-sum payout at retirement for accrued vacation leave is not regular annual pay [under the Charter’s plain text] because an employee receives a payout only one time (if at all).”⁴⁹ Moreover, an employee may cash out all accrued vacation leave at one time *only* in the year of retirement. In an ordinary year, a member may receive money in exchange for unused vacation leave only under AR 2.18’s “sell-back” option. By design, an employee cannot cash out all unused vacation leave under the sell-back system (unlike the one-time cash-out at retirement).⁵⁰

⁴⁹ [CAPP171](#) [IR-201 at 4].

⁵⁰ *Id.*

AR 2.18 allows a member to sell back up to either 40 or 80 hours of unused vacation annually (depending on the employee's unit), but only after using at least 35 to 40 hours of vacation leave that same year. The following hypothetical shows how the sell-back works:

Smith worked in Unit 3 for 20 years. Under AR 2.18, Smith accrues 11 hours/month of vacation leave, or 132 hours/year. If Smith began the year with zero hours of accrued leave and worked full time, he would receive a full year's wages and have 132 hours of unused vacation leave at the end of the year. Under AR 2.18, Smith can roll those vacation hours over to the next year, but because he did not take any leave, he cannot sell back any of his unused vacation for cash.

If, however, Smith took 40 hours (one week) of paid vacation and worked full time the other 51 weeks of the year, he would receive a full year's wages and have accrued 92 hours of unused vacation at the end of the year (132 less the 40 used). Now Smith has the option to sell back up to 80 hours of leave for cash and roll the remaining 12 hours over to the next year. Smith cannot "cash out" all of his unused leave under either scenario, however. Thus, in a normal year, an employee cannot receive a full-time

salary or wage while receiving *additional* cash for all unused vacation accrued that year. That opportunity comes only once: at retirement.⁵¹

The one-time, extraordinary nature of the vacation cash-out is precisely why it results in pension spiking, whereas regular paid vacation and sell-backs do not. In an ordinary year, the most an employee can receive (in terms of money for unused vacation) is her full-time salary or wage plus up to 40 or 80 hours of vacation sell-back. Amounts an employee receives annually for using paid leave or selling back unused leave thus do not “spike” the employee’s compensation because the employee receives no more money than she could have earned working full-time in an ordinary year. Retirement cash-outs for accrued vacation, by contrast, cause a “spike” when included in compensation because the employee has received more money that year than she can when working full-time in any other year.

2. **Nearly every court to address the issue has held that one-time cash-outs cannot be included in pension calculations.**

For these reasons, this Court has recognized that “[a]lmost all courts” to address the issue have held that payments for accrued leave are not

⁵¹ [CAPP188-CAPP189](#) [IR-124, Ex. 1a at 5-6].

included in pension calculations. *Cross*, [234 Ariz. at 604, ¶ 31](#). Another court likewise recognized that “[o]ther 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 pension benefits.” *Craig v. City of Huntington*, [371 S.E.2d 596, 598-600](#) (W. Va. 1988).

To give just a few examples:

- “[T]he common and ordinarily understood meaning of ‘salary’ is a fixed amount of income regularly paid to an employee for services rendered,” and thus one-time vacation leave cash-outs were not includable in “final average salary” for purposes of computing public retirement benefits. *W. Va. Consol. Public Ret. Bd. v. Carter*, [633 S.E.2d 521, 526-27](#) (W. Va. 2006).
- “Salary” means “periodic payments dependent upon time” and thus does not include lump-sum payments for unused vacation or sick leave. *Int’l Ass’n of Firefighters, Local No. 64 v. City of Kansas City*, [954 P.2d 1079, 1087-88](#) (Kan. 1998).
- Chicago did not unlawfully diminish or impair pension benefits in violation of the Illinois constitution when it excluded vacation pay and other fringe benefits from final average salary for pension purposes because they are not fixed compensation paid regularly. *Holland v. City of Chicago*, [682 N.E.2d 323, 327-29](#) (Ill. App. Ct. 1997).
- “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.” *Stover v. Ret. Bd. of St. Clair Shores Firemen and Police Pension Sys.*, [260 N.W.2d 112, 113-15](#) (Mich. Ct. App. 1977).

Although briefed below, the members ignore these cases.⁵²

3. The members' authorities do not support their argument.

The members cite (at 37) six other cases they claim “have specifically found payments for accrued vacation and other leave constitute ‘wages,’ or ‘salary’ for purposes of calculating pension benefits.” But none apply here.

Indeed, *Naches Valley Sch. Dist. No. JT3 v. Cruzen*, 775 P.2d 960 (Wash. App. 1989), is not a pension case at all. It concerned whether a collective bargaining agreement entitled teachers to payment for unused sick leave accrued during the contract period, and the arbitrability of those claims. *Id.* at 962.

Although both *Bowles v. Wash. Dep't of Ret. Sys.*, 847 P.2d 440 (Wash. 1993), and *Kranker v. Levitt*, 327 N.Y.S.2d 259 (Sup. Ct. 1971), held that lump-sum cash-outs for accrued leave were includable in pension calculations, neither decision was based on the statutory text. (See also [Argument § I.G.2](#), below.)

⁵² See IR-136 at 18. These holdings apply to the statutory interpretation question about the meaning of compensation, even if those jurisdictions' constitutional provisions differ from Arizona's.

Anderson v. Pension & Ret. Bd. of City of Milford, 355 A.2d 283 (Conn. 1974), did not involve any statutory interpretation, much less interpretation of plan terms like those at issue here. In *Anderson*, retirement benefits were provided by a collective bargaining agreement (not fixed by statute or city charter). The court ruled that sick leave cash-outs were included in benefit calculations under a CBA providing for pension benefits based on “all compensation.” *Id.* at 284-85.

And in *Kennedy v. S.C. Ret. Sys.*, 549 S.E.2d 243 (S.C. 2001), the parties never disputed unused-leave cash-outs counted towards pension benefits. *Id.* at 246. In addition, *Kennedy* involved *annual* payouts for leave accrued during the year (as opposed to one-time cash-outs at retirement for unused leave). Whether annual salary or wages includes vacation pay – i.e., money paid for vacation leave *used* or *accrued* during the year – is a different question than whether annual salary or wages includes a one-time cash-out at retirement for unused vacation leave. Unlike the vacation leave employees “earn” on an ongoing basis and can take anytime, the cash-out at issue here is “earned” only by retiring, and can be “taken” only once. Numerous courts have recognized this crucial distinction. *See, e.g., Cross*, 234 Ariz. at 604, ¶¶ 30-31; *Int’l Ass’n of Firefighters*, 942 P.2d at 48 (cited by

Cross) (reasoning that “salary” means “a periodic payment dependent upon time,” and “[b]y definition, a lump sum payment which occurs once upon retirement cannot be a periodic payment”).

Purdie v. Jarrett, [152 S.E.2d 749](#) (Ga. 1966), also does not support the members’ argument. In *Purdie*, the pension board adopted a formal rule directing that “*all compensation, including any bonus paid*” be included in pension calculations. *Id.* at 751 (emphases added). Citing this rule, the court held that the board could not retroactively reduce a retired schoolteacher’s retirement benefits by excluding the amount of her sick leave payout from her pensionable salary. *Id.* at 751-52. Unlike in *Purdie*, the City has not applied revised AR 2.18 retroactively, and the COPERS Board never adopted any formal rule permitting pension spiking.

Finally, the members argue (at 44-45) that even if the Charter limits pensionable pay to regular, annual compensation, the United States Supreme Court has already held that vacation leave cash-outs qualify in *Massachusetts v. Morash*, [490 U.S. 107](#) (1989). Not so.

In *Morash*, a bank was charged with violating Massachusetts’s wage act, which requires employers to pay discharged employees their full wages, including holiday or vacation pay, on the date of discharge. *Id.* at

109. The bank argued that federal law preempted the state wage act because its vacation policy was an “employee welfare benefit plan” governed by ERISA; the Supreme Court disagreed. *Id.* at 110-11, 115-16.

In the paragraph the members partially quote, *Morash* emphasized that the vacation payments at issue were regular pay covered by the state wage act (rather than benefits regulated by ERISA) because they were payable during employment, not just at termination:

Moreover, except for the fact that the payment has been deferred, such payments are as much a part of the employees’ regular basic compensation as overtime pay or the payment of salary while the employee is absent on vacation. . . . The fact that the payments in this case were due at the time of the employee’s termination does not affect their character as a part of regular compensation. *Unlike normal severance pay, the employees’ right to compensation for accrued vacation time is not contingent upon the termination of their employment.*

Id. at 120 (emphasis added).

The members (at 44) omit this crucial last sentence, which distinguishes the vacation payments in *Morash* from the retirement cash-outs here. The payment in this case *is* contingent upon employment

termination, because the City pays employees a lump-sum for accrued vacation leave under AR 2.18 only when they stop working, if at all.⁵³

In contrast to the members' cited authorities, cases like *Cross, Int'l Firefighters*, and *Carter* interpret the text of substantially similar provisions in the public pension context. (See [Argument § I.C.2.](#)) The Charter's text and design, as well as the great weight of relevant authority, support the superior court's interpretation that pensionable "compensation" excludes a one-time, lump-sum payment for accrued leave.

D. For the same reasons, vacation cash-outs cannot be nonmonetary compensation under § 2.13's second sentence.

The superior court also correctly determined vacation cash-outs at retirement do not qualify as nonmonetary compensation under § 2.13.

⁵³ The members' arguments (at 50-51) based on the Arizona Wage Act, [A.R.S. § 23-350](#) (2011), which defined "wages" to include vacation leave, fails for the same reason. Paid vacation leave an employee accrues or uses each year is *not* the same thing as a retirement cash-out for a specified amount of accrued vacation leave. Moreover, the Legislature has superseded the definition of "wages" quoted by the members. Section 23-350 now defines "wages" as "nondiscretionary compensation due an employee in return for labor or services rendered by an employee for which the employee has a reasonable expectation to be paid whether determined by a time, task, piece, commission or other method of calculation." [A.R.S. § 23-350\(7\)](#) (2016).

Section 2.13 states:⁵⁴

“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). Under a plain reading, the “compensation . . . not all paid in money” in the second sentence must still be “compensation” as defined in the first sentence. Thus, only nonmonetary items received by an employee on a regular, annual basis in exchange for personal services rendered count as nonmonetary compensation (which excludes vacation cash-outs).

Although the members half-heartedly suggest (at 45) that vacation cash-outs qualify as compensation under *both* sentences, by definition, the two compensation types are mutually exclusive—an item cannot simultaneously be paid in money and not paid in money. Further, accepting the members’ argument that “all compensation is eventually paid in money” would render the second sentence of § 2.13 superfluous. If an item of nonmonetary compensation is paid out to an employee in the

⁵⁴ [CAPP172](#) [IR-201 at 5].

form of dollars and cents, it is no longer nonmonetary compensation. At that point, it is simply “compensation,” and the second sentence of § 2.13 is unnecessary.

E. Past practice cannot vary the terms of the Charter adopted by the voters.

Under settled Arizona law, when a statute’s meaning “is plain, based on the statute as a whole and its context within the statutory scheme, [courts] do not resort to other canons of statutory interpretation.” *Stambaugh*, 242 Ariz. at 511, ¶ 17. Here, the Charter’s text unambiguously limits pensionable compensation to annual salary or wages paid for personal services rendered. True enough, for many years, the City permitted employees to spike their pensions with one-time cash-outs of accrued vacation leave. But that practice was wrong because it conflicts with the Charter’s plain text. Decisively, as the superior court correctly recognized, the City’s erroneous past practice cannot vary the terms of the Charter adopted by the voters.⁵⁵ See, e.g., *id.*; *Holland*, 682 N.E.2d at 328.

Citing *Long v. Dick*, 87 Ariz. 25 (1959), the members nevertheless argue that the City’s past practice proves that COPERS should be

⁵⁵ CAPP172-CAPP173 [IR-201 at 5-6].

interpreted to require pension spiking to continue in perpetuity. But in *Long*, the court “emphasized that *neither party seeks to construe the statute consistent with its literal language*” because applying the plain text would lead to absurdity. [87 Ariz. at 28-29](#) (emphasis added). Unlike in *Long*, all parties here ask the Court to rule on the Charter’s plain text, and no statutory provision creates conflict and absurdity. Moreover, the evidence the members cite (at 25-28) merely *described* the then-current practices; they do not reflect an actual interpretation of the Charter’s express terms.⁵⁶

For these reasons, the superior court correctly recognized that this case is more like *Holland v. City of Chicago*, [682 N.E.2d 323](#) (Ill. App. Ct. 1997), than *Long*.⁵⁷ *Holland* rejected using extrinsic evidence to vary the plain terms of a state retirement plan. Because nothing in the statute indicated 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 officer’s total compensation are treated in the City’s

⁵⁶ See [note 15](#), above.

⁵⁷ [CAPP172](#) [IR-201 at 5].

annual appropriation ordinance or in the relevant labor contracts.” *Id.* at 327.

Here, the Charter’s text likewise does not suggest that the voters intended to give the words some unusual meaning. Thus, the superior court properly declined to resort to extrinsic evidence to vary the Charter’s terms. And contrary to the members’ claim (at 47-48), the fact that the *Holland* court addressed a different kind of extrinsic evidence (the terms of a labor agreement, as opposed to past practice) does not diminish its relevance. Because the Charter prohibits pension spiking, the members’ efforts to find rights outside the Charter must fail.

Once the superior court concluded that the Charter does not include one-time cash-outs at retirement in pensionable compensation, the rest of the case was easy. Although the members searched in constitutional provisions and vested-rights cases for a source of rights outside of the Charter, none of those doctrines permit—much less require—the City to deviate from the controlling plan terms. Once the City recognized that its past practice conflicted with the plan terms, it had no choice but to fix its mistake prospectively. And to the extent the members do have any rights

outside the terms of the Charter, the City's snapshot approach protected them.

F. The superior court correctly held that no constitutional violation occurred.

1. Pension Clause.

The Pension Clause protects a public employee's contractual right to benefits as a member of a public retirement system. [Ariz. Const. art. XXIX, § 1](#) ("Membership 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."). As *Cross* recognized, an employer cannot diminish or impair a right in violation of the Pension Clause when the terms of the retirement plan do not give the employee that right in the first place. "Article 29 [the Pension Clause] and common-law contract principles . . . only protect whatever pension rights [the member] has under applicable law." *Cross*, [234 Ariz. at 600, ¶ 13](#) (concluding that pensioner did not have a contractual right to include lump-sum cash-out for accrued vacation leave in calculation of pension benefits because the amounts did not qualify under statutory definition of pensionable pay).

Courts in Illinois, a state with a nearly identical pension clause, likewise have held that the clause protects only those rights contained in the retirement plan itself. In *Holland*, for example, the court explained that because holiday and vacation pay did not qualify as “annual salary” under the pension statute’s plain text, “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 pension clause. 682 N.E.2d at 329; see also *Matthews v. Chicago Transit Auth.*, 51 N.E.3d 753, 772, ¶ 65 (Ill. 2016) (“the agreement that controls [public servants’] membership in a retirement system consists of the relevant provisions in the Pension Code that define the rights and obligations that arise from that membership”).

Here, the members agree (at 21) that the Charter sets the terms and benefits of membership in the COPERS retirement system.⁵⁸ Because the Charter does not permit pension spiking, the superior court correctly ruled

⁵⁸ See, e.g., Opening Br. at 21 (“COPERS . . . is part of the City Charter and may only be amended by referendum referred to the voters”); *id.* at 31 (identifying the primary issue as whether “accrued vacation paid to employees at termination of employment [is] included in Compensation and Final Average Compensation *under COPERS?*” (emphasis added)).

that the Pension Clause does not protect the members' alleged right to continue spiking their pensions.⁵⁹

As in *Holland*, the City and COPERS did not redefine or amend the term “compensation” when they halted pension spiking because vacation-leave cash-outs are not “compensation” under the Charter’s plain text. For this reason, the members’ authorities—cases where the retirement plan itself expressly granted the pensioners the right they claimed had been impaired—do not apply here. (See Opening Br. at 57-58.) For example, *Fields v. Elected Officials’ Ret. Plan*, 234 Ariz. 214, 217, ¶¶ 9-10 (2014), addressed a statutory amendment that raised the investment return threshold from 9% to 10.5% before the plan would pay automatic cost-of-living adjustments. Likewise, *Felt v. Bd. of Trs. of Judges Ret. Sys.*, 481 N.E.2d 698, 699-700 (Ill. 1985), found a pension clause violation where “the amendment [to the statute] changed the salary base used to compute the annuity from the salary of the judge on the final day of service to the average salary over the last year in service.” All of those cases involve changes to the controlling plan terms themselves; none of them involve

⁵⁹ [CAPP172-CAPP173](#) [IR-201 at 5-6].

bringing the plan into compliance with the plan terms. In short, revised AR 2.18 cannot have diminished or impaired the members' rights in violation of the Pension Clause because pension spiking is not a term of their retirement contract under the Charter.

2. Contracts Clause.

The same lack of any contractual right under the Charter dooms the members' arguments (at 59-61) based on the federal and state Contracts Clauses ([U.S. Const. art. I, § 10, cl. 1](#); [Ariz. Const. art. II, § 25](#)). The City cannot have violated the Contracts Clause if the members "had no vested contractual right." *Smith v. City of Phoenix*, [175 Ariz. 509, 515](#) (App. 1992) (no Contracts Clause issue without vested rights). The superior court thus correctly held that like the Pension Clause, the Contracts Clause is "not [an] independent source[] of any rights."⁶⁰

As explained above ([Argument §§ I.A-I.D](#)), the Charter does not create a right to spike pensions. The members' focus (at 60-61) on a multi-part test and burden-shifting thus misses the point. Without an impairment of contractual rights, that framework never comes into play.

⁶⁰ [CAPP172](#) [IR-201 at 5].

Moreover, as explained below ([Argument § I.G](#)), the City's snapshot approach in revised AR 2.18 protects any vested rights that the members may have had based on the City's past practices. For these reasons, the City never impaired any vested contractual right and therefore did not violate the Contracts Clauses.

G. The superior court correctly held that the City's prospective-only change in practice did not impair any vested rights.

As an alternative to their Charter argument, the members claim (at 51-57) that the City's past practice gives them a contractual right, *independent of the Charter's terms*, to continue pension spiking forever. This argument also fails. As demonstrated in [Argument § I.E](#), the Charter *is* the retirement contract, and it determines what is and is not pensionable compensation. The City cannot amend the Charter's definition of compensation via past practice, nor can it bind itself to terms prohibited by the Charter.

But even if that past practice somehow could give the members additional rights despite the Charters' express limits, revised AR 2.18 does not violate any of the members' vested rights. AR 2.18 already protects the treatment of anything in which the members possibly could have rights

(i.e., vacation leave already accrued); under Arizona law they have no vested rights to a cash-out for leave they have yet to accrue.

1. The City has no authority to contract around the Charter.

The members cannot avoid the Charter's text by invoking an alleged independent vested contractual right based on past practice. The Charter *is* the retirement plan; thus, it is the first and last word on what counts as compensation for pension purposes.

The City has no authority to contract around the Charter's terms. *See Bank of Lowell v. Cox*, [35 Ariz. 403, 419](#) (1929) ("an ultra vires contract" with public officials "is void as to the part in excess of jurisdiction . . ."). Otherwise, the City's labor agreements could, for example, double the benefit multiplier in the pension formula as a concession to employees. Or in an effort to entice a particularly talented library director from Chicago to move to Phoenix, the City could offer a guaranteed minimum \$80,000/year pension. But of course the City has no authority to make either deal. The City simply has no power to deviate from the terms the voters enacted. *See id.* The City cannot make side deals for pension benefits. Other courts have recognized that even *express contracts* that deviate from plan terms are

unenforceable: “Statutory definitions delineating the scope of PERS compensation cannot be qualified by bargaining agreements.” *Oden v. Bd. of Admin.*, 28 Cal. Rptr. 2d 388, 392 (Ct. App. 1994).

If the City cannot *expressly* contract around the Charter, it certainly cannot *implicitly* do so. *Cox*, 35 Ariz. at 419 (“Nor can the illegal part [of a government contract] be ratified.”). A past practice, no matter how longstanding, cannot overcome the Charter’s plain text. *See, e.g., 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”).

Moreover, the City regularly advised employees that the Charter’s provisions controlled, including in the materials the members point to as the source of their right. (*See, e.g.,* Opening Br. at 24-28.) For example, the COPERS “Guide to Retirement” (cited by the members at 26) 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”⁶¹ Similar language appears in labor contracts, too. For example, Unit 7 employees’ 2012-2014 agreement provides, “*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.*”⁶² These written warnings undercut the members’ claim that the City’s materials create an independent right inconsistent with the Charter’s terms.

2. No binding authority gives the City the right to contract around the plan terms.

No Arizona court has ever held that a public entity has the right to contract around the controlling terms of a retirement plan. Similarly, no Arizona court has ever held that the length of an administrative practice justifies departing from the statutory text and creating additional vested rights to pension benefits beyond those contained in a retirement plan.

The members cite cases like *Yeazell v. Copins*, [98 Ariz. 109](#) (1965), *Fields v. Elected Officials’ Ret. Plan*, [234 Ariz. 214](#) (2014); and *Hall v. Elected*

⁶¹ [CAPP277](#) [IR-164, Ex. 15 at D002692] (emphasis added).

⁶² [CAPP218](#) [IR-132, Ex. 7b at D001236] (emphasis added).

Officials' Ret. Plan, [241 Ariz. 33](#) (2016). But the superior court recognized that in those cases, the plaintiffs claimed a vested right in an *express statutory term* of the retirement plan, which the Legislature later changed by amending the statute.⁶³ Those cases do not address or even acknowledge any source of rights outside the terms of the retirement plan, much less a *conflicting* right like the one the members claim here (at 51-55).

The only case the members cite to the contrary (at 37, 55-56) is a nonbinding case from Washington, *Bowles v. Wash. Dep't of Ret. Sys.*, [847 P.2d 440](#) (Wash. 1993).⁶⁴ But *Bowles* is an outlier, and should not be followed for several reasons. First, *Bowles* ignores the fundamental principles of statutory interpretation followed by Arizona courts. *See, e.g., Stambaugh*, [242 Ariz. at 511](#), ¶ 17 (if statute's meaning is plain "based on the statute as a whole and its context within the statutory scheme" courts "do not resort to other canons of statutory interpretation").

⁶³ [CAPP172-CAPP173](#) [IR-201 at 5-6].

⁶⁴ The members also cite *Kranker v. Levitt*, [327 N.Y.S.2d 259](#) (Sup. Ct. 1971), *aff'd*, [281 N.E.2d 840](#) (N.Y. 1972). But there, the court addressed an ambiguous statute, not whether past practice created independent, conflicting right beyond the plan's terms. *See* [327 N.Y.S.2d at 262](#). Nor is *Wash. Ass'n of Cty. Officials v. Wash. Pub. Emp. Ret. Sys. Bd.*, [575 P.2d 230](#) (Wash. 1978), on point, because unlike in this case, the alleged contractual right arising from past practice did not conflict with the statutory text.

In addition, Washington does not have the robust constitutional protection for pension benefits that Arizona does. Following *Bowles* would thus make administering Arizona's public retirement systems nearly impossible, because employees could argue that every presentation, handbook, and administrative practice created a new, constitutionally-protected vested right that lasts for life. (See, e.g., Opening Br. at 11, 24-28 (citing budget and actuarial reports, COPERS PowerPoint presentations, orientation materials, and other handouts as evidence of a vested right to continue pension spiking in perpetuity).)

Bowles's approach also would allow administrative practice to trump the clear intent of Phoenix voters, who chose to incorporate the terms and benefits of the City's retirement plan in the Charter. The voters defined pensionable compensation as annual salary or wages for personal services rendered, which does not include one-time cash-outs for unused leave at retirement. In the end, the voters are on the hook for the cost of COPERS pension benefits; the Court should not rely on out-of-state cases to frustrate the intent of the Phoenix citizens responsible for paying the bill. The voters did not leave the terms of the retirement plan to the whims of government administrators.

3. Revised AR 2.18 protects whatever vested rights exist.

Finally, even if the members could have an independent vested right outside the Charter to include vacation cash-outs in pensionable compensation, revised AR 2.18 does not diminish or impair it. The City designed the vacation leave “snapshot” in revised AR 2.18 to ensure that employees may count *all* vacation-leave accrued under the old practice towards their pension calculations. Because “[n]othing in AR 2.18 affects an employee’s rights to unused vacation time already accrued,” any vested rights the employees have by virtue of past practice are fully protected under the revised regulation.⁶⁵

(a) The members have not vested in future leave or the right to accrue future leave under an old rule.

Under Arizona law, a public employee has “a vested contractual right to benefits . . . only when [the] employee ha[s] already performed services and earned benefits.” *Abbott*, [129 Ariz. at 277-79](#). In other words, employees vest in compensation and leave benefits as they earn them. *Bennett v. Beard*, [27 Ariz. App. 534, 536-37](#) (1976). Conversely, an employee

⁶⁵ [CAPP173](#) [IR-201 at 6].

has no vested rights in future pay or leave when the “employee has yet to perform services entitling him to the benefits.” *Abbott*, [129 Ariz. at 279](#).

In *Abbott*, Tempe amended its ordinance to reduce firefighters’ holiday pay and vacation credit. This Court rejected the Firefighters’ theory that they had a vested contractual right to these benefits when they were hired, noting that nothing in the original ordinance’s text indicated that Tempe intended to vest future contract rights in holiday pay rates and vacation credit accrual and thereby lock itself into those rules forever. *Id.* [at 278-79](#).

Here, as of July 2014, the members had vested rights in only one thing: the right to take off work and get paid for it, up to the number of hours they had accrued. Revised AR 2.18 does not impact those rights. The right to take time off, however, is not the same thing as the right to receive a lump-sum payment for unused time off at retirement. (*See Argument §§ I.C.1, I.C.3.*)

Under all versions of AR 2.18, employees get the right to a vacation-leave cash-out only upon retirement. None of the members had retired before the City revised AR 2.18 in July 2014. So none of them had yet earned the right to a cash-out, and therefore they had not yet vested in a

vacation-leave cash-out at all, much less a cash-out governed by the old version of the AR. Compare *Abbott*, 129 Ariz. at 279 (employee had not yet earned benefit), with *Norton v. Ariz. Dep't of Pub. Safety Local Ret. Bd.*, 150 Ariz. 303, 304 (1986) (holding that an employee who no longer met statutory definition of “member” still had vested right to rejoin retirement plan because he had *already fulfilled all statutory requirements* for rejoining under statute in place when he left).

(b) The snapshot approach protects the pensionability of accrued leave.

To top it off, even if the members had any rights in a lump-sum payment based on leave they had already accrued, revised AR 2.18 still protects them. The revised AR uses a vacation leave “snapshot” to eliminate future pension spiking. The most important feature of the snapshot relative to vested rights is its prospective-only design. As explained above (Facts & Case § II.B), all employees (these members included) may still count all hours they accrued in reliance on the old, erroneous practice in pensionable compensation when they retire.

Said another way, many members will *still be able to spike their pensions* with vacation-leave hours they accrued before revised AR 2.18.

This fair and equitable approach protects any vested rights the members may have had, and thus eliminates any claim that the City impaired or diminished any vested rights. Thus, unlike the pensioners in *Yeazell* and *Hall*, who were retroactively deprived of benefits (*Yeazell*) or required to pay more money to receive the same benefits originally promised (*Hall*), the members will continue to receive the full benefit of vacation leave accrued in reliance on the City's erroneous practice.

Importantly, although the members contend (at 51-57) that revised AR 2.18 constitutes a change to the formula for calculating retirement benefits, that section of their brief does not claim rights *under the Charter*. Rather, they claim (at 54) an independent right to continue pension spiking as a general "condition of employment." The same protections applicable to the terms and benefits of the retirement contract itself (i.e., the Charter) do not apply to general terms and benefits of employment. *Yeazell* and *Hall* concern retirement benefits specifically, whereas *Bennett* and *Abbott* address general employment benefits. This case is closer to *Bennett* than it is to *Yeazell*.

The City took pains to design a solution that balances the City's legal obligations to follow the Charter and the practical consequences of its

mistaken past practice. The City and COPERS have the legal authority to recoup benefit overpayments, and thus could have stopped pension spiking altogether, even for already-accrued hours.⁶⁶ They didn't do so, however, because they sought to implement a practical and equitable solution to a difficult problem.⁶⁷ This Court should affirm.

II. The superior court acted well within its discretion in awarding attorneys' fees.

A. The superior court had broad discretion to determine whether to award fees.

"[T]he trial court has 'broad discretion' to award and determine the amount of attorneys' fees under [A.R.S. § 12-341.01\(A\)](#)." *Vortex Corp. v. Denkewicz*, [235 Ariz. 551, 562, ¶ 39](#) (App. 2014). An appellate court "will not disturb the trial court's discretionary award of fees if there is any reasonable basis for it." *Orfaly*, [209 Ariz. at 265, ¶ 18](#) (citation omitted).

⁶⁶ See *Cross*, [234 Ariz. at 601, ¶ 15](#) (noting general rule that public bodies can recover money paid as a result of legal or factual mistake); [Charter ch. XXIV, art. II, § 36](#) (Board may recover overpayments).

⁶⁷ Although treating accrued leave under the old policy does not follow the definitions in §§ 2.13–2.14 of the Charter, the members may have asserted an equitable estoppel claim against the City if it had not implemented the snapshot approach. Cf. *Cross*, [234 Ariz. at 606-07, ¶¶ 39-45](#).

Here, the superior court properly considered the “*Warner*” factors in deciding to award fees. *See Associated Indem. Corp. v. Warner*, [143 Ariz. 567, 570](#) (1985). No individual factor is “determinative” on whether to award fees. *Wilcox v. Waldman*, [154 Ariz. 532, 538](#) (App. 1987). Although it was not required to evaluate these factors in writing, *id.*, it did so in detail.⁶⁸

After considering all of the objections and “mitigating factors,” the superior court found that “the *Warner* factors cut both ways,” and therefore properly exercised its broad discretion to award fees, but only after slashing the requested fees by half (\$141,986.70 instead of the requested \$283,973.40).⁶⁹

Importantly, no individual named plaintiff or other individual employee or retiree will be directly responsible for the fees. They will be shared “only among the non-individual plaintiffs,” meaning that the “individual Plaintiffs . . . shall not bear any liability for any award of attorneys’ fees.”⁷⁰

⁶⁸ [CAPP176-CAPP177](#) [IR-231 at 2-3].

⁶⁹ [CAPP177](#) [*Id.* at 3].

⁷⁰ [CAPP385](#) [IR-212 at 2]; [CAPP179-CAPP180](#) [IR-232 at 1-2].

B. Contrary to the members' argument, the superior court did not abuse its discretion.

The unions do not dispute that the superior court applied the correct factors under A.R.S. § 12-341.01 and *Warner*, or even the *amount* of the fee award. Instead, they argue that the court abused its discretion by awarding *any* fees. But no “one particular factor [is] necessarily determinative.” *Wilcox*, 154 Ariz. at 538. And the superior court has discretion to find that mitigating factors justify “reduc[ing] the amount of fees,” without eliminating an award. *Id.*

The government is eligible for attorneys' fees under A.R.S. § 12-341.01. See, e.g., *Hale v. Amphitheater Sch. Dist. No. 10 of Pima Cty.*, 192 Ariz. 111, 117, ¶ 19 (App. 1998) (affirming fee award in favor of public school district and against teacher). Despite this, the members suggest (at 62) that the government cannot be awarded fees and that raising constitutional rights justifies denying fees. Not so. The Supreme Court cautioned against awarding fees in a case *brought by individual taxpayers*, not three well-funded unions. *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 350 (1984). Moreover, that caution has been incorporated into the *Warner*

factors, which the superior court properly considered (as factor 6). *See Warner*, [143 Ariz. at 570](#).

The unions also assert (at 64-66) that their budgets justified denying all fees. Not so. The superior found (in factor 3) that a fee award would cause “some hardship,” but “was not persuaded that a fee award would be an ‘extreme’ hardship” as contemplated by *Warner* factor 3.⁷¹ The superior court correctly concluded that the unions did not meet their burden of establishing an “extreme hardship.”⁷² *Fulton Homes Corp. v. BBP Concrete*, [214 Ariz. 566, 573, ¶ 30](#) (App. 2007) (rejecting “extreme hardship” argument for lack of evidence). The City did not need to offer further evidence. *Rudinsky v. Harris*, [231 Ariz. 95, 102, ¶ 32](#) (App. 2012) (party asserting extreme hardship has the burden). Moreover, the organizations’ annual budget is almost \$1,000,000, more than *seven times* the fee award.⁷³

⁷¹ [CAPP176](#) [IR-231 at 2].

⁷² This Court previously distinguished between “extreme hardship” and mere “hardship” in an unpublished decision.

⁷³ IR-215 at 6 n.8.

The four remaining issues the unions identify (at 66-67) are simply wrong, and in any event do not justify denying all fees.⁷⁴ Even if the remaining points were correct, the superior court's 50% reduction from the requested fees would more than compensate for them—and the unions do not quibble with the *amount* of fees, but the award of *any* fees.

REQUEST FOR ATTORNEYS' FEES

Under ARCAP 21, [A.R.S. §§ 12-341, 12-341.01, and 12-342](#), Defendants/Appellees request fees and costs on appeal.

CONCLUSION

As the superior court correctly held, a one-time payment at retirement for unused vacation leave is not part of an employee's regular annual pay, and thus cannot be included in the calculation of an employee's pension benefit under the Charter. The Court should affirm.

⁷⁴ All four allegations are squarely rebutted by the record. *See* IR-230 at 5-9.

RESPECTFULLY SUBMITTED this 5th day of July, 2018.

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/Appellees

THIS PAGE INTENTIONALLY LEFT BLANK

THIS PAGE INTENTIONALLY LEFT BLANK

THIS PAGE INTENTIONALLY LEFT BLANK

THIS PAGE INTENTIONALLY LEFT BLANK

THIS PAGE INTENTIONALLY LEFT BLANK

**APPENDIX
TABLE OF CONTENTS***

Index of Record #	Description	Appendix Page Nos.
CITY OF PHOENIX CHARTER		
	City of Phoenix Employees' Retirement Plan ("COPERS"), Charter ch. XXIV, art. II (2014)	CAPP091 - CAPP128
	Phoenix City Employees' Retirement System, Charter ch. XXIV, § 2 (1951) (repealed)	CAPP129 - CAPP130
DICTIONARIES		
	Concise Oxford Dictionary of Current English (1st ed. 1919)	CAPP131 - CAPP133
	Webster's New International Dictionary of the English Language (2d ed. 1946)	CAPP134 - CAPP136
	New Oxford American Dictionary (3d ed. 2010)	CAPP137 - CAPP139
	American Heritage Dictionary (5th ed. 2011)	CAPP140 - CAPP142
	Black's Law Dictionary (10th ed. 2014)	CAPP143 - CAPP146
	Black's Law Dictionary (4th ed. 1951)	CAPP147 - CAPP150

* The appendix page number matches the electronic PDF page number. Counsel has added emphasis to selected pages in this Appendix using yellow highlighting to assist the Court with its review of the record. Some record items included in the Appendix contain only a limited excerpt, indicated by a double asterisk (**). This Appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

COURT-ISSUED DOCUMENTS		
	Superior Court Index of Record	CAPP151 - CAPP167
201	Minute Entry: Under Advisement Ruling (filed July 26, 2017)	CAPP168 - CAPP174
231	Minute Entry: Ruling on Application for Attorneys' Fees and Costs (filed Nov. 16, 2017)	CAPP175 - CAPP178
232	Final Judgment (filed Nov. 16, 2017)	CAPP179 - CAPP182
OTHER COURT RECORDS		
123-134	Defendant's Separate Statement of Facts in Support of Motion for Summary Judgment (filed Dec. 20, 2016)	
124	Ex. 1a: AR 2.18 (July 1, 2014)	CAPP183 - CAPP189
	Ex. 1b: AR 2.18 (Nov. 22, 2013)	CAPP190 - CAPP196
	Ex. 1c: AR 2.18 (July 1, 2012)	CAPP197 - CAPP202
	Ex. 1u: AR 2.18 (July 9, 1979)	CAPP203 - CAPP205
	Ex. 2: Declaration of City of Phoenix administrator Cindy Bezaury	CAPP206 - CAPP209
	Ex. 3: Pay Plan Ordinance S-39022**	CAPP210 - CAPP215
132	Ex. 7b: 2012-2014 Unit 7 Memorandum of Agreement**	CAPP216 - CAPP219
133	Ex. 8: Feb. 14, 2012 Pension Reform Task Force Presentation re Recommendations to City Council**	CAPP220 - CAPP223
	Ex. 9: 2012 Report to City Council re Pension Reform Task Force Recommendations**	CAPP224 - CAPP235

	Ex. 10: AR 2.441 (2012)	CAPP236 - CAPP240
	Ex. 11: Oct. 16, 2013 Report to Mayor and City Council re Pension Fairness and Spiking Elimination Ad Hoc Subcommittee Process and Recommendations	CAPP241 - CAPP244
	Ex. 12: Oct. 31, 2013 City Council Policy Session Minutes**	CAPP245 - CAPP250
134	Ex: 15: Sept. 17, 2013 Pension Fairness and Spiking Elimination Ad Hoc Subcommittee PowerPoint Presentation**	CAPP251 - CAPP253
	Ex. 16: Dec. 2013 Segal Consulting Report re Actuarial Impact of Recent City Council Action on Pension Fairness and Spiking**	CAPP254 - CAPP257
157	Joint Stipulated Facts (filed Feb. 17, 2017)	CAPP258 - CAPP275
164-178	Plaintiffs' Response to Defendants' Separate Statement of Facts and Controverting Statement of Facts, and Plaintiffs' Statement of Undisputed Facts in Support of Motion for Summary Judgment (filed Mar. 15, 2017)	
164	Ex. 15: A Guide to Retirement (July 2012)**	CAPP276 - CAPP277
186	Defendants' Response to Plaintiffs' Controverting and Additional Statement of Facts In Support of Their Cross-Motion for Summary Judgment (filed May 10, 2017)	CAPP278 - CAPP346
	Ex. 18: Rule 30(b)(6) Deposition Transcript of City of Phoenix by and through Cindy Bezaury	CAPP347 - CAPP350

	Ex. 19: Rule 30(b)(6) Deposition Transcript of COPERS by and through Scott Miller	CAPP351 - CAPP359
	Ex. 20: Deposition Transcript of COPERS witness Donna Buelow (<i>Piccioli v. City of Phoenix</i>)	CAPP360 - CAPP364
	Ex. 21: Deposition Transcript of City witness Janet Smith (<i>Piccioli v. City of Phoenix</i>)	CAPP365 - CAPP368
	Ex. 22: Deposition Transcript of COPERS witness Scott Miller (<i>Piccioli v. City of Phoenix</i>)	CAPP369 - CAPP372
	Ex. 23: <i>Piccioli v. City of Phoenix</i> Trial Transcript, Day Three	CAPP373 - CAPP383
212	Stipulation re Amended Proposed Form of Judgment (filed Sept. 6, 2017)	CAPP384 - CAPP386

CHARTER OF THE CITY OF PHOENIX*
(version in effect as of July 1, 2014)

***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 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)

...

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

**ARTICLE I. REPEAL OF PHOENIX CITY EMPLOYEES' RETIREMENT
SYSTEM LAW OF 1945**

1. System repealed; conditions.

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.

2. Effective date.

This Article I shall be in force and effect December 29, 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.
- 2.22. “Tier 1 Member” means: (A) any member hired into a position of employment with the City before July 1, 2013; and (B) any member hired into a position of employment with the City on or after July 1, 2013 who prior to July 1, 2011 participated in the Arizona State Retirement System established pursuant to Title 38, Chapter 5, Articles 1, 2 and 2.1 of the Arizona Revised Statutes (“ASRS”), and is either an active member or an inactive member of the ASRS as defined by Title 38, Chapter 5, Article 2, Section 38-711 of the Arizona Revised Statutes at the time of hire by the City. Additionally, if a member is hired into a position of employment with the City on or after July 1, 2013, but was previously employed with the City prior to July 1, 2013, and the member is not eligible to be a Tier 1 Member under the terms of the preceding sentence, the member shall be a Tier 1 Member only if the member did not withdraw his or her accumulated contributions from the retirement plan as provided for in Section 26 prior to his or her most recent date of hire with the City.
- 2.23. “Tier 2 Member” means any member hired into a position of employment with the City on or after July 1, 2013 who is not a Tier 1 Member.

(Election of 11-13-1973; election of 10-3-1995; election of 3-12-2013, eff. 6-17-2013)

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 him in any calendar year. Additionally, for all Tier 2 Members, in no case shall a month of service be credited to such a member unless the member has rendered at least 20 days of service in the calendar month at issue.

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; election of 3-12-2013, eff. 6-17-2013)

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 Tier 1 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. Any Tier 2 Member whose age and years of service, when added, equals 87 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; election of 3-12-2013, eff. 6-17-2013)

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 calculated as follows:

(a) A Tier 1 Member's straight life pension, payable upon retirement as provided in this article, shall be the greater of the sum of subsections (i), (ii), and (iii) below, or the amount set forth in subsection (iv)(1) or (iv)(2) below.

(i) 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

(ii) 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

(iii) 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;

(iv) (1) or \$500.00 per month if member has 15 or more years of credited service, or

(2) \$250.00 per month if member has less than 15 years of credited service.

(v) Unused sick leave shall not be included as credited service for computation of years of service under foregoing subsections 19.1(a)(ii), 19.1(a)(iii), 19.1(a)(iv), and Tier 2 Members shall have the portion of their straight life pension attributable to unused sick leave credited service calculated in accordance with subsection 19.1(a)(i) above.

(b) A Tier 2 Member's straight life pension, payable upon retirement as provided in this Article, shall be calculated as provided in subsections (i), (ii), (iii) and (iv) below, but without including unused sick leave credited service in the calculation:

- (i) If the member has less than 20 years of credited service, 2.1 percent of the member's final average compensation multiplied by the sum of the member's credited service; or
- (ii) If the member has 20 or more years of credited service, but less than 25 years of credited service, 2.15 percent of the member's final average compensation multiplied by the sum of the member's credited service; or
- (iii) If the member has 25 or more years of credited service, but less than 30 years of credited service, 2.20 percent of the member's final average compensation multiplied by the sum of the member's credited service;
- (iv) If the member has 30 or more years of credited service, 2.30 percent of the member's final average compensation multiplied by the sum of the member's credited service.

(c) In addition to the amount specified in subsections (b)(i), (b)(ii), (b)(iii) and (b)(iv) above, an amount will be added to each Tier 2 Member's straight life pension, payable upon retirement as provided in this Article, as specified in subsection 19.1(a)(i) above.

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.

(c) Effective for retirements on or after July 1, 2013, this Section 19.7 shall apply only to Tier 1 Members and their beneficiaries.

(Election of 11-13-1973; election of 10-6-1987; election of 10-3-1989; election of 9-7-1999; election of 3-12-2013, eff. 6-17-2013)

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 Tier 1 Member to the Retirement Plan shall be 5 percent of his annual compensation as reflected in Section 28.1(b). The contributions of a Tier 2 Member to the Retirement Plan shall be a percentage of his annual compensation determined pursuant to Section 28.1(b). 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; election of 3-12-2013, eff. 6-17-2013)

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 actuarially-required pension reserves for pensions being paid retirants and beneficiaries, and (2) the actuarially-required pension reserves for service rendered and to be rendered by

members. The pension reserves so computed shall include the reserves already held in (and to be deposited in) the employees' savings fund and the pension accumulation fund for purposes of the calculation of the annual contributions determined under this section. The actuarially-required pension reserves shall be financed jointly by the City and members by annual contributions determined by the Retirement Board in accordance with the provisions of paragraphs (1) and (2) below:

(1) The total required annual contribution to the Retirement Plan for members' current and accrued service, as well as for pensions being paid retirants and beneficiaries, shall be calculated as follows:

(i) An amount which if paid annually during the members' future service is expected to be sufficient to provide the actuarially-required pension reserves at the time of their retirements for the portions of the pensions to be paid them based upon their future service; plus

(ii) An amount which if paid annually over a period of years, to be determined by the Retirement Board, will amortize at regular interest the actuarially-required pension reserves (to the extent not funded by current assets), if any, for the accrued service portions of the pension to be paid members upon their retirements and pensions being paid retirants and beneficiaries.

(2) Once calculated, the total required annual contribution to the Retirement Plan described in subparagraph (b)(1) above will be stated in the form of a percentage of members' projected annual compensations for the applicable fiscal year (the "projected percentage"). The total required annual contribution will then be paid to the Retirement Plan by both the City and members as follows:

(i) Each Tier 1 Member will pay to the Retirement Plan 5 percent of his annual compensation.

(ii) Each Tier 2 Member will pay to the retirement plan a percentage of his annual compensation equal to one-half of the projected percentage.

(iii) The City will pay to the Retirement Plan (A) one-half of the projected percentage of the aggregate compensation of all Tier 2 Members, plus (B) the projected percentage less 5 percent (but not less than zero) of the aggregate compensation of all Tier 1 Members.

(iv) If the projected percentage is less than 5 percent, each Tier 1 Member will still pay to the Retirement Plan 5 percent of his annual compensation as specified in subparagraph (b)(2)(i) above, however, the projected percentage shall be adjusted (but shall not be less than zero) so that 5 percent of the projected aggregate compensation of all Tier 1 Members plus the projected percentage times the projected aggregate compensation of all Tier 2 Members equals the total required annual contribution.

(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 and members shall pay, within the next fiscal year, the contributions so certified. When paid the contributions from the City shall be credited to the pension accumulation fund. When paid the contributions from members shall be credited to the individual account in the employees' savings fund of the member from whose compensation said deductions were made in accordance with Section 27.

(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.

(f) In any fiscal year the City may elect to contribute amounts to the Retirement Plan in excess of the contributions to the pension accumulation fund required pursuant to Section 28.1(b). If the City exercises its right to make additional contributions to the pension accumulation fund pursuant to this subparagraph (f), then the amounts of such additional contributions will not offset or be used to reduce the amount of required contributions from members during the fiscal year in which they are made.

(Election of 3-12-2013, eff. 6-17-2013)

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 retiree 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. General duties and powers. 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.

34.2. Prudent investor rule. The Retirement Board has a duty to invest and manage the assets of the Retirement Plan solely in the interests of the members and beneficiaries of the Retirement Plan, in the manner set forth in this Section 34.2.

(a) The Retirement Board shall invest and manage trust assets as a prudent investor would, by considering the purposes, terms, distribution requirements, and other circumstances of the Retirement Plan. In satisfying this standard, the Retirement Board shall exercise reasonable care, skill, and caution.

(b) The Retirement Board's investment and management decisions respecting individual assets should not be evaluated in isolation, but rather must be evaluated in the context of the Retirement Plan asset portfolio as a whole and as a part of an overall investment strategy having risk and return objectives reasonably suited to the Retirement Plan. The prudent investor rule is a measure of the anticipated effect of the Retirement Board's investment decisions on the investment portfolio as a whole, given the facts and circumstances prevailing at the time of the investment decision or action. The prudent investor rule shall be interpreted and applied as a test of investment related conduct and not of resulting investment performance.

(c) Among circumstances that the Retirement Board shall consider in investing and managing trust assets are such of the following as are relevant to the Retirement Plan or its members and beneficiaries:

- (1) General economic conditions;
- (2) The possible effect of inflation or deflation;
- (3) The expected tax consequences of investment decisions or strategies;
- (4) The role that each investment or course of action plays within the overall Retirement Plan portfolio;
- (5) The expected total return from income and the appreciation of capital;
- (6) The Retirement Plan's need for liquidity, regularity of income, and preservation or appreciation of capital; and
- (7) The fiduciary duty to incur only reasonable and appropriate costs in relation to the assets and the purpose of the Retirement Plan.

(d) The Retirement Board shall make a reasonable effort to verify facts relevant to the investment and management of Retirement Plan assets.

(e) The Retirement Board may invest in any kind of property or type of investment consistent with the standards of this Section 34.2. If the Retirement Board wishes to invest in an investment category not previously utilized by the Retirement Board for the investment of Retirement Plan assets, it may do so provided that such investment is consistent with the standards of this Section 34.2 and two-thirds of the Retirement Board authorizes the utilization of the new investment category.

- 34.3. Diversification. The Retirement Board shall diversify the investments of the Retirement Plan unless, after taking into account all relevant circumstances, the Retirement Board reasonably determines that the interests of the members and beneficiaries, as well as the goals and purposes of the Retirement Plan, are better served without diversifying.
- 34.4. Application to Retirement Plan. Sections 34.2 through 34.4 govern only Retirement Plan investment decisions or actions occurring after July 1, 2013. The Retirement Board has a duty, within a reasonable and appropriate time after July 1, 2013, to review the Retirement Plan investments and to conform the existing Retirement Plan investments to the prudent investor rule. The Retirement Board's decision to retain or dispose of an investment may be influenced properly by the investment's special relationship or value to the Retirement Plan.
- 34.5 Delegations. The Retirement 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; election of 3-12-2013, eff. 6-17-2013)

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)

43. Tax qualified governmental pension plan.

43.1. The Retirement Plan is a public pension plan, intended to constitute a tax-qualified governmental retirement plan under Sections 401(A) and 414(D) of the Internal Revenue Code of 1954, as amended (the "Code"). The assets of the Retirement Plan are held in a separate trust, exempt from taxation under Section 501(A) of the Code, for exclusive benefit of the members and beneficiaries of the Retirement Plan. The Retirement Plan Trust also is intended to constitute an independent public trust pursuant to Article XXIX of the Constitution of the State of Arizona. The City of Phoenix Employees' Retirement Law of 1953 shall be construed in a manner consistent with the tax-qualified governmental status of the Retirement Plan whenever possible.

43.2. In accordance with the obligations and requirements imposed on tax-qualified governmental pension plans under the Code, the Retirement Plan is, and shall continue to be, administered and operated in accordance with the compensation limitations set forth in Section 401(A) (17) of the Code, the contribution and benefit limitations set forth in Section 401(A) (16) and Section 415 of the Code, and the eligible rollover distribution requirements of Section 401(A) (31) of the Code. The Retirement Plan is, and shall continue to be, operated and maintained in reasonable and good faith compliance with the required minimum distribution requirements set forth in Section 401(A)(9) of the Code. To the extent required, the provisions of Code Sections 401(A)(9), 401(A) (16), 401 (A) (17) and 401(A) (31) (and the applicable treasury regulations promulgated thereunder) are incorporated herein by this reference and the Retirement Board is authorized to adopt all policies necessary for proper implementation of the code requirements.

43.3. Section 10.1 of the Retirement Plan authorizes the Retirement Board to adopt actuarial assumptions appropriate and necessary for the administration of the Retirement Plan. For purposes of compliance with Section 401(A)

(25) of the Code, the actuarial assumptions adopted by the Retirement Board shall be set forth in an “Addendum to Section 10.1 of the City of Phoenix Employees’ Retirement Law of 1953” which shall be updated by the Board from time to time as necessary and maintained in the offices of the Executive Secretary to the Retirement Board.

- 43.4. Section 27 of the Retirement Plan requires mandatory contributions to the Retirement Plan from each member. The mandatory member contributions are deducted from the eligible compensation of each member on a pre-tax basis and deposited into the Retirement Plan Trust through an employer pick-up arrangement structured and operated in accordance with Section 414(H) of the Code and the terms of the private letter ruling issued to the Retirement Plan by the Internal Revenue Service on April 18, 1986.

(Election of 3-12-2013, eff. 6-17-2013)

THE CODE
of the
CITY OF PHOENIX
ARIZONA
1951

**HISTORY OF THE CITY
THE CHARTER
CIVIL SERVICE
ADMINISTRATIVE CODE
GENERAL ORDINANCES**

CODE ENACTED AS A WHOLE: 1951
EFFECTIVE DATE OF CODE: 1951

PUBLISHED BY ORDER OF THE CITY COUNCIL

MICHIE CITY PUBLICATIONS COMPANY
CHARLOTTESVILLE, VIRGINIA
1951

FROM THE PRESS OF
MCGREW COMMERCIAL PRINTERY, INC.
PHOENIX, ARIZONA



Prior service, means service rendered by an employee prior to January 1, 1946, for which credit is allowable under section 17, and includes service performed in any function or enterprise the city may engage in as a municipal corporation or may have acquired through purchase or eminent domain;

Board of retirement or board, means the governing body of the Phoenix City Employees' retirement system;

Medical board, means the board of physicians provided for in section 11;

The service, means the classified civil service of the City of Phoenix;

Membership service, means service rendered subsequent to December 31, 1945, or since last becoming a member;

Beneficiary, means any person in receipt of a pension, annuity, retirement allowance, or other benefit provided in this charter amendment;

Regular interest, means such rate of interest compounded annually, as may be fixed by the board on the basis of the earnings of the retirement system for the preceding year and of the probable earnings in the immediate future, but in no case shall the rate be more than three and one-half per cent;

Accumulated contributions, means the sum of all amounts deducted from the compensation of a member and credited to his individual account in the annuity savings fund, together with regular interest thereon;

Average final compensation, means the average annual earnable compensation of an employee during his last five years of service, and shall include the average compensation that an employee would have earned had he been regularly employed during any period for which a leave of absence to ill health was granted;

Final compensation, means the annual compensation of an employee at the time of termination of employment;

Annuity, means annual payments for life, payable in equal monthly installments derived from accumulated contributions;

Pension, means annual payments for life, payable in equal monthly installments, derived from contribution by the city;

Retirement allowance, means the sum of the annuity and the pension, or any optional benefit in lieu thereof;

Retirement, means the withdrawal from active service with a retirement allowance;

The Concise
Oxford Dictionary
of Current English

Adapted by
H. W. FOWLER AND F. G. FOWLER

Authors of 'The King's English'

from
The Oxford Dictionary

SEVENTH IMPRESSION

OXFORD
UNIVERSITY PRESS

Oxford
At the Clarendon Press

1919

of churches as *St Peter's*, & of towns called after their churches often with loss of possessive sign as *St Andrews* & *St Albans*, & many Christian & family names taken either from patron s. or from local names as above; also in some names of churches not called after ss., as *St Saviour's*, *Sepulchre's*, *Faith*, *Cross*; *St—'s day*, Church festival in memory of particular s.; *St VALENTINE's day*; *St Monday*, Monday as made by many workmen into a holiday or s.'s-day; *St Lubbock's day*, any of the BANK³ holidays instituted 1871 by Sir J. Lubbock's Act; *St Anthony's*, *Elmo's*, FIRE¹; *St Vitus's DANCE*²; *St Bernard dog* or *St Bernard*, breed kept by monks of Hospice on Great St Bernard pass for rescue of travellers; *St Leger*, horse-race at Doncaster for three-year-olds, f. founder's name; *St Michael*, kind of orange, f. one of the Azores so called). (N.) one of the blessed dead or other member of the company of heaven (*departed s.*, phr. used by or attributed to mourners, = deceased person); canonized person (see adj. sense; *patron s.*, selected as heavenly protector of person or place, esp. church, often named after him); (bibl., archaic, & with some mod. sects) one of God's chosen people, member of the Christian Church or speaker's branch of it; person of great real or affected holiness (*would provoke, try the patience of, a s.*; *young ss. old devils or sinners*, early piety is no good sign; *LATTER-day ss.*); *s.'s-day*, Church festival in memory of a s., often observed as holiday at schools &c.; hence *saint'dom*, *saint'hood*, *saint'ship*, *saint'ling*¹, nn., *saint'like*, *saint'ly*¹, aa., *saint'liness* n. (Vb) canonize, admit to the calendar of ss.; call or regard as a s.; (p.p.) worthy to be so regarded, of saintly life, (of place &c.) sacred. [vb f. n. f. adj., OF, f. L *sanctus* p.p. of *sancire* consecrate]

Saint-Simō'nian, a. & n. (Advocate) of the socialism of the Comte de Saint-Simon (1760-1825) with State control of property & distribution of produce. So **Saint-Simō'nist**(2), **Saint-Simō'nite**¹(1), **Saint-Simō'nism**(3), **Saint-Simō'nianism**(3), nn. [-IAN]

saith. See **SAY**².

Sā'itic, a. Of Sais, ancient capital of Lower Egypt (S. *dynasties*, 26th-30th of Egyptian kings). [f. L f. Gk *Saitikos* (*Saitēs* f. *Sais*, -ITE¹)]

sake, n. For the s. of—, for —'s or my &c. s., out of consideration for, in the interest of, because of, owing to, in order to please or honour or get or keep, (common n. with sibilant ending does not take the extra syllable of the possessive before s., but has usu. the apostrophe, as *for peace'*, *conscience'*, *goodness'*, s., cf. *for God's*, *the children's*, *Phyllis's*, s.; *for my own s. as well as yours*; *for both, all, our ss.* or rarely s.; *for his name's s.*, because he bears the name he does or in the interest of his reputation; *persecuted for opinion's s.*; *for any s.* in entreaties, for one reason if not for another; *for old s.'s s.*, in memory of old days. [OE *sacu* contention, charge, fault, sake, cf. Du *zaak* lawsuit, cause, thing, G *sache* affair, also OE *sacan* to quarrel; cogn. w. **SEEK**]

sā'ké (-ā), n. Japanese fermented liquor made from rice. [f. Jap. *sake*]

sā'ker, n. Large lanner falcon used in hawking, esp. the female larger than the male or **sā'keret**¹ n.; (Hist.) old form of cannon. [f. F *sacre* (in both senses) f. Sp., Port., *sacro* prob. f. Arab. *caqr*]

sal (sahl), **saul**, n. Valuable Indian timber (tree). [Hind.]

salaa'm (-lahm), n., & v.i. & t. Oriental salutation 'Peace'; Indian obeisance with this,

low bow of head & body with right palm on forehead; (vb) make s. (to). [f. Arab. *salam*]

sā'lable, a. Fit for sale, finding purchasers; s. *price*, that article will fetch. Hence **sala-bi'lity** n. [-ABLE]

salā'cious (-shus), a. Lustful, lecherous. Hence or cogn. **salā'ciously**² adv., **salā'ciousness**, **salā'city**, nn. [f. L *salax* (*salire* leap), -ACIOUS]

sā'lad (-ad), n. Cold dish of uncooked usu. sliced vegetables such as lettuce or endive seasoned with oil, vinegar, &c., & eaten with or including cold fish, meat, hard-boiled eggs, &c.; vegetable or herb suitable for eating raw; *s.-days*, inexperienced youth; *s.-dressing*, mixture of oil, vinegar, cream, &c., taken with s.; *s.-oil*, superior quality of olive-oil. [f. OF *salade* ult. f. L *sal* salt, -ADE(1)]

sā'lamānder, n. Lizard-like animal supposed to live in fire; person who can endure great heat, fire-eating soldier &c.; spirit living in fire (cf. *sylph*, *gnome*, *nymph*); (Zool.) kinds of tailed amphibian, whence **salama'ndroid** a. & n.; red-hot iron for firing gun-powder, hot iron plate for browning omelettes &c. Hence **salama'ndrian**, **salama'ndrine**¹, aa. [F (-dre), f. L f. Gk *salamandra*]

sāl-ammō'niac, n. Ammonium chloride. [L *sal* salt, AMMONIAC]

sā'langane (-ngg-), n. Swallow making edible nest. [F, f. *salamga* name in Luzon]

sā'lary, n., & v.t. Fixed periodical payment made to person doing other than manual or mechanical work (cf. *wages*); (vb; chiefly in p.p.) pay s. to. [AF (-ie), = OF *salaire* f. L *salarium* orig. soldier's salt-money (*sal* salt, -ARY¹)]

sale, n. Exchange of a commodity for money or other valuable consideration, selling (*on, for, s.*, offered for purchase; *s. &*, or *or*, *return*, arrangement by which retailer takes quantity of goods with right of returning all that he fails to sell), amount sold (*the ss. were enormous*); public auction (*put up for s.*, offer at auction); rapid disposal at reduced prices of shop's stock at end of season; **BILL**⁴ of s.; *s. ring*, ring of buyers at auction; *salesman*, -*woman*, person engaged in selling goods in sl op or as middleman between producer & retailer. [OE *sala* prob. f. ON *sala* cogn. w. **SALL**]

Sā'lem, n. Nonconformist chapel. [Heb. vii.2]

sā'lep, n. Nutritive meal from dried tubers of some orchidaceous plants. [F f. Turk., f. Arab. *tha'leb*]

sāleratus, n. (U.S.). Impure bicarbonate of potash or sodium bicarbonate as ingredient in baking-powders. [f. mod. L *sal aeratus* AERATED salt]

Sā'lian¹, a. Of the Sali or priests of Mars. [L *Salii* pl. (*salire* leap), -AN]

Sā'lian², a. & n. (Member) of Frankish tribe near Zuyder Zee from which the Merovingians were descended. [LL *Salii* the tribe, *AN]

Sā'lic, **Sā'lic** (-ēk), aa. (Form -*ic*) = prec. adj. (S. *law*, Frankish law-book extant in Merovingian & Carolingian times); (-*ic*, -*ique*) S. *law*, law excluding females from dynastic succession, esp. as alleged fundamental law of French monarchy (based on a quotation, not referring to such succession, from the law-book above). [F (-*que*) f. *Salii* (prec.), -IC]

sā'licin, n. Bitter crystalline principle got from willow-bark & used medicinally. So **sā'licyl** n., **salicylic** a. (-*ic acid*, used as antiseptic & for rheumatism), **salicylate**³(3) n., **salicylize**(5) & in same sense **salicylate**³ v.v.t., **salicylism**(5) n., **salicylois** (chem.) a. [F (-*ine*), f. L *salix -icis* willow, -IN]

salicional (-shon-), **sā'licet**, nn. Organ

ing or practical jokes. Hence **wa'ggery**(4) n., **wa'ggish**¹ a., **wa'ggishly**² adv., **wa'ggishness** n. [prob. for obs. *wag-halter* gallows-bird (prec. vb)]

wage¹, n. Amount paid periodically, esp. by the day or week or month, for time during which workman or servant is at employer's disposal (usu. pl. exc. in certain phrr.; *gets good ww.*; *brings his ww. home*; *at a w. or ww. of £1 a week*; *living w.*, *ww.* that allow earner to live, without fear of starvation; *a fair day's work for a fair day's w.*); requital (usu. pl.; *the ww. of sin is death*); *wage(s)-fund* in Pol. Econ., part of community's capital devoted to paying *ww.* & salaries. [OF, = *guage* GAGE¹]

wage², v.t. Carry on (war, conflict). [earlier sense *declare (war)* f. OF *wager* (prec.)]

wā'ger, n., & v.t. = BET n. & v.t. (but not now in familiar use); (Hist.) *w. of battle*, ancient form of trial by personal combat between parties or champions, *w. of law*, COMPURGATION. [f. OF *wageure* f. LL *wadiatura* (*wadiare* pledge, as prec., -URE)]

wā'ggle, v.i. & t., & n. = WAG¹ (but in more familiar usc). [-LE(3)]

wā'g(g)on, n. Four-wheeled vehicle for drawing heavy loads, often with removable semicylindrical tilt or cover, usu. drawn by two or more horses (*hitch one's w. to a star*, utilize powers higher than one's own); open railway truck; *w.-boiler*, *-ceiling*, *-roof*, *-vault*, shaped like *w.-tilt*. [f. Du. *wagen*, cf. OE *wagn* WAIN]

wa'g(g)oner, n. Driver of wagon; (*the W.*) constellation Auriga. [-ER¹]

wag(g)onette, n. Four-wheeled open pleasure vehicle (or with removable cover) for one or more horses & with facing side seats. [-ETTE]

wagon-lit(F), n. Sleeping-car on continental railway.

Waha'bi, -ee, (-hah-), n. One of a set of Mohammedan puritans following the letter of the Koran. [Abd-el-*Wahhab*, founder c. 1700]

waif, n. Ownerless object or animal, thing cast up by or drifting in sea or brought by unknown agency; homeless & helpless person, esp. unowned or abandoned child; *ww. & strays*, odds & ends, unowned or neglected children. [OF, f. ON (Icel. *veif* thing flapping about); n. corresp. to WAIVE]

wail, v.i. & t., & n. (Lament, i. & t., with prolonged plaintive inarticulate usu. high-pitched cry; (fig.) lament(ation) in words (often over); (of wind &c.) sound (v. & n.) like person wailing. Hence **wai'lful** a. (poet.), **wai'l-ingly**² adv. [f. ON *væla* (*væ* int., see WOE)]

wain, n. Wagon (chiefly poet. or agricultural); *Charles's*, *Arthur's*, or *the W.*, CHARLES'S WAIN. [f. OE *wægn*, cf. Du. & G *wagen*; cogn. w. L *vehere* carry, Skr. *vahana*- vehicle, Gk *okhos* car, & WEIGH]

wai'nscot, n., & v.t. Wooden panelling or boarding on room-wall; (vb) line with *w.*, whence **wai'nscoating**¹(3) n. [earlier sense *kind of oakwood*, f. Du. *wagenscot* perh. f. MDu. *waeghe* wave + Du. *schot* boarding cf. CAMPSHOT; w. ref. to wavy grain of wood]

waist, n. Part of human body below ribs & above hips (*large*, *small*, *w.*, of such circumference; *long*, *short*, *w.*, of such vertical extent); contraction marking this in normal figure (*has no w.*, of stout person), analogous contraction in middle of long object, e.g. fiddle or hour-glass; part of ship between fore-castle & quarter-deck; part of garment encircling *w.*, band round *w.* from which petticoats &c. may be suspended; *w.-band*, *-belt*, worn round *w.*; *w.-cloth*, = LOINCLOTH; *wai'stcoat* (also *pr. wē'skut*), garment reaching down to *w.* with front showing when

coat is open & usu. without sleeves (*sleeved w.*, with sleeves for extra warmth or for use without coat by workmen); *w.-deep* or *-high* aa. & adv., up to *w.* Hence **-waisted**² a. [ME *wast* (WAX²), cf. OHG *wahst* growth]

wait¹, v.i. & t. Abstain from action or departure till some expected event occurs, pause, tarry, stay, kick one's heels, be expectant or on the watch, (often *for*, *till*; *w. a minute*; *shall not w. here any longer*; *kept me waiting or made me w.*; *have a month to w. yet*; *w. till I come*, for high water or a fine day; *everything comes to those who w.*; *always has to be waited for*, is unpunctual); await, bide, (is waiting his opportunity; *you must w. my convenience*; *am only waiting the signal*); act as waiter, as servant shifting plates &c. at table, (*are you accustomed to waiting?*; often *at table*), or as attendant (LORD¹, GROOM, *in waiting*); defer (meal) till some one arrives (*don't w. dinner for me*); *w. (up)on*, watch (archaic), await convenience of, serve as attendant esp. at table, pay visit to (person regarded as superior), escort (archaic), (in race) purposely keep close behind (competitor), follow as result; *waiting-room*, provided for persons to *w.* in esp. at railway-station or house of consultant. [f. OF *waiter* (now *guetter*) f. *waite* sentinel f. OHG *wahta* whence G *wacht* cogn. w. WAKE¹]

wait², n. 1. (Pl.) band(s) of persons singing cards &c. from house to house at Christmas. 2. Act or time of waiting (*had a long w. for the train*); watching for enemy, ambush, (*lie in or lay w.* usu. *for*). [sense 1 f. OF *waite* sec prec.; sense 2 f. prec.]

waiter, n. In vbl senses; also or esp.: man who takes & executes orders, shifts plates, &c., at hotel or restaurant tables, whence **waitress**¹ n.; tray, salver; DUMB¹-w.; TIDE-w. [-ER¹]

waive, v.t. Forbear to insist on or use, tacitly or implicitly relinquish or forgo, (right, claim, opportunity, legitimate plea, &c.). Hence **waiver**⁴ n. (legal). [f. OF *gairer* prob. f. ON (Icel. *veifa* vibrate)]

wake¹, v.i. & t. (past *woke*, *waked*; p.p. *waked*, *woken*, *woke*). Cease to sleep, rouse from sleep, (often *up*; also fig. as *spring wakes all nature*, *nature wakes*); be awake (archaic exc. in part. or gerund, as *in his waking hours*, *waking or sleeping*); cease or rouse from sloth, torpidity, inactivity, or inattention (usu. *up*; *w. up, there!*; *wants something to w. him up*; *the insult waked his dull spirit*), rise or raise from the dead; (chiefly Ir.) hold *w. over*; disturb (silence, place) with noise, make re-echo; *w.-robin*, wild arum or lords-&-ladies. [mixture of OE *wacan* *wóc* arise, be born, & *wacian* wake, watch, cf. Du. *waken*, G *wachen*; cogn. w. VIGIL, VEGETABLE]

wake², n. (Hist.) anniversary of dedication of church kept by watching all night, merry-making or fair in connexion with this; (Ir.) watch by corpse before burial, lamentations & merry-making in connexion with it. [f. prec.]

wake³, n. Strip of smooth water left behind moving ship (*in the w. of*, behind, following, after the example of). [f. Icel. *vök* opening in ice, cogn. w. Gk *hugros*, L *humidus*, wet]

wa'keful, a. Unable to sleep, (of person's night &c.) passed with little or no sleep; vigilant. Hence **wa'kefully**² adv., **wa'kefulness** n. [WAKE¹, -FUL]

wā'ken, v.t. & i. Cause to be, become, awake (usu. = *wake up*, but conveying less of abruptness). [OE *wæcnan* (*wacan* WAKE¹)]

Waldenses (wō-), n. pl. Puritan sect in valleys of Piedmont, Dauphiné, & Provence, started c. 1170 & much persecuted in 16th &

WEBSTER'S
NEW INTERNATIONAL
DICTIONARY
OF THE
ENGLISH LANGUAGE

Second Edition
UNABRIDGED

UTILIZING ALL THE EXPERIENCE AND RESOURCES OF MORE THAN
ONE HUNDRED YEARS OF GENUINE WEBSTER DICTIONARIES

A Merriam-Webster

WILLIAM ALLAN NELSON, Ph.D., LL.D., L.H.D., Litt.D.
Editor in Chief

THOMAS A. KNOTT, Ph.D.
General Editor

PAUL W. CARIART
Managing Editor



G. & C. MERRIAM COMPANY, PUBLISHERS
SPRINGFIELD, MASS., U.S.A.

1946

distinction to the proletariat.

sal'a-ried (säl'ä-rîd), *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 AM-MONIAIC.

sal'a-ry (säl'ä-rî), *n.*; *pl.* -RIES (-rîz). [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-rî), *v. t.*; -RIED (-rîd); -RY-ING (-rî-îng). [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-rî). Dial. var. of CELERY.

sa-lat' (sä-lät'), *n.*; *pl.* SALAWAT (sä-lä'wät). [Ar. *ṣalāḥ*.] 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'thî-ël). 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'tî-kūs, -küm). [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'tî-kūs). [NL.] Epsom salt.

|| **sal cu'li-na'ri-us** (kü'lî-nä'rî-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

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 wages, 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; -Iz; 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'; -Iz; 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 (wāg'ĕl), *n., or waggel gull*. A black-backed gull in immature plumage. *Local, Eng.*

wag'ger (wāg'ēr), *n.* One who or that which wags.

wag'ger-y (wāg'ēr-ī), *n., pl.* WAGGERIES (-Iz). [From WAG.] 1. The manner or action of a wag; mischievous merriment; pleasantry; jocularly; waggishness.

2. A bit of foolery; a jest, esp. a practical joke.

wag'gle, **wag'gy** (wāg'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 roguish.

New Oxford American Dictionary

THIRD EDITION

Edited by

Angus Stevenson

Christine A. Lindberg

FIRST EDITION

Elizabeth J. Jewell

Frank Abate

OXFORD
UNIVERSITY PRESS

CAPP137

sake /sə'keɪ/ **n.** 1 I felt I couldn't give up, for my own sake or for my family's. I have to make an effort for John's sake. 2 (for God's or goodness, etc., sake) used to express impatience, annoyance, urgency, or indignation: "Oh, for God's sake!" "snarled Dyson) 3 "Did you get it, for heaven's sake?" 4 (used for old times' sake in memory of former times in acknowledgment of a shared past: they sat at back seats for old times' sake. 5 (used in Old English *sacu* 'contention, crime,' of Old Norse origin, related to Dutch *zaak* and German *sache* from a base meaning 'affair, legal action, the phrase for the sake of may be from Old Norse. 6 (also *saki* or *saké*) **n.** a Japanese alcoholic drink made from fermented rice, usually drunk warm in small porcelain cups. 7 Japanese. 8 **n.** 1 a large Eurasian falcon with black and whitish head, used in falconry. 2 (formerly *therug*, family *Falconidae*. 3 (early form of cannon. 4 (late Middle English: from Old French *sacre*, from Arabic *sakr* 'falcon'. 5 (Republic of /sə'keɪ/ official name for Japan. 6 (in /sə'keɪ, lən, sə'kə'leɪən/ a large Russian island in the Sea of Okhotsk, situated off the coast of Russia and separated from it by the Strait of Kamoharui, Yuzhno-Sakhalinsk. From 1905 it was divided into the northern part, held by Japan, and the southern part, occupied by Japan. 7 (Andrei /sə'keɪ, rɒf, 'sə:k-, -rɒv/, Andrei (1921-89), Russian nuclear physicist and rights campaigner. Although he helped to develop the Soviet hydrogen bomb, he campaigned against nuclear proliferation. He fought for reform of human rights in the former Soviet Union, for which he was sentenced to internal exile 1980-86. 8 (Nobel Prize (1975). 9 (1870-1916), British short-story writer, pseudonym of Hector Hugh Munro. His work encompasses the satiric, comic, macabre, and natural, and frequently depicts animals as seeking revenge on humankind. 10 (sake /sə'keɪ/ **n.** (pl. *sakis*) a tropical monkey with coarse fur and a long prehensile tail. 11 (Genus *Pithecia* and family *Cebidae*: several species. 12 (18th cent.: via French from Tupi *saiti*. 13 (variant spelling of *SAKE*). 14 (a northern Indian tree that yields timber and dammar resin. It is the most commercially important source of timber in India. 15 (family *Dipterocarpaceae*. 16 (18th cent.: from Hindi *sāl*. 17 (in /sə'keɪ/ exclamation, a common greeting in Arabic-speaking and Muslim countries. 18 (a form of greeting or respect, with or without salutation, typically consisting of a low bow of the head and body with the hand or fingers to the forehead. Compare with *SHALOM*. 19 (respectful compliments. 20 (to make a salaam. 21 (17th cent.: from Arabic (*al-*)*salām* 'peace (be upon you)'. 22 (also *saleable*) **adj.** fit or able to be sold. 23 (sal-a-bil-ity /sə'lə'bɪlɪti/ **n.** 24 (sal-asitas) **adj.** (Of writing, pictures, or other sexual matters in an indecent way and arousing undue interest in or enjoyment of. 25 (salacious stories. 26 (lustful; lecherous: he salaciously faltered. 27 (sal-la-cious-ly adv., sal-la-cious-ness /sə'lə'si:əs/ **n.** (category) 28 (absent) from Latin *salax*, *salac-* (leap) + *-ious*. 29 (a cold dish of various mixtures of vegetables, usually seasoned with oil or other dressing and sometimes with meat, fish, or other ingredients: a bowl of salad. 30 (with modifier) a mixture specified in a recipe served with a dressing, filled with tuna salad /fruit and vegetable salad suitable for eating raw. 31 (Middle English: from Old French *salade* 'conventional *salada*, based on Latin *sal* 'salt'. 32 (in /sə'lə'leɪ/ **n.** (One's salad days) the period of youth and inexperience. 33 (the peak or height of something. 34 (in Shakespeare's *Antony and Cleopatra* 35 (to sing) **n.** see *DRESSING* (sense 1). 36 (to sing) **n.** another term for *SALLET*.

Sal-a-din /sə'lædɪn, 'sələ'dɪn/ (1137-93), sultan of Egypt and Syria 1174-93; Arabic name *Salah-ad-Din Yusuf ibn Ayyub*. He reconquered Jerusalem from the Christians in 1187, but he was defeated by Richard the Lionheart at Arsuf in 1191.

sa-lal /sə'ləl/ **n.** a North American plant of the heath family, with clusters of pink or white flowers and edible purple-black berries. 1 *Gaultheria shallon*, family *Ericaceae*. 2 **ORIGIN** early 19th cent.: from Chinook/Jargon *sallal*.

Sal-am /sə'læm/, Abdus (1926-1996), Pakistani theoretical physicist. He independently developed a unified theory to explain electromagnetic interactions and the weak nuclear force. Nobel Prize for Physics (1979), shared with Sheldon Glashow and Steven Weinberg.

Sal-a-man-ca /sə'lə'mæŋkə, sə'lə'mæŋkə/ a city in western Spain; pop. 155,740 (2008).

sal-a-man-der /sə'lə'mændər/ **n.** 1 a newtlike amphibian that typically has bright markings, and that once was thought to be able to endure fire. 2 Order *Urodela*: four families, in particular *Salamandridae*, and numerous species, including the fire salamander. 3 a mythical lizardlike creature said to live in fire or to be able to withstand its effects. 4 an elemental spirit living in fire. 5 a metal plate heated and placed over food to brown it. 6 a space-heater, usually fueled by propane. 7 archaic a red-hot iron or poker.

DERIVATIVES *sal-a-man-drine* /sə'lə'mændrɪn/ **adj.** **ORIGIN** Middle English (sense 2): from Old French *salamandre*, via Latin from Greek *salamandra*. Sense 1 dates from the early 17th cent.

sa-la-mi /sə'læməɪ/ **n.** (pl. *same* or *salamis*) 1 a type of highly seasoned sausage, originally from Italy, usually eaten cold in slices. 2 Baseball, informal a grand slam home run. [a play on the word 'slam.'] **ORIGIN** Italian, plural of *salamme*, from a late Latin word meaning 'to salt.'

Sal-a-mis /sə'læməɪ/ an island in the Saronic Gulf in Greece, to the west of Athens.

sal-am-mo-ni-ac /sə'lə'məni'æk/ **n.** old-fashioned term for **AMMONIUM CHLORIDE**. **ORIGIN** Middle English: from Latin *sal ammoniacus* 'salt of Ammon' (see *AMMONIACAL*).

Sal-ang Pass /sə'læŋg/ a high-altitude route across the Hindu Kush in Afghanistan. A road and tunnel were built by the former Soviet Union during the 1960s to improve the supply route to Kabul.

sal-ar-i-ate /sə'lærɪ'eɪt/ **n.** (the *salariat*) salaried white-collar workers. **ORIGIN** early 20th cent.: from French, from *salair* 'salary', on the pattern of *prolétariat* 'proletariat.'

sal-a-ried /sə'lærɪd/ **adj.** receiving or recompensed by a salary rather than a wage: *salaried employees* | *he was in salaried employment*.

sal-a-ry /sə'lærɪ/ **n.** (pl. *salaries*) a fixed regular payment, typically paid on a monthly or biweekly basis but often expressed as an annual sum, made by an employer to an employee, esp. a professional or white-collar worker: *he received a salary of \$29,000* | *his modified a 15 percent salary increase*. Compare with *WAGE*.

v. (*salaries, salaried, salaried*) [with obj.] archaic pay a salary to. **ORIGIN** Middle English: from Anglo-Norman French *salarie*, from Latin *salarium*, originally denoting a Roman soldier's allowance to buy salt, from *sal* 'salt.'

sal-a-ry-mān /sə'lærɪ'mən/ **n.** (pl. *salarymen*) (esp. in Japan) a white-collar worker.

sal-lat /sə'læt/ **n.** the ritual prayer of Muslims, performed five times daily in a set form. **ORIGIN** Arabic, plural of *salāt* 'prayer, worship.'

Sal-a-zar /sə'lə'zɑːr/, Antonio de Oliveira (1889-1970), Portuguese statesman; prime minister 1932-68. He maintained Portugal's neutrality throughout the Spanish Civil War and World War II.

sal-bu-ta-mol /sə'lbyʊdətə'mɒl, -məɪl/ **n.** *Medicine* a synthetic compound related to aspirin, used as a bronchodilator in the treatment of asthma and other conditions involving constriction of the airways. **ORIGIN** 1960s: from *sal* (cyclic acid) + *but* (yl) + *am* (ine) + *-ol*.

sal-cho-w /sə'lʃəʊ/ (also *Satchow*) **n.** figure skating a jump in figure skating with a backward takeoff from the backward inside edge of one skate to the backward outside edge of the other, with one or more full turns in the air. **ORIGIN** early 20th cent.: named after Ulrich Satchow (1877-1949), Swedish skater.

sale /sæl/ **n.** 1 the exchange of a commodity for money; the action of selling something: *we withdrew it from sale* | *the sale has fallen through*. 2 (sales) a quantity or amount sold: *price cuts failed to boost sales*. 3 (sales) the activity or business of selling products: *director of sales and marketing*. 4 an event for the rapid disposal of goods at reduced prices for a period, esp. at the end of a season: *a clearance sale*. 5 [often with modifier] a public or charitable event at which goods are sold. 6 a public auction.

PHRASES (up) for sale offered for purchase; to be bought: *cars for sale at reasonable prices*. on sale offered for purchase: *the November issue is on sale now*. 7 offered for purchase at a reduced price. **ORIGIN** late Old English *salā*, from Old Norse *salā*, of Germanic origin; related to *SELL*.

sale-a-ble **adj.** variants spelling of *SALEABLE*.

Sal-lem /sə'ləm/ 1 an industrial city in Tamil Nadu in southern India; pop. 872,400 (est. 2009). 2 the state capital of Oregon, on the Willamette River, southwest of Portland; pop. 153,435 (est. 2008). 3 a city and port in northeastern Massachusetts, on the Atlantic coast, north of Boston; pop. 41,256 (est. 2008). First settled in 1626, it was the scene in 1692 of a notorious series of witchcraft trials.

sal-ep /sə'lɛp/ **n.** a starchy preparation of the dried tubers of various orchids, used as a thickener in cooking, and formerly in medicines and tonics. **ORIGIN** mid 18th cent.: from French, from Turkish *sālep*, from Arabic (*kuṣa'a-t-*) *ta'lab*, the name of an orchid (literally 'fox's testicles').

sal-e-ra-tus /sə'lærətəs/ **n.** dated sodium bicarbonate (or sometimes potassium bicarbonate) as the main ingredient of baking powder. **ORIGIN** mid 19th cent.: from modern Latin *sal aeratus* 'aerated salt.'

Sal-er-mo /sə'lærnoʊ, -le(ə)r-/ a port on the western coast of Italy, on the Gulf of Salerno, southeast of Naples; pop. 140,489 (2008).

sales-clerk /səlz,klɜːk/ (also *sales clerk*) **n.** an assistant who sells goods in a retail store.

sales-girl /səlz,gɜːl/ **n.** a female salesclerk.

Sal-e-sian /sə'lɛzʃən/ **adj.** of or relating to a Roman Catholic educational religious order founded near Turin in 1859 and named after St. Francis de Sales. **n.** a member of this order.

sales-la-dy /səlz,lædi/ **n.** (pl. *salesladies*) a saleswoman, esp. one working as a salesclerk.

sales-man /səlz,mæn/ **n.** (pl. *salesmen*) a man whose job involves selling or promoting commercial products, either in a store or visiting locations to get orders: *an insurance salesman*. **DERIVATIVES** *sales-man-ship* /-ʃɪp/ **n.**

sales-per-son /səlz,pɜːnsən/ **n.** (pl. *salespersons* or *salespeople*) a salesman or saleswoman (used as a neutral alternative).

sales-room /səlz,rəʊm, -rəʊm/ **n.** a room in which items are sold at auction. 2 a showroom displaying goods offered for sale.

sales tax **n.** a tax on sales or on the receipts from sales.

sales-woman /səlz,wʊdəmən/ **n.** (pl. *saleswomen*) a woman whose job involves selling or promoting commercial products.

Sal-ford /sɒlfɜːd, səl-/ an industrial city in northwestern England, near Manchester; pop. 69,600 (est. 2009).

Sal-li-an /sə'lɪən, -jən/ **adj.** of or relating to the Sali, a 4th-century Frankish people living near the Elbe River, from whom the Merovingians were descended. **n.** a member of this people.

Sal-ic /sæɪk, 'sæl-/ **adj.** another term for *SALIAN*.

sal-i-cin /sə'lɪsɪn/ **n.** *Chemistry* a bitter compound present in willow bark. It is a glucoside related to aspirin, and accounts for the ancient use of willow bark as a pain-relieving drug. **ORIGIN** mid 19th cent.: from French *alicine*, from Latin *salix*, *salic-* 'willow.'

sa-li-cio-nal /sə'lɪʃə'nəl/ **n.** an organ stop with a soft reedy tone. **ORIGIN** mid 19th cent.: from German *Salicional*, from Latin *salix*, *salic-* 'willow' + the obscurely derived suffix *-ional*.

Sal-ic law **historical n.** 1 a law excluding females from dynastic succession, esp. as the alleged fundamental law of the French monarchy.

PRONUNCIATION KEY ə ago, up; ɔː over, fur; a hat; ʌ ate; ʌ car; e let; ɛ see; ɪ fit; ɪ by; ŋGsing; ō go; ɒ law, for; oɪ toy; ɒ good; ɒ good; ou out; ʌ thin; ʌ then; ʌ vision

S

-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.

wag ¹ /wɑg/ ▶ 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 Ellnor*. ■ [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 of 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.'

wag ² ▶ 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 /wɑː/ ▶ 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 **WED**.

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 /'wɑːjər/ ▶ 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-gor-y /'wɑːgərə/ ▶ n. (pl. *waggories*) dated waggish behavior or remarks; jocularly. ■ archaic a waggish action or remark.

wag-gish /'wɑːgɪʃ/ ▶ adj. dated humorous in a playful, mischievous, or facetious manner: *a waggish riposte*.

-DERIVATIVES **wag-gish-ly** adv., **wag-gish-ness** n.

wag-gle /'wɑːglə/ ▶ 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 wagging. -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 /'wɑːglɪ/ ▶ adj. moving with quick short movements from side to side or up and down: *a waggly tail*.

Wag-ner ¹ /'wɑːgnər/, Hontis (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-ner ² /'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)riən/ ▶ 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 /'wɑːgən/ (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 *wagen*; related to **WAFF**.

wag-on-er /'wɑːgənər/ (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 /'wɑːgənət/ (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 /'wɑːgən'liː/ ▶ n. (pl. *wagons-lits* pronunciation same) a sleeping car on a European railroad.

-ORIGIN from French *wagon* 'railroad car' + *lit* 'bed.'

wag-on-load /'wɑːgən'ləʊd/ ▶ 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 /'wɑːgtail/ ▶ 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 /'wɑːgjuː/ ▶ 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' + *gyū* 'cattle, beef.'

Wah-ha-bi /wə'hæbi, wɑː-/ (also **Wahabi**) ▶ n. (pl. *Wahhabis* /-bɛz/) 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'hɪne/ ▶ n. 1 a Polynesian woman or wife, esp. in Hawaii or New Zealand. 2 a young woman surfer.

-ORIGIN Hawaiian or Maori.

wa-hoo ¹ /wə'hʊ, hʊ, wə'hʊ/ ▶ n. (also **wahoo elm**) another term for **WINGED ELM**.

-ORIGIN perhaps from Creek *ahá-hwa* 'walnut.'

wa-hoo ² ▶ n. a North American burning bush. ● *Euonymus atropurpurea*, family Celastraceae. -ORIGIN from Dakota.

wa-hoo ³ ▶ 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-hoo ⁴ ▶ exclam. another term for **YAHOO**. -ORIGIN 1940s: probably a natural exclamation.

wah-wah /'wəwə/ (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 /waɪ'kɑːtəʊ, -kɑːtə/ a river in New Zealand that flows northwest for 270 miles (434 km) from the center of North Island to the Tasman Sea, the country's longest river.

Wai-ki-ki /'waɪ'ki:kɪ/ a beach resort, a suburb of Honolulu, on the island of Oahu in Hawaii.

wail /weɪ/ ▶ 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**.

Wail-ing Wall /'weɪlɪŋ/ another name for **WESTERN WALL**.

Wai-mea Can-yon /waɪ'meə/ a deep canyon in western Kauai Island in Hawaii. Also called **Grand Canyon of the Pacific**.

Wain /weɪn/, 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 /weɪn/ ▶ n. archaic a wagon or cart. ■ (The Wain) short for **CHARLES'S WAIN**.

-ORIGIN Old English *wægen* (see **WAGON**), of Germanic origin; related to Dutch *wagen* and German *Wagen*; also to **WAY** and **WEIGH**.

wain-scot /'weɪn'skɒt, -skot, -skɑɪ/ ▶ n. in SgA 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, wainscotting, wainscoted or wainscots, wainscotted, 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-scotting /'weɪn'skɒtɪŋ, -skɑɪ/ (also **wainscoting**) ▶ n. wooden paneling that lines the lower part of the walls of a room. ■ material for such paneling.

Wain-wright /'weɪn'raɪt/, 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 /'weɪn'raɪt/ ▶ n. historical a wagon builder.

Wai-pa-hu /waɪ'pɑːhʊ/ a city in Hawaii, on southern Oahu Island, west of Pearl City; pop. 33,108 (2000).

WAIS /weɪs/ ▶ abbr. Computing wide area information service, designed to provide access to information across a computer network.

waist /weɪst/ ▶ 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 a wasp, etc. ■ the middle part of a ship, between the fore-castle and the quarterdeck.

-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 /'weɪs(t) bænd/ ▶ 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 /'weɪs(t) kəʊt, -weɪskəʊt/ ▶ 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 at a depth to reach the waist: [as adj.] *the waist-deep water* | [as adv.] *Ellywood stood waist-deep in the water*.

waist-high ▶ adj. & adv. of or at a height to reach the waist: [as adj.] *a ruin surrounded by waist-high grass* | [as adv.] *weeds grew waist-high*.

waist-line /'weɪs(t) lɪn/ ▶ n. an imaginary line around a person's body at the waist, esp. with respect to its size: *eliminating inches from the*

W

The
AMERICAN
HERITAGE®

Dictionary

of the
English
Language

FIFTH
EDITION

Houghton Mifflin Harcourt
BOSTON NEW YORK

CAPP140



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'tas, -tə-siz) *n.* See Sydenham's chorea. [After *Saint Vitus*, third-century AD Christian martyr.]

Sal-pan (sī-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. —**Sal'pa-neso'** (-nēz', -nēs') *adj.* & *n.*

saith (sēth, sē'th) *v.* *Archaic* A third person singular present tense of say.

Sai-va (sī'va, shī'-) *n.* *Hinduism* One who worships Shiva. [Sanskrit *śaiva*, belonging to Shiva < *Śivaś*, Shiva.] —**Sai'va** *adj.* —**Sai'vism** *n.*

Sa-ja-ma (sə-hā'ma) 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-ka-i (sā'ki) 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-wa (sāk'a-ka-wē'wə) **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.

sake (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 *sacc*; see *sāg* - In App. I.]

sa-ke 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 *sag*, probably < Turkic **soygar*, falcon.]

Sa-kha-lin (sāk'a-lēn', -lən, sā-ki-a-lyen') 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-rōf', sāk'a-, sā'kha-rōf), **Andrei Dimitrievich** 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-ki (sā'kē, -kē) *n.* Variant of *sake*².

sa-ki² (sā'kē) *n., pl. -kis* 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 Iaiwan. The islands were heavily bombed by the Allies in April-June 1945.

Sak-ka-ra (sə-kār'a) See Saqqara.

sal (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.* -laamed, -laam-ing, -laams To greet with or perform a salaam. [Arabic *salām*, peace, salaam < *salāma*, to be safe; see *šim* - In App. II.]

sal-a-ble also sale-a-ble (sāl'ə-bəl) *adj.* Offered or suitable for sale; marketable. —**sal'a-ble-ly**, **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 wink*. [*<* Latin *salāx*, *salāx*, fond of leaping, lustful < *salire*, to leap; see *sol* - In App. I.] —**sa-la'cious-ly** *adv.* —**sa-la'cious-ness**, **sa-lac'i-ty** (sə-lās'i-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 **salāta* < 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 *salāta*, 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 *salsitius*, "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.]

Sala-ad-dīn (sāl'a-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 Norte** (sə-lā'do del nōr'tē, sā-) 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'a-fē) *n., pl. Salafī* or *-fīs* An adherent of Salafism; a Salafist. *adj.* Of or relating to Salafism. [Arabic *salafī*, of the forebears of the predecessors < *salaf*, forebears, predecessors; see *šp* - In App. II.]

Sa-la-fism (sāl'a-fiz'm, sə-lā'fiz'm) *n.* A school of Sunni Islam that condemns theological innovation and advocates strict adherence to sharia and to the social structures existing in the earliest days of Islam. [*<* SALAF.] —**Sa-la'fist** *adj.* & *n.*

sa-lal (sə-lāl') *n.* A small evergreen shrub (*Gaultheria 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 *salal* < Chinook *salal*.]

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'a-māng'kə, sā-lā-māng'kə) A city of west-central Spain west-northwest of Madrid. Founded by Celts and subsequently held by Carthaginians, Romans, Visigoths, and Moors, and after the Reconquista became the site of one of Spain's first universities (founded 1218).

sa-la-man-der (sāl'o-mān'dər) *n.* 1. Any of various small, tailed amphibians of the order Caudata, having porous scaleless skin 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 *salmandre* < Old French < Latin *salamandra* < Greek.] —**sal'a-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 **saltamen* < **salāre*, to salt < Latin *sāl*, salt; see *sal* - In App. I.]

Sa-la-mis (sāl'o-mīs, sā'lā-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'o-mīs, sā'lā-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 armoniak* < Latin *sāl ammoniacus*, salt of Amen: *sāl*, salt; see *sal* - In App. I.]

sal-a-ry (sāl'ə-rē, sāl'rē) *n., pl. -rīes* Fixed compensation for services paid to a person on a regular basis. [Middle English *salarie* < Anglo-Norman < Latin *salārium*, 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.*

sal-a-ry-man (sāl'ə-rē-mān', sāl'rē-) *n.* A Japanese corporate businessman. [Anglicization of Japanese *salariman*, salaried man: English SALARY + English MAN.]

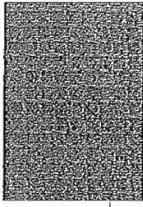
salary reduction plan *n.* See 401(k).

Sa-la-zar (sāl'ə-zār, sā'lə-) **António 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-bu-ta-mol (sāl-byū'tə-mōl', -mōl', -mōl') *n.* See albuterol [salicyl], the radical of salicylic acid (< French *salicylle* see SALICYLIC ACID) + BUT(YL) + AM(INE) + -OL'.



salamander
fire salamander
Salamandra salamandra



waffleweave

waf·fle·weave (wôf'əl-wēv') *n.* A textile weave having a pattern of small raised squares or hexagons, used to produce a soft absorbent fabric.

waft (wāft, wāft) *v.* **wafted**, **waft·ing**, **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 < *wajfer*, convoy ship, alteration of Middle English *waught* < Middle Dutch or Middle Low German *wachten*, a guard < *wachten*, to guard; see *weg-* in App. I.] —**waft'er** *n.*

wag¹ (wāg) *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 (wāg) *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 *WAGZ*.] —**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 (wāj'gər·ē) *n., pl.* -ies 1. Waggish behavior or spirit; drollery. 2. A droll remark or act.

wag·gish (wāj'gish) *adj.* Characteristic of or resembling a wag; jocular or witty. —**wag'gish·ly** *adv.* —**wag'gish·ness** *n.*

wag·gle (wāj'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*.] —**wag'gly** *adj.*

wag·gon (wāj'gən) *n.* & *v.* Chiefly British Variant of *wagon*.

Wag·ner (wāj'nər), Honus 1874–1955. American baseball player who during his 21-year career (1897–1917) was consistently among the National League's best batters.

Wag·ner (wāj'nər), 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).

Wag·ner·i·an (wāj'nər·ē·ən) *adj.* Of, relating to, or characteristic of Richard Wagner, his music dramas, or his theories. ♦ *n.* also **Wag·ner·ite** (wāj'nər·it) An admirer or disciple of Richard Wagner.

wag·on (wāj'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 *waggin* < Middle Dutch *wagen*; see *wegh-* in App. I.]

wag·on·er (wāj'ən·ər) *n.* 1. One who drives a wagon. 2. **Wagoner** Auriga.

wag·on·lit (wāj'gən·lēt) *n., pl.* **wag·ons·lits** or **wag·on·lits** (wāj'gən·lēt) A sleeping car on a European railroad train. [French: *wagon*, railroad car (< English *wagon*) + *lit*, bed (< Old French < Latin *lectus*, see *legh-* in App. I).]

wag·on·load (wāj'ən·lōd) *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·grami (wāj'grām') A town of northeast Austria northeast of Vienna. Napoleon defeated the Austrians here in July 1809.

wag·tail (wāj'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** (wā'hā'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·har·bism** (-bīz'əm) *n.*

wa·hi·ne (wā'hē'nē, -nā') also **va·hi·ne** (vā') *n.* 1. *Hawaii* A Polynesian woman. 2. Slang A woman surfer. [Hawaiian < Proto-Polynesian **wahine*.]

wa·hoo¹ (wā'hōō', wā'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*: *wag*, arrow + *hu*, leg, stock or stem of a plant (< the use of its straight, slender shoots and branches to make arrow shafts).]

wa·hoo² (wā'hōō', wā'hōō) *n., pl.* -hooos See **winged elm**. [Origin unknown.]

wa·hoo³ (wā'hōō', wā'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 (wā'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 (wā'pə-koo'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** (wā'wā') *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·a·le·a·le** (wā-'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 (wā-'ā-nā'ā) 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 *WEIF* in App. I.]

waif² (wāf) *n.* Nautical See **waft** (sense 4). [Probably of Scandinavian origin; see *WEIF* in App. I.]

Wai·ka·to (wā-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 (wā'ki-kē) A famous beach and resort district in Hawaii on the southern shore of Oahu.

wail (wā) *v.* **wailed**, **wail·ing**, **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 *vāla*, *vāla*.] —**wail'er** *n.* —**wail'ingly** *adv.*

wail·ful (wā'fəl) *adj.* 1. Resembling a wail; mournful. 2. Issuing a sound resembling a wail. —**wail'ful·ly** *adv.*

Wail·ing Wall (wā'ling) *n.* See **Western Wall**.

Wai·me·a Bay (wā-mē'ā) 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 *wāen*, *wægn*; see *wegh-* in App. I.]

Wain (wān) *n.* The Big Dipper.

wain·scot (wān'skət, -skōt', -skōt') *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 *wagheuscot*: perhaps *waghen*, *wagen*, wagon (from the quality of wood used for carriage-work); see *WAGON* + *scot*, partition; see *skeud-* in App. I.]

wain·scot·ing or **wain·scot·ting** (wān'skōt·ing, -skōt'ing, -skōt'ing) *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 **wæst*, 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'klōth', -klōth') *n.* A loincloth.

waist·coat (wāst'kōt, wāst'kōt') *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.*

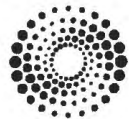


Richard Wagner
1883 portrait by Giuseppe
Tivoli (1845-?)

Black's Law Dictionary®

Tenth Edition

Bryan A. Garner
Editor in Chief



THOMSON REUTERS™

7. Bullets

Bullets are used to separate definitional information (before the bullet) from information that is not purely definitional (after the bullet), such as encyclopedic information or usage notes.

8. Cognate Forms

This dictionary lists corresponding parts of speech. For example, under the definition of *consultation*, the corresponding verb (*consult*) and adjectives (*consulting*, *consultative*) are listed.

If a cognate form applies to only one sense of a headword, that form is denoted as follows:

enjoin, *vb.* 1. To legally prohibit or restrain by injunction <the company was enjoined from selling its stock>. 2. To prescribe, mandate, or strongly encourage <the graduating class was enjoined to uphold the highest professional standards>. — **enjoinment** (for sense 1), *n.* — **enjoinder** (for sense 2), *n.*

9. Cross-references

a. See

The signal *See* is used in three ways.

- (1) To indicate that the definition is at another location in the dictionary:

call loan. See LOAN.

perpetuities, rule against. See RULE AGAINST PERPETUITIES.

- (2) To refer to closely related terms:

nationalization, *n.* 1. The act of bringing an industry under governmental control or ownership. 2. The act of giving a person the status of a citizen. See NATURALIZATION.

cognovit (kog-noh-vit). [Latin “the person has conceded (a debt or an action)”] An acknowledgment of debt or liability in the form of a confessed judgment. See *confession of judgment* under JUDGMENT.

- (3) To refer to a synonymous subentry:

binding instruction. See *mandatory instruction* under JURY INSTRUCTION.

b. Cf.

Cf. is used to refer to related but contrastable terms:

Gallagher agreement. A contract that gives one codefendant the right to settle with the plaintiff for a fixed sum at any time during trial and that guarantees payment of the sum regardless of the trial’s outcome. *City of Tucson v. Gallagher*, 493 P.2d 1197 (Ariz. 1972). Cf. MARY CARTER AGREEMENT.

false imprisonment. A restraint of a person in a bounded area without justification or consent. • False imprisonment is a common-law misdemeanor and a tort. It applies to private as well as governmental detention. Cf. *false arrest* under ARREST.

to help anyone who has serious problems or gets into a difficult predicament. — Also termed *social safety net*. 3. A guarantee designed to protect someone against an adverse contingency.

safety officer. See OFFICER (1).

safe workplace. (1910) A place of employment in which all dangers that should reasonably be removed have been removed; a place of employment that is reasonably safe given the nature of the work performed. See OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION.

sagibaro (sag-ə-bar-oh), *n.* [Old English] (17c) *Hist.* A determiner of disputes; a judge. — Also termed *sachbaro* (sak-bar-oh).

said, adj. (13c) Aforesaid; above-mentioned. • The adjective *said* is obsolescent in legal drafting, its last bastion being patent claims. But even in that context the word is giving way to the ordinary word *the*, which if properly used is equally precise. See AFORESAID.

“The word ‘said’ is used by many practitioners rather than ‘the’ to refer back to previously recited elements, sometimes to a previously cited anything. This practice is unobjectionable, although perhaps overly legalistic. If ‘sais’ or ‘thes’ are used, one should be consistent in the usage and not alternate between those words in repetitions of the same element or among different elements.” Robert C. Faber, *Landis on Mechanics of Patent Claim Drafting* § 23, at 50 (3d ed. 1990).

sailor. See SEAMAN.

sailor's will. See *soldier's will* under WILL.

Saint Lawrence Seaway Development Corporation. A wholly-owned corporation in the U.S. Department of Transportation responsible for developing, operating, and maintaining a part of the St. Lawrence Seaway from Montreal to Lake Erie. • It charges tolls at rates negotiated with the St. Lawrence Seaway Authority of Canada. — Abbr. SLSDC.

sake and soke (sayk / sohk). (16c) *Hist.* A lord's right to hold court and compel attendance. — Also spelled *sak and soc* (sak / sok). See SOC.

salable (say-lə-bəl or sayl-ə-bəl), *adj.* (16c) Fit for sale in the usual course of trade at the usual selling price; MERCHANTABLE. — **salability** (say-lə-bil-ə-tee or sayl-ə-bil-ə-tee), *n.*

salable value. See *fair market value* under VALUE (2).

salarium (sə-lair-ee-əm), *n.* [Latin “salt money”] 1. *Roman law.* An allowance, esp. for living expenses, given to persons in noble professions (such as teachers or doctors) who were not allowed to sue for fees. 2. *Roman law.* Wages for persons engaged in military service on an emergency basis. • The regular soldier's pay is a *stipendium*. 3. *Hist.* The rent or profits of a hall or house.

salary. (13c) An agreed compensation for services — esp. professional or semiprofessional services — usu. paid at regular intervals on a yearly basis, as distinguished from an hourly basis. • Salaried positions are usu. exempt from the requirements of the Fair Labor Standards Act (on overtime and the like) but are subject to state regulation. Cf. WAGE, *n.*

► **accrued salary.** (1893) A salary that has been earned but not yet paid.

sale, n. (bef. 12c) 1. The transfer of property or title for a price. See UCC § 2-106(1). 2. The agreement by which such

a transfer takes place. • The four elements are (1) parties competent to contract, (2) mutual assent, (3) a thing capable of being transferred, and (4) a price in money paid or promised.

“A sale is a transfer of the absolute title to property for a certain agreed price. It is a contract between two parties, one of whom acquires thereby a property in the thing sold, and the other parts with it for a valuable consideration. If the property in any commodity be voluntarily transferred without a valuable consideration, it is a gift; if one article be exchanged for another, it is a barter; but a sale takes place only, when there is a transfer of the title to property, for a price.” William W. Story, *A Treatise on the Law of Sales of Personal Property* § 1, at 1 (1853).

► **absolute sale.** (17c) A sale in which possession and title to the property pass to the buyer immediately upon the completion of the bargain. Cf. *conditional sale*.

► **approval sale.** See *sale on approval*.

► **auction sale.** See AUCTION.

► **average gross sales.** (1927) The amount of total sales divided by the number of sales transactions in a specific period.

► **bargain sale.** See BARGAIN SALE.

► **bona fide sale.** (18c) A sale made by a seller in good faith, for valuable consideration, and without notice of a defect in title or any other reason not to hold the sale.

► **bootstrap sale.** (1960) 1. A sale in which the purchase price is financed by earnings and profits of the thing sold; esp., a leveraged buyout. See BUYOUT. 2. A seller's tax-saving conversion of a business's ordinary income into a capital gain from the sale of corporate stock.

► **bulk sale.** See BULK SALE.

► **cash-against-documents sale.** See *documentary sale*.

► **cash sale.** (1823) 1. A sale in which cash payment is concurrent with the receipt of the property sold. 2. A securities transaction on the stock-exchange floor requiring cash payment and same-day delivery.

► **compulsory sale.** (18c) The forced sale of real property in accordance with either an eminent-domain order or an order for a judicial sale arising from nonpayment of taxes.

► **conditional sale.** (18c) 1. A sale in which the buyer gains immediate possession but the seller retains title until the buyer performs a condition, esp. payment of the full purchase price. See *retail installment contract* under CONTRACT. 2. A sale accompanied by an agreement to resell on specified terms. Cf. *absolute sale*.

► **consignment sale.** (1930) A sale of an owner's property (such as clothing or furniture) by a third party entrusted to make the sale. UCC § 9-102(a)(20). See CONSIGNMENT.

► **consumer-credit sale.** (1966) A sale in which the seller extends credit to the consumer. • A consumer-credit sale includes a lease in which the lessee's rental payments equal or exceed the retail value of the item rented.

► **consumer sale.** (1941) A retail transaction in which something is sold in the normal course of a seller's business and is bought for private use and not in the normal course of the buyer's business.

► **convoyed sale.** *Patents.* The sale of unpatented collateral products that are functionally or economically

W

W-2 form. (18c) (1948) *Tax*. A statement of earnings and taxes withheld (including federal, state, and local income taxes and FICA tax) during a given tax year. • The W-2 is prepared by the employer, provided to each employee, and filed with the Internal Revenue Service. Cf. W-4 FORM.

W-4 form. (1955) *Tax*. A form indicating the number of personal exemptions an employee is claiming and that is used by the employer in determining the amount of income to be withheld from the employee's paycheck for federal-income tax purposes. — Also termed *Employee's Withholding Allowance Certificate*. Cf. W-2 FORM.

wacreour (wah-kroor), *n.* [Law French] *Hist.* A vagrant.

Wade hearing. (1969) *Criminal law*. A pretrial hearing in which the defendant contests the validity of his or her out-of-court identification. • If the court finds that the identification was tainted by unconstitutional methods, the prosecution cannot use the identification and must link the defendant to the crime by other means. *U.S. v. Wade*, 388 U.S. 218, 87 S.Ct. 1926 (1967).

wadia (way-dee-ə), *n.* [Law Latin] *Hist.* Pledges.

wadset, *n.* (15c) *Scots law*. **1.** A mortgage. — Also termed (in Roman law) *fiducia*. **2.** A pledge or pawn.

wadset, *vb.* (14c) *Scots law*. **1.** To mortgage. **2.** To pledge.

wafer seal. See SEAL.

wafter (waf-tər), *n.* [Middle English “convoyer”] (15c) *Hist.* An English naval officer appointed under Edward IV to protect fishermen, esp. on the coast of Norfolk and Suffolk. — Also spelled *waftor*.

waga (way-gə), *n.* [Law Latin] (17c) *Hist.* A measure of weight; a measure of goods.

wage, *n.* (*usu. pl.*) (14c) Payment for labor or services, usu. based on time worked or quantity produced; specif., compensation of an employee based on time worked or output of production. • Wages include every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, bonuses, and the reasonable value of board, lodging, payments in kind, tips, and any similar advantage received from the employer. An employer usu. must withhold income taxes from wages. Cf. SALARY.

“Wages are, in both common and legal language, the compensation paid or to be paid for services, whether computed by the day, week, or month, or by the piece or job. Payment for piece or job work is frequently spoken of as earnings, but it differs in no sense from payment computed by time, the words ‘earnings’ and ‘wages’ being often used together in statutes on the subject. In mining and elsewhere, much of the work is done by what is called contracting, one man being paid by the ton or other quantity, he paying a helper or helpers a fixed sum daily or at a given rate per unit used; but the sums received by the different workmen are alike wages; so also where a group of men are employed in the joint production of a designated unit, and the payment therefor is divided among them fractionally or by a percentage. The profits of contractors where agreements are made for the performance of work involving individual direction and the employment and guidance of subordinates, as in the erection of a building or the construction of public works,

are not classed as wages. The word ‘salary’ is also said by some courts to be synonymous with wages, though in others it is held to mean a larger compensation for more important services, or payment for services other than of a manual or mechanical kind. Salaries of public officers are not exempt from garnishment under laws exempting wages.” Lindley Daniel Clark, *The Law of the Employment of Labor* 45–46 (1911) (citations omitted).

“[I]t is held that the term ‘wages’ does not include the salary of the president, manager, or superintendent of a business corporation; nor sums payable to attorneys at law for professional services rendered to the corporation upon occasional retainers; nor the compensation of a person who is employed by the company to sell its goods in a foreign country, at a fixed annual salary, with the addition of a commission and his traveling expenses. Again, the term ‘wages’ is not applicable to the compensation of the public officers of a municipal corporation, who receive annual salaries, which are not due until the end of the year, and who are entitled to be paid so long as they hold their offices without regard to the services rendered. So also, a person who takes a contract to perform a specified work, as, to build a house according to plans and specifications, to execute a cutting on a line of railway at a given sum per cubic yard, or the like, and who employs men under him to do the actual work or to assist him in doing it, is not a ‘workman’ or ‘laborer,’ although he does a portion of the work himself, and his compensation is not ‘wages.’ So again, where manufacturers receive raw material from another, and work it up for him into a finished or partly finished product, by the use of their machinery and the labor of their employes, under a contract specifying a fixed rate of payment, the money due them therefor is not wages.” Henry Campbell Black, *A Treatise on the Law and Practice of Bankruptcy* § 105, at 259–60 (1914).

► **basic wage.** See MINIMUM WAGE.

► **covered wages.** (1938) Wages on which a person is required to pay social-security taxes.

► **current wages.** (18c) Wages for the current period; wages that are not past due.

► **front wages.** (1979) Prospective compensation paid to a victim of job discrimination until the denied position becomes available.

► **green-circle wage.** A wage that is lower than the usual minimum pay.

► **living wage.** (1888) **1.** A wage sufficient to provide for a worker and his or her family a reasonably comfortable existence.

“[A] living wage means:

“1. A wage by which the worker may obtain the means of subsistence (a) for himself, (b) for those legitimately dependent on him;

“2. A wage by which the worker may provide reasonable home comforts and fit himself for the discharge of duties of citizenship; and

“3. That the wage shall be earned under such conditions as regards sanitary regulations, physical and mental effort, and duration of working hours, and as will afford reasonable time for recreation and rest.

“A wage which would meet the requirements set out in the three clauses of the above definition would enable the worker, in the widest economic sense, to attain the highest state of industrial efficiency. We might therefore adopt a more concise form of words and say:

BLACK'S LAW DICTIONARY

Definitions of the Terms and Phrases of
American and English Jurisprudence,
Ancient and Modern
with
Guide to Pronunciation

By

HENRY CAMPBELL BLACK, M. A.

Author of Treatises on Judgments, Tax Titles, Intoxicating Liquors,
Bankruptcy, Mortgages, Constitutional Law, Interpretation
of Laws, Rescission and Cancellation of Contracts, Etc.

FOURTH EDITION

By

THE PUBLISHER'S EDITORIAL STAFF

ST. PAUL, MINN.
WEST PUBLISHING CO.

1951

SAIO — SALE

function itself, and the merits of the person who fulfills it. 1 Mill.Pol.Econ. 258.

SAIO. In Gothic law. The ministerial officer of a court or magistrate, who brought parties into court and executed the orders of his superior. Spelman.

SAISIE. Fr. In French law. A judicial seizure or sequestration of property, of which there are several varieties. See *infra*.

SAISIE-ARRÊT. An attachment of property in the possession of a third person.

SAISIE-EXÉCUTION. A writ resembling that of *feri facias*; defined as that species of execution by which a creditor places under the hand of justice (custody of the law) his debtor's movable property liable to seizure, in order to have it sold, so that he may obtain payment of his debt out of the proceeds. Dalloz, Dict.

SAISIE-FORAINÉ. A permission given by the proper judicial officer to authorize a creditor to seize the property of his debtor in the district which the former inhabits. Dalloz, Dict. It has the effect of an attachment of property, which is applied to the payment of the debt due.

SAISIE-GAGERIE. A conservatory act of execution, by which the owner or principal lessor of a house or farm causes the furniture of the house or farm leased, and on which he has a lien, to be seized; similar to the *distress* of the common law. Dalloz, Dict.

SAISIE-IMMOBILIÈRE. The proceeding by which a creditor places under the hand of justice (custody of the law) the immovable property of his debtor, in order that the same may be sold, and that he may obtain payment of his debt out of the proceeds. Dalloz, Dict.

SAKE. In old English law. A lord's right of amercing his tenants in his court. Keilw. 145.

Acquittance of suit at county courts and hundred courts. Fleta, l. 1, c. 47, § 7.

SALABLE. "Merchantable," fit for sale in usual course of trade, at usual selling prices. Foote v. Wilson, 104 Kan. 191, 178 P. 430; Stevens Tank & Tower Co. v. Berlin Mills Co., 112 Me. 336, 92 A. 180, 181.

SALABLE VALUE. Usual selling price at place where property is situated when its value is to be ascertained. Fort Worth & D. N. Ry. Co. v. Sugg, Tex.Civ.App., 68 S.W.2d 570, 572.

SALADINE TENTH. A tax imposed in England and France, in 1188, by Pope Innocent III., to raise a fund for the crusade undertaken by Richard I. of England and Philip Augustus of France, against Saladin, sultan of Egypt, then going to besiege Jerusalem. By this tax every person who did not enter himself a crusader was obliged to pay a tenth of his yearly revenue and of the value of all his movables, except his wearing apparel, books, and arms. The Carthusians, Bernardines,

and some other religious persons were exempt. Gibbon remarks that when the necessity for this tax no longer existed, the church still clung to it as too lucrative to be abandoned, and thus arose the tithing of ecclesiastical benefices for the pope or other sovereigns. Enc.Lond.

SALARIIUM. Lat. In the civil law. An allowance of provisions. A stipend, wages, or compensation for services. An annual allowance or compensation. Calvin.

SALARY. A reward or recompense for services performed.

In a more limited sense a fixed periodical compensation paid for services rendered; a stated compensation, amounting to so much by the year, month, or other fixed period, to be paid to public officers and persons in some private employments, for the performance of official duties or the rendering of services of a particular kind, more or less definitely described, involving professional knowledge or skill, or at least employment above the grade of menial or mechanical labor. State v. Speed, 183 Mo. 186, 81 S.W. 1260. A fixed, annual, periodical amount payable for services and depending upon the time of employment and not the amount of services rendered. In re Information to Discipline Certain Attorneys of Sanitary Dist. of Chicago, 351 Ill. 206, 184 N.E. 332, 359. It is synonymous with "wages," except that "salary" is sometimes understood to relate to compensation for official or other services, as distinguished from "wages," which is the compensation for labor. Walsh v. City of Bridgeport, 88 Conn. 528, 91 A. 969, 972, Ann.Cas.1917B, 318. See, also, Fee.

For "Executive Salaries," see that title.

SALE. A contract between two parties, called, respectively, the "seller" (or vendor) and the "buyer," (or purchaser,) by which the former, in consideration of the payment or promise of payment of a certain price in money, transfers to the latter the title and the possession of property. Pard. Droit Commer. § 6; 2 Kent, Comm. 363; Poth. Cont. Sale, § 1; Butler v. Thomson, 92 U.S. 414, 23 L.Ed. 684. In re Frank's Estate, 277 N.Y. S. 573, 154 Misc. 472.

A contract whereby property is transferred from one person to another for a consideration of value, implying the passing of the general and absolute title, as distinguished from a special interest falling short of complete ownership. Arnold v. North American Chemical Co., 232 Mass. 196, 122 N.E. 283, 284; Faulkner v. Town of South Boston, 141 Va. 517, 127 S.E. 380, 381.

An agreement by which one gives a thing for a price in current money, and the other gives the price in order to have the thing itself. Three circumstances concur to the perfection of the contract, to-wit, the thing sold, the price, and the consent. Civ.Code La. art. 2439.

To constitute a "sale," there must be parties standing to each other in the relation of buyer and seller, their minds must assent to the same proposition, and a consideration must pass. Commissioner of Internal Revenue v. Frehofer, C.C.A.3, 102 F.2d 787, 789, 790, 125 A.L.R. 761.

W — WAGES

W

W. As an abbreviation, this letter frequently stands for "William," (king of England,) "Westminster," "west," or "western."

W. D. An abbreviation for "Western District."

WABBLE. To vacillate or sway unsteadily from side to side; to vacillate or show unsteadiness; to move or move along with an irregular rocking or staggering motion or unsteadily from one side to the other. *Meadows v. State*, 186 Ga. 592, 199 S.E. 133, 135.

WACREOUR. L. Fr. A vagabond, or vagrant. *Britt. c. 29.*

WADIA. A pledge. See *Vadium*; *Fides Facta*.

WADSET. In Scotch law. The old term for a mortgage. A right by which lands or other heritable subjects are impignorated by the proprietor to his creditor in security of his debt. Wadsets are usually drawn in the form of mutual contracts, in which one party sells the land, and the other grants the right of reversion. *Ersk. Inst.* 2, 8, 3.

WADSETTER. In Scotch law. A creditor to whom a wadset is made, corresponding to a mortgagee.

WAFORS. Conductors of vessels at sea. *Cowell.*

WAGA. In old English law. A weight; a measure of cheese, salt, wool, etc., containing two hundred and fifty-six pounds avoirdupois. *Cowell*; *Spelman.*

WAGE. In old English practice. To give security for the performance of a thing. *Cowell.*

WAGE EARNER. Within Bankruptcy Act exempting wage earners from involuntary bankruptcy proceedings must have as his paramount occupation the earning of salary or wages, indicia of wage earning being whether earner depends on his wages for his subsistence and whether wage earning is his paramount occupation. *Bankr. Act* §§ 1(27), 4b, 11 U.S.C.A. §§ 1(27), 22(b). *In re Gainfort*, D.C. Cal., 14 F. Supp. 788, 791.

WAGER. A contract by which two or more parties agree that a certain sum of money or other thing shall be paid or delivered to one of them or that they shall gain or lose on the happening of an uncertain event or upon the ascertainment of a fact in dispute, where the parties have no interest in the event except that arising from the possibility of such gain or loss. *H. Seay & Co. v. Moore*, *Tex. Com. App.*, 261 S.W. 1013, 1014; *Young v. Stephenson*, 82 Okl. 239, 200 P. 225, 228, 24 A.L.R. 978; *Odle v. State*, 139 *Tex. Cr. R.* 288, 139 S.W.2d 595, 597. See, also, *Bet.*

It was said that contract giving one party or the other an option to carry out the transaction or not at pleasure is not invalid as a "wager." *Palmer v. Love*, 18 *Tenn. App.* 579, 80 S.W.2d 100, 105; but if, under guise of contract of sale, real intent of both parties is merely to speculate in rise or fall of prices and property is not to be delivered, but at time fixed for delivery one party is to pay difference between contract price and market price, transaction is invalid as "wager." *Baucum & Kimball v. Garrett Mercantile Co.*, 188 La. 728, 178 So. 256, 259, 260.

WAGER OF BATTEL. The trial by wager of batTEL was a species of trial introduced into England, among other Norman customs, by William the Conqueror, in which the person accused fought with his accuser, under the apprehension that Heaven would give the victory to him who was in the right. 3 *Bl. Comm.* 337. It was abolished by *St. 59 Geo. III.*, c. 46.

WAGER OF LAW. In old practice. The giving of *gage* or sureties by a defendant in an action of debt that at a certain day assigned he would *make his law*; that is, would take an oath in open court that he did not owe the debt, and at the same time bring with him eleven neighbors, (called "compurgators,") who should avow upon their oaths that they believed in their consciences that he said the truth. *Glanv. lib. 1*, c. 9, 12; *Bract. fol. 156b*; *Britt. c. 27*; 3 *Bl. Comm.* 343; *Cro. Eliz.* 818.

WAGER POLICY. See *Policy of Insurance*.

WAGERING CONTRACT. One in which the parties stipulate that they shall gain or lose, upon the happening of an uncertain event, in which they have no interest except that arising from the possibility of such gain or loss. *Fareira v. Gabell*, 89 Pa. 89.

WAGERING GAIN. The share of each, where individuals carrying on business in partnership make gains in wagering transactions. *Jennings v. Commissioner of Internal Revenue*, *C.C.A. Tex.*, 110 F.2d 945, 946.

WAGES. A compensation given to a hired person for his or her services; the compensation agreed upon by a master to be paid to a servant, or any other person hired to do work or business for him. *Ciarla v. Solvay Process Co.*, 172 N.Y.S. 426, 428, 184 *App. Div.* 629; *Cookes v. Lymperis*, 178 *Mich.* 299, 144 N.W. 514, 515; *Phoenix Iron Co. v. Roanoke Bridge Co.*, 169 N.C. 512, 86 S.E. 184, 185. Every form of remuneration payable for a given period to an individual for personal services, including salaries, commissions, vacation pay, dismissal wages, bonuses and reasonable value of board, rent, housing, lodging, payments in kind, tips, and any other similar advantage received from the individual's employer or directly with respect to work for him. *Ernst v. Industrial Commission*, 246 *Wis.* 205, 16 N.W.2d 867.

In a limited sense the word "wage" means pay given for labor usually manual or mechanical at short stated inter-

WAGES — WAIVER

vals as distinguished from salary, but in general the word means that which is pledged or paid for work or other services; hire; pay. In its legal sense, the word "wages" means the price paid for labor, reward of labor, specified sum for a given time of service or a fixed sum for a specified piece of work. In re Hollingsworth's Estate, 37 Cal. App.2d 432, 99 P.2d 599, 600, 602.

Maritime Law

The compensation allowed to seamen for their services on board a vessel during a voyage.

Political Economy

The reward paid, whether in money or goods, to human exertion, considered as a factor in the production of wealth, for its co-operation in the process.

"Three factors contribute to the production of commodities,—nature, labor, and capital. Each must have a share of the product as its reward, and this share, if it is just, must be proportionate to the several contributions. The share of the natural agents is rent; the share of labor, *wages*; the share of capital, interest. The clerk receives a salary; the lawyer and doctor, fees; the manufacturer, profits. Salary, fees, and profits are so many forms of wages for services rendered." De Laveleye, Pol. Econ.

WAGON. A kind of four-wheel vehicle, especially one used for carrying freight or merchandise. *McMullen v. Shields*, 96 Mont. 191, 29 P.2d 652, 654. A vehicle moving on wheels and usually drawn by horses. The word wagon is a generic term and includes other species of vehicle by whatever name they may be called. An automobile is a vehicle propelled by power generated within itself, used to convey passengers or materials, and in a general sense is a wagon. *Strycker v. Richardson*, 77 Pa.Super.Ct. 252, 255, but see *contra United States v. One Automobile*, D.C. Mont., 237 F. 891, 892; *Whitney v. Welnitz*, 153 Minn. 162, 190 N.W. 57, 28 A.L.R. 68. For "Farm Wagon," see that title.

WAGONAGE. Money paid for carriage in a wagon.

WAGONWAY. That part of a street ordinarily used for the passage of vehicles within the curb lines. *Delaware, L. & W. R. Co. v. Chiara*, C.C.A. N.J., 95 F.2d 663, 666.

WAIF. Waifs are goods found, but claimed by nobody; that of which every one waives the claim. Also, goods stolen and waived, or thrown away by the thief in his flight, for fear of being apprehended. *Wharton*.

Waifs are to be distinguished from *bona fugitiva*, which are the goods of the felon himself, which he abandons in his flight from justice. *Brown*. See *People v. Kaatz*, 3 Parker, Cr.R. (N.Y.) 138; *Hall v. Gildersleeve*, 36 N.J.L. 237.

WAINABLE. In old records, That may be plowed or manured; tillable. *Cowell*; *Blount*.

WAINAGE. In old English law. The team and instruments of husbandry belonging to a coun-

tryman, and especially to a villein who was required to perform agricultural services.

WAINAGIUM. What is necessary to the farmer for the cultivation of his land. *Barring. Ob.St.* 12; *Magna Carta*, c. 14. *Instruments of husbandry*. 1 Poll. & Maitl. 399.

WAIN-BOTE. In feudal and old English law. Timber for wagons or carts.

WAITING CLERKS. Officers whose duty it formerly was to wait in attendance upon the court of chancery. The office was abolished in 1842 by St. 5 & 6 Vict. c. 103. *Mozley & Whitley*.

WAIVE, v. To abandon or throw away; as when a thief, in his flight, throws aside the stolen goods, in order to facilitate his escape, he is technically said to *waive* them.

In modern law, to abandon, throw away, renounce, repudiate, or surrender a claim, a privilege, a right, or the opportunity to take advantage of some defect, irregularity, or wrong. See *Brigham Young University v. Industrial Commission of Utah*, 74 Utah 349, 279 P. 889, 893, 65 A.L.R. 152.

A person is said to waive a benefit when he renounces or disclaims it, and he is said to waive a tort or injury when he abandons the remedy which the law gives him for it. *Sweet*.

In order for one to "waive" a right, he must do it knowingly and be possessed of the facts. *Barnhill v. Rubin*, D.C.Tex., 46 F.Supp. 963, 966.

WAIVE, n. In old English law. A woman outlawed. The term is, as it were, the feminine of "outlaw," the latter being always applied to a man; "waive," to a woman. *Cowell*.

WAIVER. The intentional or voluntary relinquishment of a known right, *Lehigh Val. R. Co. v. Ins. Co.*, 172 F. 364, 97 C.C.A. 62; *Vermillion v. Prudential Ins. Co. of America*, 230 Mo.App. 993, 93 S.W.2d 45, 51; or such conduct as warrants an inference of the relinquishment of such right, *Rand v. Morse*, C.C.A.Mo., 289 F. 339, 344; *Dexter Yarn Co. v. American Fabrics Co.*, 102 Conn. 529, 129 A. 527, 537; *Gibbs v. Bergh*, 51 S.D. 432, 214 N.W. 838, 841; or when one dispenses with the performance of something he is entitled to exact or when one in possession of any right, whether conferred by law or by contract, with full knowledge of the material facts, does or forbears to do something the doing of which or the failure of forbearance to do which is inconsistent with the right, or his intention to rely upon it. *Estoup Signs v. Frank Lower, Inc.*, La.App., 10 So.2d 642, 645. The renunciation, repudiation, abandonment, or surrender of some claim, right, privilege, or of the opportunity to take advantage of some defect, irregularity, or wrong. *Christenson v. Carleton*, 37 A. 226, 69 Vt. 91; *Shaw v. Spencer*, 100 Mass. 395, 97 Am.Dec. 107, 1 Am.Rep. 115; *Smiley v. Barker*, 28 C.C.A. 9, 83 F. 684; *Boos v. Ewing*, 17 Ohio 523, 49 Am.Dec. 478. A doctrine resting upon an equitable principle, which courts of law will recognize. *Atlas Life Ins. Co. v. Schrimsher*, 179 Okl. 643, 66 P.2d 944, 948. See, also, *Estoppel*.

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
1.	VERIFIED CLASS ACTION AND SPECIAL ACTION COMPLAINT	Sep. 16, 2014
2.	CERTIFICATE OF COMPULSORY ARBITRATION	Sep. 16, 2014
3.	CIVIL COVER SHEET-NEW FILING ONLY	Sep. 16, 2014
4.	AFFIDAVIT OF SERVICE OF PROCESS	Sep. 22, 2014
5.	AFFIDAVIT OF SERVICE OF PROCESS	Sep. 22, 2014
6.	AFFIDAVIT OF SERVICE OF PROCESS	Sep. 22, 2014
7.	SUMMONS	Sep. 22, 2014
8.	SUMMONS	Sep. 22, 2014
9.	SUMMONS	Sep. 22, 2014
10.	STIPULATION EXTENDING TIME FOR DEFENDANTS TO RESPOND TO COMPLAINT	Oct. 6, 2014
11.	PROPOSED ORDER REGARDING STIPULATION EXTENDING TIME FOR DEFENDANTS TO RESPOND TO COMPLAINT	Oct. 9, 2014
12.	CREDIT MEMO	Oct. 14, 2014
13.	ANSWER TO COMPLAINT	Oct. 20, 2014
14.	DEFENDANTS' CERTIFICATION OF AGREEMENT WITH PLAINTIFFS' CERTIFICATE OF COMPULSORY ARBITRATION	Oct. 20, 2014
15.	(PART 1 OF 2) MOTION AND CONSENT OF MARK OGDEN FOR PRO HAC VICE ADMISSION OF SUSAN HOFFMAN	Oct. 30, 2014
16.	(PART 2 OF 2) MOTION AND CONSENT OF MARK OGDEN FOR PRO HAC VICE ADMISSION OF SUSAN HOFFMAN	Oct. 30, 2014
17.	(PART 1 OF 2) MOTION FOR CONSENT OF MARK OGDEN FOR PRO HAC VICE ADMISSION OF WESLEY STOCKARD	Oct. 30, 2014
18.	(PART 2 OF 2) MOTION FOR CONSENT OF MARK OGDEN FOR PRO HAC VICE ADMISSION OF WESLEY STOCKARD	Oct. 30, 2014
19.	ORDER GRANTING PRO HAC VICE ADMISSION TO SUSAN HOFFMAN	Nov. 4, 2014

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
20.	ORDER GRANTING PRO HAC VICE ADMISSION TO WESLEY STOCKARD	Nov. 4, 2014
21.	ME: 100 DAY NOTICE [01/21/2015]	Jan. 21, 2015
22.	JOINT SCHEDULING REPORT	Jun. 26, 2015
23.	PROPOSED SCHEDULING ORDER	Jul. 1, 2015
24.	NOTICE OF APPEARANCE	Oct. 15, 2015
25.	STIPULATION TO EXTEND REMAINING DEADLINES	Oct. 16, 2015
26.	PROPOSED ORDER GRANTING STIPULATION TO EXTEND REMAINING DEADLINES	Oct. 20, 2015
27.	STIPULATION TO EXTEND REMAINING DEADLINES	Nov. 16, 2015
28.	ORDER GRANTING STIPULATION TO EXTEND REMAINING DEADLINES	Nov. 18, 2015
29.	STIPULATION TO EXTEND REMAINING DEADLINES	Jan. 7, 2016
30.	PROPOSED ORDER GRANTING STIPULATION TO EXTEND REMAINING DEADLINES	Jan. 15, 2016
31.	(PART 1 OF 2) DEFENDANTS' MOTION TO STAY PROCEEDINGS	Mar. 14, 2016
32.	(PART 2 OF 2) DEFENDANTS' MOTION TO STAY PROCEEDINGS	Mar. 14, 2016
33.	ME: STATUS CONFERENCE SET [03/18/2016]	Mar. 21, 2016
34.	ME: ORAL ARGUMENT SET [03/23/2016]	Mar. 24, 2016
35.	(PART 1 OF 2) PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO STAY	Apr. 4, 2016
36.	(PART 2 OF 2) PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO STAY	Apr. 4, 2016
37.	DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO STAY PROCEEDINGS	Apr. 11, 2016
38.	(PART 1 OF 2) PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION TO STAY	Apr. 19, 2016

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
39.	(PART 2 OF 2) PLAINTIFFS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION TO STAY	Apr. 19, 2016
40.	ME: MATTER UNDER ADVISEMENT [04/21/2016]	Apr. 25, 2016
41.	ME: UNDER ADVISEMENT RULING [04/22/2016]	Apr. 27, 2016
42.	RETURNED MAIL	May. 16, 2016
43.	NOTICE OF WITHDRAWAL OF COUNSEL	May. 16, 2016
44.	NOTICE OF SUBSTITUTION OF COUNSEL WITH CONSENT	May. 25, 2016
45.	ME: ORDER ENTERED BY COURT [05/27/2016]	May. 31, 2016
46.	RULE 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS RE DAMAGES CLAIMS	Jun. 3, 2016
47.	AGREED FIRST EXTENSION OF TIME TO FILE RESPONSE AND REPLY RE: DEFENDANTS' RULE 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS RE DAMAGES CLAIMS	Jun. 21, 2016
48.	(PART 1 OF 3) PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Jun. 29, 2016
49.	(PART 2 OF 3) PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Jun. 29, 2016
50.	(PART 3 OF 3) PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Jun. 29, 2016
51.	(PART 1 OF 2) PLAINTIFFS' NOTICE OF ERRATA RE: PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS RE DAMAGES CLAIMS	Jun. 30, 2016
52.	(PART 2 OF 2) PLAINTIFFS' NOTICE OF ERRATA RE: PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS RE DAMAGES CLAIMS	Jun. 30, 2016
53.	(PART 1 OF 3) PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS RE DAMAGES CLAIMS	Jun. 30, 2016
54.	(PART 2 OF 3) PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS RE DAMAGES CLAIMS	Jun. 30, 2016
55.	(PART 3 OF 3) PLAINTIFFS' RESPONSE IN OPPOSITION TO DEFENDANTS' RULE 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS RE DAMAGES CLAIMS	Jun. 30, 2016

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
56.	(PART 1 OF 2) PLAINTIFFS' NOTICE OF FILING SIGNATURE OF FRANK PICCIOLI ON DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Jun. 30, 2016
57.	(PART 2 OF 2) PLAINTIFFS' NOTICE OF FILING SIGNATURE OF FRANK PICCIOLI ON DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Jun. 30, 2016
58.	(PART 1 OF 3) PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT	Jul. 6, 2016
59.	(PART 2 OF 3) PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT	Jul. 6, 2016
60.	(PART 3 OF 3) PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT	Jul. 6, 2016
61.	(PART 1 OF 2) PLAINTIFFS' NOTICE OF FILING SIGNATURE OF DEBRA NOVAK-SCOTT ON DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Jul. 6, 2016
62.	(PART 2 OF 2) PLAINTIFFS' NOTICE OF FILING SIGNATURE OF DEBRA NOVAK-SCOTT ON DECLARATION IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Jul. 6, 2016
63.	FIRST AGREED EXTENSION OF TIME TO FILE RESPONSE AND REPLY RE: PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Jul. 15, 2016
64.	ME: STATUS CONFERENCE [07/12/2016]	Jul. 18, 2016
65.	REPLY IN SUPPORT OF DEFENDANTS' RULE 12(C) MOTION FOR JUDGMENT ON THE PLEADINGS RE DAMAGES CLAIMS	Jul. 19, 2016
66.	FIRST AGREED EXTENSION OF TIME TO FILE RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT	Jul. 25, 2016
67.	RESPONSE TO PLAINTIFFS' MOTION FOR LEAVE TO FILE AMENDED COMPLAINT	Aug. 2, 2016
68.	(PART 1 OF 6) RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Aug. 2, 2016
69.	(PART 2 OF 6) RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Aug. 2, 2016
70.	(PART 3 OF 6) RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Aug. 2, 2016

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
71.	(PART 4 OF 6) RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Aug. 2, 2016
72.	(PART 5 OF 6) RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Aug. 2, 2016
73.	(PART 6 OF 6) RESPONSE TO PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Aug. 2, 2016
74.	(PART 1 OF 2) APPLICATION FOR WITHDRAWAL OF COUNSEL FOR PLAINTIFF ASPTEA	Aug. 3, 2016
75.	(PART 2 OF 2) APPLICATION FOR WITHDRAWAL OF COUNSEL FOR PLAINTIFF ASPTEA	Aug. 3, 2016
76.	ME: ORAL ARGUMENT SET [08/08/2016]	Aug. 11, 2016
77.	JOINT PROPOSED SCHEDULING ORDER	Aug. 19, 2016
78.	REPLY IN FURTHER SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION	Aug. 24, 2016
79.	PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION FOR LEAVE TO FILE AMENDED COMPLAINT	Aug. 24, 2016
80.	ORDER SETTING REMAINING DEADLINES	Aug. 25, 2016
81.	(PART 1 OF 4) PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' FAILURE TO COMPLY WITH COURT'S ORDER ON DISCOVERY	Aug. 29, 2016
82.	(PART 2 OF 4) PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' FAILURE TO COMPLY WITH COURT'S ORDER ON DISCOVERY	Aug. 29, 2016
83.	(PART 3 OF 4) PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' FAILURE TO COMPLY WITH COURT'S ORDER ON DISCOVERY	Aug. 29, 2016
84.	(PART 4 OF 4) PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' FAILURE TO COMPLY WITH COURT'S ORDER ON DISCOVERY	Aug. 29, 2016
85.	(PART 1 OF 4) PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Aug. 30, 2016
86.	(PART 2 OF 4) PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Aug. 30, 2016

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
87.	(PART 3 OF 4) PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Aug. 30, 2016
88.	(PART 4 OF 4) PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Aug. 30, 2016
89.	FIRST AGREED EXTENSION OF TIME RE MOTION FOR SANCTIONS AND MOTION TO COMPEL	Sep. 9, 2016
90.	LITIGATION TIMELINE SHOWING 20 MONTHS OF DELAY	Sep. 15, 2016
91.	ME: MATTER UNDER ADVISEMENT [09/15/2016]	Sep. 23, 2016
92.	ME: RULING [09/21/2016]	Sep. 30, 2016
93.	(PART 1 OF 3) DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' FAILURE TO COMPLY WITH COURT'S ORDER ON DISCOVERY	Sep. 30, 2016
94.	(PART 2 OF 3) DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' FAILURE TO COMPLY WITH COURT'S ORDER ON DISCOVERY	Sep. 30, 2016
95.	(PART 3 OF 3) DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' FAILURE TO COMPLY WITH COURT'S ORDER ON DISCOVERY	Sep. 30, 2016
96.	(PART 1 OF 3) RESPONSE TO PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Sep. 30, 2016
97.	(PART 2 OF 3) RESPONSE TO PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Sep. 30, 2016
98.	(PART 3 OF 3) RESPONSE TO PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Sep. 30, 2016
99.	(PART 1 OF 6) AMENDED VERIFIED CLASS ACTION AND SPECIAL ACTION COMPLAINT	Oct. 3, 2016
100.	(PART 2 OF 6) AMENDED VERIFIED CLASS ACTION AND SPECIAL ACTION COMPLAINT	Oct. 3, 2016
101.	(PART 3 OF 6) AMENDED VERIFIED CLASS ACTION AND SPECIAL ACTION COMPLAINT	Oct. 3, 2016
102.	(PART 4 OF 6) AMENDED VERIFIED CLASS ACTION AND SPECIAL ACTION COMPLAINT	Oct. 3, 2016

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
103.	(PART 5 OF 6) AMENDED VERIFIED CLASS ACTION AND SPECIAL ACTION COMPLAINT	Oct. 3, 2016
104.	(PART 6 OF 6) AMENDED VERIFIED CLASS ACTION AND SPECIAL ACTION COMPLAINT	Oct. 3, 2016
105.	AGREED FIRST EXTENSION OF TIME TO FILE REPLY RE: PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' FAILURE TO COMPLY WITH THE COURT'S ORDER ON DISCOVERY	Oct. 6, 2016
106.	AGREED FIRST EXTENSION OF TIME TO FILE REPLY RE: PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Oct. 6, 2016
107.	STIPULATION RE APPLICABILITY OF COURT'S RULINGS ON CLASS CERTIFICATION AND MONEY DAMAGES TO PLAINTIFFS' FIRST AMENDED COMPLAINT	Oct. 19, 2016
108.	STIPULATION EXTENDING DEADLINE FOR DEFENDANTS TO RESPOND TO PLAINTIFFS' AMENDED COMPLAINT	Oct. 21, 2016
109.	AGREED SECOND EXTENSION OF TIME TO FILE REPLY RE: PLAINTIFFS' MOTION FOR SANCTIONS FOR DEFENDANTS' FAILURE TO COMPLY WITH THE COURT'S ORDER ON DISCOVERY	Oct. 21, 2016
110.	[PROPOSED] ORDER	Oct. 26, 2016
111.	MOTION TO EXCEED PAGE LIMITATION ON PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Oct. 26, 2016
112.	(PART 1 OF 2) PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Oct. 26, 2016
113.	(PART 2 OF 2) PLAINTIFFS' REPLY IN FURTHER SUPPORT OF MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Oct. 26, 2016
114.	ME: STIPULATION OF COUNSEL [10/24/2016]	Oct. 28, 2016
115.	ME: ORAL ARGUMENT SET [11/01/2016]	Nov. 4, 2016
116.	STIPULATION FOR WITHDRAWAL OF PLAINTIFFS' MOTION FOR SANCTIONS WITHOUT PREJUDICE	Nov. 4, 2016

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
117.	PLAINTIFFS' NOTICE OF ERRATA RE: STIPULATION FOR WITHDRAWAL OF PLAINTIFFS' MOTION FOR SANCTIONS WITHOUT PREJUDICE	Nov. 4, 2016
118.	STIPULATION FOR WITHDRAWAL OF PLAINTIFFS' MOTION FOR SANCTIONS WITHOUT PREJUDICE	Nov. 4, 2016
119.	ANSWER TO AMENDED VERIFIED CLASS ACTION AND SPECIAL ACTION COMPLAINT	Nov. 14, 2016
120.	STIPULATION TO EXTEND DATE FOR ARGUMENT ON PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Nov. 22, 2016
121.	[PROPOSED] ORDER ON STIPULATION TO EXTEND DATE FOR ARGUMENT ON PLAINTIFFS' MOTION TO COMPEL PRODUCTION OF DOCUMENTS ON DEFENDANTS' PRIVILEGE LOG	Nov. 30, 2016
122.	JOINT STATUS MEMORANDUM	Dec. 9, 2016
123.	(PART 1 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
124.	(PART 2 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
125.	(PART 3 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
126.	(PART 4 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
127.	(PART 5 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
128.	(PART 6 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
129.	(PART 7 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
130.	(PART 8 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
131.	(PART 9 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
132.	(PART 10 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
133.	(PART 11 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
134.	(PART 12 OF 12) DEFENDANTS' SEPARATE STATEMENT OF FACTS IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
135.	UNOPPOSED MOTION TO EXCEED PAGE LIMIT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
136.	DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Dec. 20, 2016
137.	ME: MATTER UNDER ADVISEMENT [12/16/2016]	Dec. 21, 2016
138.	NOTICE OF LODGING DOCUMENTS UNDER SEAL	Dec. 22, 2016
139.	ORDER GRANTING MOTION TO EXCEED PAGE LIMIT	Dec. 23, 2016
140.	ME: UNDER ADVISEMENT RULING [01/03/2017]	Jan. 5, 2017
141.	NOTICE OF ERRATUM REGARDING DOCUMENT NO. 4 LODGED UNDER SEAL AND MOTION FOR IN-CAMERA REVIEW OF CORRECT DOCUMENT	Jan. 6, 2017
142.	NOTICE OF LODGING DOCUMENT UNDER SEAL	Jan. 6, 2017
143.	ME: RULING [01/20/2017]	Jan. 24, 2017
144.	AGREED FIRST EXTENSION OF TIME TO FILE PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Jan. 24, 2017
145.	***SEALED*** ORIGINAL SEALED DOCUMENT (DOCUMENT NO.1 DEFENDANTS' PRIVILEGE LOG (8/11/16))	Jan. 31, 2017
146.	***SEALED*** ORIGINAL SEALED DOCUMENT (DOCUMENT NO. 2 DEFENDANTS' PRIVILEGE LOG (8/11/16))	Jan. 31, 2017
147.	***SEALED*** ORIGINAL SEALED DOCUMENT (DOCUMENT NO. 3 DEFENDANTS' PRIVILEGE LOG (8/11/16))	Jan. 31, 2017
148.	***SEALED*** ORIGINAL SEALED DOCUMENT (DOCUMENT NO. 4 DEFENDANTS' PRIVILEGE LOG (8/11/16))	Jan. 31, 2017
149.	***SEALED*** ORIGINAL SEALED DOCUMENT (DOCUMENT NO. 25 DEFENDANTS' PRIVILEGE LOG (8/11/16))	Jan. 31, 2017

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
150.	***SEALED*** ORIGINAL SEALED DOCUMENT (DOCUMENT NO. 27 DEFENDANTS' PRIVILEGE LOG (8/11/16))	Jan. 31, 2017
151.	***SEALED*** ORIGINAL SEALED DOCUMENT (DOCUMENT NO. 29 DEFENDANTS' PRIVILEGE LOG (8/11/16))	Jan. 31, 2017
152.	***SEALED*** ORIGINAL SEALED DOCUMENT (DOCUMENT NO. 30 DEFENDANTS' PRIVILEGE LOG (8/11/16))	Jan. 31, 2017
153.	***SEALED*** ORIGINAL SEALED DOCUMENT (DOCUMENT NO. 4 DEFENDANTS' PRIVILEGE LOG (8/11/16))	Jan. 31, 2017
154.	ME: ORDER ENTERED BY COURT [01/31/2017]	Feb. 1, 2017
155.	AGREED SECOND EXTENSION OF TIME TO FILE PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Feb. 7, 2017
156.	JOINT STIPULATION RE AUTHENTICITY AND FOUNDATION OF DOCUMENTS	Feb. 17, 2017
157.	JOINT STIPULATION FACTS	Feb. 17, 2017
158.	AGREED THIRD EXTENSION OF TIME TO FILE PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Mar. 7, 2017
159.	ME: STIPULATION OF COUNSEL [03/13/2017]	Mar. 15, 2017
160.	MOTION TO EXCEED PAGE LIMITATION ON PLAINTIFFS' CONSOLIDATED MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
161.	(PART 1 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
162.	(PART 2 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
163.	(PART 3 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
164.	(PART 4 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
165.	(PART 5 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
166.	(PART 6 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
167.	(PART 7 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
168.	(PART 8 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
169.	(PART 9 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
170.	(PART 10 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
171.	(PART 11 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
172.	(PART 12 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
173.	(PART 13 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
174.	(PART 14 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
175.	(PART 15 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
176.	(PART 16 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
177.	(PART 17 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
178.	(PART 18 OF 18) PLAINTIFFS' RESPONSE TO DEFENDANTS' SEPARATE STATEMENT OF FACTS AND CONTROVERTING STATEMENT OF FACTS AND PLAINTIFFS' STATEMENT OF UNDISPUTED FACTS IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
179.	(PART 1 OF 2 PLAINTIFFS' CONSOLIDATED MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017
180.	(PART 2 OF 2 PLAINTIFFS' CONSOLIDATED MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Mar. 15, 2017

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
181.	[PROPOSED] ORDER ON MOTION TO EXCEED PAGE LIMITATION ON PLAINTIFFS' CONSOLIDATED MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT	Mar. 20, 2017
182.	(PART 1 OF 2) PLAINTIFFS' NOTICE OF FILING THE SIGNED DECLARATION OF DEBRA NOVAK-SCOTT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 20, 2017
183.	(PART 2 OF 2) PLAINTIFFS' NOTICE OF FILING THE SIGNED DECLARATION OF DEBRA NOVAK-SCOTT IN SUPPORT OF PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT	Mar. 20, 2017
184.	NOTICE OF FIRST AGREED EXTENSION OF TIME FOR THE PARTIES TO FILE REMAINING SUMMARY JUDGMENT BRIEFING	Mar. 28, 2017
185.	ME: ORAL ARGUMENT SET [05/02/2017]	May. 4, 2017
186.	DEFENDANTS' RESPONSE TO PLAINTIFFS' CONTROVERTING AND ADDITIONAL STATEMENT OF FACTS IN SUPPORT OF THEIR CROSS-MOTION FOR SUMMARY JUDGMENT	May. 10, 2017
187.	MOTION TO EXCEED PAGE LIMIT OF DEFENDANTS' RESPONSE TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT	May. 10, 2017
188.	DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	May. 10, 2017
189.	DEFENDANTS' RESPONSE TO PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT	May. 10, 2017
190.	MOTION TO EXCEED PAGE LIMITATION ON PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' CROSS-MOTION FOR SUMMARY JUDGMENT	Jun. 9, 2017
191.	(PART 1 OF 3) PLAINTIFFS' REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT	Jun. 9, 2017
192.	(PART 2 OF 3) PLAINTIFFS' REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT	Jun. 9, 2017
193.	(PART 3 OF 3) PLAINTIFFS' REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT	Jun. 9, 2017
194.	ME: RULING [06/15/2017]	Jun. 16, 2017
195.	NOTICE OF CHANGE OF ADDRESS	Jun. 16, 2017

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
196.	(PART 1 OF 2) PLAINTIFFS' REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT	Jun. 22, 2017
197.	(PART 2 OF 2) PLAINTIFFS' REPLY IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT	Jun. 22, 2017
198.	DEFENDANTS' MOTION TO TRANSFER RELATED CASE	Jun. 28, 2017
199.	NOTICE OF SUBMISSION OF COURTESY COPIES OF SOME OF PLAINTIFFS' PRINCIPLE CASES	Jul. 11, 2017
200.	ME: HEARING [07/10/2017]	Jul. 12, 2017
201.	ME: UNDER ADVISEMENT RULING [07/25/2017]	Jul. 26, 2017
202.	PLAINTIFFS' RESPONSE TO DEFENDANTS' MOTION TO TRANSFER	Aug. 2, 2017
203.	DEFENDANTS' REPLY IN SUPPORT OF MOTION TO TRANSFER RELATED CASE	Aug. 4, 2017
204.	ME: CASE REASSIGNED [08/08/2017]	Aug. 11, 2017
205.	NOTICE OF LODGING PROPOSED FORM OF JUDGMENT	Aug. 15, 2017
206.	(PART 1 OF 3) DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Aug. 15, 2017
207.	(PART 2 OF 3) DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Aug. 15, 2017
208.	(PART 3 OF 3) DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Aug. 15, 2017
209.	(PART 1 OF 2) STIPULATION TO EXTEND TIME FOR PLAINTIFFS' TO FILE OBJECTIONS TO DEFENDANTS' PROPOSED FORM OF JUDGMENT	Aug. 22, 2017
210.	(PART 2 OF 2) STIPULATION TO EXTEND TIME FOR PLAINTIFFS' TO FILE OBJECTIONS TO DEFENDANTS' PROPOSED FORM OF JUDGMENT	Aug. 22, 2017
211.	[PROPOSED] ORDER ON STIPULATION AND REQUEST TO EXTEND TIME FOR PLAINTIFFS' TO FILE OBJECTIONS RE: DEFENDANTS' PROPOSED FORM OF JUDGMENT	Aug. 24, 2017
212.	STIPULATION RE AMENDED PROPOSED FORM OF JUDGMENT	Sep. 6, 2017

**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
213.	AGREED SECOND EXTENSION OF TIME TO FILE OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Sep. 27, 2017
214.	ME: STIPULATION OF COUNSEL [09/29/2017]	Oct. 3, 2017
215.	(PART 1 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
216.	(PART 2 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
217.	(PART 3 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
218.	(PART 4 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
219.	(PART 5 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
220.	(PART 6 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
221.	(PART 7 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
222.	(PART 8 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
223.	(PART 9 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
224.	(PART 10 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
225.	(PART 11 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
226.	(PART 12 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
227.	(PART 13 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017
228.	(PART 14 OF 14) PLAINTIFFS' OPPOSITION TO DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 6, 2017



**Electronic Index of Record
MAR Case # CV2014-011778**

No.	Document Name	Filed Date
229.	NOTICE OF DEFENDANTS' FIRST EXTENSION OF TIME RE REPLY IN SUPPORT OF APPLICATION FOR ATTORNEYS' FEES AND COSTS	Oct. 12, 2017
230.	REPLY IN SUPPORT OF DEFENDANTS' APPLICATION FOR ATTORNEYS' FEES AND COSTS	Nov. 3, 2017
231.	ME: RULING [11/15/2017]	Nov. 16, 2017
232.	FINAL JUDGMENT	Nov. 16, 2017
233.	NOTICE OF APPEAL	Dec. 14, 2017
234.	PLAINTIFFS' NOTICE OF TRANSCRIPTS ORDERED	Dec. 21, 2017
235.	NOTICE OF APPEARANCE OF ADDITIONAL COUNSEL	Dec. 21, 2017

APPEAL COUNT: 1

RE: CASE: UNKNOWN

DUE DATE: 01/11/2018

CAPTION: AMERICAN FEDERATION VS CITY OF PHOENIX

EXHIBIT(S): NONE

LOCATION ONLY: NONE

SEALED DOCUMENT: ORIGINAL SEALED DOCUMENT INCLUDED IN INDEX

DEPOSITION(S): NONE

TRANSCRIPT(S): NONE

COMPILED BY: blacky on January 11, 2018; [2.5-17026.63]
\\ntfsnas\c2c\C2C-6\CV2014-011778\Group_01



**Electronic Index of Record
MAR Case # CV2014-011778**

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

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

07/25/2017

HONORABLE ROGER E. BRODMAN

CLERK OF THE COURT
L. Stogsdill
Deputy

AMERICAN FEDERATION OF STATE
COUNTY AND MUNICIPAL EMPLOYEES A F
L-C I O LOCAL 2384, et al.

SUSAN MARTIN

v.

CITY OF PHOENIX, et al.

COLIN F CAMPBELL

UNDER ADVISEMENT RULING

The Court reviewed the cross motions for summary judgment, the responses and replies. The Court held extended oral argument on July 10, 2017. Each party alleges that it is entitled to judgment as a matter of law.

At issue is the revision to Administrative Regulation 2.18 dealing with paid vacation leave for City employees. Amended AR 2.18 was effective on July 1, 2014. The City characterizes the administrative regulation as intended to prevent pension “spiking.”

The parties agree that there are no determinative disputes of fact. As a result, the Court can rule on this motion as a matter of law.¹

I. BACKGROUND

In 1953, the City adopted the City of Phoenix Employees’ Retirement Plan, commonly referred to as COPERS. The retirement plan is set forth in Ch. XXIV, article II to the City Charter. COPERS is a defined benefit retirement plan that provides City employees with a

1. The parties submitted stipulated statements of fact. Although the parties have several disputes over other facts, the Court does not believe that any of the factual disputes are material to resolving the current motions.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

07/25/2017

pension upon retirement. An employee's ultimate pension benefit is determined by an employee's final average compensation, years of service, and a "benefit multiplier" set by the Charter to determine the benefit amount.

The City has offered paid vacation leave to employees since at least 1979. In addition to the leave itself, the City offers three related benefits: 1) the ability to accrue vacation leave; 2) the option to sell back unused vacation leave accrued during the year; and 3) the option to receive cash out at separation or retirement from the City for a certain amount of accrued vacation. As of July 1, 2012, AR 2.18 provided vacation leave rules that allowed up to 450 hours of accrued compensation at retirement. The amount of carry-over vacation time was negotiated in the MOUs, and the amount allowed varied over the years. The City and the union could agree to reduce or eliminate the carry-over vacation time in the future.

Although AR 2.18 spells out specific rules and limits for using, accruing, selling back and cashing out vacation leave, until the revisions at issue, the AR said nothing about whether payments for used and accrued vacation qualify as pensionable "compensation" under the Charter. The employees' collective bargaining agreements likewise said nothing about the pensionability of those payments.

At least since 1980 (and possibly longer; the Court doesn't think the exact date is significant), the City allowed the employee's unused vacation accrual to be added to the employee's annual salary or wage for his or her retirement year for pension calculation purposes. The City never made a formal determination or issued a formal policy regarding the nature of these payments until 2014.

A City task force studied ways to reduce the City's pension costs. On October 31, 2013, the Mayor and City Council approved a plan to exclude payouts for unused vacation leave at retirement from final average compensation calculations. Revised AR 2.18 took effect on July 1, 2014. It makes clear that amounts paid to an employee at retirement for accrued vacation do not qualify as pensionable compensation for purposes of calculating an employee's COPERS pension. The revision, however, is prospective only. Employees and retirees who relied on prior contracts or the City's past practice will continue to receive the full benefit of any vacation leave they accrued before July 1, 2014.

The Court views the amendment in context of pension reform efforts. COPERS' funding ratio fell from 102.5% in 2001 to only 66.7% in 2011. In the same time, the City's contribution rate more than tripled, from 6.13% in 2001 to over 20% in 2013. The City's experience is consistent with the national underfunding of pension plans. Indeed, Justice Bolick recently recounted the troublesome state of pension plans in his dissent in *Hall v. Elected Officials' Ret. Plan*, 241 Ariz. 33, ¶¶ 64-65 (2016) (Bolick dissenting).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

07/25/2017

II. ANALYSIS

The City argues that it is entitled to summary judgment because plaintiffs have no legal right to treat lump-sum payouts for accrued vacation at retirement as part of their final average compensation under COPERS. The City first argues that including these lump-sum payouts in the calculation of an employee's pension violates the Charter's definitions of final average compensation, final compensation, and compensation. Next, the City argues that the City may prospectively change the practice of including unused vacation leave in its calculation of pension benefits because employees are vested only as to vacation already accrued. Each of these arguments is addressed below.

A. Are vacation payouts at retirement pensionable "compensation" under the Charter's text?

The parties have a significant dispute over interpretation of the Charter. The three relevant definitions set forth in the Charter are as follows:

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.

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

The Charter controls what is and what is not compensation. It controls the terms and benefits of COPERS. Interpretation of the Charter is a matter of law. The Court agrees with the City's position that vacation payouts at retirement are not annual salary and wages as those terms are defined in the City Charter.

The pension is based on "final average compensation," which means the average of the "highest **annual** compensations" (emphasis added). The word "annual" is an important modifier

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

07/25/2017

to “compensation.” A one-time payment upon termination based on vacation accrued from prior years is not annual compensation. It is not a payment made at regular intervals.

In defining the words “salary and wages,” the Court looks to definitions set forth in *Cross v. Elected Officials Ret. Plan*, 234 Ariz. 595, 604, ¶ 31 (App. 2014). There, the court of appeals looked at Black’s Law Dictionary for a definition of “salary.” The court concluded:

Consistent with the dictionary definition, legal authorities have concluded that “salary” does not include bonuses or other amounts not paid at regular intervals. Almost all courts that have addressed the issue have held that payments for accrued sick leave may not be included in a pension calculation. See 91 A.L.R.5th 225, § 6[b]; see, e.g., *Int’l Ass’n of Firefighters, Local No. 64 v. City of Kansas City*, 264 Kan. 17, 954 P.2d 1079, 1088 (1998) (“salary” in pension statute does not include sick leave or vacation time); *West Va. Cons. Pub. Retirement Bd. v. Carter*, 219 W.Va. 392, 633 S.E.2d 521, 526 (2006) (“final average salary” in pension statute does not include payment for unused vacation time). As we have noted *supra* ¶ 28, note 10, accrued sick leave payments may not be included when calculating the pensions of other public employees. See A.R.S. 38-615(F) (2014).

Id. (some citations omitted). *Dessauer v. Ariz. Dept. of Economic Sec.*, 141 Ariz. 384, 386 (App. 1984) is distinguishable. The issue in that case was when wages were credited as being paid under the unemployment statute. It is not helpful in defining what annual wages and salary mean.²

In short, this Court believes that salary and wages refer to regular, periodic pay for services rendered. The Charter’s definition of “final average compensation” sets an annual timeframe for pensionable pay. Specifically, § 2.14 calculates final average compensation based on an average of the employee’s “highest annual compensations.” Accordingly, only amounts an employee receives as regular annual pay for personal services rendered are pensionable “compensation” under the Charter. A one-time payment at the end of employment is not a payment at a regular interval.

A lump-sum payout at retirement for accrued vacation leave is not regular annual pay because an employee receives a payout only one time (if at all). Moreover, the employee’s retirement year is the only time an employee can cash out all accrued vacation leave at one time.

2. The Court sees no meaningful distinction between “wages” and “salary” as those words are used in section 2.13. The Court adopts the commonsense view that wages refer to compensation paid on an hourly or daily basis, while salary is fixed compensation over a longer period of time. In any event, the Court sees no reason for the Charter to treat wages and salary differently in calculating pensions.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

07/25/2017

As noted above, *Cross* confirms that a one-time, lump-sum payout is not considered regular annual pay for pension purposes. *Cross*, 234 Ariz. at 604.

The second sentence of the compensation definition provides that if compensation is not paid in money the City Council may, upon recommendation of the City Manager, fix the value of the portion of compensation not paid in money. This sentence does not help the plaintiffs. The second sentence by its own terms applies to compensation not paid in money. Accrued vacation payouts do not qualify as nonmonetary compensation. Only nonmonetary items that are received by an employee on a regular, annual basis in exchange for personal service rendered (*e.g.*, a rent-free home on City property) should count as nonmonetary compensation. One-time accrued vacation payouts upon retirement are not regular, annual compensation received for personal services rendered.

Plaintiffs argue that past practice establishes that the accrued vacation leave is pensionable. There is some merit to this position. Indeed, the City has included accrued vacation leave in the final pension calculation for many, many years. Nevertheless, extrinsic evidence is not enough to overcome the plain terms of the retirement plan. *Holland v. City of Chicago*, 682 N.E.2d 323, 328 (Ill.App. 1997). *Long v. Dick*, 87 Ariz. 25 (1959), is distinguishable. In *Long*, the parties asked the court to construe a statute that, if applied as written, would create an absurd and conflicting result. The supreme court noted that neither party “seeks to construe the statute consistent with its literal language,” and applied the administrative agency’s long-standing interpretation of the provision. In addition, it is for the courts to determine the Charter’s meaning, and there is no reason to defer to the City’s interpretation (which has now changed). See *Wade v. Arizona State Ret. Sys.*, 241 Ariz. 559, ¶ 21 (2017) (supreme court declines to defer to ASRS’s interpretation of a pension statute when the court can ascertain legislative intent by applying interpretive principles).

Finally, the fact that the City had been generous in interpreting the Charter in the past does not prevent the City from prospectively modifying the practice if it can do so without injury to vested rights. See *Cross* (court allowed retirement plan to recover payments made by mistake but remanded to trial court for determination of whether plaintiff’s reliance on the erroneous interpretation estopped defendants from obtaining recovery).

The contracts and pension clauses of the Arizona Constitution are not independent sources of any rights. They only protect rights that public employees otherwise have under the law. Without a right under the Charter, cases like *Yeazell v. Copins*, 98 Ariz. 109 (1965) do not salvage plaintiffs’ claims. But see *Bowles v. Wash. Dep’t of Ret. Sys.*, 847 P.2d 440 (Wash. 1993) (Washington Supreme Court allowed accrued vacation in calculation of pension benefits).

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

07/25/2017

In conclusion, neither the City Charter nor past practices give plaintiffs a right to continue spiking their pensions with lump-sum payouts at retirement for unused vacation leave in the future.

B. Are unused vacation rights vested?

Whether the Charter prohibits the use of accrued vacation payouts as pensionable compensation is a close call. Nevertheless, the Court believes that plaintiffs' claims fail for the additional reason that unused vacation rights are not vested and can be changed by the City.

Nothing in AR 2.18 affects an employee's rights to unused vacation time already accrued. With regard to vacation time not yet earned, the Court agrees with the City that such time vests only when earned. *Bennett ex rel. Arizona State Pers. Comm'n v. Beard*, 27 Ariz. App. 534 (1976), *Abbott v. City of Tempe*, 129 Ariz. 273 (1981), and *Fund Manager, Public Safety Personnel Retirement System v. City of Phoenix Police Department Public Safety Personnel Retirement System Board*, 151 Ariz. 487 (App. 1986), all support the proposition that unused vacation time does not vest until it is earned. In *Fund Manager*, the court concluded that the right to an accidental disability pension does not vest until the contingent event of injury occurs. The court held that a disability pension vests "upon the occurrence of the event or condition which would qualify him for such pension – the injury." *Id.* at 489. In interpreting *Abbott*, the court concluded that "the right to future benefits had not vested because the employees had yet to perform services entitling them to benefits." *Id.* at 490. The court stated:

Just as unearned annual leave, holiday pay, vacation credits and sick leave do not vest until the "condition" of service is satisfied, we conclude that the right to an accidental disability pension does not vest until the contingent event of injury occurs.

Id. at 490. Unused vacation credits do not vest until earned. *Yeazell* does not apply because "Yeazell applies only where the right to a benefit has vested." *Id.*

The instant case is different from *Hall v. Elected Officials' Retirement Plan*, 241 Ariz. 33 (2016) and *Fields v. Elected Officials' Retirement Plan*, 234 Ariz. 214 (2014). In both *Hall* and *Fields*, a statute established a specific formula for a pension that was later changed by the legislature. Here, the City Charter, City ordinances and regulations do not establish a specific formula used to calculate the pension, nor do they establish that accrued vacation can be applied to spike pension calculations. In fact, the amount of accrued vacation time that can be carried to the next year is the subject of negotiations to the MOU every two years and can and was changed over the years.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

07/25/2017

The City could eliminate the practice of accruing vacation time in its entirety. It could eliminate or reduce the number of hours of accrued vacation time. Each of these actions would affect plaintiffs' pension rights without offending the constitution. Here, since the vacation time has not yet been earned, it hasn't yet vested. Since the benefits had not vested, the City had a right to change them.

III. CONCLUSION

IT IS ORDERED that the City's motion for summary judgment is granted.

IT IS ORDERED that the plaintiffs' motion for summary judgment is denied.

IT IS FURTHER ORDERED that, within 20 days from the filed date of this Order, defendants shall submit a proposed form of judgment containing Rule 54(c) language.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

11/15/2017

HONORABLE ROGER E. BRODMAN

CLERK OF THE COURT
M. Corriveau
Deputy

AMERICAN FEDERATION OF STATE
COUNTY AND MUNICIPAL EMPLOYEES A F
L-C I O LOCAL 2384, et al.

SUSAN MARTIN

v.

CITY OF PHOENIX, et al.

COLIN F CAMPBELL

RULING ON APPLICATION FOR ATTORNEYS' FEES AND COSTS

The Court reviewed the City's application for attorneys' fees and costs, the response and reply.

The Court finds that the briefing submitted on these issues is sufficient and that oral argument would not add to the Court's consideration of the issues presented. Accordingly, oral argument is waived pursuant to Ariz. R. Civ. P. Rule 7.1(c)(2) to expedite the business of this Court. The Court herein issues the following ruling.

The City seeks \$283,973.40 in attorneys' fees and \$1,008.50 in costs. The Court will make some initial observations and then address the specifics of the application.

I. INTRODUCTION

As an initial matter, the Court finds that the fees were appropriately documented and supported by a *China Doll* affidavit. The legal work (on both sides) was outstanding. The

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

11/15/2017

determinative issue was a close call and one on which the Court believes reasonable judges could differ. The Court commends both sides for their efficient conduct of this litigation; discovery was minimal and the parties avoided a trial by filing cross-motions for summary judgment. The parties even reached an agreement on certain stipulated facts. Nevertheless, at bottom this is a breach of contract case and fees are recoverable pursuant to A.R.S. § 12-341.01(A). *See Hall v. Elected Officials' Retirement Plan*, 241 Ariz. 33, 45, ¶¶ 34-37 (2016) (pension case properly within the scope of the attorneys' fees statute); *Barth v. Cochise County*, 213 Ariz. 59, 64, ¶ 19 (App. 2006) (public entities that are successful parties may recover attorneys' fees under A.R.S. § 12-341.01(A)).

II. ANALYSIS OF WARNER FACTORS

Considering all relevant factors, an award of attorneys' fees is appropriate. The Court makes the following findings as to relevant factors. *Associated Indemnity Corp. v. Warner*, 143 Ariz. 567 (1985).

1. *Whether the unsuccessful party's claim or defense was meritorious.* Plaintiffs' claim was not successful at this stage, but the claim was not without merit. As previously noted, the issue was a close call upon which reasonable people could differ. Nevertheless, plaintiffs made a multimillion dollar claim and did not prevail.

2. *Whether the litigation could have been avoided or settled and the successful party's efforts were completely superfluous in achieving the results.* The City's efforts were necessary to achieve the result. There is no evidence that plaintiffs made any reasonable settlement offers. But the Court has no quarrel with plaintiffs' decision to bring the case. Bringing litigation to challenge the City's change in pension policy was a reasonable decision.

3. *Whether a fee award would be an extreme hardship.* There will be some hardship to the plaintiff labor organizations, but the Court was not persuaded that a fee award would be an "extreme" hardship. Plaintiffs are labor organizations with a significant litigation budget. But even if there was evidence of hardship, plaintiffs made a decision to make a multimillion dollar claim. Plaintiffs took a risk, lost, and should bear the consequences of their litigation decision. The Court notes that the fee award will not run against the individual plaintiffs.

4. *Whether the successful party prevailed with respect to all of the relief sought.* The City prevailed with respect to all relief sought.

5. *Whether the matter presented a novel legal question.* The matter presented a novel legal question in an area of law that is not fully developed.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

11/15/2017

6. *Whether the award would discourage other parties with tenable claims or defenses from litigating them.* An award could discourage parties with tenable claims from pursuing them. On the other hand, any party that undertakes pension litigation is aware that, if it loses, it will be subject to attorneys' fees under *Hall*.

Thus, the *Warner* factors cut both ways on the application for fees. Having determined that a fee award is appropriate, the question is the amount. The Court finds that the hourly rates are consistent with the Phoenix community, and the Court finds that the City's counsel provided sufficient explanation to satisfy *China Doll* standards. The Court will award the City some of its attorneys' fees but, in its discretion, will reduce the fees in light of the mitigating factors discussed below.

III. MITIGATING FACTORS

The Court agrees with plaintiffs that there are mitigating factors to consider. Plaintiffs were seeking to vindicate a constitutional right (although one that would result in the receipt of money by the plaintiffs). The issue was a close call and one on which reasonable men and women of good faith could differ. The City changed the method it used to calculate accrued pension benefits after many, many years. The City was unsuccessful in its efforts to stay the litigation. And the City is large with lots of resources.

These factors suggest that the Court should mitigate -- but not eliminate -- the City's fee application. The plaintiffs took a risk for their own financial benefit. At least at this stage, they lost. Plaintiffs have a significant litigation budget. The City, too, has financial issues. Some fees are appropriate.

IV. CONCLUSION

Taking into account the mixed *Warner* factors and the equities of the situation, the Court awards the City half of its attorneys' fees, or \$141,986.70. The Court finds this amount to be a fair and reasonable amount for attorneys' fees in this case.

The City's request for \$1,008.50 in costs is reduced by \$670.50 because the costs for obtaining court transcripts are not recoverable. The Court finds that the City should be awarded costs of \$338.

IT IS ORDERED that the City is awarded \$141,986.70 in reasonable attorneys' fees, with said amount accruing interest at the rate of 5.25% from the date of this Order.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-011778

11/15/2017

IT IS FURTHER ORDERED that the City is awarded \$338 in costs, with said amount accruing interest at the rate of 5.25% from the date of this Order.

1 Colin F. Campbell, 004955
 2 Eric M. Fraser, 027241
 3 Hayleigh S. Crawford, 032326
 4 Osborn Maledon, P.A.
 5 2929 North Central Avenue, 21st Floor
 6 Phoenix, Arizona 85012-2793
 7 (602) 640-9000
 8 ccampbell@omlaw.com
 9 efraser@omlaw.com
 10 hcrawford@omlaw.com

11 Attorneys for Defendants

12 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

13 IN AND FOR THE COUNTY OF MARICOPA

14 American Federation of State County and
 15 Municipal Employees, AFL-CIO, Local
 16 2384, et al.,

No. CV2014-011778

FINAL JUDGMENT

17 Plaintiffs,

(Assigned to the Honorable
Roger Brodman)

18 v.

19 City of Phoenix, et al.,

20 Defendants.

21 Pursuant to the Court's minute entry order entered July 26, 2017 granting
 22 summary judgment in favor of Defendants and against Plaintiffs on all of Plaintiffs'
 23 claims,

24 IT IS ORDERED, ADJUDGED and DECREED:

25 1. Final judgment is entered in favor of Defendants and against Plaintiffs
 26 on all of Plaintiffs' claims against Defendants for the reasons given in the minute
 27 entry order entered on July 26, 2017.

28 2. Defendants shall have judgment against the non-individual Plaintiffs
 (American Federation of State County And Municipal Employees, AFL-CIO, Local
 2384; American Federation of State County And Municipal Employees, AFL-CIO,

1 Local 2960; and Administrative Supervisory Professional & Technical Employees
2 Association), jointly and severally, for Defendants' reasonable attorneys' fees in the
3 amount of \$141,986.70 and costs in the amount of \$338, for a total of \$142,324.70.

4 3. Interest on the foregoing attorneys' fees and taxable costs shall accrue
5 from the date of judgment until paid in full at the legal rate of 5.25% per annum (one
6 per cent plus the prime rate as published by the board of governors of the federal
7 reserve system in statistical release H.15 on the date that the judgment is entered
8 pursuant to A.R.S. § 44-1201(B)).

9 4. This judgment is final as to all claims and parties. No further matters
10 remain pending and this judgment is entered under Ariz. R. Civ. P. 54(c).

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DATED this _____ day of _____ 2017.

The Honorable Roger Brodman
Judge of the Superior Court

eSignature Page 1 of 1

Filing ID: 8841175 Case Number: CV2014-011778
Original Filing ID: 8640434

Granted with Modifications



/S/ Roger Brodman Date: 11/15/2017
Judicial Officer of Superior Court
CAPP181

ENDORSEMENT PAGE

CASE NUMBER: CV2014-011778

SIGNATURE DATE: 11/15/2017

E-FILING ID #: 8841175

FILED DATE: 11/16/2017 8:00:00 AM

COLIN F CAMPBELL

SUSAN MARTIN

Exhibit 1a



City of Phoenix

ADMINISTRATIVE REGULATION	A.R. NUMBER
	2.18 Revised
	FUNCTION Human Resources and Payroll Page 1 of 6
	EFFECTIVE DATE July 1, 2014
EXCESSIVE ACCUMULATION AND CARRYOVER OF VACATION CREDITS	REVIEWED DATE

INTRODUCTION

Transmittal Message

This A.R. has been revised to incorporate changes recommended by the Mayor, City Council, and Ad Hoc Pension Fairness and Spiking Elimination Subcommittee on October 31, 2013; and adopted by the City Manager effective June 30, 2014. Questions regarding this AR should be directed to the Human Resources Department at (602) 262-6608.

Summary of Changes

This AR was last revised in 2013. The section titled Vacation Leave Snapshot for Middle Managers and Executives has been revised to include all non-sworn employee groups. The section describes the vacation leave snapshot policy, which establishes the maximum amount of vacation leave that can be included in an employee's Final Average Compensation (FAC) for the purposes of pension calculation.

PURPOSE

This regulation sets forth the policies and guidelines governing the accumulation and carryover of vacation credits.

VACATION POLICY

Vacation leave is an important benefit to an employee's health, productivity, personal development, and enjoyment of life. Vacation leave should be taken. Vacation gives employees a refreshed outlook on life and work. Although vacations usually must be scheduled to align with workload peaks and seniority, employees who skip vacation altogether are hurting both themselves and the City, in the long run. Employees who continuously find themselves with excess leave should be directed to prevent its occurrence.

ADMINISTRATION OF VACATION CREDITS

A. STANDARD CARRYOVER

Maximum vacation carryover is based on the formula of two times (2x) accrual rate. The standard carryover amounts noted below are temporarily suspended. Employees should refer to Section B, Temporary Carryover Change for fiscal years 2014-2016.

HOURLY EMPLOYEES			
Years of Service	Accrual Rate Per Month	Maximum Carryover as of December 31	Maximum Accrual Compensated at Separation
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*

EXEMPT EMPLOYEES			
Years of Service	Annual Accrual Rate **	Maximum Carryover as of December 31	Maximum Accrual Compensated at Separation
0 - 5	12 days	24 days	30 days
6 - 10	15 days	30 days	37.5 days
11 - 15	16.5 days	33 days	41.25 days
16 - 20	19.5 days	39 days	48.75 days
21 +	22.5 days	45 days	56.25 days

*Employees in LIUNA 777 / Unit 1 may be compensated for 500 hours of vacation upon retirement if they have more than 21 years of service.

**Prorated monthly based on eight hour days.

Employees who have accumulated vacation credits in excess of the hours/days indicated in the third column (or Fire Department 56-hour equivalent) as of December 31 must obtain the written recommendation of their Department Director and the approval of the City Manager to carry over excess credits. Such requests are discouraged. Requests should be made only when the City will be seriously impacted by allowing the employee to take vacation. Such requests should document the employee's and department's efforts to allow the employee to take vacation and reduce the accrual total. Written requests should include the vacation accrual rate of the employee. All such requests must be submitted through the Human Resources Department to the City Manager by November 30. The written authority to carry over excess vacation credits shall be transmitted to the Human Resources Department.

B. TEMPORARY CARRYOVER CHANGE

A temporary change to the standard carryover amounts noted in Section A has been implemented to allow employees to “catch-up” their vacation use over a period of time. These additional carryover amounts were required due to the elimination of vacation sell-back and furloughs in some units. Note – there are no changes to the monthly accrual rate or the maximum accrual compensated at separation.

HOURLY EMPLOYEES			
Years of Service	Accrual Rate Per Month (no change)	Max Carryover** as of Dec 31, 2014 (40 hours added)	Max Accrual Compensated at Separation (no change)
0 - 5	8 hours	232 hours	240 hours
6 - 10	10 hours	280 hours	300 hours
11 - 15	11 hours	304 hours	330 hours
16 - 20	13 hours	352 hours	390 hours
21 +	15 hours	400 hours	450 hours*

EXEMPT EMPLOYEES			
Years of Service	Annual Accrual Rate*** (no change)	Max Carryover as of Dec 31, 2014 (5 days added)	Max Accrual Compensated at Separation (no change)
0 - 5	12 days	29 days	30 days
6 - 10	15 days	35 days	37.5 days
11 - 15	16.5 days	38 days	41.25 days
16 - 20	19.5 days	44 days	48.75 days
21 +	22.5 days	50 days	56.25 days

* Employees in LIUNA 777 / Unit 1 may be compensated for 500 hours of vacation upon retirement if they have more than 21 years of service.

** Unit 5 employees should refer to the 2014-2016 MOU for more information on carryover.

*** Prorated monthly based on eight-hour days.

C. Excess vacation credits approved to be carried over, together with vacation credits accruing during the new calendar year, must be used within the next calendar year. Excess vacation credits cannot be carried over for more than one year.

D. Vacation credits shall accrue during leaves of absence compensated under the jurisdiction of the Arizona Industrial Commission, during a period not to exceed one (1) year of total absence per injury.

VACATION SELL-BACK

Vacation sell-back has been suspended for some employee groups as part of the 2014-2016 MOU and MOA's. Please review your MOU / MOA to determine if vacation sell-back is available.

- A. At the discretion of the City Manager, employees designated as either Executive or Middle Management may be paid up to ten (10) days or 80 hours of accumulated vacation time each year. Employees may sell back a maximum of 80 hours in November. The November sell-back is conditional upon having used 80 hours of vacation time during the calendar year.

Public Safety Middle Managers and Executives may be paid up to 118 hours of accumulated vacation time each year. The November sellback for Police and 40-hour Fire Middle Managers and Executives is conditional upon having used 80 hours of vacation time during the calendar year. The 56-hour Middle Managers in the Fire Department may be paid up to 133 hours of accumulated vacation time each year. Their November sell-back is conditional upon having used 96 hours of vacation time during the calendar year.

Supervisory/Professional employees may be paid up to 80 hours of accumulated vacation each year, contingent upon their using a minimum of 80 hours of vacation/compensatory time during the same calendar year. Employees may sell back vacation hours twice per year, for an annual maximum of 80 hours, payable with the last check of May and/or November.

Employees designated as Unit I may be paid up to 80 hours of accumulated vacation each year contingent upon their having accumulated a minimum of 175 hours of vacation leave. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Employees designated as Unit II may be paid up to 80 hours of accumulated vacation each year after accumulating a minimum of 120 hours of vacation leave, contingent upon their use of 35 hours of vacation/compensatory time during the same calendar year. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Employees designated as Unit III may be paid up to 80 hours of accumulated vacation each year after accumulating a minimum of 120 hours of vacation leave, contingent upon their use of 40 hours of vacation/compensatory time during the same calendar year. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Confidential Office/Clerical employees may be paid up to 80 hours of accumulated vacation each year, contingent upon their having used a minimum of 40 hours of vacation/compensatory time during the same calendar year. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Police Supervisory/Professional employees may be paid up to 40 hours of accumulated vacation each year contingent upon their using a minimum of 40 hours of vacation or compensatory time during the same calendar year.

Police officers may be paid up to 40 hours of accumulated vacation each year contingent upon their using a minimum of 40 hours of vacation/compensatory time during the same calendar year.

Firefighters may be paid up to 80 hours of accumulated vacation annually. This benefit shall not exceed 80 hours, and may be used as follows: 40 hours on the last pay period in November and/or May of each MOU year. The sell-back of hours must not bring an employee's bank of vacation hours below 150 hours (210 for 56-hour employees).

- B. The requirement to use time in order to sell back vacation leave may be waived in either the calendar year prior to retirement or the calendar year of retirement provided the employee submits a written notice to retire on a specific date.

VACATION CASH OUT AT SEPARATION

- A. The maximum accrual which can be compensated at separation sets a limit on the number of vacation hours/days to be paid when an individual ends employment with the City. This number is based on the formula of two and one-half times ($2 \frac{1}{2}x$) the annual accrual rate. The reason for including this limitation is to encourage employees to use their vacation time, particularly when they have accumulated the maximum carryover amount. If the employee accrues more vacation hours than are listed in the fourth column, he risks losing the accumulated excess upon separation from employment with the City. (The Fire Department should use the 56-hour equivalent.)
- B. On a one-time exception basis, employees who plan to retire in the upcoming calendar year may request permission from the City Manager or his designee to carryover vacation leave credits in excess of the annual maximum carryover. The request must include a specific retirement date, and will not be considered a second time.
- C. Vacation credits are not paid out at separation unless the employee has completed at least six months of regular employment.

VACATION LEAVE SNAPSHOT

- A. Executives and Middle Managers - Lump-sum payments of unused vacation leave accrued after December 31, 2013, will not be included in pension calculations for Middle Manager and Executive employees who are part of the City of Phoenix Employee Retirement System (COPERS).
 1. The amount of vacation leave eligible for inclusion in the calculation of an employee's final average compensation at the time of retirement is limited to the number of hours in the Middle Manager's or Executive's vacation bank on December 31, 2013.
 2. An employee who was promoted into the Middle Manager or Executive benefit category between December 31, 2013, and July 1, 2014, had his vacation snapshot taken on the effective date of the promotion.
 3. New hires after December 31, 2013, in the Middle Manager or Executive benefit category will not have final cash outs of vacation leave factored into the Final Average Compensation (FAC) used to establish an employee's pension.

B. Employees in Units 1, 2, 3, 7 and 8 - Lump-sum payments of unused vacation leave accrued after June 30, 2014, will not be included in pension calculations for employees in Units 1, 2, 3, 7, and 8, who are part of the City of Phoenix Employee Retirement System (COPERS.)

1. The amount of vacation leave eligible for inclusion in the calculation of an employee's final average compensation at the time of retirement is limited to the number of hours in the employee's vacation bank on June 30, 2014.
2. New hires after June 30, 2014, will not have final cash outs of vacation leave factored into the Final Average Compensation (FAC) used to establish an employee's pension.

EXAMPLES:

Example A – An Executive has 22 years of service at the time of her retirement. Her vacation snapshot balance was 400 hours on December 31, 2013, and her vacation balance upon retirement is 450 hours, the maximum that can be cashed out with 22 years of service. She will have the 400 hours of vacation cash out factored into her final average salary. The additional 50 hours of vacation cash out is eligible to be paid into her tax-deferred 457 account, but will not be reflected in her pension calculation.

Example B – A Middle Manager has 25 years of service at the time of his retirement. He was hired in March 2014. He has no vacation snapshot. His vacation balance upon retirement is 450 hours. The 450 hours of vacation cash out is eligible to be paid into his tax-deferred 457 account, but will not be reflected in his pension calculations.

Example C – A Unit 7 employee has 25 years of service at the time of her retirement. Her vacation snapshot balance was 400 hours on June 30, 2014, and her vacation balance upon retirement is 450 hours, the maximum that can be cashed out with 25 years of service. She will have the 400 hours of vacation cash out factored into her final average salary. The additional 50 hours of vacation cash out is eligible to be paid into her tax-deferred 457 account, but will not be reflected in her pension calculation.

Example D – A Unit 2 employee has 14 years of service at the time of his retirement. His vacation snapshot balance was 200 hours on June 30, 2014, and his vacation balance upon retirement is 330 hours, the maximum that can be cashed out upon separation with 14 years of service. He will have the 200 hours of vacation cash out factored into his final average salary. The additional 130 hours of vacation cash out is eligible to be paid into his tax-deferred 457 account, but will not be factored in his pension calculation.

ED ZUERCHER, City Manager


By 
Ginger Spencer
Special Assistant to the City Manager

Exhibit 1b



City of Phoenix

ADMINISTRATIVE REGULATION	A.R. NUMBER
	2.18 Revised
	FUNCTION Human Resources and Payroll Page 1 of 6
	EFFECTIVE DATE November 22, 2013
SUBJECT EXCESSIVE ACCUMULATION AND CARRYOVER OF VACATION CREDITS	REVIEWED DATE

INTRODUCTION

Transmittal Message

This A.R. has been revised to incorporate changes approved by the Mayor and City Council following the recommendations made by the Ad Hoc Pension Fairness and Spiking Elimination Subcommittee on October 31, 2013. Questions regarding this AR should be directed to the Human Resources Department at (602) 262-6608.

Summary of Changes

This AR was last revised in 2012. A new section was added on page 5 describing the vacation leave snapshot that is effective December 31, 2013, which establishes the maximum amount of vacation leave that can be included in a Middle Manager's or Executive's Final Average Compensation for the purposes of pension calculation.

PURPOSE

This regulation sets forth the policies and guidelines governing the accumulation and carryover of vacation credits.

VACATION POLICY

Vacation leave is an important benefit to an employee's health, productivity, personal development, and enjoyment of life. Vacation leave should be taken. Vacation gives employees a refreshed outlook on life and work. ~~Although vacations usually must be scheduled to align with workload peaks and seniority, employees who skip vacation altogether are hurting both themselves and the City, in the long run. Employees who continuously find themselves with excess leave should be directed to prevent its occurrence.~~

ADMINISTRATION OF VACATION CREDITS

A. STANDARD CARRYOVER

Maximum vacation carryover is based on the formula of two times (2x) accrual rate. For the carryovers as of December 31, 2012 and as of December 31, 2013, the standard carryover amounts noted below only apply to employees in units 1 (LIUNA 777) and 6 (PPSLA). All other employees should refer to Section B, Temporary Carryover Change.

HOURLY EMPLOYEES			
Years of Service	Accrual Rate Per Month	Maximum Carryover as of December 31	Maximum Accrual Compensated at Separation
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

EXEMPT EMPLOYEES			
Years of Service	Annual Accrual Rate **	Maximum Carryover as of December 31	Maximum Accrual Compensated at Separation
0 - 5	12 days	24 days	30 days
6 - 10	15 days	30 days	37.5 days
11 - 15	16.5 days	33 days	41.25 days
16 - 20	19.5 days	39 days	48.75 days
21 +	22.5 days	45 days	56.25 days

** Prorated monthly based on eight hour days.

Employees who have accumulated vacation credits in excess of the hours/days indicated in the third column (or Fire Department 56-hour equivalent) as of December 31 must obtain the written recommendation of their Department Director and the approval of the City Manager to carry over excess credits. Such requests are discouraged. Requests should be made only ~~when the City will be seriously impacted by allowing the employee to take vacation.~~ Such requests should document the employee's and department's efforts to allow the employee to take vacation and reduce the accrual total. Written requests should include the vacation accrual rate of the employee. All such requests must be submitted through the Human Resources Department to the City Manager by November 30. The written authority to carry over excess vacation credits shall be transmitted to the Human Resources Department.

B. TEMPORARY CARRYOVER CHANGE

A temporary (two-year) change to the standard carryover amounts noted in Section A has been implemented to allow certain employees to “catch-up” their vacation use over a period of time. These additional carryover amounts were required due to the recent completion of the two-year freeze on vacation cut-back and furloughs in some units. The charts below apply to employees in units other than Unit 1 (LIUNA 777), Unit 5 (IAFF), and Unit 6 (PPSLA) for the carryovers as of December 31, 2012 and as of December 31, 2013. Note – there are no changes to the monthly accrual rate or the maximum accrual compensated at separation.

HOURLY EMPLOYEES				
Years of Service	Accrual Rate Per Month (no change)	Max Carryover as of Dec 31, 2012 (80 hours added)	Max Carryover as of Dec 31, 2013 (40 hours added)	Max Accrual Compensated at Separation (no change)
0 - 5	8 hours	272 hours	232 hours	240 hours
6 - 10	10 hours	320 hours	280 hours	300 hours
11 - 15	11 hours	344 hours	304 hours	330 hours
16 - 20	13 hours	392 hours	352 hours	390 hours
21 +	15 hours	440 hours	400 hours	450 hours

EXEMPT EMPLOYEES				
Years of Service	Annual Accrual Rate** (no change)	Max Carryover as of Dec 31, 2012 (10 days added)	Max Carryover as of Dec 31, 2013 (5 days added)	Max Accrual Compensated at Separation (no change)
0 - 5	12 days	34 days	29 days	30 days
6 - 10	15 days	40 days	35 days	37.5 days
11 - 15	16.5 days	43 days	38 days	41.25 days
16 - 20	19.5 days	49 days	44 days	48.75 days
21 +	22.5 days	55 days	50 days	56.25 days

** Prorated monthly based on eight-hour days.

C. Excess vacation credits approved to be carried over, together with vacation credits accruing during the new calendar year, must be used within the next calendar year. Excess vacation credits cannot be carried over for more than one year.

D. Vacation credits shall accrue during leaves of absence compensated under the jurisdiction of the Arizona Industrial Commission, during a period not to exceed one (1) year of total absence per injury.

VACATION SELL-BACK

A. At the discretion of the City Manager, employees designated as either Executive or Middle Management may be paid up to fifteen (15) days of accumulated vacation time each year. Employees may sell back a maximum of 80 hours in November. The November sell-back is conditional upon having used 80 hours of vacation time during the calendar year. For 56-hour Middle Managers in the Fire Department, the sell-back is conditional upon having used 96 hours of vacation time during the calendar year. Also at the discretion of the City Manager, employees in the Executive and Middle Management categories may sell back a maximum of 40 hours during an additional sell-back opportunity, when authorized.

Supervisory/Professional employees may be paid up to 80 hours of accumulated vacation each year, contingent upon their using a minimum of 80 hours of vacation/compensatory time during the same calendar year. Employees may sell back vacation hours twice per year, for an annual maximum of 80 hours, payable with the last check of May and/or November.

Employees designated as Unit I may be paid up to 80 hours of accumulated vacation each year contingent upon their having accumulated a minimum of 175 hours of vacation leave. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Employees designated as Unit II may be paid up to 80 hours of accumulated vacation each year after accumulating a minimum of 120 hours of vacation leave, contingent upon their use of 35 hours of vacation/compensatory time during the same calendar year. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Employees designated as Unit III may be paid up to 80 hours of accumulated vacation each year after accumulating a minimum of 120 hours of vacation leave, contingent upon their use of 40 hours of vacation/compensatory time during the same calendar year. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Confidential Office/Clerical employees may be paid up to 80 hours of accumulated vacation each year, contingent upon their having used a minimum of 40 hours of vacation/compensatory time during the same calendar year. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Police Supervisory/Professional employees may be paid up to 40 hours of accumulated vacation each year contingent upon their using a minimum of 40 hours of vacation/compensatory time during the same calendar year.

Police officers may be paid up to 40 hours of accumulated vacation each year contingent upon their using a minimum of 40 hours of vacation/compensatory time during the same calendar year.

Firefighters may be paid up to 80 hours of accumulated vacation annually. This benefit shall not exceed 80 hours, and may be used as follows: 40 hours on the last pay period in November and/or May of each MOU year. The sell-back of hours must not bring an employee's bank of vacation hours below 150 hours (210 for 56-hour employees).

- B. The requirement to use time in order to sell back vacation leave may be waived in either the calendar year prior to retirement or the calendar year of retirement provided the employee submits a written notice to retire on a specific date.

VACATION CASH OUT AT SEPARATION

- A. The maximum accrual which can be compensated at separation sets a limit on the number of vacation hours/days to be paid when an individual ends employment with the City. This number is based on the formula of two and one-half times (2 1/2x) the annual accrual rate. The reason for including this limitation is to encourage employees to use their vacation time, particularly when they have accumulated the maximum carryover amount. If the employee accrues more vacation hours than are listed in the fourth column, he/she risks losing the accumulated excess upon separation from employment with the City. (The Fire Department should use the 56-hour equivalent.)
- B. On a one-time exception basis, employees who plan to retire in the upcoming calendar year may request permission from the City Manager or his designee to carryover vacation leave credits in excess of the annual maximum carryover. The request must include a specific retirement date, and will not be considered a second time.
- C. Vacation credits are not paid out at separation unless the employee has completed at least six months of regular employment.

VACATION LEAVE SNAPSHOT FOR MIDDLE MANAGERS AND EXECUTIVES

- A. Lump-sum payments of unused vacation leave accrued after December 31, 2013, will not be included in pension calculations for Middle Manager and Executive employees who are part of the City of Phoenix Employee Retirement System (COPERS).
- B. The amount of vacation leave eligible for inclusion in the calculation of a Middle Manager's or Executive's final average compensation at the time of retirement is limited to the number of hours in the Middle Manager's or Executive's vacation bank on December 31, 2013.
- C. If an employee is promoted into the Middle Manager or Executive benefit category between December 31, 2013, and July 1, 2014, the employee's snapshot will be taken on the effective date of the promotion.
- D. ~~New hires in the Middle Manager or Executive benefit category will not have final cash outs of vacation leave factored into the Final Average Compensation used to establish an employee's pension.~~

EXAMPLES:

Example A – An Executive has 22 years of service at the time of her retirement. Her vacation snapshot balance was 400 hours on December 31, 2013, and her vacation balance upon retirement is 450 hours. She will have the 400 hours of vacation cash out factored into her final average compensation. The additional 50 hours of vacation cash out is eligible to be paid into her tax-deferred 401(a) account, but will not be reflected in her pension calculation.

Example B – A Middle Manager has 25 years of service at the time of his retirement. He was hired in March 2014. He has no vacation snapshot. His vacation balance upon retirement is 450 hours. The 450 hours of vacation cash out is eligible to be paid into his tax-deferred 401(a) account, but will not be reflected in his pension calculations.

ED ZUERCHER, Acting City Manager

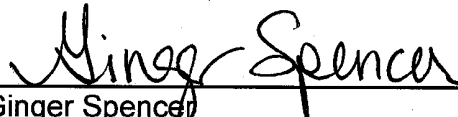
By 
Ginger Spencer
Special Assistant to the City Manager

Exhibit 1c



City of Phoenix

ADMINISTRATIVE REGULATION	A.R. NUMBER
	2.18 Revised
SUBJECT EXCESSIVE ACCUMULATION AND CARRYOVER OF VACATION CREDITS	FUNCTION
	Human Resources and Payroll Page 1 of 5
	EFFECTIVE DATE
	July 1, 2012
	REVIEWED DATE

INTRODUCTION

Transmittal Message

This AR has been revised to reflect the vacation sell-back benefit as detailed in applicable Memoranda of Understanding. Questions regarding this AR should be directed to the Human Resources Department at (602) 262-6608.

Summary of Changes

This AR was last revised in 2008. The 2012 revision reflects a temporary (two year) change in the maximum vacation hours that can be carried over each calendar year. Refer to the applicable MOU or MOA for fiscal year 2012-2014 for information about vacation sell-back as it has been part of the negotiated concessions with some employee units. Also, the term "buy-back" has been changed to "sell-back" in order to better describe the employee perspective of the employee benefit.

PURPOSE

This regulation sets forth the policies and guidelines governing the accumulation and carryover of vacation credits.

VACATION POLICY

Vacation leave is an important benefit to an employee's health, productivity, personal development, and enjoyment of life. Vacation leave should be taken. Vacation gives employees a refreshed outlook on life and work. Although vacations usually must be scheduled to align with workload peaks and seniority, employees who skip vacation altogether are hurting both themselves and the City, in the long run. Employees who continuously find themselves with excess leave should be directed to prevent its occurrence.

ADMINISTRATION OF VACATION CREDITS

A. STANDARD CARRYOVER

Maximum vacation carryover is based on the formula of two times (2x) accrual rate. **For the carryovers as of December 31, 2012 and as of December 31, 2013, the standard carryover amounts noted below only apply to employees in units 1 (LIUNA 777) and 6 (PPSLA). All other employees should refer to Section B, Temporary Carryover Change.**

HOURLY EMPLOYEES			
Years of Service	Accrual Rate Per Month	Maximum Carryover as of December 31	Maximum Accrual Compensated at Separation
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

EXEMPT EMPLOYEES			
Years of Service	Annual Accrual Rate **	Maximum Carryover as of December 31	Maximum Accrual Compensated at Separation
0 - 5	12 days	24 days	30 days
6 - 10	15 days	30 days	37.5 days
11 - 15	16.5 days	33 days	41.25 days
16 - 20	19.5 days	39 days	48.75 days
21 +	22.5 days	45 days	56.25 days

** Prorated monthly based on eight hour days.

Employees who have accumulated vacation credits in excess of the hours/days indicated in the third column (or Fire Department 56-hour equivalent) as of December 31 must obtain the written recommendation of their Department Director and the approval of the City Manager to carry over excess credits. Such requests are discouraged. Requests should be made only when the City will be seriously impacted by allowing the employee to take vacation. Such requests should document the employee's and department's efforts to allow the employee to take vacation and reduce the accrual total. Written requests should include the vacation accrual rate of the employee. All such requests must be submitted through the Human Resources Department to the City Manager by November 30. The written authority to carry over excess vacation credits shall be transmitted to the Human Resources Department.

B. TEMPORARY CARRYOVER CHANGE

A temporary (two year) change to the standard carryover amounts noted in Section A has been implemented to allow certain employees to “catch-up” their vacation use over a period of time. These additional carryover amounts were required due to the recent completion of the two-year freeze on vacation cut-back and furloughs in some units. **The charts below apply to employees in units other than Unit 1 (LIUNA 777), Unit 5 (IAFF), and Unit 6 (PPSLA) for the carryovers as of December 31, 2012 and as of December 31, 2013. Note – there are no changes to the monthly accrual rate or the maximum accrual compensated at separation.**

HOURLY EMPLOYEES				
Years of Service	Accrual Rate Per Month (no change)	Max Carryover as of Dec 31, 2012 (80 hours added)	Max Carryover as of Dec 31, 2013 (40 hours added)	Max Accrual Compensated at Separation (no change)
0 - 5	8 hours	272 hours	232 hours	240 hours
6 - 10	10 hours	320 hours	280 hours	300 hours
11 - 15	11 hours	344 hours	304 hours	330 hours
16 - 20	13 hours	392 hours	352 hours	390 hours
21 +	15 hours	440 hours	400 hours	450 hours

EXEMPT EMPLOYEES				
Years of Service	Annual Accrual Rate** (no change)	Max Carryover as of Dec 31, 2012 (10 days added)	Max Carryover as of Dec 31, 2013 (5 days added)	Max Accrual Compensated at Separation (no change)
0 - 5	12 days	34 days	29 days	30 days
6 - 10	15 days	40 days	35 days	37.5 days
11 - 15	16.5 days	43 days	38 days	41.25 days
16 - 20	19.5 days	49 days	44 days	48.75 days
21 +	22.5 days	55 days	50 days	56.25 days

** Prorated monthly based on eight hour days.

C. Excess vacation credits approved to be carried over, together with vacation credits accruing during the new calendar year, must be used within the next calendar year. Excess vacation credits cannot be carried over for more than one year.

D. Vacation credits shall accrue during leaves of absence compensated under the jurisdiction of the Arizona Industrial Commission, during a period not to exceed one (1) year of total absence per injury.

VACATION SELL-BACK

- A. At the discretion of the City Manager, employees designated as either Executive or Middle Management may be paid up to fifteen days of accumulated vacation time each year. Employees may sell back a maximum of 80 hours in November. The November sell-back is conditional upon having used 80 hours of vacation time during the calendar year. For 56-hour Middle Managers in the Fire Department, the sell-back is conditional upon having used 96 hours of vacation time during the calendar year. Also at the discretion of the City Manager, employees in the Executive and Middle Management categories may sell back a maximum of 40 hours during an additional sell-back opportunity, when authorized.

Supervisory/Professional employees may be paid up to 80 hours of accumulated vacation each year, contingent upon their using a minimum of 80 hours of vacation/compensatory time during the same calendar year. Employees may sell back vacation hours twice per year, for an annual maximum of 80 hours, payable with the last check of May and/or November.

Employees designated as Unit I may be paid up to 80 hours of accumulated vacation each year contingent upon their having accumulated a minimum of 175 hours of vacation leave. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Employees designated as Unit II may be paid up to 80 hours of accumulated vacation each year after accumulating a minimum of 120 hours of vacation leave, contingent upon their use of 35 hours of vacation/compensatory time during the same calendar year. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Employees designated as Unit III may be paid up to 80 hours of accumulated vacation each year after accumulating a minimum of 120 hours of vacation leave, contingent upon their use of 40 hours of vacation/compensatory time during the same calendar year. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Confidential Office/Clerical employees may be paid up to 80 hours of accumulated vacation each year, contingent upon their having used a minimum of 40 hours of vacation/compensatory time during the same calendar year. Employees may sell back a maximum of 40 hours, twice per year, for an annual maximum of 80 hours.

Police Supervisory/Professional employees may be paid up to 40 hours of accumulated vacation each year contingent upon their using a minimum of 40 hours of vacation/compensatory time during the same calendar year.

Police officers may be paid up to 40 hours of accumulated vacation each year contingent upon their using a minimum of 40 hours of vacation/compensatory time during the same calendar year.

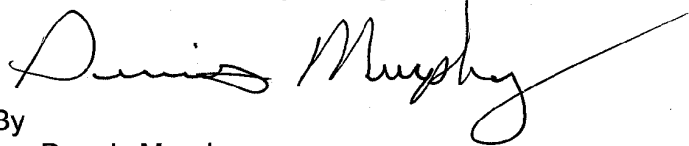
Firefighters may be paid up to 80 hours of accumulated vacation annually. This benefit shall not exceed 80 hours, and may be used as follows: forty hours on the last pay period in November and/or May of each MOU year. The sell-back of hours must not bring an employee's bank of vacation hours below 150 hours (210 for 56-hour employees).

- B. The requirement to use time in order to sell back vacation leave may be waived in either the calendar year prior to retirement or the calendar year of retirement provided the employee submits a written notice to retire on a specific date.

VACATION CASH OUT AT SEPARATION

- A. The maximum accrual which can be compensated at separation sets a limit on the number of vacation hours/days to be paid when an individual ends employment with the City. This number is based on the formula of two and one-half times (2 1/2x) the annual accrual rate. The reason for including this limitation is to encourage employees to use their vacation time, particularly when they have accumulated the maximum carryover amount. If the employee accrues more vacation hours than are listed in the fourth column, he/she risks losing the accumulated excess upon separation from employment with the City. (The Fire Department should use the 56-hour equivalent.)
- B. On a one-time exception basis, employees who plan to retire in the upcoming calendar year may request permission from the City Manager or his designee to carryover vacation leave credits in excess of the annual maximum carryover. The request must include a specific retirement date, and will not be considered a second time.
- C. Vacation credits are not paid out at separation unless the employee has completed at least six months of regular employment.

DAVID CAVAZOS, City Manager



By

Dennis Murphy
Assistant to the City Manager

Exhibit 1u

Rev. 8-1-81



ADMINISTRATIVE REGULATION

A.R. NUMBER
A.R. 2.18
Page 1 of 2 pages

FUNCTION
PERSONNEL AND PAYROLL

CITY OF PHOENIX

SUBJECT
EXCESS ACCUMULATION AND CARRYOVER OF
VACATION CREDITS

EFFECTIVE DATE
July 9, 1979

(1) Purpose

This regulation sets forth the policies and guidelines governing the accumulation and carryover of vacation credits.

(2) Vacation Policy

Vacation leave is an important benefit to employees' health, productivity, personal development and enjoyment of life. Vacation leave should be taken. Vacation gives the employee a refreshed outlook on life and work. Although vacations usually must be scheduled to match workload peaks and seniority; the employee who skips vacation altogether is, in the long run, hurting both himself and the City. Employees who continuously find themselves with excess leave, should be directed to prevent its reoccurrence.

(3) Personnel Rules

Policies established by the Civil Service Board and approved by the City Council, which permit the accumulation and carryover of excess vacation credits are contained in Sections 14b1, 14b2 and 14b3 of Rule 14, City of Phoenix, Personnel Rules.

(4) Administration of Vacation Credits

Implementation and interpretation of these rules shall be as follows:

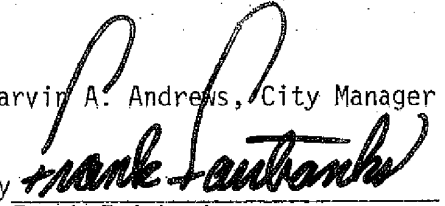
(A) Employees who have accumulated vacation credits in excess of 240 hours (30 working days, Fire Department 56-hour employees proportional to 30 working days), at the completion of the first pay period ending in January of any calendar year, must obtain in writing, the recommendation of their Department Head and the approval of the City Manager, to carryover excess credits. The written authority to carryover excess vacation credits shall be transmitted to the Personnel Department and placed on file. No employee shall be allowed to accumulate more than 408 hours vacation credits (or Fire Department equivalent hours).

(B) Any vacation credits in excess of 240 hours (or Fire Department equivalent hours) carried over after the completion of the first pay period ending in January of any calendar year, together with vacation credits accruing during that year, must be used during the carryover year.

- (C) The City Manager may grant special exceptions to these requirements, under unique circumstances.
- (D) Vacation credit shall accrue during leaves of absence compensated under the jurisdiction of the Arizona Industrial Commission, for up to one (1) year of total absence per injury.

Marvin A. Andrews, City Manager

By



Frank Fairbanks
Assistant to the City Manager

Exhibit 2

1 Colin F. Campbell, 004955
Eric M. Fraser, 027241
2 Hayleigh S. Crawford, 032326
Osborn Maledon, P.A.
3 2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
4 (602) 640-9000
ccampbell@omlaw.com
5 efraser@omlaw.com
hcrawford@omlaw.com

6 Attorneys for Defendants

7
8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF MARICOPA

10 American Federation of State County and
11 Municipal Employees, AFL-CIO, Local
2384, et al.

12 Plaintiffs,

13 v.

14 City of Phoenix, et al.,

15 Defendants.

No. CV2014-011778

**DECLARATION OF CINDY
BEZAURY**

(Assigned to the Honorable
Roger Brodman)

16
17 I, Cindy Bezaury, declare and state as follows:

18 1. I make this declaration in support of Defendants' Motion for Summary
19 Judgment. I have worked in various roles for the City of Phoenix from December 2013 to
20 present, including Assistant Human Resources Director and Labor Relations
21 Administrator, Interim Retirement Administrator, and Acting Human Resources Director.
22 I am currently employed as the Assistant Human Resources Director and Labor Relations
23 Administrator. Through my present and past capacities in the HR and Retirement
24 Departments, I have personal knowledge of the facts set forth in this declaration. If called
25 as a witness, I could and would testify competently to such facts.

26 2. Frank Piccioli is a current employee of the City of Phoenix.

27 3. Marshall Pimentel is a current employee of the City of Phoenix.

28 4. Ronald Ramirez is a current employee of the City of Phoenix.

- 1 5. Debra Novak-Scott is a current employee of the City of Phoenix.
- 2 6. Jason Stokes is a current employee of the City of Phoenix.
- 3 7. None of the individuals named in ¶¶ 2–6 have sought or received a cash out
4 for accrued vacation leave at separation or retirement pursuant to Administrative
5 Regulation (“AR”) 2.18.
- 6 8. Employees who elect to cash out accrued vacation leave when they retire are
7 paid for that leave at their final rate of compensation, even if the leave had been accrued in
8 an earlier year when the employee was compensated at a lower rate.
- 9 9. For union-represented employees, vacation leave accrual, sell back, and cash
10 out benefits are generally negotiated as part of the collective bargaining process. For non-
11 union employees (middle managers and executives), the City Manager may set the
12 applicable vacation leave rules.
- 13 10. The City Manager incorporates all of vacation leave rules, whether
14 negotiated or unilaterally set, into a single policy set out in AR 2.18, titled “Excessive
15 Accumulation and Carryover of Vacation Credits.”
- 16 11. Until the City Manager revised AR 2.18 in 2013 to expressly exclude cash
17 outs for accrued vacation from the calculation of employee pensions, none of the City’s
18 formal policies stated whether money received for vacation (whether from using, selling
19 back, or cashing out vacation leave) was pensionable “compensation” under the Charter.
- 20 12. In practice, however, the City included all amounts received for vacation
21 (whether from using, selling back, or cashing out vacation leave) when reporting an
22 employee’s pensionable “compensation” to COPERS at the employee’s separation or
23 retirement.
- 24 13. When an eligible employee retired or separated from the City, the City would
25 report the employee’s final year compensation to COPERS administrators as a single “all-
26 in” amount. The City did not distinguish between money received by an employee for used
27 vacation time, money received for vacation sold back during the year, and cash outs at
28 retirement.

1 14. Under the "vacation leave snapshot," as reflected in AR 2.18, employees can
2 continue to cash out accrued vacation leave at separation or retirement. However, only
3 those amounts accrued prior to the effective date of the snapshot (December 31, 2013 for
4 executives and middle managers; July 1, 2014 for employees in Units 1, 2, 3, and 7) may
5 be included in the calculation of an employee's COPERS pension benefit.

6 15. The City proposed the vacation leave snapshot to the representatives of
7 employees in Units 1, 2, and 3 during the negotiation of their 2014-2016 Memoranda of
8 Understanding ("MOUs") and to the representatives of Unit 7 during the negotiation of
9 their 2014-2016 Memorandum of Agreement ("MOA").

10 16. The City explicitly told the representatives of employees in Units 1, 2, 3, and
11 7, before the parties executed the 2014-2016 MOUs and MOA, that the City would be
12 revising AR 2.18 to exclude lump-sum payouts for accrued vacation at retirement or
13 separation from the calculation of employee pensions and did not intend to treat these
14 amounts as pensionable going forward.

15 I declare under penalty of perjury that the foregoing is true and correct.

16 EXECUTED on this 20th day of December, 2016.

17
18 
19 Cindy Bezaury

20
21
22
23
24
25
26
27
28

Exhibit 3

ORDINANCE S-39022

AN ORDINANCE REPEALING EXISTING PAY
ORDINANCES S-37212 AND S-37502 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 No. S-37212 and S-37502 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 9, 2012, 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 an 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 2012-2014 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 2012-2014 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 2012-2014 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 2012-2014 by and between the City of Phoenix and Phoenix Law Enforcement Association, covering Police Officers Unit 4.

Memorandum of Understanding 2012-2014 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 shall be effective and/or modified in accordance with the following:

- (a) Effective July 9, 2012, 1.00% wage concession will be restored to Unit 1 pay grades.
- (b) Effective July 9, 2012, an additional 0.94% wage restoration will be applied to Unit 1 pay grades.

- (c) Effective July 9, 2012, 1.00% wage concession will be restored to Unit 2 pay grades.
- (d) Effective July 9, 2012, 0.70% wage concession will be restored to Unit 3 pay grades.
- (e) Effective July 9, 2012, 1.00% wage concession will be restored to Unit 4 pay grades.
- (f) Effective July 9, 2012, 0.35% wage concession will be restored to Unit 5 pay grades.
- (g) Effective July 9, 2012, 1.00% wage concession will be restored to Unit 6 (Police supervisors) pay grades.
- (h) Effective July 9, 2012, 0.85% wage concession will be restored to Confidential Office and Clerical pay grades.
- (i) Effective July 9, 2012, 1.00% wage concession will be restored to Supervisory and Professional pay grades.
- (j) A 2012-2013 1.50% pay grade increase for all Middle Manager and Executive pay grades will be deferred to July 8, 2013.
- (k) The City Manager, in consultation with the Finance and the Budget and Research Directors, is authorized to evaluate the City's 2012-2013 fiscal performance with respect to the 2013-2014 Required Stability Indicators set forth in Exhibits B-1 through B-10, and is authorized to modify the rate of compensation of all City employees, effective July 8, 2013, as set for the therein.

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 24. Re-employment

Employees re-employed or recalled to a full-time position in the same classification or a related classification within five (5) years shall be placed at a pay rate that is closest to, but not less than, the rate of pay the employee was receiving at the time of layoff, demotion, or separation, except where concessions remain in effect thereby reducing the previous rate of pay by a percentage respective to the employee Unit. The provisions of this paragraph do not apply to promotions after re-employment.

SECTION 25. Transfer

If an employee transfers within the same classification, but in a different meet and confer unit, the Human Resources Director is authorized to designate the pay step to which the employee shall be assigned.

SECTION 26. Retroactive Payment

Retroactive payments will not exceed three (3) years from the date the employee notifies the Human Resources Department in writing of a payment dispute. The Human Resources Director shall have exclusive authority to determine the appropriate time limit and amount of retroactive pay for any retroactive pay awarded.

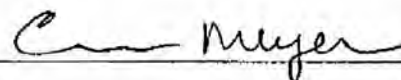
SECTION 27. That unless otherwise specified, the provisions of this Ordinance shall be effective as of the 9th day of July, 2012.

PASSED by the Council of the City of Phoenix this 20th day of June, 2012.



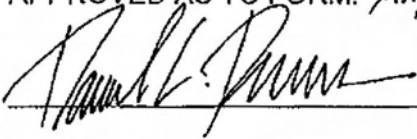
MAYOR

ATTEST:

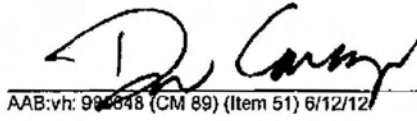
 City Clerk

...
...
...

APPROVED AS TO FORM: *AAS*


Acting City Attorney

REVIEWED BY:


City Manager

AAB:vh: 99-548 (CM 89) (Item 51) 6/12/12

Exhibit 7b

AGREEMENT

2012 – 2014

CITY OF PHOENIX

&

**ADMINISTRATIVE, SUPERVISORY
PROFESSIONAL & TECHNICAL EMPLOYEES
ASSOCIATION (ASPTEA)**

REPRESENTING UNIT 7 EMPLOYEES

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

ATTACHMENT A

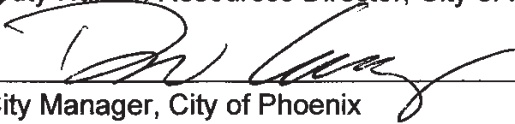
IN WITNESS WHEREOF, the parties have set their hands this
26 day of April, 2012



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

Exhibit 8



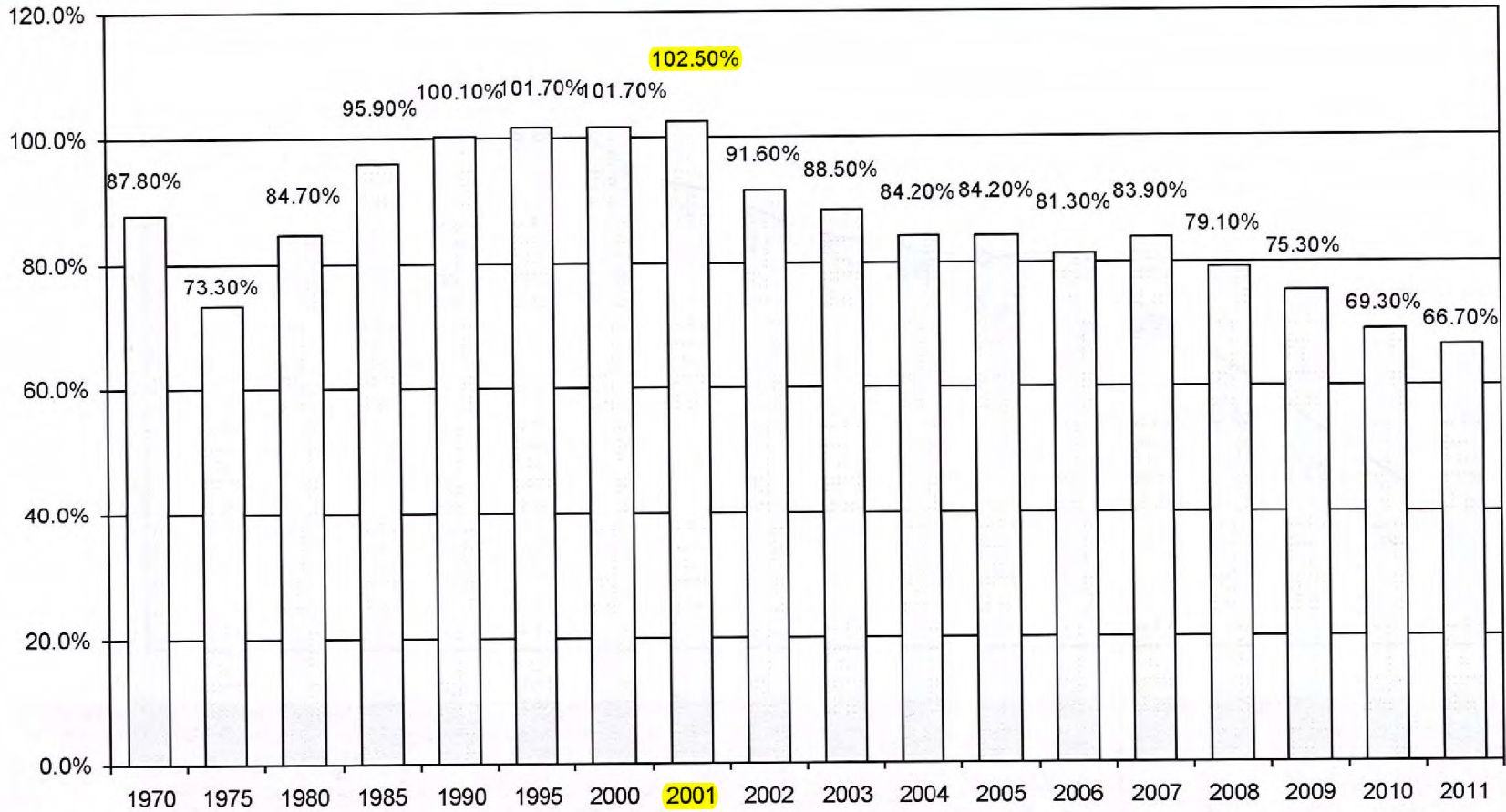
Pension Reform Task Force
Recommendations to City Council

February 14, 2012

City of Phoenix
phoenix.gov/pensionreform



Funded Ratio





History of Employer Contributions

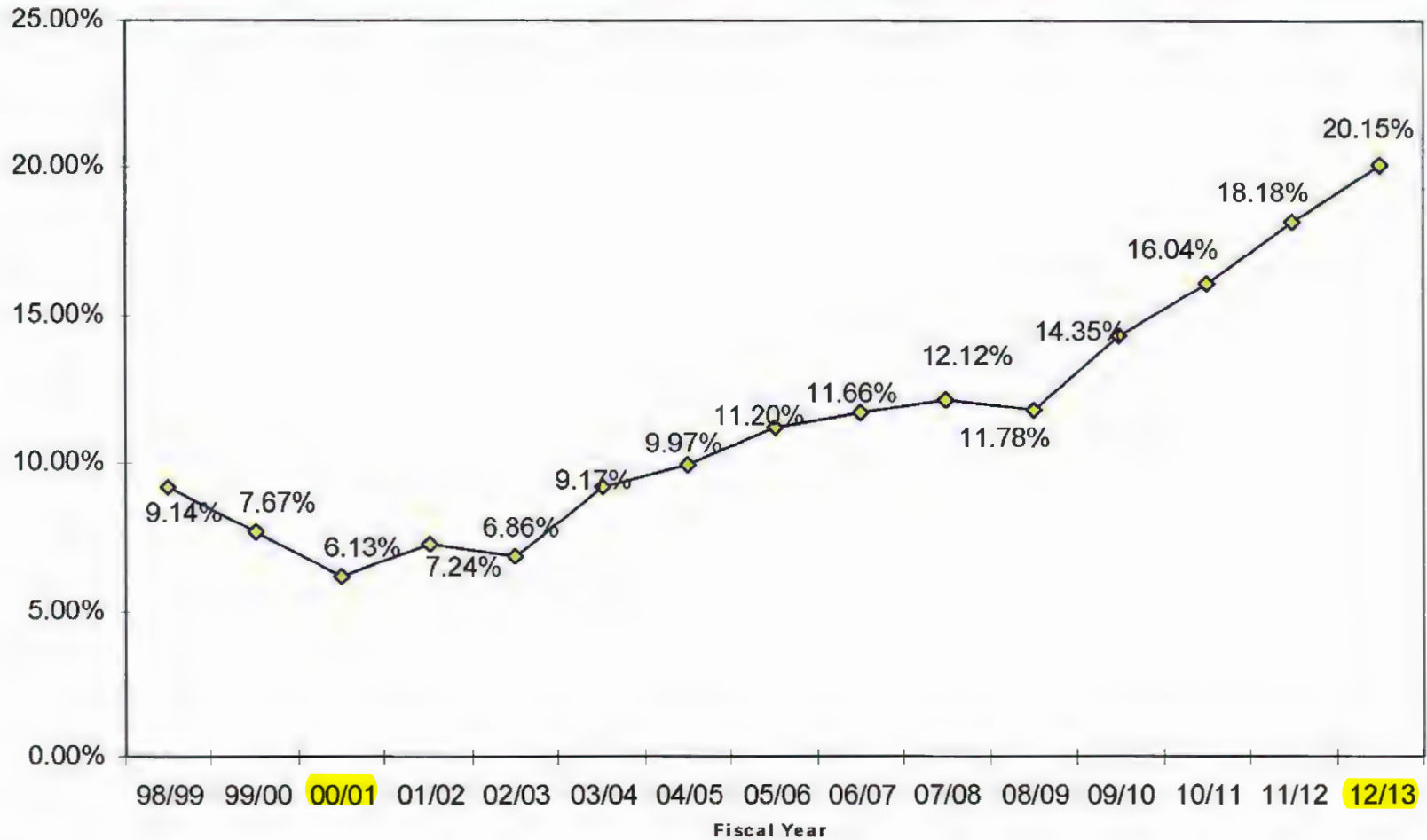


Exhibit 9

CITY COUNCIL REPORT

TO: David Cavazos
City Manager

FROM: Rick Naimark
Deputy City Manager

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 sixteen-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 COUNCIL REPORT

POLICY AGENDA

TO: David Cavazos
City Manager AGENDA DATE: June 19, 2012

FROM: Rick Naimark
Deputy City Manager ITEM: 7

SUBJECT: PENSION REFORM TIMELINE

This report provides the City Council with an update on pension reform issues and requests direction on additional actuarial analysis and approval of a timeline for reform of the City of Phoenix Employees' Retirement System.

THE ISSUE

The Pension Reform Task Force was appointed by the Mayor and City Council in January 2011 to work with management, outside consultants, and other stakeholders to review and recommend changes to the City of Phoenix Employees' Retirement System (COPERS). Following a thorough review of the plan and actuarial and legal analysis, Task Force recommendations were presented to the City Council on February 14, 2012 (see Attachment A). On March 15, staff provided a report with additional information requested by the Mayor and City Council.

On July 1, 2011, the Arizona State Retirement System (ASRS) employee / employer contribution rate split was changed from the historical 50/50 split of the actuarially determined annual pension contribution to a 53 percent employee and 47 percent employer split. On July 13, 2011 a lawsuit contesting the legality of changing contribution rates for existing employees was filed. The Superior Court ruled against the State of Arizona on February 1, 2012. Judge Eileen Willett filed a judgment on April 17, 2012, beginning a 30 day appeal period. The Governor signed HB2264 into law on May 7, 2012, which retroactively returned the ASRS employer contribution to 50 percent, rather than 47 percent, and returned the employee's contribution to 50 percent. The State of Arizona did not file a notice of appeal within the 30 day period, which ended on May 18, 2012.

The Pension Reform Task Force recommendations included a contribution rate change for existing City employees. Although this option is no longer feasible, there are several other options that could be considered.

One option the Council could pursue is to move forward with the Task Force recommendations as they apply to new employees only. This approach has been modeled by the consultant, but would need to be updated with the most current actuarial information.

A second option would be to make different modifications to the COPERS plan than those recommended by the Task Force, such as changing COPERS to match the ASRS plan in terms of eligibility (i.e. Rule of 85), multiplier and contribution rate. This would save the City money while keeping the system competitive with the State's, which is helpful in recruitment and retention. Or, the Council could choose to limit the City's liability for new employees in the COPERS plan to either a fixed dollar figure or percentage of salary. These modifications would require additional actuarial analysis to fully understand their impact.

A third option is to further explore the possibility of freezing the COPERS plan to new entrants and converting to a defined contribution plan for all new employees. The Task Force modeled this concept and recommended against it because of its significant increased expense over the next 20 years. Any defined contribution approach different than the one modeled by the Task Force would also require additional actuarial analysis to fully understand its impact.

OTHER INFORMATION

Based upon the current City Council meeting schedule, to place an item on pension reform on the November 6, 2012 ballot, the City Council would need to refer the item with proposed revisions to City Charter language, if necessary, no later than the July 3, 2012 Formal Council meeting. The Council would then need to approve call of election, form of the ballot and other election-related ordinances at the same meeting. Due to the time necessary to draft and review any desired amendments to the City Charter and the corresponding ballot language, this schedule is not feasible. The next available election is March 12, 2013.

Below is a proposed Pension Reform Timeline Based on a March 12, 2013 Election:

Activity	Date
City Council direction on additional actuarial analysis and action adopting a timeline for reform of COPERS	June 19, 2012
Conduct additional actuarial analysis	July- August 2012
Present results of additional actuarial analysis to City Council. City Council direction on specific reform provisions to be included in ballot language	September 2012
Submit RCA for proposition referral to City Manager's Office	October 18, 2012
Council to refer propositions to the ballot	October 31, 2012
Submit election-related RCAs to City Manager's Office (includes call of election and form of the ballot)	October 25, 2012
Council approves call of election, form of the ballot and other election-related ordinances	November 7, 2012
Permanent Early Voting List notices mailed to voters	November 12, 2012
Law Department submits Polling Place Ordinance and changes to Justice Department for pre-clearance	November 16, 2012

Activity	Date
Deadline to file pro/con arguments on ballot measures with City Clerk	December 12, 2012
Latest date to register to vote	February 11, 2013
Election Day	March 12, 2013
Canvass of Vote	March 20, 2013
COPERS Reform Effective	July 1, 2013

Additional actuarial analysis and modeling of possible changes to COPERS is needed for any options requested by City Council not previously modeled by the Task Force to ensure that the impacts of the proposed changes are fully understood and that they incorporate the most current actuarial information available. Under the timeline proposed above, additional analysis would be completed in July and August for presentation to the City Council in September 2012. In order to refer an item on pension reform to the March 12, 2013 ballot, the City Council would need to refer the item to the ballot with proposed revisions to City Charter language, if necessary to enact the change, no later than the October 25, 2012 Formal Council meeting. The Council would then need to approve call of election, form of the ballot and other election-related ordinances no later than November 7, 2012.

To conduct additional actuarial analysis, staff has proposed on the June 20, 2012 Formal Agenda an amendment to contract 131392 with The Segal Company to increase the contract amount by \$60,000 for a total amount not to exceed \$260,000. City Council originally authorized a contract with the Segal Company for an amount not to exceed \$200,000 on June 1, 2011. Funds are available in the Human Resources Department operating budget due to savings in the Council-approved budget for this project.

Finally, should the Council decide to refer pension reform language to the ballot, the COPERS Board also recommended that two additional Charter revisions be referred to the ballot (see Attachment B). The first involves removing some non-standard investment limitations from the Charter to provide the opportunity to maximize investment returns for the Plan. The second involves putting into the Charter certain IRS-required operational and documentation provisions that are current practice, but should be placed into Charter, since the COPERS operates as a tax-qualified retirement plan.

RECOMMENDATION

This report recommends City Council adopt the proposed pension reform timeline and authorize staff to work with the consultant team to conduct additional actuarial and legal analysis and prepare any necessary ballot language for City Council consideration for the March 12, 2013 election.

Attachments

Attachment A

Pension Reform Task Force Recommendations

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.



City of Phoenix
RETIREMENT SYSTEMS

February 10, 2012

Dear Mayor and City Council Members:

On December 6, 2011, the Pension Reform Task Force (the "Task Force") voted on final recommendations for changes to the City of Phoenix Employees' Retirement Plan (the "Retirement Plan"). The City of Phoenix Employees' Retirement Board (the "Retirement Board") understands that the Task Force recommendations may result in the inclusion of certain Retirement Plan items on an upcoming general election ballot. The Retirement Board would like to take this opportunity to recommend two Board sponsored revisions to Chapter XXIV of the Phoenix City Charter (the "Charter") and to comment on the final recommendations of the Task Force.

Retirement Plan Investments

The Charter provisions governing Retirement Plan investments appoint the Retirement Board as the Trustee of the Retirement Plan assets and grant the Retirement Board the authority to direct the investment of those assets. However, the Charter provisions also contain a number of limitations on the investment authority of the Retirement Board with regard to specific asset classes. The current limitations on asset classes create an investment environment which is more restrictive than that of many public plans, including the two Arizona state retirement systems. More importantly, the current limitations may lessen the Board's ability to protect the Plan's assets through the risk mitigating benefits of broad diversification. The Retirement Board recommends that the current Charter investment provisions be modernized and expanded, to provide the Retirement Board with greater opportunities to maximize investment returns for the Retirement Plan.

Specifically, the Retirement Board recommends that the Charter's investment provisions be amended to incorporate a prudent investor standard, replacing security and asset class restrictions with a modern mandate to prudently manage total fund risk. The recommended prudent investor language would incorporate modern portfolio theory and allow the Retirement Board to invest the Retirement Plan assets in a manner that is deemed prudent in relation to the entire Retirement Plan investment portfolio. As part of the investment process, the Retirement Board would continue to conduct due diligence and take into account current market conditions, investment risks and costs, liquidity requirements, the investment goals of the Retirement Plan and likely returns to the Retirement Plan. The prudent investor language, adopted by more than 40 states in various contexts, allows the Retirement Board to invest as a fiduciary, acting in the best

interests of the Retirement Plan and its members, pursuant to an overall diversified investment strategy and without being limited to specific asset classes. The recommended language also would require a two-thirds vote of the Retirement Board on any decision to move Retirement Plan assets into an investment classification not previously utilized by the Retirement Board.

The proposed prudent investor language is attached hereto as a proposed revision to Section 34 of the Charter. The Retirement Board recommends inclusion of this proposed change on a general election ballot at the first opportunity.

Retirement Plan Compliance with Federal Tax Laws

The Retirement Plan is operated and administered as a tax-qualified retirement plan, exempt from income tax under Section 401(a) of the Internal Revenue Code (the "Code"). Tax-qualified retirement plans are required to comply with both operational and documentation requirements set forth in the Code. Historically, the Retirement Board has met its obligation to comply with Code based documentation requirements through the adoption of Board policies. If it is feasible to include Retirement Plan Charter changes on a general election ballot in the near future, the Retirement Board recommends that the document provisions required for tax-qualified retirement plans be incorporated into the Charter, as a new Section 43 of the Charter. The document provisions recommended for inclusion in the Charter are not likely to require amendments in the future, as they reflect fundamental Code rules that typically do not change. The proposed Code compliance language is attached hereto.

Task Force Recommendations

As noted above, the Task Force recently approved recommendations for changes to the Retirement Plan. The Retirement Board serves as the fiduciary and trustee of the Retirement Plan and wishes to provide comments on the Task Force recommendations, from its fiduciary perspective. We appreciate the hard work and dedication of the members of the Task Force as they tackled the difficult issue of pension reform.

As the fiduciary of the Retirement Plan, the role of the Retirement Board is limited by the Charter to the administration, management and operation of the Retirement Plan. The Retirement Board must carry out those functions in accordance with the Retirement Plan, for the exclusive benefit of the Retirement Plan members and beneficiaries and in conformity with governing law. The Retirement Board also is obligated to protect the actuarial soundness of the Retirement Plan. Although many of the Retirement Board members serve the City of Phoenix in their employment positions or otherwise represent citizen, employee or retiree groups, all of the Retirement Board members are required to set aside their other roles and duties while working on Retirement Board matters. With only the Retirement Board's fiduciary requirements in mind, we have reviewed the final recommendations of the Task Force and have consulted with the Retirement Board's legal counsel.


With regard to the Task Force's recommendation for the individuals hired by the City after any proposed changes to the Retirement Plan may be enacted, the Retirement Board has no fiduciary duties with regard to individuals who are not yet members of the Retirement Plan. The Retirement Board has reviewed the components of the Task Force's recommendations for the new hire group and notes that the proposed changes for new hires are not projected to have a significant impact on the funded status of the Retirement Plan. Therefore, the Retirement Board has no objections to the Task Force's recommendations for the new hire group.

The Retirement Board does have fiduciary obligations with regard to the current members and beneficiaries of the Retirement Plan, including current City employees and current Retirement Plan retirees. It is the understanding of the Retirement Board that the Task Force does not recommend any changes to the Retirement Plan which would impact current retirees. The Task Force is, however, making a recommendation regarding the Retirement Plan contribution rate for new and existing City employees. The recommended change would divide the annual contribution requirement for the Retirement Plan evenly between the City and the City employees, with some phase-in protection for the existing employees. The Retirement Board members wish to comment on the recommended change to a floating contribution rate as it would impact the existing City employees who are current Retirement Plan members.

Under Arizona law, the recommended contribution change for current employees may be subject to legal challenge as an impairment of the Retirement Plan benefits. In light of the Arizona Superior Court's recent ruling regarding the increase in employee contributions under the Arizona State Retirement System, and because the Retirement Plan could incur significant costs associated with a legal challenge and judgment, the Retirement Board is not able to support the final recommendation of the Task Force to shift current City employees to a shared, floating contribution rate.

Given our concerns, the Retirement Board recommends that the proposed revisions to the Retirement Plan be limited to changes which impact only individuals hired by the City prospectively. The Retirement Board further recommends that the proposed revisions do not include any changes that are likely to be challenged as potential impairments of the Retirement Plan benefits provided to current employees or retirees.

Sincerely,



Linda Reidenbach, Chairperson
City of Phoenix Employees' Retirement Board

cc: David Cavazos, Phoenix City Manager

Attachments

Exhibit 10



City of Phoenix

ADMINISTRATIVE REGULATION	A.R. NUMBER
	2.441 Revised
SUBJECT SICK LEAVE PAYOUT	FUNCTION
	Human Resources and Payroll Page 1 of 4
	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.

Exhibit 13
Cota
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.

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

Exhibit 11



City of Phoenix

To: Mayor Greg Stanton

Date: October 16, 2013

Members of the City Council

From: Vice Mayor Bill Gates *Bill Gates*

Subject: CITY COUNCIL PENSION FAIRNESS AND SPIKING ELIMINATION AD HOC SUBCOMMITTEE PROCESS AND RECOMMENDATIONS

On September 9, 2013, Mayor Greg Stanton created the Pension Fairness and Spiking Elimination Ad Hoc City Council Subcommittee. As the Subcommittee Chair, I have worked closely with my colleagues, Council members Thelda Williams, Tom Simplot, and Daniel Valenzuela on the charge of the Subcommittee. On October 4, 2013, I issued an update on the progress of the Subcommittee at that time. This memo includes additional information on the Subcommittee meeting held October 8, 2013, and also includes the Ad Hoc Subcommittee recommendations to the City Council.

The Subcommittee held public meetings on September 17, September 23, October 1, and October 8, 2013. Three of these meetings were preceded by Executive Sessions, so that the Subcommittee could receive legal advice regarding pension issues. The Subcommittee received and considered the following information: a review of pension reform efforts to date including implementation of the Sick Leave Snapshot on July 1, 2012; overall results of the 2012 Total Compensation Study; membership, eligibility criteria, benefit formulas, and average annual benefit amounts for the City of Phoenix Employees' Retirement System, the Arizona Public Safety Personnel Retirement System, and the Elected Officials Retirement Program; vacation and sick leave accrual and payout practices; the impact of sick and vacation leave on pension; and general information on other cities' retirement formulas and benefits.

In addition, the Subcommittee requested and received information on the City's labor negotiation process; additional information on leave policies including a review of the impact of sick leave taken on City operating costs, readily available information from comparable cities regarding sick and vacation leave accrual and payout formulas and final average compensation formulas; charts and graphs with information on accumulated sick leave at retirement as well as vacation and sick leave payouts for retirees from 2011-2013; short term disability program components and comparisons to national and local comparable cities; "compensation" as defined in the Phoenix City Charter and Arizona Revised Statutes; and a detailed review of compensation components used to calculate pension including information on payment authority documents for general City employees, general City middle managers and executives, public safety employees and public safety middle managers and executives.

Public comment was heard at each of the Subcommittee meetings. In addition, each meeting was posted as a special meeting of the City Council for the purpose of allowing City Council members who do not serve on the Subcommittee the opportunity to be present and comment during the call to the public. A total of 84 comments were made over the course of the four meetings. In addition, a total of 70 cards were submitted by individuals who did not wish to speak, but who indicated they were opposed, and 1 card was submitted by an individual who did not wish to speak, but who indicated he was in support.

On October 1, 2013, Subcommittee members expressed the need for additional time to formulate a recommendation for consideration by the City Council. The Ad Hoc Subcommittee directed staff to present analysis at a future meeting on legal issues and practical implications relating to including the following compensation components in the pension calculation:

- Allowances (car, phone)
- Sellbacks (vacation, sick leave)
- Deferred Compensation
- Retirement Contribution Reimbursement
- Enhanced Regular Compensation Periodic Payments (public safety only)

At that time, the Subcommittee also requested a further examination of implementing a Paid Time Off (PTO) system and costing for a potential short term disability program as it relates to changes in accrual of sick and vacation time. Subcommittee members also asked for definitions of "compensation" and "spiking," and asked staff to explore alternatives to longevity pay and performance pay in the City's compensation package. Finally, the Subcommittee requested a timeline for any changes made to compensation or pension calculations, and how the timeline might be different for at will employees and employees currently under a contract.

On October 8, 2013, the Subcommittee met to review information requested on October 1, and formulate recommendations to the full City Council for consideration at the October 22, 2013 City Council Policy Session. At that meeting, the Subcommittee received information on PTO systems in the public, private and non-profit sectors, and additional information on costs and considerations associated with implementation of a short term disability program. The Ad Hoc Subcommittee reviewed definitions of "compensation" and "spiking" from several sources.

On October 8, 2013, the Subcommittee made the following recommendations to the City Council:

The Subcommittee recommended to the City Council that the following items be included in the definition of compensation for the purpose of pension calculation for employees in the City of Phoenix Employees' Retirement System (COPERS):

- Base salary and wages
- Premium pay, including, but not limited to shift differentials, and linguistic pay, military differential pay, and holiday pay
- Overtime pay
- Compensatory time
- Longevity and performance pay

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

- Payments toward expenses incurred in the performance of employment obligations, whether paid as reimbursements or as set allowances, and including but not limited to communications allowances and transportation allowances
- Lump-sum payouts on unused accrued sick leave upon retirement (except unused leave accrued pursuant to the sick leave "snapshot" effective July 1, 2012)
- Lump-sum payouts on unused accrued vacation leave upon separation (except unused leave accrued pursuant to new vacation policies yet to be developed)
- Reimbursements to employees for retirement contributions

The items included and excluded above are intended also to apply to public safety employees, unless state law addresses them differently. The Public Safety Enhanced Regular Compensation payments made upon reaching certain sick and vacation milestones, and the enhanced pay instead of uniform allowance for Police personnel after 17 years, also are recommended not to be considered as compensation for the purposes of calculating pension.

The intent of the Subcommittee is that changes to any of the above items that are considered part of labor agreements would become effective upon the expiration of those agreements on July 1, 2014. For Executives and Middle Managers, the Subcommittee recommended that changes become effective January 1, 2014, if practicable and legal.

The Subcommittee requested staff work with the City's actuarial consultant to model the impact of these changes to the pension systems.

Additionally, the Subcommittee recommended the City Council:

- Direct staff to pursue the possible implementation of a combined paid time off system and short-term disability program to replace the current leave system;
- Direct staff to negotiate with bargaining groups about the replacement of the longevity payment system with an alternate form of compensation; and
- Have City staff further explore potential changes to deferred compensation for future employees.

The motions were unanimous with the exception of deferred compensation and the treatment of existing leave balances. I was the sole dissenting vote on those items.

The City Council is scheduled to discuss these recommendations on October 22, 2013.

Exhibit 12

168009

CITY CLERK DEPT.

2013 NOV -8 AM 7:45



**CITY OF PHOENIX
CITY COUNCIL POLICY SESSION
THURSDAY, OCTOBER 31, 2013 - 10:00 A.M.
CITY COUNCIL CHAMBERS
200 WEST JEFFERSON**

Pursuant to A.R.S. §38.431.02, notice is hereby given to the members of the City Council and to the general public that the City Council will hold a meeting open to the public on Thursday, October 31, 2013, at 10:00 A.M. located in the City Council Chambers, 200 West Jefferson, Phoenix, Arizona.

Mayor Stanton called the meeting to order at 10:09 A.M. with Councilmembers Daniel Valenzuela, Jim Waring, Michael Nowakowski, Vice Mayor Bill Gates, Michael Johnson, Thelda Williams, Tom Simplot and Sal DiCiccio present.

ESTIMATED

- | | | |
|------------------------|---|--|
| 1. <u>10:00 A.M.</u> - | CITY COUNCIL PENSION
FAIRNESS AND SPIKING
ELIMINATION AD HOC
SUBCOMMITTEE REPORT | Staff: Naimark
(Presentation 20 min.) |
|------------------------|---|--|

This report transmits to the City Council the recommendations made by the Pension Fairness and Spiking Elimination Ad Hoc Subcommittee on October 8, 2013.

This item is for information, discussion, and possible action.

Backup included in Council packet/City Clerk's Office.

Action Taken:

Mayor Stanton thanked the Councilmembers and members of the public present. He explained that since there was no new recommendation, and with the testimony received by the Pension Fairness and Spiking Elimination Subcommittee and at the previous Policy Meeting, he asked that speakers from the public on each side, in favor and opposed, limit testimony to a total of 10 minutes. He called for those opposing the item to speak first.

Councilman Nowakowski questioned limiting the time and noted that many people in the audience took vacation time to be at the meeting.

Mayor Stanton reiterated his position explaining Council listened to hours of testimony in previous meetings.

Councilman Simplot agreed, noting the need for Council to discuss and act.

Councilman DiCiccio agreed with Councilman Nowakowski on not limiting the time of public comment and explained each person should be able to speak.

Mayor Stanton asked for any further comment from Councilmembers before continuing with public comment.

Councilman Waring added his disagreement with the limit as well.

Mayor Stanton opened the floor for public comment:

Dorie Levy expressed her opposition to the item, and her belief the pension system should not be changed.

Michelle Newcomb indicated she took a vacation day to express opposition to the item. She discussed the additional cost of taking leave compared to saving it and only paying out a portion at retirement.

Barbara Gonzales spoke in opposition to the item and her belief the current benefits are not based on greed, but on the right thing to do.

Bruce Levitch opposed the item and warned about extra costs that would be incurred if retirements increased.

Luis Schmidt thanked the Mayor, Councilmembers and taxpayers and spoke in opposition adding concerns about difficulties in attracting quality candidates for City positions if benefits are diminished.

Chris Manning spoke in opposition of the item and encouraged others to vote in Council elections.

Mayor Stanton noted that many comment cards were submitted opposed, including many that did not wish to speak, but he had not received any cards in support of the item.

Councilman DiCiccio mentioned that there were also citizens that wished to speak.

Mayor Stanton allowed further comments from the public.

Councilwoman Williams mentioned the significant amount of time that the item had been considered by the Ad Hoc Subcommittee and the hours of testimony received by the Subcommittee. She moved that the Council approve the Pension Fairness and Spiking Elimination Subcommittee recommendations, including ending pensionability of all allowances, reconfirm the Council's commitment to the contracts currently in place, and recognize those employees vested sick leave and vacation hours and direct the City Manager to address the Subcommittee's recommendation in labor negotiations. Councilman Simplot seconded the motion.

Councilman Waring submitted a substitute motion that the following items no longer be used to increase pension calculations to be effective January 1, 2014, for executive and middle managers and to direct the City Manager to include it in the next contract effective July 1, 2014, for all represented by unions:

1. Communications and transportation allowance.
2. All lump sum payouts of accrued vacation and sick time.
3. Reimbursements for retirement contributions.
4. Deferred compensation.
5. Public safety enhanced regular compensation.

Additionally, staff shall prepare an ordinance consistent with the above recommendations, the current system of unlimited accrual of vacation and sick time be replaced effective July 1, 2014, with a paid time off system that will include a cap of 550 hours of accrued paid time off (PTO). Finally, directing staff to model all proposals presented to the Council since the Ad Hoc Subcommittee formed, including a plan to move to a PTO system moving forward.

Councilman DiCiccio requested an amendment that all options would be modeled.

Councilman Waring accepted.

Councilman DiCiccio seconded the motion.

Councilman Waring asked if staff had a number concerning the cost of pension spiking.

Deputy City Manager Rick Naimark explained that while an actuary has been hired to perform those calculations, the financial models were not yet complete.

Councilman Waring expressed disappointment that the numbers were not known for Councilwoman Williams' motion. He said he does not believe his motion would break any contracts and defended his record of voting against specific pay raises.

Councilwoman Williams explained that she believed the substitute motion could be unlawful and warned about the cost of litigation.

Vice Mayor Gates stated Councilman Waring's motion goes farther than the original motion and he would support the substitute motion.

Councilman Simplot believed Councilwoman Williams' motion protects the vested rights of employees. Therefore, he would not be supporting the motion.

Councilman DiCiccio said he supports the substitute motion because it stops pension spiking. He stated he believes the language of the original motion because is vague and leaves confusion as to the authority of the local Public Safety Personnel Retirement System (PSPRS). He further added that he believes more financial modeling is necessary than the original motion provides. Finally, he explained his concerns with the legal defensibility of the original motion and believes that it is set up for failure.

Councilman Simplot reiterated his belief that the City should keep promises to employees.

Councilman Nowakowski indicated that he will not be voting for either of the motions because he believes that employees have not had sufficient time for testimony, and employee groups were not given a voice on the Ad Hoc Subcommittee because it was not a Task Force including broad representation from the community. Further, he added that the fine tuning of the pension system should be done through labor negotiations.

Councilman Valenzuela discussed a variety of issues including the drive of City employees to serve, the cuts in compensation employees have experienced, and whether the motions are morally and ethically right and legal. He said that he would support Councilwoman Williams' motion.

Councilman DiCiccio expressed concerns that the original motion would help build a foundation for the public to support an initiative to move employees toward a 401(k) plan.

Councilman Johnson voiced concern about cuts to employee compensation that have not been restored and that positions have not been filled yet as the food tax has been repealed. He said he supports what Councilwoman Williams is doing and believes that it is important to the employees to go through the negotiation process.

Councilman Nowakowski indicated that he felt the pension system has already been modified so that it is not as competitive with other cities, and he is voting against both motions because he believes he is siding with the employees.

Councilwoman Williams called for the question. Councilman Simplot seconded.

Mayor Stanton called for a roll call. The motion failed 5:4 (DiCiccio, Nowakowski, Waring, and Gates dissenting). The motion failed to obtain a 2/3 vote to pass.

Councilman Waring expressed concerns with a list of items that he does not believe the City should be spending money on, including lobbyists, a City Manager pay raise, employee memberships, golf courses and furniture. He stated he would like to see frivolous items eliminated before pay raises are discussed.

Councilman DiCiccio reiterated his positions on the two items proposed.

Councilwoman Williams called for the question. Councilman Simplot seconded the motion. Motion passed 8:1 (Waring dissenting).

Mayor Stanton called for a roll call on the substitute motion. The motion failed 3:6 (Johnson, Nowakowski, Simplot, Valenzuela, Williams, and Stanton dissenting).

Mayor Stanton called for a roll call on the original motion and thanked the Council members who served on the Ad Hoc Subcommittee. **Motion passed 5:4** (DiCiccio, Nowakowski, Waring, and Gates dissenting).

Councilwoman Williams reiterated her belief that the Ad Hoc Subcommittee accomplished its task to eliminate spiking, not to eliminate pensions.

Mayor Stanton adjourned the meeting at 11:32 A.M.

For further information, please call the Management Intern, City Manager's Office, at 602-262-4449.

For reasonable accommodations, call the Management Intern at Voice/602-262-4449 or TTY/602-534-5500 as early as possible to coordinate needed arrangements.
Si necesita traducción en español, por favor llame a la oficina del gerente de la Ciudad de Phoenix, 602-262-4449 tres días antes de la fecha de la junta.

PHOENIX CITY COUNCIL MEMBERS

Councilman DiCiccio
Vice Mayor Gates
Councilman Johnson
Councilman Nowakowski
Councilman Simplot
Councilman Valenzuela
Councilman Waring
Councilwoman Williams
Mayor Stanton

Exhibit 15



Phoenix City Council

Pension Fairness and
Spiking Elimination
Ad Hoc

Subcommittee
9/17/1
3

City of Phoenix



Examples of Impact of Sick Leave and Vacation

Data: Service retirements during calendar years 2011, 2012 and through 8/2013 currently receiving benefits (population = 775)

Average monthly final average compensation without vacation and sick leave payout = \$6,261

Average vacation payout = \$8,875

Average sick leave payout = \$8,309

Average monthly final average compensation with average vacation and sick leave payout = \$6,739

Exhibit 16



City of Phoenix

To: Ed Zuercher
Acting City Manager

Date: December 23, 2013

From: Rick Naimark *RN*
Deputy City Manager

Subject: ACTUARIAL IMPACT OF RECENT CITY COUNCIL ACTION ON PENSION FAIRNESS AND SPIKING

On October 31, 2013, City Council approved the recommendations of the Pension Fairness and Spiking Elimination Ad Hoc Subcommittee. The City Council also requested an actuarial analysis to determine the long-term financial impact of the changes to the City's contribution rate and the funded ratio for the City Of Phoenix Employees' Retirement System (COPERS), and the Arizona Public Safety Personnel Retirement System (AZ PSPRS) for both police and fire. Impacts of other potential changes are also included.

The Segal Company, the City's contracted actuary on pension reform, has completed the analysis, which is attached to this memo. In addition to analyzing the impact of the October 31, 2013 actions, the actuary also included an update to the impact of the sick leave "snapshot" implemented on July 1, 2012.

Attachment

cc:

Mayor Greg Stanton
Council member Thelda Williams
Council member Jim Waring
Council member Tom Simplot
Council member Daniel Valenzuela
Council member Sal DiCiccio
Council member Michael Nowakowski
Council member Michael Johnson
Penny Parrella
Mario Paniagua
Karen Peters
Gail Strohl
Neal Young

**City of Phoenix Employees' Retirement Plan
ESTIMATED FUNDED STATUS**

Plan Year	Before Changes	Remove Unused Sick Leave	Remove Allowances	Remove Reimbursement Credit	Remove Unused Accrued Vacation
06/30/2012	62.2%	62.2%	62.2%	62.2%	62.2%
06/30/2013	55.1%	55.3%	55.4%	55.4%	55.6%
06/30/2014	56.1%	56.4%	56.5%	56.5%	56.7%
06/30/2015	56.8%	57.1%	57.1%	57.2%	57.4%
06/30/2016	58.5%	58.7%	58.8%	58.8%	59.0%
06/30/2017	59.7%	59.9%	60.0%	60.0%	60.2%
06/30/2018	60.9%	61.1%	61.2%	61.2%	61.3%
06/30/2019	62.1%	62.3%	62.3%	62.3%	62.4%
06/30/2020	63.3%	63.4%	63.5%	63.5%	63.6%
06/30/2021	64.5%	64.6%	64.6%	64.6%	64.7%
06/30/2022	65.7%	65.8%	65.8%	65.8%	65.9%
06/30/2023	67.0%	67.0%	67.1%	67.1%	67.1%
06/30/2024	68.3%	68.3%	68.4%	68.4%	68.4%
06/30/2025	69.7%	69.7%	69.7%	69.7%	69.7%
06/30/2026	71.1%	71.1%	71.1%	71.2%	71.1%
06/30/2027	72.7%	72.6%	72.7%	72.7%	72.6%
06/30/2028	74.3%	74.2%	74.3%	74.3%	74.2%
06/30/2029	76.1%	76.0%	76.0%	76.0%	75.9%
06/30/2030	77.9%	77.8%	77.9%	77.9%	77.8%
06/30/2031	80.0%	79.8%	79.9%	79.9%	79.8%
06/30/2032	82.1%	82.0%	82.0%	82.0%	81.9%
06/30/2033	84.5%	84.4%	84.4%	84.4%	84.3%
06/30/2034	87.1%	87.0%	87.0%	87.0%	86.9%
06/30/2035	89.9%	89.8%	89.8%	89.8%	89.7%
06/30/2036	92.9%	92.8%	92.8%	92.8%	92.8%
06/30/2037	96.2%	96.2%	96.2%	96.2%	96.2%
06/30/2038	99.9%	99.9%	99.9%	99.9%	99.9%

**City of Phoenix Employees' Retirement Plan
ESTIMATED CITY CONTRIBUTIONS**

Fiscal Year	Before Changes	Remove Unused Sick Leave	Savings	Remove Allowances	Savings	Remove Reimbursement Credit	Savings	Remove Unused Accrued Vacation	Savings	Reflecting All Changes	Savings
2014	125,454,000	125,454,000	0	125,454,000	0	125,454,000	0	125,454,000	0	125,454,000	0
2015	153,918,000	151,666,000	-2,252,000	151,427,000	-239,000	151,377,000	-50,000	149,560,000	-1,817,000	149,560,000	-4,358,000
2016	155,767,000	153,220,000	-2,547,000	152,967,000	-253,000	152,913,000	-54,000	150,857,000	-2,056,000	150,857,000	-4,910,000
2017	158,594,000	155,890,000	-2,704,000	155,628,000	-262,000	155,571,000	-57,000	153,385,000	-2,186,000	153,385,000	-5,209,000
2018	159,173,000	156,329,000	-2,844,000	156,055,000	-274,000	155,994,000	-61,000	153,696,000	-2,298,000	153,696,000	-5,477,000
2019	160,865,000	157,884,000	-2,981,000	157,595,000	-289,000	157,534,000	-61,000	155,125,000	-2,409,000	155,125,000	-5,740,000
2020	162,881,000	159,771,000	-3,110,000	159,468,000	-303,000	159,402,000	-66,000	156,887,000	-2,515,000	156,887,000	-5,994,000
2021	164,821,000	161,597,000	-3,224,000	161,280,000	-317,000	161,213,000	-67,000	158,602,000	-2,611,000	158,602,000	-6,219,000
2022	166,914,000	163,579,000	-3,335,000	163,249,000	-330,000	163,181,000	-68,000	160,479,000	-2,702,000	160,479,000	-6,435,000
2023	169,205,000	165,768,000	-3,437,000	165,424,000	-344,000	165,351,000	-73,000	162,567,000	-2,784,000	162,567,000	-6,638,000
2024	171,587,000	168,056,000	-3,531,000	167,695,000	-361,000	167,622,000	-73,000	164,758,000	-2,864,000	164,758,000	-6,829,000
2025	173,941,000	170,321,000	-3,620,000	169,947,000	-374,000	169,868,000	-79,000	166,933,000	-2,935,000	166,933,000	-7,008,000
2026	176,348,000	172,647,000	-3,701,000	172,259,000	-388,000	172,174,000	-85,000	169,175,000	-2,999,000	169,175,000	-7,173,000
2027	179,063,000	175,283,000	-3,780,000	174,881,000	-402,000	174,788,000	-93,000	171,723,000	-3,065,000	171,723,000	-7,340,000
2028	181,704,000	177,850,000	-3,854,000	177,431,000	-419,000	177,331,000	-100,000	174,211,000	-3,120,000	174,211,000	-7,493,000
2029	184,339,000	180,414,000	-3,925,000	179,977,000	-437,000	179,874,000	-103,000	176,704,000	-3,170,000	176,704,000	-7,635,000
2030	186,928,000	182,947,000	-3,981,000	182,490,000	-457,000	182,385,000	-105,000	179,163,000	-3,222,000	179,163,000	-7,765,000
2031	189,728,000	185,691,000	-4,037,000	185,220,000	-471,000	185,105,000	-115,000	181,838,000	-3,267,000	181,838,000	-7,890,000
2032	192,623,000	188,533,000	-4,090,000	188,046,000	-487,000	187,920,000	-126,000	184,611,000	-3,309,000	184,611,000	-8,012,000
2033	195,829,000	191,681,000	-4,148,000	191,169,000	-512,000	191,039,000	-130,000	187,687,000	-3,352,000	187,687,000	-8,142,000
2034	199,124,000	194,930,000	-4,194,000	194,390,000	-540,000	194,255,000	-135,000	190,863,000	-3,392,000	190,863,000	-8,261,000
2035	202,789,000	198,547,000	-4,242,000	197,982,000	-565,000	197,843,000	-139,000	194,401,000	-3,442,000	194,401,000	-8,388,000
2036	207,015,000	202,707,000	-4,308,000	202,115,000	-592,000	201,972,000	-143,000	198,473,000	-3,499,000	198,473,000	-8,542,000
2037	211,392,000	207,005,000	-4,387,000	206,408,000	-597,000	206,264,000	-144,000	202,714,000	-3,550,000	202,714,000	-8,678,000
2038	216,711,000	212,249,000	-4,462,000	211,645,000	-604,000	211,503,000	-142,000	207,871,000	-3,632,000	207,871,000	-8,840,000
Total			-86,694,000		-9,817,000		-2,269,000		-70,196,000		-168,976,000

1 Susan Martin – AZ Bar No. 014226
Jennifer Kroll – AZ Bar No. 019859
2 **MARTIN & BONNETT, P.L.L.C.**
3 1850 North Central Avenue, Suite 2010
Phoenix, Arizona 85004
4 smartin@martinbonnett.com
jkroll@martinbonnett.com

5
6 Attorneys for Plaintiffs

7
8 **IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA**
9 **IN AND FOR THE COUNTY OF MARICOPA**

10 American Federation of State County And)
11 Municipal Employees, AFL-CIO, Local 2384;)
American Federation of State County And)
12 Municipal Employees, AFL-CIO, Local 2960;) Case No.: CV-2014-011778
Administrative Supervisory Professional &)
13 Technical Employees Association; Frank) **JOINT STIPULATED FACTS**
Piccioli; Ron Ramirez; Debra Novak Scott;)
14 Luis Schmidt, on behalf of themselves and all)
15 others similarly situated,) **(Assigned to Judge Roger Brodman)**
)
16 Plaintiffs,)
v.)
17)
18 City of Phoenix; City of Phoenix Employee)
Retirement System; City of Phoenix)
19 Retirement System Board,)
)
20 Defendants.)
21)

1 The parties hereby stipulate to the following facts for purposes of summary judgment and trial.
2 The parties do not agree that all of the following facts are relevant. When a fact quotes or references a
3 written document, the parties agree that the document is the best evidence of its contents.

4 **I. STIPULATED FACTS**

5 1. Individual Plaintiffs are current employees of the City of Phoenix (“City”) who
6 participate in the City of Phoenix Employees’ Retirement Plan (“Retirement Plan” or “COPERS”), a
7 defined-benefit plan established pursuant to Chapter XXIV of the Charter of the City of Phoenix
8 (“Charter”).

9 2. Plaintiff Frank Piccioli is an employee of the City of Phoenix and a member of “Unit 3,”
10 a group of employees in positions classified as “Office” including pre-professional and clerical
11 employees in a unit designated under the Meet-and-Confer Ordinance set forth in Phoenix Code § 2-214
12 *et seq.* as an appropriate unit. Unit 3 employees are represented by Plaintiff American Federation of
13 State County and Municipal Employees, AFL-CIO, Local 2960 (“AFSCME Local 2960”), the certified
14 bargaining representative. Plaintiff Frank Piccioli is the current President of AFSCME Local 2960.

15 3. Mr. Piccioli worked for the City in the years 1999 and 2000. Mr. Piccioli began working
16 for the City again in 2004 and has continuously worked for the City since that date. Mr. Piccioli is an
17 “Employee” of the City and a “Member” of the Retirement Plan as those terms are defined in Chapter
18 XXIV, Article II, Section 2 of the Charter.

19 4. Plaintiff Debra Novak-Scott is an employee of the City of Phoenix and a member of Unit
20 3. Ms. Novak-Scott began working for the City in 1984 and has continuously worked for the City since
21 that date. Ms. Novak-Scott is an “Employee” of the City and a “Member” of the Retirement Plan as
22 those terms are defined in Chapter XXIV, Article II, Section 2 of the Charter. Ms. Novak-Scott is the
23 current Vice-President of AFSCME Local 2960.

24 5. Plaintiff Marshall Pimentel is an employee of the City of Phoenix and a member of “Unit
25 2,” a group of employees in positions classified as skilled trades and equipment operation in a unit
26 designated under the Meet and Confer Ordinance set forth in Phoenix Code § 2-214 *et seq.* as an
27 appropriate unit. Unit 2 employees are represented by Plaintiff American Federation of State County
28

1 And Municipal Employees, AFL-CIO, Local 2384 (“AFSCME Local 2384”), the certified bargaining
2 representative under the Meet-and-Confer Ordinance. Mr. Pimentel is the current President of
3 AFSCME Local 2384.

4 6. Mr. Pimentel began working for the City in or around 2006 and has continuously worked
5 for the City since that date. Mr. Pimentel is an “Employee” of the City and a “Member” of the
6 Retirement Plan as those terms are defined in Chapter XXIV, Article II, Section 2 of the Charter.

7 7. Plaintiff Ronald Ramirez is an employee of the City of Phoenix and a member of “Unit
8 7,” which is a group of employees in positions classified as professional and supervisory under the Meet
9 and Discuss ordinance set forth in Phoenix City Code Phoenix Code § 2-223 *et seq.* Unit 7 employees
10 are represented by Plaintiff Administrative Supervisory Professional & Technical Employees
11 Association (“ASPTEA”), the authorized employee association representative under the Meet-and-
12 Discuss ordinance.

13 8. Mr. Ramirez began working for the City in 1986 and has continuously worked for the
14 City since that date. Mr. Ramirez is an “Employee” of the City and a “Member” of the Retirement Plan
15 as those terms are defined in Chapter XXIV, Article II, Section 2 of the Charter.

16 9. Plaintiff Jason Stokes is an employee of the City of Phoenix and a member of Unit 7.
17 Plaintiff Jason Stokes is the current President of ASPTEA. Mr. Stokes began working for the City in or
18 around 1992 and has continuously worked for the City since that date. Mr. Stokes is an “Employee” of
19 the City and a “Member” of the Retirement Plan as those terms are defined in Chapter XXIV, Article II,
20 Section 2 of the Charter.

21 10. Defendant City of Phoenix is a political subdivision of the State of Arizona and the
22 employer of the individual Plaintiffs.

23 11. Defendant COPERS is a named defendant in this action.

24 12. Defendant, City of Phoenix Employees’ Retirement Plan Board (“Retirement Board,” or
25 “Board”) is the nine-member board established under the Retirement Plan.

26 13. COPERS is a defined benefit plan established in the Charter.

27 14. Article II of Chapter XXIV of the Charter sets forth the provisions of the Retirement
28

1 Plan.

2 15. There are approximately 2,133 full-time employees in Unit 3 who are members of
3 COPERS.

4 16. There are approximately 1,591 full-time employees in Unit 2 who are members of
5 COPERS.

6 17. There are approximately 2,998 full-time employees in Unit 7 who are members of
7 COPERS.

8 18. During the relevant time period, the Retirement Plan had and continues to have a
9 Retirement Plan Administrator who serves as the chief operating officer of the Retirement Plan, fulfills
10 the function of Executive Secretary set forth under § 5.2 of the Retirement Plan and reports directly to
11 the Board.

12 19. From in or around 1990 through in or around 2000, the Retirement Plan Administrator
13 was Duamel Vellon.

14 20. Donna Buelow was the Retirement Plan Administrator from May 2001 through February
15 2013.

16 21. The current Retirement Plan Administrator is Scott Miller. Mr. Miller began working for
17 the City of Phoenix in October 2014.

18 22. From at least 1980 until the present, the City has offered eligible employees the option of
19 “cashing out” accrued vacation leave when the employee separates or retires from City employment.

20 23. From at least 1981 to the present, under AR 2.18, the City has also offered eligible
21 employees the option of “selling back” certain amounts of accrued but unused vacation during a
22 calendar year. The City’s policy of allowing employees to receive payment for a certain amount of
23 unused vacation during a calendar year is called “vacation buy back” or “vacation sell back.”

24 24. Payments for accrued vacation leave at separation or retirement from employment are
25 made at the employee’s rate of pay in effect at separation or retirement.

26 25. Each year, the Retirement Board and the City Finance Department prepare and issue the
27 Retirement Plan Comprehensive Annual Financial Report (“Retirement Plan CAFR”), which includes a
28

1 required actuarial report containing, *inter alia*, the determination of the actuarially required amount of
2 pension reserves and the annual contributions required of all Members and the City.

3 26. Prior to 2013, none of the City's Personnel Rules or Administrative Regulations
4 expressly stated whether payments for accrued vacation at separation or retirement would be included in
5 the calculation of an employee's final average compensation.

6 27. The City has consistently paid the City's share of all required contributions as determined
7 by the Retirement Plan actuaries and as certified by the Retirement Board and City Finance Director.

8 28. Prior to December 31, 2013, the City and COPERS staff communicated to Members that
9 payments for accrued vacation at separation or retirement would be included in the employee's final
10 average compensation for benefit calculation purposes including in, *inter alia*, benefit summaries,
11 reports, classes, counseling sessions, seminars, new employee orientation sessions and retirement
12 planning workshops.

13 29. The information presented by the City and COPERS staff to Members prior to December
14 31, 2013 regarding the inclusion of payments for accrued vacation leave at separation or retirement in
15 final average compensation for retirement benefit calculation purposes was consistent with how these
16 payments were actually handled and factored into retirement benefit calculations.

17 30. After December 31, 2013, the City and COPERS staff communicated to executives and
18 middle managers that cash outs for accrued vacation at separation or retirement cannot be included in
19 the employees' final average compensation for pension benefit purposes, except for amounts received
20 for vacation leave accrued prior to the effective date of revised AR 2.18. The City and COPERS
21 communicated this information in, *inter alia*, benefit summaries, reports, classes, counseling sessions,
22 seminars, new employee orientation sessions and retirement planning workshops.

23 31. The information presented by the City and COPERS staff to executives and middle
24 managers since December 31, 2013 regarding the exclusion of payments for accrued vacation leave at
25 separation or retirement from the calculation of final average compensation for retirement benefit
26 calculation purposes is consistent with how these payments have been handled and factored into
27 retirement benefit calculations since December 31, 2013.

1 32. After July 1, 2014, the City and COPERS staff communicated to employees in Units 2, 3
2 and 7 that cash outs for accrued vacation at separation or retirement cannot be included in the
3 employees' final average compensation for pension benefit purposes, except for amounts received for
4 vacation leave accrued prior to the July 1, 2014 effective date of revised AR 2.18. The City and
5 COPERS communicated this information in, *inter alia*, benefit summaries, reports, classes, counseling
6 sessions, seminars, new employee orientation sessions and retirement planning workshops.

7 33. The information presented by the City and COPERS staff to employees in Units 2, 3 and
8 7 since July 1, 2014 regarding the exclusion of payments for accrued vacation leave at separation or
9 retirement from the calculation of final average compensation for retirement benefit calculation
10 purposes is consistent with how these payments have been handled and factored into retirement benefit
11 calculations for Unit 2, 3 and 7 employees since July 1, 2014.

12 34. The City has offered paid vacation leave to employees since at least 1979.

13 35. Beginning at least as early as 1979, the City adopted a policy permitting employees to
14 accrue and carry over unused vacation leave to subsequent years, contained in Personnel Rule 14 and/or
15 15 and Administrative Regulation ("AR") 2.18.

16 36. Beginning at least as early as 1979, consistent with Personnel Rules, the City Manager,
17 with the direction and approval by the City Council, issued AR 2.18 entitled "Excess Accumulation and
18 Carryover of Vacation Credits" setting forth accrual of vacation hours and maximum carryover from
19 year to year.

20 37. AR 2.18 has been revised several times since its adoption to modify the amount of
21 vacation leave that certain employees can accrue and carry over, as well as to add policies allowing
22 certain employees to "sell back" a specified amount of accrued vacation leave each year, and to receive
23 a one-time payment for a specified amount of accrued vacation leave at separation or retirement. These
24 revisions to the AR 2.18 were effective on the following dates:

- 25 a. July 1, 1981
- 26 b. July 4, 1983
- 27 c. September 17, 1984

- 1 d. January 26, 1988
- 2 e. July 1, 1989
- 3 f. July 1, 1990
- 4 g. July 1, 1991
- 5 h. October 11, 1993
- 6 i. July 1, 1994
- 7 j. July 1, 1995
- 8 k. July 1, 1997
- 9 l. July 1, 1998
- 10 m. July 1, 1999
- 11 n. July 1, 2000
- 12 o. July 8, 2002
- 13 p. July 5, 2005
- 14 q. February 12, 2007
- 15 r. July 14, 2008
- 16 s. July 1, 2012
- 17 t. November 22, 2013
- 18 u. July 1, 2014

38. The July 1, 2012 version of AR 2.18 provided the following vacation leave rules for hourly employees in Units 1, 2, 3, and 7:

Units 2, 3, and 7 Vacation Leave Accrual, Carryover, Retirement Cash Out, and Sellback					
Years of Service	Accrual Rate/Month	Max Carryover as of	Max Carryover as of	Max Accrual Compensated at Separation/	Maximum Buyback/Year

		12/31/12 (80 hours added)	12/31/13 (40 hours added)	Retirement	
0-5	8 hours	272 hours	232 hours	240 hours	Unit 2: 80 hours after accruing 120 hours, contingent upon using 35 hours of vacation time during same year. Unit 3: 80 hours after accruing 120 hours, contingent upon using 40 hours of vacation time during same year. Unit 7: 40 hours, contingent upon using 40 hours of vacation time during the same year.
6-10	10 hours	320 hours	280 hours	300 hours	
11-15	11 hours	344 hours	304 hours	330 hours	
16-20	13 hours	392 hours	352 hours	390 hours	
21+	15 hours	440 hours	400 hours	450 hours	

Unit 1 Vacation Leave Accrual, Carryover, Retirement Cash Out, and Sellback				
Years of Service	Accrual Rate/Month	Max Carryover as of 12/31/12	Max Accrual Compensated at Separation/Retirement	Maximum Buyback/Year
0-5	8 hours	192 hours	240 hours	80 hours, contingent upon having accrued a minimum of 175 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	

39. From 1979 until December 31, 2013, AR 2.18 did not expressly state whether cash outs for accrued vacation leave received at separation or retirement would be included in the calculation of an employee's final average compensation for pension purposes.

40. The Meet-and-Confer Ordinance, Phoenix Code § 2-214 *et seq.*, sets forth a process by which the City and representatives of various employee groups (including Units 1, 2 & 3) negotiate,

1 bargain and reach agreements on wages, hours, and other terms and conditions of employment.

2 41. Pursuant to the City’s Meet-and-Confer Ordinance, Plaintiff AFSCME Local 2960
3 represents all full-time employees in Unit 3 regardless of whether they are members of AFSCME Local
4 2960. AFSCME Local 2960 has entered into a series of binding and enforceable Memoranda of
5 Understanding (“MOUs”) with the City of Phoenix that cover all full-time employees in Unit 3.

6 42. Section 5-5(B) of the 2014-2016 MOU between the City and AFSCME Local 2960 (Unit
7 3) states as follows:

8
9 **In July 2014 and July 2015, every unit member will receive eight (8) hours of
10 vacation time, in addition to their other annual accruals, added to their vacation
11 leave.**

12 Vacation accrual, carryover, and separation payout shall be governed by the following table:

13 Service Years	Monthly Accrual	Maximum Carryover	Payout
14 0-5	8 hours	192 hours	240 hours
15 6-10	10 hours	240 hours	300 hours
16 11-15	11 hours	264 hours	330 hours
17 16-20	13 hours	312 hours	390 hours
18 21+	15 hours	360 hours	450 hours

20 Unit members shall be allowed vacation buy out twice per calendar year, on the last
21 paycheck of November and/or May. The total annual buy out is up to a maximum of
22 eighty (80) hours taken in no more than forty (40) hour increments, after the employee
23 has accumulated a minimum of one hundred twenty (120) hours and has used forty (40)
hours of vacation/comp-time during the calendar year.

24 This vacation buy out benefit was suspended in the 2010 – 2012 concession agreement.
25 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 **2014 – 2016** agreement.

26 Unit members may contribute accrued vacation or compensatory time to other employees
27 in accordance with City policy governing contribution of leave for serious illness of an
employee or their immediate family member.

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

3 43. The language and chart in Section 5-5(B) of the 2014-2016 MOU is substantially similar
4 to the provisions governing vacation carryover, accrual and payout at separation in all prior MOUs
5 entered into by the City and AFSCME Local 2960 between 1992 and 2014. The only substantive
6 changes have been to add provisions governing vacation buyback and to increase or decrease the amount
7 of vacation buyback.

8 44. The 2014-2016 MOU between Unit 3 and the City contains an Attachment B that
9 provides as follows:

10 All of the following, including the agreed-upon Intent, are material terms of this
11 Attachment B and if any provision contained herein is not accepted by the City, the City
12 Council or the employee group, this entire Attachment B becomes null and void:

13 Section 3-4 (Continued)

14 A. Final Average Compensation and Vacation Leave

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

19 2. The City recognizes that the Union may bring a lawsuit regarding the City's proposed
20 implementation of the practice set forth in this Attachment B by submitting the dispute
21 concerning the City's proposal and planned implementation of the practice in Paragraph
22 B.1 of this Attachment B to a court of competent jurisdiction.

23 3. The Parties expressly agree that nothing contained in Section 3-4 or this Attachment B
24 shall be construed to constitute an agreement by the Union to the lawfulness of the
25 practice set forth in Attachment B or the lawfulness of implementation of the changes set
26 forth in Paragraph B.1 of this Attachment B. Nor shall anything contained in this
27 Attachment B constitute a waiver of the Union's, employees' or the City's claims or
28 defenses in connection with a lawsuit as set forth in Paragraph B.2. hereof regarding the
lawfulness of the City's proposed implementation of the changes set forth in Paragraph
B.1. The City agrees not to make any argument based on this Attachment B regarding
waiver, estoppel, ratification, novation or any similar arguments based on this
Attachment B. The City expressly agrees it waives any rights to argue and will not and
may not argue, based on this Attachment B, in any lawsuit as set forth in Paragraph B.2
regarding the lawfulness of City's proposed implementation of the changes in Paragraph
B.1, that the Union or Unit 3 employees agreed to the lawfulness of such changes
including, without limitation, by asserting that the Union or employees agreed to the

1 lawfulness of such change based on this Attachment B, the negotiations leading up to this
2 Attachment B, the ratification of the MOU by the Unit 3 employees or based on any
3 action or statements of the Union in relation to this Attachment B.

4 4. The Parties further agree that until there is a final judgment and declaration with
5 respect to the rights of the parties regarding the lawfulness of and the proposed
6 implementation of the practice in Paragraph B.1, if the City calculates retirement benefits
7 based on such practice, the Union will not seek a temporary restraining order, preliminary
8 injunction or other interim relief to cease the practice set forth in paragraph B.1. The City
9 expressly agrees that it waives any rights to argue and will not and may not argue that
10 failure to seek a temporary restraining order, preliminary injunction or other interim relief
11 to cease the practice set forth in paragraph B.1 constitutes estoppel, an agreement to such
12 practice or waives any rights to challenge such practice nor will the City argue that either
13 the Union or Unit 3 employees agreed to the lawfulness of the practice set forth in
14 Paragraph B.1 or such practices based on the failure to seek a temporary restraining
15 order, preliminary injunction or other interim relief.

16 5. The City and the Union further agree that in the event a court determines in a lawsuit
17 as described in Paragraph B.2., after final judgment and all appeals are exhausted, that:
18 (a) the vacation payments at issue in Paragraph A are compensation within the meaning
19 of the Charter; or (b) determines that the practice set forth violates the contractually
20 vested rights of employees; or (c) determines that the practice violates either the Arizona
21 or United States Constitutions, the City shall, as soon as is reasonably practicable after
22 final judgment and all appeal rights are exhausted, sever Paragraph B.1 of this
23 Attachment B and its terms from this MOU and will take whatever administrative action
24 is reasonably necessary to undo the practice described in this Attachment B as required to
25 implement such court's judgment and make any affected employees whole. The City
26 shall meet and discuss with the Union about such administrative action before such action
27 is taken and shall advise the Union first before advising affected Unit 3 employees about
28 any such administrative action that directly affects Unit 3 employees

19 6. The City and the Union further agree that, in the event of a final judgment in the
20 Union's favor such as described in Paragraph B.5. of this Attachment, and after all
21 appeals are exhausted, the City will apply such judgment retroactively to undo the effect
22 of the practices described in this Attachment B.1 on any employees affected or bound by
23 this Attachment B and make such employees whole, including without limitation those
24 Unit 3 employees who retire after June 30, 2014 but before such final judgment and
25 appeals are concluded. The City shall meet and discuss with the Union about what
26 actions are taken to undo the effect of the practices and shall provide the Union with
27 information concerning what Unit 3 employees retired after June 30, 2014 who were
28 affected by Paragraph B.1 of this Attachment B as reasonably requested by the Union.
reasonably requested by the Union. The City agrees that it will not argue or claim that
such judgment should be applied prospectively only.

26 45. No MOU prior to the 2014-2016 MOU between Unit 3 and the City contain any express
27 statements regarding whether accrued vacation payouts will be included in the calculation of final
28

1 average compensation for pension purposes.

2 46. Pursuant to the City’s Meet-and-Confer Ordinance, Plaintiff AFSCME Local 2384
3 represents all full-time employees in Unit 2 whether or not they are members of AFSCME Local 2384.
4 AFSCME Local 2384 has entered into a series of binding and enforceable MOUs with the City of
5 Phoenix that cover all full-time employees in Unit 2.

6 47. Section 5-5(B) of the 2014-2016 MOU between the City and AFSCME Local 2384 (Unit
7 2) provides as follows:

8
9 Vacation accrual, carryover, and separation pay-out shall be governed by the following table:

10

Service	Monthly Accrual
0-5	8 hours
6-10	10 hours
11-15	11 hours
16-20	13 hours
21+	15 hours

11
12
13
14
15
16
17
18
19

Max. Carryover	Max. Payout
192 hours	240 hours
240 hours	300 hours
264 hours	330 hours
312 hours	390 hours
360 hours	450 hours

20
21
22
23
24
25
26 Unit members shall be allowed “vacation sell-back” twice per calendar year, on the last
27 paycheck of November and/or May. The total annual buyout is up to a maximum of
28 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

1 employee must take a minimum of forty (40) hours of vacation/comp-time during the
2 calendar year to qualify for these payments.

3 The May vacation sell-back benefit (40 hours) was suspended in the 2010 – 2012
4 concession agreement. This suspension remains in effect through the 2014 – 2016
5 agreement.

6 Unit members may contribute accrued vacation or compensatory time to other employees
7 in accordance with City policy governing contribution of leave for serious illness of an
8 employee or their immediate family member. An immediate family member is defined as
9 the employee's spouse, qualified domestic partner, mother, father or child. Child is
10 defined as a biological, adopted, foster or stepchild, legal ward, or a child of a person
11 standing in place of a parent or a brother, sister, grandparent, or in-law who are living
12 with the employee and under his/her care. Requests to receive such leave contributions
13 will require a completed doctor's certification.

14 ...

15 48. The language and chart in Section 5-5(B) of the 2014-2016 MOU is substantially
16 similar to the provisions governing vacation carryover, accrual and payout at separation in all prior
17 MOUs entered into by the City and AFSCME Local 2384 between 1988 and 2014. The only substantive
18 changes have been to add provisions governing vacation buyback and to increase or decrease the amount
19 of vacation buyback.

20 49. The 2014-2016 MOU for Unit 2 contains and Attachment B that provides as follows:

21 All of the following, including the agreed-upon Intent, are material terms of this Attachment B
22 and if any provision contained herein is not accepted by the City, the City Council or the
23 employee group, this entire Attachment B becomes null and void:

24 Section 3-4 (Continued)

25 A. Final Average Compensation and Vacation Leave

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

2. The City recognizes that the Union may bring a lawsuit regarding the City's proposed
implementation of the practice set forth in this Attachment B by submitting the dispute
concerning the City's proposal and planned implementation of the practice in Paragraph B.1 of
this Attachment B to a court of competent jurisdiction.

3. The Parties expressly agree that nothing contained in Section 3-4 or this Attachment B shall be

1 construed to constitute an agreement by the Union to the lawfulness of the practice set forth in
2 Attachment B or the lawfulness of implementation of the changes set forth in Paragraph B.1 of
3 this Attachment B. Nor shall anything contained in this Attachment B constitute a waiver of the
4 Union's, employees' or the City's claims or defenses in connection with a lawsuit as set forth in
5 Paragraph B.2. hereof regarding the lawfulness of the City's proposed implementation of the
6 changes set forth in Paragraph B.1. The City agrees not to make any argument based on this
7 Attachment B regarding waiver, estoppel, ratification, novation or any similar arguments based
8 on this Attachment B. The City expressly agrees it waives any rights to argue and will not and
9 may not argue, based on this Attachment B, in any lawsuit as set forth in Paragraph B.2
10 regarding the lawfulness of City's proposed implementation of the changes in Paragraph B.1,
11 that the Union or Unit 3 employees agreed to the lawfulness of such changes including, without
12 limitation, by asserting that the Union or employees agreed to the lawfulness of such change
13 based on this Attachment B, the negotiations leading up to this Attachment B, the ratification of
14 the MOU by the Unit 3 employees or based on any action or statements of the Union in relation
15 to this Attachment B.

16 4. The Parties further agree that until there is a final judgment and declaration with respect to the
17 rights of the parties regarding the lawfulness of and the proposed implementation of the practice
18 in Paragraph B.1, if the City calculates retirement benefits based on such practice, the Union will
19 not seek a temporary restraining order, preliminary injunction or other interim relief to cease the
20 practice set forth in paragraph B.1. The City expressly agrees that it waives any rights to argue
21 and will not and may not argue that failure to seek a temporary restraining order, preliminary
22 injunction or other interim relief to cease the practice set forth in paragraph B.1 constitutes
23 estoppel, an agreement to such practice or waives any rights to challenge such practice nor will
24 the City argue that either the Union or Unit 3 employees agreed to the lawfulness of the practice
25 set forth in Paragraph B.1 or such practices based on the failure to seek a temporary restraining
26 order, preliminary injunction or other interim relief.

27 5. The City and the Union further agree that in the event a court determines in a lawsuit as
28 described in Paragraph B.2., after final judgment and all appeals are exhausted, that: (a) the
vacation payments at issue in Paragraph A are compensation within the meaning of the Charter;
or (b) determines that the practice set forth violates the contractually vested rights of employees;
or (c) determines that the practice violates either the Arizona or United States Constitutions, the
City shall, as soon as is reasonably practicable after final judgment and all appeal rights are
exhausted, sever Paragraph B.1 of this Attachment B and its terms from this MOU and will take
whatever administrative action is reasonably necessary to undo the practice described in this
Attachment B as required to implement such court's judgment and make any affected employees
whole. The City shall meet and discuss with the Union about such administrative action before
such action is taken and shall advise the Union first before advising affected Unit 3 employees
about any such administrative action that directly affects Unit 3 employees.

6. The City and the Union further agree that, in the event of a final judgment in the Union's favor
such as described in Paragraph B.5. of this Attachment, and after all appeals are exhausted, the
City will apply such judgment retroactively to undo the effect of the practices described in this
Attachment B.1 on any employees affected or bound by this Attachment B and make such
employees whole, including without limitation those Unit 3 employees who retire after June 30,
2014 but before such final judgment and appeals are concluded. The City shall meet and discuss
with the Union about what actions are taken to undo the effect of the practices and shall provide

1 the Union with information concerning what Unit 3 employees retired after June 30, 2014 who
2 were affected by Paragraph B.1 of this Attachment B as reasonably requested by the Union.
3 reasonably requested by the Union. The City agrees that it will not argue or claim that such
4 judgment should be applied prospectively only.

5 50. No MOU prior to the 2014-2016 MOU between Unit 2 and the City contains any express
6 statements regarding whether accrued vacation payouts will be included in the calculation of final
7 average compensation for pension purposes.

8 51. The City's Meet-and-Discuss Ordinance, Phoenix Code § 2-223 *et seq.*, sets forth a
9 process by which the City and representatives of professional and supervisory employees (Unit 7) meet
10 and discuss matters pertaining to salary and fringe benefits

11 52. Plaintiff ASPTEA represents all full-time employees in Unit 7 regardless of whether they
12 are members of ASPTEA. ASPTEA is the Meet-and-Discuss representative for full-time employees in
13 Unit 7.

14 53. Until 2006, under the City's Meet-and-Discuss Ordinance, Phoenix City Code §2-223 *et*
15 *seq.*, there were no written memoranda applicable to employees in Unit 7. Rather, the City Manager had
16 authority to meet and discuss with ASPTEA representatives on matters relating to wages and fringe
17 benefits for employees in Unit 7 and to make recommendations to the City Council for approval of
18 agreements reached during that process. Phoenix City Code §§ 2-223, 2-229 & 2-231.

19 54. In 2006, the City's Meet-and-Discuss Ordinance was amended to provide for written
20 Memoranda of Agreement ("MOAs").

21 55. Pursuant to the City's Meet-and-Discuss Ordinance, ASPTEA has entered into a series of
22 MOAs with the City of Phoenix that cover all full-time employees of Unit 7.

23 56. Section 5-9(A) of the 2014-2016 MOA between the City and ASPTEA (Unit 7) provides
24 as follows::

25 In accordance with Personnel Rule 15, vacation accrual, carryover, and separation payout shall
26 be governed by the following table:

Years Served	Monthly Accrual	Maximum Carryover	Payout
0-5	8 hrs	192 hrs/24 days	240 hrs/30 days

1		/1 day		
2	6-10	10 hrs/1.25 days	240 hrs/30 days	300 hrs/37.5 days
3	11-15	11 hrs/1.375 days	264 hrs/33 days	330 hrs/41.25 days
4	16-20	13 hrs/1.625 days	312 hrs/39* days	390 hrs/48.75 days
5	21+	15 hrs/1.875 days	360 hrs/45 days	450 hrs/56.25 days

7 ** In the table above, hourly (non-exempt) employee time is reflected by hours. Salaried
8 (exempt) employee time is reflected by days.

9 Unit 7 employees may contribute accrued vacation and compensatory time to other employees in
10 accordance with City policy governing contributions of leave for serious illness or injury of
11 employee or their immediate family member.

12 57. The language in Section 5-9(A) of the 2014-2016 MOA is substantially similar to the
13 provisions governing vacation payouts in all prior MOAs entered into by the City and ASPTEA between
14 2006 and 2014.

15 58. The 2014-2016 MOA for Unit 7 does not contain any express statements regarding
16 whether accrued vacation payouts will be included in the calculation of final average compensation for
17 pension purposes.

18 59. No prior MOA between Unit 7 and the City contain any express statements regarding
19 whether accrued vacation payouts will be included in the calculation of final average compensation for
20 pension purposes.

21 **II. OTHER STIPULATIONS**

22 The parties stipulate that all trial transcripts and trial exhibits from *Piccioli, et al. v. City of*
23 *Phoenix, et al.*, CV2012-010330 (Maricopa Cnty. Superior Court), are admissible in this action subject
24 to the evidentiary rulings made by the Court in that matter, as well as any relevance objections the
25 parties may raise in the instant case.

26 The parties further agree to treat all deposition transcripts from *Piccioli, et al. v. City of Phoenix,*
27 *et al.*, as if they were taken in the instant action. By doing so, neither side waives any objections thereto,
28 including objections to relevance and foundation under the Arizona Rules of Evidence and objections to

1 form as reflected in the record.

2 The parties agree that all of the foregoing stipulations are made without waiver of any parties'
3 right to add additional facts and take additional discovery including through a Rule 56(f) motion.
4

5 Respectfully submitted this 17th day of February, 2017.

6 **MARTIN & BONNETT, P.L.L.C.**

7 By: /s/ Jennifer Kroll
8 Susan Martin
9 Daniel L. Bonnett
10 Jennifer Kroll
11 1850 N. Central Ave. Suite 2010
12 Phoenix, AZ 85004
13 Attorneys for Plaintiffs

14 **OSBORN MALEDON, P.A.**

15 By: /s/ Hayleigh S. Crawford (with permission)
16 Colin C. Campbell, No. 004955
17 Eric M. Fraser, No. 027241
18 Hayleigh S. Crawford, No. 032326
19 OSBORN MALEDON, P.A.
20 2929 North Central Avenue, 21st Floor
21 Phoenix, Arizona 85012-2793
22 Attorneys for Defendants
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Original of the foregoing electronically filed this 17th day of February, 2017 with:

Clerk of the Court
Maricopa County Superior Court
Central Court Building
201 W. Jefferson Street
Phoenix, AZ 85003

Copy of the foregoing served electronically via the Court's electronic filing system this 17th day of February, 2017 on:

Colin C. Campbell
Eric M. Fraser
Hayleigh S. Crawford
OSBORN MALEDON, P.A.
2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793

Attorneys for Defendants

/s/ T. Mahabir

EXHIBIT 15

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).

1 Colin F. Campbell, 004955
Eric M. Fraser, 027241
2 Hayleigh S. Crawford, 032326
Osborn Maledon, P.A.
3 2929 North Central Avenue, 21st Floor
Phoenix, Arizona 85012-2793
4 (602) 640-9000
ccampbell@omlaw.com
5 efraser@omlaw.com
hcrawford@omlaw.com

6 Attorneys for Defendants

7
8 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
9 IN AND FOR THE COUNTY OF MARICOPA

10 American Federation of State County and
Municipal Employees, AFL-CIO, Local
11 2384, et al.

12 Plaintiffs,

13 v.

14 City of Phoenix, et al.,

15 Defendants.

No. CV2014-011778

**DEFENDANTS' RESPONSE TO
PLAINTIFFS' CONTROVERTING
AND ADDITIONAL STATEMENT
OF FACTS IN SUPPORT OF THEIR
CROSS-MOTION FOR SUMMARY
JUDGMENT**

(Assigned to the Honorable
Roger Brodman)

16
17
18 Defendants the City of Phoenix (“the City”), the City of Phoenix Employees’
19 Retirement System (“COPERS”), and the City of Phoenix Employees’ Retirement
20 System Board (“COPERS Board”) offer the following response to Plaintiffs’
21 controverting and additional statement of facts (“Plfs.’ CSOF”) in support of their cross-
22 motion for summary judgment. Defendants’ responses are shown in **bold text** preceded
23 by the identifier “**Defendants’ response.**”

24 **Responses to Plaintiffs’ Controverting and**
25 **Additional Statement of Facts**

26 As a general matter, Defendants note that the failure to specifically object on
27 relevance grounds in the responses below is not a waiver of the objection. Further,
28 although many of Plaintiffs’ quotations do not indicate that formatting and paragraph

1 structures have been altered, for brevity's sake Defendants generally omit objections and
2 disputes on that basis from their responses.

3 **A. The Plaintiffs¹**

4 1. Plaintiffs AFSCME 2960 and Plaintiff AFSCME 2384 are voluntary
5 nonprofit labor organizations affiliated with the American Federation of State, County
6 and Municipal Employees, AFL-CIO International Union. SF ¶¶ 2, 5.

7 **Defendants' Response: Undisputed.**

8 2. AFSCME 2960 is the certified Meet and Confer bargaining representative
9 for the approximately 2,133 full-time employees of Unit 3 who are participants in
10 COPERS. SF ¶ 15. AFSCME 2960 has entered into binding and enforceable
11 memoranda of understanding with the City of Phoenix pursuant to the City's Meet and
12 Confer Ordinance. SF ¶ 41.

13 **Defendants' Response: Undisputed.**

14 3. AFSCME 2384 is the certified Meet and Confer bargaining representative
15 for the approximately 1,591 full-time employees of Unit 2 who are participants in
16 COPERS. SF ¶ 16. Unit 2 employees include City of Phoenix skilled trade and
17 equipment operation employees. SF ¶ 5. AFSCME 2384 has entered into binding and
18 enforceable memoranda of understanding with the City of Phoenix pursuant to the City's
19 Meet and Confer Ordinance. SF ¶ 46.

20 **Defendants' Response: Undisputed.**

21 4. Plaintiff ASPTEA is a voluntary nonprofit labor organization. SF ¶ 7.
22 ASPTEA is the certified Meet and Confer bargaining representative for the
23 approximately 2,998 full-time Unit 7 employees who are participants in COPERS. SF
24 ¶¶ 7, 17. ASPTEA has entered into a series of memoranda of agreement with the City
25 pursuant to the City's Meet and Discuss Ordinance. SF ¶ 55.

26 **Defendants' Response: Undisputed.**

27
28

¹ Defendants include Plaintiffs' section headings only for navigational purposes.

1 5. Plaintiff Frank Piccioli is the President of AFSCME Local 2960, an
2 employee of the City of Phoenix, and a member of Unit 3. SF ¶ 2.

3 **Defendants’ Response: Undisputed.**

4 6. Plaintiff Piccioli worked for the City from in or around 1999 through 2000.
5 Mr. Piccioli began working for the City again in or around 2002 and has continuously
6 worked for the City since that date. Mr. Piccioli is an “Employee” of the City and a
7 “Member” of the Retirement Plan as those terms are defined in the Retirement Plan and
8 is entitled to pension benefits under the Retirement Plan upon his retirement or eligibility
9 for a deferred pension. SF ¶ 3.

10 **Defendants’ Response: Disputed in part. Mr. Piccioli has not been**
11 **employed by the City continuously since 2002. Per the stipulated facts submitted**
12 **by the parties, Mr. Piccioli was reemployed by the City in 2004, not 2002.**
13 **Defendants also note that the cited stipulated fact (¶ 3) supports Plaintiffs’**
14 **statement in the second sentence regarding pension benefits, as it says nothing**
15 **about Mr. Piccioli’s entitlement to pension benefits. Mr. Piccioli’s entitlement to**
16 **benefits depends on his satisfaction of the eligibility requirements under the**
17 **Charter. (See, e.g., Charter ch. XXIV, art. II; Plfs.’ Responses to Defs.’ SSOFF ¶ 14**
18 **(acknowledging that the Charter controls entitlement to pension benefits).)**
19 **Defendants do not dispute the remainder of paragraph 6.**

20 7. Plaintiff Debra Novak-Scott is the Vice President of AFSCME Local 2960,
21 an employee of the City of Phoenix and a member of Unit 3. SF ¶ 4. Ms. Novak-Scott
22 began working for the City in or around 1984 and has continuously worked for the City
23 since that date. *Id.* Ms. Novak-Scott is a Member of the Retirement Plan and is eligible
24 to retire and is entitled to pension benefits under the Retirement Plan upon her retirement.
25 Deposition of Debra Novak-Scott in *Piccioli*, p. 93:21-25, Ex. 12 hereto; Novak-Scott
26 Decl. ¶ 2, Ex. 6 hereto.

27 **Defendants’ Response: Undisputed, although Defendants note that**
28 **Plaintiffs’ Exhibit 12 does not support the statement regarding Ms. Novak-Scott’s**

1 entitlement to pension benefits. (Ms. Novak-Scott testified only that she was
2 eligible to retire, *see* Plfs.’ Ex. 12 at 93:21–25.) Ms. Novak-Scott’s entitlement to
3 benefits depends on her satisfaction of the eligibility requirements under the
4 Charter. (*See, e.g.*, Charter ch. XXIV, art. II; Plfs.’ Responses to Defs.’ SSOF
5 ¶ 14.)

6 8. Plaintiff Marshall Pimentel is the President of AFSCME Local 2384, an
7 employee of the City of Phoenix, and a member of Unit 2. SF ¶ 5. Mr. Pimentel began
8 working for the City in or around 2006 and has continuously worked for the City since
9 that date. SF ¶ 6. Mr. Pimentel is a Member of the Retirement Plan and is entitled to
10 pension benefits under the Retirement Plan upon his retirement or eligibility for a
11 deferred pension. SF ¶ 6.

12 **Defendants’ Response: Undisputed, but Defendants note that the cited**
13 **stipulated fact (¶ 6) does not support Plaintiffs’ statement in the third sentence**
14 **regarding pension benefits, as it says nothing about Mr. Pimentel’s entitlement to**
15 **pension benefits. Mr. Pimentel’s entitlement to benefits depends on his satisfaction**
16 **of the eligibility requirements under the Charter. (*See, e.g.*, Charter ch. XXIV, art.**
17 **II; Plfs.’ Responses to Defs.’ SSOF ¶ 14.)**

18 9. Plaintiff Ronald Ramirez is a past President and Board Member of
19 ASPTEA, an employee of the City of Phoenix and a member of Unit 7. SF ¶ 7.
20 Mr. Ramirez began working for the City in or around 1986 and has continuously worked
21 for the City since that date. SF ¶ 8. Mr. Ramirez is a Member of the Retirement Plan and
22 is eligible to retire and entitled to unreduced pension benefits under the Retirement Plan
23 upon his retirement because he is over 60 years old and has more than ten years of
24 credited service. SF ¶ 8; Deposition of Ronald Ramirez, in *Piccioli* p. 165:11-18, Ex. 11
25 hereto; Ramirez Decl. ¶ 2. Retirement Plan § 17.1;

26 **Defendants’ Response: Disputed in part. Defendants dispute Plaintiffs’**
27 **allegation that Mr. Ramirez is “entitled to unreduced pension benefits under the**
28 **Retirement Plan upon his retirement” to the extent it suggests that the benefits to**

1 which Mr. Ramirez may be entitled when he retires have been reduced.
2 Defendants also note that the stipulated fact cited by Plaintiffs (SF ¶ 8) does not
3 support Plaintiffs' statements in the third sentence regarding pension benefits, as it
4 says nothing about Mr. Ramirez's entitlement to pension benefits. Mr. Ramirez's
5 entitlement to benefits depends on his satisfaction of the eligibility requirements
6 under the Charter. (See, e.g., Charter ch. XXIV, art. II; Plfs.' Responses to Defs.'
7 SSOF ¶ 14.)

8 10. Plaintiff Jason Stokes is the President of ASPTEA, an employee of the City
9 of Phoenix, and a member of Unit 7. SF ¶ 9. Mr. Stokes began working for the City in
10 or around 1992 and has continuously worked for the City since that date. SF ¶ 9.
11 Mr. Stokes is a Member of the Retirement Plan and is entitled to pension benefits under
12 the Retirement Plan upon his retirement or eligibility for a deferred pension. SF ¶ 9.

13 **Defendants' Response: Undisputed, but Defendants note that the cited**
14 **stipulated fact (¶ 9) does not support Plaintiffs' statement in the third sentence**
15 **regarding pension benefits, as it says nothing about Mr. Stokes's entitlement to**
16 **pension benefits. Mr. Stokes's entitlement to benefits depends on his satisfaction of**
17 **the eligibility requirements under the Charter. (See, e.g., Charter ch. XXIV, art.**
18 **II; Plfs.' Responses to Defs.' SSOF ¶ 14.)**

19 **B. The Retirement Plan**

20 11. The City of Phoenix Employees' Retirement Plan ("COPERS,"
21 "Retirement Plan" or "Plan") is a defined benefit plan established in the City of Phoenix
22 Charter ("Charter"). SF ¶ 14.

23 **Defendants' Response: Undisputed.**

24 12. Article II of Chapter 24 of the City of Phoenix Charter, the City of Phoenix
25 Retirement Law of 1953, as amended from time to time, sets forth the provisions of the
26 Retirement Plan including provisions regarding the retirement benefits to which
27
28

1 individual Plaintiffs are entitled. *See* Chapter XXIV of the Charter, attached hereto as
2 Ex. 1.²

3 **Defendants' Response: Undisputed.**

4 13. With the exception of police and fire employees who are covered by
5 another retirement system, any person who becomes a full-time civil service employee of
6 the City becomes a Member of the Retirement Plan beginning with the date of his/her
7 first employment with the City. Plan §§ 2.5, 12.

8 **Defendants' Response: Defendants object to this statement as one of law, not**
9 **fact. Defendants assert that the Charter's provisions speak for themselves.**

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

14 **Defendants' Response: Defendants object to this statement as one of law, not**
15 **fact. Defendants assert that the Charter's provisions speak for themselves.**

16 15. Any Member who has at least five years of service with the City and
17 reaches a specified age or combination of age and years of service can elect to retire with
18 a defined benefit pension. Plan §§17.1-17.3.

19 **Defendants' Response: Defendants object to this statement as one of law, not**
20 **fact. Defendants assert that the Charter's provisions speak for themselves.**

21 16. There are also deferred vested pension benefits for Members who leave
22 employment with more than five years of service, and disability pension benefits for
23 Members with more than ten years of credited service who become disabled. Plan §§ 20,
24 21.

25 **Defendants' Response: Defendants object to this statement as one of law, not**
26 **fact. Defendants assert that the Charter's provisions speak for themselves.**

27 _____
28 ² Unless otherwise indicated the provisions of the Plan referred to by Article and Section
number are the provisions set forth in Part II of Chapter XXIV of the Charter.

1 17. Under the terms of COPERS, "Service" means personal service rendered to
2 the City by an employee of the City and includes service rendered in any function or
3 enterprise the City may engage in as a municipal corporation or may have heretofore
4 acquired through purchase or eminent domain. Plan § 2.7.

5 **Defendants' Response: Defendants object to this statement as one of law, not**
6 **fact. Defendants assert that the Charter's provisions speak for themselves.**

7 18. Under the terms of the Retirement Plan, "Credited Service" means "the
8 number of years and months of service credited a member by the Retirement Board[.]"
9 Plan § 2.8.

10 **Defendants' Response: Defendants object to this statement as one of law, not**
11 **fact. Defendants assert that the Charter's provisions speak for themselves.**

12 19. Under the Retirement Plan, the term "compensation" means:
13 a member's salary or wages paid him by the City for personal services
14 rendered by him to the City. In case a member's compensation is not all
15 paid in money the City Council shall, upon recommendation of the City
16 Manager, fix the value of the portion of his compensation which is not paid
17 in money.

18 Plan § 2.13.

19 **Defendants' Response: Defendants object to this statement as one of law, not**
20 **fact. Defendants assert that the Charter's provisions speak for themselves.**

21 20. A Member's benefit is a formula generally based on the sum of various
22 percentages (such percentages vary based on the number of years of service) multiplied
23 by final average compensation multiplied by credited service. Plan §19.1

24 **Defendants' Response: Defendants object to this statement as one of law, not**
25 **fact. Defendants assert that the Charter's provisions speak for themselves.**

26 21. Under COPERS, the term "final average compensation" is defined as
27 follows:

28 (a) for a Tier 1 Member and Tier 2 Member, 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,

1 his final average compensation shall be the average of his compensations
2 for his total period of service.

3 (b) for a Tier 2 Member, the average of the highest annual compensations
4 paid a member for a period of 5 consecutive, but not necessarily
5 continuous, years of his credited service contained within his 10 years of
6 credited service immediately preceding the date his City employment last
7 terminates. If he has less than 5 years of credited service, his final average
8 compensation shall be the average of his compensations for his total period
9 of service.

10 For the purposes of determining benefits based on final average
11 compensation, any compensation in excess of the limitations established by
12 Section 401(a)(17) of the Internal Revenue Code (including applicable
13 adjustments), shall be disregarded; further, for any Tier 3 Member, any
14 annual compensation in excess of \$125,000 in any one year shall be
15 disregarded, provided that such \$125,000 limitation shall be adjusted
16 annually each January 1, commencing on January 1, 2017, by the annual
17 unadjusted percentage increase or decrease in The Consumer Price IndEx.
18 for All Urban Consumers (CPI-U); U.S. City Average; All items, not
19 seasonably adjusted, 1982-1984=100 reference base, published by the
20 Bureau of Labor Statistics of the United States Department of Labor (such
21 adjustments to be cumulative and compounded) for the twelve month
22 period ending on the immediately preceding September 30. For an
23 individual who was a member of the retirement plan before the first plan
24 year beginning after December 31, 1995, the limitation on compensation
25 for eligible employees under Section 401(a)(17) of the Internal Revenue
26 Code shall not be less than the amount which was allowed to be taken into
27 account under the plan as in effect on July 1, 1993.

28 Plan § 2.14.

**Defendants' Response: Disputed. The relevant version of the Charter (i.e.,
the version in effect as of 2014), which Plaintiffs submitted as Ex. 1, defines final
average compensation as:**

**[T]he 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**

1 was allowed to be taken into account under the plan as in
2 effect on July 1, 1993. For this purpose an eligible employee
3 is an individual who was a member of the retirement plan
before the first plan year beginning after December 31, 1995.

4 Defendants also object to these statements as statements of law, not fact.
5 Defendants assert that the provisions of the Charter speak for themselves, and
6 dispute the allegations in paragraph 21 to the extent they are inconsistent with the
7 2014 Charter's text.

8 22. Under COPERS, the term "final compensation" is defined as: "a member's
9 annual rate of compensation at the time his City employment last terminates." Plan
10 § 2.15.

11 **Defendants' Response: Defendants object to this statement as one of law, not**
12 **fact. Defendants assert that the Charter's provisions speak for themselves.**

13 23. The term "final compensation" is utilized in only two instances in the
14 Retirement Plan, both of which define the benefits payable to the beneficiary of a
15 deceased employee under certain circumstances as follows:

16 a. Article I, "Repeal of Phoenix City Employees' Retirement System Law of
17 1945" provides in § 1.5 under the heading "System repealed; conditions"
18 that the beneficiaries of a member who died after the repeal of the prior
19 plan and before June 30, 1954 "shall receive benefits to the same extent and
20 in the same manner in all respects as if the said Chapter XXIV had not been
21 repealed, provided said benefits shall be based upon his *final compensation*
22 as of the date of the repeal of Chapter XXIV."

23 b. Similarly § 25.3 of the Retirement Plan, limits the City's liability to a
24 beneficiary of a member who died who is also paid from the state workers
25 compensation fund on account of the death of a member as follows:
26 During the workmen's compensation period arising on account of
27 the death of a member the total of the pensions provided in Section
28 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. Retirement Plan § 25. 3.

1 **Defendants’ Response: Disputed in part. “Final compensation” is not used**
2 **only in reference to benefits payable to beneficiaries of deceased employee; sections**
3 **1.4 and 1.6 in Chapter XXIV, article I also reference “final compensation” when**
4 **discussing the calculation of retirement and disability benefits for members of the**
5 **former retirement system based on average final compensation. (See Plfs.’ Ex. 1 at**
6 **1–2.) Defendants also object to these statements as statements of law, not fact.**
7 **Defendants assert that the Charter’s provisions speak for themselves.**

8 24. The term “final average compensation” is used in the benefit provision of
9 COPERS under the heading “Pension,” to calculate the pension benefits for members.
10 Plan § 19.1(a) (Tier 1 member’s straight life pension is “2.0 percent of the member’s
11 final average compensation multiplied by the sum of the member’s credited service,
12 subject to a maximum of 32.5 years, plus the member’s unused sick leave credited
13 service...”); Plan § 19.1(b) (Tier 2 member’s pension if the member has less than 20
14 years of credited service, “2.1 percent of the member’s final average compensation
15 multiplied by the sum of the member’s credited service...”); Plan § 19.1(d) (Tier 3
16 member’s pension with less than 10 years of credited service is “1.85 percent of the
17 member’s final average compensation multiplied by the sum of the member’s credited
18 service.”).

19 **Defendants’ Response: Defendants object to this statement as one of law, not**
20 **fact. Defendants assert that the Charter’s provisions speak for themselves.**

21 25. Members must make contributions to COPERS based on a percentage of
22 compensation. Plan §§ 11.1 and 28.1(b)(1). That percentage varies based on when the
23 employee started employment. Each year, the Retirement Board’s actuary must conduct
24 an actuarial valuation and determine the contributions required to COPERS to ensure that
25 anticipated future and current benefits are funded and amortized over a period of years to
26 be determined by the Retirement Board. The actuary converts the contribution
27 requirement to a percentage of Member compensation (referred to as the “Projected
28 Percentage”). See Plan §§ 11.1 and 28.1(b)(1).

1 **Defendants’ Response: Defendants object to this statement as one of law, not**
2 **fact. Defendants assert that the Charter’s provisions speak for themselves.**

3 26. Employees hired by the City prior to July 1, 2013 (“Tier 1 members”) must
4 contribute 5% of their annual compensation. Plan §§ 27.1(b), 28(b)(2)(i). Employees
5 hired on or after July 1, 2013 (“Tier 2” and “Tier 3” members) must contribute an amount
6 that is one-half of the Projected Percentage. As amended through a vote in 2015, if that
7 amount exceeds 11%, then 11% plus an additional amount based on a formula that
8 utilizes the Projected Percentage. Plan §28(b)(2)(iii). The City must make the rest of the
9 contributions required to meet the Projected Percentage. Plan § 28(b)(2). Until July
10 2014, deductions from pay for mandatory contributions to COPERS were consistently
11 made on all vacation pay paid at retirement.

12 **Defendants’ Response: Defendants object to this statement as one of law, not**
13 **fact. Defendants assert that the Charter’s provisions speak for themselves.**
14 **Defendants further object to the allegations in paragraph 26 that refer to versions**
15 **of the Charter in effect after 2014 as irrelevant. (See Responses to ¶¶ 33–34, *infra*.)**

16 **Defendants also dispute Plaintiffs’ statement that until July 2014, deductions**
17 **from pay for mandatory contributions to COPERS were consistently made on all**
18 **vacation pay paid at retirement. Defendants ceased deducting the 5% employee**
19 **contribution amount from vacation cash outs paid to executive and middle**
20 **manager employees in December 2013. (See Stipulated Facts (“SF”) ¶¶ 28–33;**
21 **May 8, 2017 Declaration of Cindy Bezaury, attached as Ex. 17 hereto.) Further,**
22 **because Plaintiffs have failed to provide any evidentiary support for this statement,**
23 **it should be disregarded for purposes of summary judgment. See *State v. Mecham*,**
24 **173 Ariz. 474, 478 (App. 1992) (“unsworn and unproven assertions are not ‘facts’”**
25 **for purposes of summary judgment”)** (emphasis added).

26 **Defendants further note that Plaintiffs have misstated the employee**
27 **contribution amounts for Tier 2 and Tier 3 members, which are capped at 11%**
28 **under § 28(b)(2)(ii) of the Charter’s Plan provisions: “Each Tier 2 Member and**

1 **Tier 3 Member will pay to the Retirement Plan a percentage of his annual**
2 **compensation equal to one-half of the Projected Percentage, but, as of the start of**
3 **the first full pay period after January 1, 2016, such percentage shall not exceed 11**
4 **percent of the member’s annual compensation (i.e., if one-half of the Projected**
5 **Percentage is 11 percent or less of the member’s annual compensation then the**
6 **member pays one-half of the Projected Percentage, but if one-half of the Projected**
7 **Percentage is more than 11 percent of the member’s annual compensation then the**
8 **member pays only 11 percent of his annual compensation).”**

9 27. Chapter XXII of the Charter provides that the Charter (which includes the
10 Retirement Plan provisions) may only be amended by a majority vote of the qualified
11 electors voting in a regular or special election.

12 **Defendants’ Response: Defendants object to this statement as one of law, not**
13 **fact. Defendants assert that the Charter’s provisions speak for themselves.**

14 28. Prior to 1953, when the Retirement Plan was amended, there was no
15 definition of compensation. Rather there was a definition of Average Final
16 Compensation and Final Compensation as follows:

17 *Average final compensation*, means the average annual earnable
18 compensation of an employee during his last five years of service, and shall
19 include the average compensation that an employee would have earned had
20 he been regularly employed during any period for which a leave of absence
21 to [sic] health was granted;

22 *Final compensation*, means the annual compensation of an employee at the
23 time of termination of employment.

24 1951 Retirement Plan Section 2, attached hereto as Ex. 41.

25 **Defendants’ Response: Undisputed, but Defendants object to these**
26 **statements as statements of law, not fact. Defendants assert that the Charter’s**
27 **provisions speak for themselves.**

28 29. Prior to 1953, when the Retirement Plan was amended, the pension
benefits provision entitled “Service retirement allowance” provided in part as follows:

Upon retirement for service a member shall receive a Service retirement
allowance payable throughout life, consisting of: 1. an annuity which shall

1 be the actuarial equivalent of his accumulated contributions at the time of
2 retirement; 2. A membership service pension equal to one-fourth of his
3 average final compensation. Whenever a retiring employee has been
4 employed and a member of the retirement system less than thirty years his
5 pension shall relate to one-fourth of his average final compensation in the
6 proportion that his period of membership service bears to thirty years. In
7 any event, the retiring employee shall have been employed a minimum of
8 fifteen years by the City unless he or his dependents become eligible for
benefits under section 22 and 23. The total pension portion provided by the
city under this item shall not exceed nine hundred dollars per annum, and,
3. if a member has a valid prior service certificate, an additional pension
equal to such portion of one-half of his average final compensation as the
number of years of service certified in his prior service certificate not to
exceed thirty years. The total pension portion provided by the city under
this time shall not exceed eighteen hundred dollars per annum.

9 1951 Retirement Plan section 21, attached hereto as Ex. 41.

10 **Defendants' Response: Undisputed, but Defendants object to these**
11 **statements as statements of law, not fact. Defendants assert that the Charter's**
12 **provisions speak for themselves.**

13 30. In December 1953, the voters approved an amendment to the Retirement
14 Plan provisions of the Charter and the Plan was amended and restated in its entirety.
15 D015304-05, attached hereto as Ex. 94.

16 **Defendants' Response: Undisputed that in December 1953, Phoenix voters**
17 **approved amending the Charter to adopt the COPERS retirement plan in article**
18 **II, Chapter XXIV.**

19 31. In 1969, the term "average final compensation" was changed to "final
20 average compensation." See History of Charter Changes, D015251, at D015290, Ex. 40
21 hereto. In 1973, the definition of final average compensation was changed from a five
22 year final average compensation period to three years. See D015251-D015295, at
23 D015281-D015283, attached hereto as Ex. 40.

24 **Defendants' Response: Undisputed.**

25 32. The definition of compensation and final average compensation were not
26 amended from 1973 until 2013. The definition of compensation has remained completely
27 unchanged since 1969. Since that time and prior to 2014, there were ten elections
28 approving other changes to the Plan." [sic] See History of Charter Changes, D015251,

1 Ex. 40 hereto. The definition of compensation and final average compensation were not
2 amended from 1973 until 2013. *Id.* There were nine elections during this time. *Id.*

3 **Defendants' Response: Disputed in part. Defendants do not dispute that the**
4 **definition of "final average compensation" remained the same from 1973 until**
5 **2013. But the Charter's definition of "compensation" in Chapter XXIV, article 2**
6 **(COPERS) has remained unchanged since the inception of the current retirement**
7 **plan in 1953, not just since 1969. (See Plfs.' Ex. 94 (1953 Charter containing**
8 **identical definition of "compensation" in place today).)**

9 **Defendants also note that the exhibit cited by Plaintiffs does not support**
10 **their claims that there were ten elections between 1969 and 2014 and nine elections**
11 **between 1973 and 2014. Plaintiffs' Exhibit 40 reflects only that there were ten**
12 **elections between 1969 and 2003, and nine elections between 1973 and 2003.**

13 33. On March 12, 2013 (effective June 17, 2013) and on August 25, 2015
14 (effective October 22, 2015), the City of Phoenix voters enacted some changes to the
15 Retirement Plan. *See* Ordinance S-39298, Ex. 39 hereto and March 20, 2013 City
16 Council minutes and certification of election results, Ex. 95 hereto; and September 2,
17 2015 City Council minutes and certification of election results, Ex. 96 hereto.

18 **Defendants' Response: Defendants object to the relevance of the statements**
19 **in paragraph 33 because none of the amendments described above apply to**
20 **Plaintiffs. The 2015 amendments described above were adopted after the conduct**
21 **challenged in this lawsuit (the revision to AR 2.18 effective July 1, 2014). Further,**
22 **the 2013 amendments noted by Plaintiffs impact only those employees hired on or**
23 **after July 1, 2013, while the 2015 amendments impact employees hired on or after**
24 **December 31, 2015. Accordingly, none of these amendments apply to the plaintiffs**
25 **in this lawsuit, all of whom were hired before July 1, 2013.**

26 34. There was no change to the definition of compensation in either the 2013 or
27 2015 elections. *Id.* The only change made in either of these elections to the definition of
28 final average compensation was to impose a final average compensation limit of

1 \$125,000 for employees hired on or after January 1, 2016 and to change the calculation
2 of final average compensation for those employees hired on and after January 1, 2016 to
3 “the average of the highest annual compensations paid a member for a period of 5
4 consecutive, but not necessarily continuous, years of his credited service contained within
5 his 10 years of credited service immediately preceding the date his City employment last
6 terminates. If he has less than 5 years of credited service, his final average compensation
7 shall be the average of his compensations for his total period of service.” See September
8 2, 2015 City Council minutes and certification of election results, Ex. 95.

9 **Defendants’ Response: Defendants object to the relevance of the statements**
10 **in paragraph 34 because none of the amendments described above apply to**
11 **Plaintiffs. The 2015 amendments described here were adopted after the conduct**
12 **challenged by Plaintiffs in this lawsuit (the revision to AR 2.18 effective July 1,**
13 **2014), and do not apply to any of the plaintiffs, all of whom were hired prior to July**
14 **1, 2016.**

15 **C. The Retirement Board And Retirement Plan Administrator**

16 35. The Retirement Board is an entity established pursuant to the Retirement
17 Plan and is responsible for the Retirement Plan’s administration, management, and
18 operation, including construing and carrying into effect its provisions. Plan § 4.1.

19 **Defendants’ Response: Defendants object to this statement as one of law, not**
20 **fact. Defendants assert that the Charter’s provisions speak for themselves.**

21 36. The Retirement Board consists of nine (9) members enumerated in the
22 Retirement Plan. Plan § 4.2.

23 **Defendants’ Response: Defendants object to this statement as one of law, not**
24 **fact. Defendants assert that the Charter’s provisions speak for themselves.**

25 37. Three Board members who are active City employees and who are also
26 Members of the Retirement Plan, are elected by Members of the Retirement Plan.
27 § 4.2(a).

28

1 **Defendants' Response: Defendants object to this statement as one of law, not**
2 **fact. Defendants assert that the Charter's provisions speak for themselves.**

3 38. One Board member is a retired City employee who is a Member of
4 COPERS, and who is elected by the employee Board members. One Board Member is a
5 private citizen, who is elected by the other Board members. §§ 4.2(c), (d). Four ex-
6 officio, voting Board Members are: 1) the City Manager or his designee; 2) the City
7 Treasurer; 3) the City Finance Director; and 4) a department head appointed by the City
8 Manager (historically, the Personnel Director - later renamed the Human Resources
9 Director). § 4.2(b).

10 **Defendants' Response: Defendants object to this statement as one of law, not**
11 **fact. Defendants assert that the Charter's provisions speak for themselves.**

12 39. Historically, the City Manager has appointed a Deputy City Manager to
13 stand in the shoes of the City Manager on the Board. Trial Record in *Piccioli v. City of*
14 *Phoenix*, No. CV2012-010330 (Maricopa Superior) ("TR") 04/29/2015 (PM) (Cathy
15 Gleason), pp. 113-14, Ex. 22 hereto.

16 **Defendants' Response: Defendants do not dispute that the City Manager has**
17 **in the past appointed a designee to serve in the City Manager's stead on the**
18 **retirement board. However, the testimony cited by Plaintiffs does not support the**
19 **allegations in paragraph 39, as it says nothing about historical practice nor about**
20 **the title of the City Manager's designee. Cathy Gleason testified only that the City**
21 **Manager had a designee serving on the retirement board at one time:**

22 **Q. And this is the -- once again the finance director**
23 **reporting this to the city council, the mayor, and the city**
24 **manager; is that correct?**

25 **A. Yes.**

26 **Q. And both the city manager and the finance director at**
27 **this time would have been on the COPERS board as well;**
28 **is that correct?**

A. Not the city manager. His designee.

Q. His designee.

A. Correct.

1 (Plfs.' Ex. 22 at 113:20—114:4.) Accordingly, this statement should be disregarded
2 for purposes of summary judgment. See *Mecham*, 173 Ariz. at 478.

3 40. During the relevant time period, the Retirement Plan had and continues to
4 have a Retirement Plan Administrator who serves as the Chief Operating Officer of the
5 Retirement Plan, fulfills the function of Executive Secretary set forth under § 5.2 of the
6 Retirement Plan, and reports directly to the Board. SF ¶ 18.

7 **Defendants' Response: Undisputed.**

8 41. From in or around 1990 through in or around 2000, the Retirement Plan
9 Administrator was Duamel Vellon. SF ¶ 19.

10 **Defendants' Response: Undisputed.**

11 42. Donna Buelow was the Retirement Plan Administrator from May 2001
12 through February 2013. SF ¶ 20.

13 **Defendants' Response: Undisputed.**

14 43. The current Retirement Plan Administrator is Scott Miller. Mr. Miller
15 began working for the City of Phoenix in October 2014. SF ¶ 20. Mr. Miller was the
16 Plan and Board's Rule 30(b)(6) designee in this case. Miller Dep. pp. 5:21-6:16 and
17 Miller Dep., Ex. 1, Ex. 17 hereto.

18 **Defendants' Response: Undisputed.**

19 44. All Retirement Board members and the Retirement Plan Administrator are
20 fiduciaries required to make decisions and operate the Retirement Plan in the best interest
21 of and for the benefit of Retirement Plan Members. Retirement Board Policy 192
22 provides in relevant part:

23 As the fiduciary of the Plan:

24 The Board members are required to discharge their duties with respect to
25 the Plan solely in the interest of Plan members and their beneficiaries for
the exclusive purpose of providing benefits to members and beneficiaries.

26 A Board member's loyalty must be to the Plan members and their beneficiaries.

27 Miller Dep. Ex. 2, at 14-FP016572, Ex. 17 hereto.

28

1 **Defendants’ Response: Defendants dispute that Plaintiffs have quoted Policy**
2 **192 “in relevant part.” The fiduciary policy contained in the Retirement Board’s**
3 **Policy Manual must be read in its entirety.**

4 **Undisputed that the Retirement Board and its members (including the**
5 **Retirement Plan Administrator) are fiduciaries of the Plan, and that Board Policy**
6 **192 purports to describe some of the Board’s fiduciary duties. Defendants assert,**
7 **however, that the Charter proscribes the Board’s fiduciary obligations to the**
8 **Retirement Plan and its members in Chapter XXIV, art. II, § 34 (“Fiscal**
9 **management”). While the Board has adopted Policy 192 to further describe its**
10 **fiduciary role, the Charter provides and defines the Board’s fiduciary obligations**
11 **in the first instance.**

12 45. Under the Charter, neither the Mayor, City Council, nor City Manager have
13 authority or responsibility for the operation or administration of the Retirement Plan.
14 Retirement Plan §4.1, 4.2; City of Phoenix Charter, Chapter III, §§ 2-3 (powers and
15 duties of the City Manager include power to direct and supervise departments and
16 agencies except as otherwise provided by Charter); Phoenix City Code §2-48 (City
17 Manager may create change and abolish offices, departments or agencies, boards and
18 commissions except for Retirement System).

19 **Defendants’ Response: Defendants object to these statements as statements**
20 **of law, not fact. Defendants assert that the Charter’s provisions speak for**
21 **themselves.**

22 46. Pursuant to Retirement System Policy 27, the Retirement Board has the
23 responsibility to “determine the formulas for the computation of a member’s average
24 final compensation.” Miller Dep. p. 20:2-20 and Miller Dep. Ex. 2, at 14-FP016412,
25 Ex. 17 hereto.

26 **Defendants’ Response: Undisputed.**

27 47. From the time payment of accrued and unused vacation pay paid at
28 termination of employment commenced, the Retirement Board knew and agreed such

1 payments were to be included in the determination of compensation and final average
2 compensation in calculating retirement benefits under the Retirement Plan. *See* SF ¶¶ 28-
3 29; Actuarial Valuations, COPERS Comprehensive Annual Financial Reports
4 (“CAFRS”) and Actuarial Audit Report, Exs. 47-80 hereto, cited in ¶¶ 71, 72, *infra*;
5 sworn statements, Exs. 24-25 hereto, cited in ¶¶ 74-78, *infra*; Retirement Plan
6 communications, Exs. 26-36, cited in ¶¶ 82-94, *infra*.

7 **Defendants’ Response: Disputed. The Retirement Board never “agreed”**
8 **that retirement payouts for vacation leave were properly included in the**
9 **determination of compensation and final average compensation under the terms of**
10 **the Charter’s Retirement Plan. (See Defs.’ SSOF ¶¶ 14–16.) **The un-contradicted****
11 **testimony of Defendants’ witnesses (in both this case and the prior case involving**
12 **retirement payouts for accrued sick leave) establishes that, prior to 2011,**
13 **Defendants never analyzed or considered whether retirement payouts for accrued**
14 **leave qualified as “compensation” under the text of the Retirement Plan in the**
15 **Charter; staff simply defaulted to adding retirement payouts for accrued sick and**
16 **vacation leave to an employee’s final year of compensation when calculating final**
17 **average compensation and pension benefits. (See, e.g., Defs.’ SSOF ¶¶ 14–16 & Ex.**
18 **2; Deposition of City 30(b)(6) witness Cindy Bezaury at 44:14–21, attached hereto**
19 **as Ex. 18; Deposition of COPERS 30(b)(6) witness Scott Miller at 9:13–10:14,**
20 **attached as Ex. 19; Deposition of COPERS witness Donna Buelow (*Piccioli*, Feb. 13,**
21 **2013) at 25:8–26:3, attached as Ex. 20; Deposition of City witness Janet Smith**
22 **(*Piccioli*, Feb. 13, 2013) at 14:1–10, attached as Ex. 21; Deposition of COPERS**
23 **witness Scott Miller (*Piccioli*, Mar. 12, 2015) at 30:8–25, attached as Ex. 22; *Piccioli***
24 **Tr. Day 3 p.m. at 44–48, attached as Ex. 23 (former Board member Cathy Gleason**
25 **describing how Defendants came up with snapshot approach once they determined**
26 **that retirement payouts for accrued vacation did not meet the Charter’s definition**
27 **of compensation).)**

1 Further, Plaintiffs' cited evidence does not support their claims in paragraph
2 47, and thus the statements should be disregarded for purposes of summary
3 judgment. *See Mecham*, 173 Ariz. at 478. Defendants do not dispute that
4 retirement payouts for accrued vacation were included in the calculation of pension
5 benefits prior to 2013 by default. (See SF ¶¶ 28–33; Defs.' SSOF ¶¶ 14–16.) The
6 financial and actuarial reports cited by Plaintiffs merely reflect the practice that
7 had been taking place prior to the City and COPERS implementing the vacation
8 leave snapshot. (See SF ¶¶ ¶ 25, 27–33.) These reports are created by independent
9 third parties for financial purposes and do not involve or purport to interpret the
10 Charter's provisions. (See Plfs.' Exs. 46–80.) For example, the introduction to the
11 1980 Comprehensive Annual Financial Report ("CAFR") states:

12 The report consists of three sections: an introductory Section
13 which contains the Executive Secretary's Letter of Transmittal,
14 the Board Chairman's Report and the identification of the
15 administrative organization and consulting services utilized by
16 the System; the Financial Statements Section contains the
17 opinion of the independent certified public accountant as well
18 as the financial statements of the System; and the Actuarial
19 Section contains the independent consulting actuary's opinion
20 and results of their annual actuarial valuation.

21 (Plfs.' Ex. 46 at D0052987 (emphasis added).) Thus, the CAFR and actuarial
22 report references are only assumptions, reflecting at most the practice at the time
23 as opposed to any affirmative determination. Accordingly, they do not show that
24 the Board knew and agreed that these amounts were properly treated as
25 compensation and included in final average compensation under the terms of the
26 Charter's Retirement Plan.

27 The declarations of former Retirement Administrator Duamel Vellon (Plfs.'
28 Ex. 24) and City Personnel Director Donald Walsh (Plfs.' Ex. 25) likewise do not
state or intimate that the COPERS Board knew and agreed retirement payouts for
accrued vacation should be included in compensation and final average
compensation under the text of the Retirement Plan. Both declarations state only

1 that an employee “received lump-sum payments for unused vacation and sick leave
2 hours upon retirement, which payments were included in his 1996 compensation
3 for pension purposes.” (Plfs.’ Ex. 24 at 14-FP007049; Plfs.’ Ex. 25 at 14-P007323).
4 Again, this is consistent with the un-contradicted testimony of Defendants’
5 witnesses in both the prior sick leave case and this vacation leave suit. Defendants’
6 witnesses consistently testified that retirement payouts for accrued leave were
7 included in pension calculations by default (without any formal reasoning, analysis,
8 or decision), and that Defendants did not analyze the propriety of including
9 retirement payouts for accrued leave in pension calculations under the terms of the
10 Charter’s Retirement Plan until 2011. (See *supra* record citations at 19.) .)

11 Finally, just like the rest of the documents cited in support of paragraph 47,
12 the “Retirement Plan communications” Plaintiffs rely on simply show that amounts
13 received by employees at retirement for accrued vacation were included in the
14 calculation of pension benefits prior to 2013 (a fact Defendants do not dispute).
15 (See, e.g., Defs.’ SSOF ¶¶ 28–33.) None of those communications state or suggest,
16 however, that Defendants analyzed the propriety of the practice under the terms of
17 the Charter’s Retirement Plan.

18 In sum, the record does not support Plaintiffs’ claim that the Board
19 “agreed” retirement payouts for accrued vacation were properly included in the
20 calculation of benefits under the terms of the Retirement Plan. Defendants have
21 presented direct evidence to the contrary.

22 48. The Retirement Plan § 2.14 provides “For the purposes of determining
23 benefits, based on final average compensation, any compensation in excess of the
24 limitations established by section 401(a)(17) of the Internal Revenue Code including
25 applicable adjustments shall be disregarded.”

26 Defendants’ Response: Defendants object to this statement as one of law, not
27 fact. Defendants assert that the Charter’s provisions speak for themselves.

28

1 49. Despite the compensation limit in the charter, COPERS has a policy (Policy
2 No. 174, Excess Benefit Arrangement), established by the COPERS Board that provides
3 for an “excess benefit arrangement” paid by the City, which provides retirement benefits
4 to individuals whose compensation exceeds the statutory limit set forth in § 2.14. Miller
5 Dep. p. 45:19-48:25 and Exhibit 2 at 14-FP016530-16534.

6 **Defendants’ Response: Disputed. Defendants do not pay COPERS**
7 **retirement benefits to members in excess of the statutory limit set forth in § 2.14.**
8 **As reflected in Board Policy 174, the excess benefit arrangement addresses the**
9 **federal limitation on retirement benefits in Internal Revenue Code § 415(b), not the**
10 **annual compensation limitations in § 401(a)(17). As Policy 174 itself explains:**
11 **“Because of the statutory limitation on benefits set forth in Section 415(b) of the**
12 **Code, certain COPERS participants do not receive their full benefits under**
13 **COPERS. Congress has recognized that governmental employers who sponsor tax-**
14 **qualified retirement plans have constitutional and contractual obligations to**
15 **provide full retirement benefits to their employees, regardless of the limitations of**
16 **Code Section 415(b)” and thus § 415(m) of the Code allows qualified governmental**
17 **excess benefit arrangements. (Plfs.’ Ex. 17 (Policy 174) at 14-FPO 16530; see also**
18 **Miller Deposition at 45:19–48:25 (testifying that the excess benefit arrangement is a**
19 **tool used by the City to provide “retirement-like benefits to individuals who would**
20 **otherwise be entitled to a benefit from COPERS that would exceed the federal**
21 **limitation,” and that these amounts are *not* paid by COPERS).) The excess benefit**
22 **arrangement thus complies with both federal tax law and the Charter.**

23 **Defendants note that Plaintiffs did not attach the excerpts of Mr. Miller’s**
24 **deposition testimony concerning the excess benefit arrangement and attach them as**
25 **Exhibit 19 hereto.**

26 50. There is no authority under the Charter for Policy 174. Miller Dep. Ex. 2,
27 at 14-FP016530-16534.

28

1 **Defendants’ Response: Disputed.** As stated in Policy 174: “The Board is
2 adopting this Board Policy No. 174 in accordance with Chapter XXIV, Article II,
3 Section 4.1, Charter, City of Phoenix, which vests in the Board the power to
4 administer, manage and operate COPERS. To properly administer COPERS in
5 accordance with its terms and in a manner that is consistent with both the Arizona
6 Constitution and the Internal Revenue Code, the Board finds that it must
7 implement a Code Section 415(m) qualified governmental excess benefit
8 arrangement.” (Plfs.’ Ex. 17 (Policy 174) at 14-FPO 16530.)

9 51. Pursuant to Chapter XXV of the Phoenix City Charter, the City Manager
10 acts as the City’s Personnel Official and proposes and promulgates Personnel Rules and
11 amendments thereto and the City Council is required to approve all Personnel Rules.

12 **Defendants’ Response: Defendants object to these statements as statements**
13 **of law, not fact.** Defendants assert that the Charter’s provisions speak for
14 themselves.

15 **D. Rules Governing Vacation Pay and Vacation Pay at Retirement**

16 52. Since at least 1953, the City Council issued Personnel rules that set the
17 number of vacation pay hours employees accrue each month depending on the number of
18 years of service for full time employees and limiting the right to carry over unused
19 vacation pay hours in subsequent years to two times an employee’s maximum annual
20 accrual rate with the right to accrue and receive payment at termination of employment.
21 See Exs. 42, 44 hereto (Ordinance No. G-67 and D014278 May 1, 1992 Personnel
22 Rules).

23 **Defendants’ Response: Disputed in part.** The 1953 ordinance cited by
24 **Plaintiffs did not establish a maximum carryover equal to two times an employee’s**
25 **maximum annual accrual rate, nor did it establish vacation leave accrual rates that**
26 **varied depending on years of service.** (See Plfs.’ Ex. 42.) The earliest version of the
27 personnel rules adopting an accrual rate tied to years of service that Defendants
28 have found is the 1980 personnel rule 14b1. (See Plfs.’ Ex. 43 at D013689.) The

1 **1980 personnel rule 14b also set a maximum annual accrual rate, but it was an**
2 **annual maximum of 240 hours (30 working days) and allowed carryovers only with**
3 **a supervisor's permission. (*Id.* at D013690.) The current two times maximum**
4 **annual accrual rate did not appear in the personnel rules until 1992. (*See Plfs.'***
5 **Ex. 44 at D014329.)**

6 **Defendants also note that a different maximum applies to vacation cashouts**
7 **at retirement. The maximum amount of vacation cash out at retirement is two and**
8 **one half times (not two times) the maximum annual accrual rate. (*See Defs.'* SSOF,**
9 **Ex. 1a at 5.)**

10 **Defendants do not dispute that since 1953, the City has had a personnel rule**
11 **governing vacation leave, nor that the relevant 1953 personnel rule established the**
12 **number of vacation leave hours employees could accrue each month and stated that**
13 **employees should receive pay for all earned vacations at the time they leave the**
14 **City's service.**

15 53. Ordinance No. G-67 enacted by the City Council on March 31, 1953,
16 Ex. 42 hereto, provided under Rule IX for paid vacation for all employees who have
17 worked for the City for at least six months as follows:

18 Every full-time employee and official who shall have been in the service of
19 the City for six (6) months shall be entitled to vacation leave with full pay
20 at; the rate of one-fourth (1/4) working days for every completed month of
21 paid service. Time taken by an employee due to a work injury, and for
22 which he is periodically compensated by the Arizona Industrial
23 Commission, not in excess of one year shall be considered creditable time
24 in regard earning vacation credits. Vacation credits, thereafter, shall be
25 earned and vacation leave allotted at the same rate, except that accumulated
26 vacation credits shall not exceed thirty (30) days at the first of any calendar
27 year. Any credits in excess of thirty (30) days become void on January first
28 of each year. The department head is responsible for the scheduling the
vacations of his employees regularly each year. For good reason he may
allot or require an employee to forego part or all of his annual vacation
except that the allowable amount of accumulated credit is subject to the
aforementioned thirty (30) day limit. No department head may require an
employee to forego any portion of his annual vacation, to the extent that the
employee will lose any days of earned vacation under this rule. No
employee shall be allowed to be absent from his work during a vacation
period for more than thirty (30) consecutive days including vacation days
and regular days off. A part-time employee shall be entitled to vacation
leave earned and granted in the same manner as a full-time employee

1 except that his vacation rate of pay per day shall be the average daily rate
2 paid him during the twelve months immediately preceding the month in
3 which vacation leave is begun. Until one year of service has been
4 completed, the number of months of service completed shall be used to
5 determine the vacation rate of pay for part-time employees. Twenty-five
6 days per month shall be considered as a basis for establishing the part-time
7 employee's vacation rate of pay. All vacation leaves shall be taken when
8 practicable.

9 **Defendants' Response: Undisputed.**

10 54. Personnel Rule IX section 1(a) also stated as follows:

11 No city official shall cause an employee to forfeit any earned vacation. All
12 full-time and part-time employees and officials shall have paid to them all
13 earned vacations at the time they leave the City's service by way of
14 resignation, retirement, layoff, dismissal or death. Rate of vacation pay for
15 salaried employees shall be that being paid at the time vacation leave is
16 approved; and the rate of vacation-pay for full-time per diem employees
17 shall be the same as they would earn in the same period; provided,
18 however, that in determining the rate of vacation pay for such employees
19 whose regular work hours fluctuated during the preceding year the average
20 wage for the twelve pay periods immediately prior to such vacation shall be
21 used. The employee shall be paid by the department in which he is
22 employed at the time vacation leave is approved.

23 Ex. 42 hereto, at p. 6.

24 **Defendants' Response: Undisputed.**

25 55. The City Council amended the Personnel Rules and the City issued revised
26 rules several times. The 1980 Personnel Rules provide in relevant part as follows:

27 14b - Vacation Leave with Pay:

28 14b1 - Eligibility and Vacation Allowances: Every full-time employee who
works a schedule at full time fifty two (52) weeks of the year shall be
credited with vacation credits for every completed calendar month of paid
service according to the following schedule:

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

*Eight hours (1 day) per month	Through five (5) years of service
Ten hours (1-1/4 days) per month beginning	6th through 15th year of service
Twelve hours (1-1/2 days) per month beginning	16th through 20th year of service
Fourteen hours (1-3/4 days) per month beginning	21st year of service and thereafter

*Employees with less than six (6) years of service hired before July 1, 1969 will continue to receive not less than ten (10) hours (1-1/4 days) vacation credits per month. Leaves of absence compensated by the Arizona Industrial Commission in excess of one (1) year shall not be considered as paid service. Any absence without pay in excess of ten (10) working days shall not be allowed as creditable time.

Eligibility to use vacation credits shall begin only after completion of six (6) months employment with the following exceptions:

(a) A full-time certified employee, appointed from layoff list, is eligible to use vacation credits as earned upon reemployment.

(b) Vacation credits, earned during the first six (6) months of employment, may be used for sick leave only if sick leave credits are not available.

*14b2 - Accrual of Vacation Credits: Vacation credits shall not be allowed to accumulate in excess of 240 hours (30 working days) at the completion of the first pay period ending in January of any calendar year, except on the recommendation of the employee's department head and approval of the appointing authority.

1 The written authority to carry over vacation credits in excess of thirty (30)
2 working days shall be placed on file in the Personnel Department. Any
3 unauthorized carry-over of vacation credits in excess of thirty (30) working
4 days becomes void at the end of the first pay period in January of the first
5 calendar year into which such excess credits are extended. Fire Department
6 employees shall be allowed a carry-over proportional to the thirty (30)
7 working days.

8 14b3 - Vacation Rate of Pay and Assessment: The department head is
9 responsible for the scheduling of vacations for his employees regularly each
10 year. Vacation is charged against the employee's credits at the rate of eight
11 (8) hours per work day while he is on vacation leave. The full-time
12 employee shall receive the same amount in vacation pay that he would
13 receive if he worked his full eight (8) hour per day schedule. Vacation
14 leave in an amount of less than a day for a full-time employee shall be
15 charged in multiples of a full hour or hours.

16 For good reason an employee may be allowed or required by the
17 department head to forego part or all of his annual vacation. No employee
18 shall be required to forego the use of vacation credits without the
19 department head approving the carry-over of credits in excess of 240 hours
20 (30 working days).

21 No employee shall be allowed to be on vacation for a period over thirty
22 (30) consecutive working days.

23 *14b4 - Termination Pay of Vacation Credits: Every employee who has
24 vacation credits shall have such credits paid at the time of leaving the
25 City's employment, whether by resignation, retirement, layoff, dismissal or
26 death. No such payment shall be made unless the employee has completed
27 six (6) months of permanent employment.

28 1980 Personnel Rules, D013653, at D013689-90, Ex. 43 hereto.

**Defendants' Response: Disputed that the "City Council amended the
Personnel Rules and the City issued revised rules several times." The Civil Service
Board and Personnel Official (not the City Council) are responsible for
promulgating and amending the personnel rules; the City Council merely approves
them. (See Plfs.' Ex. 45 (2007 Personnel Rules) at 6, § 8 ("The Personnel Official or
the Civil Service Board shall proposed Personnel Rules. Subject to approval by the
City Council, the Personnel Official shall promulgate such Rules after notice and
opportunity for comments from the affected parties is given.")**.) **Defendants do not
otherwise dispute the substance of paragraph 55.**

56. From at least 1981 to the present, under AR 2.18, the City has also offered
eligible employees the option of "selling back" certain amounts of accrued but unused
vacation during a calendar year. The City's policy of allowing employees to receive

1 payment for a certain amount of unused vacation during a calendar year is called
2 “vacation buy back” or “vacation sell back.” SF ¶ 23.

3 **Defendants’ Response: Undisputed.**

4 57. The current Personnel Rule 15(b)(1) effective in or around January 2008
5 provides that vacation pay is only earned when an employee completes a completed
6 calendar month of paid service as follows:

7 15b1. Eligibility and Vacation Allowances: Every full-time hourly
8 employee who works a schedule at full-time fifty-two weeks of the year
9 shall be credited with vacation credits for every completed calendar month
10 of paid service according to the following schedule:

11 8 hours per month	Through 5 years of service
12 10 hours per month beginning	6th through 10th year of service
11 11 hours per month beginning	11th through 15th year of service
12 13 hours per month beginning	16th through 20th year of service
13 15 hours per month beginning	21st year of service & thereafter

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

14 12 days	Through 5 years of service
15 15 days	6th through 10th year of service
16 16.5 days	11th through 15th year of service
17 19.5 days	16th through 20th year of service
18 22.5 days	21st year of service and thereafter

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

D014690, at D0014729, Ex. 45 hereto.

21 **Defendants’ Response: Undisputed, but Defendants note that Plaintiffs**
22 **quote only a portion of Rule 15b1. Defendants assert that Rule 15b1 should be**
23 **read in full.**

24 58. The current personnel rule, Personnel Rule 15b2, which has been in effect
25 since 2008 also limits the amount of vacation accrual and carryover as follows:

26 15b2. Accrual of Vacation Credits: Vacation credits shall not be allowed to
27 accumulate in excess of an amount equal to two times the employee’s
28 current annual rate at the end of any calendar year, except on the
recommendation of the employee’s department head and approval of the

1 appointing authority. Approved excess vacation carryover shall be subject
2 to the provisions and limitations imposed by the City Manager. The City
3 Manager may establish limits beyond which the employee shall not
accumulate further leave credits and for which the employee shall not be
compensated.

4 The written authority to carry over vacation credits in excess of an amount
5 equal to two times the employee's current annual accrual rate shall be
6 placed on file in the Personnel Department. Any unauthorized carryover of
7 vacation credit in excess of an amount equal to two times the employee's
8 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.

9 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.

10 D014690, at D0014729, Ex. 45 hereto.

11 **Defendants' Response: Undisputed.**

12 59. The current personnel rules, Personnel Rule 15b3 provides as follows with
13 respect to the rate of pay for vacation hours:

14 Vacation is charged against the employee's credits in the amount equal to
15 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.

16 D014690, at D0014729-30, Ex. 45 hereto.

17 **Defendants' Response: Undisputed, but Defendants note that Plaintiffs**
18 **quote only a portion of Rule 15b3. Defendants assert that Rule 15b3 should be**
19 **read in full.**

20 60. The current personnel rules, Personnel Rule 15b4, also provides as follows
21 with respect to pay for accrued vacation at termination of employment:

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

26 D014690, at D0014730, Ex. 45 hereto.

27 **Defendants' Response: Undisputed.**

28

1 **E. Contributions and Funding of the Retirement Plan Consistently Included**
2 **Vacation Paid at Termination in Final Average Compensation**

3 61. Pursuant to §§ 11.1 28.1(c) of COPERS, the Retirement Plan actuary must
4 conduct an actuarial valuation and based on that valuation, the Board, in each fiscal year,
5 must certify to the City Council the required contributions to the Retirement Plan, and the
6 City Council must appropriate and the City and the Members must pay, within the next
7 fiscal year, their respective share of the amount of the contributions certified by
8 COPERS. Plan §§ 11.1, 28.1.

9 **Defendants' Response: Defendants object to these statements as statements**
10 **of law, not fact. Defendants assert that the Charter's provisions speak for**
11 **themselves.**

12 62. The City Council has consistently paid the City's share of all required
13 contributions as determined by the Retirement Plan actuaries and as certified by the
14 Retirement Board and City Finance Director. *See, e.g.*, D0004169, at D004178.

15 **Defendants' Response: Undisputed with respect to the statement itself,**
16 **which the parties stipulated to in their joint agreement. (See Plfs.' Ex. 2 at ¶ 27.)**
17 **Defendants note that Plaintiffs did not file page D0004178.**

18 63. Under the Retirement Plan, the determination of the annual amount of
19 required contributions is based on an annual actuarial valuation and annual certifications
20 prepared by the Retirement Plan for that purpose and presented and published to the City
21 Council. Retirement Plan §§ 11, 28.1; Retirement Plan Policy 117, Miller Dep. Ex. 2, at
22 14-FP016455, Ex. 17 hereto.

23 **Defendants' Response: Defendants object to these statements as statements**
24 **of law, not fact. Defendants assert that the Charter's provisions speak for**
25 **themselves.**

26 64. Retirement Plan Policy number 117 provides:

27 The Retirement Law requires a certification to the City Council, each year,
28 indicating the employer amount of contributions required for the next fiscal
year. It shall be the Board's policy to issue an annual certification through

1 the City Finance Director. The annual letter shall include the actuary's
2 report supporting the employer contribution amounts.

3 Miller Dep. Ex. 2, at 14-FP016455, Ex. 17 hereto

4 **Defendants' Response: Undisputed.**

5 65. The Board meets the requirement to provide a certification to City Council
6 by preparing and issuing an annual actuarial valuation and Comprehensive Annual
7 Financial Report (CAFR), which set forth the liabilities of the Plan and the contributions
8 which will satisfy the Plan's funding objectives. TR testimony on 04/30/2015 (PM)
9 (Donna Buelow), at pp. 49:14-52:5, attached hereto as Ex. 23.

10 **Defendants' Response: Disputed in part. Defendants do not dispute that the**
11 **Board meets the requirement to provide an annual certification to City Council**
12 **showing the amount of employer contributions necessary to fund the pension plan**
13 **by obtaining and submitting an annual actuarial valuation to the City Council. But**
14 **Defendants dispute that the Board prepares the Comprehensive Annual Financial**
15 **Report ("CAFR") to satisfy this same requirement. The CAFRs are prepared to**
16 **satisfy the requirement in § 9.1 of COPERS that the Board issue an annual**
17 **financial report "certified to by a certified public accountant, showing the fiscal**
18 **transactions of the Retirement Plan for the preceding fiscal year, and the balance**
19 **sheet of the Plan as of the preceding June 30." See Charter ch. XXIV, art. II, § 9.1.**

20 **Moreover, the trial testimony cited by Plaintiffs does not support the**
21 **statements in paragraph 65. Ms. Buelow's testimony pertained to a specific**
22 **actuarial valuation for the year 2010 which was prepared by Rodwan consulting. It**
23 **did not relate to actuarial valuations more broadly, or otherwise address the**
24 **Board's certification obligations under the Charter.**

25 66. The Plan's actuarial valuations are performed by the actuary with input
26 from the retirement office staff. TR testimony on 04/30/2015 (PM) (Donna Buelow), at
27 pp. 49:14-52:5, attached hereto as Ex. 23.

28

1 **Defendants' Response: Undisputed that an actuary performs the actuarial**
2 **valuation for the Retirement Plan and that the underlying data necessary for the**
3 **valuation is provided to the actuary by retirement office staff, but Defendants**
4 **assert that the retirement office staff do not have any substantive involvement in**
5 **preparing the actuarial valuation. Defendants also note that the trial testimony**
6 **cited by Plaintiffs does not support the broad statements in paragraph 66, because**
7 **Ms. Buelow's testimony was specific to the 2010 actuarial report prepared by**
8 **Rodwan Consulting.**

9 67. Each year, after the annual actuarial valuations were completed, the actuary
10 made presentations to the Board to discuss the reports. TR testimony on 04/30/2015
11 (PM) (Donna Buelow), at p. 48:17-20, attached hereto as Ex. 23.

12 **Defendants' Response: Undisputed that the actuaries who prepare the**
13 **annual actuarial valuations presents the valuation to the Board. Defendants note,**
14 **however, that Plaintiffs have again failed to support the statements in paragraph 67**
15 **with any evidence. The trial testimony cited by Plaintiffs here consists of the**
16 **following:**

17 **Q. Okay. Now, we've put it up on the screen. And this**
18 **letter is from Sandra Rodwan. She was the actuary, or her**
19 **firm was the actuary for the -- for COPERS, is that**
20 **correct, when this report was**

21 **Not only does this testimony have nothing to do with the statements Plaintiffs**
22 **make in paragraph 67, it does not consist of testimony at all (only Plaintiffs'**
23 **counsel's questioning). Accordingly, even if this statement were relevant, the Court**
24 **should disregard it for purposes of summary judgment. See *Mecham*, 173 Ariz. at**
25 **478.**

26 68. The COPERS CAFRs state that the reports are the effort of the COPERS
27 staff under the leadership of the Board of Trustees together with the City Finance
28 Department. They further state that they are intended to be complete and reliable and for
a making management decisions as well as a means for determining compliance with

1 legal provisions, and as a means for determining responsible stewardship for the assets
2 contributed by the members and their employers. *See, e.g.*, 1981 COPERS CAFR,
3 D005870, at D005878, Ex. 97 hereto; D005281, at D005289, Ex. 48 hereto (CAFR “is
4 intended to provide complete and reliable information as a basis for making management
5 decisions, as a means of determining compliance with legal provisions, and as a means
6 for determining responsible stewardship for the assets contributed by the members and
7 their employers” and expressing gratitude, on behalf of the Board of Trustees, “to the
8 City Controller’s Office for preparation of this report”); D009694, at D009700-04, Ex. 78
9 hereto.

10 **Defendants’ Response: Undisputed that the CAFRs from 1981, 1982, and**
11 **2010 contain the language quoted by Plaintiffs, but Defendants assert that these**
12 **statements must be read in light of the purpose of the reports themselves. The**
13 **CAFRs fulfill the Board’s obligation to prepare an annual financial report certified**
14 **by a certified public accountant. Charter. Ch. XXIV, art. II, § 9.1. The CAFRs do**
15 **not involve any legal assessment of the Charter’s text. (See Declaration of Scott**
16 **Miller at ¶¶2–4, attached as Ex. 24 hereto.) Defendants are not aware of any other**
17 **instances when the Board or the City Council has taken action based on a CAFR’s**
18 **findings. (Id. at ¶ 4.)**

19 69. The 1980 Plan actuarial valuation (the earliest valuation produced by
20 Defendants), (Kroll Decl. ¶ 6), included a salary increase economic assumption that had
21 been used since the 1975 valuation, which included a 4.5% salary increase assumption,
22 4% of which was as a result of inflation and .5% of which was “from other across the
23 board causes (e.g., productivity)...” D005086, at D005145, Ex. 46 hereto. The
24 assumption was increased to 5.5% in 1981. D003552, at D003560, Ex. 47 hereto.

25 **Defendants’ Response: Undisputed.**

26 70. The Retirement Board’s actuaries conduct an experience study at periodic
27 intervals (currently every five years) in order to make recommendations relative to the
28

1 Plan's actuarial assumptions, and to ensure proper funding patterns based on future
2 expectations. D006775-76, Ex. 18 hereto.

3 **Defendants' Response: Undisputed.**

4 71. An actuarial experience study was performed in April 2005 for the period
5 July 1, 1999-June 30, 2004 where payments for unused vacation were reviewed.
6 D0015171, at D0015205, Ex. 75 hereto.

7 **Defendants' Response: Undisputed, but Defendants object to the relevance**
8 **of these statements. The actuarial experience studies referenced in Retirement**
9 **Board Policy 122 and the 2008 Actuarial Valuation do not involve an interpretation**
10 **of the Charter's text. They are prepared solely for purposes of analyzing the**
11 **appropriateness of the actuarial assumptions and methods used to determine the**
12 **Plan's funding and contribution rates. (See, e.g., Plfs.' Ex. 75 at D015208-10**
13 **(summarizing recommendations based on experience study, which includes items**
14 **like revising the normal cost rate used in calculations); Ex. 24 hereto (Miller**
15 **Declaration).)**

16 72. The COPERS Board completed an extensive review of the system in the
17 year prior to the Comprehensive Annual Financial Report issued by COPERS for the year
18 ended June 30, 1981. See 1982 COPERS CAFR, D005281 at D005285, Ex. 48 hereto
19 (Chairman's Report stating: "Last year saw the completion of a comprehensive review of
20 the retirement plan law for the first time since 1983.").

21 **Defendants' Response: Disputed in part. The Chairman's report from the**
22 **1982 CAFR states that "[l]ast year saw the completion of a comprehensive review**
23 **of the retirement plan law for the first time since 1973," not 1983 as quoted by**
24 **Plaintiffs. Defendants also object to the relevance of the statements in paragraph**
25 **72. Whether a comprehensive review of COPERS took place in 1981 is not relevant**
26 **to the legal issue in this case, i.e., whether the Charter's plain text permits pension**
27 **spiking.**

1 73. In 2008, an actuarial audit was conducted which stated the vacation
2 payments were considered by the Retirement Plan to be a plan term and the impact of
3 those payments were properly included in the Plan's actuarial assumptions:

4 The plan provisions permit lump sum payments for unused sick leave and
5 vacation time to be used in the calculation of Final Average Compensation.
6 This provision increases the amount of pension benefits paid by the Plan. It
7 appears there was analysis performed on the impact of this provision in the
8 experience study that supports continued use of the current assumption.
9 Based on the findings this appears reasonable.

D0015171, at D0015205, Ex. 75 hereto.

9 **Defendants' Response: Disputed. The quoted language does not state that**
10 **the Retirement Plan "considered" retirement payouts for accrued vacation to be a**
11 **plan term, nor does it state that including these amounts in the actuarial**
12 **assumptions is proper under the text of the Retirement Plan. This statement, made**
13 **by a third-party consultant, was made in the context of a review of a prior actuarial**
14 **consultant's assumptions; it is irrelevant to the current dispute over the Charter's**
15 **text. (See Plfs.' Ex. 18 at D006775-76 (Board Policy 122, describing purpose of**
16 **experience studies). Defendants also object to this third-party statement as**
17 **inadmissible hearsay to the extent Plaintiffs offer it to prove the truth of the matter**
18 **asserted. See Ariz. R. Evid. 801(c).**

19 74. Since at least 1982, the year after the Board of Trustees' comprehensive
20 review, the CAFRS and/or COPERS actuarial valuations have consistently and explicitly
21 referenced vacation pay at termination of employment, *inter alia*, stating, that unused
22 vacation payments increase the required City's contributions and specifying the
23 percentage by which unused vacation pay was assumed to increase the present value of
24 benefits. See the following COPERS CAFRS and COPERS actuarial valuations, attached
25 hereto:

26 **Defendants' Response: Defendants do not dispute that the CAFRS and**
27 **actuarial valuations since 1980 have consistently referenced lump-sum payouts for**
28 **accrued vacation leave. Defendants assert, however, that these statements merely**

1 reflect the undisputed fact that retirement payouts for accrued vacation were
2 included in the calculation of pension benefits prior to 2013. The CAFRs and
3 valuations do not address or concern whether the Charter’s text allowed that
4 practice or not; they are prepared by third parties for purposes of fiscal assessment.
5 (See Response to ¶ 47, *supra*.) Because nothing in the CAFRs or actuarial
6 valuations addresses the legal question in this case, i.e., whether the Charter permits
7 pension spiking, Defendants object to the statements in paragraph 74 as irrelevant.

8 a. 1982 COPERS CAFR: “Inclusion of lump sum payments for unused
9 vacation and compensatory time in the computation of final average
10 compensation is increasing pension amounts approximately 3.5% on
11 average....The increase in the City’s computed contribution requirement is
12 primarily attributable to the recognition of the inclusion of lump sum
13 payments for unused vacation and compensatory time in final average
14 compensation.” D005281, at D005321 (Comment B), D005343 (“Unused
15 vacation and compensatory service credits were assumed to increase the
16 present value of benefits by 5.5%”), Ex. 48 hereto.

17 **Defendants’ Response: Undisputed. Defendants note that Plaintiffs did not**
18 **file page D005321.**

19 b. 1983 Actuarial Valuation: “Compensatory service credits and lump sum
20 payments for unused vacation and compensation [sic] time were assumed to
21 increase the present value of benefits by 5.5%. This assumption is
22 unchanged from the June 30, 1982 valuation.” D004362 at D004390,
23 Ex. 49 hereto.

24 **Defendants’ Response: Undisputed.**

25 c. 1984 Actuarial Valuation: “Age and service pensions were assumed to be
26 increased 6.5% on average to reflect the effect of lump sum payments for
27 accrued vacation and compensatory time, and service credit for unused sick
28 leave. This increase over the 5.5% assumed last year reflects actual

1 experience during the past two years.” D004563, at D004572 (Comment
2 C), Ex. 50 hereto. *See also id*, Comment A (“Offsetting the favorable
3 experience was an increase sum payments for accrued vacation and
4 compensatory time.”), D004593 (“Compensatory service credits and lump
5 sum payments for unused vacation and compensatory time were assumed to
6 increase the present value of benefits by 6.5%. This is an increase of 1.0%
7 from the June 30, 1983 valuation.”).

8 **Defendants’ Response: Undisputed except with respect to the second**
9 **parenthetical quoting Comment A from page D004572. Plaintiffs omitted a portion**
10 **of that sentence, which reads in full: “Offsetting the favorable experience was an**
11 **increase in lump sum payments for accrued vacation and compensatory time.”**
12 **Defendants also note that Plaintiffs did not file page D004593.**

13 d. 1985 Actuarial Valuation: “The factor used to project increases in age and
14 service pensions attributable to lump sum payments included in final
15 average compensation and service credit for unused sick leave was
16 increased to 7.0% from 6.5% for the June 30, 1985 actuarial valuation.
17 These lump sums and service credits increased individual pensions 8.4% on
18 average for retirements during the year ended June 30, 1985.” D003831, at
19 D003840 (Comment C), Ex. 51 hereto; *see also id.* at D003861
20 (“Compensatory service credits and lump sum payments for unused
21 vacation and compensatory time were assumed to increase the present value
22 of benefits by 7.0%. This is an increase of 0.5% from the June 30, 1984
23 valuation.”).

24 **Defendants’ Response: Undisputed. Defendants note that Plaintiffs did not**
25 **file page D003861.**

26 e. 1987-1990 Actuarial Valuations: “Compensatory service credits and lump
27 sum payments for unused vacation and compensatory time were assumed to
28 increase the present value of benefits by 7.0%.” D004401, at D004423

1 (1987), Ex. 52 hereto; D003759, at D003784 (1988), Ex. 53 hereto;
2 D004314, at D004356 (1989), Ex. 54 hereto; D004033, at D004061 (1990),
3 Ex. 55 hereto,

4 **Defendants' Response: Undisputed.**

5 f. 1991 Actuarial Valuation: "Compensatory service credits and lump sum
6 payments for unused vacation and compensatory time were assumed to
7 increase the present value of benefits by 9.0%, previously 7.0%."
8 D003871, at D003902, Ex. 56 hereto.

9 **Defendants' Response: Undisputed.**

10 g. 1992- 2000 Actuarial Valuations: "Compensatory service credits and lump
11 sum payments for unused vacation and compensatory time were assumed to
12 increase the present value of benefits by 9.0%." D003912, at D003938
13 (1992), Ex. 57 hereto; D003792, at D003823 (1993), Ex. 58 hereto;
14 D003946, at D003979 (1994), Ex. 59 hereto; D003241, at D003274 (1995),
15 Ex. 60 hereto; D003282, at D003315 (1996), Ex. 61 hereto; D004169, at
16 D004201 (1997), Ex. 62 hereto; D003399, at D003431 (1998), Ex. 63
17 hereto; D003439, at D003471 (1999), Ex. 64 hereto; D003198, at D003233
18 (2000), Ex. 65 hereto.

19 **Defendants' Response: Undisputed.**

20 h. 2001-2013 Actuarial Valuations: "Compensatory service credits and lump
21 sum payments for unused vacation and compensatory time were assumed to
22 increase the present value of normal retirement benefits by 9.0%."
23 D003679, at D003699 (2001), Ex. 66 hereto; D003987, at D004015 (2002),
24 Ex. 67 hereto; D003517, at D003537 (2003), Ex. 69 hereto; D004431, at
25 D004451 (2004), Ex. 70 hereto; D004279, at D004299 (2005), Ex. 71
26 hereto; D003363, at D003383 (2006), Ex. 72 hereto; D003327, at D003347
27 (2007), Ex. 73 hereto; D004133, at D004153 (2008), Ex. 74 hereto;
28 D004097, at D004117 (2009), Ex. 76 hereto; D004527, at D004547 (2010),

1 Ex. 77 hereto; D003643, at D003663 (2011), Ex. 79 hereto; D003714, at
2 D003752 (2012), Ex. 80 hereto; D002199, at D002245 (2013), Ex. 81
3 hereto.

4 **Defendants' Response: Undisputed.**

5 i. COPERS CAFR for the fiscal years ending 2010 - 2012 under Summary of
6 Plan provisions: "Pursuant to City management and Board action FAC
7 includes vacation payout..." D009694, at D009765 (2010), Ex. 78 hereto;
8 14-FP009312, at 14-FP009385 (2011), Ex. 98 hereto; 14-FP009400, at 14-
9 FP009471 (2012), Ex. 99 hereto.

10 **Defendants' Response: Undisputed, but Defendants object to the relevance**
11 **of these statements. Again, the quoted language merely reflects the undisputed fact**
12 **that retirement payouts for accrued vacation were being included in the calculation**
13 **of pension benefits prior to 2013. (See SF ¶¶ 28–29.) It does not indicate that**
14 **Defendants interpreted the text of the Charter and concluded these amounts should**
15 **or could be included in final average compensation. (See Response to ¶ 47, supra.)**

16 **In fact, the summary cited by Plaintiffs reinforces that the Charter's text is**
17 **determinative of a member's right to benefits, not City or Board action. At the end**
18 **of the "Summary of Plan Provisions" section in these CAFRs, the reports**
19 **specifically note that the summary is intended to give general information about the**
20 **Plan and, "[a]lthough every effort has been made to accurately summarize the**
21 **benefits under the Plan, the provisions of Chapter XXIV shall prevail in the**
22 **unlikely event of discrepancies." (Plfs.' Ex. 99 at 14-FP009475; see also id.**
23 **("Details of all benefits can be obtained from Chapter XXIV of the City Charter,**
24 **which is available in COPERS' Office.").)**

25 75. The Retirement Plan's unfunded liability has varied over the years. In
26 1980, for example, the Retirement Plan was 88.7% funded and over the past ten years had
27 varied from a low of 73.3% in 1975 to a high of 88.7% in 1980. 1981 COPERS Annual
28 Actuarial Valuation, D003552, at D003559, Ex. 47 hereto.

1 **Defendants’ Response: Undisputed, but Defendants assert that the high and**
2 **low funding percentages between 1970–1980 are not representative of more recent**
3 **fluctuations, which have been far more dramatic. For example, between 2001 and**
4 **2011, the Plan’s funding percentage fell from 102.5% to only 66.7%. (Defs.’ SSOF**
5 **¶ 28.)**

6 **F. Defendants’ Deliberate and Uninterrupted Administration of the Retirement**
7 **Plan to Include Vacation Paid at Termination in Final Average**
8 **Compensation**

9 76. In or around March 1997, Mr. Vellon, the Retirement Program Administrator,
10 submitted a sworn declaration on behalf of the City in a case entitled *Baldwin v. City of*
11 *Phoenix et. al.* No. CV 96-22584 stating that:

12 In calculating final average compensation, the [COPERS] Board includes in
13 the last year any lump-sum payments received for unused sick leave and
14 unused vacation time.

15 14-FP007049-7059, at 14-FP007053, Ex. 24 hereto.

16 **Defendants’ Response: Undisputed. Defendants assert, however, that Mr.**
17 **Vellon’s declaration merely reflected the practice at the time. (See SF ¶¶ 28–29.)**

18 77. Mr. Vellon’s sworn declaration also stated as follows:

19 The City provides a certain number (varies based upon years of service) of
20 vacation days per year for its employees. Employees are not required to
21 work on those vacation days, but nonetheless received their regular pay for
22 such days. All pay to the employees attributable to such days is, and
23 historically has been, included in “compensation” for pension calculation
24 purposes.

25 Lump-sum payments for accumulated vacation days are already included in
26 Plan compensation for calculating FAC.

27 14-FP007049-7059, at 14-FP007053 ¶¶ 42-43, Ex. 24 hereto

28 **Defendants’ Response: Undisputed. Defendants further assert, however,**
29 **that Mr. Vellon’s declaration merely reflected the practice at the time. (See SF**
30 **¶¶ 28–29.)**

31 78. Mr. Vellon also stated in his declaration that the plaintiff in that case, a
32 Retirement Plan Member and City employee who retired in December 1996, “received
33 lump-sum payments for unused vacation and sick leave hours upon his retirement, which

1 payments were included in his 1996 compensation for pension calculation purposes.” 14-
2 FP007049-7059, at 14-FP007049 ¶ 4, Ex. 24 hereto. *See also id.*, at 14-FP007058 ¶¶ 52-
3 54.

4 **Defendants’ Response: Undisputed. Defendants further assert, however,**
5 **that Mr. Vellon’s declaration merely reflected the practice at the time. (See SF**
6 **¶¶ 28–29.)**

7 79. Donald Walsh, the City’s Assistant Personnel Director, who, at the time of
8 his affidavit, had been in that position for the past 27 years, also submitted a sworn
9 affidavit in 1996 in the *Baldwin* case, stating that:

10 Plaintiff received lump-sum payments for unused vacation and sick leave
11 hours upon his retirement, which payments were included in his 1996
12 compensation for pension calculation purposes. Also included in his
13 compensation for FAC purposes were the City’s contribution to his
14 Deferred Compensation Plan (“DCP”) and City payments to him of a travel
15 allowance.

14-FP007322-14-FP007340, at 14-FP007323 ¶ 8, Ex. 25 hereto.

15 **Defendants’ Response: Undisputed. Defendants assert, however, that Mr.**
16 **Walsh’s declaration merely reflected the practice at the time. (See SF ¶¶ 28–29.)**

17 80. Mr. Walsh further stated:

18 Plaintiff received lump sum payments for unused vacation and sick leave
19 hours upon his retirement, which payments were included in his 1996
20 compensation for pension calculation purposes.
21 The City and the Retirement Board thus computed Baldwin’s FAC as
22 follows:

	1994	1995	1996
21 Salary	\$70,000.96	\$75,699.20	\$80,498.44
22 DCP	\$3,962.53	\$4,448.36	5,508.79
23 Supplement		\$1,050.00	382.36
24 Accrued vacation (450 hours)			16,380.00
25 Accrued sick leave (430.2 hours)			15,659.28
	\$73,963.49	\$81,197.56	\$120,528.87

26 The City provides 12 to 22.5 vacation days per year depending on length of
27 service for its employees. Employees are not required to work on those
28 vacation days, but nonetheless receive their regular pay for such days. All

1 pay to the employees attributable to such days is, and historically has been,
2 included in “compensation” for pension calculation purposes.
3 Lump-sum payments for accumulated vacation days are already included in
4 compensation for calculating FAC.

5 The regulation dealing with lump-sum payments of accrued vacation has
6 been administered consistently over the years, with all of the lump-sum
7 payouts based upon the base hourly wage as specified in the regulations

14-FP007322-14-FP007340, at 14-FP007327 ¶¶ 30-31, Ex. 25 hereto.

8 **Defendants’ Response: Undisputed. Defendants assert, however, that Mr.**
9 **Walsh’s declaration merely reflected the practice at the time. (See SF ¶¶ 28–29.)**

10 81. In 1995, the Legal Review Committee and the Retirement Board
11 determined that “two fringe benefits” (deferred compensation payments and
12 transportation allowances) should be included in the calculation of final average
13 compensation. See June 1995 Legal Review Committee Minutes and Retirement Board
14 minutes, D014776, at D014776-78, Ex. 19 hereto; Ex. 6 to Defendants’ Opposition to
15 Plaintiffs’ Motion to Compel, at pp. 3, 9, Ex. 20 hereto.

16 **Defendants’ Response: Undisputed.**

17 82. In making the determination to include the two fringe benefits (deferred
18 compensation payments and transportation allowances) in final average compensation,
19 Retirement Board Member Ales commented: “from what legal counsel is advising, the
20 fringe benefits appear to be wage-related.” D014776, at D014781, Ex. 19 hereto.
21 Retirement Board Chairman Manion “indicated the practice of excluding certain wage-
22 related fringe benefits cannot be defended.” D014776, at D014781, Ex. 19 hereto.

23 **Defendants’ Response: Undisputed.**

24 83. The Retirement Board has never made a determination that vacation pay
25 should be excluded from compensation or final average compensation for purposes of
26 calculating benefits under the Retirement Plan or formally acknowledged the City’s
27 vacation leave snapshot. Miller Dep. 10:7-14, 10:19-11:19, Ex. 17 hereto.

28 **Defendants’ Response: Disputed in part. Defendants do not dispute that the**
Board has not adopted a formal policy acknowledging the vacation leave snapshot,

1 as it did for the sick leave snapshot. Defendants assert, however, that there is no
2 requirement that the Board adopt a policy acknowledging the City’s revised
3 administrative regulation. In the sick leave case, a Board member on the CAPP
4 subcommittee had specifically requested an acknowledgement of the revised AR
5 2.441. There was no similar request with regard to revised AR 2.18. The Board
6 nonetheless did assess the City’s recommended vacation leave snapshot, *see, e.g.*,
7 Oct. 17, 2013 Board Minutes (D013330–42) & Dec. 19, 2013 Board Minutes
8 (D013343–53),³ and ultimately concluded that it was appropriate.

9 **G. Defendants Communicated To Retirement Plan Members and The Public**
10 **That Vacation Pay Paid at Termination of Employment Is Included in Final**
11 **Average Compensation.**

12 84. The City has repeatedly and consistently promised employees that they
13 would have their vacation pay paid at termination included in final average compensation
14 for purposes of calculating their Retirement Plan retirement benefits. SF ¶ 28. *See also*
15 ¶ 74-78, 82-94, *infra*.

16 **Defendants’ Response: Disputed. Defendants have never “promised”**
17 **employees that they would have retirement payouts for accrued vacation included**
18 **in their final average compensation. (See, e.g., Response to ¶ 47.) Further, the**
19 **existence of an implied “promise” to provide benefits is a legal question, not a**
20 **statement of fact. Moreover, even assuming that Plaintiffs make a factual**
21 **statement as opposed to a legal one, it is not supported by the miscellaneous**
22 **employee presentations and handouts Plaintiffs cite. These pre-2013 employee**
23 **communications merely informed employees how these amounts were actually**
24 **being handled, i.e., that they were included in the calculation of pension benefits.**
25 **(See SF ¶¶ 28–29; see also Ex. 23 hereto (*Piccioli* Tr. Day 3 p.m.) at 74:19–75:11)**
26 **(defense witness Cathy Gleason testifying that “the presentations were just**
27 **conveying how the plan was being administered at the time”).)**

28 ³ Attached as Exs. 25 and Ex. 26 hereto.

1 85. Prior to December 31, 2013, the City and COPERS staff communicated to
2 Members that payments for accrued vacation at separation or retirement would be
3 included in the employee’s final average compensation for benefit calculation purposes
4 including in, *inter alia*, benefit summaries, reports, classes, counseling sessions,
5 seminars, new employee orientation sessions and retirement planning workshops. SF
6 ¶ 29.

7 **Defendants’ Response: Undisputed, but Defendants note that Plaintiffs’**
8 **citation does not support this statement. Defendants assume Plaintiffs meant to cite**
9 **to stipulated fact ¶ 28, not ¶ 29.**

10 86. The information presented by the City and COPERS staff to Members prior
11 to December 31, 2013 regarding the inclusion of payments for accrued vacation leave at
12 separation or retirement in final average compensation for retirement benefit calculation
13 purposes was consistent with how these payments were actually handled and factored
14 into retirement benefit calculations. SF 1 30.

15 **Defendants’ Response: Undisputed, but Defendants note that Plaintiffs’**
16 **citation does not support this statement. Defendants assume Plaintiffs meant to cite**
17 **to stipulated fact ¶ 29, not ¶ 30.**

18 87. The Retirement Plan’s Summary Plan Descriptions entitled “A Guide to
19 Retirement” are prepared by the City for Members of COPERS to advise employees
20 about their retirement benefits. TR 04/29/15 (PM) (Cathy Gleason), p. 74:2-12, Ex. 22
21 hereto. The Summary Plan Descriptions, which were available on the COPERS website,
22 distributed upon request and at some classes, state that they are a “summary of certain
23 provisions of the Retirement Law and the administrative policies and procedures adopted
24 by the COPERS Board in accordance with the Charter.” D007640, at D007640 (May
25 2011 Guide to Retirement), Ex. 14 hereto. *See also* D007720, at D007720 (March 2009
26 Guide to Retirement), Ex. 13 hereto; TR testimony on 04/30/2015 (PM) (Donna Buelow),
27 at pp. 27:16-22, attached hereto as Ex. 23.

28

1 **Defendants’ Response: Disputed.** The summary descriptions contained in
2 **the Guides to Retirement are not a part of the “Retirement Plan” (i.e., Chapter**
3 **XXIV of the Charter).** Further, Defendants dispute that these Guides “advised”
4 **employees about their retirement benefits under the Retirement Plan.** The very
5 **first page of the Guides to Retirement makes clear that it summarizes not just**
6 **“certain provisions” of the Charter, but also some of the administrative procedures**
7 **and policies of COPERS. (E.g., Plfs.’ Ex. 14 at D007640.)** The Guides also
8 **informed members that the Charter governs the terms of their retirement benefits**
9 **in the event of a conflict. (See id.)** Specifically, the first page of the Guide to
10 **Retirement states:**

11 **This document provides you with important information**
12 **regarding the City of Phoenix Employees’ Retirement System**
13 **(“COPERS”). This document is a summary of certain provisions**
14 **of Chapter XXIV of the City of Phoenix Code, the Phoenix City**
15 **Employees’ Retirement Law of 1953 (the “Retirement Law”)**
16 **and the administrative policies and procedures adopted by the**
17 **COPERS Board in accordance with the Charter. Every effort**
18 **has been made to ensure accuracy; however, if any inconsistency**
19 **exists between this document and the City Charter, the**
20 **provisions of the City Charter, as interpreted by the COPERS**
21 **Board, shall prevail. The City Charter legally governs the**
22 **operation of the Plan; please refer to the City Charter for a full**
23 **statement of the applicable rules. If you cannot find an answer**
24 **to a question about the Plan in this summary or in the Charter,**
25 **contact the City of Phoenix Employees’ Retirement Systems**
26 **Office at (602) 534-4400.**

22 88. The “Guide to Retirement” available until 2014 advised Members that the
23 Retirement Plan includes vacation pay paid at termination of employment in
24 compensation and final average compensation as follows:

25 **What Is Final Average Salary (“FAS”)?**
26 **FAS is the average of your highest annual salary amounts for three**
27 **consecutive years of service. Any applicable lump sum payments for**
28 **vacation, compensatory time, etc., will be added to your last three years**
before comparison with other periods of employment....

1 D007640, at D007640 (May 2011 Guide to Retirement), Ex. 14 hereto (emphasis in
2 original). *See also* TR Ex. 40, at D002697 (July 2012 Guide to Retirement), Ex. 15
3 hereto; D007720, at D007725 (March 2009 Guide to Retirement), Ex. 13 hereto.

4 **Defendants’ Response: Disputed in part. Undisputed that certain Guides to**
5 **Retirement predating the change to eliminate pension spiking contain the language**
6 **quoted above, but disputed that these earlier Guides stated or advised that the**
7 **terms of the Retirement Plan set forth in the Charter give employees the right to**
8 **spike their pensions with lump-sum payouts for accrued vacation. The very first**
9 **page of the Guides to Retirement makes clear that it summarizes not just “certain**
10 **provisions” of the Charter, but also some of the administrative procedures and**
11 **policies of COPERS. (E.g., Plfs.’ Ex. 14 at D007640.) Further, the Guides also**
12 **informed members that the Charter governs the terms of their retirement benefits**
13 **in the event of a conflict. (See Response to ¶ 87, *supra*.)**

14 89. The Retirement Plan’s summary plan descriptions further contain an
15 example that states:

16 The vacation and sick pay is added to Pat’s highest 36 months of wages
17 when figuring her FAS. Her vacation and sick pay increased her three-year
18 average.

19 Pat’s FAS is calculated as follows:

20 \$51,000 2004 Salary
21 \$52,000 2005 Salary
22 \$53,000 2006 Salary
23 \$5,700 VACATION PAY & SICK PAY
24 \$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.

25 *See* D007640, at D007640-41 (May 2011 Guide to Retirement), Ex. 14 hereto. *See also*
26 TR Ex. 40, at D002697-98 (July 2012 Guide to Retirement), Ex. 15 hereto; D007720, at
27 D007725-26 (March 2009 Guide to Retirement), Ex. 13 hereto. The City’s retirement
28

1 offices conducted classes to educate employees about their Plan benefits. TR testimony
2 on 04/30/2015 (PM) (Donna Buelow), at pp. 24:14-25:9, 37:4-, 43:15, Ex. 23 hereto.

3 **Defendants' Response: Disputed in part. Defendants do not dispute that**
4 **retirement staff conducted classes to educate employees about their retirement**
5 **benefits. Defendants do dispute, however, that the "Retirement Plan" (i.e., Chapter**
6 **XXIV of the Charter) contains the language quoted by Plaintiffs. This language**
7 **comes from certain Guides to Retirement predating the change to eliminate**
8 **pension spiking; it is not found in the Charter's Retirement Plan.**

9 **Defendants further dispute that this language from earlier Guides advises**
10 **members that the terms of the Retirement Plan set forth in the Charter give**
11 **employees the right to spike their pensions with lump-sum payouts for accrued**
12 **vacation. The very first page of the Guides to Retirement makes clear that it**
13 **summarizes not just "certain provisions" of the Charter, but also some of the**
14 **administrative procedures and policies of COPERS. (E.g., Plfs.' Ex. 14 at**
15 **D007640.) Further, the Guides also informed members that the Charter governs**
16 **the terms of their retirement benefits in the event of a conflict. (See Response to**
17 **¶ 87, supra.)**

18 90. These classes, counseling sessions, seminars and new employee orientation
19 sessions conducted by Defendants prior to December 2013 provided the same
20 information with respect to unused vacation pay paid at termination of employment - *i.e.*,
21 those payments would be included in final average compensation if the last year of
22 retirement was one of their highest years. SF ¶ 28.

23 **Defendants' Response: Assuming the reference to "these classes" means the**
24 **classes offered by retirement staff, Defendants do not dispute that some employees**
25 **were told in some classes, counseling sessions, seminars, and new employee**
26 **orientations that payouts for accrued vacation at retirement would be included in**
27 **the calculation of pension benefits. However, Defendants dispute the statements in**
28 **paragraph 90 to the extent they suggest that all classes, counseling sessions,**

1 seminars, and new employee orientation sessions conducted by Defendants prior to
 2 2013 included this information. Defendants further assert that any such
 3 information merely reflected the practice that had been taking place prior to the
 4 implementation of the vacation leave snapshot. (SF ¶¶ 28–29; Ex. 23 hereto
 5 (*Piccioli Tr. Day 3 p.m.*) at 74:19–75:11 (defense witness Cathy Gleason testifying
 6 that “the presentations were just conveying how the plan was being administered at
 7 the time”).)

8 Finally, Defendants note that Plaintiffs’ citation does not support this
 9 statement. Defendants assume Plaintiffs meant to cite to stipulated fact ¶ 29, not
 10 ¶ 28.

11 91. By way of example of the statements provided to employees in these
 12 counseling sessions, seminars and new employee orientation sessions, a “Choices and
 13 Decisions” class contained a written handout and presentation prepared by the City’s
 14 Retirement staff that included, *inter alia*, the following statements:

15 Final Average Compensation (FAC)

16 If high 36 months is last 36 months we include all retirement applicable
 17 payouts at retirement including sick leave, vacation and comp-time.

18 Increasing Your Final Average Compensation

- 19 • Comp Time Payout
- Sick Leave Payout
- 20 • Vacation Payout

21 Vacation Accrual

22 Playing the Numbers Game

23 Years of Service (City Service only)	*Maximum Carry Over as of Dec. 31st	*Maximum Accrual Paid at Retirement
24 5.00 - 10 years	240 hours	300 hours
25 10.08 - 15 years	264 hours	330 hours
26 15.08 -20 years	312 hours	390 hours
27 20.08+ years	360 hours	450 hours

28 *Note: Must have City Manager’s approval to carry over more than
 maximum.

1 (See A.R. 2.18 Revised 7/8/02)

2 ***

3 Vacation Sellback

4 The “Vacation Sellback” program offered by the City of Phoenix can also
5 increase your final average compensation. By taking advantage of this
6 program during your last 3 years (highest 36 month period used for
calculating FAC), the sellback payments will be included in your yearly
salary used for pension calculation.

7 D007794 slides 9, 10, 11, 18 (2003), Ex. 27 hereto.

8 **Defendants’ Response: Defendants do not dispute that the 2003 presentation**
9 **titled “Choice and Decisions,” which predates the action to eliminate pension**
10 **spiking, contains the language quoted in paragraph 91. Defendants assert,**
11 **however, that this presentation merely reflects the practice that had been taking**
12 **place prior to the implementation of the vacation leave snapshot. (SF ¶¶ 28–29; Ex.**
13 **23 hereto (*Piccioli* Tr. Day 3 p.m.) at 74:19–75:11 (defense witness Cathy Gleason**
14 **testifying that “the presentations were just conveying how the plan was being**
15 **administered at the time”).)**

16 92. A 2006 COPERS - Choices and Decisions presentation and handouts
17 provided substantially the same information as the 2003 Choices and Decision
18 presentation. *See* 14-FP013734-14-FP013751, at 14-FP013736-37 (“Increasing Your
19 Final Average Salary”), 14-FP013741 (“Vacation Sellback”), Ex. 26 hereto.

20 **Defendants’ Response: Defendants do not dispute that the 2006 presentation**
21 **titled “Choice and Decisions,” which predates the action to eliminate pension**
22 **spiking, contains substantially similar language to that quoted in paragraph 91.**
23 **Defendants further assert, however, that this presentation merely reflects the**
24 **practice that had been taking place prior to the implementation of the vacation**
25 **leave snapshot. (SF ¶¶ 28–29; Ex. 23 hereto (*Piccioli* Tr. Day 3 p.m.) at 74:19–**
26 **75:11 (defense witness Cathy Gleason testifying that “the presentations were just**
27 **conveying how the plan was being administered at the time”).)**

1 93. The following presentations and handouts for seminars and classes offered
2 by the City also contain substantially the same information about the inclusion of
3 vacation pay at termination in final average compensation as was provided in the City's
4 "Choices and Decisions" class:

5 a. Maximize Your Pension (2003), 14-FP017010-25, at 14—FP017015, 14-
6 FP017019-21, Ex. 28 hereto;

7 b. Maximize Your Pension - (COPERS) (2005), 14-FP016982-14-FP017009
8 at 14- FP016987-89, 14-FP016995, Ex. 29 hereto;

9 c. Ready to Retire? What to Expect! (2006), 14-FP017026-56, at 14-
10 FP017032-34, 14- FP017040-41 Ex. 30 hereto;

11 d. Today's Choices Tomorrow's Realities (2003), 14-FP017057-82 at 14-
12 FP017067, 14- FP017071-74, Ex. 31 hereto;

13 e. COPERS - Your Present Life and Retirement (2006) 14-FP013724-33, at
14 14- FP013727, 14-FP013730-31 Ex. 32 hereto.

15 **Defendants' Response: Defendants do not dispute that these presentations**
16 **from 2003, 2005, and 2006, all of which predate the action to eliminate pension**
17 **spiking, contain substantially similar language to that quoted in paragraph 91.**
18 **Defendants further assert, however, that these presentations merely reflect the**
19 **practice that had been taking place prior to the implementation of the vacation**
20 **leave snapshot. (SF ¶¶ 28–29; Ex. 23 hereto (*Piccioli Tr. Day 3 p.m.*) at 74:19–**
21 **75:11 (defense witness Cathy Gleason testifying that “the presentations were just**
22 **conveying how the plan was being administered at the time”).)**

23 94. Presentations entitled “Understanding Your Pension” also advised
24 employees about their pension benefits, stating as that vacation paid out during the last 36
25 months would be included in average compensation:

26 Final Average Salary (FAS)

- 27 • Average of highest 36 consecutive months of retirement applicable
28 earnings within the last 10 years

- 1 • If high 36 months are the last 36 months, applicable payouts (401(a) plan)
2 will be included
3 ▪ Sick leave (if qualified by MOU)
4 ▪ Vacation
5 ▪ Comp-time

6 D007797 (2009), at p. 11, Ex. 33 hereto. *See also* 14-FP013752-14-FP013768, at 14-
7 FP013761-62, 14-FP013764-65 (2006), Ex. 34 hereto.

8 **Defendants’ Response: Defendants do not dispute that the 2006 and 2009**
9 **presentations titled “Understanding Your Pension,” which predate the action to**
10 **eliminate pension spiking, contain the language quoted in paragraph 94.**
11 **Defendants further assert, however, that these presentations merely reflect the**
12 **practice that had been taking place prior to the implementation of the vacation**
13 **leave snapshot. (SF ¶¶ 28–29; Ex. 23 hereto (*Piccioli Tr. Day 3 p.m.*) at 74:19–**
14 **75:11 (defense witness Cathy Gleason testifying that “the presentations were just**
15 **conveying how the plan was being administered at the time”).)**

16 95. A 2010 presentation about the “General City Pension Plan: COPERS” also
17 advised employees that vacation paid out was included in final average compensation:

- 18 ➤ Final Average Salary (FAS)
19 Average of highest 36 consecutive months of retirement applicable earnings within the
20 last 10 years
21 ➤ Applicable payouts to the 401a/457 plans will be added to your last 3 years of
22 retirement-applicable earnings before comparison to other periods of earnings
- 23 ▪ Sick leave (if qualified by MOU)
 - 24 ▪ Vacation
 - 25 ▪ Comp-time

26 D007877, at p. 8, attached hereto as Exhibit 35.

27 **Defendants’ Response: Defendants do not dispute that the 2010 presentation**
28 **titled “General City Pension Plan: COPERS,” which predate the action to**
29 **eliminate pension spiking, contains the language quoted in paragraph 95.**
30 **Defendants further assert, however, that this presentation merely reflects the**
31 **practice that had been taking place prior to the implementation of the vacation**
32 **leave snapshot. (SF ¶¶ 28–29; Ex. 23 hereto (*Piccioli Tr. Day 3 p.m.*) at 74:19–**

1 **75:11 (defense witness Cathy Gleason testifying that “the presentations were just**
2 **conveying how the plan was being administered at the time”).)**

3 96. In or around 2002 and 2003, the City considered whether to move the
4 City’s 911 dispatchers out of the Retirement Plan and into the Arizona Correction
5 Officers’ Retirement Plan (“CORP”). In connection with the City’s consideration of
6 whether to move the City’s 911 dispatchers out of the Retirement Plan and into CORP,
7 the Retirement System embarked on a series of educational meetings and presentations
8 for the City’s 911 dispatchers. In comparing the Retirement Plan and the CORP Plan, the
9 City advised the City’s 911 dispatchers of the differences between final average
10 compensation under the two plans, in part, as follows:

11 Final Average Compensation

- 12 Phoenix [COPERS]- Includes payment at retirement for unused vacation and
sick time. Includes most payroll items.
- 13 CORP - Does NOT include payments for unused vacation and sick time.
14 Includes base pay, shift differential pay and holiday pay, excludes overtime.

15 14-FP014247, Ex. 36 hereto.

16 **Defendants’ Response: Defendants object to the statements in paragraph 96**
17 **because Plaintiffs have failed to provide any supporting evidence. See *Mecham*, 173**
18 **Ariz. at 478. Their Exhibit 36 states only that the purpose of the education session**
19 **is to compare the plan provisions of COPERS and CORP; it does not contain the**
20 **substantive information identified in paragraph 96. Defendants further object to**
21 **this statement as irrelevant.**

22 **H. Negotiations Under the Meet and Confer and Meet and Discuss Ordinances**

23 97. All prior Memoranda of Understanding effective since at least the MOU
24 whose terms were effective on and after January 1, 1989 (the 1988-1990 MOU) between
25 the City and AFSCME Local 2960 and between the City and AFSCME Local 2384
26 provide identically to the MOU in effect for the years July 1, 2014 through June 30, 2016
27 and the MOU in effect for the years July 1, 2016 through June 30, 2019 that the amount
28 of vacation hours an employee accrues, the maximum amount of vacation an employee

1 can carry over into the following year, and the maximum amount of vacation an
 2 employee can be paid out at termination of employment depends on the length of an
 3 employee's service with the City as follows:

4 Years of Service	5 Accrual Rate Per Month	6 Maximum Carryover	7 Maximum Accrual Which Can Be Compensated at Separation
8 0-5	9 8 hours	10 192 hours	11 240 hours
12 6-10	13 10 hours	14 240 hours	15 300 hours
16 11-15	17 11 hours	18 264 hours	19 330 hours
20 16-20	21 13 hours	22 312 hours	23 390 hours
24 21+	25 15 hours	26 360 hours	27 450 hours

28 SF ¶ 43; 48. *See also* 14-FP017083-14-FP017120 (1988-1990 MOU between City and
 AFSCME 2384), Ex. 82 hereto; 14-FP017121-14-FP017159 (1988-1990 MOU between
 City and AFSCME 2960), 2016-2019 MOU between City and AFSCME 2384, Ex. 85
 hereto; 2016-2019 MOU between City and AFSCME 2960), Ex. 86 hereto.

Defendants' Response: Disputed in part. Defendants note that the parties stipulated to the exact language the labor contract provisions governing vacation accrual, carryover, and cashouts in the stipulated facts. (See SF ¶¶ 42-43, 47-48; Plfs.' Exs. 82, 83, 85, 86.) As reflected in those stipulated facts, none of the MOUs refer to employees being "compensated" at separation for accrued vacation. (See *id.*) Accordingly, Defendants dispute the statements in this paragraph to the extent they conflict with stipulated facts ¶¶ 42-43 and 47-48.

Defendants further object to the statements in paragraph 97 to the extent they include labor contracts from 2016-2019. Those contracts post-date the challenged conduct in this case (i.e., the revision of AR 2.18 effective July 1, 2014) and have no relevance to this dispute. The fact that neither side requested nor produced the 2016-2019 contracts during discovery demonstrates that they are not relevant.

1 **Defendants do not dispute that, between 1989 and 2016, the MOUs for Local**
2 **2960 and Local 2384 provided for the accrual, carryover, and cash out rates set**
3 **forth in Plaintiffs’ table.**

4 98. Until 2006, under the City’s Meet-and-Discuss Ordinance, Phoenix City
5 Code §2-223 et. seq., there were no written memoranda applicable to employees in Unit
6 7. Rather, the City Manager had authority to meet and discuss with ASPTEA
7 representatives on matters relating to wages and fringe benefits for employees in Unit 7
8 and to make recommendations to the City Council for approval of agreements reached
9 during that process. Phoenix City Code §§ 2-223, 2-229 & 2-231.SF ¶ 53.

10 **Defendants’ Response: Undisputed.**

11 99. In 2006, the City’s Meet-and-Discuss Ordinance was amended to provide
12 for written MOAs. SF ¶ 54.

13 **Defendants’ Response: Undisputed.**

14 100. All prior agreements under the Meet and Discuss Ordinance in effect for all
15 years beginning on and after 2006 have provided identically to the MOA in effect for the
16 years July 1, 2014 through June 30, 2016 and the MOA in effect for the years July 1,
17 2016 through June 30, 2019 that the amount of vacation hours an employee accrues, the
18 maximum amount of vacation an employee can carry over into the following year, and
19 the maximum amount of vacation an employee can be paid out at termination of
20 employment depends on the length of an employee’s service with the City as follows:

21
22
23
24
25
26
27
28

Years of Service	Accrual Rate Per Month	Maximum Carryover	Maximum Accrual Which Can Be Compensated at Separation
0-5	8 hours (hourly employees)/1 day (salaried employees)	192 Hours (hourly employees) /24 days (salaried employees)	240 Hours (hourly employees)/30 days (salaried employees)
6-10	10 hours (hourly employees)/1.25 days (salaried employees)	240 Hours (hourly employees) /30 days (salaried employees)	300 Hours (hourly employees) /37.5 days (salaried employees)
11-15	11 hours (hourly employees)/1.375days (salaried employees)	264 Hours (hourly employees) /33 days (salaried employees)	330 Hours (hourly employees) /41.25 days (salaried employees)
16-20	13 hours (hourly employees)/1.625 days (salaried employees)	312 Hours (hourly employees) /39 days (salaried employees)	390 Hours (hourly employees) /48.75 days (salaried employees)
21+	15 hours (hourly employees) /1.875days (salaried employees)	360 Hours (hourly employees) /45 days (salaried employees)	450 Hours (hourly employees)/56.25 days(salaried employees)

SF 56, 57. *See also* 2016-2019 MOA, attached hereto as Ex. 84.

Defendants’ Response: Disputed in part. Defendants note that the parties stipulated to the exact language the labor agreement provisions governing vacation accrual, carryover, and cashouts in the stipulated facts. (*See* SF ¶¶ 56–57; Plfs.’ Ex. 84.) As reflected in those stipulated facts, none of MOAs refer to employees being “compensated” at separation for accrued vacation. (*See id.*) Accordingly, Defendants dispute the statements in this paragraph to the extent they conflict with stipulated facts ¶¶ 56–57.

Defendants further object to the statements in paragraph 100 to the extent they reference the labor agreement from 2016–2019. That agreement post-dates the challenged conduct in this case (i.e., the revision of AR 2.18 effective July 1, 2014) and has no relevance to the instant dispute. The fact that neither side

1 requested nor produced the 2016–2019 agreement during discovery demonstrates
2 that it is not relevant.

3 Defendants do not dispute that, between 2006 and 2016, the MOAs for
4 ASPTEA provided for the accrual, carryover, and cash out rates set forth in
5 Plaintiffs’ table.

6 101. The 2014-2016 and 2016-2019 MOUs between AFSCME 2960 and the
7 City and between AFSCME 2384 and the City contain an Attachment B that provides as
8 follows:

9 All of the following, including the agreed-upon Intent, are material terms of
10 this Attachment B and if any provision contained herein is not accepted by
11 the City, the City Council or the employee group, this entire Attachment B
12 becomes null and void:

12 Section 3-4 (Continued)

13 A. Final Average Compensation and Vacation Leave

14 1. The number of vacation leave hours eligible to be cashed out and
15 included in an employee’s Final Average Compensation upon retirement
16 will be limited to the number of vacation leave hours in the employee’s
17 leave bank on June 30, 2014, not to exceed 450 hours.

18 2. The City recognizes that the Union may bring a lawsuit regarding
19 the City’s proposed implementation of the practice set forth in this
20 Attachment B by submitting the dispute concerning the City’s proposal and
21 planned implementation of the practice in Paragraph B.1 of this Attachment
22 B to a court of competent jurisdiction.

23 3. The Parties expressly agree that nothing contained in Section 3-4 or
24 this Attachment B shall be construed to constitute an agreement by the
25 Union to the lawfulness of the practice set forth in Attachment B or the
26 lawfulness of implementation of the changes set forth in Paragraph B.1 of
27 this Attachment B. Nor shall anything contained in this Attachment B
28 constitute a waiver of the Union’s, employees’ or the City’s claims or
defenses in connection with a lawsuit as set forth in Paragraph B.2. hereof
regarding the lawfulness of the City’s proposed implementation of the
changes set forth in Paragraph B.1. The City agrees not to make any
argument based on this Attachment B regarding waiver, estoppel,
ratification, novation or any similar arguments based on this Attachment B.
The City expressly agrees it waives any rights to argue and will not and
may not argue, based on this Attachment B, in any lawsuit as set forth in
Paragraph B.2 regarding the lawfulness of City’s proposed implementation
of the changes in Paragraph B.1, that the Union or Unit 3 employees agreed
to the lawfulness of such changes including, without limitation, by asserting
that the Union or employees agreed to the lawfulness of such change based
on this Attachment B, the negotiations leading up to this Attachment B, the

1 ratification of the MOU by the Unit 3 employees or based on any action or
2 statements of the Union in relation to this Attachment B.

3 4. The Parties further agree that until there is a final judgment and
4 declaration with respect to the rights of the parties regarding the lawfulness
5 of and the proposed implementation of the practice in Paragraph B.1, if the
6 City calculates retirement benefits based on such practice, the Union will
7 not seek a temporary restraining order, preliminary injunction or other
8 interim relief to cease the practice set forth in paragraph B.1. The City
9 expressly agrees that it waives any rights to argue and will not and may not
10 argue that failure to seek a temporary restraining order, preliminary
11 injunction or other interim relief to cease the practice set forth in paragraph
12 B.1 constitutes estoppel, an agreement to such practice or waives any rights
13 to challenge such practice nor will the City argue that either the Union or
14 Unit 3 employees agreed to the lawfulness of the practice set forth in
15 Paragraph B.1 or such practices based on the failure to seek a temporary
16 restraining order, preliminary injunction or other interim relief.

17 5. The City and the Union further agree that in the event a court
18 determines in a lawsuit as described in Paragraph B.2., after final judgment
19 and all appeals are exhausted, that: (a) the vacation payments at issue in
20 Paragraph A are compensation within the meaning of the Charter; or (b)
21 determines that the practice set forth violates the contractually vested rights
22 of employees; or (c) determines that the practice violates either the Arizona
23 or United States Constitutions, the City shall, as soon as is reasonably
24 practicable after final judgment and all appeal rights are exhausted, sever
25 Paragraph B.1 of this Attachment B and its terms from this MOU and will
26 take whatever administrative action is reasonably necessary to undo the
27 practice described in this Attachment B as required to implement such
28 court's judgment and make any affected employees whole. The City shall
meet and discuss with the Union about such administrative action before
such action is taken and shall advise the Union first before advising
affected Unit 3 employees about any such administrative action that
directly affects Unit 3 employees

6. The City and the Union further agree that, in the event of a final
judgment in the Union's favor such as described in Paragraph B.5. of this
Attachment, and after all appeals are exhausted, the City will apply such
judgment retroactively to undo the effect of the practices described in this
Attachment B.1 on any employees affected or bound by this Attachment B
and make such employees whole, including without limitation those Unit 3
employees who retire after June 30, 2014 but before such final judgment
and appeals are concluded. The City shall meet and discuss with the Union
about what actions are taken to undo the effect of the practices and shall
provide the Union with information concerning what Unit 3 employees
retired after June 30, 2014 who were affected by Paragraph B.1 of this
Attachment B as reasonably requested by the Union. The City agrees that it
will not argue or claim that such judgment should be applied prospectively
only.

26 SF ¶ 38, 44. *See also* 2016-2019 MOU between AFSCME 2384 and the City, Ex. 85
27 hereto; 2016-2019 MOU between AFSCME 2960 and the City, Ex. 86 hereto.

1 **Defendants’ Response:** Defendants note that Plaintiffs have cited the
2 **incorrect stipulated facts in support; stipulated facts ¶¶ 44 and 49 address the topic**
3 **described in paragraph 101, not ¶ 38. Defendants do not dispute the statements in**
4 **paragraph 101 to the extent they are consistent with the parties’ stipulated facts**
5 **¶¶ 44 and 49.**

6 **Defendants object, however, to the references to labor contracts from 2016–**
7 **2019. Those contracts post-date the challenged conduct in this case (i.e., the**
8 **revision of AR 2.18 effective July 1, 2014) and have no relevance to this case. The**
9 **fact that neither side requested nor produced the 2016–2019 contracts during**
10 **discovery demonstrates that they are not relevant.**

11 102. The cost of including the payment of vacation, both used and unused, in
12 the determination of final average compensation for purposes of calculating pension
13 benefits is prepared by the City’s Budget and Research Department and made available
14 to the City’s negotiating team and discussed during MOU and MOA negotiations. TR
15 testimony on 04/29/2015 (AM) (Cathy Gleason) at pp. 41:45:24; 99:18-100:16, Ex. 21
16 hereto.

17 **Defendants’ Response: Disputed.** Defendants assert that the cost of
18 **including amounts received for unused vacation payouts in the cost of final average**
19 **compensation is not routinely determined by the City’s Budget and Research**
20 **Department, made available to the City’s negotiating team, or discussed during**
21 **labor contract negotiations. (Ex. 17 hereto (Bezaury Declaration).) Ms. Gleason’s**
22 **testimony does not support Plaintiffs’ statements in paragraph 102. Her testimony**
23 **at pages 41–45 of Plaintiffs’ Exhibit 21 merely describes the City Budget and**
24 **Research Department’s role in providing estimates of the economic impact that**
25 **various proposals during labor negotiations would have on the budget (i.e.,**
26 **“costing”). It does not state that the City provided estimates of the cost of including**
27 **vacation pay in final average compensation for purposes of calculating pension**
28 **benefits. Further, Ms. Gleason’s testimony at pages 99–100 relates to a COPERS**

1 **Powerpoint presentation that retirement staff presented to members, not labor**
2 **negotiations or the parties' labor contracts.**

3 **Defendants also dispute the relevance of the Budget and Research**
4 **department's costing and economic analyses of proposals during labor negotiations**
5 **to the current lawsuit. Costing does not involve an assessment of the legal**
6 **ramifications of a proposal (much less an assessment of the proposal under the text**
7 **of the Charter). (See *Piccioli* Tr. Day 2 p.m. at 28:24—29:4, attached as Ex. 27**
8 **hereto (“Costing is the process we go through during negotiations where our**
9 **budget and research department will look at proposals, whether they are a City**
10 **proposal or a union proposal, and analyze that and calculate what the cost to the**
11 **City would be for that provision should it be enacted.”).) It is simply irrelevant.**

12 103. During negotiations, the City has calculated that cost using a special long
13 term impact factor of 1.09 that the City obtained from the Retirement Plan actuary and
14 used this factor to estimate the impact of improving the amount of vacation leave
15 payouts. TR testimony on 04/29/2015 (AM) (Cathy Gleason) at pp. 41:45:24; 99:18-
16 100:16, Ex. 21 hereto.

17 **Defendants' Response: Disputed. The costing factor noted in paragraph 103**
18 **related to a specific union proposal regarding sick leave (not vacation) payouts for**
19 **Unit 2 employees only, made during the labor negotiations for 2006-2008. (See**
20 ***Piccioli* Tr. Day 3 a.m. at 58:9–20, attached as Ex. 28 hereto (“this is a costing for**
21 **unit – Unit 2's proposal in the 2006 negotiations”); Plfs.' *Piccioli* Tr. Ex. 98 (Nov.**
22 **2005 AFSCME Local 2984 Proposal to the City re Sick Leave Conversion at**
23 **Retirement), attached as Ex. 29 hereto.) Plaintiffs have provided no evidence of**
24 **any negotiations pertaining to vacation leave payouts, much less negotiations**
25 **pertaining to vacation leave payouts for the relevant 2014-2016 labor contracts.**

26 **Further, Defendants dispute the relevance of costing factors to the current**
27 **lawsuit. Costing is simply a process for approximating the cost of proposals during**
28 **labor negotiations; it does not involve an assessment of the legal ramifications of a**

1 **proposal (much less an assessment of the proposal under the text of the Charter).**
2 **(See Response to ¶ 102, *supra*.) Further, the costing factor of 1.09 cited by**
3 **Plaintiffs related to a 2005 union proposal that was never adopted. (See Ex. 27**
4 **hereto (*Piccioli* Tr. Day 2 p.m.) at 28:24—29:4.) Accordingly, it is simply**
5 **irrelevant.**

6 **I. Unilateral Imposition of AR 2.18 As Revised Effective July 1, 2014**

7 104. AR 2.18 was revised effective as of July 1, 2014 to impose a limitation on
8 the amount of accrued vacation paid at termination of employment that could be used in
9 the calculation of final average compensation. SF ¶ 39. See D000001-6, Ex. 91 hereto.

10 **Defendants' Response: Undisputed that the City Manager revised AR 2.18**
11 **effective July 1, 2014 to prohibit future pension spiking using accrued vacation**
12 **cash-outs. Defendants note that stipulated fact ¶ 39 does not support Plaintiffs'**
13 **statement, however.**

14 105. As revised effective July 1, 2014, AR 2.18 for the first time purports to
15 limit the amount of accrued vacation pay paid at termination of employment that can be
16 included in the calculation of final average compensation under the Retirement Plan. SF
17 ¶ 37- 39.

18 **Defendants' Response: Disputed. The version of AR 2.18 effective**
19 **November 22, 2013 limits the amount of vacation cashout that executives and**
20 **middle managers may count towards their final average compensation. (See Defs.'**
21 **SSOF, Ex. 1b (AR 2.18 effective Nov. 22, 2013).)**

22 106. Under AR 2.18 as revised effective July 1, 2014 provides that for the City's
23 Middle Manager or Executive Members of COPERS, regardless of the amount of
24 vacation pay paid to the at time of separation from service, no vacation accrued after
25 December 31, 2013 will be included in final average compensation for pension
26 calculations and the amount of vacation leave eligible for inclusion in such employee's
27 final average compensation is limited to the number of vacation hours that employee had
28 accrued on December 31, 2013. AR 2.18 (2014), D000001-6, Ex. 91 hereto.

1 **Defendants’ Response: Disputed.** Under revised AR 2.18 effective July 1,
2 2014, the amount of vacation leave eligible for inclusion in the calculation of
3 executive and middle management employees’ final average compensation at the
4 time of retirement is limited to the number of hours in the employee’s leave bank as
5 of December 31, 2013 (the “snapshot” amount). But if the executive or middle
6 manager subsequently uses the vacation leave in his or her bank, the employee may
7 “replenish” the bank with leave accrued after December 31, 2013 back up to the
8 snapshot amount. (*See* Plfs.’ Ex. 91 at D000005.)

9 107. Under AR 2.18 as revised effective July 1, 2014, employee members of
10 COPERS who are promoted into the Middle Manager or Executive benefit category
11 between December 31, 2013 and July 1, 2014 will have the amount of vacation leave
12 eligible for inclusion in such employee’s final average compensation limited to the
13 number of vacation hours that employee had accrued as of the effective date of the
14 promotion. AR 2.18 (2014), D000001-6, Ex. 91 hereto

15 **Defendants’ Response: Undisputed.**

16 108. Under AR 2.18 as revised effective July 1, 2014, for employees in Units 1,
17 2, 3, 7 and 8, regardless of the amount of accrued vacation pay that is actually paid to the
18 Member at time of separation from service, no vacation accrued after June 30, 2014 will
19 be included in final average compensation for pension calculations and the amount of
20 vacation leave eligible for inclusion in such employee’s final average compensation is
21 limited to the number of vacation hours that the employee had accrued on June 30, 2014.
22 AR 2.18 (2014), D000001-6, Ex. 91 hereto

23 **Defendants’ Response: Disputed.** Under revised AR 2.18 effective July 1,
24 2014, the amount of vacation leave eligible for inclusion in the calculation of final
25 average compensation at the time of retirement for employees in Units 1, 2, 3, 7,
26 and 8 is limited to the number of hours in the employee’s leave bank as of July 1,
27 2014 (the “snapshot” amount). But if the employee subsequently uses the vacation
28

1 leave in his or her bank, the employee may “replenish” the bank with leave accrued
2 after July 1, 2014 back up to the snapshot amount. (See Plfs.’ Ex. 91 at D000006.)

3 109. Under AR 2.18 as revised effective July 1, 2014, no member of COPERS
4 hired after June 30, 2014 will have any vacation pay paid at separation of employment
5 included in final average compensation for pension calculation purposes. AR 2.18
6 (2014), D000001-6, Ex. 91 hereto

7 **Defendants’ Response: Undisputed.**

8 110. No Plaintiff organization and no member of Units 2, 3 or 7 which are
9 represented by AFSCME 2384, AFSCME 2960 and ASPTEA agreed to the “vacation
10 snapshot” contained in AR 2.18 as revised effective as of July 1, 2014 and all such
11 members have expressly reserved their right to challenge the vacation leave snapshot. SF
12 11 44, 49; *see also* DSF 11 41, 43, 2016-2019 Unit 2 MOU and 2016-2019 Unit 3 MOU,
13 Exs. 85 and 86, hereto. *See also* Piccioli Decl. ¶¶ 4-6; Pimentel Decl. ¶¶ 4-5; Ramirez
14 Decl. ¶ 4-5.

15 **Defendants’ Response: Disputed in part. Undisputed that the 2014–2016**
16 **MOUs for Units 2 and 3 (AFSCME Local 2384 and Local 2960, respectively)**
17 **contain an appendix B stating that these groups do not agree to the “vacation**
18 **snapshot” in AR 2.18 and reserve their right to challenge it. Defendants dispute**
19 **that Unit 7 (ASPTA) has expressly reserved its right to challenge the vacation**
20 **leave snapshot. Mr. Ramirez’s declaration is the only evidence concerning**
21 **ASPTA, and he does not say that ASPTA has expressly reserved its right to**
22 **challenge the snapshot. Because Plaintiffs have provided no evidence in support of**
23 **this statement, it should be disregarded for purposes of summary judgment. *See***
24 ***Mecham*, 173 Ariz. at 478.**

25 111. No Plaintiff or anyone acting on their behalf ever agreed to change, waive
26 or modify their vested rights or the City and Board’s contractual obligations to City
27 employees and Retirement Plan Members, including Plaintiffs, to include all unused
28 vacation pay paid at termination in the calculation of compensation and final average

1 compensation for purposes of determining Members' retirement benefits under the
2 Retirement Plan. SF 11 44, 49; *see also* DSF 11 41, 43, 2016-2019 Unit 2 MOU and
3 2016-2019 Unit 3 MOU, Exs. 85 and 86, hereto.

4 **Defendants' Response: Defendants do not dispute that Plaintiffs did not**
5 **agree to the vacation snapshot in their 2014–2016 labor contracts and agreements,**
6 **but Defendants object to the remaining statements in paragraph 111 because they**
7 **are legal conclusions masquerading as factual statements. Further, Defendants**
8 **dispute that any employee has a vested or contractual right to spike his or her**
9 **pension with retirement payouts for accrued vacation. Plaintiffs and their**
10 **constituents are legally entitled only to those pension benefits provided in the**
11 **Charter. Because the Charter prohibits pension spiking, the vacation snapshot's**
12 **elimination of pension spiking did not impact Plaintiffs' rights to retirement**
13 **benefits.**

14 112. There were 2,240 cards and/or signatures submitted to the City Council in
15 opposition to the Ad Hoc Subcommittee's 2013 recommendations. Defs.' Ex. 12, at
16 pp. 4-21.

17 **Defendants' Response: Undisputed.**

18 113. The Subcommittee recommended that the following items be included in
19 the definition of compensation for the purpose of pension calculation for employees in
20 COPERS:

21 Base salary and wages
22 Premium pay, including, but not limited to shift differentials, and linguistic
23 pay, military differential pay, and holiday pay
24 Overtime pay
25 Compensatory time
26 Longevity and performance pay

27 Defs.' Ex. 11.

28 **Defendants' Response: Undisputed.**

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

4 Payments toward expenses incurred in the performance of employment
5 obligations, whether paid as reimbursements or as set allowances, and
6 including but not limited to communications allowances and transportation
7 allowances

8 Lump -sum payouts on unused accrued sick leave upon retirement (except
9 unused leave accrued pursuant to the sick leave "snapshot" effective July 1,
10 2012)

11 Lump -sum payouts on unused accrued vacation leave upon separation
12 (except unused leave accrued pursuant to new vacation policies yet to be
13 developed)

14 Reimbursements to employees for retirement contributions

15 Defs.' Ex. 11.

16 **Defendants' Response: Undisputed.**

17 115. Although Defendants made the change purportedly to reduce pension costs,
18 Defendants never received a calculation to determine the financial impact of the
19 Subcommittee's recommendations until after the recommendations had been adopted by
20 City Council and never performed a calculation separating out current employees from
21 new hires. D016635, Ex. 89 hereto; D018293-D018300; Bezaury Dep. pp. 42: 21.
22 Defendants did not receive a calculation until December 20, 2013. See Email from
23 Deputy City Manager, Rick Naimark dated December 20, 2013, D016635, Ex. 89 hereto.

24 **Defendants' Response: Disputed. Defendants did not make these changes
25 solely to save costs, although sustaining the fiscal health of the retirement plan was
26 (and is) a factor Defendants must consider. (See Charter ch. XXIV, art. II. § 34
27 ("Fiscal management").) Rather, Defendants made these changes after
28 determining that their prior practices conflicted with the Charter. (See, e.g., Ex. 23
hereto (Piccioli Tr. Day 3 p.m.) at 44-48 (former Board member Cathy Gleason
describing how Defendants came up with snapshot approach once they determined
that retirement payouts for accrued leave did not meet the Charter's definition of
compensation).)**

1 116. As the Deputy City Manager noted when he received the December 20,
2 2013 calculations, even combined with the sick leave pension reductions and other
3 changes adopted by the City, “the funded status of the plans is expected to remain
4 relatively unchanged.” D016635, Ex. 89 hereto.

5 **Defendants’ Response: Disputed to the extent Plaintiffs suggest that the**
6 **pension spiking reforms had no long-term financial impact on the Retirement**
7 **Plan’s funded status. The Plan’s funding status would remain relatively**
8 **unchanged, since the City has an obligation make the actuarially required**
9 **contribution necessary to keep the Retirement Plan funded. (See Plfs.’ Ex. 1 at 8,**
10 **21–22 (Charter ch. XXIV, art. II at §§ 11.1 & 28.1).) Because employee**
11 **contributions for Tier 1 employees like Plaintiffs are fixed at 5%, the contribution**
12 **required from the City to maintain the Plan’s funding fluctuates. So, the critical**
13 **question from a cost perspective is whether the City’s required contributions would**
14 **decrease. The Segal modeling shows that implementation of the vacation snapshot**
15 **is projected to reduce the City’s required contributions to ensure the Plan remains**
16 **funded by over \$70 million by 2038. (Plfs.’ Ex. 90 at D018294.)**

17 117. In response to heated media coverage and public pressure after two former
18 city managers received exceptionally large pensions based, in part, on payment at
19 termination of 100% of every unused vacation day covering their entire period of
20 employment (which have no relation to the narrow allowance of vacation pay accrual at
21 issue here), Defendants convened a Pension Reform Task Force, a nonpartisan group that
22 included business leaders and City employees that met for over a year. See TR testimony
23 on 05/11/2015 (PM) (Deputy City Manager Rick Naimark), at pp. 85:8-21; 112:1-17,
24 Ex. 92 hereto. *See also* Final Recommendations of Pension Reform Task Force, Ex. 93,
25 hereto.

26 **Defendants’ Response: Disputed in part. Defendants dispute that the Mayor**
27 **convened the Pension Reform Task Force in “response to heated media coverage**
28 **and public pressure after two former city managers received exceptionally large**

1 pensions based, in part, on payment at termination of 100% of every unused
2 vacation day covering their entire period of employment” Mr. Naimark’s
3 testimony does not state that pension spiking by two former City Managers led to
4 the creation of the Task Force (and even if he had testified along those lines, his
5 testimony discussed only sick leave payouts, not vacation). In fact, Mr. Naimark
6 disputed Plaintiffs’ counsel’s attempt to suggest that this was the case:

7
8 **Q.** You said that there was a lot of talk about sick leave, and
9 I’m presuming if I’m -- that it was about payments of sick
10 leave to highly paid people leaving the [C]ity of Phoenix and
11 getting outside pensions; is that correct?

12 **MR. STOCKARD:** I object to the question as vague. There’s
13 no mention of where this talk occurred or what it was.

14 **THE COURT:** Well, do you understand the question?

15 **THE WITNESS:** I think so. I mean, basically the answer is
16 what you said is only partially part of the facts. As we
17 discussed all of the elements that were -- had been currently
18 used in calculating pensions, there was a lot of concern about
19 pension spiking and about sick leave payout at retirement in
20 its role in increasing people’s pensions, regardless of highly
21 paid or not.

22 (Plfs.’ Ex. 92 at 112:1–17.)

23 **Defendants do not dispute that that the Pension Reform Task Force was a**
24 **nonpartisan group that included business leaders and City employees, and that it**
25 **met for over a year.**

26 118. Defendants continue to include vacation sell back, holiday pay, longevity
27 pay, shift differential pay, Miller Dep. pp. 24:1-30:8, 31:9-23, 34:15-22, Ex. 17 hereto;
28 Bezaury Dep. p. 13:9-16, 43:22-44:19, 49:14-61:24 and Ex. 5, Ex. 16 hereto.

Defendants’ Response: It appears Plaintiffs have inadvertently omitted a
portion of the sentence in paragraph 118. Assuming that Plaintiffs meant to state
that Defendants continue to include amounts received for vacation sell back,

1 holiday pay, longevity pay, and shift differential pay in the calculation of
2 retirement benefits under the Charter when those amounts are part of the
3 employee's highest annual compensations during the relevant time period prior to
4 retirement, Defendants do not dispute that statement.

5 **J. Plaintiffs' Retirement Benefits Were Reduced and Diminished By The**
6 **Change In The Retirement Plan Formula**

7 119. The average annual COPERS retirement benefit is \$28,912. *See* Defs'
8 Ex. 15, at D017846.

9 **Defendants' Response: Disputed in part. Defendants do not dispute that the**
10 **average annual COPERS retirement benefit based on June 30, 2012 valuations was**
11 **\$28,912, but dispute this statement to the extent Plaintiffs suggest that this number**
12 **is the current average benefit or otherwise representative of average COPERS**
13 **annual benefits more broadly.**

14 120. The implementation of the snapshot did in fact reduce the value of the
15 pension benefits of Plaintiffs and their constituents. *See, e.g.,* Pimentel Decl. ¶ 7; Ramirez
16 Decl. ¶ 7, L Pedraza Decl. ¶ 4 and R. Pedraza Decl. ¶ 4

17 **Defendants' Response: Disputed. Defendants object to the allegation in**
18 **paragraph 120 because it is a legal conclusion masquerading as a statement of fact.**
19 **Further, Defendants dispute that the snapshot reduced the pension benefits of**
20 **Plaintiffs and their constituents. First, none of the named plaintiffs have retired, so**
21 **they were not receiving pension benefits that could have been reduced by the**
22 **snapshot. Further, Plaintiffs are legally entitled only to those pension benefits**
23 **provided in the Charter. Because the Charter prohibits pension spiking, the**
24 **elimination of pension spiking did not reduce the benefits Plaintiffs are entitled to**
25 **in the future.**

26 **Defendants do not dispute that pension spiking increases the amount of**
27 **pension benefit an employee receives, and so in that sense, the elimination of**
28 **spiking "reduces" the pension amount the employee can receive.**

1 **Finally, Defendants object to the relevance of the Pedraza declarations.**
2 **Neither Louisa nor Russell Pedraza are named plaintiffs to this suit, nor are they**
3 **members of the organizational Plaintiffs.**

4 121. By way of example, two of the individuals harmed by the benefit formula
5 change are former Executive Board members for Local 2960, both of whom retired
6 shortly after the benefit formula reduction yet both of whom had benefits that were less
7 as a result of the exclusion of some of the vacation pay paid at termination. *See*
8 L Pedraza Decl. ¶ 4 and R. Pedraza Decl. ¶ 4.

9 **Defendants' Response: Disputed in part. First, Defendants object to the**
10 **allegation that two individuals were "harmed by the benefit formula change"**
11 **because it is a legal conclusion masquerading as a statement of fact. Further,**
12 **Defendants dispute that there was a benefit formula change; the snapshot did not**
13 **alter or otherwise impact the pension benefit formula in the Charter.**

14 **Defendants do not dispute that Louisa Pedraza and Russell Pedraza were not**
15 **allowed to spike their pensions with vacation pay accrued after July 1, 2014, but**
16 **Defendants object to the relevance of the Pedraza declarations. Neither Louisa nor**
17 **Russell Pedraza are named plaintiffs to this suit, nor are they members of the**
18 **organizational Plaintiffs.**

19
20 DATED this 10th day of May, 2017.

21 OSBORN MALEDON, P.A.

22
23 By /s/ Hayleigh S. Crawford
24 Colin F. Campbell
25 Eric M. Fraser
26 Hayleigh S. Crawford
27 2929 North Central Avenue, 21st Floor
28 Phoenix, Arizona 85012-2793

Attorneys for Defendants

1 THE FOREGOING has been electronically
2 filed and a COPY electronically delivered
3 this 10th day of May, 2017, to:

4 The Honorable Roger Brodman
5 Maricopa County Superior Court
6 125 West Washington, ECB 413
7 Phoenix, Arizona 85003

8 COPY of the foregoing e-mailed
9 this 10th day of May, 2017, to:

10 Susan Martin
11 Daniel L. Bonnett
12 Jennifer Kroll
13 MARTIN & BONNETT, P.L.L.C.
14 1850 North Central Avenue, Suite 2010
15 Phoenix, Arizona 85004
16 smartin@martinbonnett.com
17 dbonnett@martinbonnett.com
18 jkroll@martinbonnett.com
19 tmahabir@martinbonnett.com

20 *Attorneys for Plaintiffs and the Proposed Class*

21 /s/ Rebecca Warinner
22 _____
23 7072835

24
25
26
27
28

EXHIBIT 18

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

American Federation of State,)	
County and Municipal Employees,)	No. CV 2014-011778
AFL-CIO, Local 2384, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
City of Phoenix; City of Phoenix)	
Employee Retirement System; and)	
City of Phoenix Retirement System)	
Board,)	
)	
Defendants.)	
_____)	

RULE 30(b)(6) DEPOSITION OF CITY OF PHOENIX
BY AND THROUGH CINDY BEZAURY

Phoenix, Arizona
February 22, 2017
1:10 p.m.

REPORTED BY:
Gary W. Hill, RMR, CRR
AZ Certified Court
Reporter No. 50812

1 RULE 30(b)(6) DEPOSITION OF CITY OF PHOENIX
2 BY AND THROUGH CINDY BEZAURY, taken on February 22,
3 2017, commencing at 1:10 p.m., at the law offices of
4 MARTIN & BONNETT, P.L.L.C., 1850 North Central Avenue,
5 Suite 2010, Phoenix, Arizona, before GARY W. HILL, RMR,
6 CRR, a Certified Court Reporter in the State of Arizona.

7
8
9 * * *

10
11 APPEARANCES:

12 For the Plaintiffs:

13 MARTIN & BONNETT, P.L.L.C.
14 By: Jennifer Kroll, Esq.
15 1850 North Central Avenue, Suite 2010
16 Phoenix, Arizona 85004
17 (602) 240-6900
18 jkroll@martinbonnett.com

19 For the Defendants:

20 OSBORN MALEDON, P.A.
21 By: Hayleigh S. Crawford, Esq.
22 2929 North Central Avenue, 21st Floor
23 Phoenix, Arizona 85012
24 (602) 640-9000
25 hcrawford@omlaw.com

26 ALSO PRESENT:

27 Stephanie Hart, Esq.
28 Michael Licata

1 sometimes.

2 A. Yes, I know.

3 Q. The vacation sell-back, those hours that are
4 sold back under the vacation sell-back provision of
5 AR 2.18, those payments are still included in
6 compensation for pension purposes; is that right?

7 A. Yes.

8 Q. Did the elected officials make any
9 determination about vacation sell-back?

10 MS. CRAWFORD: Objection, form.

11 THE WITNESS: No.

12 BY MS. KROLL:

13 Q. And are you aware of the City making any
14 determination at any time regarding whether vacation
15 sell-back should be included in compensation for pension
16 purposes?

17 A. Not up to this point.

18 Q. Not up to this point makes me think that
19 there's some qualification to your answer. Has a
20 determination been made?

21 A. No.

22 Q. Is that undergoing review at the moment?

23 A. Pending litigation, there will be consideration
24 given.

25 Q. Consideration given to not include vacation

EXHIBIT 19

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

American Federation of State,)	
County and Municipal Employees,)	
AFL-CIO, Local 2384, et al.,)	
)	
Plaintiffs,)	
)	
vs.)	No. CV2014-011778
)	
City of Phoenix; City of Phoenix)	
Employee Retirement System; and City)	
of Phoenix Retirement System Board,)	
)	
Defendants.)	
)	

DEPOSITION OF SCOTT MILLER

Phoenix, Arizona
February 17, 2017
9:06 a.m.

REPORTED BY:
Kristy A. Ceton, RPR
AZ Certified Court Reporter No. 50200

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF SCOTT MILLER

commenced at 9:06 a.m., on February 17, 2017, at
Martin & Bonnett, 1850 North Central Avenue, Suite
2010, Phoenix, Arizona, before Kristy A. Ceton, RPR,
Arizona Certified Court Reporter No. 50200.

* * *

APPEARANCES:

For the Plaintiffs:

MARTIN & BONNETT, PLLC
By: Jennifer Kroll, Esq.
1850 North Central Avenue
Suite 2010
Phoenix, Arizona 85004

For the Defendants:

OSBORN MALEDON, P.A.
By: Hayleigh S. Crawford, Esq.
Eric Fraser, Esq.
2929 North Central Avenue
Suite 2100
Phoenix, Arizona 85012

Also Present:

Stephanie Hart

1 the payment for vacation -- accrued vacation; is that
2 right?

3 A. Correct.

4 Q. And that payment is for accrued vacation
5 at separation of employment; is that right?

6 A. At retirement. Correct.

7 Q. And that changed in 2013 for middle
8 managers and executives; is that right?

9 A. I believe December 31.

10 Q. And for the rest of the employees in the
11 retirement system, that changed in July 2014?

12 A. The very beginning, correct.

13 Q. Okay. Did the retirement board make a
14 determination to exclude a portion of vacation
15 payouts at retirement from final average
16 compensation?

17 MS. CRAWFORD: Objection. Form.

18 THE WITNESS: I guess I'm not clear on
19 your question.

20 Q. BY MS. KROLL: Sure.

21 You told me about a change that happened
22 called a vacation snapshot in the end of 2013 and
23 then beginning of July 2014. And was that -- was
24 that change something that was enacted by the
25 retirement board?

1 A. The snapshot was promulgated by the city
2 manager's office through an administrative
3 regulation.

4 Q. And did the retirement board take any
5 action with respect to that snapshot?

6 A. None that I could find.

7 Q. Do you know, has -- Let me start that
8 over.

9 Has the retirement board made any sort of
10 determination regarding vacation pay and whether it's
11 included in compensation for -- under the City of
12 Phoenix retirement plan?

13 MS. CRAWFORD: Objection. Form.

14 THE WITNESS: Not that I could find.

15 MS. KROLL: I'm going to show you another
16 document, which is very long, but I'm not going to go
17 through the whole thing.

18 (Exhibit 2 was marked for identification.)

19 Q. BY MS. KROLL: You have what's been
20 marked Exhibit 2, which is a document that has Bates
21 numbers 14FP016397 through 14FP016577. And I'm not
22 going to make you go through the whole thing or even
23 identify the whole thing.

24 But I would like you to turn to
25 14FP016576, please?

1 Q. Are you familiar with this document?

2 A. Yes.

3 Q. And, to your understanding, it's a copy
4 of the city charter?

5 A. The former city charter, yes.

6 Q. The one that was in effect in and around
7 2013?

8 A. Yes. Well, it -- At some point. The --
9 there's a -- on page -- I don't see a page. CHT:67.
10 Immediately after the definition of tier 2 member.
11 The upper right-hand column, it says "Effective
12 6/17/2013." So this was effective for part of 2013.
13 Yes.

14 Q. So some time after June 2013?

15 A. Yes.

16 Q. Because there was a tier 3 that was added
17 later; is that right?

18 A. That's correct.

19 Q. Okay. And if you could look at the
20 definition of final average compensation, which is on
21 CHT:66. I'm glad you noticed those numbers. Article
22 -- or Section 2.14. Do you see that?

23 A. Yes.

24 Q. And if you look at the third sentence of
25 that definition, it says, "For the purposes of

1 determining benefits, based on final average
2 compensation, any compensation in excess of the
3 limitations established by section 401(a)(17) of the
4 Internal Revenue Code including applicable
5 adjustments shall be disregarded."

6 Do you see that?

7 A. Yes.

8 Q. And are you familiar with that
9 limitation?

10 A. Yes.

11 Q. And does COPERS disregard the benefits in
12 excess of the 401(a)(17) limits?

13 A. The --

14 MS. CRAWFORD: Objection. Form.

15 THE WITNESS: The 401(a)(17) limits are a
16 limit on pensionable compensation, not a limit on
17 benefits.

18 Q. BY MS. KROLL: COPERS, in fact, pays
19 benefits above the 401(a)(17) limit; isn't that
20 correct?

21 MS. CRAWFORD: Objection. Form.

22 THE WITNESS: Again, 401(a)(17) doesn't
23 limit benefits, it limits compensation. That's taken
24 into account for benefits.

25 Q. BY MS. KROLL: Okay. So let me rephrase.

1 You're right.

2 So COPERS actually has an excess benefit
3 arrangement; is that right?

4 MS. CRAWFORD: Objection. Form.

5 THE WITNESS: The City does, yes.

6 Q. BY MS. KROLL: Okay. And that's not paid
7 out of COPERS?

8 A. That is correct.

9 Q. And what's your understanding of what the
10 excess benefit arrangement is?

11 A. The excess benefit arrangement is a tool
12 that the City uses to provide retirement benefit --
13 retirement-like benefits to individuals who would
14 otherwise be entitled to a benefit from COPERS that
15 would exceed the federal limitation.

16 Q. And are you aware of any statutory
17 authority for paying those benefits?

18 MS. CRAWFORD: Objection. Form.

19 THE WITNESS: I don't know the state
20 statutes well enough to be able to tell you that, I
21 guess.

22 Q. BY MS. KROLL: Is there any authority
23 under the City statutes for doing that?

24 MS CRAWFORD: Objection. Form.

25 THE WITNESS: I'm sorry. For doing what?

1 Q. BY MS. KROLL: For paying benefits under
2 the excess benefit arrangement.

3 A. I don't know if the EBA -- short for
4 excess benefit arrangement. I don't know if the EBA
5 is out of the city charter or not.

6 Q. There is a COPERS' policy for paying
7 those excess benefits under the excess benefit
8 arrangement, isn't there?

9 A. I don't know if there's a specific policy
10 or not.

11 Q. If you could turn to policy 174 in here.
12 And, I'm sorry. Exhibit -- Is that 2?

13 MS. CRAWFORD: Yes.

14 THE WITNESS: 2.

15 Q. BY MS. KROLL: Exhibit 2. If you could
16 turn to policy 174, which is 14FP016530.

17 A. Yes. We have a policy.

18 Q. Does that refresh your recollection?

19 A. Yes.

20 Q. That COPERS has a policy regarding the
21 excess benefit arrangement, correct?

22 A. Yes.

23 Q. And this was a policy established by the
24 board; is that right?

25 A. This is.

EXHIBIT 20

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

FRANK PICCIOLI; DEBRA NOVAK-SCOTT;)
 JAMES P. TIERNEY II; 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 AND MUNICIPAL EMPLOYEES,)
 AFL-CIO, LOCAL 2384; ADMINISTRATIVE)
 SUPERVISORY PROFESSIONAL & TECHNICAL) No. CV2012-010330
 EMPLOYEES ASSOCIATION,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF PHOENIX; CITY OF PHOENIX)
 EMPLOYEE RETIREMENT SYSTEM; CITY OF)
 PHOENIX RETIREMENT SYSTEM BOARD,)
)
 Defendants.)
 _____)

DEPOSITION OF DONNA BUELOW

Phoenix, Arizona
February 13, 2013
9:47 a.m.

REPORTED BY:
Kristy A. Ceton, RPR
AZ Certified Court Reporter No. 50200

1 DEPOSITION OF DONNA BUELOW
2 commenced at 9:47 a.m., on February 13, 2013, at
3 Phoenix City Hall, 200 West Washington Street, 13th
4 Floor, Phoenix, Arizona, before Kristy A. Ceton, RPR,
5 Arizona Certified Court Reporter No. 50200.

6
7 * * *

8
9 APPEARANCES:

10 For the Plaintiffs:
11 MARTIN & BONNETT, PLLC
By: Jennifer Kroll, Esq.
12 1850 North Central Avenue
Suite 2010
13 Phoenix, Arizona 85004
jkroll@martinbonnett.com

14
15 For the Defendants:
LITTLER MENDELSON, PC
16 By: Wesley E. Stockard, Esq.
3344 Peachtree Road N.E.
17 Suite 1500
Atlanta, Georgia 30326
18 wstockard@littler.com

19 Also Present:
20 Mike Hamblin

21
22
23
24
25

1 in the calculation of retirement benefits?

2 MR. STOCKARD: Objection to form. Vague.

3 THE WITNESS: I'm not aware of the
4 specific decision concerning that. It is a -- a
5 process that the sick leave is intended to provide
6 monetary support to the individual when they're
7 unable to work.

8 Q. BY MS. KROLL: Let's talk about vacation
9 pay. If an individual is paid vacation pay, accrued
10 vacation pay at termination of employment, is that
11 vacation pay included in the calculation of
12 retirement benefit?

13 MR. STOCKARD: Objection to form.

14 THE WITNESS: Yes. Unused vacation paid
15 at termination is included in the calculation if it's
16 within the termination and if that is the highest
17 three years within the last 10.

18 Q. BY MS. KROLL: Are you aware if somebody
19 made a determination that that unused vacation pay
20 should be included in the calculation of retirement
21 benefits?

22 MR. STOCKARD: Objection to form. Vague.

23 THE WITNESS: I'm not aware of the
24 specific decision, no.

25 Q. BY MS. KROLL: You said "specific

1 decision." Are you aware whether a decision was
2 made?

3 A. I am not.

4 Q. Okay. Do you know how long unused
5 vacation pay has been included in the calculation of
6 -- Sorry. Let me start over.

7 Do you know how long the unused vacation
8 pay that's paid out at termination of employment has
9 been included in the calculation of retirement
10 benefits?

11 MR. STOCKARD: Objection to form.

12 THE WITNESS: I am not aware of that, no.

13 Q. BY MS. KROLL: Has it been since you
14 began employment with the City?

15 MR. STOCKARD: Objection to form.

16 THE WITNESS: It's my recollection that
17 it has been included since I have been working here,
18 yes.

19 Q. BY MS. KROLL: Are you aware of any
20 changes that have been made to any policies
21 concerning unused vacation pay that's paid at
22 termination of employment and the calculation of
23 retirement benefits?

24 MR. STOCKARD: Objection to form. Vague.
25 Compound.

EXHIBIT 21

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

FRANK PICCIOLI; DEBRA NOVAK-SCOTT;)
 JAMES P. TIERNEY II; 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 AND MUNICIPAL EMPLOYEES,)
 AFL-CIO, LOCAL 2384; ADMINISTRATIVE)
 SUPERVISORY PROFESSIONAL & TECHNICAL) No. CV2012-010330
 EMPLOYEES ASSOCIATION,)
)
 Plaintiffs,)
)
 vs.)
)
 CITY OF PHOENIX; CITY OF PHOENIX)
 EMPLOYEE RETIREMENT SYSTEM; CITY OF)
 PHOENIX RETIREMENT SYSTEM BOARD,)
)
 Defendants.)
 _____)

DEPOSITION OF JANET SMITH

Phoenix, Arizona
February 13, 2013
12:57 p.m.

REPORTED BY:
Kristy A. Ceton, RPR
AZ Certified Court Reporter No. 50200

1 DEPOSITION OF JANET SMITH
2 commenced at 12:57 p.m., on February 13, 2013, at
3 Phoenix City Hall, 200 West Washington Street, 13th
4 Floor, Phoenix, Arizona, before Kristy A. Ceton, RPR,
5 Arizona Certified Court Reporter No. 50200.

6
7 * * *

8
9 APPEARANCES:

10 For the Plaintiffs:
11 MARTIN & BONNETT, PLLC
12 By: Jennifer Kroll, Esq.
13 1850 North Central Avenue
14 Suite 2010
15 Phoenix, Arizona 85004
16 jkroll@martinbonnett.com

17 For the Defendants:
18
19 LITTLER MENDELSON, PC
20 By: Wesley E. Stockard, Esq.
21 3344 Peachtree Road N.E.
22 Suite 1500
23 Atlanta, Georgia 30326
24 wstockard@littler.com

25 Also Present:
Mike Hamblin
Ron Ramirez

1 When the City started making lump sum
2 payouts of sick leave at time of termination of
3 employment to members of COPERS, did the City make a
4 determination regarding whether those lump sum sick
5 leave payments were required to be included in the
6 calculation of retirement benefits?

7 A. Did they make a determination that it was
8 required to be?

9 Q. Yes.

10 A. Not that I'm aware of.

11 Q. Has the City calculated the cost of
12 paying sick leave at time of termination of
13 employment to City employees?

14 A. Not that I'm aware of.

15 Q. Okay. Has the City calculated the cost
16 of including lump sum payments to -- lump sum
17 payments of sick leave at time of termination of
18 employment in retirement benefits?

19 A. No. And if I could kind of clarify your
20 prior question. If I understood your question, now
21 that I'm thinking about it, did the City calculate
22 the cost of the payout; not whether it's pensionable
23 or not, but the cost of the payout?

24 Q. Correct.

25 A. Since the payout amount was negotiated, I

EXHIBIT 22

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

FRANK PICCIOLI; DEBRA NOVAK-SCOTT;)
JAMES P. TIERNEY II; RONALD RAMIREZ,)
on behalf of themselves and all)
others similarly situate and)
AMERICAN FEDERATION OF STATE COUNTY)
AND MUNICIPAL EMPLOYEES, AFL-CIO,)
LOCAL 2960; AMERICAN FEDERATION OF)
STATE 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.)

DEPOSITION OF SCOTT MILLER

Phoenix, Arizona
March 12, 2015
1:07 p.m.

REPORTED BY:
Kristy A. Ceton, RPR
AZ Certified Court Reporter No. 50200

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

DEPOSITION OF SCOTT MILLER

commenced at 1:07 p.m., on March 12, 2015, at Martin & Bonnett, P.L.L.C., 1850 North Central Avenue, Suite 2010, Phoenix, Arizona, before Kristy A. Ceton, RPR, Arizona Certified Court Reporter No. 50200.

* * *

APPEARANCES:

For the Plaintiffs:

MARTIN & BONNETT, P.L.L.C.
By: Jennifer Kroll, Esq.
1850 North Central Avenue
Suite 2010
Phoenix, Arizona 85004

For the Defendants:

LITTLER MENDELSON, P.C.
By: Wesley E. Stockard, Esq.
3344 Peachtree N.E.
Suite 1500
Atlanta, Georgia 30326

1 A. No.

2 Q. And what conversations have you had with
3 your staff about the retirement plan provisions of
4 the charter?

5 A. Just talking with staff about different
6 benefit levels for different years of service. Just
7 general information about the system.

8 Q. Have you had any conversations with your
9 staff about the compensation or final average
10 compensation provisions of the retirement system
11 provisions of the Phoenix City Charter?

12 A. I think the answer to that is yes, but it
13 would have been related to whether we use the high
14 three or the high five. I don't think that I've had
15 a conversation regarding whether sick or vacation
16 leave should be included or excluded.

17 Q. Other than -- again, I don't want any
18 conversation specifically about this lawsuit with the
19 board. But have you had any -- or, that involve
20 legal advice.

21 Have you had any conversations with board
22 members about the compensation or final average
23 compensation provisions of the retirement plan
24 provisions of the Phoenix City Charter?

25 A. I do not believe so.

EXHIBIT 23

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)

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

WITNESS : PAGE

CATHY GLEASON

Cross-Examination/Direct	By Mr. Stockard	4
Further Examination	By Mr. Stockard	65
Redirect/Cross-Examination	By Mr. Bonnett	69
Redirect Examination	By Mr. Stockard	116

STEWART CASEY

Direct Examination	By Ms. Kroll	126
Court Questions of Witness Gleason		61
Exhibit 76 Admitted Into Evidence		93
Exhibits 61, 62 Admitted Into Evidence		124

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

1 Yup, here it is. Okay.

2 Q. I believe you identified this document as
3 containing information that is put together and provided
4 to members to review as part of understanding their
5 benefits under the COPERS -- under the retirement plan; is
6 that correct?

7 A. Yes.

8 Q. And this is not the Charter; correct?

9 A. Correct.

10 Q. This is something in addition to the Charter;
11 correct?

12 A. Yes, it's considered a summary plan description.

13 Q. And if you'll look at the last page of
14 Exhibit 38, which should be D 000260, under the heading
15 Retirement Information there's a question. It says,
16 quote, "How can I get information about my retirement
17 benefits, question mark." See what I'm referring to?

18 A. I do.

19 Q. And it says, quote, "The city personnel
20 department in coordination with COPERS organizes a number
21 of presentations every year. These programs cover many
22 benefits, including retirement, health, insurance, social
23 security, and deferred compensation; is that correct?

24 A. Yes.

25 Q. So COPERS was advising city employees who were

1 members of the retirement plan that the City personnel
2 department in coordination with COPERS organized
3 presentations during the year and among those issues that
4 were covered in the presentation were retirement benefits;
5 is that right?

6 A. Yes.

7 Q. And that was a source of information that COPERS
8 was advising employees that they could rely on in terms of
9 understanding what those benefits were?

10 A. I think the presentations were just conveying how
11 the plan was being administered at the time.

12 Q. Right. And my question -- my question was that
13 was a place that COPERS, in conjunction with the City
14 personnel department, was directing retirees -- I'm
15 sorry -- directing employees that they could go to get
16 information about their retirement benefits?

17 A. Yes.

18 Q. You were asked some questions about contracting
19 under the City as you understand it. You were involved in
20 doing some contracting or knew how the contracting process
21 works.

22 What kind of contracting experience did you
23 have in that regard? Did you put together contracts?

24 A. In conjunction with the law department, and I
25 didn't do a great many of contracts. I obviously read a

1 Colin F. Campbell, 004955
2 Eric M. Fraser, 027241
3 Hayleigh S. Crawford, 032326
4 Osborn Maledon, P.A.
5 2929 N. Central Ave., Suite 2100
6 Phoenix, Arizona 85012-2793
7 (602) 640-9000
8 ccampbell@omlaw.com
9 efraser@omlaw.com
10 hcrawford@omlaw.com
11 Attorneys for Defendants

9 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

10 IN AND FOR THE COUNTY OF MARICOPA

11 American Federation of State County and
12 Municipal Employees, AFL-CIO, Local
13 2384, et al.

14 Plaintiffs,

15 v.

16 City of Phoenix, et al.,

17 Defendants.

No. CV2014-011778

**STIPULATION RE AMENDED
PROPOSED FORM OF JUDGMENT**

(Assigned to the
Honorable Roger Brodman)

18
19 Plaintiffs (American Federation of State County And Municipal Employees,
20 AFL-CIO, Local 2384; American Federation of State County And Municipal
21 Employees, AFL-CIO, Local 2960; Administrative Supervisory Professional &
22 Technical Employees Association; Frank Piccioli; Ron Ramirez; Debra Novak Scott;
23 Marshall Pimentel; and Jason Stokes) and Defendants (City of Phoenix; City of Phoenix
24 Employee Retirement System; and City of Phoenix Retirement System Board) hereby
25 stipulate and agree as follows:

26 1. Defendants have filed a motion for attorneys' fees. In the event that
27 motion were to be granted, and there is an award of attorneys' fees or costs in favor of
28 Defendants and against Plaintiffs in this action, such award shall be joint and severable

1 only among the non-individual plaintiffs (American Federation of State County And
2 Municipal Employees, AFL-CIO, Local 2384; American Federation of State County
3 And Municipal Employees, AFL-CIO, Local 2960; and Administrative Supervisory
4 Professional & Technical Employees Association). The individual Plaintiffs (Frank
5 Piccioli; Ron Ramirez; Debra Novak Scott; Marshall Pimentel; and Jason Stokes) shall
6 not bear any liability for any award of attorneys' fees or costs in this action.

7 2. The parties hereby stipulate to the form of the accompanying Amended
8 Proposed Final Judgment.

9 3. By entering into this stipulation, Plaintiffs do not stipulate that any award
10 of attorneys' fees or costs is warranted.

11 RESPECTFULLY SUBMITTED this 6th day of September, 2017.

12 OSBORN MALEDON, P.A.

13
14 By /s/ Eric M. Fraser
15 Colin F. Campbell
16 Eric M. Fraser
17 Hayleigh S. Crawford
2929 N. Central Avenue, Suite 2100
Phoenix, Arizona 85012

18 *Attorneys for Defendants*

19 MARTIN & BONNETT, PLLC

20
21 By /s/ Jennifer Kroll (with permission)
22 Susan Martin
23 Daniel Bonnett
24 Jennifer Kroll
4647 N. 32nd St., Suite 185
Phoenix, Arizona 85018

25 *Attorneys for Plaintiffs*

1 THE FOREGOING has been electronically
2 filed and a COPY electronically delivered
3 this 6th day of September, 2017, to:

4 The Honorable Roger Brodman
5 Maricopa County Superior Court
6 125 West Washington, ECB 413
7 Phoenix, AZ 85003

8 COPY of the foregoing e-mailed
9 this 6th day of September, 2017, to:

10 Susan Martin
11 Daniel L. Bonnett
12 Jennifer Kroll
13 MARTIN & BONNETT, P.L.L.C.
14 4647 N. 32nd St., Suite 185
15 Phoenix, Arizona 85018
16 smartin@martinbonnett.com
17 dbonnett@martinbonnett.com
18 jkroll@martinbonnett.com
19 tmahabir@martinbonnett.com
20 *Attorneys for Plaintiffs and the Proposed Class*

21 /s/ Brenda Wendt

22
23
24
25
26
27
28