

SUPREME COURT OF ARIZONA

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

Plaintiffs/ Appellants,

vs.

CITY OF PHOENIX, et al.,

Defendants/ Appellees.

Arizona Supreme Court
No. CV-19-0143-PR

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

Maricopa County
Superior Court
No. CV2014-011778

**COMBINED RESPONSE TO
PETITION FOR REVIEW AND APPENDIX**

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PRELIMINARY STATEMENT

This Court ordered that it will consider this case together with *Piccioli v. City of Phoenix*, No. CV-19-0116-PR, the petition from [246 Ariz. 371](#) (App. 2019). Because this case and *Piccioli* involve substantially overlapping facts, parties, and legal issues, this response will frequently refer to the *Piccioli* opinion and the City's response to the *Piccioli* petition for review ("*Piccioli* PFR Response").

INTRODUCTION

The plaintiffs asked the courts to recognize a permanent, prospective, perpetual right for municipal employees to artificially inflate their pensions by treating one-time cash payouts for accrued leave as part of their salary or wages for pension purposes. Both the superior court and court of appeals correctly rejected this attempt to "constitutionalize" pension spiking because, under the plain terms of the City's retirement plan, one-time cash payouts for unused leave are not pensionable "compensation."

The lower courts' decisions are legally correct and fundamentally fair. The City's regulation on pension spiking affects only *future* leave accruals, thus ensuring that the revisions do not impact any leave accrued by the

Members in reliance on the City's mistaken past practice. This Court should deny review.

BACKGROUND

The superior court resolved this case on competing summary judgment motions using the parties' stipulated facts. [CAPP123](#) ("The parties agree that there are no determinative disputes of fact."); *see also* Op. ¶ 2 ("The material facts are undisputed."). Both sides agreed that the court could decide their motions as a matter of law. [CAPP138](#) ("The Plaintiffs agree that there are virtually no factual disputes that are—that could be material."). The Petition nonetheless relies heavily on the Members' additional and controverting statement of facts in support of their unsuccessful summary judgment motion. The Court should disregard these disputed facts, which are neither relevant nor material to the underlying decisions.

I. COPERS.

City employees participate in the City of Phoenix Employees' Retirement System (COPERS), the terms of which are established in the City Charter.¹ [Charter ch. XXIV, art. II](#). COPERS provides eligible retirees with a

¹ References to COPERS or the Charter refer to the 2014 version (excerpted at [CAPP030-67](#)).

fixed pension benefit for life. *Id.* § 19. The benefit is based on a Member's service (time) and pre-retirement earnings (pay), multiplied by a benefit rate set in the Plan:

$\text{Pension} = \text{Credited Service} \times \text{Final Average Compensation} \times \text{Benefit Rate}$
--

Id.

Not all money paid to City employees is “pensionable,” however. Op.

¶ 4. Rather, COPERS defines “final average compensation” and “compensation” for pension purposes:

“**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. . . .

“**Compensation**” means a member's salary or wages paid him by the City for personal services rendered by him to the City. . . .

Id. §§ 2.14, 2.13 (emphases added).

For the time component of the formula, COPERS counts an employee's “years and months of service,” plus unused sick leave time at retirement. *Id.*

§§ 2.8, 14.4.

The Retirement Board administers the Plan. *Charter ch. XXIV, art. II, § 4.1.* Although the Board has some discretion, the Charter fixes COPERS's

terms and benefits. Changing the Plan requires a majority vote of the taxpayers. *Id.* ch. XXII, § 2.

II. The City's vacation-leave policies.

A. AR 2.18.

The City has offered vacation leave to its employees since at least 1979. Op. ¶ 6. In addition to the leave itself, the City offers three related benefits: employees may (1) accrue and carry over vacation leave; (2) "sell back" up to 80 hours of accrued leave each year; and (3) "cash out" up to 2.5 years' worth of accrued vacation leave at retirement. Op. ¶¶ 6-7.

Administrative Regulation 2.18 contains the rules governing vacation-leave benefits. Op. ¶¶ 6-7. The 2012 version of AR 2.18 provided the following rules for employees in Units 2, 3, and 7:

Years of service	Accrual per month	Max carryover	Max accrual paid at retirement	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 accrued vacation during the year. Unit 3: 80 hours after accruing 120 hours, contingent on using 40 hours of accrued vacation during the year. Unit 7: 40 hours, contingent on using 40 hours of accrued vacation during the 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	

CAPP111-12 (Stipulated Facts) at ¶ 38.

Although AR 2.18 spells out the specific rules for using, selling back, and cashing out vacation leave, until the revisions at issue, the AR said nothing about the pensionability of any vacation-related payments. [CAPP112](#) at ¶ 39; [CAPP124](#). The Members' labor contracts likewise said nothing. [CAPP119](#) at ¶ 50 (Unit 2 MOU); [CAPP115-16](#) at ¶ 45 (Unit 3 MOU); [CAPP120](#) at ¶¶ 58-59 (Unit 7 MOA). In practice, however, City staff lumped vacation-related payments (from using, selling back, or cashing out vacation leave) in with employees' regular pay when reporting to COPERs. *See* Op. ¶ 8; [CAPP124](#).

Adding one-time retirement cash-outs on top of regular salary and wages leads to an artificial boost in the employee's retirement-year compensation, which then skews (i.e., "spikes") the employee's final average compensation and resulting benefit amount. *See* Op. ¶¶ 8-9. And because COPERs pays retirement benefits for life, even relatively small "spikes" wind up dramatically increasing the City's pension costs. *See id.* ¶ 9; *see also* City's Answering Br. at 18-22.

B. Revised AR 2.18.

The last economic downturn caused serious funding problems for public pensions, including COPERs. [CAPP124](#). In 2012-2013, the Mayor and

City Council approved plans to exclude retirement cash-outs for unused sick leave and vacation leave from final average compensation. Op. ¶ 11. The City Manager revised AR 2.18 to implement the new vacation-leave policy, effective July 1, 2014. Op. ¶ 12.

The revised AR 2.18 clarifies that retirement cash-outs for accrued vacation leave at retirement are not pensionable compensation for COPERS purposes. [CAPP124](#); Op. ¶ 10. At the same time, however, it treats retirement cash-outs of all *previously accrued* vacation leave as pensionable compensation. Op. ¶ 12. In other words, the revised AR 2.18 takes a “snapshot” of an employee’s accrued vacation-leave as of June 30, 2014, and grandfathers it under the old policy. *Id.* The snapshot thus ensures that employees who accrued vacation leave in reliance on the City’s mistaken past practice do not lose any benefit because of the City’s error. [CAPP124](#) (“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 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 FAC	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 (FAC).
Current Employee	All included in FAC	Can receive lump-sum cash-out, but not included in FAC	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 FAC.
Future Employee	N/ A, because not yet hired	Can receive lump-sum cash-out, but not included in FAC	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 FAC.

Importantly, the *only* change revised AR 2.18 makes is clarifying that accrued vacation cash-outs will not be treated as pensionable compensation *prospectively*. See Op. ¶ 12. Employees can still accrue, carry over, sell back, and cash out vacation-leave under the revised AR. Further, amounts paid for vacation-leave an employee uses or sells back during the year still qualify as pensionable compensation. See *id.* And, under the snapshot, cash-outs

paid for vacation-leave accrued under the City's old practice still count towards pensions, as well. *Id.*

III. Procedural history.

The Members sued the City, COPERS, and the COPERS Board, alleging that revised AR 2.18 violates the Charter and the Arizona and U.S. Constitutions by diminishing their retirement benefits. The Members include several current City employees in Units 2, 3, and 7 and their labor unions.

After stipulating to the relevant facts, the parties filed summary judgment motions focused on interpreting the Charter's text. Op. ¶ 14; [CAPP123](#). The superior court ruled in the City's favor, finding "that vacation payouts at retirement are not annual salary and wages as those terms are defined in the City Charter," [CAPP125](#), and awarding \$141,986.70 in attorneys' fees, [CAPP132](#).

The court of appeals affirmed both rulings. Op. ¶¶ 36, 38.

ISSUES

1. Whether members of COPERS have public-pension rights under the common law or Arizona or federal constitutions that extend beyond the plan terms contained in the Charter?

2. Whether a one-time cash-out at retirement for accrued vacation leave qualifies as pensionable compensation under the Charter.

3. Whether the superior court had discretion to award 50% of the City's requested attorneys' fees.

REASONS TO DENY REVIEW

I. The Panel properly applied Arizona law on public pension benefits.

A. The Pension and Contracts Clauses secure the Members' right to receive benefits in accordance with COPERS.

In Arizona, a public employee's right to retirement benefits is contractual. *Yeazell v. Copins*, 98 Ariz. 109, 112-15 (1965); Ariz. Const. art. XXIX, § 1(C)-(D) ("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." (emphases added)).

Contract principles and the Pension Clause "only protect whatever pension rights [a plaintiff] has under applicable law"—i.e., under the retirement system. *Cross v. Elected Officials' Ret. Plan*, 234 Ariz. 595, 599, ¶ 9 (App. 2014); 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, Phoenix voters fixed the terms and benefits of the COPERS retirement system in the Charter. Op. ¶¶ 2-5. As discussed in [Section II](#) below, nothing in the Charter’s text requires the City to count a one-time retirement cash-out for accrued vacation leave in an employee’s final average compensation. Op. ¶¶ 31-32. For that reason, cases involving changes to a benefit term in the text of the retirement plan (e.g., *Yeazell*, [98 Ariz. 109](#); *Fields v. Elected Officials’ Ret. Plan*, [241 Ariz. 33](#) (2016)) do not apply. Cf. Pet. at 14-15. Here, “the Plan d[oes] not authorize the City to count one-time cash payouts for accrued vacation-leave at retirement as pensionable compensation,” and thus revised AR 2.18 does not unconstitutionally diminish or impair the Members’ contractual right to receive pension benefits in accordance with COPERS’s terms. Op. ¶ 32.

B. Only the voters can amend the Charter.

The Panel also correctly recognized that the City’s past practice cannot change the terms of the Charter adopted by Phoenix voters. See Op. ¶¶ 23-28. The Charter serves as the City’s constitution, see *Paddock v. Brisbois*, [35 Ariz. 214, 221](#) (1929), and any amendments require a majority vote of

Phoenix electors. [Charter ch. XXII, § 2](#); *see also* Pet. at 7 (acknowledging that “[o]nly voters can amend COPERS, a part of the City Charter.”). Phoenix voters never authorized or approved the practice of allowing employees to spike their pensions with vacation cash-outs at retirement. Op. ¶¶ 9, 22, 24. Consequently, the City’s past practice cannot “bend the will of voters and amend the Charter.” Op. ¶ 24.

Contrary to the Members’ claims (at 11-15), the Opinion does not leave the Members without a remedy if the City promises an extra-contractual benefit and then fails to deliver. Although administrative practice cannot give rise to a constitutional claim to retirement benefits, it may create an equitable one. *See Cross*, [234 Ariz. at 606-07, ¶¶ 39-45](#) (holding retiree had no constitutional claim as result of reduced benefit, but remanding for consideration of equitable estoppel argument). But the Members did not bring an equitable estoppel claim, presumably because the snapshot approach *already protects* and grandfathers in any vacation-leave benefits accrued in reliance on the City’s past practice.

C. The Panel correctly refused to recognize administrative practice as a new source of constitutionally protected benefits.

Although the Members recognize that the Charter *is* the retirement contract, they urged the court of appeals to recognize administrative practices as a new source of contractual rights to pension benefits. *See* Op. ¶ 29. The Panel correctly rejected this argument. Op. ¶¶ 30-32. No Arizona court has held that *Yeazell* or the Pension Clause give public employees an additional, extra-contractual right to benefits not authorized by the retirement plan itself. Op. ¶ 31 (“These authorities do not confer new or independent pension rights on Plan members, but instead protect the actual pension rights conferred on members under the Plan’s express terms.”).

The only contrary authority the Members offer is the non-binding, out-of-state outlier *Bowles v. Wash. Dep’t of Ret. Sys.*, [847 P.2d 440](#) (Wash. 1993). None of the other cases the Members cite (at 12-13) address whether a past practice creates a prospective, extra-contractual right to a benefit not otherwise allowed under the plan’s terms. *See, e.g., Wash. Ass’n of Cty. Officials v. Wash. Pub. Emp. Ret. Sys. Bd.*, [575 P.2d 230](#) (Wash. 1978) (administrators could not *retroactively* exclude accrued-leave cash-outs from pension calculation where that practice did not conflict with the plan terms);

Kranker v. Levitt, [327 N.Y.S.2d 259](#) (N.Y. Sup. Ct. 1971) (rejecting statutory amendment purporting to *retroactively* exclude accrued leave cash-outs from pension calculation), *aff'd*, [281 N.E.2d 840](#) (N.Y. 1972); *Halpin v. Neb. State Patrolmen's Ret. Sys.*, [211 Neb. 892](#) (1982) (same); *In re Pension Reform Litig.*, [32 N.E.3d 1](#) (Ill. 2015) (rejecting legislation that purported to *retroactively* change pension annuities); *Flisock v. State*, [818 P.2d 640](#) (Alaska 1991) (lump-sum leave payouts pensionable under statute defining pensionable pay as “any remuneration”).

Moreover, allowing past practice to create new rights to retirement benefits would prove unworkable in a state like Arizona, where pension benefits receive specific constitutional protection. If the Court adopted such a rule, any presentation, handbook, default practice, or even administrative oversight could give employees a permanent, prospective, and *constitutionally protected* right to a mistakenly provided benefit. *See* Pet. at 9-10, 11-15 (citing budget/actuarial reports, orientation materials, etc. as evidence of a vested right). The Panel correctly concluded that “[a]t issue is voter intent and City administrators cannot reshape the intent of the voters with errant practices.” Op. ¶ 28.

II. The Panel correctly interpreted the Charter.

A. Accrued-leave payouts are not pensionable “compensation” under the Charter’s text.

The Panel correctly followed *Piccioli*, [246 Ariz. 371](#), and *Cross*, [234 Ariz. 595](#), to conclude that the Charter does not require the City to treat accrued vacation-leave cash-outs as pensionable “salary or wages.” Op. ¶¶ 18-20. Both before and after the voters adopted the Charter’s definition of “compensation” in 1953, dictionaries defined “salary” and “wages” as fixed, regular payments made periodically, and this meaning is consistent with the Plan’s overall text and structure. See *Piccioli* PFR Response at 12-13 & n.3; City’s Answering Br. at 31-36; [CAPP068-87](#).

B. The Members’ interpretation clashes with COPERS’s terms and Arizona law.

Relying on various other dictionary definitions, the Members argue (at 16-17) that the Panel misinterpreted the plain meaning of “compensation,” i.e., “salary or wages.” As the court of appeals explained in *Piccioli* (followed by the Panel here), the Members’ definitions are overbroad and inconsistent with the Charter’s text. *Piccioli*, [246 Ariz. at 375-77](#), ¶¶ 16-21; see also City’s Answering Br. at 36-43.

Nor did the Panel err in refusing to defer to the City's past practice. *See* Pet. at 19. When the statutory text is plain, even a longstanding administrative practice cannot alter its meaning. Op. ¶¶ 24-25.

Finally, none of the various out-of-state cases the Members cite (at 16-17) show that "salary or wages," as used in the Charter, includes one-time cash-outs for accrued vacation leave. *See, e.g., Brampton Woolen Co. v. Local Union 112*, 61 A.2d 796, 797 (N.H. 1948) (interpreting an arbitration clause in a labor agreement, the court found that "under the agreement before us . . . vacation pay is included in the term wages and therefore arbitrable."); *see also* City's Answering Br. at 53-57. Indeed, the Members cite cases contrary to their position. For example, in *Gilliam v. Nevada Power Co.*, 488 F.3d 1189, 1196 (9th Cir. 2007) (an ERISA case), the court ruled that a lump-sum severance payout was not part of an employee's "wages or salary" under the company retirement plan, notwithstanding its broad interpretation of that phrase to mean "remuneration for services."

C. The Opinion relies on undisputed facts.

The Panel properly relied on the undisputed facts. The Members' arguments to the contrary distort the reasoning of the opinion and take the Panel's statements out of context. *See* Pet. at 18, 22.

First, contrary to the Petition’s claim (at 18), the Panel’s point about the 1973 amendment does not depend on the timing of when the cash-outs began. *See* Pet. at 18 (asserting that the Panel erroneously relied on a “disputed fact” regarding the date vacation-leave cash-outs were first offered). Whether employees could cash out accrued vacation leave in 1973 is irrelevant to the question of voter intent. Even assuming that accrued vacation-leave cash-outs were available and being used to spike pensions at that time, no evidence suggests that Phoenix voters knew about the practice. And even if they *did* know, the voters still could have amended COPERS to explicitly account for accrued vacation leave in the pension formula, the same way they did for accrued sick leave. The Panel properly considered this omission when interpreting the Charter’s text. Op. ¶ 22.

Second, the Panel did not conclude “that the record ‘does not indicate that officials have uniformly interpreted’ COPERS.” *Compare* Pet. at 20, *with* Op. ¶ 25. Rather, it observed more narrowly that “the record [does not] indicate that officials have uniformly interpreted ‘final average compensation’ since adopted,” in the context of distinguishing *Long v. Dick*, [87 Ariz. 25](#) (1959). Op. ¶ 25. And in *Long*, the uninterrupted, uniform interpretation of a school funding by various superintendents of public

instruction mattered only to the extent it helped to establish legislative intent. [87 Ariz. at 28-29](#) (giving “controlling weight to the fact” that members of the legislature were aware of the “uninterrupted administrative interpretation since the adoption of the statute,” which showed “not merely acquiescence on the part of the legislature, but as a practical effect, an endorsement of administrative conduct.”). Here, there is no similar evidence of a uniform, consistent, and widely known interpretation by the COPERS Board that would support an inference that Phoenix voters had effectively endorsed the City’s erroneous pension-spiking practices. Op. ¶¶ 9, 22, 24. Tellingly, the Members argue (at 16) only that the Board and City officials interpreted COPERS to allow pension spiking; they do not claim that the voters—whose intent is controlling, Op. ¶¶ 23-25—endorsed this interpretation.

Third, the Panel did not overlook that, “[u]nlike unused sick leave, accrued vacation is payable annually and upon any termination, not just at retirement.” Pet. at ¶ 20. The Panel acknowledged that difference, Op. ¶ 7 (describing retirement payouts for sick- and vacation-leave, and vacation sellback program), but found it irrelevant because the parties’ dispute concerns only the one-time retirement payouts and not the annual payments

under the vacation-sellback program. Op. ¶¶ 10–11. Whether for sick- or vacation-leave, employees can cash out multiple years’ worth of accrued leave *only once* in their career, at termination or retirement. Thus, both payouts are “irregular in time and amount.” Op. ¶ 20.

III. The superior court acted well within its discretion to award fees.

Finally, the superior court thoroughly explained its reasoning for awarding the City half its attorneys’ fees. [CAPP130-33](#). The court of appeals found no abuse of discretion. Although the Members claim error generally, they have not identified any issues warranting this Court’s review. *See* [ARCAP 23\(d\)\(3\)](#).

ATTORNEYS’ FEES

The City requests fees and costs under [ARCAP 21](#), [A.R.S. §§ 12-331, 12-341.01](#), and [12-342](#).

CONCLUSION

The Court of Appeals applied settled Arizona law to reach the correct result under the text of the Phoenix City Charter. Several Arizona decisions already address these issues, and the Members do not contend that any of those decisions are in conflict or should be overruled. The Court should deny review.

RESPECTFULLY SUBMITTED this 30th day of October, 2019.

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* 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. This Appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).

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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 retirant who elected an optional form of payment provided in Section 24.1 shall be the effective date of the retirant'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 retirant who is returned to the employ of the City his pension reserve, computed as of the date of his return, shall be transferred from the pension reserve fund to the employees' savings fund and pension accumulation fund in the same proportion that his pension reserve, as of the date of his retirement, was transferred from the employees' savings fund and pension accumulation fund to the pension reserve fund. The amount transferred to the employees' savings fund shall be credited to his individual account therein.

30. Mortality reserve fund.

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

31. Income fund.

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

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

32. Allowance of regular interest.

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

33. Expense fund.

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

34. Fiscal management.

- 34.1. 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 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

THE
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 *saintdom*, *sainthood*, *saintship*, *saintling*¹, nn., *saintlike*, *saintly*¹, aa., *saintliness* 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 SAY².

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.]

salā'am (-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. *salām*]

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

sālā'cious (-shus), a. Lustful, lecherous. Hence or cogn. **sala'ciously**² adv., **sala'ciousness**, **sālā'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; BILL⁴ of s.; s. *ring*, ring of buyers at auction; *salesman*, -*woman*, person engaged in selling goods in shop or as middleman between producer & retailer. [OE *sala* prob. f. ON *sala* cogn. w. SLIL]

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 Salii 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'lique** (-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 anti-septic & for rheumatism), **salicylate**³(3) n., **salicylize**(5) & in same sense **salicylate**³ vv.t., **salicylism**(5) n., **salicylous** (chem.) a. [F (-ine), f. L *salix -icis* willow, -IN]

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

ing or practical jokes. Hence **wa'ggery**(4) n., **wa'ggish**¹ a., **wa'ggishly**² adv., **wa'gishness** 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. = **WAG**¹ (but in more familiar use). [-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.

Wahā'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 **wail'ful** a. (poet.), **wail'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'nscoot, n., & v.t. Wooden panelling or boarding on room-wall; (vb) line with w., whence **wai'nscooting**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]

wā'keful, a. Unable to sleep, (of person's night &c.) passed with little or no sleep; vigilant. Hence **wā'kefully**² adv., **wā'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 &

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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-āk) or **ar-mo'ni-ak**. = **SAL AM-MONIAc**.

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. *salaris* 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. *ṣalāh*.] The ritual prayer of Mohammedans, made five times daily, in a standing position alternating with inclinations and prostrations, the worshiper facing toward Mecca.

Sa-la'thi-el (sä-lä'thī-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'î-kūs, -kūm). [L.] Attic salt.

|| **sal'band'** (zäl'bänt'), *n.* [G. *salband*, *sahlband*, lit., self end (cf. **SELVAGE**). See **SELF**; **END**.] *Petrog.* The border of a dike or other igneous mass, usually characterized by a finer grain or even glassy texture produced by the chilling of the molten rock by the cold country rock.

|| **sal ca-thar'ti-cus** (kä-thär'tî-kūs). [NL.] Epsom salt.

|| **sal cu'li-na'ri-us** (kü'î-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 (sāl), *n.* [Late AS. *sala*, fr. ON. *sala*. See **SELL**, *v.*; cf. **HANSEL**.] 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'ēs; -īz; 119), *n., pl.* of **WAGE**, *n.* (see **WAGE**, *n.*, *Note*). 1. Pay given for labor, usually manual or mechanical, at short stated intervals, as distinguished from salaries or fees.

2. *Theoretical Econ.* The share of the annual product or national dividend which goes as a reward to labor, as distinct from the remuneration received by capital in its various forms. This economic or technical sense of the word *wages* is broader than the current sense, and includes not only amounts actually paid to laborers, but the remuneration obtained by those who sell the products of their own work, and the *wages of management*, or *superintendence* (called also *earnings of management*), which are earned by skill in directing the work of others. See **REAL WAGES**, 1st EARNING, 2.

Syn. — **WAGES**, **HIRE**, **SALARY**, **STIPEND**, **PAY**, **EMOLUMENT**. **WAGES** and **HIRE** (the latter somewhat archaic in this sense) denote the price paid for labor, esp. by the day or week; as, a day laborer's, carpenter's, cook's *wages*; "The laborer is worthy of his *hire*" (*Luke* x. 7). **SALARY** and **STIPEND** denote a fixed compensation, commonly paid at longer intervals than *wages*, for services (often professional) which require training or ability; as, the *salary* of a minister, a teacher, a bank president, a consul. **PAY**, which is often general in its sense, may be equivalent esp. to *wages* (as in *payday*, *pay roll*, etc.); more specifically, it is used with reference to soldiers; as, an officer on half *pay*. **EMOLUMENT** applies to whatever profits arise from office or employment; as, "the *emoluments* of a profession" (*Gibbon*); "A worthier successor wears his dignity and pockets his *emoluments*" (*Hawthorne*). Cf. **PAY**.

wage scale. 1. A series of rates of wages paid for related tasks.

2. The level of wages paid by an individual employer.

wages fund. = **WAGE FUND**.

wag'es-man' (wāj'ēs-mān'; -īz; 119), *n., pl.* **-MEN** (-mēn'). A wageworker. *Rare.*

wage system. *Econ.* An industrial system in which free laborers are hired by capitalists to do a large part of the productive work of society; — contrasted with slavery or serfdom on the one hand, and small proprietorship on the other.

wage'work' (wāj'wŭrk'), *n.* Work done for wages.

wage'work'er (-wŭr'kēr), *n.* One who works for wages. — **wage'work'ing**, *adj.* & *n.*

wag'gel (wāg'ēl), *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** (-īz). [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 (-īsh), *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

CAPP074

CAPP075

—ORIGIN early 16th cent. (in the sense 'escort (a ship)'): back-formation from obsolete *wafter* 'armed convoy vessel,' from Low German and Dutch *wachter*, from *wachten* 'to guard.' A sense 'convey by water' gave rise to the current use of the verb.

wag¹ /wag/ ▶ v. (wags, wagging, wagged) (with reference to an animal's tail) move or cause to move rapidly to and fro: [no obj.] *his tail began to wag* | [with obj.] *the dog went out, wagging its tail*. ▶ [with obj.] move (an upward-pointing finger) from side to side to signify a warning or reprimand: *she wagged a finger at Elinor*. ▶ [no obj.] (used of a tongue, jaw, or chin, as representing a person) talk, esp. in order to gossip or spread rumors: *this is a small island, and tongues are beginning to wag*.

▶ n. a single rapid movement from side to side: *a chirpy wag 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.'

wag² ▶ n. dated a person who makes facetious jokes.

—ORIGIN mid 16th cent. (denoting a young man or mischievous boy, also used as a term of endearment to an infant): probably from obsolete *waghalter* 'person likely to be hanged' (see **WAG**, **HALTER**).

wage /wæɪ/ ▶ 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 **AGE** and **WEO**.

wage drift ▶ n. Finance the tendency for the average level of wages actually paid to rise above wage rates through increases in overtime and other factors.

wager /wæjər/ ▶ 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 slave-ery** n.

wag-gor-y /wəgərə/ ▶ n. (pl. *waggories*) dated waggish behavior or remarks; jocularly. ▶ archaic a waggish action or remark.

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

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

wag-gle /wəgl/ ▶ v. informal move or cause to move with short quick movements from side to side or up and down: [no obj.] *his arm wagged* | [with obj.] *Mary wagged 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 wagging 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 /wəg(ə)le/ ▶ adj. moving with quick short movements from side to side or up and down: *a waggly tail*.

Wag-ner¹ /wəgnər/, 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).

W

Wag-ner² /vəgnər/, 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 /vəg'n(e)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 /wəgən/ (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 **WARI**.

wag-on-er /wəgənər/ (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 /wəgən'et/ (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 /wəgən 'li/ ▶ n. (pl. *wagons-lits* pronounced same) a sleeping car on a European railroad.

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

wag-on-load /wəgən'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 /wəg'tail/ ▶ 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 /wəg'yu/ ▶ n. [often as modifier] a breed of Japanese cattle. ▶ the tender beef obtained from such cattle, typically containing a high percentage of unsaturated fat.

—ORIGIN Japanese, from *wa* 'Japanese' + *gyu* 'cattle, beef.'

Wah-ha-bi /wə'həbi, wə-/ (also **Wahabi**) ▶ n. (pl. *Wahabis* /bēz/) 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** /bīzəm/ n., **Wah-ha-bite** n. & adj.

wa-hi-ne /wə'hēnē/ ▶ n. 1 a Polynesian woman or wife, esp. in Hawaii or New Zealand. 2 a young woman surfer.

—ORIGIN Hawaiian or Maori.

wa-hoo¹ /wə'hū, wə'hū/ ▶ n. (also **wahoo elm**) another term for **WINGED ELM**.

—ORIGIN perhaps from Creek *ahā-hwa* 'walnut.'

wa-hoo² ▶ n. a North American burning bush.

▶ *Euonymus atropurpurea*, family Celastraceae.

—ORIGIN from Dakota.

wa-hoo³ ▶ n. a large predatory tropical marine fish of the mackerel family, prized as a game fish. ▶ *Acanthocybium solanderi*, family Scombridae.

—ORIGIN early 20th cent.: of unknown origin.

wa-hoo⁴ ▶ exclam. another term for **YAHOO**.

—ORIGIN 1940s: probably a natural exclamation.

wah-wah /wə'wə/ (also **wa-wa**) ▶ n. a musical effect achieved on brass instruments by alternately applying and removing a mute and on an electric guitar by controlling the output from the amplifier with a pedal. ▶ a pedal for producing such an effect on an electric guitar.

—ORIGIN 1920s: imitative.

waif /wəf/ ▶ n. 1 a homeless and helpless person, esp. a neglected or abandoned child: *she is foster-mother to various waifs and strays*. ▶ an abandoned pet animal.

2 Law a piece of property thrown away by a fleeing thief and held by the state in trust for the owner to claim.

—DERIVATIVES **waif-ish** adj.

—ORIGIN late Middle English: from an Anglo-Norman French variant of Old Northern French *gaif*, probably of Scandinavian origin. Early use was often

waist-high

in *waif and stray*, as a legal term denoting a piece of property found and, if unclaimed, falling to the lord of the manor.

Waika-to /wɪ'kātō, -kātō/ 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 /wɪ'kɪ'kɪ/ a beach resort, a suburb of Honolulu, on the island of Oahu in Hawaii.

wail /wəɪ/ ▶ n. a prolonged high-pitched cry of pain, grief, or anger: *Christopher let out a wail*. ▶ a sound resembling this: *the wail of an air-raid siren*.

▶ v. [no obj.] give such a cry of pain, grief, or anger: *Tina ran off wailing* | [with direct speech] *'But why?' she wailed*. ▶ make a sound resembling such a cry: *the wind wailed and buffeted the timber structure*. ▶ [with obj.] literary manifest or feel deep sorrow for; lament: *she wailed her wretched life*.

—DERIVATIVES **wailer** n., **wail-ful** /fə'l/ adj. (rare), **wailing-ly** adv.

—ORIGIN Middle English: from Old Norse; related to **WOE**.

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

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

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

—ORIGIN Old English *wæg(e)n*; of Germanic origin; related to Dutch *wagen* and German *Wagen*; also to **WAY** and **WEIGH**.

wain-scot /wān'skōt, -skōt, -skāɪ/ ▶ n. in Scotland an area of wooden paneling on the lower part of the walls of a room. ▶ Brit. historical imported oak of fine quality, used mainly to make paneling.

▶ v. (wainscots, wainscoting, wainscoted or wainscots, wainscotted, wainscotted) [with obj.] line (a room or wall) with wooden paneling.

—ORIGIN Middle English: from Middle Low German *wagenscot*, apparently from *wagen* 'wagon' + *schot*, probably meaning 'partition.'

wain-scotting /wān'skōtɪŋ, -skāɪ/ (also **wainscoting**) ▶ n. wooden paneling that lines the lower part of the walls of a room. ▶ material for such paneling.

Wain-wright /wān'rit/, 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 /wān'rit/ ▶ n. historical a wagon builder.

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

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

waist /wəɪst/ ▶ 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 /wəɪst(b)ænd/ ▶ n. a strip of cloth forming the waist of a garment such as a skirt or a pair of trousers.

waist cloth ▶ n. a loincloth.

waist-coat /wəɪst(ɪ)kōt, 'weskət/ ▶ 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.] *Elwood 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 /wəɪst(ɪ)lɪn/ ▶ n. an imaginary line around a person's body at the waist, esp. with respect to its size: *eliminating inches from the*

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FIFTH
EDITION

Houghton Mifflin Harcourt
BOSTON NEW YORK

CAPP077



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

Sa-ja-ma (sa-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-kai (sā'kai) A city of southern Honshu, Japan, on Osaka Bay south of Osaka. It was a leading port from the 15th to the 17th century.

Sak-a-ka-we-a (sāk'a-ka-wē'a), **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 *sag* 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 *saqr*, probably < Turkic **suyur*, falcon.]

Sa-kha-lin (sāk'a-lēn', -lan, sā-kia-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'ka-rōf', sā'ka-, sā'kha-rōf'), **Andrei Dmitrievich** 1921–1989. Soviet physicist and dissident who helped develop the first Soviet hydrogen bomb. An outspoken advocate of human rights and nuclear disarmament, he won the 1975 Nobel Peace Prize and was banished to Gorky (now Nizhny Novgorod) from 1980 to 1986.

sa-ki (sā'kē, -kē) *n.* Variant of *sake*.

sa-ki (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 Taiwan. The islands were heavily bombed by the Allies in April–June 1945.

Sak-ka-ra (sa-kār'a) See Saqqara.

sal (sāl) *n.* Salt. [Middle English < Old French < Latin *sāl*; see *sal* in App. I.]

sa-laam (sā-lām') *n.* 1. A ceremonious act of deference or obeisance, especially a low bow performed while placing the right palm on the forehead. 2. A greeting in various Muslim cultures. *tr. & intr.v.* -laamed, -laam-ing, -laams To greet with or perform a salaam. [Arabic *salām*, peace, salaam < *salāma*, to be safe; see *šim* in App. II.]

sal-a-ble also **sale-a-ble** (sāl'a-bal) *adj.* Offered or suitable for sale; marketable. —**sal'a-bil'i-ty**, **sal'a-ble-ness** *n.* —**sal'a-bly** *adv.*

sa-la-cious (sā-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** (sā-lā'si-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 *salāta*. 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 *salus*, meaning "salted." Another derivative of this word was the Late Latin adjective *salsicus*, "prepared by salting," which eventually gave us the word *sausage*.

salad bar *n.* A counter in a restaurant from which customers may serve themselves a variety of salad ingredients and dressings.

salad days *pl. n.* A time of youth, innocence, and inexperience: "my salad days, / When I was green in judgment, cold in blood" (Shakespeare). [Coined by William Shakespeare.]

salad dressing *n.* A sauce, such as one made of mayonnaise or of oil and vinegar, that is served on salad.

sa-lade ni-çoise (sā-lād' nē-swāz') *n.* A salad of tomatoes, anchovies, black olives, green beans, tuna, and hard-boiled eggs. [French: *salade*, salad + *niçoise*, fem. of *niçois*, of Nice.]

Sa-lā-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** (sā-lā'dō 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. Salafi* or *-fis* An adherent of Salafism; a Salafist. *adj.* Of or relating to Salafism. [Arabic *salafī*, of the forebears, of the predecessors < *salaf*, forebears, predecessors; see *šlp* in App. II.]

Sa-la-fism (sāl'a-fiz'm, sā-lā'fizm) *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. [*<* SALAFI.] —**Sa-la-fist** *adj. & n.*

sa-lal (sā-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 *sallal* < Chinook *sallal*.]

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

sa-la-man-der (sāl'a-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 *salamandre* < Old French < Latin *salamandra* < Greek.] —**sal'a-man'drine** (-drīn) *adj.*

sa-la-mi (sā-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 **salamen* < **salāre*, to salt < Latin *sāl*, salt; see *sal* in App. I.]

Sa-la-mis (sāl'a-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-mis (sāl'a-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 ammoniak* < Latin *sāl ammoniacus*, salt of Amen < *sāl*, salt; see *sal* in App. I.]

sal-a-ry (sāl'a-rē, sā'l'rē) *n., pl. -rīes* Fixed compensation for services paid to a person on a regular basis. [Middle English *salarte* < Anglo-Norman < Latin *salārium*, money given to Roman soldiers to buy salt < neuter of *salarius*, pertaining to salt < *sāl*, salt; see *sal* in App. I.] —**sal'a-ried** *adj.*

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

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

Sa-la-zar (sāl'a-zār', sā'lō-) **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-but-a-mol (sāl-byū'tō-mōl', -mōl', -mōl') *n.* See albuterol [salf(y)], the radical of salicylic acid (< French *salicylle* see SALICYLIC ACID) + BUT(YL) + AM(INE) + -OL.]

salamander
fire salamander
Salamandra atra



waffleweave

waf·fle·weave (wəf'fl-ēv'v) *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**, **wafting**, **wafts** —*tr.* To cause to go gently and smoothly through the air or over water: *The breeze wafted the fog through the fields.* —*intr.* To float easily and gently, as on the air; drift: *The smell of soup wafted from the kitchen.* ♦ *n.* 1. Something, such as an odor, that is carried through the air: *a waft of perfume*. 2. A light breeze; a rush of air: *felt the waft of the sea breeze*. 3. The act or action of fluttering or waving: *the waft of her dress*. 4. Nautical A flag used for signaling or indicating wind direction. Also called *waif*. [Back-formation < *wafter*, convoy ship, alteration of Middle English *waught* < Middle Dutch or Middle Low German *wachter*, 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 *wag-* in App. I.] —**wag'ger** *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'wūr'kər) *n.* A wage earner.

wag-ger-y (wāj'gə-rē) *n., pl.* -les 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*¹.] —**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'nēr-ē-ən) *adj.* Of, relating to, or characteristic of Richard Wagner, his music dramas, or his theories. ♦ *n.* also **Wag-ner-ite** (wāj'nə-rīt') 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-lē') *n., pl.* **wa-gons-lits** or **wa-gon-lits** (wāj'gən-lē') 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-gram (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-ha-bism** (-bīz'əm) *n.*

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

wa-hoo¹ (wā-hōō', wā'hōō) *n., pl.* -hoos 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*: *wap*, 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.* -hoos See *winged elm*. [Origin unknown.]

wa-hoo³ (wā-hōō', wā'hōō) *n., pl.* **wahoo** or **-hoos** 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.* -hoos An exuberant cry: *He let out a wahoo*. Also called *regionally rebel yell*.

Wah-pe-ku-te (wā'pə-kōō'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, *scray* animal < Anglo-Norman, probably of Scandinavian origin; see *weip-* in App. I.]

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

Wai-ka-to (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 in 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'-ing-ly** *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-mā-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 *wān*, *wegn*; 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 *waghen-scot*: 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'skō-ting, -skōt'ing, -skōt'ing) *n.* 1. A wainscoted wall or walls; paneling. 2. Material, such as wood, used for wainscoting.

wain-wright (wān'writ') *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 *waist*, perhaps < Old English **west*, 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.

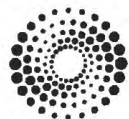
waist-coat (wēst'kōt, wāst'kōt') *n.* 1. A garment formerly worn by men under a doublet. 2. Chiefly British A short, sleeveless, collarless garment worn especially over a shirt and often under a suit jacket; a vest. —**waist'-coat'-ed** *adj.*

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

Black's Law Dictionary®

Tenth Edition

Bryan A. Garner
Editor in Chief



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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 'saids' 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

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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. Freilhofer, 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.*, 183 La. 728, 178 So. 256, 259, 260.

WAGER OF BATTEL. The trial by wager of bat-tel 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. Barrington, 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.

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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

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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

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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

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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

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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

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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

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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

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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

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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

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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



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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]
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AMERICAN FEDERATION VS CITY OF PHOENIX

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CERTIFICATION: I, MICHAEL K. JEANES, Clerk of the Superior Court of Maricopa County, State of Arizona, do hereby certify that the above listed Index of Record, corresponding electronic documents, and items denoted to be transmitted manually constitute the record on appeal in the above-entitled action.

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

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

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

American Federation of State County And)
Municipal Employees, AFL-CIO, Local 2384;)
American Federation of State County And)
Municipal Employees, AFL-CIO, Local 2960;) Case No.: CV-2014-011778
Administrative Supervisory Professional &)
Technical Employees Association; Frank) **JOINT STIPULATED FACTS**
Piccioli; Ron Ramirez; Debra Novak Scott;)
Luis Schmidt, on behalf of themselves and all)
others similarly situated,) **(Assigned to Judge Roger Brodman)**
Plaintiffs,)
v.)
City of Phoenix; City of Phoenix Employee)
Retirement System; City of Phoenix)
Retirement System Board,)
Defendants.)

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

- d. January 26, 1988
- e. July 1, 1989
- f. July 1, 1990
- g. July 1, 1991
- h. October 11, 1993
- i. July 1, 1994
- j. July 1, 1995
- k. July 1, 1997
- l. July 1, 1998
- m. July 1, 1999
- n. July 1, 2000
- o. July 8, 2002
- p. July 5, 2005
- q. February 12, 2007
- r. July 14, 2008
- s. July 1, 2012
- t. November 22, 2013
- 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,

bargain and reach agreements on wages, hours, and other terms and conditions of employment.

41. Pursuant to the City's Meet-and-Confer Ordinance, Plaintiff AFSCME Local 2960 represents all full-time employees in Unit 3 regardless of whether they are members of AFSCME Local 2960. AFSCME Local 2960 has entered into a series of binding and enforceable Memoranda of Understanding ("MOUs") with the City of Phoenix that cover all full-time employees in Unit 3.

42. Section 5-5(B) of the 2014-2016 MOU between the City and AFSCME Local 2960 (Unit 3) states as follows:

In July 2014 and July 2015, every unit member will receive eight (8) hours of vacation time, in addition to their other annual accruals, added to their vacation leave.

Vacation accrual, carryover, and separation payout shall be governed by the following table:

Service Years	Monthly Accrual	Maximum Carryover	Payout
0-5	8 hours	192 hours	240 hours
6-10	10 hours	240 hours	300 hours
11-15	11 hours	264 hours	330 hours
16-20	13 hours	312 hours	390 hours
21+	15 hours	360 hours	450 hours

Unit members shall be allowed vacation buy out twice per calendar year, on the last paycheck of November and/or May. The total annual buy out is up to a maximum of eighty (80) hours taken in no more than forty (40) hour increments, after the employee has accumulated a minimum of one hundred twenty (120) hours and has used forty (40) hours of vacation/comp-time during the calendar year.

This vacation buy out benefit was suspended in the 2010 – 2012 concession agreement. 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.

Unit members may contribute accrued vacation or compensatory time to other employees in accordance with City policy governing contribution of leave for serious illness of an employee or their immediate family member.

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
agreement.

5 Unit members may contribute accrued vacation or compensatory time to other employees
6 in accordance with City policy governing contribution of leave for serious illness of an
7 employee or their immediate family member. An immediate family member is defined as
8 the employee's spouse, qualified domestic partner, mother, father or child. Child is
9 defined as a biological, adopted, foster or stepchild, legal ward, or a child of a person
standing in place of a parent or a brother, sister, grandparent, or in-law who are living
with the employee and under his/her care. Requests to receive such leave contributions
will require a completed doctor's certification.

10 . . .

11 48. The language and chart in Section 5-5(B) of the 2014-2016 MOU is substantially
12 similar to the provisions governing vacation carryover, accrual and payout at separation in all prior
13 MOUs entered into by the City and AFSCME Local 2384 between 1988 and 2014. The only substantive
14 changes have been to add provisions governing vacation buyback and to increase or decrease the amount
15 of vacation buyback.

16 49. The 2014-2016 MOU for Unit 2 contains and Attachment B that provides as follows:

17
18 All of the following, including the agreed-upon Intent, are material terms of this Attachment B
19 and if any provision contained herein is not accepted by the City, the City Council or the
employee group, this entire Attachment B becomes null and void:

20 Section 3-4 (Continued)

21 A. Final Average Compensation and Vacation Leave

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

25 2. The City recognizes that the Union may bring a lawsuit regarding the City's proposed
26 implementation of the practice set forth in this Attachment B by submitting the dispute
27 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.

28 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

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. reasonably requested by the Union. The City agrees that it will not argue or claim that such judgment should be applied prospectively only.

50. No MOU prior to the 2014-2016 MOU between Unit 2 and the City contains any express statements regarding whether accrued vacation payouts will be included in the calculation of final average compensation for pension purposes.

51. The City's Meet-and-Discuss Ordinance, Phoenix Code § 2-223 *et seq.*, sets forth a process by which the City and representatives of professional and supervisory employees (Unit 7) meet and discuss matters pertaining to salary and fringe benefits

52. Plaintiff ASPTEA represents all full-time employees in Unit 7 regardless of whether they are members of ASPTEA. ASPTEA is the Meet-and-Discuss representative for full-time employees in Unit 7.

53. Until 2006, under the City's Meet-and-Discuss Ordinance, Phoenix City Code §2-223 *et seq.*, there were no written memoranda applicable to employees in Unit 7. Rather, the City Manager had authority to meet and discuss with ASPTEA representatives on matters relating to wages and fringe benefits for employees in Unit 7 and to make recommendations to the City Council for approval of agreements reached during that process. Phoenix City Code §§ 2-223, 2-229 & 2-231.

54. In 2006, the City's Meet-and-Discuss Ordinance was amended to provide for written Memoranda of Agreement ("MOAs").

55. Pursuant to the City's Meet-and-Discuss Ordinance, ASPTEA has entered into a series of MOAs with the City of Phoenix that cover all full-time employees of Unit 7.

56. Section 5-9(A) of the 2014-2016 MOA between the City and ASPTEA (Unit 7) provides as follows::

In accordance with Personnel Rule 15, vacation accrual, carryover, and separation payout shall 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
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/s/ T. Mahabir

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.

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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).

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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

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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.

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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).

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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.

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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.

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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

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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.

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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.

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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.

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.

CITY OF PHOENIX, et al.,

Defendants.

No. CV 2014-011778

Phoenix, Arizona

July 10, 2017

9:01 a.m.

BEFORE THE HONORABLE ROGER E. BRODMAN

TRANSCRIPT OF PROCEEDINGS

Oral Argument and Status/Trial Setting Conference

Proceedings recorded by electronic sound recording; transcript
produced by eScribers, company.

LISA FREEMAN
Transcriptionist



I N D E X

<u>PLAINTIFFS' WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VD</u>
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None

<u>DEFENDANTS' WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>	<u>VD</u>
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None

M I S C E L L A N E O U S

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APPEARANCESJuly 10, 2017

Judge: Roger E. Brodman

For the Plaintiffs:

Susan Martin

Jennifer Kroll

Witnesses:

None

For the Defendants:

Colin F. Campbell

Hayleigh S. Crawford

Witnesses:

None



rights which have vested, rights which are accrued, or which have been earned by virtue of public employment, and rights which are contingent, rights which are conditioned upon the happening of some future event, such as an on-the-job injury.

It's clear the Doctrine of Yizelle applies only where the right to a benefit is vested."

And here's the important language:

"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."

So, Judge, the Abbott, Bennett, and Fund Manager, stand clearly for the proposition that benefits such as vacation pay, do not vest until they are earned. Now, if you look at what AR2.18 does, it basically says, we're going to grandfather in everything that you have earned. But prospectively, going into the future, we are going to change what you can do with vacation pay -- accrued vacation pay with respect to pensions.

And for future time, where you have not accrued or vested your rights, the City says, we're no longer going to allow pension spiking. So AR2.18 is fully consistent with Fund



1 Manager, Bennett, and Abbott. If the Court were to hold there
2 was some sort of right, which we would urge the Court not to
3 do. We don't think they're entitled to this right. But even
4 if you thought they were, nothing precludes the City from
5 changing it prospectively, and that's exactly what happened in
6 this case.

7 So, Judge, I don't think I need my full 50 minutes
8 because I don't think my case is that complicated. And if you
9 have any further questions, I'd be happy to answer them.

10 THE COURT: I'll tell you what, let's hear from the
11 other side.

12 MR. CAMPBELL: Thank you.

13 THE COURT: I'm sure you'll have some things that
14 you'll want to respond to. Okay. Let's hear from the
15 Plaintiffs then.

16 MS. KROLL: Thank you, Your Honor. So with respect
17 to the first question you asked about whether or not there are
18 factual disputes --

19 THE COURT: Uh-huh.

20 MS. KROLL: The Plaintiffs agree that there are
21 virtually no factual disputes that are -- that could be
22 material. In addition to the stipulated facts, Plaintiffs put
23 in a number of facts that were addressed primarily to
24 Defendant's argument that this was some sort of administrative
25 default that was going on, and not a considered, deliberate,



1 inclusion of vacation pay paid at termination or separation in
2 the formula for calculating retirement benefit.

3 They seem to be sticking with that argument, but as
4 you can see from all of the evidence, from the actuarial
5 reports, from the CalPERS actuarial experience studies, from
6 the communication to the employees, all of this evidence shows
7 that it was a considerate, deliberate, practice. It was
8 communicated to the employees over decades.

9 And to the extent that the Court finds that whether
10 or not it was some sort of accidental default practice is
11 relevant, we don't think the evidence supports that. We don't
12 think there are issues of material fact on that question. But
13 I supposed to the extent that they are still alleging it, and
14 the Court finds that there's some issue of fact there, that's
15 the only thing that we can think of that would be a material
16 issue that would need to be tried. But we don't think it is.

17 THE COURT: Okay. So just, I think I understood what
18 you said. I have a tendency to repeat back just to make
19 certain that I appreciate what has just been told to me; that
20 as far as you're concerned, you don't see any triable issues of
21 fact either. However, it's your position that the, whether
22 it's 20, 40, 50, or interpretation of using accrued vacation to
23 increase pension was a considered deliberate practice, not sort
24 of an accidental, default as Mr. Campbell, my words not his,
25 but I think probably fairly characterizing his position. If



1 that ended up being an issue that was important to me there is
2 a disputed fact. But from your position, you think the
3 evidence is clear that it wasn't considered.

4 MS. KROLL: That is exactly right, Your Honor.

5 THE COURT: Okay. I got it.

6 MS. KROLL: Thank you. Yeah. And that evidence goes
7 to this issue of this politically-charged word of pension
8 spiking. This wasn't some unanticipated jump in pension
9 benefits. This was a planned for, funded, liability of the
10 City, set forth in actuarial evaluations that were passed on to
11 City council, that were communicated to employees that were
12 anticipated. There was specific actuarial factors that were
13 used to calculate the cost of this. This wasn't some
14 unanticipated jump in pension benefits.

15 And, you know, despite the politically-charged
16 rhetoric, we don't think that there's any justification for
17 changing the formula for calculating pension benefits.

18 I want to start, first, with this question; also,
19 since we're on this topic of the evidence, you asked Mr.
20 Campbell if the statute's ambiguous what happens, essentially.
21 And he didn't have an answer to that because, and he tried
22 to -- both parties have asserted the statute is clear in their
23 favor. But if you determine that the statute's ambiguous,
24 Plaintiffs have to prevail in this case.

25 There are decades upon decades of and interpretation



1 adjourned. Have a good day.

2 THE BAILIFF: All rise.

3 (Proceedings concluded at 10:43 a.m.)

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CERTIFICATE

eScribers has a current transcription contract with the Maricopa County Superior Court under contract #13010-RFP; as such, eScribers is an "authorized Transcriber."

I, Lisa Freeman, a court-approved transcriber, do hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter, to the best of my professional skills and abilities.

/s/

LISA FREEMAN
Transcriber

July 28, 2017

