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Oakland, California 94611

IN INTEREST ARBITRATION PROCEEDINGS PURSUANT TO
CHARTER SECTION 1107

In the Matter of a Controversy between:)	
)	
SAN LUIS OBISPO POLICE OFFICERS ASSOCIATION,)	
)	
)	ARBITRATOR'S
)	OPINION AND AWARD
)	
Union,)	
)	
and)	CSMCS No. ARB 06-0315
)	
)	
CITY OF SAN LUIS OBISPO,)	
)	
)	
Employer)	
_____)	
)	
Re: Interest Arbitration)	
_____)	

This interest arbitration arises pursuant to Charter Section 1107 between **SAN LUIS OBISPO POLICE OFFICERS ASSOCIATION** (referred to below as “Union” or “Association”), and the **CITY OF SAN LUIS OBISPO** (referred to below as “Employer” or “City”). Under its terms, **MATTHEW GOLDBERG** was selected from a panel submitted by the California State Mediation and Conciliation Service to serve as Neutral Chair of the Arbitration Board and render a final and binding decision.¹

Hearings in this matter was conducted on October 15 and 16, and December 17 through 21, 2007 in San Luis Obispo, California. All parties had full opportunity to examine and cross-examine witnesses, and to submit evidence and argument. The parties submitted Final Proposals and Argument on February 22, 2008. The Union also submitted supplemental evidence on that same date, to which the City responded and presented its own supplemental evidence on March 10. Rebuttals to the respective Final Arguments were submitted to the Arbitrator on March 18, 2008.

¹The parties stipulated that the decision of the Neutral Chair would constitute the decision of the Board.

APPEARANCES:

On behalf of the Association:

ALLISON BERRY WILKINSON, Esq. of **BERRY WILKINSON LAW GROUP**, 4040 Civic Center Drive, San Rafael, California 94903

On behalf of the Employer:

RICHARD S. WHITMORE, Esq. of **LIEBERT, CASSIDY, WHITMORE, LLP**, 153 Townsend Street, Suite 520, San Francisco, California 94107

CHARTER OF THE CITY OF SAN LUIS OBISPO

Section 1107. Impartial and Binding Arbitration for San Luis Obispo Police Officers Association and San Luis Obispo Firefighters Association, IAFF Local 3523, Employee Disputes

(D) Impasse Resolution Procedures

(4) In the event no agreement is reached prior to the conclusion of the arbitration hearings, the Board of Arbitrators shall direct each of the parties to submit, within such time limit as the Board of Arbitrators may establish, but not to exceed thirty (30) business days, a last offer of settlement on each of the remaining issues in dispute. The Board of Arbitrators shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment, including, but not limited to the following: changes in the average consumer price index for goods and services using the San Francisco-Oakland-San Jose index, as reported at the time impasse is declared for the preceding twelve (12) months, the wages, hours, benefits and terms and conditions of employment of employees performing similar services in comparable cities; and the financial condition of the City of San Luis Obispo and its ability to meet the costs of the decision of the Board of Arbitrators.

(5) The decision of the Board of Arbitrators shall not be publicly disclosed and shall not be binding until ten (10) days after it is delivered to the parties. During that ten (10) day period the parties shall meet privately, attempt to resolve their differences, and by mutual agreement amend or modify the Decision of the Board of Arbitrators. At the conclusion of the of the ten (10) day period, which may be extended by mutual agreement between the parties, the decision of the Board of Arbitrators, as it may be modified or amended by the parties, shall be publicly disclosed and shall be binding upon the parties. The City and the employee organization shall take whatever action is necessary to carry out and effectuate the arbitration award. No other actions by the City Council or by the electorate to conform or approve the decision . . . shall be permitted or required.

1. PRELIMINARY STATEMENT

After mediation resulted in resolving some but by no means all of the issues in dispute, the parties presented evidence over the course of seven hearing days in support of their various proposals for the Collective Bargaining Agreement which is to succeed that which expired on December 31, 2005. As the record closed, 44 separate issues remained to be resolved by this Award. A number of these have been settled since then.

The issues are discussed in the order numbered by the parties. The proposals are set forth under the heading of the party propounding them. New language is designated in ***italic bold***. Where a party proposes to delete a particular phrase or provision, the deletion is designated in ~~strikeout~~ format. Following a summary of the evidence and the position of the parties on each issue, the Analysis and Conclusions will indicate which proposal will be granted. A summary of all the proposals to be implemented and made part of the Agreement will be submitted at the end of the Award.

The City asserts that the party seeking a change in the status quo has the burden of proof and persuasion, and must present sufficient evidence to persuade the Arbitrator to grant the requested change. The failure to meet the moving party's burden should result in a rejection of the proposal. The Association does not dispute this basic notion, and in fact adopts it whenever appropriate.

The City further argues that the fact it is not making an "ability to pay" argument with regard to the Association's various economic proposals does not render the cost of these proposals irrelevant. The distinction between ability to pay and financial condition of the City made in Charter Section 1107(D)(4) clarifies that cost and financial impact are relevant considerations in accepting or rejecting a given proposal. Moreover, cost is a factor "traditionally taken into consideration" in making decisions with regard to wages, hours, and terms and conditions of employment.

A central principle of contract interpretation is that the Agreement must be read as a whole. Proposals which conflict with one another create ambiguities not contemplated by the parties. Anything unforeseen is naturally inconsistent with their contractual intent as expressed during these proceedings. In a rights arbitration, the arbitrator's primary function is to enforce contractual intent. While the Charter requires an issue by issue submission, some issues necessarily have an impact on others. Therefore, in determining that one proposal is preferable to another, internally consistency and clarity will be two factors "traditionally taken into consideration" in addition to the others spelled out in the Charter.

2. The Issues

ISSUE 1: ARTICLE 47 - TERM OF AGREEMENT

City:

This Agreement shall become effective ***as of the date this Agreement is formally approved by the city Council or ten (10) days after an arbitration***

award is issued, whichever is later, and shall continue in full force and effect until expiration at midnight, **December 31, 2009**.

Association:

This Agreement shall become effective **January 1, 2006** and shall continue in full force and effect until expiration at midnight, **December 31, 2009**.

ISSUE 2: ARTICLE 1 - PREAMBLE

City:

- 1.1 This Agreement is effective and entered into **as of the date of this Agreement and is formally approved by the City Council or ten (10) days after an arbitration award is issued, whichever is later**, by and between the City of San Luis Obispo, hereinafter referred to as City, and the San Luis Obispo Police Officers' Association; **provided however, individual sections of this Agreement may designate other individual effective dates**.

Association:

- 1.1 This Agreement is effective the **1st day of January 2006** by and between the City of San Luis Obispo, hereinafter referred to as the City, and the San Luis Obispo Police Officers Association.

ISSUE 3: ARTICLE 1 - PREAMBLE

City:

New Section 1.2

The provisions of this Agreement shall apply to all employees in the bargaining unit employed by the City on the date this Agreement is formally approved by the City Council or ten (10) days after an arbitration award is issued whichever is later. The provisions of this Agreement shall also apply to employees honorably retired from the City between the expiration date of the proceeding contract (12/31/2005) and the later of the effective dates described above.

[Re-number current sections 1.2 through 1.4.]

Association:

This Agreement is effective the **1st day of January 2006** by and between the City of San Luis Obispo, hereinafter referred to as the City, and the San Luis Obispo Police Officers Association. ***The provisions of this Agreement shall apply to all unit members***

employed on January 1, 2006, or thereafter.

Each of the first three issues pertain to the date that the Contract is to become effective. This naturally has an impact on the retroactivity of certain provisions. The parties accordingly argue the acceptability of their proposals in those terms, as well as in terms of the burden of proof. Final proposals memorialized the parties' agreement on the length of the Contract term.²

No evidence was presented at the hearing from either side in conjunction with Issue 1. The Association asserts that the City's language departs from the status quo and the pattern developed in prior Agreements, and has not been adequately justified. It maintains that in practical effect, it would shorten the term of the Agreement from four years to less than two, thus conflicting with the stated purpose of creating a four year agreement. The Association further urges that the City is not only modifying its original proposal, without justification, from language identical to that submitted by the Association, it is also seeking to blend this issue with Issue 2 (retroactivity). This has the potential of creating an internal conflict within the Agreement if the City's retroactivity proposal is not adopted.

As concerns Issue 2, the City argues that the Association's proposal is impossible to implement, as many of the proposals in controversy cannot be applied retroactively, such as changes to the grievance procedure, and the amount of life insurance employees can purchase. The City's proposal, it asserts, provides for the flexibility essential to crafting a Contract that is internally consistent.

The Association states that absent specific language in tentative agreements or in proposals adopted by the Arbitrator to the contrary, all provisions should be retroactive to January 1, 2006. As with Issue 1, it argues that its proposal maintains the status quo, while the City changes it, thus placing the burden of proof on the City. The City, the Association argues, has failed to identify any reason to divert from the status quo, while its modifying language is redundant and potentially confusing. Its proposal is unnecessary because the language of any provision providing for a specific implementation date will override the general language of the preamble.

In its rebuttal, the City argues that the Association's blanket retroactivity clause may have unforeseen and unintended consequences which could lead to potentially costly unfunded liabilities. The City should be clear on its contractual obligations, rather than guessing on how to retroactively implement each provision. It will create additional disputes between the parties. Examples of provisions which would be impossible to implement retroactively would be, in addition to those above, extending the cap on compensatory time off. Retroactive application of court appearance payments (Issue 11) would require the City to reconstruct every cancelled court appearance over the last two years. Applying Issue 41 retroactively would require it to calculate the cost of FST lunches over the last two years. The City further asserts that the Association's proposal re-writes negotiating history and ignores the long process which was necessary to reach a final agreement.

The Association counters that it is not seeking to make all provisions retroactive, as there

²The City's argument on the Union's former proposal for a shorter term is therefore moot, and not discussed.

have been a number of tentative agreements which have been reached which have effective dates after the term of the Agreement begins. It asserts that the City failed to present any evidence to show that there were sections in dispute where retroactivity might be an issue. The City's argument regarding the grievance procedure ignores language that a grievance must be filed within "15 business days of the occurrence." Its argument "is nothing other than a manipulative effort to create uncertainty by crafting an illusory issue."

Concerning Issue 3, the City maintains that there is no compelling reason to provide retroactive pay or benefits to non-employees who were terminated or left voluntarily. It would be a burden on the City to track these employees down. Benefits are offered to those who left honorably in the interest of fairness. Reviews of comparable agencies have not shown any other that includes such a provision in their Contract.

The Association supports the status quo here. Accepting the City's proposal would allow it to profit from its protracted negotiations strategy. It maintains that the City has not carried its burden of proof because it produced no external data supporting it. It attempts to shift the burden to the Association by urging that it has not put forth any evidence why the City should be required to use its finances in this manner. The Association was not required to do so. Nothing but speculation about expense and difficulties was offered in support of the City's argument.

The City responds that the Association's proposal here highlights the absurdity of its proposal for blanket retroactivity. It would be extremely burdensome to track down former employees. Compensation for former employees falls outside the scope of representation. The principles of fairness, contractual stability and responsible government require that the Arbitrator grant the City's proposal.

To accept the proposal offered by the City would reward any exercise in protracted negotiations. It would in effect lessen the value of any economic concessions. The City further acknowledges that issue 3 is plainly interconnected with Issues 1 and 2, and must be determined in a way which is consistent with the determinations reached on those issues.

Analysis and Conclusions

The language of Article 47 must necessarily conform to that in the Preamble. While the parties up to this point have viewed the retroactivity issue as separate from Contract term, the practical effect of the two proposals, as the Association suggests, is to merge this issue with Issue 2. Accordingly, any conclusions with regard to Article 47 must be based on the same considerations which are used to determine Issue 2. Similarities in the language of all three proposals require that they be determined in a way which is consistent with one another. Accordingly, a decision on Issue 3 would be necessarily driven by those in Issues 1 and 2.

The City's various proposals with regard to the effective date of the Agreement cannot be adopted because they conflict with the specific wording of the Charter. As such, implementing them would exceed the Arbitrator's authority. The Charter provides that the parties must have a minimum of ten days in which to consider modifying the conclusions of the Arbitrator and/or Arbitration Board. If they wish to take additional time, they may do so. The

Contract thus cannot be effective ten days after the Award is issued, as the parties may take additional time to amend or modify the Agreement. It is only after they have concluded that process that the Agreement is "binding."

The Charter also provides that any act of the City Council with regard to approving the Agreement shall only be ministerial in nature:

The City and the employee organization shall take whatever action is necessary to carry out and effectuate the arbitration award. No other actions by the City Council and the electorate to conform or approve the decision . . . shall be permitted or required.

The Agreement is thus effective when the process described above is concluded, and at no other time. The City urges, nonetheless, that the Association's proposal would create ambiguities insofar as the retroactive effect of many provisions is concerned. However, as the Association points out, retroactivity is specifically designated in various provisions. The specific language of these provisions would override the general language in Article 47 and the preamble.

The City's argues that if the Association's proposal were adopted, it might face some unfunded liability or have to go some length to locate people who left after the last Contract expired. Lack of evidence renders these contentions speculative. It is also noteworthy that turnover in the Department was exceedingly low during the time in question, with two disability retirements and only one resignation.

The change in the *status quo* phraseology has not been demonstrated to be warranted.

ISSUE 4: ARTICLE 7 - SALARY

Section 7.1

City:

No change to current language and number of steps.

Association:

- B. Effective January 1, **2006**, Step progression for all represented employees shall be at twelve-month intervals except for progression to Master Police Officer, step **6**. Those requirements are identified in Article 8.4.

The salary range for Police Officer consists of ~~seven~~ **six** steps (1 through ~~7~~ **6**). Steps 1 through ~~6~~ **5** equals 95% of the next highest step, computed to the nearest \$1.00.

The parties deployed a series of lists of other agencies which were used for the purposes

of external comparisons. As more fully described below in the discussions of Issues 6 and 7, the City relied on a list of 9 entitled the "Chico 9" or the "Fire List"; the Association used a list entitled the "Gilroy 9." The lists differed only in the respect that the City's contained Chico and Davis, while the Association's list substituted Santa Barbara and Gilroy for them. Combined, the lists consisted of eleven entities.

8 comparable jurisdictions out of this 11 use 5 salary steps. Only Chico and Santa Cruz have 7 steps, while Salinas has six. Union president and chief negotiator Dale Strobridge, who also served in the Department for 30 plus years and held various Union offices over the period, stated that the incentive for compressing steps began with the institution of the Master Police Officer classification ("MPO" below). He characterized the program as a longevity scheme which currently requires one year at step 6, as well as multiple years in three speciality assignments. The Association agreed to add two steps to the salary schedule for police officers in 1991 because salaries were straying farther from their benchmark, a comparison between top step police officer and top step sergeant. In an effort to close that separation, as the City appeared unwilling to agree to compress the steps, it chose to add two more via the MPO program. An additional step for "MPO III" was added in subsequent negotiations. Another step was added in the 1998-2001 MOA.

A settlement was obtained in the 2001 negotiations which resulted in a compression of the salary schedule to the current number, 7. This was accomplished by eliminating Steps 1 and 2, and moving everyone at those levels to Step 3. The Association proposes the same process here. The net effect would be that nearly everyone would advance one step on the salary scale. Those MPO's in Step 7 would receive the same amount, but it would be designated at Step 6. Strobridge added that the MPO III was the equivalent of the corporal rank in other jurisdictions, as officers at that level are permitted to wear corporal stripes, and occupy a lead person role.

Strobridge testified that the Association proposed the change because journeyman officers quickly progressed through the lowest steps. Instead of these journey officers reaching the top level in five years, it was now taking 12 to 16 years, if it ever happened. There have been hundreds of thousands saved by this longevity scheme. He added that he advocated against it, even though he attained that status and benefitted from the program. Eight comparable jurisdictions have also identified Level 5 as journey level as well as a number of others which created for Strobridge the "industry standard."

Each step on the salary schedule increases pay by 5.26%. Should the Association's proposal be adopted, everyone currently employed would receive an increase in that amount, except those who were MPO's, and those who were at Step 5 but had not qualified for MPO. The City presented evidence should the Association's proposal be adopted, 20 employees would receive a 5.26% increase, which, when combined with the Association's wage demand, would amount to a 10.54% increase for those individuals. The total cost to the City, including salary driven benefits, would be \$112,680.

The Association argues that the purpose of its proposal is to continue step compression in order to return to the historic practice of maintaining five salary steps. The Association presented ample evidence demonstrating this practice, which was modified and expanded with

the MPO program. The City asserts that the salary increases would be in addition to those already proposed. In its view, the Association has not demonstrated the necessity for such an expensive change. Nor has it put forward any evidence explaining why it is better to have six rather than seven steps. While the Association presented some evidence discussing the negative aspects of the MPO program, the program was only implemented at the Association's request during previous negotiations. The proposal is a transparent attempt to secure salary raises outside of the salary proposal. In addition to those increases, the City also will have higher salaries to pay at entry level. The Association has not demonstrated why such compression is necessary. Even assuming it were, that goal could be reached without an increase by simply deleting the top step. The Association further neglects to explain how this proposal impacts its survey analysis data. As is evident from that data, there is nothing to support the additional 5.26% increase for twenty officers.

Analysis and Conclusions

The evidence demonstrated that additional steps were added to the salary schedule, at the behest of the Union, with the introduction of the MPO classification. That classification was clearly intended to reward officers who had achieved certain levels of experience, education, and training, and to distinguish these officers from those who had attained journey level status. Nothing intrinsic to the program would appear to have an effect on the salary schedule other than introducing additional higher pay steps in recognition of those achievements. Stated differently, the introduction of a classification at a higher pay rate which one could attain after fulfilling certain qualifications has no demonstrable negative impact on lower classifications. Officers would still rise to journey level at the same pace. Those who wished to progress beyond that could do so by meeting the requirements of becoming an MPO.

As the City points out, while there was evidence that the three-quarters of the combined universe of comparable districts plus the City utilize a five-step salary progression, there has been no showing what impact this proposal would have on relative salary levels, or how this proposal would effect the comparisons which the Association advanced in support of its salary increase proposal. The City stresses that the proposal will result in a 5.26% increase for 20 of its 44 officers, or slightly less than half of them. The Contract requires time in grade and an evaluation of "Meets Performance Standards" for advancement on the salary schedule. The Association's proposal thus arguably conflicts with this language by proposing step advancement which has no such longevity and performance qualifications.

There has been no showing that the compensation for officers with up to five years' experience or less is substandard, or does not compare favorably with that offered in comparable jurisdictions. In addition, there has been no demonstration that the City has experienced difficulties recruiting because of non-competitive entry-level salaries. Insufficient evidence has therefore been presented to support changing the status quo.

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ISSUE 5: ARTICLE 7 - SALARY

Section 7.1

City:

No change to current language or current practice

Association:

Salary Increases for Term of Agreement

Top step Police Officer designated as benchmark for all classifications.

A composite list of all 15 comparable agencies (described below in the succeeding section) demonstrates that in about half, non-sworn, miscellaneous personnel are included in the bargaining unit. However, of the seven agencies which do not include non-sworn classifications in the unit, five (Monterey, Napa, Palm Springs, Pleasanton and Salinas) appear on the comparability lists of both parties. In only two agencies, Gilroy and Santa Cruz, do non-sworn receive the same salary increases as sworn personnel.

Strobridge testified that the purpose for placing this wording in the Agreement was to memorialize the practice that has been in effect for the past 30 years, namely that salary increases apply equally to all classes across the board, sworn and non-sworn alike. There have been some exceptions, but these have occurred when there have been equity adjustments in certain classifications or where there have been different benefit allocations, such as occurred with retirement benefits in March, 2003 and in July, 1987. He added that he is currently the president of the San Luis Obispo County Deputy Sheriff's association, an agency on the composite list, and that contrary to the City's evidence, the increases given to non-sworn personnel are equal to that of sworn, with the top step deputy sheriff classification as the benchmark. Strobridge noted that the top step police officer salary is the total compensation amount that is surveyed to establish a benchmark for all classifications.

The City maintains that the Association has not met its burden of proof on this issue to show that this change is necessary or even preferable for unit members. Setting the benchmark at top step police officer would unnecessarily limit the City's discretion with respect to salary increases. The Association's own data demonstrates that it is occasionally necessary to provide additional increases to certain classifications that may have fallen behind market-level compensation. On no less than eleven occasions were increases granted that were not applied equally to all classes in the unit, representing close to one-third of all increases that were granted from July, 1979 to December, 2005. The Association's current proposal provides for different increases for sworn and non-sworn in January, 2006. This data shows that the City does not have an unequivocal practice of granting uniform increases to all unit members.

Additionally, there was no evidence to show that all wage increases were based solely on salary surveys of the police officer classification alone. The Association proposes that the City end its practice of conducting various salary surveys among different classifications. This

would severely limit the City's ability to recommend salary adjustments on the basis of market data, and potentially cause severe misalignment for other job classes, both internally and externally. There is no past practice to memorialize. The proposal will severely skew salary equity within the unit, and cause real potential harm to the City's compensation system.

The City further asserts that the comparability data does not support the Association's proposal. While only Gilroy and Santa Cruz provide the same raises to sworn and non-sworn, it is not reasonable to conclude that they use the top step police officer as the benchmark for all classifications.

The Association counters that enacting a benchmark would not prevent equity adjustments in the future should a classification fall below market-level. The benchmark is nothing more than a measure to evaluate the current market, not a ceiling on what can be imposed or agreed upon.

Analysis and Conclusions

Data from comparable agencies was insufficient to establish that there was any widespread practice among them to link salary increases of non-sworn employees to that of sworn. More importantly, none were shown to contain language in their respective MOU's regarding a benchmark classification for determining the level of increases.

Although the City maintained that the exceptions to the linking of increases proved the rule, and that there was no consistent practice in this regard, the evidence shows that in more than a majority of cases, the increases granted to sworn were identical to those granted miscellaneous employees. In other cases, adjustments were necessary in certain instances due to market forces, or to offset differences in benefits. Accordingly, the parties have recognized that salary increases will be across-the-board except when circumstances dictate otherwise. The parties have also assumed that there is some sort of benchmark classification which is used for the purposes of analyzing comparative salary data. There has been no evidence presented that there has been extensive disagreement as to the classification which would be appropriate to use for comparisons, and that such disagreements have unduly protracted or hindered negotiations. Nor has it been shown that non-sworn personnel are consistently granted lesser increases than sworn. The question then arises why the Association now believes it is necessary to include language in the MOA which will provide a restrictive approach to salary negotiations, especially when there has been no demonstrable difference of opinion about the approach which is taken during these negotiations.

As the saying goes, "if it ain't broke, don't fix it." The Association's proposal introduces language into the Agreement which the parties negotiating practices have rendered superfluous. Additionally, the language is somewhat ambiguous, and may create uncertainty as to whether increases in various classifications are irrevocably tied to one another into the future. As such, the Association has not sustained its burden of proving why this change to the Contract is justified.

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ISSUES 6 AND 7: ARTICLE 7 - SALARY

Section 7.2

City:

Salary Increases for Term of Agreement

Salary increases will be effective on the first day of the first full pay period following the dates listed below:

January 2006	3%
July 2006	2%
July 2007	4%
July 2008	5%
July 2009	5%

Association:

January 1, 2006	5.28%	Sworn Classifications (Police Officer)
	10.82%	Non-sworn Classifications
January 1, 2007	6.00%	All Classifications
July 1, 2007	6.00%	All Classifications
January 1, 2008	5.00%	All Classifications
January 1, 2009	5.00%	All Classifications

Throughout the course of the presentation of evidence on the salary issue, the parties referred to various “universes” of comparable jurisdictions against which they measured and attempted to provide support for their proposals. Those universes had various designations. The POA list was commonly referred to as the “Gilroy 9.” That used by the City was referred to as the “Chico 9” or “Fire List,” as it was the list that was used in the negotiations with the City’s firefighters. Additional lists of comparables were used in support of a recent sales tax initiative, Measure Y, and in a compensation study conducted in 2007 for managerial and non-safety employees. Issue 38, discussed and determined below, found that the most apt universe for the sake of comparing bargaining unit compensation with that of other agencies should be that designated as the “Gilroy 9.” Nevertheless, argument in favor of the parties’ various economic proposals can be found in other universes, or a combination thereof. The lists of comparables are as follows:

<u>Gilroy 9:</u>	<u>Chico 9:</u>	<u>Measure Y:</u>	<u>Salary Survey:</u>
Gilroy	Chico	Ventura	Ventura
Santa Barbara	Davis	Davis	Davis
Monterey	Monterey	Monterey	Monterey
Napa	Napa	Napa	Napa
Petaluma	Petaluma	Petaluma	Petaluma
Pleasanton	Pleasanton	Pleasanton	Pleasanton
Salinas	Salinas	Salinas	Salinas
Santa Cruz	Santa Cruz	Santa Cruz	Santa Cruz
Santa Maria	Santa Maria	Santa Maria	Santa Maria
			Paso Robles
			SLO County

The City first presented comparisons between the two proposals and the average in its universe with the 9% PERS pick-up included as part of compensation, then as compared with total compensation, which included PERS pick-up, cafeteria contribution, education incentive, and uniform allowance. With PERS pick-up alone, the City's proposed increases put it slightly above the mean (in the 2-3% plus range) on every list except the POA list. Using total compensation,³ the City increases were between 4 and 5% plus above the Compensation Study mean, and between 2.5% and 3.73% above the Measure Y list mean. Comparing total compensation on the Fire List, City proposed increases for sworn personnel would place the Association at 1.18%, .02% and 2.03% above the average in the first three years of the Agreement. City proposed increases were -3.3%, -4.469%, and -2.33% below the average on the Gilroy 9 list in January, 2006, January, 2007, and July, 2007 respectively.

The City's combined wage offer of 19% was roughly equivalent to that provided its other bargaining units (Firefighters Local 3523, General (SLOCEA), Fire Battalion Chiefs, and Police Managers (SLOPSOA)). The City asserted that no bargaining group has received more than the City is proposing. The Consumer Price Index from the prior 12 months rose in December, 2005 to 2%; December, 2006, to 3.4%; and in August, 2007, to 2.6%. The City has hired a total of 8 officers from outside agencies, four of whom were from out of the area. There was one disability retirement in 2006 and one in 2007, and only one resignation in 2006. Turnover generally is lower in the Police Department than anywhere else in the City.

In July, 2007, the Department was authorized to add six new sworn positions and one non-sworn. At the time of these hearings, two of the police officer vacancies are unfilled. In one of these a lateral transfer is scheduled to interview. It was fairly common for the Department to hire lateral transfers. One lateral in the past five years declined a job offer for salary-based reasons. Over the next few years, about five officers will become eligible to retire, thus creating five vacancies.

As far as non-sworn classifications are concerned, using communications technician as the benchmark, the City's proposed increases will put them at -3.87% and -3.64% from the Fire List average for 2006 and January, 2007, and at -.58% in July, 2007. With total compensation, non-sworn will be -2.26%, -2.14%, and .40% in each of these three periods. The increases put them over 10% above average on the Compensation Study and Measure Y lists, using total compensation. With the City's proposed increases, Communications Technicians are -5.49%, -5.21%, and -4.11% below the average of the Gilroy 9 list for the three periods, respectively. Applying the Association's proposed increases, the classification is .37%, 6.25% and 5.56% above the average on the Fire List, and -4.14%, 6.97%, and 4.89% of the average of the Gilroy 9 data set. There was only one non-sworn resignation in 2006. Three communications technicians were hired from other local agencies in 2006, and one was hired from that source in 2007.

In response, Union president Strobridge first challenged the assertion that firefighters had received a total 19% wage increase package. In 2006, the firefighters received a 5% increase, but there was an additional 6% that was paid inspectors as of July, 2006. In July,

³City Risk Manager Karen Jenny noted, however, that the City and the Association had not come to agreement in prior negotiations as to what elements should be included in total compensation

2007 there was an additional 3% for paramedic incentives for top firefighter, as well as an increase of two slots for compensated firefighter/paramedic. In 2008, inspectors received an additional 6% salary increase,⁴ plus two more paramedic slots were added. In the final year, there was a hazmat incentive added, although there was no specific percentage indicated. What makes the firefighter/paramedic compensation significant is that this is the classification that the firefighters have identified as their benchmark. Thus, the firefighters have arguably received a 22% increase over the life of their contract. This would place them third in their data set of comparable agencies.

The Association maintained that the purpose behind its numbers was to bring department salaries within 85th percentile of the Gilroy 9 data set. The proposed increase for 2006 reached the average of that data set, while the proposals for subsequent years resulted in achieving that ranking. Total compensation used for purposes of the Association's calculations included salary, educational incentive, longevity, uniform allowance, PERS contribution, health, dental and vision. The difference between the sworn and non-sworn increases in the first year is the inclusion of the educational incentive package, which amounted to 5.26%.

Strobridge testified that the rationale behind the 85th percentile ranking was that in agreements which were effective for more than two years, the Association had lost ground relative to the market because of economic conditions. As of January, 2006, sworn officers received less total compensation than any comparable agency in the Gilroy 9, and were second from the bottom, ahead of Chico, on the Fire List. Other than attempting to guess at some number, the Association worked to develop a methodology whereby it could preserve its market position. The goal was to be in the top quartile of the appropriate comparable universe, which equates to the 85th percentile mark, or in the number three position among the agencies listed.

Strobridge stated that the firefighters pursued a similar strategy: identifying a benchmark position (firefighter/paramedic), and raising their incentive pay to fix it at a certain market position within their comparable data set. It was his understanding that they have reached that goal, and will be in the top three of their data set.

There were other considerations as well. Most agencies in the data set have contracts which expire at the end of their jurisdiction's fiscal year. This Agreement expires December 31. Accordingly, there are six months where the Association's market position is eroding relative to these other agencies. The Association's strategy is to capture that lag. Although raises might be adjusted in July rather than January, Strobridge stated that many of the comparable agencies have been without contracts for long periods due to unresolved bargaining issues, and it is difficult to assemble their data. Availability of health insurance data also posed a problem, as rates for the new calendar year are not typically published until late September or October. Bargaining on a fiscal year basis places organizations at a disadvantage, as they have already concluded salary negotiations when these rates come out, and face the possibility that health benefit increases might be substantial enough to nullify wage gains.

⁴There are three or four inspectors in the fire department. Strobridge believed that the increase was an equity adjustment.

There are a number of elements of compensation which are not accounted for in a total compensation survey. Strobridge stated that a common element for miscellaneous employees is shift differential pay. This element plus an equity increase for dispatchers in Santa Maria has created a substantial difference in pay between what they receive and what they are paid in the City. This had led to recruitment and retention issues for these positions in the City, where a high rate of turnover has made a dispatcher with seven years' experience the most senior in the Department.

The City has a mandatory shift rotation in the patrol division and in dispatch. There are only two shifts on a 3/12 plan, and these individuals work either days or graveyard. Thus everyone would be eligible for shift differential pay if it were an element of compensation in the City.

Another element common to comparable agencies is special assignment pay. In the City, all sworn officers engage in some form of special assignment. Ten are on the SWAT team, five are motor officers, four are field training officers, five are detectives, four are assigned as crime scene investigators. They do not receive special assignment pay, in part due to the MPO program, where officers do not receive the additional compensation until they have worked three special assignments over the span of nine years.

Affordability of living in the City was another factor in the Association's wage demand. Strobridge stated that the area is one of the least affordable in the state if not in the nation, as shown by the cost of housing relative to what average earnings are. Very few officers live in the City itself. Minimum response time has changed from thirty minutes to an hour because most officers live some distance outside the City.

In addition, there are recruitment and retention issue fueled in part by an aging work force which will be retiring in significant numbers from City service. The problem is not unique to the City, and there are thousands of police officer vacancies in the state. Attracting high quality candidates has become more competitive, especially because the City, unlike other jurisdictions, has maintained high standards for those it recruits. Strobridge disagreed with the City's evidence that indicated that there was no retention problem. The Department has hired many new people since he retired in 2003. He anticipated that five or six more will leave the Department shortly. Nonetheless, about three quarters of the officers are lateral transfers.

One possible lateral transfer, Kevin Rhyne, testified about his decision not to accept the City's offer of employment. Rhyne works for the Santa Barbara Police Department. He was interested in working for the City because it is closer to his home, and to relatives that live in Atascadero. He testified that he would have had to take a significant pay reduction if he were to change jobs, and that salary was the only factor that made him decide against coming to work in the City.

Strobridge stated that the 2007 increase was split to reduce the total cost of the package while maintaining the City's relative position among the comparable agencies in the Gilroy 9. With the Association's proposed increases, the total compensation package will place the City 4th on the Gilroy list, second on the Chico 9 list, and 4th on the combined list.

After hearings in this matter were concluded, the City granted significant increases to its managers. A January 22, 2008 article in the local newspaper pointed out that the raises, in the 12 to 17% range, were “a necessary remedy if the city is going to attract and retain top-flight candidates.” The news article further points out that many of the City’s top employees were “significantly underpaid” when compared with cities in the area, and that it has been losing employees to those neighboring cities. A compensation study released in November whose recommendations were approved by the City Council December 20, 2007 revealed that although salaries “within market,” considerable adjustments had to be made to enhance recruitment and retention. As a result, it was recommended that 86% of the managerial classifications needed adjustments, and that 81% of these employees under consideration would receive these adjustments. The compensation survey also found that 22% of the SLOCEA classifications, comprising 43% of the employees in the unit, would receive adjustments over and above the 19% increase they received in contract negotiations, and that there would also be an adjustment in their health plan contributions, as it was not competitive in the amount paid for family coverage.⁵ More specifically, an 8% adjustment was recommended for engineering and biologist classifications and 14% was recommended for utilities classifications. 50% of the proposed adjustments were to be implemented in January, 2008, while the remainder were to be phased in the following year.

Position of the Association

The Association’s goal of being in the top quartile in the Gilroy 9 data set is proposed in a series of incremental steps. The 2006 increase brings it to the average in that data set, and above average in the Chico 9 and combined list of comparables. In the year following, a 12% increase is required for it to reach its goal. To reduce the cost of the proposal, the Association has split the raise into two segments. This brings the City to the top quartile in both the Gilroy 9 and the combined list of comparable agencies.

As the data set for comparison cities in 2008 and 2009 is not complete, the Association was required to project a percentage increase which would maintain its position in the market. The adjustments it requests are identical to those proposed by the City in the last two years of the Contract.

Positioning the Association in the top quartile is critical for recruitment and retention. Indeed, there is a recruitment and retention problem for police officers state-wide. Artificially low salaries paid to City police are a deterrent to lateral hires. Part of reason for the reduced salaries is market erosion. Additionally, City police officers do not receive specialty or shift differential pay at the same frequency as other agencies. The Association is seeking to insure that the City will continue to attract and retain higher quality candidates rather than being forced, as other agencies have been, to lower standards.

Attracting and maintaining qualified communications technicians has become such a problem that the City authorized over-hiring in that classification. This issues have become more acute as baby boomers retire and there is a smaller labor pool to draw from. As noted

⁵Increases and adjustments were subject to the meet and confer process. The eventual outcome of that process is unknown.

in an August, 2006 article in the San Luis Obispo Tribune which described the hiring crisis at the county level, paying average wage levels has a downside. The City's proposal thus will spark a recruitment crisis similar to that faced by the County, whereas the Association's proposal will ensure that qualified candidates will have an incentive to work for the City instead of the County.

As shown by the supplemental evidence, at the same time that the City was promoting keeping police salaries at the average, it was preparing to grant huge increases to management staff. Although balking at the Association's proposal, it granted a 15% immediate salary adjustment for the Chief.

The evidence also showed that the City is one of the least affordable areas to live in the nation. Home and gasoline prices are among the highest anywhere. In addition, internal comparisons justify placing Association salaries in the top quartile, as that is the same comparative position that the firefighter contract places its personnel. The City does not challenge the fact that it has the ability to pay its officers at the top quartile. Its healthy financial condition has not been eroded by current budget issues in the state. The recent sales tax increase has resulted in higher than expected revenues. There is thus no justification for the City's proposals which keep Association member salaries artificially compressed at or below the average of comparable cities.

The City's salary proposals contained misleading information, relied on inaccurate data, and artificially attached the proposed increases to inappropriate data sets. Contrary to its argument, the Association's proposal for sworn personnel is not fatally flawed. The Association has submitted a final offer that can be independently adjudicated. It does not wish to manipulate the issue-by-issue process by accepting the City's educational incentive and then asking for a 10.82% increase, which would have placed its wage proposal considerably above its stated goal. Since the City has agreed to extend the education incentive to sworn officers, the issue can be decided as submitted and the offset will automatically be applied.⁶

The City's proposal artificially delays and compresses salaries to be paid its police officers. Applying the City's proposed increase and including the applicable educational incentive, sworn personnel would remain well below the Gilroy 9 average, and only slightly above the averages of the Chico 9 and combined data sets. If the City's proposal for 2006 is adopted in would ultimately result in a total compensation adjustment that would be slightly less than that requested by the Association. However, while the differences are slight in the first year, they become incredibly significant in the second. In contrast to the Association's 12% proposal for the second year, the City's July, 2007 proposed 4% increase places sworn officers well below average on all comparable jurisdiction lists. Its assertion that its salary offer places the Association "comfortably above average" on any list is patently incorrect.

⁶The Association presented its salary proposal for the first year with two alternatives, depending on whether the educational incentive was adopted for sworn personnel. This contingency has been withdrawn as a result of the City's agreement on educational incentive. Additionally, it is unclear whether the Charter permits alternate proposals when the items are to be adjudicated on an issue-by-issue basis. The contingency could not have been considered in any event.

The proposed increases for 2008 and 2009 are at the same level, with the main difference between them when they are implemented. Both are clearly designed to keep the Association in the market position established in year 2 of the Contract. Thus, in determining which proposal is most appropriate, this second year becomes the deciding factor. It will mean the difference between being competitive at the top quartile, or well below market average.

The City additionally claims that its offer is internally appropriate as the percentage raises it is offering are similar to those provided to other bargaining groups. Looking at the pure percentages is deceiving. Fire is in the top quartile, and requires only a minimum adjustment to stay there, whereas police require a significant adjustment to attain that goal.

The City further maintains that it does not have a recruitment and retention problem. Even assuming that to be true, it is undisputed that there is such a problem state-wide in law enforcement. The City points to anecdotal information in its brief that Monterey, Santa Barbara, and Santa Cruz are experiencing significant recruiting issues, and are understaffed. Using these agencies for comparison, adoption of the Association's proposal would enable it to maintain its market position relative to these agencies, while adoption of the City's proposal would drop salaries well below the average and well below those paid by these three agencies. By so dramatically altering the Association's position in the market, it is reasonable to forecast that significant recruitment and retention problems suffered in these comparable agencies are only a hair's breadth from occurring here.

Similarly, the Association's proposal for non-sworn personnel is fair and reasonable, and achieves ultimate goal of bringing its members into the top quartile. The City's proposed salary increases would place it well below average in 2007, creating a hole that it would be impossible to climb out of. The City argues that there is no justification for the 10.82% raise for non-sworn in the first year. However, that amount is justified as the equivalent value of those who are getting a part of their adjustment through the educational incentive, as well as the severe staffing problem in the Communications Technician classification.

Although the City claims that its raises would place Communications Technicians slightly above the average in its data set, the City has influenced the statistics by not including salaries paid in three of the nine comparable agencies, Monterey, Salinas and Santa Cruz. Once these are factored in, the City's proposal drops Communications technicians to 2% below the average in July, 2007. The 10.82% increase is necessary to keep the Communications Technician competitive. As shown by its exhibits, this classification will have fallen well below the average in both data sets by November, 2007. Thus, the City's argument that its proposal meets the average and is fair when external comparisons are made is patently incorrect. There is no justification for dropping the Communications Technician 6% below the average on the City's list, and the City's non-sworn wage proposal should be rejected.

Position of the City

The Association's salary proposal contains a fatal flaw that requires its rejection. The Charter provides that a decision must be made on each issue separately. Under the Charter, arbitration proposals cannot be made contingent on other proposals. To award this contingent package or to allow the Association to condition one proposal on the granting or rejecting of

another violates the Charter Section which requires the parties to submit a last offer on each individual issue. The proposal is additionally confusing because it is unclear whether the lower salary would apply if the City's proposal on Issue 20 were adopted. It is so unclear as it would likely lead to future disputes. Should the proposal be awarded, it is highly probable that the City will pursue litigation to correct its illegality.

Even absent this fatal flaw, the City's proposal is preferable because it reasonably incorporates the internal and external salary survey data, represents a fair increase that adequately protects the interests of both parties with respect to morale and recruitment issues, and ensures equity among City bargaining units. No other city employee group has received a higher salary offer than that being offered the Association.

The City's offer also exceeds the CPI increases in the San Francisco/Oakland/San Jose area, which increased 2.6% from August, 2006 to August, 2007. The Charter requires that the decision take into consideration that factor, which conclusively establishes that the City's salary proposal should be rejected.

The City's offer is also competitive with respect to external comparables. The current Contract and past practice has been to use a list of comparables used for other city employees. Comparing the offer to any of the lists, the City's is comfortably above average. It is only in comparison to the Association's handpicked list, which has never been used for comparison purposes, that the City's proposal falls below average. The City's offer is also well above the Fire List average for salary.

Comparability is only one of the many considerations that go into any salary decision. One such factor is whether the unit is experiencing problems in recruitment and retention of employees. Turnover within the Association's unit has been lower than that which is City-wide. There is no indication that officer salaries are creating any difficulties for the retention of Department employees.

The Department excels in recruitment and filling vacancies for sworn staff. It has filled four of the six newly created positions, with one of the two remaining about to be filled. The City has regularly recruited laterals, and has hired four in two successive years from other agencies. The Association witness who turned down a job offer admitted that he had not done a full analysis of the total compensation package, and that morale is high in the Department. This success is in stark contrast to the status of many other law enforcement agencies. Monterey, Santa Barbara and Santa Cruz have reported significant recruitment and retention issues. Compared with this experience, the City is doing an extremely good job recruiting and retaining officers.

The only possible justification of a pay increase as significant as the Association is proposing would be that the City is currently paying well below the market rate. Its success recruiting and retaining indicates that its current compensation and benefits package is competitive. It is also significant that even though officers in the City have not received a raise since 2005, it has been able to retain and recruit with salary levels from 2005.

The Association's proposal is simply unreasonable. It has not articulated any

justification why City police should be paid salaries that are far above average. Although the City is expensive to live in, cheaper housing is available in other areas outside the City. Most officers take advantage of that fact by living in those areas. High housing costs do not support the Association's proposed increase.

The Association has also failed to put forward any evidence explaining why its sworn members should receive raises that are so much higher than that received by other bargaining units. It would be disastrous for the City's ongoing labor relations to grant such a windfall to the Association. It would create a strong incentive for other units to hold out for arbitration in hopes of getting a similar deal.

The City is offering sworn officers a proposal that is in line with internal and external comparables. It is the same as the firefighter increase, and falls squarely within or above the average salaries in comparable cities. It is meant to keep salary competitive while maintaining positive labor relations with other units. The Association's proposal would create an uneven pay structure where sworn officers received a disproportionate share of the City's resources. The proposal is especially unreasonable given current uncertainties in state and local budgets.

The reasons advanced for rejecting the Association's proposal for sworn employees apply equally to rejecting its proposal regarding non-sworn personnel. It has not presented any evidence to support such a large increase, amounting to a 32.82% increase over the life of the Agreement, which would place Communications Technicians into the second position on the Fire List and the third position on the Association's list. The City's offer is the same as that received by Firefighters and Battalion Chiefs, the same percentage increase over the term of the Contract to SLOCEA, and 1.5% higher than that provided Staff Officers. The increase is greater than the increase in the CPI, and competitive with respect to external comparables. Only on the Association's list does the City's proposal not meet the average. For reasons stated above, it makes no sense to grant a windfall to a single group of employees.

The City's supplemental exhibits, which include the Council resolutions adopted by the City, demonstrate that the representations made by the Association are erroneous and misleading. The raise given the Police Chief, rather than "whopping" as described by the Association, was justified because the salary was below the median of cities in the survey. Even at that, the recommendation was to increase the salary range, which would not mean an immediate raise for the incumbent. It is only the opportunity to earn it over time. They advance in range only if their performance is evaluated positively and they are granted discretionary salary advancement. The Chief did receive a raise because of salary compaction between her classification and that of captain.

The Study confirms that about 60% of the City's classifications are competitive, including police. While top management jobs may be difficult to fill with lateral hires, police officer positions have been filled with lateral transfers without difficulty. It is interesting to note that the Association now feels that the list used in the compensation study is relevant and useful in comparing salaries. The City adopted salary adjustments for job classes that were significantly below market and for which the City has had difficulty recruiting and retaining employees.

Analysis and Conclusions

Fundamental differences arise in the appropriate level of increase in the second year of the Agreement, and as to the dates when the increases shall become effective in each Contract year. The City places the effective date for all of its increases save one in July of each year. The Association's demand seeks implementation of increases as of January, thus making its proposal more costly not simply from the standpoint of percentage amount, but also from the standpoint of the number of months over which the increase shall be paid. Salary demands and offers are presented within a multi-year group as part of a single proposal. As the Charter requires an issue-by-issue decision on each proposal, there is no means for adopting the City's offer in part and the Association's demand in part, regardless of the merits of particular components of each proposal. Either must be implemented *in toto*.

The City advances the position that the Association's proposal for sworn officers must be rejected because rather than presenting an issue which could be determined in and of itself, it initially contained alternative positions contingent on whether proposals on other issues were accepted or rejected. The Charter clearly states that submissions must submit "a last offer of settlement," and thus only one offer, on each issue, and that "each issue" must be decided by itself. Accordingly, as the City suggests, a party may not submit an issue which is contingent upon the resolution of a separate issue.

The question remains whether such a proposal was "fatal" to the Association's entire demand. This question must be answered in the negative. A number of reasons compel this conclusion. Perhaps the most significant centers on a question of due process. These negotiations have taken more than two and a half years. Wages and benefits of bargaining unit members which have remained stagnant at pre-2006 levels have been actually declining in value as the process drags on. They are the lynch-pins around which this Contract turns. To nullify, rather than weigh, a party's wage demand after such a long period, and essentially grant the opposing side its proposal by default, would promote protracted negotiations and a reluctance to come to terms. It would further encourage a party to keep its legal arguments against a proposal close to the vest, and postpone until the 11th hour the submission of those arguments which might convince the other side to modify demands and finalize an Agreement.

The record is unclear whether the City asserted the "fatal flaw" argument consistently through the negotiations. When the Association realized that there was some logic to the City's assertions, it modified its final proposal to conform to the Charter. This is not unlike agreeing to any other part of the Contract, as has occurred in a number of instances. Preservation of the collective bargaining process here, as well as morale, are too important to be left to "gotchas." The City has not been prejudiced by this modification, and asserts that its proposal should be accepted on the merits alone. In sum, the Association has corrected the flaw contained in its original proposal, without prejudice to the City. Even if it had not, the objectionable portion of the demand is severable from the remainder so as to preserve the Association's fundamental collective bargaining right to negotiate wages. Given the Charter's requirements, the proposal must be determined without any contingency attached, and the demand weighed after it is stricken. Consequently, only that part of the Association's proposal requesting a 5.26% increase for sworn officers in the first year of the Agreement may be

considered as part of the Association's wage demand.⁷

Changes in the CPI justify no less than an 8% increase through 2007, assuming wages were static. This Agreement goes two years beyond that. There is no reason to believe that the CPI in these outer years would not continue to grow at the same if not greater pace as it has in the past, particularly in light of the significant recent rise in the cost of food and energy. Thus, salary increases in the neighborhood of 12% to 14%, or slightly higher, are amply supportable on the basis of CPI alone.

Both parties, however, are not interested in merely preserving the value of employee compensation. Both seek to elevate the rank of their agency from the relative market position it has occupied since before 2006. The City offers increases which would place the Association roughly in the middle of its universe. The Association proposes increases which will place it in the "85th percentile," or top three, on its nine-agency list of comparables.

There is nothing intrinsically persuasive about which relative position this Department should occupy on a selected list, especially where that position has not been established by custom or practice. Establishing a pay scale in the top third appears no more meritorious than establishing and preserving one at average, regardless of the universe. The Association must therefore demonstrate why compensation that is above average is warranted. Simply put, they must show why their members need to be among the highest paid around.

Recruitment and retention is most often cited as a rationale why employees should be paid more than their counterparts in similar agencies. Here, such problems do not appear nearly as acute as elsewhere. Lateral transfers are common. Jobs do not stay vacant long. The City asserts that the Association's significant pay increase could only possibly be justified if the City were paying well below market rate, and was experiencing difficulties recruiting and retaining employees. Yet the Association established that there are some imminent retirements, and a need to attract from a state-wide pool that is failing to meet demand for qualified officers. While recruitment does not appear to be a problem now, at least for sworn officers, it may well become one into the future. Higher wages may attract better candidates, or at least more of them to choose from. They also encourage employees to remain with the City by placing the City among the more greener pastures in the State. Furthermore, as the Association points out, similar coastal communities such as Monterey, Santa Cruz and Santa Barbara, which provide compensation at or below the average of the Gilroy 9 data set, are having difficulties recruiting sworn personnel.

The City stresses that its proposal is more in line with the increases offered to other bargaining units, and should be adopted for the sake of internal consistency. However, the evidence showed that managers and supervisors, though not in a group of represented employees, recently received significant increases, in some cases between 12% and 17%. These increases, or "adjustments," were over and above any increases that these classifications had received in 2006 and 2007. A sizeable percentage of SLOCEA members received salary adjustments as the result of a wage survey which were in addition to the 19%

⁷The Association's withdrawal of the alternative proposals arguably rendered this discussion moot.

they had achieved via contract negotiations. Firefighters also received compensation above the 19% level if one factors in the raises given inspectors and the 3% paramedic incentive. The Association was further able to demonstrate that the increases attained by Firefighters placed them at a level in their list of comparable agencies that was roughly equivalent to the relative position that the Association will achieve on its list of comparables should its proposal be granted. When assessed from this standpoint, the Association's proposed salary increase is consistent with that awarded to the Firefighters.

The City argues that it would be "disastrous" for its internal labor relations to grant increases which were significantly greater than those granted other bargaining units, and that it would encourage others to hold out for arbitration in the hopes of getting increases of this magnitude. Nonetheless, there can be no perceived premium in protracted negotiations and in the postponement of wage increases which inflation alone would justify. Even with retroactivity, the amounts paid out in salaries for prior years are worth less than they would be if a Contract had been concluded sooner. As noted, the additional 8% which the Association requests above the City's offer is not that far different from total augmentations paid to other employees via wage increases combined with salary "adjustments."

Though the City asserts that granting the Association's proposal would create an imbalance among the City's bargaining units and force it to devote a disproportionate amount of resources to the Association's members, the increases paid to unit members must be determined not only by what it has been agreed upon by other employee groups, but also by reference to overall market standards for the specific type of work which the Association's members perform. As determined below, it was concluded that the "Gilroy 9" list of comparable agencies was a more appropriate measure of relative market position than the "Chico 9" list. When the City's proposal is compared with the compensation paid in those agencies on the Gilroy 9 list, sworn personnel receive well below average compensation in the data set after the second year of the Contract. It is also below average on the combined lists through 2007. The situation is more acute when the City's proposal is applied to non-sworn personnel and compared with the agencies on the Gilroy 9 list. Parenthetically, the City's proposal for non-sworn leaves their compensation for the benchmark non-sworn classification below average until July, 2007 even when compared with its own Chico 9 list.

The Association was also able to demonstrate that certain elements of compensation that are paid in other jurisdictions are not compensable in the City. These included shift differential pay and special assignment pay. These augmentations provide an additional rationale for compensating sworn personnel at a level which is relatively higher than that of most comparable jurisdictions. Other support for the Association's proposal can be found in the relatively higher cost of living in the area in and around the City. A lack of affordable housing within the City has necessitated increasing the response time for the bulk of officers who must commute to work. Providing a higher level of compensation might enable some unit employees to live in closer proximity.

The City acknowledges that it is able to meet the Association's demand with available resources, and does not assert that it would be fiscally irresponsible to grant the Association's proposal. Given the Charter's requirement that the matter of salary must be decided on a package basis, it is concluded that the Association's proposal, overall, most nearly conforms

to those factors detailed in the Charter.

ISSUE 8: ARTICLE 8 - MASTER POLICE OFFICER PROGRAM

Section 8.4 Master Police Officer

[Tentative Agreement regarding subsection (3) of Section 8.4. Remaining issue concerns whether provision will apply retroactively.]

City:

Eligibility requirements for the position of Master Police Officer are as follows effective ~~January 13, 2005~~ **upon the date this Agreement is formally approved by the City Council or ten (10) days after an arbitration award is issued, whichever is later:**

Association:

Eligibility requirements for the position of Master Police Officer are as follows effective January ~~13, 2005~~; **01, 2006:**

The Association maintains that the distinction between the parties' proposals is *de minimis*, as there is only one officer, Gregg Dunn, who would actually be affected by the retroactive application of this provision. Dunn has worked for the City since 1994, and was hired as a lateral from another agency, Riverside, where he had worked for 15 years. While at Riverside, Dunn worked on the SWAT team for 11 years, on assignments similar to the SORT squad, as well as on a Narcotics Task Force. He has fulfilled all the MPO requirements save one: he is missing a third special assignment. However, while with the City, he worked on SORT and the Narcotics Task Force, but chose not to work in a third special assignment. If given credit for work while in Riverside, Dunn would achieve MPO status. The Association therefore asserts that as the cost to the City for this proposal would be relatively small, there is no justification for denying its retroactive application.

The City argues that despite his time with the Department, the reason Dunn has not attained MPO status is because he has chosen not to complete a third specialty assignment. Thus, there is no compelling reason to provide him with pay he was not expecting, and no reason why he should not wait until the date that an arbitration award is entered before using his prior specialty assignment to qualify under this provision. Unlike Officer Dunn, other officers have pursued third specialty assignments and are actively working toward the MPO requirements. The Association ignores the unfairness of according him MPO status through a retroactive rule change. Applying the change prospectively to all is more equitable and fair.

The Association counters that the purpose of this provision is not to punish individuals for their career choices, but to expand the availability of the benefit to those who have achieved the skills, experiences, and education necessary to qualify them for MPO, even if one of those specialty assignments was performed at a prior agency.

In some sense, granting the Association's proposal on this issue will result in a minor

windfall for Officer Dunn. Nevertheless, the City was not opposed to the principle of recognizing service in other agencies in specialty assignments, and to giving credit towards attaining MPO status by virtue of such service. Officer Dunn will be in effect "made whole" for the delay in the renewal and implementation of this Agreement, not unlike other unit members will be made whole for the increases in compensation that they would have received had this Contract been concluded in due course and coincidental to the prior Agreement's expiration. Additionally, this article will be modified in such a manner as to make it consistent with the determinations and retroactivity aspects of Issues 1, 2, and 3.

ISSUE 9: ARTICLE 10 - OVERTIME - SWORN

Withdrawn by both parties; status quo

ISSUE 10: ARTICLE 10 - OVERTIME - SWORN

Section 10.3 - Compensation

City:

- A. Overtime hours shall, at the employee's option, be compensated in cash at time and one half the employee's regular rate of pay or in time off compensated at time and one half. However, no employee shall accumulate and have current credit for more than ~~80~~ **100** hours of compensatory time off.

The Association accepts the City's proposal.

ISSUE 11: ARTICLE 10 - OVERTIME - SWORN

Section 10.6 Court Time

City:

- D. Effective upon the date this Agreement is formally approved by the City Council or ten (10) days after an arbitration award is issued whichever is later, if a scheduled court appearance is canceled on the day the employee is to appear, s/he shall be eligible for the minimum payment in this Section.***

Association: The Association accepts the City's final proposal.

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ISSUE 12: ARTICLE 10 - OVERTIME - SWORN

Section 10.6 Court Time

City:

- E. Effective upon the date this Agreement is formally approved by the City Council or an arbitration award is issued, pay for a DMV hearing by telephone shall be made for actual hours worked and shall not be subject to the minimum payment in this Section. Work time starts at scheduled subpoena time and ends at the conclusion of the employee's testimony on that day.***

Association: No change

In-person appearances before the DMV are no longer required in all cases, and may be accomplished via telephone, as noticed on the subpoena. Over the last three years, the Department has averaged about 20 DMV appearances per year when officers received extra compensation. The amount of time it took for such an appearance averaged 45 minutes. About 30 members of the bargaining unit would be involved. On occasion, an officer working night shift who cited someone for a DUI would not be called to testify during his/her normal working hours.

Lieutenants and sergeants also might be called to testify at such hearings. Their recently concluded MOA contained no such similar restrictions. Were the change not adopted here, officers would continue to receive the current minimum, pay for three hours, if they are not on duty.

Officer Thomas King has been contacted for telephonic hearings during his off hours on two occasions following a graveyard shift. On one occasion, the hearing took about 40 minutes after he had gotten off at 7:00 a.m. He could not go to sleep until after the call process, which began at 8:45. However, he did go home. Officer John Villanti also worked nights when he was called for a DMV hearing. He spent about 15 minutes at the hearing, and about one hour on stand-by. However, Villanti stated that it was unusual to be on stand-by for so long.

In the combined list of 11 comparative agencies, 6 agencies paid 3 hours OT minimum, and three paid 4 hours OT. Only one, Santa Maria, paid for hours worked.

The City urges that court appearances involve a great deal more than telephonic ones. Appearing in uniform and commuting to the court house are required in addition to testimony. The only obligation in a telephonic hearing is to call at a particular time and present testimony. There was only one isolated instance of having to be on standby. The City's modified proposal clarifies that officers will be compensated for waiting time as well. It is an attempt to differentiate between the court/DMV appearance compensation offered in a fair manner. Under the City's proposal, officers will not receive a windfall for a brief telephone conference.

The Association maintains that the City has not sustained its burden of proof in seeking to change the *status quo*. There is no identifiable reason for the disparity between ranks when performing identical work. This contrary to any notions of fair compensation for DMV telephonic appearances. The only difference for the City is attire, which the Association maintains is a *de minimis* task in another context. A graveyard officer still has to stay awake, interfering with the ability to get sufficient rest before the next shift. It is precisely this type of inconvenience that the compensation for court time is supposed to address.

The City counters that the disparity between sergeants and officers is justifiable, as there are far fewer sergeants, and disparities elsewhere, such as in uniform allowances. Ultimately, the proposal makes good economic sense. The impact on free time of a DMV court appearance is negligible and does not warrant pay beyond the time worked.

Analysis and Conclusions

Comparisons both internal and external demonstrate that the distinction between telephonic appearances and court appearances is one which is recognized only by the City. A substantial portion of other jurisdictions is willing to compensate their sworn officers with guarantees of three or four hours, regardless of the type of appearance. The City is also willing to compensate staff officers at the three-hour level. This indicates that this level of compensation is widely recognized and acknowledged as fair and reasonable for the inconvenience of performing work while one would otherwise be off duty. Accordingly, the Association's proposal most nearly conforms to the Charter factors, and will be adopted.

ISSUE 13: ARTICLE 10: OVERTIME – SWORN

Article 10.10 Overtime Assignment

City:
(New Section)

B. An officer may decline a non-emergency overtime shift if s/he has worked an overtime shift of at least eight hours in the last fourteen days. If no volunteers are available from the list, the Watch Commander may then move up to the next least senior officer on that shift for mandatory overtime.

Association: No change

This proposal is intended to address the concerns about mandatory overtime when there are not enough volunteers to fill the assignments. Typically, the most junior officers volunteer for overtime work. To avoid the possibility that they work an excess of overtime, the City proposes to allow the lower seniority officer to decline a non-emergency shift if they had already worked an extra shift in the past two weeks. "Non-emergency" was something defined as projected or planned overtime, meaning a shift filling in for some one out on leave. "Planned overtime," under Section A, is filled from an overtime list.

Strobridge testified, however, that absolute seniority has been the paradigm in the Department. Junior officers, typically needing the extra compensation, volunteer for overtime. The City's proposal forecloses the Department's ability to use half of the total staffing in the Department, as there are two shifts, and a list for each shift. If the Department may only designate overtime from a shift, it forecloses them from working on days off. It also conflicts with the nonsworn overtime provisions and the seniority clause.

However, Capt. Parkinson stated that the practice was to get someone voluntarily first, regardless of what shift they happened to work on. If there were no volunteers, the Department tries to work within the shift, and has followed this practice for the past six years.

The City asserts that its proposal provides additional rights to officers and addresses safety concerns. The Association surprisingly opposes the change, which would help prevent overburdening less senior officers with overtime. The second part of the proposal prevents serious safety concerns from arising when an officer who works nights is forced to work on a day shift by virtue of strict seniority. It would not prevent officers from volunteering. It simply addresses the safety concerns which arise when officers are ordered to work overtime shifts that are opposite their current schedules. The provision is important to allow the City to maintain positive morale among less senior officers in conjunction with the highest safety and service standards.

The Association maintains that this change to the status quo is unjustified, and seeks to correct a non-existent problem. The provision would also conflict with Article 18, which states that "overall seniority in a specific job classification . . . will prevail as the standard" for determining "days off, vacation, holidays, and shift selection." The seniority system should only be modified when there is a tangible, demonstrable reason for doing so. The City was unable to cite one instance where a junior officer was overburdened with overtime, or where safety issues were raised. The evidence demonstrates the opposite: that the City permits officers to sign up for voluntary overtime even when it is opposite their regular shift. The City has a longstanding requirement to give an officer at least ten hours' rest between shifts. These factors mitigate the purported problem.

In addition, the Association urges that the proposal would create an inequity between sworn and non-sworn, in that overtime assignment provisions are currently identical. No evidence was submitted as to why the two groups should be treated differently.

The City argues that the language of Article 18 (Seniority) is narrowed to certain aspects of employment such as vacation, holidays, and shift assignments. No mention is made of overtime assignments, thus giving rise to the implication that the parties did not contemplate using seniority as a controlling basis in assigning overtime. The City's concerns are not trivial. It has had problems with the least senior person being overwhelmed with overtime.

Analysis and Conclusions

The Association maintains that the City's proposal runs counter to the Contract's recognition of seniority rights. However, as the City points out, these seniority rights apply to certain discrete situations, and not to the assignment of mandatory overtime. The thrust of the

Association's position appears to be a concern that seniority that has been earned will not be respected in the event that a junior officer is able to decline a mandatory overtime assignment. In so arguing, the Association is seeking to implement an absolute right where none had existed previously. The City's proposal allows it a degree of flexibility in assigning overtime, and has the legitimate effect of shielding the most junior officers from excessive overtime and the morale issues which result from it. The Association claims that the proposal unduly restricts overtime assignments to those on a particular shift, foreclosing officers from working on their days off. Nothing in the language of the proposal suggests that officers wishing to work on those days cannot signify their interest by volunteering.

The City's proposal meets a legitimate safety and operational need. It also preserves seniority rights to the extent that mandatory overtime, when no volunteers are available for it, will be assigned to the least senior individual on the shift who has not worked on overtime shift in the previous two weeks. The City's proposal thus most nearly conforms to the Charter factors.

ISSUE 14: ARTICLE 11 - OVERTIME - NON-SWORN

Status quo – Proposals withdrawn by both parties

ISSUE 15: ARTICLE 11 - OVERTIME - NON-SWORN

Section 11.3 Compensation

City:

- A. Overtime hours shall, at the employee's option, be compensated in cash at time and one half the employee's regular rate of pay or in time off compensated at time and one half. Maximum accrual of compensatory time shall be ~~480 hours for Communication Technician and~~ 240 hours for all other non-sworn classifications.

Association: No change⁸

In a 2004 supplemental agreement, the City agreed to increase the number of accruable hours from 240 to 480. Overtime in dispatch during 2007 totaled 2,182.75 hours. Only one communications tech has accumulated more than 240 hours, with that individual at 262.06 hours. The next three closest were at 203.19, 178.34 and 116.2 hours, while the remaining dispatchers were well below those levels. None of the departments in any comparative district have comp time for dispatchers at the level which currently exists in the City. In point of fact, even an accrual level of 240 hours for dispatchers is more than double that of any other agency, save Petaluma.

⁸In its rebuttal, the Association submitted a modification to its proposal on Issue 15 which would have allowed accrued time off to be reduced to 360, rather than 480 hours. As discussed below, this revised offer may not be considered in this Award.

Dispatcher Shaana Lichty testified that the same staffing issues which existed in 2004 continue to exist at present. The City knows a year in advance how much time the dispatchers plan to take off. The master schedule issues in September. Because of staffing shortages, there are few opportunities to take time off which has not previously been requested. The large accrual enables dispatchers to take time off to deal with family medical issues. Dispatchers are primarily female, and may need the time for pregnancies. Lichty stated that there would also be a reluctance among employees to sign up for overtime if there were a cap on accruals. Nevertheless, coverage problems would be exacerbated, and more comp time/overtime required, if a dispatcher took a large amount of time off, such as two or three months.

The City points out that the City's proposal would maintain an accrual cap more than twice the average of 106 hours in comparable cities. Allowing employees to accrue high levels of comp time is potentially very costly. It creates large banks of unmanageable liabilities when employees separate from City service. This comp time becomes more expensive as salaries increase over time. The accruals also can create scheduling nightmares if employees take large amounts of time off. The communications unit already suffers from staffing issues, which would be exacerbated by the large leave banks. As there is only one employee with a large leave balance over the 240-hour threshold, the proposal would not be difficult to implement.

The Association asserts that the City failed to sustain its burden of proof in seeking to alter the *status quo*. The same staffing issues exist now as they did in 2004, when the number of hours was increased to 480. As noted, in its rebuttal, the Association offered a compromise which would reduce maximum accrual to 360 hours. It also asserted that the City proposal would have a negative impact on one member of the bargaining unit, who worked long hours to assist in the staffing crisis given the incentive provided by the high number of hours she could accrue.

Analysis and Conclusions

The external comparisons demonstrated that the number of hours dispatchers were permitted to accumulate was inordinately high. The City has offered convincing proof that continuing to allow that level of accumulation would aggravate the problem the level was designed to solve, *i.e.*, staffing shortages. Should a dispatcher take off as much as 12 weeks, this would necessarily require other dispatchers to work overtime to fill in. Additionally, as the City asserts, a 480 hour accumulation would create a large unfunded liability, compensated at a rate which would steadily increase as wages rose. Although the Association maintains that conditions are the same as when the 480 accrual was implemented, the City has had the benefit of the experience of working under the proposal, and has discovered that it has not worked to its advantage.

The Association's rebuttal offer to lower the accumulation to 360 hours may not be considered. While there is no apparent obstacle in the Charter to a party withdrawing a proposal or signifying tentative agreement prior to the issuance of the Award, the Charter directs the parties to submit a "last" offer of settlement. The Award may only be based on that last offer. Notably, the Charter provides the parties with ample opportunity to present and try to come to terms on any subsequent modifications after the Award has been issued.

There is an employee who has accumulated in excess of 240 hours, and the adoption of the City's proposal arguably reneges on the promise that it made that she would be able to accumulate (and thus use) such hours. Reducing the amount removes the opportunity that the time might be taken all at once, thus providing for an extended leave. It also denies dispatchers the chance to build up a large bank of time to be used for unforeseen circumstances, such as health issues. Nonetheless, the value of the hours worked will not be eliminated, as employees will be able to cash out whatever amount exceeds 240. Additionally, it is somewhat speculative to assume that the Department, due to operational necessity, could afford to grant a leave for as long as 12 weeks (or longer if combined with other leave), or even that the employee would wish to take the time all at once.

The City's proposal thus most nearly conforms to those factors traditionally taken into consideration in the determination of wages, hours, benefits and terms and conditions of public and private employment.

ISSUE 16: ARTICLE 11 - OVERTIME - NON-SWORN

Withdrawn – status quo

ISSUE 17: ARTICLE 11 – OVERTIME NON-SWORN

Section. 11.6 Court Time

The parties have reached tentative agreement on the following new language:

- D. If a scheduled court appearance is canceled on the day the employee is to appear, s/he shall be eligible for the minimum payment in this Section.***

ISSUE 18: ARTICLE 11 - OVERTIME - NON-SWORN

Withdrawn – Status Quo

ISSUES 19 & 20: ARTICLE 14 - EDUCATION INCENTIVE

City:

The educational incentive pay plan shall continue as described below for **sworn and** non-sworn personnel for the term of this agreement.

- A. BASIC BENEFITS.** Education incentive pay shall not begin until one year after employment with the City of San Luis Obispo, but credit will be given for approved education obtained prior to that time. **Effective January 1, 2007**, the basic benefit ~~for employees hired prior to July 1, 1981~~ will consist of one-half step above the base salary for possession of an A.A. or equivalent degree from an accredited community or junior college, or 60 or more semester units, or a

City-approved equivalent; one full step for a B.A. or equivalent degree from an accredited college or university.

Association:

The educational incentive pay plan shall continue as described below for **sworn and** non-sworn personnel for the term of this agreement.

- A. BASIC BENEFITS. Education incentive pay shall not begin until one year after employment with the City of San Luis Obispo, but credit will be given for approved education obtained prior to that time. The basic benefit for employees hired prior to July 1, 1981, will consist of **an adjustment equal to** one-half step above the base salary for possession of an **Intermediate POST certificate**, A.A., or equivalent degree from an accredited community or junior college, or 60 or more semester units, or a City-approved equivalent; **an adjustment equal to** one full step for an **Advanced POST certificate**, B.A. or equivalent degree from an accredited college or university.

Association president Strobridge testified that the Educational Incentive for sworn officers was originally eliminated when the MPO program was adopted in the 1988-93 Agreement. Because there are additional requirements beyond certificates for MPO's, Strobridge did not believe that educational incentive was folded into that program. The additional requirements include three specialty assignments, as well as one year at Step 6 of the salary range, which itself takes 6 years to attain.

Both the intermediate and advanced certificates require a certain number of years experience, in addition to possession of or eligibility for the Basic Certificate. An Intermediate Certificate may be obtained with a Bachelor's Degree and 2 years experience, or an Associate Degree and 4 years experience. It may also be obtained by various combinations of Education and Training Points, coupled with a certain number of years of experience: the lower the number of points accumulated, the greater the amount of experience is required. Advanced Certificates may be obtained with 4 years experience and a Master's Degree, 6 years experience and a bachelor's degree, and nine years experience with an A.A. degree.

The 2004-2006 Contract reinstated educational incentives for non-sworn personnel who had not been grandfathered. Due to fiscal constraints during that collaborative negotiations process, Strobridge did not seek the incentive for sworn officers at that time. However, an inequity has been created. As indicated, both the City and the Association agree that educational incentive pay should be provided to sworn as well as non-sworn personnel. Where they differ is on the criteria for eligibility, as well as the date on which the proposal becomes effective. The Association seeks to add both Intermediate and Advanced POST certificates to those criteria.

There are educational incentives for POST certificates in all of the 15 agencies used in

comparability surveys except two, Monterey and Petaluma.⁹ A good number of these provide for a maximum of 5% for the Advanced certificate, which is roughly equal to the two half-steps (2.63% each) proposed as incentives by the Association. An MPO with a bachelor's degree may earn a combined 10% incentive. Another agency is at 7%, while two more are at 7.5%. Other jurisdictions provide a dollar amount, which may equal between 2% and 9% of base salary. However, the large majority of these agencies do not have an MPO program, which the Association views as the equivalent of a corporal or police agent rank. Strobridge added that many POST courses can be taken and training points earned while on duty, and that the intent of the Association's proposal was to allow the college credits thus earned to apply towards earning the incentive.

The City asserts that it has chosen to reward officers for Advanced POST training through the MPO program. The Association's proposal, it argues, is not supported by comparables and would undermine the MPO program and the core purpose of the educational incentive, which is to encourage employees to complete college degrees. Officers would be tempted to simply complete POST training rather than complete the additional requirements of the MPO program. Only two of the cities surveyed by the City, Gilroy and Santa Cruz, provide identical increases for POST certificates as college degrees, and most differentiate between the two. Only three (Davis, Napa, and Santa Maria) offer education incentives for both POST certificates and advanced degrees simultaneously. None provides paying twice for the POST certificates, as does the Association's proposal, and no other agency provides for a 10% increase for an advance POST certificate. None of the comparable agencies on the Fire List have an MPO program. As some POST training is done on City time, it makes no sense to provide an incentive and pay for such training. The City's proposal enables MPO status based on advanced POST certificate, plus educational incentive based on advanced degrees.

The Association bears the burden of demonstrating that the current language should be changed to include POST certificates as part of the educational incentives. It has not put forth any evidence to suggest that such certificates are comparable to A.A. or bachelor's degrees. The City believes that both types of training are important, and has thus provided encouragement for such attainments through the education incentive and the MPO program.

With regard to the effective date of this proposal, the City argues that the Association's proposal is problematic because it does not state an effective date. Depending on which proposal on Issue 2 is accepted, the Association's proposal might actually provide a lesser benefit with respect to retroactivity.

The Association argues that all but two of the combined eleven survey agencies provide educational incentives for POST certificates. Accordingly, the inclusion of POST certificates in an educational incentive program is standard in the industry. While the City argues that including these certificates will undermine its education goals, there is no data in the record indicating that the inclusion of the benefit will increase its availability to Association members. Some years of experience are required for an Intermediate or Advanced certificate. Coupling "Education Points," which are earned by acquiring college credits and experience, has

⁹These provide incentives for BS and AA degrees only.

transformed the POST Certificate process into one that encourages sworn personnel to gain a greater level of education. Thus, the City's goals to provide incentives for education are easily met by including these certificates in the program.

Analysis and Conclusions

As there was no proof presented on the fiscal impact of this proposal, it must be assumed that it will be minimal. The evidence amply demonstrated that the great bulk of comparable agencies provide an educational incentive for POST Intermediate and Advanced Certificates. Compensation for these Certificates through incentive pay is thus a widely accepted and typical benefit among law enforcement personnel.

The City's principal argument against the adoption of the Association's proposal, which includes POST certificates among the eligibility criteria for the incentive, is that it will discourage individuals from seeking advanced education and/or from participating in the MPO program. Yet the POST Regulations permit college degrees, college courses and training courses to be used interchangeably in satisfying certificate criteria. An officer with a BA and two years of experience meets the qualification for an Intermediate Certificate. So does an officer with 15 Education points, 15 Training Points, and 8 years of experience. The City asserts that the Association has not shown that such certificates are comparable to A.A. or bachelor's degrees. POST views them otherwise.

One can get a POST certificate with some education and training and a lot of experience, or one can reach that goal more quickly with more education. Either way, employees are encouraged to enhance their knowledge and applicable skills. The Association explained that it wished to get credit for the incentive when participating in City-directed training. The City urges that there is no reason to provide an incentive where the officer is being paid. The structure of the POST Certificate program indicates that it was designed to do exactly that: enable officers to work toward incentives while being trained on the job. As noted, POST allows experience to substitute for formal classroom instruction.

The City maintains that including POST in this provision will lessen enthusiasm for one of the "purposes" of the incentive, the completion of college degrees. While the completion of a degree is certainly may be one purpose of an educational incentive, it is not the only purpose. Officers are clearly encouraged to take college courses, as this will shorten the time needed to meet the Certificate requirements, and enable them to start earning the incentive that much faster.

The City expresses concern that providing compensation for POST Certificates alone will lead to diminished interest in its more rigorous MPO program. The MPO incentives are still intact, and still require an Advanced Certificate. The compensation offered remains over and above what one would receive on the basis of the certificate alone.

The Association's proposal to include POST certificates in the educational incentive is in general conformity with provisions in agreements in comparable agencies. In Issue 20, the City sought to make the benefit retroactive only from January 1, 2007. This will lessen the financial impact of the provision somewhat, and is a reasonable compromise given the fact that

the broader applications of the Association's proposal have been adopted.

ISSUE 21: ARTICLE 14 - EDUCATION INCENTIVE

City:

Section F. ADDITIONAL PROVISIONS

1. The basic benefit for non-sworn employees hired ~~on or after July 1, 1981~~ **prior to January 1, 2008**, shall be a five percent step increase for a period of one fiscal year if during the previous fiscal year the employee has successfully completed - i.e., grades of "C" or better in all courses – a minimum of nine semester units of college level classroom work, or City-approved equivalent, approved by the Chief of Police, provided that this benefit shall be payable only for classroom work done after completion of the probationary period.
2. ~~Employees hired after July 1, 1981 shall be eligible for compensation as set forth in paragraph A effective January 13, 2005 with the following requirements:~~
 - ~~Annual qualification of 3 semester units~~
 - ~~Qualification on a fiscal year basis with first qualification during 2005-2006~~
 - ~~Tuition reimbursement as set forth in City policy.~~
2. ***The maximum benefit under this article is the equivalent to the one-step increase for possession of one B.A. or equivalent degree (5.26%)***
3. ***Sworn and non-sworn employees are eligible to participate in the Tuition Reimbursement program as set forth in City Policy.***

Association:

2. Employees hired after July 1, 1981 shall be eligible for compensation as set forth in paragraph A effective ~~January 13, 2005~~, **January 1, 2006** with the following requirements:
 - ~~Annual qualification of 3 semester units~~
 - ~~Qualification on a fiscal year basis with first qualification during 2005-2006~~
 - Tuition reimbursement as set forth in City policy

Strobridge testified that the reason for deleting the 3 semester unit requirement was that none of the comparable agencies had an ongoing course requirement to maintain the incentive. Experience has shown that the continuing qualification issue has become problematic. For example, dispatchers have critical staffing issues. If they are attending classes to maintain the benefit, they are not available for call back. A number of employees are duplicating prior work, finding it difficult to locate additional courses which qualify. The City also must pay for the work under the tuition reimbursement program. Lichty corroborated this information. She has a BA in English from UCSB, yet must continue to take course to qualify for the incentive. She is

even taking courses that she once taught. Shift rotations also make it difficult to find courses which fit into her schedule over two rotations.

Both sides obviously agree that there are convincing reasons for eliminating the annual qualification requirement. The City argues that it met the Association halfway and met the concerns expressed by one of its members about this requirement. Under its proposal, current employees hired before January 1, 2008 will keep the benefit. The City does not seek to eliminate the benefit for any current unit employees.

The program from the City's standpoint was a nightmare to administer, as it required a yearly assessment of qualifications. It maintains that the two types of educational incentives operate in a way which could lead to ridiculous results. For example, if an employee had an AA degree and was enrolled in 9 units, the employee would earn more than someone with a bachelor's degree. It rewards those who do not work towards a degree. The language changes address this issue, as well as the concerns expressed by one unit member that they would lose the benefit. Administration difficulties would be phased out as current, non-sworn personnel complete their degrees.

The Association responds that the City is eliminating a significant benefit, although it maintained that at the outset that its proposal was a simplification. The final proposal it presented at impasse was simply that. The new proposal was targeted at a single Association member, and is a thinly disguised form of regressive bargaining. While the City claimed simplification, there is only this one member who is eligible for the benefit. The City has failed to sustain its burden of proving that a change to the *status quo* is warranted.

Its modified final proposal eliminates the benefit as it applies to future non-sworn employees who have not obtained a degree. It runs counter to the City's position in response to Issues 19 and 20, that it values educational achievement. The City also failed to produce any evidence that employees use the provision to "double dip" and take advantage of the incentives under the scenario described.

Analysis and Conclusions

The City proposes to eliminate, or more properly sunset, the educational incentive earned by non-sworn employees for successfully completing nine semester units in the previous fiscal year. Unlike the circumstances presented for Issue 19, where POST certificate, A.A. and B.A. incentives were a common benefit in other agencies, neither side presented evidence on whether the benefit was available for non-sworn personnel in comparable jurisdictions. While the City bears the burden of proving a sufficient basis for changing the *status quo*, the absence of evidence on the point shows that the benefit is not a typical one. Notwithstanding the elimination of the current year 3 credit requirement, the program would still be difficult to administer, requiring monitoring each year to determine whether employees would qualify. The City is willing to continue allow current employees to remain eligible for the benefit. Although the Association maintains that City's position is contrary to that urged in support of other educational incentives, the City will clearly encourage employees to complete their degrees, or to have them when hired, by implementing changes to the Basic Benefits which will result from this process. The City's proposal on this issue is accordingly adopted.

ISSUES 22 & 23: ARTICLE 14 - EDUCATION INCENTIVE

TENTATIVE AGREEMENT

Section E. NON-APPLICABILITY. Educational incentives shall **generally** not be paid for education on City time. **However, if the City sends an employee for training on City time and college-level credits are earned during that training, those credits shall count toward education incentive.** The education incentive will be removed if the employee is promoted to a position that does not entitle employees to such incentives.

ISSUES 24 & 25: ARTICLE 16 - HEALTH CARE INSURANCE

City:

Section 16.1 CONTRIBUTION

Effective December 2006 (for the January 2007 premium), City shall contribute the monthly amounts as set forth below for Cafeteria Plan benefits for each regular, full time employee covered by this agreement. Less than full-time employees shall receive a prorated share of the City's contribution.

Employee:	\$479.00
Employee Plus One	\$855.00
Family	\$1,133.00

The Cafeteria Plan amount is inclusive of mandatory dental, vision and **life** coverage.

Effective December 2007, (for the January 2008 premium), the contributions shall be as follows:

Employee Only:	\$507.00
Employee Plus One	\$900.00
Family	\$1,188.00

Effective December 2008, (for the January 2009 premium), the contributions shall be as follows:

Employee Only:	\$533.00
Employee Plus One	\$968.00
Family	\$1,277.00

The Cafeteria Plan amount is inclusive of mandatory dental, vision and life coverage.

Employees shall be eligible for the City contributions set forth above based on the number of dependents they enroll in the PERS Health Benefit Program. Employees opting out of health coverage as provided for below, shall ~~also receive payment at the employee level only~~ **receive a contribution as described in Section 16.2.B below.**¹⁰

Association:

Section 16.1 CONTRIBUTION

City shall contribute the monthly amounts as set forth below for Cafeteria Plan benefits for each regular, full time employee covered by this agreement. Less than full-time employees shall receive a prorated share of the City's contribution. **Effective the first full pay period of December 2006 and each subsequent December first full pay period thereafter, the City contribution shall include the 100% employee and 90% Dependant formula as set forth in the Association August 29, 2006 Cafeteria Plan Insurance Proposal.**

Employee:	\$478.22
Employee Plus One	\$879.67
Family	\$1,152.20

The Cafeteria Plan amount is inclusive of mandatory dental, **life**, and vision coverage.

Two bargaining units within the Fire Department have a formula which provides for prospective increases in a tiered benefit structure. Rates are published in September and October. The Association believes that a formula is best mechanism to capture the prospective increases, and wishes to more or less guarantee that the premium for employee only will be fully covered. It includes dental, vision and life insurance and the Cafeteria Plan for purposes of evaluation.

Information obtained from PERS and the City produced an average of the 2007 rates for the three health plans in which members are enrolled plus the remaining cafeteria components. The Association's proposal is based on these averages for employee only, employee plus one and family coverage, the latter two being paid at 100% of employee only plus 90% of the difference between the tier level and the employee only averages. Applying the formula to premium amounts for 2008, the City would contribute \$504.05 for employee only, \$931.99 for employee plus one, and \$1,221.42. The 2008 calculations included a 4th health care plan recently made available to members.

The combined list of survey cities shows that the average health plan contribution at the family level was \$1,086.13 for 2006, and \$1,207.56 for 2007. Santa Maria, at \$545.71 and

¹⁰The Employer's opt-out proposal is designated Issue 27.

\$586.66, was the lowest; Napa at \$1,284.64 in 2006, and Santa Cruz at \$1,473.99 in 2007, were the highest in those respective years. In the City, the 2008 insurance benefit for firefighters and battalion chiefs was \$824 a month, \$870 a month for SLOCEA, and under a tiered system for the Police Staff Officers Association, \$489, \$889 and \$1,178.

As noted, after the first contract year's contributions are specified, the firefighters and battalion chiefs use a formula to determine contributions for succeeding years. For firefighters, it is "one-half of the average percentage change for family coverage in the PERS health plans available in San Luis Obispo County." Should a single employee opt out in the units which do not have a tiered system, they would be at a disadvantage because of a lower payout.

The City derived its compensation numbers using the same formula for successive years that it uses in other public safety units. That method splits the cost of the average increase between the City and the employee. As different units have different plans available, the percentages would not necessarily be the same for every unit. However, in those units where a formula is applied, the employee only category would have sufficient contribution to pay for their entire benefit.

The City's 2007 number includes the average cost increases in prior years back to 2006, the last time the contribution was set. For those years, the average cost increase was 21.5%. Thus, the City's proposed increase for contributions was 10.7%, bringing the employee only and opt out number up to \$470 per month, etc. It was slightly higher due to an adjustment to make it equal to the SLOPSOA contribution. The figures for the years following are based on a 3.2% increase and a 7.5% increase. The figure for 2009 was based on a projection. If the increase turns out to be less, the proposal would not change.

Strobridge agreed that some time in the past rates were based on a formula that was incorporated into the MOA. However, as the Association moved from a flat dollar amount to a tiered contribution, the formula language was removed.

The City's raised contribution in its final proposal for 2008 fully covers the single employee. It points out that the Association has done no calculation for 2009. The City argues that its proposal for these two years is based on an equitable concept where the health premiums for single employees are paid at 100%, while increases in premiums for employee plus one and family coverage are shared equally. Both employees and the City share the burden of ever-increasing health-care costs. Co-pays are minimal.

The City further urges that the formula concept has several serious flaws. It is confusing and will take several years to work out. There is already confusion regarding the unworkability of this formula when applied to Retiree Health proposals. It will be a constant source of dispute that 90% is not 90% of the dependent coverage, but rather 90% of the difference between employee and employee plus dependent coverage.

No other agency in the set of comparables has such a convoluted benefit. The Association has the burden of establishing by preponderance of the evidence that its proposal should be granted. Lack of evidence on this point demonstrates a failure to meet that burden.

The proposals for 2008 premiums are very close. Single employee rates are actually higher under the City plan. The Association's proposal should be rejected because it will cause too many problems in the final year of the Contract. Its formula will saddle the City with an unknown liability moving forward, forcing the City to bear the entire risk of future increases. The Association's proposal places all the risk on the City, while under the City's proposal the risk is shared. The City bears the risk that the premium will be lower than projected, the employees bear the risk that it might be higher.

Finally, the City maintains that the proposal is too difficult to implement. PERS does not release its premium costs for the next year until October. This would prevent the City from having hard numbers to complete their annual budget. Additionally, the proposal refers to a separate document. The parties may be familiar with that document, but it is uncertain whether the leadership in 2009 will be so familiar.

The Association argues that internal and external comparables support the conclusion that its proposal is reasonable and justified. The City's fixed amount is set without regard to potentially escalating health care costs. The City's proposal thus causes an erosion in benefits over the life of the Contract, while the Association's provides a method of maintaining the benefit at a reasonable level. The formula is not confusing, as shown by the Union's example provided in Exhibit 247.

Analysis and Conclusions

Both parties present good faith solutions to a problem over which neither has any control, namely, the ever-escalating cost of health care insurance. Interestingly enough, the parties' view of a reasonable benefit level is fairly equal, although hindsight has been dispositive in determining benefits for years which have already elapsed. These levels are also generous when compared with external agencies and even with public safety units in the City. The point of departure for the parties is, however, a fundamental one: who is to bear the burden of the risk of the inevitable increase in premiums?

In one sense at least, both parties are seeking to change the status quo. They are both seeking to augment premiums from the current levels. However, the Association's proposal seeks to change the method by which benefits are calculated from a negotiated flat dollar amount to a formula where the actual level of benefits is unstated. As the City points out, this method places the risk of premium increases entirely on the City. The Association thus bears the burden of showing that its formulaic approach is a reasonable one, considering the Charter factors.

While units within the City use a formula to determine medical premium levels, the formula is that more or less applied by the City to determine the levels here, with the exception of the final year of the Agreement. Both firefighters and supervising police officers share the increase, as each year their benefits are modified "by an amount equal to one-half of the average percentage change for family coverage in the PERS health plans available in San Luis Obispo County." Battalion chief MOA language is similar, but takes an average of the increases "available" health plans, rather than simply family coverage. In the final year of its proposal, based on its own projections, the City has set a benefit amount. The Association has

not shown that its estimate of potential costs is arbitrary or unreasonable.

The equitable arguments in favor of the City's proposal are considerable. The cost of employee only premiums is covered in the first two years, a goal which the Association's proposal is designed to meet. In the third year, the cost of any increases is equally borne by employees and the City, and barring some catastrophe, will only require a modest co-pay, if any. Other considerations with regard to the City's approach contribute to its acceptability under the Charter factors. Although the Association maintains that its formula is not a confusing one, unlike the formulae in other public safety contracts, it is not spelled out. It is unclear what the "August 29, 2006 Cafeteria Plan Insurance Proposal" said, as it was not put in evidence. Moreover, the benefit level cannot be calculated without reference to a specific sum. This presents a significant drawback to the City, which cannot budget for the amount but has to engage in some guesswork to determine how much money is needed to fund the benefit.

Accordingly, it is concluded that the City's proposal is more closely aligned with the factors in the Charter.

ISSUE 26: ARTICLE 16 - HEALTH CARE INSURANCE

Section 16.2 - Insurance Coverage

City:

A. PERS Health Benefit Program

The City has elected to participate in the PERS Health Benefit Program (Public Employees' Medical and Hospital Care Act (PEMHCA)) with the "unequal contribution option" at the PERS minimum contribution rates, ~~\$-80.80~~ **97.00** per month for active employees and ~~\$ 20.30~~ **72.75** for retirees as of January 1, 2008. The City's contribution toward retirees shall be increased by 5% per year of the City's contribution for the active employees ***multiplied by the number of years the City has been in the PEMHCA program*** until such time as the contributions for employees and retirees are equal. The City's contribution will come out of that amount the City currently contributes to employees as part of the Cafeteria Plan. The cost of the City's participation in PERS will not require the City to expend additional funds toward health insurance beyond what is already provided. In summary, this cost and any increases will be borne by the employees.

Association:

A. PERS Health Benefit Program

~~The City has elected to participate in the PERS Health Benefit Program with the "unequal contribution options" at the PERS minimum contribution rates, currently \$48.40 per month for active employees and \$13.03 for retirees. The City's contribution toward retirees shall be increased by 5% per year of the City's contribution for the active~~

~~employees until such time as the contributions for employees and retirees are equal. The City's contribution will come out of that amount the City currently contributes to employees as part of the Cafeteria Plan. The cost of the City's participation in PERS will not require the City to expend additional funds toward health insurance beyond what is already provided. In summary, this cost and any increases will be borne by the employees.~~

[New]

The City provides health benefits through the California Public Employee's Retirement System (CalPERS) Health Benefits Program under the Public Employees' Medical and Hospital Care Act (PEMHCA). The City's contribution shall be an equal amount for both employees and annuitants, but may not be less than the following:

- January 1, 2006 \$64.60 per month
- January 1, 2007 \$80.80 per month
- January 1, 2008 \$97.00 per month

The Association argues that the purpose of its proposal is to secure compliance with Government Code §22892. That code provision sets minimum contribution levels for entities participating in PERS system health plans in the amounts specified by the proposal. The City began its participation under PEMHCA in 1993. At the time, it had an option whether to make equal or unequal contributions on behalf of annuitants. The law was modified in 2007 to increase the maximum contribution where they are unequal by multiplying the annual percentage increase by the number of years that the agency was in the PEMHCA system. The Association's goal is to reach equal contribution for retirees. Comparable agencies vary as to whether they have equal or unequal contribution. However, one agency entered PEMHCA in 1986, so that the contributions would still be equal for both groups of employees.

The City asserts that the Association has failed to explain how adding the new Contract language would modify the current relationship between PERS and the City. City enrollment is governed by Contract and by City resolution. The City Council resolution provided that its enrollment would be under the unequal contribution option. The relationship between the City and PERS cannot be changed by any provision in the Contract between the City and the Association.

The Association may attempt to bargain for greater contributions from the City towards the cost of retiree health care, as it has done in Issue 28. However, it cannot change the minimum that the City is required to pay PERS. The language in the Contract reflects the status of the relationship between the City and PERS. The Association's proposal must be rejected because it would misrepresent that relationship.

The City further asserts that language in the Association's proposal is problematic as it deletes language that clarifies that the City's payment comes out of the cafeteria contribution for employees. The Association has not put forth any evidence justifying such an expensive change. The City's proposal includes current minimums required under the unequal plan. The

difference between the two contributions will equalize in about 2013, according to the City's calculations, the 20th year it has been enrolled in PEMHCA.

Analysis and Conclusions

Minimum contributions for a portion of the cost of providing benefit coverage for employees are set by Government Code § 22892. The Association's proposal spells out what those minimum contributions were in 2006 and 2007, thus indicating that the increases are to be retroactive. The City's proposal only states the contribution amount for 2008, yet it is obliged by statute to provide the 2006 and 2007 contributions in the amounts set forth in the Association's proposal. In other words, while the City's proposal does not indicate retroactivity for rate changes, such changes are required by statute. Nor does the City's proposal set forth a contribution rate for 2009, even though the statute requires the contribution to be "adjusted annually by the [Board of Administration of PERS] to reflect any change in the medical care component of the Consumer Price Index and shall be rounded to the nearest dollar." This proposal accordingly contains an ambiguity which needs to be rectified.

Nonetheless, the Association's proposal represents a fundamental change in the contribution level for annuitants, requiring it to be equal to that provided for employees. The City maintains that its contract with PERS was made on an "unequal contribution" basis, and that modifying the Collective Bargaining Agreement in the manner the Association suggests could not have an impact on its relationship with PERS. Thus, if the Association's proposal were adopted, the City would necessarily have to renegotiate its arrangement with PERS, if possible, and pass the necessary resolution. Moreover, as the City points out, its proposal makes clear that its contribution "will be borne by employees." The elimination of this language carries the implication that it will not.

Because the Association proposal is a change in the *status quo*, it bears the burden of proving that its changes are consistent with the criteria set forth in the Charter. External comparisons were inconclusive on the issue. There was no particular pattern among PERS health plan participating comparable agencies regarding equal versus unequal contribution. Some had it, while others did not. No evidence was offered with regard to contribution levels within the City. Nor was there any indication of the expense that the proposal might entail. It is noteworthy that contributions will become equal in any event by operation of law, four years after the Contract under consideration has expired. As the Association has not sustained its burden of proof on this issue, the City's proposal will be adopted.

ISSUE 27: ARTICLE 16 - HEALTH CARE INSURANCE

Section 16.2 - Insurance Coverage

B. Health Insurance Coverage Optional Participation

City:

Employees with proof of medical insurance elsewhere are not required to participate in the PERS Health Benefit Program and may receive the unused portion of the City's

Cafeteria Plan contribution **of \$479.00 per month** (after dental, vision and **life insurance** is deducted) in cash in accordance with the City's Cafeteria Plan. ~~Those employees will also be assessed \$16.00 per month to be placed in the Retiree Health Insurance Account. This account will be used to fund the City's contribution toward retiree premiums and the City's costs for the Public Employee's Contingency Reserve Fund and the Administrative Costs. However, there is no requirement that these funds be used exclusively for this purpose nor any guarantee that they will be sufficient to fund retiree health costs, although they will be used for negotiated employee benefits.~~

Association:

~~Employees with proof of medical insurance elsewhere are not required to participate in the PERS Health Benefit Program and may receive the unused portion of the City's contribution (after dental and vision insurance is deducted) in cash in accordance with the City's Cafeteria Plan. Those employees will also be assessed \$16.00 per month to be placed in the Retiree Health Insurance Account. This account will be used to fund the City's contribution toward retiree premiums and the City's costs for the Public Employee's Contingency Reserve Fund and the Administrative Costs. However, there is no requirement that these funds be used exclusively for this purpose nor any guarantee that they will be sufficient to fund retiree health costs, although they will be used for negotiated employee benefits.~~

Those employees who were not covered under PEMHCA were still being charged for participation. The Association sought a clarification from PERS on the issue, which informed the Association that there was no such requirement placed on employees. Both the City and the Association's proposals accordingly delete the language which refers to it.

What the parties do not agree on is whether there shall be a cap on the benefit based on the single-only rate for 2007. The City argues that its language is an equitable compromise that addresses its concern about the rising cost of health care, as well as removes the \$16 assessment that was viewed as unfair. The current open-ended provision could result in windfall to employees and a significant liability for the City. A defined amount will assist in budget projections, as well as limit liability. It also benefits those who stay in City plans, as it enables the City to put health care dollars toward health coverage, rather than provide a windfall to employees. The City's proposal, it asserts, makes good economic sense, and treats all employees fairly.

Among the combined 15-agency list of comparables, only four agencies do not address the issue in their agreements. The highest payout is \$1121 plus dental in Davis. The next highest is Petaluma at \$970, then Monterey at \$470, with a number of agencies below that.

The Association responds that the City is seeking to establish a *quid pro quo* for the \$16 assessment elimination by establishing a cap. It has failed in its burden of proof, as there was no evidence at the hearing in support of such a cap: no internal or external data or financial analysis. The number of people receiving the benefit was not shown. The City's proposal was supported by no evidence or justification other than it prefers to have a cap.

Analysis and Conclusions

Since there was no cap in the prior Contract, the institution of one here would change the status quo. The City thus has the burden of proof on this issue. Although there was some evidence that the bulk of comparable agencies have a cap at \$470 or lower, there has been no showing of the cost to the City of this proposal, and whether it would have the dire impact on the budget which it predicts. Absent such evidence, an inference must be drawn that there would be little impact, if any, if no cap were imposed.

The City urges that the cap is an equitable offset to its relinquishing the \$16 assessment from those who opt out. However, the Union demonstrated that the City was under no obligation from PERS to furnish this money. More importantly, a health benefit is as much a component of compensation as wages. Arguably, those who have the good fortune to have spouses or domestic partners with health coverage should not be penalized by receiving a lesser benefit package than their co-workers. Nor has it been shown how the cap assists those who remain in City-sponsored plans. While the City urges that the maximum enables it to put more money in health coverage, it actually results in a savings to the City which is not paid out as employee compensation.

The City's asserts that the lack of a cap might result in a windfall to certain employees. It is unlikely that opt-outs would decide not to have any health insurance whatsoever. Most probably, they would be covered as a dependent under someone else's policy. This necessarily means that were the City to pay opt-outs at employee plus one or family rates, it would be paying for double coverage, rather than providing compensation which is earned in the form of a basic benefit. This fits the City's "windfall" description of the Association's proposed benefit. The City's proposal thus more nearly conforms to the considerations stated in the Charter, and will be adopted.

ISSUE 28: ARTICLE 16 - HEALTH CARE INSURANCE

City:

Increase monthly City contribution for retirees from \$20.30 per month under the current contract to \$72.75 per month as of Jan 1, 2008 - see Issue 26.

Association:

Post-Retirement Health Benefit Coverage

Notwithstanding Article 16.2(A) [PER Health Benefit Program], the percentage of employer contribution payable for post retirement health benefits for a unit member subject to this section shall be based on the member's completed years of credited City service¹¹ at retirement as

¹¹The proposal begins vesting after a minimum of 10 years of City service at 50% of the benefit. It would not include work at another PERS agency.

shown in the following table:

Credited Years of Service	Percentage of Employers Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20	100

This subdivision shall apply to:

- ***All employees who retire from City service for service or disability after this section becomes applicable:***

The City's contribution with respect to each annuitant shall be adjusted by the City each year. Those adjustments shall be based upon the principle that the City contribution for each annuitant may not be less than the amount equal to 100 percent of the weighted average of the health benefit plan premiums for an employee or annuitant enrolled for self-alone, during the benefit year to which the formula is applied for the four health benefit plans that had the largest unit member enrollment, excluding family members, during the previous benefit year.

The Association's Position and Evidence

Language in the Association's proposal regarding increasing employer contribution based on years of service is taken from Government Code §22893. Although it initially sought annuitant benefits at the same level as those for active employees, its final proposal limits the contribution to the employee-only level. The Association urges that this significantly reduces the cost of retiree health care, since its application is limited to those with ten or more years of service and provides no benefits for spouses or dependents. The modification provides an incentive for employees to remain with the City.

The Association maintains that the City has the financial ability to provide this benefit. The Association supplied comparative data which demonstrated that among the combined eleven-agency list, all paid some form of retiree health benefit. The highest was paid by Pleasanton, at 100% of employee + 1 with 25 years of service. Davis provides 100% of Kaiser-North up to employee plus 2. Santa Barbara is the next highest, at \$318.15 per month, based on years of service. Gilroy pays \$300 per month at age 50 with 15 years. One pays \$139 per month, another \$100 for ten years, while another pays \$50. Three agencies

contribute \$100, \$50, and \$30 per month, respectively, into a defined contribution trust. The Association argues that the fact that all comparable jurisdictions provide some form of retiree health benefit in excess of that provided the City justifies the benefit requested. The Association further asserts that as a result of the substantial modification of its proposal, its cost has become “staggeringly smaller.”

The City’s Evidence

John Bartel, president of an actuarial consulting firm, was retained by the City to analyze the retiree health benefit proposal. Bartel performed various calculations to determine the potential liability that it would entail. Assuming a 4.25% discount rate, and a 30-year amortization, the annual required contribution (“ARC”) to fund the current benefit amounts to 3.9% of payroll, or \$173,000, even though the cash requirement on a pay-as-you go basis would be \$12,000. Funding the benefit contained in the Association’s final proposal (*i.e.*, actually setting the money aside in an internal account) would have an ARC of an additional \$924,000, or 21.1% of payroll, and would add another \$14,000 to the cash requirement. Presuming the City would move money into an irrevocable trust and pre-fund the benefit, at a 7.75% discount rate, the ARC would be \$499,000, or 11.4% of payroll. The ARC figures represent what the payout commitment would be some time in the future, even though it does not have to be backed by cash.

As Bartel explained, the ARC are the amounts which, under the “GASB 45” new accounting standards, would have to be recognized on the City’s financial statement as a “book accrual.”¹²: “You don’t have to fund for it, but you have to tell your [financial statement] readers what you have not funded for.” It is a type of disclosure, describing a City obligation “over and above what it has already.” Benefit pay-outs would naturally increase as more and more active employees retire. The calculations also take into account certain assumptions regarding the increase in health care costs. The net obligation for the retiree health benefit currently offered (“net Other Post-Employment Benefits” or “OPEB”), or the difference between what has been paid and what an actuary determines should be set aside, will grow to \$1.7 million by 2017 on a pay-as-you-go basis. Bartel projected this amount to accumulate to \$11.8 million by 2017 were the Association’s proposal to be adopted.

Such disclosures are necessary for bond rating purposes. Bartel testified that they would focus on the issue whether the entity agency could afford to pre-fund or pay the ARC. If not, it becomes a question of whether the entity can afford the benefit. There are also fluctuations in the numbers due to experience, investment return and health care costs. Pre-funding naturally eliminates the OPEB obligation, but it would cost 13.5% of payroll every year.

Bartel noted further that the changes which took place under AB 2544 render the Association’s proposal impossible to administer under PEMHCA. The proposal only recognizes “City service,” as opposed to PERS service, and would thus lead to an unequal benefit, contrary to PEMCHA’s requirements for enrollment. Bartel noted, however, that it would be possible to

¹²As Bartel noted further, the amounts would be a “message to the reader of the financial statement” to the effect that “there is this promise to make. We don’t have money set aside to pay for that promise. But just be aware that we have this obligation to make these payments down the road.”

administer the plan outside the PEMCHA system.

He testified further that of the 175 or 200 agencies that he works for, only 10% have adopted the benefit under the 100/90 formula set forth in Government Code 22893. He also detected a trend away from defined benefit to defined contribution accounts, and very little interest in expanding the benefit.

Position of the City

The City proposes merely to raise the PEMHCA contribution it makes on behalf of annuitants to \$72.75 per month. It maintains that the Association's proposal would require it to leave the PEMHCA system and create a completely separate retiree health plan. Moreover, the proposal was presented poorly, is very confusing, extraordinarily expensive, and so unsupportable that the Association's own evidence shows why it should be rejected. Accordingly, the City argues, the Association has fallen well short of meeting its burden of proof.

No witnesses were called by the Association to justify its proposal. The City asserts that although Strobridge tried to explain what the Association wanted, he never testified why the Association proposal should be granted, or tried to explain the comparability evidence.¹³ However, the Association called Officer James Fellows,¹⁴ who stated that an officer who, after seven years, retired from the Department on disability and had to relocate because his retirement compensation did not cover the cost of expenses and medical insurance premiums. The City maintains that while the Association alluded to retiree health benefits as a "major item" for laterals in deciding to move, the fact remains that the City has successfully recruited a number of these individuals.

The Association's evidence with regard to comparability does not contain a single agency that provides the benefit it seeks. In fact, this evidence supports the City's position and demonstrates that the proposal should be rejected. Some agencies have a benefit similar to that in the City (Napa and Santa Cruz), while others provide a lesser benefit (Chico and Monterey). A majority have a fixed dollar amount rather than a percentage of a premium average. Apparently aware of the contradictions presented by this proof, counsel for the Association listed a number of State of California departments that provided the benefit sought. This was not substantiated by any documentation or testimony to establish its accuracy. Nor, as counsel conceded, was it among "our comparables."

Bartel's testimony strongly suggests that the Association's proposal is headed in the wrong direction. Although the Association acknowledged there was a "substantial cost" in connection with the proposal, it provided no evidence as to that cost. It was Bartel who

¹³In her opening statement, counsel for the Association represented that various state agencies from which City employees might be recruited provide 100% retiree medical benefits. The agencies cited included the Highway Patrol, the Department of Corrections, State Parks, Department of Justice, Alcohol Beverage Control, State Police, Fish and Game, State Fire Marshals, and University of California and California State University police. However, no evidence was offered in support of this claim.

¹⁴Fellows is a member of the Association's Board of Directors.

provided such evidence. He established that the proposal would, by year 2017, create a financial obligation for the City which would be more than twice the payroll for active employees. Even if the benefit were pre-funded, it would require setting aside a dollar amount for the ARC which was the equivalent of 13.5% of payroll every year. The benefit sought is staggeringly expensive, and should be rejected on that basis alone. Even though the Association maintains that the City can afford its new proposal, this argument says nothing about why the proposal should be granted.

Additionally, the proposal contained many uncertainties which were not clarified, such as its relationship with Government Code 22893. While the “formula” Strobridge cited is from the code, it is apparently not part of the current proposal. It is unclear whether the Association wants the average of three City plan premiums, or the four most popular in the state. The “election” in the statute may or may not apply to the new proposal. Ambiguities in the proposal virtually guarantee that litigation would result if were granted. Although Strobridge implied that the proposal would grant the same benefits as provided in 22893, the proposal appears to include provisions that are completely different from that statute. These include City vs. State service, averaging premiums from a different set of plans, and whether current retirees are covered. Bartel’s testimony was uncontradicted that PEMHCA would not allow the plan to be administered under it. The burden of creating an entirely new retiree health care system on top of the one in existence is a compelling reason to reject the proposal. The administrative, staff and fiscal impacts on the City would be monumental.

The Association does not suggest how the new system could or would work. The modifications to the initial proposal do not solve its fundamental problems nor clarify the confusion resulting from it. Even though it maintains that the cost of the program has been substantially reduced in the final offer, the Association has failed to demonstrate the fiscal impact that it would have on the enormous costs associated with earlier versions. To the contrary, the City has shown that limiting the proposal to active employees does not substantially reduce costs. The Association also has not met its burden of showing that limiting coverage to employee only would have a material effect on the cost of the proposal.

The proposal’s reference to the average of “four health plans” creates additional confusion. It is unclear which four plans the Association means. The City now has five plans, and the number fluctuates from year to year. Litigation would be the only means of clarifying that the proposal means, and litigation is in neither party’s interest.

Analysis and Conclusions

The importance with which both sides view this proposal merited the extensive review of the evidence and arguments presented in support of and contrary to it. The complexities of the issue were also, it is hoped, made apparent. Focus on first principles provides the decisive element here. The Association is seeking to obtain a new benefit for its members. It bears the burden of justifying it by reliance on the factors in the Charter.

The Association was unable to show that “employees performing similar services in comparable cities” were paid this benefit to any major degree. Only two cities out of eleven surveyed provided full premium costs. Two others had a plan similar to that being adopted by

the City. A number paid benefits near or below City levels. The absence of proof that any unit in the City enjoys retiree health benefits at this level demonstrates that the proposal is not supported by internal comparisons either. The proposal thus cannot be justified on a comparative basis.

As the City pointed out in its broad approach to these proceedings, while it has not raised “ability to pay” as a reason for denying this proposal, cost of this item, especially when compared with costs associated with other parts of this Agreement, is a factor commonly weighed in interest arbitration. The lack of cost information from the Association speaks as much to the issue as the blizzard of actuarial data and the painstaking efforts of the City’s witness to explain it to all involved.

Simply put, the ultimate expense of the retiree health benefit as currently proposed would place an unreasonable burden on City’s resources. While the Association asserts that its reduced demand, limiting the proposal to active employees and eliminating dependent premiums from coverage, substantially lowers the expense, the City’s expert provided data assuming that only active employees would be eligible. Even at that point, the projected liability was prohibitive. Two areas of comparison well illustrate the point. Should the proposal be implemented and put on a pay-as-you-go basis, by the year 2017 the City would have obligations as a result which would amount to more than double its payroll. Should the City decide to pre-fund the benefit, it would be required to devote 13.5% of the unit payroll to it. Absent any evidence that this benefit is typical in comparable agencies or within the City, this huge potential expenditure cannot be justified.

The City’s arguments with regard to the ambiguities of the language proposed are also well taken. The Association clearly attempted to conform certain aspects of the provision to state statutory language. However, this led to additional uncertainty as to how the amount of the City contribution would be determined. There were also doubts raised as to whether the proposal could be administered under PEMHCA, as it determines percentage of benefits according to City, as opposed to PERS service.

The City’s proposal accordingly most nearly conforms to the Charter factors, and will be adopted.

ISSUE 29: ARTICLE 16 - HEALTH CARE INSURANCE

City:

Section 16.2 Insurance Coverage

E. Life Insurance

Employees shall pay for life insurance coverage of Thirty-five Thousand Dollars (\$35,000) through the cafeteria plan. The effective date of the increase in coverage from \$20,000 to \$35,000 will depend on approval from Standard Insurance Company.

Association:

The Association accepts the City's proposal.

ISSUE 30: ARTICLE 16.5 – HEALTH INSURANCE FOR UNIT MEMBER SURVIVORS

Tentative Agreement

The City shall maintain and pay for the existing level of **health, dental and vision** benefits for one (1) year for the surviving family of ~~a unit~~ **an active employee** who dies while in the line of duty **as a result of a job-related illness or injury**.

ISSUE 31: ARTICLE 21 - SICK LEAVE

Section 21.2

City:

Upon termination of employment by death or retirement, a percentage of the dollar value of the employee's accumulated sick leave will be paid to the employee, or the designated beneficiary of beneficiaries, according to the following schedule:

A. Death - ~~25%~~ **50%**

Association:

Upon termination of employment by death or retirement, a percentage of the dollar value of the employee's accumulated sick leave will be paid to the employee, or the designated beneficiary of beneficiaries, according to the following schedule:

A. Death - ~~25%~~ **100%**

Two public safety units in the City, the Firefighters and the Battalion Chiefs, have a 50% sick leave payout at death. SLOPSOA has a 25% payout, while SLOCEA has a 30% payout. As the benefit is available only to those who die while on active duty, there has been only one employee in the last 15 years who would have been eligible for it. The Association argues therefore that the proposal would have minimum cost to the City.

The City maintains that the Association has failed to sustain its burden of demonstrating that such a dramatic change to the language of the Contract is warranted. The benefit would be far out of line with the death benefit provided by the City in other bargaining units, while the City's proposal is in line with internal comparables.

Analysis and Conclusions

Although the potential cost of this proposal was minimal, internal comparisons, particularly with other public safety employees of the City, underscore the reasonableness of the City's proposal. No data from external agencies was provided. An inference can therefore be drawn that the 50% payout proposed compares favorably with that offered in similar jurisdictions. The City's proposal will therefore be adopted.

ISSUE 32: ARTICLE 21 – SICK LEAVE

Section 21.2

City:

Upon termination of employment by . . . retirement, a percentage of the dollar value of the employee's accumulated sick leave will be paid to the employee, [etc.,] according to the following schedule:

B. Retirement and actual commencement of PERS benefits.

1. After twenty years of continuous employment - 20%
2. After twenty-five years of continuous employment - 25%
3. After thirty years of continuous employment - 30%
4. ***Job-related disability retirement and actual commencement of PERS benefits - 50% with maximum of 750 hours payoff (50% of 1,500 accrued hours) effective January 1, 2008.***

Association:

C. ***Job-related disability retirement and actual commencement of PERS benefits – 75% with maximum of 1000 hours payoff.***

Both proposals add a sick-leave cash-out when a job-related disability retirement occurs. Within the eleven comparable agencies, five do not provide such a benefit. Only two others provide for an actual cash out: Petaluma (50%, maximum 700 hours with 10 years' service) and Santa Maria (50% between 240 and 1300 hour maximum). The remainder provide benefits to be paid to retiree health funds, insurance, or as a 500 hour annuity. SLOFD has a 75% payout, with a maximum of 1000 hours, the SLOBC a 50% maximum of 750 hours, while neither SLOPSOA nor SLOCEA have the benefit.

The Association argues that the proposal is justified by internal comparisons with the fire unit. Externally, six of the eleven comparable agencies provide for a sick leave cash out upon disability. The City maintains that the language proposed by the Association is ambiguous and should be rejected on that basis, as it may be interpreted to mean either 750 hours or 1000 hours. Although the City's position has been that no additional benefit is warranted, it has modified its position in efforts to reach a compromise. While firefighters have a 75% payout with a maximum of 1000 hours, they receive a significantly lower payout for

years of service at non-disability retirement.¹⁵ Granting the Association's proposal, the City urges, would provide this unit with benefits that far exceed all other bargaining units. In addition, no other comparable agency provides for the level of benefits which the Association seeks. The City's proposal more closely resembles that paid by agencies that do provide the benefit, and is more generous.

Analysis and Conclusions

It must be inferred that considerations of potential liability would not be significant were either proposal to be adopted, as no evidence was presented on the point. Both parties rely on comparables to argue in favor of their respective proposals. Although the pay-out at the level proposed is not common among outside agencies, the Association seeks the same level of benefit as that available to City firefighters. The City counters that this argument is undermined by the fact that the firefighters have a "significantly lower" payout at a non-disability retirement. This payout is actually 25% less after 20 years. It is also at the maximum level for firefighters at the point, whereas percentage payout for Association members increases by 5% at 25 and 30 years, respectively, to a maximum of 30%, or double what firefighters may receive.

Notwithstanding this distinction, the issue here involves retirement because of job-related disability. The City has recognized that while employees may not use sick leave for job-related disabilities under the Charter (see discussion below), they may be compensated with a sick leave payout should they be injured on the job and forced to retire. It provides an incentive for employees to maintain steady attendance.

The internal comparison with the Firefighters demonstrates that the Association's level of payout, though unusual, is appropriate in this City. The Association's proposal on this issue thus most nearly to the Charter factors.

ISSUE 33: ARTICLE 21 - SICK LEAVE

Section 21.2

City:

Upon termination of employment by death or retirement, . . .

- 5. *Sick leave cannot be used to postpone the effective date of an industrial disability retirement. This provision is intended to reiterate past practice and to exercise the employer's rights under Government Code, section 21163.***

¹⁵Firefighters with 20 years are eligible for a 15% payout.

Association

D. Notwithstanding any other provision of this article, the medical retirement of an employee who has been granted or is entitled to sick leave shall not become effective until the expiration of such leave with compensation unless the member consents.

Government Code 21163 allows members to postpone retirement until sick leave or comp time is exhausted, unless the member consents otherwise or there is a local ordinance or resolution to the contrary. Under Charter Section 1107, 2.36.420, which contains Personnel Rules and Regulations, sick leave is defined as absence from work for reasons which are not the result of an on-the-job injury. Additionally, a public safety employee may not receive sick leave payments while receiving Worker's Comp.

Nonetheless, Strobridge testified that a past Association president was allowed to postpone retirement and utilize accrued sick leave after exhausting his 4850 benefits. There is considerable diversity regarding the benefit among comparable jurisdictions. Gilroy allows members to use sick leave, while the MOU's in Santa Barbara and Salinas are silent, thus the accrual usage is as permitted by statute. Three others provide that the leave may not be used after the member has attained permanent and stationary disability status. Four others provide no benefit, while one allows it in conjunction with temporary disability payments.

The Association maintains that its proposal is consistent with the Government Code and similar to benefits provided by external, comparable jurisdictions. While the Personnel Rules prohibit an employee from getting sick leave benefits while receiving worker's comp, sick leave would not be utilized until workers compensation benefits have expired. The City is permitted to negotiate greater benefits in the MOA than are provided for in the Personnel Rules. The Association argues in addition that this is simply "the right thing to do." Employees who have their careers shortened due to injuries or other life-altering circumstances should be entitled to accrued sick leave while an active employee.

The City argues, however, that the Association's proposal directly conflicts with City Personnel Rules regarding the use of sick leave. Nor is it supported by comparability data. The City proposes to add clarification language which reflects both past practice and the City's right to exclude sick leave from being used for industrial injuries. Because job-related injuries are excluded from the definition of sick leave, the City is not required to allow employees to postpone industrial retirement in the manner proposed. Nor has the Association put forward any evidence explaining why it should be allowed to use sick leave in a way which contradicts City personnel rules. It is not inequitable to restrict sick leave in this way as significant other benefits exist for industrial injuries.

Analysis and Conclusions

The Preamble to the MOA (Article 1) contains the following:

- 1.4 Nothing in this Agreement between the parties shall invalidate or be substituted for any provision in Charter Section 1107. . . unless

stipulated to by provision(s) contained herein and agreed to.

Although the Association asserts that the parties may negotiate greater benefits than are provided for in the Personnel Rules, the above language of the MOA requires that if they do so, they must stipulate and agree to the modification. Here, the parties are not agreeing or stipulating, but presenting conflicting proposals as to whether sick leave may be used to postpone a disability retirement. Nor does the provision submitted by the Association contain the necessary language to make it consistent with Article 1.4. Though the Arbitrator possess broad authority, it is unclear whether an Award can substitute for the party's "stipulation" or "agreement" within the meaning of Article 1.4, despite the fact that it may very well be the "right thing to do."

Comparability evidence was inconclusive on this issue. Accordingly, the City's proposal on this issue most nearly conforms to the Charter factors.

ISSUE 34: ARTICLE 21– SICK LEAVE & ARTICLE 30– PERFORMANCE EVALUATIONS

Association

Section 21.2

C. Employee use of sick leave shall be deemed confidential and not subject to reporting in monthly or annual personnel evaluations without proof of abuse.

City:

Section 30.3

Sick leave usage may be documented in performance evaluations where there exists an indication of abuse or when the use of sick leave negatively impacts work performance. Documentation of sick leave usage shall be in conformance with privacy and leave laws.

There is no dispute that the City cites sick leave usage within its evaluations. No comparable agency has language in their MOU about the confidentiality of sick leave usage. The Association takes exception to the practice because an employee may legitimately have been required to use an above-average amount of sick leave which may result in a negative mark on his/her record because of an unexplained series of unfortunate events. The Association submitted two evaluations citing sick leave usage. One was very positive, and indicated that the employee's use of sick leave was normal. The other was from 1995 and notes that the employee would have been rated "exceeds expectations" for work habits had she not been forced to take considerable time off.

The City asserts that the Association's evidence does not support an inference that the Department has a pattern of misusing sick leave information. Additionally, the proposal would be impossible to implement. Sick leave misuse is an important issue that needs to be reported in evaluations. In an effort to meet the Association's concerns, the City proposes language that

sick leave documentation be in accordance with privacy and leave laws.

The Association counters that the language proposed by the City is too uncertain and ambiguous to be of any real value. An “indication” of abuse may simply be the number of hours taken. The meaning of “negatively impact work performance” is uncertain, as any absence creates a negative impact in that work is not completed or must be accomplished by another employee. The Association’s language is a more reasonable means of resolving the problem of negative inferences based on legitimate use of sick leave.

The City responds that removing the word “conclusive” from the proposal rendered it unclear as to what would constitute “proof.” The City cannot presume the meaning, and the provision could generate a grievance each time sick leave is referred to in an evaluation. The City must have some recourse to deal with employees whose constant absences make it impossible to meet staffing levels and provide an appropriate level of service. Evaluations are a tool for management to address poor performance and behavioral issues, as well as a means for putting employees on notice that their conduct needs improvement. The Association’s proposal would force the City to abandon this non-disciplinary tool and resort to discipline to address attendance problems. Performance evaluation is also the starting point for management’s interactive exchange with employees facing a disability. Limiting the City’s ability to raise the issue during the evaluation process would hamper the interactive mechanism required by law. The City has failed to meet its burden to demonstrate a need for this proposal, one which creates ambiguous restrictions on management, while limiting its ability to address performance issues and disabilities in the workplace.

Analysis and Conclusions

Although the City urges that the Association bears the burden of proof, both parties are seeking to add language to the Contract. The two proposals have a common element, in that both agree to implement a new employee right. What the parties disagree on are the dimensions of that right.

There are no comparable jurisdictions whose Contracts spell out restrictions on references to sick leave use in evaluations. The right is therefore a unique one. The Association wants to make sick leave use “confidential,” and hence excludable, from evaluations, unless there is proof of abuse. The City agrees to do this, but seeks to add another exception: when sick live use “negatively impact[s] work performance.” The Association asserts that this phrase is hopelessly vague. Admittedly, there is a great deal of ambiguity in it. More importantly, the Employer is already free to comment on poor work performance in an evaluation. Adding this language would be superfluous, and create confusion among employees and management as to its application. Another addition in the “this goes without saying” category is the phrase: “Documentation of sick leave usage shall be in conformance with privacy and leave laws.”

The City already has mechanisms for dealing with absence issues, and for deficiencies in performance. Employees are subject to progressive discipline. Clearly, evaluations may address poor performance and behavioral issues. The Association objects to citing sick leave use in evaluations as a means of demonstrating of poor performance. Employees may be put

on notice through a host of other means that their conduct needs improvement. The City asserts that remarks in an evaluation are “non-disciplinary.” Many would differ with that assessment, as indications of poor performance typically lay the ground-work for more serious discipline for recurring offenses. Finally, the City urges that evaluations are the beginning of a dialogue with employees facing potential disability, and eliminating such references would hamper the interactive mechanism required by disability law. No evidence was offered on the point.

The proposals, for the most part, are two ways of saying the same thing. The Association’s proposal is just a simpler way of saying it. Accordingly, the Association’s proposal most nearly conforms to the Charter factors, and will be adopted.

ISSUE 35: ARTICLE 22 - FAMILY LEAVE

Section 22.1

City:

No change to current language

Association:

An employee may take up to ~~16~~ **48** hours of sick leave per year if required to be away from the job to personally care for a member of his/her immediate family.

The Association relies on comparative data to support its proposal. Both firefighters and battalion chiefs may use more than 16 hours for family care, 24 and 33.6 hours, respectively. Eight of 11 comparable jurisdictions provide for more than 16 hours. Two allow use of all leave for this purpose, four more have the same benefit as that asked for, while two others substantially similar. The applicable MOU’s are silent with respect to the remaining three.

The City argues that the Association has failed to provide evidence supporting a reason for the change. The Labor Code and the Contract both provide that employees may use up to 48 hours to care for a child, parent, spouse or domestic partner. If the family member is part of the employee’s household, the employee may take 40 hours sick leave to care for him/her. The 16 hour restriction applies only to more distant family members, such as siblings or grandparents who are not part of the household.

The City further asserts that internal comparisons do not support the change. No other unit receives 48 hours. It is the same benefit paid to SLOPSOA and SLOCEA. Firefighters and battalion chiefs have 56-hour work-weeks, and their benefits are adjusted accordingly. The proposal is not without cost: the City must pay overtime to fill shifts.

Analysis and Conclusions

External comparisons lean heavily in favor of the Association’s proposal. Seven of the eleven provide the benefit at the level sought or above, while an eighth provides a 40-hour

benefit, considerably greater than the one currently in effect in the City. In other words, 16 hours is well below the average, while 48 approaches it very nearly. Regardless of the level of wages and benefits in comparative jurisdictions, it is widely recognized that this particular aspect of compensation is appropriate.

The City, in contrast, seeks to apply internal comparisons to justify the status quo. If granted, this proposal would place the Association at the highest level of leave the City allows to take care of a an immediate family member. The City also cites potential cost generated by overtime. There has been no evidence that costs would increase significantly, if at all, especially because state law and other portions of the Agreement allow sick leave to be used to care for a number of different categories of relations. Additionally, in urgent situations, employees might use other leave to absent themselves, thus requiring an equal amount of overtime to be paid to cover for them.

The Association's proposal on this issue thus most nearly conforms to the Charter factors, and will be adopted.

ISSUE 36: ARTICLE 22 - FAMILY LEAVE

Section 22.2

City:

No change to current language

Association:

An employee may take up to ~~40~~ **48** hours of sick leave per year if the family member is a part of the employee's household.

The Association argues that the proposal would bring consistency to the sick leave provisions and is also justified by external comparisons. Comparable agencies have the same allowances described above under Issue 36. The City maintains that the Association failed to carry its burden of demonstrating that the change is needed, employees are already able to use 48 hours to care for most family members living in the same household. The consistency which the Association seeks is that with their proposal in Issue 35. The City further points out that the current language complies with Labor Code Section 233. If the care is for someone other than those listed in the statute, namely child, parent spouse or domestic partner, the 40 hour limit would apply.

For the reasons stated above in considering Issue 36, it is determined that the Association's proposal is more nearly in line with the Charter factors.

ISSUE 37: ARTICLE 22: FAMILY LEA VE

Tentative Agreement

Section 22.3

If the family member is a child, a parent, spouse, or ***domestic partner***, an employee may use up to forty-eight (48) hours annually to tend to the illness of a child, parent, spouse, or domestic partner, instead of the annual maximums set forth in paragraphs 22.1 and 22.2 and in accordance with Labor Code Section 233.

ISSUE 38: ARTICLE 27 - GENERAL PROVISIONS

Section 27.2 - Salary Survey Agencies

City:

No change to current language. City proposes using same cities as were used in negotiations with the Fire Union.

Association:

For the purposes of external comparisons the agencies to be used for review of compensation shall be:

- ***Gilroy***
- ***Monterey***
- ***Napa***
- ***Petaluma***
- ***Pleasanton***
- ***Salinas***
- ***Santa Barbara***
- ***Santa Cruz***
- ***Santa Maria***

~~the same survey agencies as the City uses for other City employees.~~ Parties agree that this survey shall be based on total compensation and shall only be one of the considerations used to determine compensation.

As previously noted, the Association has utilized the above-named agencies, denominated the "Gilroy 9," for wage and benefit comparisons in these proceedings. The list used by the City for such comparisons, entitled the "Chico 9" substitutes Chico and Davis for Gilroy and Santa Barbara. Simply put, the parties are in agreement about seven of the nine agencies which provide for appropriate comparisons, and differ only on the issue of whether Gilroy and Santa Barbara, as opposed to Chico and Davis, are more appropriate for to include on the comparisons list.

The City has utilized comparative data from four separate sets of municipalities in different wage and benefit surveys, as described above. The list it seeks to apply here is the same as has been used in its 2006 negotiations with Firefighters. That list was agreed upon

by the parties. Another list was used for a compensation study performed in 2007 for the purpose of determining appropriate compensation levels for managerial and general, non-safety employees.¹⁶ As detailed in the “Wages” section above, besides the seven cities common to the Association and City surveys, this list included Paso Robles, San Luis Obispo County, Davis and Ventura. The City’s finance director also compiled a list of comparable entities which was submitted to the City Council in support of Measure Y, a voter initiative to increase the sales tax by one half-cent. This list contained Davis and Ventura in addition to the seven mutually selected cities. The City, through its Risk Manager Karen Jenny, asserted that Davis, which is included on every City list and not on the Association’s, has similar demographics, including population, “university town” aspects, home prices, average age, and education level of residents.

The Battalion Chiefs agreed to use the same survey set that had been used by the Firefighters. The survey set agreed upon by the Firefighters and the City in 2006 was different from the one that had been used and agreed upon for their 1999-2001 Contract. SLOCEA and the City agreed to conduct a “benchmark compensation study” which resulted in the list referred to above. Association evidence showed demographic data for the eleven survey cities combined. The City was near the bottom in population and geographic size, necessarily putting it near the bottom in sworn and total personnel. It is also second to the bottom in ratio of officers per 1,000 people at 11.9%. The two entities which the City adds to the core 7 are the farthest distance from it, as well as farthest from what the Association entitles the “Highway 101 Corridor.” They are also two of the three lowest paying agencies on the list.

The City is 4th from the top when ranked within the 11 survey cities in property and property plus violent crimes. It was in the middle of median price of homes in 2006. Changes in values place it fourth from the bottom in July, 2007 even though the median price increased. By October, 2007, median home prices surged to where the City was now fourth on the list.

Strobridge testified that Davis and Chico should be excluded because they are not tourist destinations, like most of the cities on the agreed list, and their sources of revenue are different. He included Gilroy because it was used by the City’s management and confidential employees in 1999 to justify their own pay and benefits, and subsequently by staff police officers.¹⁷ The list was used further in the 2001 Association interest arbitration. In the next round of negotiations, the list was expanded to the “Gilroy 12.” For purposes of the current negotiations, Strobridge removed Davis and Tracy from the Gilroy 8 list, and substituted Salinas, Pleasanton, and Santa Barbara. Santa Barbara was included because of laterals from that agency, and that it was in the City’s labor market. The two were also connected by proximity and a tourist economy. Salinas and Pleasanton were included because they were on the various fire surveys.

Strobridge noted that he had spoken with the Fire Association president, who explained that they agreed on the Chico 9 data set because it produced a favorable outcome, providing increased compensation for their survey benchmark, firefighter/paramedic. The Fire contract

¹⁶That list was selected by a Labor/Management Committee with the assistance of a consultant.

¹⁷He entitled this list the “Gilroy 8.”

has premium pay above salary for specialty classifications. An information request established that numerous salary surveys have been conducted since 1998 in the negotiations with the City's various bargaining units. For example, there were two data sets prepared by the City for the 1998 police negotiations, four in 2001, and six in 2004, three for police officers, one for records, and two for comm techs. The City council conducted its own surveys in 2004. The Gilroy 8 was used in the 2005 SLOPSOA negotiations. A different set was used for the June, 2007 SLOPSOA negotiations. In 2005, the firefighters used a 37-agency survey. In the current negotiations, the City surveyed six different data sets. In 2007, the survey for appointed officers included Santa Barbara as well as Chico and Davis.

The Association argues that survey agencies used by the City have constantly changed. The *status quo* is no longer viable. To facilitate negotiations, it is important to identify the universe. Internal comparisons support listing an identified set of agencies, though each one has a different comparative data sets. Chico and Davis do not comport to the index factors. The City's list was one tailored to provide a favorable outcome to fire personnel, specifically the result of the existence of a benchmark classification.

The Association adds that it has used standard comparability criteria in assembling its list: proximity to 101, revenue from tourism, and per capita revenue streams. Neither Chico or Davis compare to the City. The City's 2006-07 per capita figure is more than double for that of Davis, and slightly greater than Santa Barbara.

The City maintains that the change the Association seeks is a "dramatic departure" from past practice in that the proposed list is not one used by any City department. It has shown neither that it is preferable to set such a list in stone that will be used by the parties in the future, or that the cities it chooses are proper. Many factors determine what are the best comparables, and these factors change over time. The Association's proposal seems based on a short-term goal to get preferable salary comparisons. There is no guarantee that such a universe will continue to support the Association's goals. It is impossible to tell what would result from including this list in the Contract.

The City adds that the Association's main justification for including the list appears to be that it would avoid conflict on the issue during negotiations. However, once the Contract expires, there is nothing to prevent the parties from arguing that the list no longer represents the best comparables. Nothing would be served by providing this list in the Agreement, as the Association agreed to delete the reference to it in its salary proposal.

The City maintains that the Association did not sustain its burden of proving that its list provided the best comparisons. City salary proposals are much more competitive when compared with City lists. The City did not unilaterally create any of these lists. The only way that the Association could justify its wage proposal was to hand pick its own list. There is a strong inference that it was used to arrive at a specific result, not based on analysis of comparability data. Chico and Davis are university towns. Many others on the Association's list are not, in effect, "tourist destinations."

Finally, the City asserts that per capita revenue was incomplete, and not directly linked to the survey cities proposed. It is also not a good salary indicator. The Association has failed

to demonstrate that its list represents the best possible comparables.

The Association responds that it is no longer possible to identify a set of “same” survey agencies. The data set it proposes most closely parallels those traditionally used in prior negotiations. The proposal that the fire list should be used was unsupported by any data from those jurisdictions. The Gilroy 9 contains more comparable jurisdictions than the fire-centric Chico 9.

The City counters that the proposal would not forestall protracted negotiations. Contracts often are delayed until other negotiations are concluded. The Fire list contains jurisdictions comparable to the City in population, demographics, public safety and job characteristics. The Association used Chico to support its argument in Issue 35. Proximity to 101 has no bearing on comparability, and there is nothing standard about determining whether the City economy is driven by tourism. Many agencies, such as Napa, Pleasanton, Santa Cruz and Monterey are not in proximity to 101. This demonstrates that the agencies were hand-picked to support its proposals.

Analysis and Conclusions

This proposal is clearly linked to other economic items in the Agreement. Both parties seek justification for their various economic proposals by reference to some list of comparable agencies. Often, support for a proposal can be found regardless of what list is used. There is thus some agreement between the parties that the combined list of 11 comparable jurisdictions contains many points of similarity with the City. More importantly, the mutual inclusion of the same seven jurisdictions on the respective lists reflects the parties’ intent that these agencies are in fact comparable, and should be used in assessing the acceptability of any proposal. Thus, the argument that certain jurisdictions on this list are not “tourist destinations” is unavailing, since both sides have agreed that they should be used for comparisons, non-tourist designation notwithstanding.

It is abundantly clear that the inclusion of Chico and Davis, which are in the lower third in compensation on the Chico 9 list, necessarily drags down the average compensation in the data set. Gilroy is the highest paid agency in its group, and Santa Barbara is above average, thus necessarily raising the average compensation in that group. The City maintains that the Association’s list is simply offered to justify its economic proposals, and that for the sake of internal comparisons, its “fire list” is most appropriate. Obviously, each party devises a comparative universe that produces the most favorable outcome for their point of view. The fact that the Association’s list supports their argument is no less a reason to consider it than the fact that the City’s list supports its own.

The two cities that the Association substitutes for Chico and Davis on the fire list are Gilroy and Santa Barbara. These two cities are 154 and 95 miles, respectively from the City; Chico and Davis are 286 and 382 miles away, respectively, the farthest away of any cities on the list. Gilroy and Santa Barbara, like the City, are on 101; Davis is 50 miles away, Chico 75. Davis, Gilroy and the City have departments whose numbers of sworn personnel are roughly equivalent. The City was between Santa Barbara and Gilroy in 2005-06 per capita revenue; Chico and Davis ranked considerably lower, at or near the bottom of the list. January, 2007

population in the City is 44,239, in Gilroy (the next largest) it is 49,649, Davis, 64,938, Chico 84,396, and Santa Barbara, 89,458. Geographically, Chico leads the list in size, while the City ranks third from the bottom at 10.7 sq. miles, slightly larger than Davis at 10.4. It ranks just below Santa Barbara, or 4th on the list, in ratio of peace officers per 1,000, at 1.37. Chico has 1.2, Davis .92.

Although the City argues that the fact that Chico and Davis are comparable because they are college towns, like the City, Santa Barbara shares that designation as well. Santa Barbara is appropriate to consider as a comparable agency for a variety of other reasons, not the least of which is its proximity, in addition to the other factors cited above. Strobridge testified without contradiction that there have been several lateral transfers from that department, and thus the City has to compete with Santa Barbara for the same pool of employees. As far as Gilroy is concerned, that municipality compares well with the City in population, size of department, and per capita revenue. In other words, the City has a department with an equivalent number of personnel, serving nearly equivalent numbers of people, with an equivalent amount of money, per capita. Moreover, Gilroy has been included on lists which the City has used with other bargaining units, most notably, the police staff officers.

The City argues that the Association must compile a list which approaches perfection in terms of comparability. An impossible burden, all that is necessary is that the agencies on a given list are not chosen arbitrarily, *i.e.*, that there must be a reasonable basis for including them. Commonly accepted methods of comparison necessarily involve demographics, crime rates, geographical proximity, and cost of living. Weighing these factors, a reasonable basis exists for including Gilroy and Santa Barbara on any comparative list.

The City's asserts that its list and the Contract language which supports it should be accepted because the list was not created unilaterally. In advancing the point, the City's argument for its version carries the seeds of its own refutation. Each of the survey lists used for other units was negotiated. In this case, the City seeks to remove the issue from negotiations by tying the results here to what other units have agreed upon. While the City asserts that it is appropriate to obtain bargaining representative input on the survey question in every other case, it maintains an altogether different stance here, arguing that the Association should be bound by what others have agreed to, and not provide such input. Additionally, the language which the City seeks to retain is wholly ambiguous, as there is no uniformity among the lists used in other negotiations. The phrase "the same survey agencies as the City uses for other City employees" can have no meaning when each unit uses a different list, and each time the issue arises in negotiations, variations are made to the list.

In sum, Gilroy and Santa Barbara contain more points of similarity to the City than do Chico and Davis, and thus provide more appropriate bases for comparisons and inclusion within the group of comparable agencies. Internal consistency within the City underscores the importance of subjecting the question of comparable agencies to negotiation, rather than imposing the result without input from the subject bargaining unit. Rather than setting the list in stone by spelling it out in the Agreement, its inclusion as a provision of the Contract reinforces the fact that it is subject to negotiations, and may be modified as circumstances dictate. The Association's proposal thus most nearly conforms to the Charter factors.

ISSUE 39: ARTICLE 31 - GRIEVANCE PROCEDURE

City: NEW ARTICLE

Disciplinary matters are excluded in Section 31.1. The rules governing disciplinary matters for employees covered by this MOA are contained in Sections 2.36.320 through 2.36.350 of the Personnel Rules and Regulations for the City of San Louis Obispo.

Association:

31.9 Binding Arbitration Grievance Disciplinary Appeals Procedure:

A. Definition. For the purpose of this article, disciplinary action shall mean counseling memorandum, written reprimand, disciplinary reassignment, suspension, demotion, disciplinary reduction in salary or discharge.

B. It is the expressed intent of the parties that employees shall receive fair treatment and shall be disciplined only for just cause.

C. Employees on probationary status (entry-level or promotional) may not appeal under this agreement rejection on probation.

D. Counseling memoranda and written reprimands may be appealed under this article only to the City Administrative Officer level.

E. Disciplinary reassignment, suspension, demotion, disciplinary reduction in salary or discharge may be appealed under this article to a hearing officer.

F. Nothing herein constitutes a waiver of rights of employees otherwise granted by law (e.g., Government Code Sections 3300, 3500, 3508.1 et. Seq.).

32.0 Pre-Action Procedure:

A. Prior to the imposition of disciplinary action, the employee shall first be provided a preliminary written notice of the proposed action stating the effective date and the specific grounds and particular facts upon which the action will be taken. The employee shall have access to any known, written materials, reports or documents upon which the action is based. The employee shall have the right to respond to the charges within fifteen (15) business days from receipt of the notice either orally, in writing, or both to the Chief of Police. If the department head is personally involved

in the initial investigation and notice process, the City Administrative Officer shall appoint a designee to hear the response.

B. The employee may request an extension of the time to respond for justifiable reasons. Failure to respond within the time specified will result in the employee's waiver of her/her procedural rights and final action will be taken.

C. Following a review of a proposed disciplinary action, the Chief of Police, within five (5) business days of receiving the employee's response, shall render a written decision and send it by registered mail and Email to the employee. A copy shall also be Emailed and mailed to the employee's representative.

32.2 Post Action Discipline Appeal Process:

A. Disciplinary action including counseling/training memoranda or a written reprimand imposed upon an employee may be appealed through the Grievance Procedure as set forth in Sections 31.1 through 31.6 of this article. The City Administrative Officer's decision shall be final.

B. Disciplinary action including disciplinary reassignment, suspension, demotion, disciplinary reduction in salary or discharge may be appealed through the Grievance Procedure to a hearing officer as set forth in Sections 31.1 through 31.7, following completion of the Skelly process.

C. The decision of the hearing officer shall be rendered after the evidence and arguments are presented to him/her by the parties in the presence of each other and in post-hearing briefs, if necessary. The decision of the hearing officer shall be final and binding upon the parties.

Simply put, the Association seeks to submit disciplinary matters to binding arbitration. Currently, employees who are "removed, reduced in compensation, demoted or suspended for more than five days" are entitled to notice and an opportunity to respond. Three days after the response, the appointing authority issues its decision. Employees may appeal those decisions to a hearing officer selected through State Mediation, who conducts a hearing, then issues findings and recommendations to the Council, which makes the final decision on the matter. Serious discipline is rare in the Department.

A composite comparison list of 15 separate jurisdictions which includes San Luis Obispo County, Ventura, Palm Springs, and Paso Robles in addition to the 11 jurisdictions on the combined City/Association lists shows that in only four – Gilroy, Petaluma, Pleasanton and Santa Cruz – may discipline be appealed to an arbitrator. The remaining 11 do not address the issue in their respective MOU's.

The Association points to the fact that its proposal codifies the rules which apply to

disciplinary action in one location. It establishes the same appeal provision as for Contract grievances. It will bring stability to discipline appeals and provide for uniform grievance handling, as well as conforming to present industry standard.

The City notes that the proposal would “dramatically change” discipline appeal procedures for unit members. It not only would submit them to binding arbitration. It would expand appealable discipline to include written reprimands and counseling memos, creating a process which would be extremely burdensome. It would also remove the City Council’s oversight over disciplinary decisions.

The City urges that the Association has not presented any evidence which would support such drastic changes. The City provides employees with a fair and equitable disciplinary appeal procedure. In order to address concerns raised by the Association that members might not readily realize the location of the applicable discipline appeals rules, the City is proposing to add a provision to provide that reference.

In addition, employees have a right to appeal to a hearing officer, and may file a writ of mandate to challenge a City Council decision. The Association’s attempt to paraphrase *Skelly* rights creates a potential litigation risk. Trying to memorialize a concept like “due process” is difficult if not impossible. The proposal has the potential of wreaking havoc with the process. There is no support for the claim that the proposal conforms to industry standard.

The Association responds that the City’s attempt at compromise does not cure the defect in the process: employees will still have to slog through the code to find out what their rights are. The City is also preventing any proposed modifications which might have an impact on non-sworn personnel. Its proposal is impractical for this reason.

Analysis and Conclusions

Convincing an arbitrator to impose a system of binding arbitration is a little like convincing someone in the oil business of the virtues of starting a war to secure the supply of oil. As might be expected, arbitrators are firm believers in the process, and perhaps prone to expand it whenever the opportunity presents itself. Given this fact, any arbitrator before whom this question is raised needs to be especially conscious of his/her own particular biases on the subject. Nonetheless, any system of arbitration derives its authority from the fact that it has been mutually agreed upon by the parties as a means of resolving disputes and avoiding labor unrest. In this Arbitrator’s view, imposing it through the mechanism of interest arbitration, absent compelling circumstances, would diminish that authority.

The Association’s proof fell far short establishing such circumstances. There was no evidence that the process currently in place produced arbitrary results, or was administratively so deficient that it effectively nullified the appeal process. Comparisons, both internal and external, were unavailing in demonstrating that the right to appeal serious discipline to binding, neutral arbitration was as widely-conferred contract right. To the contrary, the overwhelming bulk of jurisdictions do not even address the issue in their MOU’s. In addition, the right does not exist in any other City bargaining unit.

The City's proposal thus most nearly conforms to the Charter factors, and will be included in this Award.

ISSUE 40: ARTICLE 38 – WORK SCHEDULES

Section 38.4

City:

No change

Association:

Field Service Technicians Alternative Work Schedule shall be defined as a 4/10 work plan consisting of four days worked on a Monday through Friday schedule. . . . Field Service Technicians schedules shall be coordinated to provide maximum coverage during a defined 0700 hours to 1800 hours work period. Work periods shall consist of four consecutive days. Days off shall not be split.

Field service technicians ("FST's") perform a variety of functions with regard to the handling and processing of evidence. While there are three in the classification, one FST works in the evidence room and not in the field. The remaining two have a choice of either a 8/5 or a 9/80 schedule, and both are on the 9/80, with one being off every Friday. Capt. Parkinson stated that under the current arrangement, there is only one FST one day per week. If the change to 4/10 occurred, there would be one FST on two days of the week. Vacation and sick leave would further complicate matters. Because the Department is so small, the revision to the schedule, Parkinson stated, would not be in its best interest.

The Association asserts that while Article 38 contains specific work schedule provisions for other classifications, it is silent with regard to schedules for FST's. The Association seeks to cure this oversight. The City responds that the proposed scheduling change would leave little flexibility when an FST is sick or on vacation. It would also decrease productivity and place heavier burdens on the FST who might be the only one on duty. Additionally, the City asserts that the Association has failed to present any evidence that contradicts or overrides the Department's strong concerns about the scheduling change.

The Association responds that the City is incorrect when it argues that additional burdens would be placed on the FST's when one is on vacation or sick. The current schedule presents the identical problem, as there are only two FST's. The City counters that the omission from the MOA was not an oversight, but a purposeful means of refraining from permitting the 4/10 work schedule.

Analysis and Conclusions

As the party seeking to change the status quo, the Association has the burden of proof as to establishing the rationale for the change. No evidence was submitted to support its view that FST's should be allowed to work a 4/10 schedule. On the other hand, the City established

that the modification would result in scheduling inflexibility, decreased productivity, and place a heavier burden on the one FST at work on each of two days during a two-week period as opposed to the one day that exists under the current arrangement. The City's proposal to leave the Contract's language unchanged in this regard thus most nearly conforms to the Charter factors.

ISSUE 41: ARTICLE 38 - WORK SCHEDULES

Section 38.4

City:

~~Field Service Technicians will be entitled to a thirty minute unpaid lunch break.~~ **Field Service Technicians assigned primarily to field duties will receive a 30-minute paid lunch break as part of their regular shift as staffing and calls permit. They will remain subject to call and interruption during their lunch period.**

Association:

The Association accepts the City's proposal.

ISSUE 42: ARTICLE 38 – WORK SCHEDULES

Section 38.5 - Investigations - Division Work Schedule

City:

- A. ~~The City will commence a trial 4/10 work schedule the pay period following Council ratification of this agreement in accordance with the City's alternate work schedule policy. The schedule will include a 30 minute unpaid lunch.~~ **Investigators may participate in a 4/10 work schedule in accordance with the City's alternate work schedule policy.** The schedule will include a 30 minute unpaid lunch. **If investigators are called back to work during the lunch period, the time will be considered time worked.**

Association:

The City will commence a trial 4/10 work schedule the pay period following Council ratification of this agreement in accordance with the City's alternate work schedule policy. The schedule will include a 30 minute unpaid lunch.

Officer Charles Ridell, who is currently assigned to investigations, is also vice president of the Association. He testified that two officers in investigations work a 9/80, while three work a 4/10. They could also work a traditional 5/8 if they chose to. Those on the 9/80 work from

7:45 to 5:30, while those on the 4/10 work from 6:45 to 5:30. For Ridel, the biggest concern is being on call during lunch. Detectives are assigned a cell phone and have to be available at all times. On occasion, they need to work through lunch. For example, they may contact witnesses who call them back during the lunch period. Ridel has been instructed to respond to calls during lunch. A number of investigative officers do have paid lunches. They would include the investigator in the narcotics task force and the three officers assigned to SORT, a narcotics and vice-related unit which has an off-site office. These individuals generally work out in the field. Currently, if an investigator's lunch break is interrupted, they are permitted to alter their shift somewhat by taking their break later or go home early.

Capt. Parkinson testified that while there may be times when investigators are called out during their lunch period, they should be compensated for that time. This rarely occurs, and compensation would be on an overtime basis when it does. He stated further that members of the SORT team work predominantly out in the field, and much of their work is self-initiated. In contrast, an investigator works primarily in the station, and their work is assigned.

The Association asserts that because the investigation unit must remain available to respond to calls and witnesses during lunch, and there are frequent interruptions during their lunch break, they should be compensated during this 30 minute period. Under the FLSA, Section 785.19 of the DOL Regulations, if an employee is not "completely relieved of duty" during meal periods, payment for that period is required. To be excluded from the FLSA definition of "hours worked," meal periods must be at least 30 minutes long and actually be provided for employees. Those who actually perform work during their meal periods usually have those periods counted as hours worked.

The City did not rebut any of the Association's evidence, and in effect concedes the issue by agreeing that interrupted time should be paid. Rather than simply incorporating the lunch period into the regular work day, the City proposes to increase its costs by paying for overtime during interrupted lunches. This is fiscally imprudent and will create an administrative burden, including an unnecessary layer of bureaucracy and thus escalated costs for the preparation and processing of overtime requests. The Association considers the City's proposal well-intentioned but impractical and unreasonable.

While the City is maintaining the position that the lunch period should remain unpaid, it proposes the above language to clarify that they will be paid if they work through that period. The Association has not shown that there are any concerns about investigators not receiving their uninterrupted 30 minute lunch, there is no reason for the period to be paid. The Association offered no argument in opposition to the clean-up of "trial" language, which reflects that the work week is no longer in the trial stage. As it is rare for detectives to get called out at lunch, their time is primarily used for private pursuits and for their own effective use. To pay them for every lunch period would not be an effective use of City resources.

Analysis and Conclusions

The Association's proof lacked any quantification as to how serious the problem of working through lunch is for detectives. On the other hand, Capt. Parkinson testified without contradiction that such interruptions are rare, and that when they do occur, investigators are

duly compensated. Nor has it been shown that paid lunch breaks for investigators are common in comparable jurisdictions. The Association's proposal thus addresses a problem which does not appear to exist. The City's proposed language will accordingly be adopted.

ISSUE 43: ARTICLE 38 - WORK SCHEDULES

Section 38.5 - Investigations - Division Work Schedule

City:

B. The Investigative Lieutenant will determine the work days and hours for those employees who work the 4/10 schedule based on the coverage needs of the entire unit. The schedule may include shifts beginning at 6:45 a.m. with attendance at patrol briefings. Investigators who attend patrol or other daily briefings shall do so as part of their regular shift hours.

Association:

Status quo

As noted above, there are three shifts that are available to investigators. The 5/8 shift has traditionally started at a quarter to the hour for briefing, similar to the briefing for patrol. The 15 minutes are paid at overtime rates. The City is recommending that the 4/10 shift begin at 6:45 to facilitate attendance at the detective briefing. Time in briefing is mandatory. In patrol, it is necessary to have an overlap between shifts to cover the briefing period. Under the proposal, investigators would leave 15 minutes earlier at the end of the day, thus avoiding overtime.

The City argues that the proposal is necessary to prevent investigators from working what amounts to regularly scheduled overtime. If their schedule does not start before briefing, the officer is required to work an additional 15 minutes in order to attend. The proposal saves the officers' time, and allows the City to redirect resources into areas that better serve the public and its employees.

The Association maintains that because the City's proposal changes the *status quo*, it bears the burden of proving that the change and the resulting reduction in benefits is warranted. The City introduced no evidence in support of its proposal. It presented no cost savings information, or identified any problem or reason why eliminating attendance at roll call briefing was necessary or appropriate. The City is proposing to exchange a long-standing practice and benefit for a provision that gives the City the ability to change investigator schedules at whim. Additionally, the City's creation of a new proposal at the last minute effectively deprived the Association of the opportunity to present evidence that would show that the proposal was ill-advised and impractical.

Analysis and Conclusions

The authority to determine shift starting times is a generally accepted prerogative of management. It may be described as in Article 5, the Contract's management's rights clause, as the right to "direct" employees, "maintain the efficiency of government operations," and to "determine the . . . means and personnel by which government operations are conducted." Appendix E of the prior Agreement, which is to be incorporated into Article 38, specifically "reaffirms" that "scheduling is a management responsibility," and provides that "shift assignments for special units or assignments are not covered by this guideline and remain the discretion of the Unit Supervisor or Bureau Commander." The City's proposal underscores this authority. Investigator positions are recognized as specialty assignments in the MPO Article. The proposal is clearly designed to maintain efficiency in operations and to effectuate a cost savings by eliminating what has become a built-in overtime expense.

Though the Association argues that the provision changes a long-standing practice and gives management the right to change investigator schedules "at whim," there is nothing in the prior Agreement which would restrict management's ability in this regard. Thus, the Association is not being forced to surrender any rights that it previously enjoyed. While the thrust of this proposal may be to eliminate overtime payments which had been regularly paid to investigators, overtime cannot be guaranteed, and may legitimately be eliminated as part of management's authority to maintain the efficiency, or cost-effectiveness, of its operations.

The City has demonstrated that its proposal codifies a well-recognized management right, and is offered for the sake of efficiency and cost savings. As such, the City's proposal most nearly conforms to the Charter factors.

ISSUE 44 – Appendix Clean-up

Tentative Agreement

AWARD

The Agreement which was in effect from July 1, 2004 to December 31, 2005, will be modified in the following particulars, with the formatting system described above indicating additions, deletions and modifications. These changes will be incorporated in the new Agreement, effective January 1, 2006 through December 31, 2009:

ARTICLE 47 - TERM OF AGREEMENT

This Agreement shall become effective ***January 1, 2006*** and shall continue in full force and effect until expiration at midnight, ***December 31, 2009***.

ARTICLE 1 - PREAMBLE

- 1.1 This Agreement is effective the ***1st day of January 2006*** by and between the City of San Luis Obispo, hereinafter referred to as the City, and the San Luis Obispo Police Officers Association. ***The provisions of this Agreement shall apply to***

all unit members employed on January 1, 2006, or thereafter.

ARTICLE 7 - SALARY

7.1 [Status quo]

7.2 Salary Increases for Term of Agreement

Salary increases will be effective on the first day of the first full pay period following the dates listed below:

<i>January 1, 2006</i>	<i>5.28%</i>	<i>Sworn Classifications (Police Officer)</i>
	<i>10.82%</i>	<i>Non-sworn Classifications</i>
<i>January 1, 2007</i>	<i>6.00%</i>	<i>All Classifications</i>
<i>July 1, 2007</i>	<i>6.00%</i>	<i>All Classifications</i>
<i>January 1, 2008</i>	<i>5.00%</i>	<i>All Classifications</i>
<i>January 1, 2009</i>	<i>5.00%</i>	<i>All Classifications</i>

ARTICLE 8 - MASTER POLICE OFFICER PROGRAM

8.4 Eligibility requirements for the position of Master Police Officer are as follows effective January ~~13, 2005~~; **01, 2006**:

[Tentative Agreement regarding subsection (3)]

ARTICLE 10 - OVERTIME - SWORN

10.3 Compensation

A. Overtime hours shall, at the employee's option, be compensated in cash at time and one half the employee's regular rate of pay or in time off compensated at time and one half. However, no employee shall accumulate and have current credit for more than ~~80~~ **100** hours of compensatory time off.

ARTICLE 10 - OVERTIME - SWORN

10.6 Court Time

D. Effective upon the date this Agreement is formally approved by the City Council or ten (10) days after an arbitration award is issued whichever is later, if a scheduled court appearance is canceled on the day the employee

is to appear, s/he shall be eligible for the minimum payment in this Section.

ARTICLE 10 – OVERTIME – SWORN

10.10 Overtime Assignment

- B. *An officer may decline a non-emergency overtime shift if s/he has worked an overtime shift of at least eight hours in the last fourteen days. If no volunteers are available from the list, the Watch Commander may then move up to the next least senior officer on that shift for mandatory overtime.***

ARTICLE 11 - OVERTIME - NON-SWORN

11.3 Compensation

- A. Overtime hours shall, at the employee's option, be compensated in cash at time and one half the employee's regular rate of pay or in time off compensated at time and one half. Maximum accrual of compensatory time shall be ~~480 hours~~ for ~~Communication Technician~~ and 240 hours for all other non-sworn classifications.

11.6 Court Time

- D. *If a scheduled court appearance is canceled on the day the employee is to appear, s/he shall be eligible for the minimum payment in this Section.***

ARTICLE 14 - EDUCATION INCENTIVE

The educational incentive pay plan shall continue as described below for **sworn and** non-sworn personnel for the term of this agreement.

- A. BASIC BENEFITS. Education incentive pay shall not begin until one year after employment with the City of San Luis Obispo, but credit will be given for approved education obtained prior to that time. **Effective January 1, 2007, the basic benefit for employees hired prior to July 1, 1981, will consist of *an adjustment equal to* one-half step above the base salary for possession of an *Intermediate POST certificate, A.A.*, or equivalent degree from an accredited community or junior college, or 60 or more semester units, or a City-approved equivalent; *an adjustment equal to* one full step for an *Advanced POST certificate, B.A.* or equivalent degree from an accredited college or university.**
- Section E. NON-APPLICABILITY. Educational incentives shall **generally** not be paid for education on City time. **However, if the City sends an employee for training**

on City time and college-level credits are earned during that training, those credits shall count toward education incentive. The education incentive will be removed if the employee is promoted to a position that does not entitle employees to such incentives.

Section F. **ADDITIONAL PROVISIONS**

1. The basic benefit for non-sworn employees hired ~~on or after July 1, 1981~~ ***prior to January 1, 2008***, shall be a five percent step increase for a period of one fiscal year if during the previous fiscal year the employee has successfully completed - i.e., grades of "C" or better in all courses – a minimum of nine semester units of college level classroom work, or City-approved equivalent, approved by the Chief of Police, provided that this benefit shall be payable only for classroom work done after completion of the probationary period.
2. ~~Employees hired after July 1, 1981 shall be eligible for compensation as set forth in paragraph A effective January 13, 2005 with the following requirements:~~
 - ~~Annual qualification of 3 semester units~~
 - ~~Qualification on a fiscal year basis with first qualification during 2005-2006~~
 - ~~Tuition reimbursement as set forth in City policy.~~
2. ***The maximum benefit under this article is the equivalent to the one-step increase for possession of one B.A. or equivalent degree (5.26%)***
3. ***Sworn and non-sworn employees are eligible to participate in the Tuition Reimbursement program as set forth in City Policy.***

ARTICLE 16 - HEALTH CARE INSURANCE

16.1 **CONTRIBUTION**

Effective December 2006 (for the January 2007 premium), City shall contribute the monthly amounts as set forth below for Cafeteria Plan benefits for each regular, full time employee covered by this agreement. Less than full-time employees shall receive a prorated share of the City's contribution.

Employee:	\$479.00
Employee Plus One	\$855.00
Family	\$1,133.00

The Cafeteria Plan amount is inclusive of mandatory dental, vision and ***life*** coverage.

Effective December 2007, (for the January 2008 premium), the contributions shall be as follows:

Employee Only:	\$507.00
Employee Plus One	\$900.00
Family	\$1,188.00

Effective December 2008, (for the January 2009 premium), the contributions shall be as follows:

Employee Only:	\$533.00
Employee Plus One	\$968.00
Family	\$1,277.00

16.2 Insurance Coverage

A. PERS Health Benefit Program

The City has elected to participate in the PERS Health Benefit Program (Public Employees' Medical and Hospital Care Act (PEMHCA)) with the "unequal contribution option" at the PERS minimum contribution rates, ~~\$-80.80~~ **97.00** per month for active employees and ~~\$ 20.30~~ **72.75** for retirees as of January 1, 2008. The City's contribution toward retirees shall be increased by 5% per year of the City's contribution for the active employees **multiplied by the number of years the City has been in the PEMHCA program** until such time as the contributions for employees and retirees are equal. The City's contribution will come out of that amount the City currently contributes to employees as part of the Cafeteria Plan. The cost of the City's participation in PERS will not require the City to expend additional funds toward health insurance beyond what is already provided. In summary, this cost and any increases will be borne by the employees.

B. Health Insurance Coverage Optional Participation

Employees with proof of medical insurance elsewhere are not required to participate in the PERS Health Benefit Program and may receive the unused portion of the City's **Cafeteria Plan** contribution **of \$479.00 per month** (after dental, vision and **life insurance** is deducted) in cash in accordance with the City's Cafeteria Plan. ~~Those employees will also be assessed \$16.00 per month to be placed in the Retiree Health Insurance Account. This account will be used to fund the City's contribution toward retiree premiums and the City's costs for the Public Employee's Contingency Reserve Fund and the Administrative Costs. However, there is no requirement that these funds be used exclusively for this purpose nor any guarantee that they will be sufficient to fund retiree health costs, although they will be used for negotiated employee benefits.~~

E. Life Insurance

Employees shall pay for life insurance coverage of Thirty-five Thousand Dollars (\$35,000) through the cafeteria plan. The effective date of the increase in coverage from \$20,000 to \$35,000 will depend on approval from Standard Insurance Company.

16.5 HEALTH INSURANCE FOR UNIT MEMBER SURVIVORS

The City shall maintain and pay for the existing level of **health, dental and vision** benefits for one (1) year for the surviving family of ~~a unit~~ **an active employee** who dies while in the line of duty **as a result of a job-related illness or injury.**

ARTICLE 21 - SICK LEAVE

21.2 Upon termination of employment by death or retirement, a percentage of the dollar value of the employee's accumulated sick leave will be paid to the employee, or the designated beneficiary of beneficiaries, according to the following schedule:

A. Death - ~~25%~~ **50%**

C. **Job-related disability retirement and actual commencement of PERS benefits – 75% with maximum of 1000 hours payoff.**

5.¹⁸ **Sick leave cannot be used to postpone the effective date of an industrial disability retirement. This provision is intended to reiterate past practice and to exercise the employer's rights under Government Code, Section 21163.**

C.¹⁹ **Employee use of sick leave shall be deemed confidential and not subject to reporting in monthly or annual personnel evaluations without proof of abuse.**

ARTICLE 22 - FAMILY LEAVE

22.1 An employee may take up to ~~16~~ **48** hours of sick leave per year if required to be away from the job to personally care for a member of his/her immediate family.

22.2 An employee may take up to ~~40~~ **48** hours of sick leave per year if the family member is a part of the employee's household.

¹⁸This provision should be lettered either "D" or "B.4" to conform with the rest of the Article.

¹⁹This provision should be re-numbered either "D" or "E," depending on the designation of the preceding paragraph.

22.3 If the family member is a child, a parent, spouse, or **domestic partner**, an employee may use up to forty-eight (48) hours annually to tend to the illness of a child, parent, spouse, or domestic partner, instead of the annual maximums set forth in paragraphs 22.1 and 22.2 and in accordance with Labor Code Section 233.

ARTICLE 27 - GENERAL PROVISIONS

27.2 - Salary Survey Agencies

For the purposes of external comparisons the agencies to be used for review of compensation shall be:

- **Gilroy**
- **Monterey**
- **Napa**
- **Petaluma**
- **Pleasanton**
- **Salinas**
- **Santa Barbara**
- **Santa Cruz**
- **Santa Maria**

~~the same survey agencies as the City uses for other City employees.~~ Parties agree that this survey shall be based on total compensation and shall only be one of the considerations used to determine compensation.

ARTICLE 31 - GRIEVANCE PROCEDURE

Disciplinary matters are excluded in Section 31.1. The rules governing disciplinary matters for employees covered by this MOA are contained in Sections 2.36.320 through 2.36.350 of the Personnel Rules and Regulations for the City of San Louis Obispo.

ARTICLE 38 - WORK SCHEDULES

38.4 ~~Field Service Technicians will be entitled to a thirty minute unpaid lunch break.~~ ***Field Service Technicians assigned primarily to field duties will receive a 30-minute paid lunch break as part of their regular shift as staffing and calls permit. They will remain subject to call and interruption during their lunch period.***

38.5 Investigations - Division Work Schedule

A. ~~The City will commence a trial 4/10 work schedule the pay period following Council ratification of this agreement in accordance with the City's alternate work schedule policy. The schedule will~~

~~include a 30 minute unpaid lunch.~~ ***Investigators may participate in a 4/10 work schedule in accordance with the City's alternate work schedule policy.*** The schedule will include a 30 minute unpaid lunch. ***If investigators are called back to work during the lunch period, the time will be considered time worked.***

- B. The Investigative Lieutenant will determine the work days and hours for those employees who work the 4/10 schedule based on the coverage needs of the entire unit. The schedule may include shifts beginning at 6:45 a.m. with attendance at patrol briefings. Investigators who attend patrol or other daily briefings shall do so as part of their regular shift hours.***

APPENDICES C, E AND F

[Incorporate Appendices C and E in Article 38 and Appendix F in Article 7]

The Arbitrator retains jurisdiction in this matter over any questions arising from the interpretation or implementation of this Award.

Dated: June 4, 2008

MATTHEW GOLDBERG
Arbitrator