

CITY OF SAN LUIS OBISPO

Charter Section 1107

ARBITRATION

between

CITY OF SAN LUIS OBISPO

and

SAN LUIS OBISPO POLICE OFFICERS ASSOCIATION

Thursday, December 20, 2007

9:36 a.m - 5:27 p.m.

REPORTED BY CINDY D. GRIFFITH, CSR #7281 (a.m. session)

JACQLYN M. GRIFFITH, CSR #7281 (p.m. session)

1 THE ARBITRATION BETWEEN CITY OF SAN LUIS OBISPO AND
2 SAN LUIS OBISPO POLICE OFFICERS ASSOCIATION
3 was held at the Embassy Suites, San Luis Obispo,
4 California, before Cindy D. Griffith, a Certified
5 Shorthand Reporter in and for the State of California,
6 and Jacqlyn M. Griffith, a Certified Shorthand Reporter
7 in and for the State of California, on Thursday,
8 December 20, 2007, commencing at the hour of 9:36 a.m.

9 APPEARANCES OF COUNSEL:

10

11 THE ARBITRATOR: MATTHEW GOLDBERG
Attorney at Law
12 130 Capricorn
Oakland, CA 94611
13 (510) 655-1520

14 FOR CITY OF SAN LUIS OBISPO:

15 LIEBERT, CASSIDY, WHITMORE
Attorneys at Law
16 153 Townsend Street, Suite 520
San Francisco, CA 94107
17 BY: RICHARD S. WHITMORE
MARLA K. LETELLIER
18 (415) 512-3000

19 FOR SAN LUIS OBISPO POLICE OFFICERS ASSOCIATION:

20 RAINS, LUCIA & WILKINSON, LLP
Attorneys & Counselors at Law
21 2300 Contra Costa Boulevard
Suite 230
22 Pleasant Hill, CA 94523
BY: ALISON BERRY WILKINSON
23 (925) 609-1699

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ALSO PRESENT: Monica Irons - Director of Human
 Resources
 Karen Jenny - Assistant Director of
 Human Resources
 Ian Parkinson - Captain San Luis

 Police Department
 Shaana Lichty - Secretary
 Dale Strobridge - Police Officers
 Association, President
 Chuck Reidel, Police Officers
 Association, Vice President
 Barbara Sims - Treasurer
 Jim Fellows - Member at Large
 Chad Pfarr - Association
 Representative

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1 San Luis Obispo, California

2 Thursday, December 20, 2007

3 --o0o--

4

5 THE ARBITRATOR: We're back on the record.

6 MS. BERRY WILKINSON: As an introduction, and
7 then I will be calling Dale Strobridge to talk in more
8 particulars about the proposal, when we presented our
9 proposal on Issues 6 and 7, the formula presented
10 certain challenges both in terms of implementation and
11 costing analysis, et cetera. And so what we endeavored
12 to do was to apply the theory behind the 85th percentile
13 proposal that was there, and just place it out with, in
14 essence, projections that we believe reasonably will
15 take us to the goals that we're trying to achieve. As
16 articulated by Dale Strobridge in his testimony, the
17 85th percentile was established, in essence, for the
18 purposes of placing the San Luis Obispo Police Officers
19 Association in the top quartile.

20 As you'll recall, our initial proposal for 2006
21 was targeted to bring the Association to the average of
22 its comparison cities, the Gilroy 9. And then was
23 targeted to bring them to the top quartile, which they
24 had set as the 85th percentile for 2007. And then we,
25 of course, had a two-year proposal on the table. Given

1 the arbitration and the developments, we are certainly
2 giving serious contemplation to going with the four-year
3 proposal issue, so we placed out also 2008 and 2009 for
4 consistency purposes.

5 It is our belief that with respect to 2008 and
6 2009, that the 5 percent salary increase, as proposed by
7 the City, if we should reach at least somewhere in a
8 reasonable range of our target, would bring us -- or
9 maintain us at the level that we would like to see out
10 into the future.

11 So, with that in mind, we're certainly willing
12 to stipulate to a four-year agreement, and to withdraw
13 our proposal for a two-year agreement from consideration
14 in this arbitration. I'm not expecting any opposition
15 on that, but we talked about it --

16 MR. WHITMORE: Well, you can make whatever
17 proposal you'd like with regard to the length of the
18 contract, clearly, so you don't need a stipulation from
19 me. If you want to move your -- your term proposal from
20 two to four, I mean, you certainly can do that. I don't
21 have to agree, but you can do it.

22 MS. BERRY WILKINSON: I don't anticipate any
23 opposition to it, is --

24 THE ARBITRATOR: Well, it also involves a
25 matter that I no longer have to rule on.

1 MS. BERRY WILKINSON: Exactly.

2 MR. WHITMORE: If both sides have the same
3 position, I agree.

4 THE ARBITRATOR: Okay.

5 MS. BERRY WILKINSON: All right.

6 THE ARBITRATOR: Let's make it unanimous.

7 MS. BERRY WILKINSON: So, with that in mind,
8 then, what I would like to do at this point is to --
9 looking at our proposal, you can see the 5, in years
10 2008 and 2009, are similar to the proposal that the City
11 has made. Obviously we have some differences in 2006
12 and 2007, from the City's proposal, in modifying or
13 revising the proposal, to provide more clarity in these
14 proceedings. We left 2006 the same. The only thing
15 that we adjusted was 2007, which was the year the
16 formula was to go into place, to address some of the
17 concerns and issues that were raised as the evidence was
18 presented and developed.

19 So, I would call Mr. Strobridge at this point
20 in time to address the salary.

21

22 DIRECT EXAMINATION

23

24 BY MS. BERRY WILKINSON:

25 Q Mr. Strobridge, in your testimony the day

1 before yesterday, you spent some time explaining the
2 underlying rationale and justification for the movement
3 that the Association sought with respect to its
4 comparative wage package within the Gilroy 9. And also
5 we presented some evidence as to how that translated to
6 the Fire list being used by the City, as well as a
7 combined list of the two.

8 In adjusting the proposal to present more
9 finite terms, would you please explain how the proposal
10 is currently situated, and why?

11 A Okay. Well, the January 1, 2006 proposal was
12 extrapolated using the total compensation and
13 benchmarking to the average, with the ultimate goal of
14 moving us to the top quartile. And we believed, at the
15 time that we were developing the formula, that the 85th
16 percentile achieved that goal for year 2007, and
17 prospectively however many years forward that formula
18 remained in the -- in the contract. Obviously we've now
19 retreated from using a formula, but the goal -- the end
20 goal is still to accomplish the top quartile.

21 And so, using the analysis that we -- we have
22 done, the 85th percentile, for the prospective year
23 moving forward out of 2006 into 2007, the 85th
24 percentile should have been a salary number of
25 approximately 13.1 percent, to get us to that 85th

1 percentile.

2 And so what we've done today is, with the --
3 the same end goal, the top quartile, is reduced that
4 13.1 percent salary number to a 12 percent number; but,
5 moreover, we've split the 12 percent number into two
6 different benchmark months. One, January 1, 2007, and
7 then July 1 of 2000 -- did I say January? -- January 1,
8 2007 -- I'll correct myself -- and then July 1, 2007.

9 A couple of reasons for that is -- anticipating
10 a -- a double digit move, is to hand back some cost
11 savings in the package. A 12 percent number over the
12 course of one year, obviously, is 12 percent of whatever
13 our 1 percent number is of cost of package.

14 By splitting that to a 6 and 6, there's a
15 reduction in the total package cost to the City. We
16 anticipate that's shaving approximately 3 points off,
17 one, by reducing it to a 12 percent number split 6 and
18 6; but, moreover, by reducing the original 13.1 number,
19 we've also reduced the cost of package for the year 2007
20 approximately 4.1 percent cost of package for that year.
21 This still gets us to the goal, by the conclusion of
22 July 1, 2007, of benchmarking into that top quartile.

23 Q And is that illustrated, that goal, on the
24 following pages?

25 A Yes, it is.

1 Q The second page of what's been marked as
2 Exhibit -- Dale, what's the number at the bottom of
3 that?

4 A 141.

5 Q Thank you. I gave him my copy.

6 There, on Exhibit 141, the first page is
7 obviously a summary of the overall package, and then
8 there are two supporting sheets. The second page is the
9 supporting sheet for the January 2006 numbers; correct?

10 A That is correct.

11 Q And that is the sheet that shows, as the
12 Association had previously articulated, its goal of
13 incrementally moving itself up -- or its strategy of
14 incrementally moving itself upwards to its goal of the
15 top quartile of the salary cities. So, with the second
16 sheet there, that illustrates the incremental step of
17 going to the average of the Gilroy 9; correct?

18 A That is true.

19 Q And then, with the goal of getting to the top
20 quartile by January of 2008, that's illustrated on the
21 third page of what's been marked as Exhibit 141;
22 correct?

23 A That is correct.

24 Q Can you explain what that third page of
25 Exhibit 141 shows?

1 A Page 3 of POA Exhibit 141 is a compilation of
2 three different data sets: The POA data set of the
3 Gilroy 9; the City data set, or what's referred to as
4 "The Chico 9" or "The Fire List"; and then, on the far
5 right column, in green, is the combined list of both the
6 Gilroy 9 and the Chico 9.

7 And the proposed wage -- the wage proposal,
8 that we have now clarified with -- with hard numbers,
9 are articulated, or represented, on placement in the
10 Gilroy 9 data set, in the -- at the total comp number of
11 8,987, which puts us into position number four, which
12 is -- realizes our goal of being in the top quartile.

13 And then moving all the way to the far right,
14 also, again, in the combined list, it puts us in the
15 position number four, with a total comp number of 8,987,
16 again realizing that same goal of the top quartile.

17 The middle list, the Chico 9 list, it puts us
18 into position two.

19 Q In your opinion, is this consistent with the
20 previous proposal, just simply articulated in a
21 different manner?

22 A Yes.

23 Q But as you articulated, also realizing, by way
24 of its different method of expression, a cost savings to
25 the City?

1 A Yes, cost of package.

2 MS. BERRY WILKINSON: I have nothing further.

3 MR. WHITMORE: I have two questions, and then
4 would like --

5 THE ARBITRATOR: Absolutely.

6 MR. WHITMORE: -- a break to make sure I
7 understand it in the way I hope my team does.

8 THE ARBITRATOR: Okay.

9

10 CROSS-EXAMINATION

11

12 BY MR. WHITMORE:

13 Q Mr. Strobridge, going to the third page of 141.

14 A Yes.

15 Q This is addressing '07-'08 -- or '07; right?

16 A Yes.

17 Q So it doesn't address '08?

18 A Does not.

19 Q Okay. And does not address '09?

20 A No. '08 and '09 are represented on page 1 of
21 POA Exhibit 141, January 1, 2008, with a 5 percent
22 increase, and --

23 Q Okay.

24 A -- similarly in 2009, similar, a 5 percent
25 increase.

1 Q Okay. Previously, hadn't you estimated the '08
2 and the '09 at 4.6, or some such number, when your
3 proposal involved a percentile, the 85th percentile,
4 which you're now calling "the top quartile"?

5 A The November 2007, referring to POA Exhibit
6 Number 87, which -- strike that.

7 Moving to POA Exhibit Number 89, which is the
8 numbers as we knew them -- or know them at -- in
9 November 2007, was a 4.7 percent projection, to get us
10 to the 85th percentile.

11 Q Okay. As you understood the numbers, the
12 increase to go into effect -- that would have gone into
13 effect to achieve the 85th percentile as of January 1st,
14 '08, would have been 4.7; right? Do I understand it?

15 A No.

16 Q Okay. Sorry.

17 A The numbers, as we know them, in November 2007,
18 it would take 4.7 percent. What we don't know is what's
19 occurring in these agencies between November 2007 and
20 midnight December 31st of 2007. So we would anticipate
21 that the 4.7 number is going to roll up, with some
22 prospective increases in these other agencies.

23 Q Okay. I understand.

24 A That's a projection.

25 MR. WHITMORE: Thank you. I don't have

1 anything more at this time in terms of understanding
2 this, but would like a break to talk to --

3 MS. BERRY WILKINSON: I did have a couple of
4 follow-up questions I would --

5 THE ARBITRATOR: And I had --

6 MR. WHITMORE: Oh, all right.

7 THE ARBITRATOR: I had something that some of
8 the City's exhibits sparked for me, and that is, the
9 City did some compensation comparisons for nonsworn, for
10 communications tech and for records clerk. And while I
11 was reviewing the sevens, a question arose in my mind,
12 why am I looking at this, because we have a benchmark
13 classification that -- from which all these things flow.

14 But, finally, I did see the light, if you can
15 say it in that way, and I did realize that the City was
16 trying to establish the reasonableness of its proposal
17 by just not -- not just applying it to the benchmark
18 classification, but see how -- how it played out
19 throughout the bargaining unit.

20 And I'm wondering if you had any sort of
21 comparable statistics about where the nonsworn might
22 fit, under the scheme of things.

23 THE WITNESS: Yes. And just to clarify, I
24 believe that the City's position was that they
25 completely benchmarked communications tech. They did

1 not do that on behalf of any other classification of the
2 miscellaneous group.

3 THE ARBITRATOR: There was data with regard to
4 the records clerks as well?

5 THE WITNESS: Yes.

6 MR. WHITMORE: Yes.

7 MS. BERRY WILKINSON: Data on salary only.

8 THE WITNESS: But not --

9 MR. WHITMORE: Right.

10 THE ARBITRATOR: Right.

11 THE WITNESS: Yes. And with that, I would like
12 to go off the record and consult with my --

13 MR. WHITMORE: Okay.

14 MS. BERRY WILKINSON: Actually, if we can, for
15 a moment --

16 MR. WHITMORE: Sure.

17 MS. BERRY WILKINSON: -- in answer to your
18 question, Mr. Goldberg, we do have some data. When we
19 received the City's data, we've been in the process --

20 THE ARBITRATOR: Okay.

21 MS. BERRY WILKINSON: -- of doing some
22 comparison work, because the first that we received that
23 package of data with respect to the nonsworn's'
24 classification was the day before yesterday. And so we
25 are -- it's what I would consider to be still a work in

1 progress, and so you're going to have to bear with me as
2 I complete that in order to determine whether its -- to
3 present it here.

4 THE ARBITRATOR: All right. And let me just
5 express to the parties, it's kind of a complicated
6 notion or complicated construct that I have in my head,
7 because we do have the benchmark classification from
8 which the argument should be made pro or con. However,
9 this other information that the City supplied is
10 supportive of using the benchmark, so --

11 MS. BERRY WILKINSON: Understood. And that's
12 the same kind of struggle, in terms of creating a
13 response to the City's nonsworn data, that we have
14 struggled with, how do we present that, given those
15 incongruities in mind, so that's been something that's
16 been a work in progress since we received that
17 information on Tuesday.

18 THE ARBITRATOR: Okay. And although musical
19 reference isn't particular apt, it's another brick in
20 the wall.

21 MS. BERRY WILKINSON: Exactly.

22 I do have a couple of follow-up questions.

23 ///

24 ///

25 ///

1 REDIRECT EXAMINATION

2

3 BY MS. BERRY WILKINSON:

4 Q Mr. Strobridge, pulling out Association
5 Exhibits 88 and 89, as well as Association Exhibit 141,
6 which is the one we introduced today.

7 Mr. Strobridge, you had articulated a couple of
8 concepts in your -- in your testimony. The first was
9 that the estimated 4.7 percent, in Association
10 Exhibit 89, for January of 2008, was based on data that
11 was insufficient to reasonably protect -- project
12 January of 2008 numbers. Is that a fair summary of what
13 you were testifying about?

14 A Yes, it is.

15 Q All right. And so the Exhibit 89 was for
16 illustrative purposes; correct?

17 A That's correct.

18 Q Not designed to set the benchmark for what the
19 January '08 wage increase would be, but rather an
20 illustration of how the formula would apply; correct?

21 A That's correct.

22 Q As we sit here today, is there, in your
23 opinion, sufficient data to actively project what level
24 of wage increase it would take, in January of 2008, to
25 keep the Association at its level, or its stated goal,

1 of being in the top quartile?

2 A I'm very comfortable projecting a 5 percent
3 increase in January 2008 to maintain that goal.

4 Q Now, looking at the third page of -- well,
5 actually, let's go to Association Exhibit 141, and --
6 Excuse me. I'm sorry. The January 2007 in- -- the
7 third page of Association Exhibit 141, which are the
8 proposed January 2007 split wage increases; correct?

9 A Yes.

10 Q Now, you had referenced the 13.1 percent that
11 was previously projected, based on the formula in
12 Association Exhibit 88 for January of 2007, and
13 explained in your testimony, making it a 12, with a
14 split 6 and 6, to realize some cost savings?

15 A True.

16 Q Is that correct?

17 A True.

18 Q With the goal in mind of bringing it to the top
19 quartile as opposed to the 85th percentile; correct?

20 A True.

21 Q Now, looking at the third page of Association
22 Exhibit 141, with the wage increases articulated there,
23 a total of 12 percent, split at 6 and 6, in January and
24 July of 2007, that brings us, by July of 2007, as I
25 understand the calculations, to a total compensation

1 package of \$8,987; correct?

2 A Yes.

3 Q Now, looking at Association Exhibit 88, if you
4 apply the 13.1 percent for the 85th percentile --

5 A Yes.

6 Q -- that was a number of \$9,039, which is
7 greater than what is proposed for January of 2007 now;
8 correct?

9 A That is correct.

10 Q Is that -- what is the reason for the change
11 there?

12 A Well, the 85th percentile, in POA Exhibit
13 Number 88, we would have achieved third place. Slightly
14 higher than quartile, or the fourth place. And so what
15 POA Exhibit 141, page 3, does represent is the goal of
16 achieving the top quartile, which is illustrated in the
17 Gilroy 9 as position number four, and the combined list
18 as position number four.

19 So the -- retreating or reducing the 13.1
20 salary number to a split 6 and 6, eventual 12, it
21 returns a package savings to the City, but still
22 achieves the goal, over the term of a four-year
23 contract, of placing us in that top quartile, position
24 four.

25 Q Looking at, again, Association Exhibit 88, this

1 time the second page, which contains the placement, if
2 you actually go with the hard 85th percentile number,
3 for the Association's original formulaic proposal that
4 was designed to get it to the top quartile in both the
5 Gilroy 9 as well as in the combined data set, the
6 Association was at what ranking?

7 A 85th percentile, if I understood your question.
8 What position --

9 Q Yeah. What position on the list?

10 A Is it represented in Exhibit 88?

11 Q They're in the third spot; correct?

12 A Yes.

13 Q All right. Turning now to Association Exhibit
14 141, which is the revised proposal to meet the stated
15 goal using hard numbers, the change from using the
16 formula to these split 6's places the Association in the
17 fourth rank; correct?

18 A Yes.

19 Q And the Association was comfortable with that
20 because it still met the stated goal while realizing a
21 cost savings?

22 A Yes.

23 MS. BERRY WILKINSON: I have nothing further at
24 this point.

25 MR. WHITMORE: Just one follow-up.

1 MR. WHITMORE: We have no further questions of
2 Mr. Strobbridge.

3 THE ARBITRATOR: Okay. At this point --

4 MS. BERRY WILKINSON: At this point, with the
5 reservation that I made about a little bit more
6 information on the nonsworn comparisons, as we continue
7 to work through the data that the City provided us, we'd
8 like to move to our next issue.

9 THE ARBITRATOR: Okay.

10 MR. WHITMORE: We have one follow-up on 6 and
11 7.

12 MS. BERRY WILKINSON: Do you want to do that
13 now? That's fine.

14 MR. WHITMORE: Yeah, thanks. And we've
15 designated it as 6-39 and following.

16 For the record, this is a sort of anecdotal,
17 by E-mail and telephone survey over the last two days,
18 since Mr. Goldberg asked a question about turnover in
19 other departments, about vacancies, and the like.

20 We have, utilizing a couple of different people
21 while we were here in the hearings, made phone calls and
22 done E-mails, and this is what we came up with. I would
23 suggest that this is, as I say, anecdotal, and should be
24 given weight similar to that given newspaper articles.

25 THE ARBITRATOR: Okay.

1 MR. WHITMORE: But it -- and the reason for it,
2 as indicated at the top, was to try to address issues
3 that Mr. Goldberg raised when he asked Karen Jenny, the
4 city she used to work in, what was the turnover there,
5 so this is the attempt to provide at least some
6 information to address that subject.

7 THE ARBITRATOR: All right. I appreciate that.

8 MS. BERRY WILKINSON: And this would pertain
9 solely to turnover within the sworn classification?

10 MR. WHITMORE: That's correct, yes.

11 MS. BERRY WILKINSON: Do you have data with
12 respect to turnover on nonsworn?

13 MR. WHITMORE: Correct.

14 MS. BERRY WILKINSON: We do not?

15 MR. WHITMORE: We do not have information on
16 turnover for nonsworn. This is sworn only.

17 MS. BERRY WILKINSON: Because you had
18 submitted, as I recall, a nonsworn turnover percentage
19 calculation as well.

20 MR. WHITMORE: We did. And in the scrambling
21 over the last two days, with two people doing it, we did
22 the best we could.

23 MS. BERRY WILKINSON: So as I understand it,
24 you made your priority sworn, and you haven't done
25 nonsworn?

1 MR. WHITMORE: I --

2 THE ARBITRATOR: No, let's not go there.

3 MS. BERRY WILKINSON: No?

4 MR. WHITMORE: Or they just couldn't find
5 enough information.

6 THE ARBITRATOR: They got the information, and
7 this is what they got.

8 MR. WHITMORE: This is what we got. Thank you.

9 MS. BERRY WILKINSON: I have a couple of
10 questions about this.

11 MR. WHITMORE: Okay. If I can answer them, I
12 will. If I can't, I'll try to get you answers.

13 MS. BERRY WILKINSON: All right. In some
14 circumstances, taking Chico, Davis, Paso Robles,
15 Petaluma, Pleasanton, and Ventura, you've excluded
16 retirement terminations and releases from probation, and
17 in others, Gilroy, Monterey, Napa, Santa Barbara, Santa
18 Cruz, and Santa Maria, you've included them. Is there a
19 reason for that?

20 MR. WHITMORE: No.

21 MS. BERRY WILKINSON: Was it --

22 MR. WHITMORE: It's just the way the
23 information came back. There's some where we have
24 listed total vacancies and some where that has not been
25 listed. That's just the way the information came back.

1 MS. BERRY WILKINSON: So, in other words, the
2 information with respect to, like, vacancies, was it
3 asked for, but simply not returned, or --

4 MR. WHITMORE: In some cases, it was asked for.
5 In some cases it wasn't asked for, but was provided. In
6 some cases, it was a response to E-mail. I believe
7 those that say, "Excluding retirement, terminations, and
8 releases from probation," I believe that came back in
9 response to an E-mail. The others may have been
10 telephone calls. In some cases, I believe the response
11 to the E-mail was a telephone call. So that's why the
12 information came back in kind of a hodgepodge.

13 MS. BERRY WILKINSON: I guess what I'm asking
14 then is, was there a consistent request presented to
15 each of the agencies, from which then they returned the
16 data?

17 MR. WHITMORE: I don't know that there was.

18 MS. BERRY WILKINSON: Okay. So it's entirely
19 possible that the data -- the differences between the
20 data is as a consequence of the question being framed to
21 Chico being different than how it was framed to Davis?

22 MR. WHITMORE: That's entirely possible.

23 MS. BERRY WILKINSON: I'm trying to make sure I
24 understand --

25 MR. WHITMORE: Sure.

1 THE ARBITRATOR: It simply is what it is --

2 MS. BERRY WILKINSON: No, I understand.

3 THE ARBITRATOR: -- and Mr. Whitmore
4 represented it to be nothing more than anecdotal, so --

5 MS. BERRY WILKINSON: I understand. I'm just
6 trying to apply it --

7 MR. WHITMORE: Sure.

8 THE ARBITRATOR: I'm not going to attach any
9 motivation to the thing that was presented here.

10 MS. BERRY WILKINSON: It wasn't my intent.

11 THE ARBITRATOR: It is what it is.

12 MS. BERRY WILKINSON: It wasn't my intent. I
13 was just trying to establish the integrity of the
14 anecdotal data, in terms of its consistency across the
15 board, for the purposes of assessment of weight. That's
16 all.

17 MR. WHITMORE: Consistency is the hobgoblin of
18 something.

19 THE ARBITRATOR: Small minds.

20 MR. WHITMORE: Thank you.

21 MS. BERRY WILKINSON: Small minds. No, I
22 understand that, and so, therefore, that's why I was
23 asking the questions.

24 MR. WHITMORE: I understand.

25 MS. BERRY WILKINSON: If it appeared as though

1 I was attributing an improper motive, that wasn't --

2 THE ARBITRATOR: Okay.

3 MS. BERRY WILKINSON: -- my intention. I was
4 just trying to assess the weight in terms of comparison
5 analysis.

6 THE ARBITRATOR: Okay.

7 MS. BERRY WILKINSON: That's all.

8 THE ARBITRATOR: This brings us to --

9 MS. BERRY WILKINSON: This brings us to the end
10 of the City's supplement to Item 6.

11 MR. WHITMORE: That's correct.

12 MS. BERRY WILKINSON: Do you have more on 6 and
13 7?

14 MR. WHITMORE: Not that I know of.

15 MS. BERRY WILKINSON: So -- at this point?

16 MR. WHITMORE: At this point.

17 MS. BERRY WILKINSON: Then we can move to our
18 next issue.

19 MR. WHITMORE: Okay.

20 MS. BERRY WILKINSON: We were, in conformance
21 with the general, sort of, agreed-upon approach,
22 understanding that there are occasional divergences
23 because of time and the like, as we fit -- try to get
24 through as expeditiously as possible, our next issue
25 to -- that we're prepared to move forward on is

1 Issue 29, which is the life insurance provision.

2 MR. WHITMORE: Oh, okay. I was thinking the
3 next in order would be a smaller number, but that's fine
4 to go to that issue.

5 MS. BERRY WILKINSON: The problem has to do
6 with there are a couple of the smaller numbers in which
7 there's still some data.

8 THE ARBITRATOR: Could we go off the record?

9 MR. WHITMORE: Yeah.

10 (Discussion held off the record.)

11 THE ARBITRATOR: Back on the record.

12 MS. BERRY WILKINSON: I have handed, with
13 respect to Issue 29, to the arbitrator and to the City's
14 team, various Association exhibits on this particular
15 issue. Let me walk you through them, and then I will
16 have Mr. Strobbridge articulate the position with respect
17 to the Association on this.

18 Starting with Exhibit 142, on Issue Number 29,
19 that is the existing language in the contract, under
20 16.2, and there is -- it is only Subdivisions A, B, C
21 and D.

22 There is no specific provision concerning life
23 insurance currently in the contract, although life
24 insurance is provided through the Cafeteria Benefit Plan
25 in the amount of \$25,000 presently.

1 So, the Exhibit 143 is the Association's
2 proposal for contract language adding Subsection (E) to
3 article 16.2, which would not only include the
4 practice -- the existing practice of life insurance
5 being provided through the cafeteria plan, but to
6 increase the amount from 25,000 to 35,000.

7 Exhibit 144 is --

8 THE ARBITRATOR: Could you just back up here a
9 second? Increase the amount from 25 to 35?

10 MS. BERRY WILKINSON: The amount of available
11 life insurance, yes. The policy amount.

12 THE ARBITRATOR: And currently the 25,000 is
13 available through?

14 MS. BERRY WILKINSON: The Cafeteria Plan.
15 Paid for by the City; correct?

16 MR. STROBRIDGE: You know, I'm not sure.

17 THE ARBITRATOR: Let's go of the record.

18 (Discussion held off the record.)

19 THE ARBITRATOR: We are back on the record.
20 And we're going to be discussing Issue Number 29.

21 MS. BERRY WILKINSON: Before we -- before
22 Mr. Strobridge explains what the proposal is, I want to
23 just note, and complete the exhibits, that Exhibit 144
24 is that summary chart. Attached is -- it is divided
25 into two sections, the external comp for life insurance

1 and the internal comp for life insurance.

2 Notably, the -- and all of the supporting
3 provisions from the MOUs are attached as Exhibits 145
4 through 157, including the sections of the collective
5 bargaining agreements for the internal comparisons.

6 You can see from the internal comparisons
7 collective bargaining agreements that although the life
8 insurance is not disclosed in the MOU in the same way
9 that it's not included in the POA MOU, it is included in
10 the SLOPSOA MOU in the amount of \$20,000. It is
11 included in the Battalion Chiefs MOU, which is
12 Exhibit 156, in the amount of \$10,000. And it is
13 included in the SLOCEA, the City Employees Association,
14 MOU, which is Exhibit 157, in the amount of \$50,000.

15 THE ARBITRATOR: And these are paid for by the
16 employee; correct?

17 MS. BERRY WILKINSON: The SLOPSOA is paid for
18 by the employee. The Fire, we don't know.

19 THE ARBITRATOR: Okay.

20 MS. BERRY WILKINSON: The Battalion Chiefs,
21 it's unclear. And the City employees --

22 THE ARBITRATOR: No, it says, "Paid by
23 employee."

24 MS. BERRY WILKINSON: Does it? I don't see
25 that. Okay.

1 THE ARBITRATOR: It's clear.

2 MS. BERRY WILKINSON: All right. Yeah, they
3 are all mandatory for the Cafeteria Plan.

4 THE ARBITRATOR: They are in the Cafeteria
5 Plan, but the employees pay for it.

6 MR. WHITMORE: Right.

7 THE ARBITRATOR: Okay.

8

9 REDIRECT EXAMINATION

10

11 BY MS. BERRY WILKINSON:

12 Q Mr. Strobridge.

13 A Yes.

14 Q Will you please explain for us the proposal and
15 the cost for Issue 29 --

16 A Yes.

17 Q -- the increase to the life insurance plan?

18 A Yes. Proposal -- or Issue Number 29, POA
19 Exhibit 143, Article 16.2(E), Life Insurance, we realize
20 that over the course of the years, somehow life
21 insurance slipped out of the contract. Don't know how.
22 Don't know when. But it slipped out.

23 It's still an obligation of the employees,
24 whether they're active or they opt out of the City's
25 Cafeteria Plan, to pay for life insurance. So there's

1 an obligation, but it's not memorialized contractually
2 with the City. So we want to fix that. Similar to what
3 the -- is represented by the SLOPSOA MOU, the SLOBC MOU,
4 and the SLOCEA MOU. And so, by doing so, our proposal
5 brings the life insurance obligation under the umbrella
6 of the Cafeteria Plan, and all of the costs related to
7 it. So the costs currently are \$5.20 for the life
8 insurance plan, at 26 cents a thousand.

9 Q And that's for a \$20,000 life insurance plan?

10 A Yes. And the POA proposal is to increase the
11 maximum benefit from 20,000 to 35,000. Again, the cost
12 is still 26 cents a thousand. So the cost increases
13 from \$5.20 to \$9.10. But -- and so our proposal is to
14 increase the differential between 5.20 and 9.10. That's
15 an increase in the Cafeteria Plan. And then the life
16 insurance policy is then paid for by the employee
17 through the 125 plan.

18 Q And those are the 2007 rates you have just
19 quoted here?

20 A Yes.

21 Q Which, by my math, is a difference of \$3.90 per
22 employee per month?

23 A Yes.

24 Q Does that change for 2008?

25 A It does, and the -- not the amount of life

1 insurance, but the cost of life insurance increased
2 2 cents a thousand to 28 cents a thousand. So there's
3 an additional increase premium cost of 70 cents a month
4 per employee. And our proposal is to have the Cafeteria
5 Plan contribution increased by the City by the
6 equivalent amount, and then the benefit is then paid for
7 by the employees through the Cafeteria Plan.

8 Q Okay. Now, when you're reading these rates,
9 what are you reading from?

10 A I'm reading from Issue Number 24, 25, Article
11 16.1, which will be a proposal --

12 Q Wait. You didn't answer my question.

13 A I'm sorry.

14 Q The sheet itself that you have there, where did
15 you get it?

16 A This is something that I created.

17 Q And so that's a -- that's a document you put
18 together? Where did you obtain the information from
19 which to prepare that document?

20 A The information of the data was obtained from
21 CalPERS, as well as the City. So all of the information
22 you need from CalPERS is obtained from them. All
23 information unique to the City, that the City controls,
24 such as the Delta Premier dental insurance, Medical Eye
25 Services insurance, and life insurance premiums, that

1 data was obtained from the City.

2 Q We're going to mark this as an exhibit with
3 respect to Issue 29. It is also an exhibit with respect
4 to Issue Number --

5 A 24 and 25.

6 Q -- 24 and 25, which we are prepared to cover
7 today, but we'll just note that the exhibit will pertain
8 to both Issue 29, as well as Issues 24 and 25, which we
9 have not yet presented. I don't think we need to have a
10 separate additional -- an additional paper for --

11 MR. WHITMORE: On the additional issue, you
12 mean? For the additional issues?

13 MS. BERRY WILKINSON: Yes.

14 THE ARBITRATOR: No.

15 MS. BERRY WILKINSON: Right.

16 MR. WHITMORE: No. It's in.

17 THE ARBITRATOR: Just so long as it's in there
18 somewhere.

19 MR. WHITMORE: Yeah.

20 MS. BERRY WILKINSON: Right. It will be in
21 there.

22 MR. WHITMORE: Of course.

23 (Discussion held off the record.)

24 BY MS. BERRY WILKINSON:

25 Q So what has been marked as Exhibit 158 to Issue

1 29 is also an exhibit to Issues 24 and 25, which are yet
2 to come today.

3 And with that, we would conclude our
4 presentation of Issue 29.

5

6

RECROSS-EXAMINATION

7

8 BY MR. WHITMORE:

9 Q Okay. Question of Mr. Strobbridge. The
10 internal comparisons, Exhibit 144, bottom half of the
11 page?

12 A Okay.

13 Q Each of those amounts -- the premiums for each
14 of those coverages, paid for by employees, out of the
15 Cafeteria Plan?

16 A We're talking the lower table?

17 Q Yes, sir.

18 A Yes, through the Cafeteria Plan.

19 Q And your proposal to go up to 35,000, the City
20 would pay for; right? Rather than the employee?

21 A This gets a bit twisted.

22 Q No, I don't think so.

23 A Well, it does. It kind of -- it's twisted.
24 The proposal is to increase the Cafeteria Plan by the
25 corresponding amount of the life insurance increase.

1 One is to bring it into the -- into the Cafeteria Plan,
2 and then the prospective increase for life insurance.
3 Not only the rate increase, but the moving from 20 to
4 \$35,000. So once that Cafeteria Plan is increased, the
5 benefits are paid for by the employee through the
6 Cafeteria Plan.

7 Q Who pays for the increase in the plan?

8 A The City does.

9 MR. WHITMORE: Nothing further.

10 THE ARBITRATOR: All right. I just want to
11 make sure it's clear on the record. The City is already
12 paying for \$20,000 of life insurance; correct?

13 THE WITNESS: Yes.

14 THE ARBITRATOR: And that's not in the contract
15 for some reason?

16 THE WITNESS: True.

17 MR. WHITMORE: Yes.

18 THE ARBITRATOR: Do you have any idea why it's
19 not in the contract?

20 THE WITNESS: It just slipped out some time
21 ago.

22 THE ARBITRATOR: Okay. Thank you very much.

23 (Discussion held off the record.)

24 THE ARBITRATOR: We're back on the record.

25 MR. WHITMORE: We have distributed a single

1 page sheet. It will go under Issue 29 in the City's
2 notebook, 29-1. This is the acknowledgment, there's no
3 current language; the City proposal, which I hope is
4 clear; and then what we understand to be the Association
5 proposal at the bottom.

6 THE ARBITRATOR: Anything by the Association?

7 MS. BERRY WILKINSON: I believe so. And my
8 understanding is it's intended to codify the current
9 practice within -- with the increase from 20 to
10 \$35,000 when --

11 MR. WHITMORE: Correct.

12 MS. BERRY WILKINSON: -- when approved by the
13 insurance company?

14 MR. WHITMORE: Correct.

15 THE ARBITRATOR: All right.

16 MS. BERRY WILKINSON: So we will now turn to
17 Issue 31, just because we're trying to keep the City on
18 its toes today and see if they can follow along.

19 MR. WHITMORE: Your sense of "in order" is a
20 little different than our --

21 MS. BERRY WILKINSON: The problem --

22 MR. WHITMORE: That's okay.

23 MS. BERRY WILKINSON: The problem is, we were
24 ready to go in order on Monday, and we had everything
25 set in order. But as, of course, you know, the best

1 laid plans are going awry. So from 29 to 31 is a
2 semblance of order.

3 So what I distributed here, with respect to
4 Issue 31, is our Association Exhibits 159 through 165.
5 Issue 31 pertains to sick leave. And the Association
6 Exhibit 159 is the current language of the Association's
7 Memoranda of Understanding, Article 21.2, which provides
8 for a 25 percent sick leave cash out upon the death of
9 an employee during -- while they are still an employee
10 of the City. Not death following retirement.

11 And with respect to the Association's proposal
12 to modify Section 21.2, Association Exhibit 160 contains
13 the proposed language, which is to increase the cash
14 out, when an employee dies during the course of their
15 employment, for sick leave from 25 percent to
16 100 percent.

17 The Association Exhibit 161 are the internal
18 comparisons. The Association, as you can see, currently
19 has a 25 percent sick leave cash out death -- benefit at
20 death. The San Luis Obispo Fire Department contract has
21 a 50 percent cash out. The Battalion Chiefs have a
22 50 percent cash out. The Police Staff Officers
23 Association, SLOPSOA, has 25 percent. And the City
24 Employees Association has 30 percent.

25 The supporting provisions of the various

1 agreements, which are summarized in Association Exhibit
2 161, are attached as Exhibits 162 through 165, so that
3 you have the supporting data from which the chart was
4 prepared. And our justification or position with
5 respect to why we are asking for the increase is simply
6 that it is the right thing to do.

7 When an employee dies during the course of
8 their employment, they never do have the opportunity to
9 utilize their sick leave. If they were incapacitated,
10 but not dead, they would have the ability to use sick
11 leave. But if they die, then they lose that particular
12 benefit.

13 In our knowledge, there has never been anyone
14 who has or would have been in the Association's
15 Bargaining Unit entitled to cash out, whether at
16 25 percent.

17 MR. STROBRIDGE: I can think of one.

18 MS. BERRY WILKINSON: Did that change now?

19 MR. STROBRIDGE: There's one.

20 MS. BERRY WILKINSON: So there's one?

21 MR. STROBRIDGE: Yes.

22 MS. BERRY WILKINSON: How long ago?

23 MR. STROBRIDGE: 15 years ago.

24 MS. BERRY WILKINSON: Approximately?

25 So, to our knowledge, one employee, 15 years

1 ago, is the only one who would have -- to whom this
2 provision of the agreement would apply, so it is
3 anticipated that the cost is very minimal, simply
4 because it would be a rare and a unique unusual
5 experience for the provision to be invoked.

6 Unless the City has any questions, I wasn't
7 planning on putting on any testimony.

8 MR. WHITMORE: Okay. I do have a question to
9 understand the proposal. Just give me a minute here.

10 (Discussion held off the record.)

11 MR. WHITMORE: Okay. On the record.

12 As I understand your proposal, this would
13 increase the pay out from 25 percent to 100 percent if
14 an employee dies while employed?

15 MS. BERRY WILKINSON: That is correct.

16 MR. WHITMORE: There is also, in your proposal,
17 Exhibit 160, a reference to retirement.

18 MS. BERRY WILKINSON: Ah. That is due to the
19 fact that we are only seeking to modify Subdivision
20 21.2(A).

21 MR. WHITMORE: (A).

22 MS. BERRY WILKINSON: Subdivision -- or Article
23 21.2(B) sets out a specific schedule for the sick leave
24 cash out permissible at retirement, and that we are not
25 seeking a modification to.

1 MR. WHITMORE: Thank you for --

2 MS. BERRY WILKINSON: So while the prefacing
3 language refers to both, the only change that we're
4 making is to death.

5 MR. WHITMORE: And that clarifies it. Thank
6 you.

7 Are there going to be any further exhibits from
8 the Association on 31?

9 MS. BERRY WILKINSON: No.

10 MR. WHITMORE: No external surveys?

11 MS. BERRY WILKINSON: No.

12 MR. WHITMORE: Okay. I don't have anything
13 else.

14 THE ARBITRATOR: Okay.

15 MS. BERRY WILKINSON: All right. We will move
16 to Issue -- which one? -- 32.

17 (Discussion held off the record.)

18 THE ARBITRATOR: We're on the record.

19 MS. BERRY WILKINSON: We're moving now to Issue
20 32, which is another modification to the sick leave
21 provision of the Memoranda of Understanding, this time
22 being the Subsection (B), the retirement provision. So
23 31 dealt solely with Subsection (A) of Article 21.2, and
24 now we're dealing with Subsection (B) of 21.2, the sick
25 leave cash out upon retirement.

1 So Exhibit Number 166 is the existing language
2 of that particular article.

3 Exhibit Number 167 is the Association's
4 proposal to modify that language. And the proposal to
5 modify is to include a sick leave cash out upon
6 retirement for a job-related disability. The present
7 cash out provisions on retirement deal with service
8 retirements only. Does not include any sick leave cash
9 out upon a job-related disability retirement. That is
10 intended to correct that -- or to supplement, and to
11 deal with, both job-related disability and service
12 retirements. So the language that we have proposed is
13 that with a -- there's a 75 percent maximum, of a
14 1,000-hour payoff, upon retirement for a job-related
15 disability. So the maximum someone could cash out would
16 be 750 hours, assuming they had 1,000 hours on the books
17 at the time of a job-related disability retirement.

18 We did not have accessible data with respect to
19 how much sick leave was available to individuals who
20 have retired for a disability, so we are challenged to
21 be able to identify the particular cost, or whether or
22 not even any of the people who retired for a disability
23 had any sick leave.

24 With respect to Article -- or Exhibit
25 Number 168, that would be the comparison jurisdictions,

1 both with respect to the external comps, as well as the
2 internal comps. As you can see now, presently the
3 Police Officers Association has no sick leave cash out
4 with respect to job-related disability retirement. The
5 Fire unit has the same provision that the Association is
6 seeking, which is a 70 percent -- or a 75 percent sick
7 leave cash out for job-related disability, up to a
8 maximum of 75 percent of 1,000 hours -- or, I'm sorry, a
9 maximum of 1,000 hours payoff. Theirs is -- there at
10 Exhibit 169, it is virtually identical to that which the
11 Association is proposing. The Battalion Chiefs unit has
12 a 50 percent maximum payoff of 750 hours. And there's
13 no benefit included in either the SLOPSOA or the SLOCEA
14 agreement. And so, for those -- because we believe that
15 that is the appropriate extension and the cost, given
16 that the Association's average years of tenure presently
17 are 6.9 years of service, as we had from the testimony
18 of Mr. Bartel yesterday, the maximum current, assuming
19 nobody has ever used any sick leave, the Association has
20 seven years of accumulated sick leave. And with that,
21 we would conclude Issue 32.

22 MR. WHITMORE: Question on the proposal itself.
23 If I -- what I wrote down, from what you said -- I want
24 to make sure I understand it correctly -- the maximum
25 number of hours that could be cashed out is 750?

1 MS. BERRY WILKINSON: I stated that
2 incorrectly, apparently. The maximum number of hours to
3 be cashed out would be 1,000 hours.

4 MR. STROBRIDGE: Yes.

5 MS. BERRY WILKINSON: Okay. That was my fault.
6 I misstated.

7 MR. WHITMORE: Okay.

8 MS. BERRY WILKINSON: That would be to be
9 consistent with the Fire MOU, IAFF Local 3523, which is
10 Exhibit 169, which means that that's basically
11 75 percent of 1,333.3 hours accrued.

12 THE ARBITRATOR: Off the record.

13 (Discussion held off the record.)

14 MR. WHITMORE: Nothing further on this issue.

15 THE ARBITRATOR: Okay.

16 MR. WHITMORE: We reserve the right to come
17 back to it when we deal with numbering in a different
18 way than Counsel's chosen to.

19 MS. BERRY WILKINSON: We would move now to
20 Association -- or Issue Number -- excuse me -- 33.

21 With respect to Issue Number 33, the
22 Association has proposed a change to the language to add
23 a Subsection (C) to article 21.2, and this to permit, in
24 essence, what I would characterize as the ability to run
25 out one's sick leave after one has exhausted their 4850

1 workers' compensation benefit time off. And simply the
2 purpose of this provision is to allow those employees
3 who have been disabled in -- as a consequence of a
4 job-related injury to exhaust their sick leave before
5 their industrial disability retirement commences. It
6 just allows someone to exhaust their sick leave before
7 they actually retire.

8 Association Exhibit 186 is something in the
9 code section which allows this to occur.

10 Association Exhibit 187 is a summary chart with
11 respect to the sick leave provisions, and the ability to
12 exhaust sick leave after 4850 benefits have concluded.
13 And it is a summary of what, of course, is attached to
14 that as Exhibits 188 through 198, which are the
15 comparable clauses -- or analysis of the comparable
16 jurisdictions, and clauses of a similar nature. Gilroy
17 permits such an accumulated sick leave. Pleasanton
18 allows use in combination with temporary disability
19 payments. And so this is just simply intended to
20 summarize those provisions from what we -- what all
21 parties have been using as comparable jurisdictions
22 throughout.

23 This is, in essence, what we just consider to
24 be yet another one of a variety of proposals designed to
25 do the right thing for employees who end up receiving

1 their injuries or other life-altering circumstances
2 during the course of their employment, and it is, of
3 course, always the Association's goal to take care of
4 those unit members to the best degree possible when they
5 suffer an injury that is permanently disabling such that
6 they can no longer work, as we have articulated in
7 previous proposals.

8 If you have any questions with respect to the
9 proposal, Mr. Strobridge would be happy to answer them.

10 THE ARBITRATOR: I've got a question. I don't
11 know whether to direct it to Mr. Strobridge or to
12 Mr. Whitmore or to somebody on the City's side of the
13 room.

14 Is there a local ordinance or resolution or
15 rule or regulation providing to the contrary?

16 MS. BERRY WILKINSON: There's not one to our
17 knowledge.

18 MR. WHITMORE: And I don't know either, so
19 we'll try to find out.

20 THE ARBITRATOR: Off the record.

21 (Discussion held off the record.)

22 THE ARBITRATOR: We're back on the record.

23 MR. WHITMORE: I had a question -- well, first
24 a comment. Counsel said that the -- Exhibit 187 was the
25 list of comparables used by both parties throughout this

1 proceeding. That is the combined list contained in the
2 two proposals, as I understand.

3 MS. BERRY WILKINSON: Ah.

4 MR. WHITMORE: We have also submitted other
5 lists for comparative purposes, but with the
6 understanding that this is the combined agencies on the
7 survey list proposed by the Association, list proposed
8 by City, I would agree that's what it is.

9 MS. BERRY WILKINSON: Right. And prior to the
10 commencement of this hearing, we did not have data with
11 respect to the fact that the City was relying on the
12 other two comparable city proposals. But this is
13 intended to be what I would consider to be the combined
14 list --

15 MR. WHITMORE: Yeah.

16 MS. BERRY WILKINSON: -- that we have referred
17 to throughout, which include as you articulated.

18 MR. WHITMORE: Right. Okay.

19 (Discussion held off the record.)

20 MR. WHITMORE: Nothing further at this time,
21 but we would reserve the right to come back to it.

22 MS. BERRY WILKINSON: We would then move to --
23 could we take a break?

24 MR. WHITMORE: Sure.

25 THE ARBITRATOR: Sure.

1 (Recess taken.)

2 MS. BERRY WILKINSON: We are moving now to
3 Issue Number 34, which is the Association's proposed
4 modification. Again, we're still with the sick leave
5 article, which is Article 21. Association Exhibit 199
6 is the current language of the article. We are
7 proposing the addition of an article, Subsection (B).

8 MR. WHITMORE: Off the record?

9 THE ARBITRATOR: Yeah, off the record.

10 (Discussion held off the record.)

11 MS. BERRY WILKINSON: We have made, in our
12 off-the-record discussion, a correction of a
13 typographical error on Exhibit Number 200.

14 So, going back, Exhibit 199 is the existing
15 language of Article 21 of the MOA.

16 Exhibit 200 is the proposed language that the
17 Association has presented with respect to a modification
18 to Article 21.2. And I actually also would correct
19 that. That should not be a (B). That should be a (C).
20 So we will correct two typographical errors on
21 Exhibit 200. At the top, it should say, "Issue 34," not
22 "35." And the amendment would be to add a Subsection
23 (C), not a Subsection (B), because a Subsection (B)
24 exists, as we already discussed in Issue 33. So that
25 would be a (c).

1 The Association's proposal is to have sick
2 leave usage deemed confidential, and not subject to
3 reporting in monthly or annual personnel evaluations,
4 without, actually, some kind of conclusive proof of
5 abuse.

6 This is not intended to limit in any way the
7 City's ability to investigate or review sick leave usage
8 to determine whether there are abuses, or to record-keep
9 and assess and evaluate on an ongoing basis employees'
10 usage of sick leave. Those are managerial
11 responsibilities that the City has, over the course of
12 time, traditionally exercised.

13 It is just simply the documentation of the
14 usage in the personnel evaluations which the Association
15 takes exception to, in that there are -- it tends to
16 suggest, when it is documented as above the average,
17 that there is some negative connotation to that, that
18 there is a usage that is of an abusive nature, whereas
19 it may be an entirely legitimate use of sick leave.

20 There is, I believe, no -- no dispute about the
21 fact that the City compares each employee's sick leave
22 usage to the average use overall within the unit. That
23 is the practice that has been ongoing.

24 The Association Exhibit 200 -- 201 is an
25 example of the -- of a personnel evaluation that

1 contains a reference to sick leave. We take exception
2 to both the documentation of normal uses of sick leave,
3 as well as those above the average.

4 Exhibit 201, on the third page -- and it should
5 be highlighted on the arbitrator's copy and on
6 Mr. Whitmore's copy, the phrase, "You are on time and
7 you use a normal amount of sick leave," that was
8 contained in the documentation of one of our unit
9 member's evaluations.

10 And then Association Exhibit 202 simply has, at
11 page 2, another -- it's a demonstration of another
12 example of its inclusion in the performance appraisal
13 report. That is on the second page of Exhibit 202. It
14 states, "Circumstances beyond her control have forced,"
15 unnamed employee, "to take considerable time off during
16 this rating period. Were it not for this fact, she
17 would be rated as 'exceeds expectations' in this
18 category with respect to work habits."

19 This particular evaluation related to an
20 employee who had a -- what we would consider to be a
21 relatively tragic year, in that this employee suffered
22 both the death of a child and a heart attack by -- that
23 was suffered by her spouse, and so, therefore, it is one
24 of those circumstances where the documentation of the
25 sick leave, while attempting "circumstances beyond her

1 control" to qualify it, still, nonetheless, is
2 troublesome to see in a performance appraisal report.

3 So, in summary, we are looking to correct this
4 particular practice, since we've been unable to convince
5 the City informally to discontinue the practice of
6 placing this information in the personnel evaluation.
7 And, again, it's not designed to limit their ongoing
8 review, which they are entitled to do, as they currently
9 have. Only to address -- only to limit the inclusion in
10 the performance evaluation.

11 MR. WHITMORE: Can I ask a question about the
12 proposal itself?

13 MS. BERRY WILKINSON: Sure.

14 MR. WHITMORE: And then I'd like just a minute,
15 and I'll try to make it -- okay, two minutes -- make it
16 short, because I know we're about ready for lunch.

17 In the proposal, Exhibit 200 --

18 MS. BERRY WILKINSON: Yes.

19 MR. WHITMORE: -- there is a phrase "conclusive
20 proof of abuse." What's that? How would we know?
21 Would that be disputable?

22 MS. BERRY WILKINSON: Well, it would be, in my
23 opinion, in the same way that the -- if the City chose
24 to investigate a use -- or a use of sick leave to
25 determine if there was abuse, and going to discipline

1 the employee with respect to that, they have to come up
2 with proof. They have to demonstrate with adequate
3 proof, conclusive proof, whatever modifying phrase you
4 wish to choose, that there was actual abuse.

5 MR. WHITMORE: But the phrase you've used is
6 "conclusive proof"; right?

7 MS. BERRY WILKINSON: That's the phrase we
8 used, yes. It is a modifier.

9 And Mr. Strobridge has a comment.

10 MR. STROBRIDGE: Yeah. I'd like to give an
11 example of a case incident that actually happened, where
12 an employee reported in sick, and then -- with a back
13 injury, and then later that evening was filmed in a
14 bowling marathon, that evening, so that was very
15 conclusive abuse of sick leave.

16 MS. BERRY WILKINSON: Of abuse.

17 MR. WHITMORE: So a videotape would be a
18 definition of conclusive --

19 MS. BERRY WILKINSON: That's not intended --

20 MR. WHITMORE: That's not the problem, from our
21 perspective. It's what other kinds of things would be
22 deemed conclusive. That one, I agree, would certainly
23 be.

24 MR. STROBRIDGE: The videotaping was
25 incidental. But, you know, eyes on, if someone were to

1 see an employee bowling in a bowling marathon after
2 having called in sick with a back injury --

3 MR. WHITMORE: All right.

4 MS. BERRY WILKINSON: It would be -- I mean,
5 certainly, if the City felt that it had conclusive proof
6 of abuse, and the employee disagreed that that which was
7 being used to document the abuse was conclusive, there
8 are two avenues, depending upon what choice the City
9 makes with respect to how it addresses the situation.
10 If they include it in the performance evaluation, the
11 performance appraisal report, this would make it
12 grievable.

13 MR. WHITMORE: Understood.

14 MS. BERRY WILKINSON: If they opted to put it
15 into a disciplinary action, but not the performance
16 evaluation, that would be in a separate --

17 MR. WHITMORE: Disciplinary appeal based on
18 cause.

19 MS. BERRY WILKINSON: Correct.

20 MR. WHITMORE: The -- okay. I understand your
21 position.

22 Can we have just a minute?

23 THE ARBITRATOR: Sure.

24 (Recess taken.)

25 THE ARBITRATOR: We're back on the record.

