

INTRODUCTION

Pursuant to Charter Section 1107, an interest arbitration was held between the San Luis Obispo Police Officers Association and the City of San Luis Obispo. Arbitrator Matthew Goldberg presided over the public hearing, which consumed seven (7) days of evidence and testimony.

Charter Section 1107(D)(4) requires that the parties submit, at the conclusion of the arbitration hearings, its “last offer of settlement on each of the remaining issues in dispute.” The Charter further provides:

The Board of Arbitrators shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds 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.

Joint Exhibit 1 at page 1-2.

In accordance with the Charter, the San Luis Obispo Police Officers Association hereby submits its final proposals on each issue remaining in dispute.

FINAL PROPOSALS AND ARGUMENT

ISSUE 1: TERM

Summary: Joint Proposal for a term of four (4) years

Article 47 of the Memorandum of Agreement currently states:

This Agreement shall become effective July 1, 2004 and shall continue in full force and effect until expiration at midnight, December 31, 2005.

During negotiations, the City proposed a four year term (2006 – 2009), and the Association proposed a two year term (2006-2008). In that the negotiations were protracted and resulted in these lengthy arbitration proceedings that have continued into the year 2008, a two year term would require the parties to return to negotiations almost immediately upon resolution of these arbitration proceedings.

As a result, the Association hereby presents a ***modified final proposal*** for a four (4) year term, as follows:

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: RETROACTIVITY

Summary: POA Proposal to maintain the *status quo* on language related to the effective date of the Agreement

Article 1.1 of the Memorandum of Agreement currently states:

This Agreement is effective and entered into this 1st day of July, 2004, by and between the City of San Luis Obispo, hereinafter referred to as City, and the San Luis Obispo Police Officers' Association.

During negotiations, the POA posited that *all* provisions of the Memorandum of Agreement should be retroactive to January 1, 2006, whereas the City posited that only certain provisions should be retroactive.

It is the Association's position that absent specific language in a tentative agreement or proposal adopted by the arbitrator to the contrary, all provisions of the Memorandum of Agreement should be retroactive to January 1, 2006. In other words, unless a specific provision of the MOA states otherwise, the provision is retroactive.

Therefore, the Association's *modified final proposal* on the issue of retroactivity is as follows:

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. . . .

Notably, the Association's proposal maintains the status quo, only replacing the previous effective date (the "1st day of July 2004") with the current effective date (the "1st day of January 2006").

The City, however, proposes changing the *status quo* by adding an additional modifying clause at the end of this Article 1.1 which articulates that certain sections of the agreement may designate effective dates other than January 1, 2006. Because the City proposes a change to the *status quo* by the addition of new language, the City bears the burden of proof on this issue.

The City has failed to identify any reason to divert from the *status quo*. Indeed, such modifying language is unnecessary, redundant, and potentially confusing. The purpose of Article 1.1 is to identify the beginning date of the Agreement. The fact that certain sections specify later dates at which they become applicable does not impact or change the overall effective date of the Agreement. Indeed, any provision of the Agreement that specifies a date in

the future upon which it becomes applicable simply delays implementation of that provision until the effective date is reached, but does not alter the overall effective starting date of the Agreement as a whole. Further, adding the City's proposed modifying clause is unnecessary because the specific language of the provision will override the general language of the preamble. Thus, it is the Association's position that the City has failed to meet its burden of proof on this issue and the status quo should be maintained.

As this is a City proposal and the purpose of this post-hearing brief is to set out the Association's final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City's final proposals.

ISSUE 3: RETROACTIVITY (Preamble)

Summary: City Proposal to Add a New Section to the Agreement Restricting the Application of the Agreement Only to Those Currently Employed or Honorably Retired During the Term of the Agreement

The City has proposed a change to the *status quo*, in that it seeks to have the Memorandum of Agreement applicable only to those individuals who were either employed by the City on the date the Agreement takes effect or to those honorably retired after the preceding contract expired, and to exclude anyone who left City employment during the period that this contract remained unresolved. To do this, the City proposes adding a new subsection of the MOA, Article 1.2.

The Association supports the status quo: that is, the Agreement should be effective for any person employed by the City on or after January 1, 2006 because to do otherwise would allow the City to profit from its protracted negotiations strategy.

The Association therefore presents a *final modified proposal* that simply confirms the status quo in Article 1.1, as follows:

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.*

Because Issue 3 is a City proposal and the purpose of this post-hearing brief is to set out the Association's final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City's final proposals.

ISSUE 4: SALARY

Summary: POA Proposal to Reduce the Salary Range From 7 to 6 Steps

Article 7.1 of the Memorandum of Agreement currently contains a salary range consisting of seven steps. That section states:

The rules governing step increases for employees covered by this MOA are included in the current Salary Resolution (4272 [1980 series], incorporated herein as Appendix F) with the following modifications:

- A. Effective January 13, 2005, Step progression for all represented employees shall be at twelve-month intervals except for progression to Master Police Officer, step 7. Those requirements are identified in Article 8.4.

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

The Association has proposed reducing the salary range for Police Officer from 7 to 6 steps. The Association proposes deleting the first step, and automatically moving every officer

up one step, which equals a 5.26% wage increase. Those at the current top step (Step 6), would simply transition to the new top step (Step 5) without any salary adjustment. Thus, the Association's final proposal is, as follows:

The rules governing step increases for employees covered by this MOA are included in the current Salary Resolution (4272 [1980 series], incorporated herein as Appendix F) with the following modifications:

- 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.

Historically, the City had a five step salary range for the police classification, as demonstrated by Association Exhibit 32 (Memorandum of Agreement for the period of July 1, 1988 through June 30, 1993). Exhibit 32 contained the historic language codifying the *status quo*: “Each salary range consists of five steps (1 through 5)”. That historic practice was modified and expanded with the creation of the Master Police Officer Program, which added additional salary steps if an officer achieves certain qualifying conditions. (TR 143; Assoc. Exhibits 32–35.)

At its peak, the salary range consisted of nine (9) steps due to the Master Police Officer Program. (Assoc. Exh. 34 “the salary range for police officer consists of nine steps....”) This extended range being unwieldy, the parties then engaged in a process of compressing the steps. Indeed, as demonstrated by Association Exhibit 35, the City and the Association agreed to reduce the salary range from nine (9) to seven (7) steps.

The purpose of this proposal is to continue the compression of steps in order to return the City to its historic practice of having five salary steps. The restoration of the five step salary range would also bring the City back to the industry standard. As demonstrated by Association Exhibits 36 through 48, eight (8) out of the twelve (12) combined comparison agencies utilize a five step salary range.

ISSUE 5: SALARY

Summary: POA Proposal to link salary increases for all classifications to top step police officer as the benchmark.

Article 7.2 of the Memorandum of Agreement currently states:

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:

The Association proposes incorporating the *status quo* of using as a benchmark the top step of the police officer classification. The Association's ***final proposal*** is as follows:

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:

Top step Police Officer designated as benchmark for all classifications.

The purpose of this proposal is to memorialize the practice that has been in existence for the past thirty (30) years in which there has been an “equal application of the salary increases to all classifications....” (TR 321-322; Assoc. Exh. 76) The only exceptions to this practice occurred when an equity increase was compelled due to increased duties or responsibilities (such as the addition of an Emergency Medical Dispatch qualification for the Communications

Technician classification) or to adjust a particular classification upward based on the market compensation standard. (TR 325-329; Assoc. Exh. 76.)

ISSUES 6 and 7: SALARY INCREASES – SWORN and NON-SWORN

Summary: POA Proposal for Salary Increases during the Term of the Agreement

2006		
January 1, 2006	5.28%*	Sworn Classification (Police Officer)* * If Issue 20 (Education Incentive for police officer classification) is adopted. If not, then 10.82%
	10.82%	Non-sworn Classifications

2007		
January 1, 2007	6.00%	All Classifications
July 1, 2007	6.00%	All Classifications

2008		
January 1, 2008	5.00%	All Classifications

2009		
January 1, 2009	5.00%	All Classifications

The ultimate goal of the Association’s salary proposal is to bring the wages paid to the members of the San Luis Obispo Police Department into the top quartile of the comparison cities

it relies upon, otherwise known as the “Gilroy 9”¹. (TR 686). To achieve that goal, the Association originally proposed a formula that would establish a benchmark of the 85th percentile of the comparison cities. During arbitration, the Association presented a modified proposal that moved away from the use of a formula and instead applied actual percentage increases to accomplish the goal of reaching the top quartile of comparison agencies. (TR 685-687.)

As of January 2006, the San Luis Obispo Police Officers Association was well below the average of the comparable cities, whether using the comparison agencies advocated by the City (the “Chico 9”), or the comparison agencies advocated by the Association (the “Gilroy 9”).

Top Step Police Officer January 2006

GILROY 9		CHICO 9	
Gilroy	9274	Pleasanton	8612
Pleasanton	8612	Napa	8542
85th Percentile	8598	85th Percentile	8443
Napa	8542	Santa Cruz	8049
75th Percentile	8542	75th Percentile	8049
Santa Barbara	8188	Salinas	7950
Average	8102	Average	7728
Santa Cruz	8049	Petaluma	7556
Median	8049	Median	7556
Salinas	7950	Monterey	7453
Monterey	7453	Chico	7344
Petaluma	7556	Santa Maria	7301
Santa Maria	7301	San Luis Obispo	7296
San Luis Obispo	7296	Davis	6748

Recognizing that reaching the top quartile of the comparative agencies is an ambitious goal for the first year of the contract, the Association’s proposal phases in the goal. Indeed, the Association’s modified salary proposal for the first year of the contract remained the same as its

¹ The “Gilroy 9” is comprised of Gilroy, Pleasanton, Napa, Santa Barbara, Santa Cruz, Salinas, Monterey, Petaluma and Santa Maria. The City’s comparison data set (known as the “Chico 9”) replaced the cities of Gilroy and Napa with Chico and Davis. A “combined” data set was also used during the interest arbitration which was comprised of all 11 cities used by both the parties.

original proposal: a 10.82 % salary adjustment for all classifications. For the sworn personnel, if Issue 20 (the education incentive program) is granted, then the police officer classification would only receive a 5.28% adjustment with the remainder being deferred to the education incentive program. (Assoc. Exh. 141). Using standard total compensation data, the January 2006 proposed salary increase adjusts the Association’s position in the market as follows:

Starting Salary	Jan 2006 Increase	New Salary	Health	Ed (5.26%)	Uniform	Total
6,226	5.28%	6,555	1,152	345	83	8,135
6,226	10.82%	6,800	1,152	-	83	8,135

The January 2006 first adjustment of 10.82% for 2006 simply brings the Association to slightly above the *average* of the Gilroy 9 data set, but below the top quartile. (Assoc. Exh. 141 at p. 2) This progressive movement toward that goal is reflected in Association Exhibit 141, as follows:

GILROY 9		CHICO 9		COMBINED	
Gilroy	9274	Pleasanton	8612	Gilroy	9274
Pleasanton	8612	Napa	8542	Pleasanton	8612
85th Percentile	8598	85th Percentile	8443	85th Percentile	8577
Napa	8542	San Luis Obispo	8135	Napa	8542
75th Percentile	8542	Santa Cruz	8049	75th Percentile	8365
Santa Barbara	8188	75th Percentile	8049	Santa Barbara	8188
San Luis Obispo	8135	Salinas	7950	San Luis Obispo	8135
Average	8102	Average	7728	Santa Cruz	8049
Santa Cruz	8049	Petaluma	7556	Salinas	7950
Median	8049	Median	7556	Median	7950
Salinas	7950	Monterey	7453	Average	7911
Monterey	7453	Chico	7344	Petaluma	7556
Petaluma	7556	Santa Maria	7301	Monterey	7453
Santa Maria	7301	Davis	6748	Chico	7344
				Santa Maria	7301
				Davis	6748

Thus, the January 2006 wage increase is predicated on incrementally reaching the Association’s goal of placing it in the top quartile of the comparison jurisdictions.

After implementing the January 2006 wage increase, in order for the Association to reach its goal of the top quartile for the calendar year 2007 required a total salary adjustment of 12%. (TR 686-687). In order to reduce the cost of that proposal, the Association’s proposal splits the wage adjustment into two segments: a 6% increase in January 2007, with another 6% increase in June 2007. (TR 687; Assoc. Exh. 141) Using standard total compensation data, the January 2006 proposed salary increase adjusts the Association’s position in the market as follows:

Date	Salary	Increase	New Salary	Health	Ed (5.26%)	Uniform	Total
1-Jan-07	6,555	6.00%	6948	1,152	365	83	8548
1-Jul-07	6,948	6.00%	7,365	1,152	387	83	8,987

This proposed salary adjustment takes the Association to its goal of being in the top quartile, but reduces the cost of so doing by 4.1%. *Id.* As shown below, this places the Association in the top quartile of its comparable agencies (the “Gilroy 9”) as well as the combined data set that includes all the agencies in both its Gilroy 9 data set and the City’s “Chico 9/Fire” data set:

GILROY 9	
Gilroy	9644
Pleasanton	9040
Santa Barbara	9033
San Luis Obispo	8987
Napa	8761
Median	8599
Santa Cruz	8599
Average	8560
Salinas	8292
Petaluma	8206
Monterey	8126
Santa Maria	7341

COMBINED	
Gilroy	9644
Pleasanton	9040
Santa Barbara	9033
San Luis Obispo	8987
Napa	8761
Santa Cruz	8599
Average	8375
Salinas	8292
Median	8292
Petaluma	8206
Monterey	8126
Chico	7629
Davis	7455
Santa Maria	7341

The data available for the comparison cities into 2008 and 2009 is not complete. Thus, the Association was required to project a percentage increase that would maintain its position in the market. As a result, the Association proposed 5% increases on January 1, 2008 and again on January 1, 2009. (TR 690-691, 695-698) These 5% salary adjustments are identical to those proposed by the City for the last two years of the contract.

Positioning the Association in the top quartile of the comparative agencies is appropriate for multiple reasons. First, it is critical to recruitment and retention. As shown by the testimony of Kevin Rhyne, the artificially low salaries paid to San Luis Obispo police officers is a deterrent to lateral hires. Officer Rhyne testified that although he desired to laterally move to San Luis Obispo in order to shorten his commute and improve his quality of life, to do so would have required a significant pay cut. (TR 433-437.)

Part of the artificially reduced San Luis Obispo salaries is due to market erosion. (TR 446) Additionally, San Luis Obispo police officers do not receive specialty or shift differential pay at the same frequency as the comparative agencies. (TR 450-451)

Market erosion and the compressed San Luis Obispo salaries wreak havoc on recruitment and retention. Indeed, there is a recruitment and retention problem for police officers statewide, and the Association is seeking to ensure that the City of San Luis Obispo will continue to attract and retain higher quality candidates rather than being forced, as other agencies have been, to lower standards. (TR 455)

Similarly, attracting and maintaining qualified communications technicians has become such a problem that the City authorized over hiring in that classification. (Assoc. Exh. 248.) In a report prepared by the Chief of Police to the City Council, the Chief noted that overstaffing

authorization was necessary “to avoid critical staffing shortages due to upcoming retirements.”

The Chief also noted that:

Law enforcement agencies throughout the State, including our City, have been experiencing great difficulty recruiting and hiring an adequate number of dispatchers. The training and job duties are extremely demanding and highly technical and the pool of interested candidates is relatively small. ...

(Assoc. Exh. 248)

The San Luis Obispo Tribune reported in August of 2006, that it is going to be difficult for local public agencies to “replace an expected avalanche of retiring baby boomers” and “recruitment is going to be a crisis.” (Assoc. Exh. 90) One reason for the recruitment problem is that “the coming generation is smaller in numbers than the baby boomer generation.” Another reason is that “surveys show that fewer college students are interested in public sector employment...” (*Id.*)

In the same article, the Tribune notes that one of the reasons recruitment for the County will reach crisis proportions is the “county’s policy of paying wages comparable to those of similar counties” in that “there’s a downside to saying we can’t pay more than this average.” (Assoc. Exh. 90.) As a result, the City’s proposal to keep the Association at the average will spark a similar recruitment crisis to that being faced by the County, whereas the Association’s goal of reaching the top quartile will ensure that qualified candidates have an incentive to work for the City instead of the County.

Shortly after the arbitration hearing concluded, the City Council granted *significant* raises to its managers in recognition of the recruitment and retention policies, as well as to make the positions more competitive in the local market. (See, Supplemental Evidence submitted herewith) Indeed as shown by Supplemental Exhibit C, the San Luis Obispo Tribune reported

that a study comparing San Luis Obispo salaries to pay rates in 10 other cities showed that the employees are “significantly underpaid.” The article noted: “The pay study isn’t the only evidence of the disparity; lately, the city of SLO has been losing employees to neighboring cities, such as Los Angeles, San Francisco, Santa Barbara, even Santa Maria.” Adopting the Association’s final proposal for salaries will assist in keeping that erosion from happening in the Police Department.

In an article dated January 21, 2008, the Tribune further reported on the salaries, Councilman Paul Brown was quoted as stating: “If you want to hire and retain good people ... you have to be competitive” and “We pride ourselves on our excellent staff. If we want to keep them, we’ve got to pay for it to continue. People are going to look for better opportunities, so we have to be competitive.” The same concept applies equally to the classifications represented by the Association.

Just two days ago, on February 20, 2008, the San Luis Obispo Tribune again reported on the difficulty of recruitment and retention, as well as the importance of competitive salaries. (Supplemental Exhibit A) In that article, the Tribune reported: “We need highly qualified people to carry out our priorities, but in recent years it has become increasingly challenging to attract and retain top employees. Partially because of past belt tightening, some of our positions had fallen way behind in compensation. For example, our police chief slipped to the fourth-highest paid, when compared to the other six cities in the county.” The article went on to state: “We have recently lost some key people to neighboring cities such as Paso Robles, Santa Maria and Morro Bay. And because of low salaries, filling some important job vacancies has been tough.”

As shown by Supplemental Exhibit E, at the same time the City was promoting during these arbitration proceedings artificially keeping the salaries of the police classifications at the average, it was preparing to grant huge wage increases to management staff. While balking at the Association's proposal for a 10.82% wage increase in the first year of the contract and, instead, proposing a paltry split 5% wage increase (2% in January 2006 and 3% in July), the *City proposed a whopping 15% immediate adjustment for the Police Chief*. (Supplemental Exhibit E at page 15 [Slide 30])

Also supporting the Association's wage proposal is the fact that San Luis Obispo is oft-reported as one of the least affordable areas to live in the nation. (TR 452; Assoc. Exh. 75) As reported by the State of California Department of Housing and Community Development, San Luis Obispo is rated in the least affordable category, along with San Diego and Mendocino. (TR 453) The affordability index is analyzed on the median family income available within the community as it relates to the median cost of housing in that community. (TR 453) Moreover, as demonstrated by Association Exhibits 91, San Luis Obispo "continues to be one of the least affordable regions in the country to buy a home" (Exh. 91) and has the highest gas prices in California (Exh. 93). Indeed, as shown by Association Exhibit 94, officers cannot afford to buy homes in the City of San Luis Obispo and are, as a result, forced to commute. (TR 458-459; Assoc. Exh. 94)

Finally, internal comparisons justify placing the Police Officers Association in the top quartile, as that is the same comparative location that the fire contract places the firefighter personnel (TR 445) and using similar costing. (Assoc. Exh. 86.)

Notably, the City does not challenge that it has the ability to pay its officers at the top quartile; it simply does not desire to do so. Indeed, the San Luis Obispo Tribune noted in

December 2006 that Measure Y, a one-half-cent sales-tax increase passed by the voters has created a “rosy economic picture” for the City over the next five years, and “in the short term, the city has a one-time bonus reserve of \$3.5 million” combined with an additional \$5.5 million above what is required to maintain existing services....”

The City’s healthy financial condition has not been eroded by the current budget issues facing the State of California. Indeed, as reported by the Tribune in just this week: “In spite of downturns in the housing market and the economy overall, San Luis Obispo still enjoys a positive fiscal outlook, mostly because of higher-than-expected revenues from the city’s recent half-cent sales tax increase.” (Supplemental Exhibit B, Tribune Article dated February 16, 2008).

Based on the City’s healthy financial condition, there is no justification for the City’s proposals which would keep the Association’s member artificially compressed at or below the average of the comparison cities.

The City’s salary proposals as set forth during the hearing on Issues 6 and 7 contained misleading information, relied upon inaccurate data, and artificially attached the proposed wage increases to inappropriate data sets. As it is uncertain whether the City will modify its final salary proposals based on the evidence presented, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City’s final proposals.

ISSUE 8: MASTER POLICE OFFICER

Summary:

- (A) Joint Proposal: Provide laterals credit for a third specialty assignment if have completed two specialty assignment at their prior agency;**
- (B) Retroactivity:**
 - 1. POA proposal is to have the provision retroactive to January 1, 2006;**
 - 2. City's proposal is to have the provision retroactive to date on which the agreement is formally approved by the Council or an arbitration award is rendered.**

Article 8.4 of the current Memorandum of Agreement currently states:

8.4 Master Police Officer

Eligibility requirements for the position of Master Police Officer are as follows effective January 13, 2005:

- 1. One full year at Step 6 of the salary range.
- 2. Must have obtained an advanced POST Certificate
- 3. Must have successfully completed two specialty assignments and two years in a third specialty assignment.
- 4. Reassignment, with a break in service, to the same assignment will be credited as a third assignment. To be credited for the purposes of compensation, an officer shall be required to complete the terms of any specialty assignment unless early departure for good cause is/was authorized by the Chief of Police. Departure for any other reason will forfeit MPO compensation at the time of departure.
- 5. The Department may, at any time, temporarily remove an employee from a specialty assignment to meet operational needs. If the cumulative total time of removal from the assignment prior to the employee's scheduled rotation date exceeds 90 days, the employee shall have the option of extending the rotation date by the total time of removal or accepting that amount of time as credit towards completion of the specialty assignment.

6. Qualified Master Police Officers will be permitted to wear a two-stripe insignia (otherwise recognized as Corporal stripes) recognizing their status as determined by Department uniform policy.

7. Compensation: Police Officer Step 7.

8. The employee is responsible for requesting advancement to Master Police Officer. The Department will, once annually, remind employees to make such requests. Retroactive payments will not be made if the employee fails to make a timely request.

(Assoc. Exh. 249; City Exhibit 8-2)

During negotiations, the Association proposed modifying this section to provide lateral hires with a credit for the third specialty assignment requirement retroactive to January 1, 2006².

The Association's proposal was, as follows:

8.4 Master Police Officer

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

1. One full year at Step 6³ of the salary range.
2. Must have obtained an advanced POST Certificate
3. Must have successfully completed two specialty assignments and two years in a third specialty assignment. **Lateral officers having completed two comparable specialty assignments at their prior agency shall receive credit for a third specialty assignment.**
4. Reassignment, with a break in service, to the same assignment will be credited as a third assignment. To be credited for the purposes of compensation, an officer shall be required to complete the terms of any specialty assignment unless early departure for good cause is/was authorized by

² The Association notes that if the Arbitrator grants Issue 4 in favor of the Association that a further adjustment would be required to reflect the reduction in the number of steps (7 to 6).

³ If the Arbitrator grants Issue 4 in favor of the Association, the "6" referenced here would have to be changed to "5"

the Chief of Police. Departure for any other reason will forfeit MPO compensation at the time of departure.

5. The Department may, at any time, temporarily remove an employee from a specialty assignment to meet operational needs. If the cumulative total time of removal from the assignment prior to the employee's scheduled rotation date exceeds 90 days, the employee shall have the option of extending the rotation date by the total time of removal or accepting that amount of time as credit towards completion of the specialty assignment.

6. Qualified Master Police Officers will be permitted to wear a two-stripe insignia (otherwise recognized as Corporal stripes) recognizing their status as determined by Department uniform policy.

7. Compensation: Police Officer Step 7⁴.

8. The employee is responsible for requesting advancement to Master Police Officer. The Department will, once annually, remind employees to make such requests. Retroactive payments will not be made if the employee fails to make a timely request.

(Assoc. Exh. 250; City Exhibit 8-2)

During the arbitration hearing, the City agreed to provide the proposed credit for a third specialty assignment, so long as the comparability of special assignments is determined at the discretion of the Police Chief after receiving satisfactory proof of successful performance in that specialty assignment. (TR 801-807) The Association had no objection to the modification proposed by the City, as reflected by the double underline below:

8.4 Master Police Officer

3. Must have successfully completed two specialty assignments and two years in a third specialty assignment.
Lateral officers having completed two comparable specialty

⁴ If the Arbitrator grants Issue 4 in favor of the Association, the "7" referenced here would have to be changed to "6"

assignments at their prior agency shall receive credit for a third specialty assignment. The comparability of specialty assignment shall be determined by the Police Chief in his/her discretion. The Chief may require an employee seeking credit for prior agency specialty assignment to submit satisfactory proof of successful performance in such assignments.

Thus, the only remaining issue with respect to Article 8.4 is whether it is retroactive to January 1, 2006 as proposed by the Association, or retroactive to “the date this Agreement is formally approved by the City Council or an arbitration award is issued” as proposed by the City. (City Exhibit 8-2.) (TR 812-814)

This final distinction is *de minimis*, in that there is only one officer that would be actually affected by the retroactive application of this provision – Officer Greg Dunn. (TR 843-849, Association Exhibit 251) While there are a handful of people who would progress one further step in achieving the qualifications for Master Police Officer, those individuals only make it on more step forward on the journey and, therefore, there is no cost component to the City. However there is a single employee – Officer Greg Dunn – who, if given credit for the third specialty assignment would actually achieve Master Police Officer status and pay. That cost being relatively small, there is no justification for the City’s position against retroactivity of this provision.

ISSUE 9: OVERTIME – SWORN

Summary: POA Proposal to have all sworn overtime compensated to the nearest five (5) minutes worked.

Article 10.3 of the Memorandum of Agreement currently states:

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 hours of compensatory time off.

(Assoc. Exh. 242; City Exh. 9-1)

During negotiations, the Association proposed changing that article to allow overtime to be calculated to the nearest five (5) minutes worked.

The Association hereby *withdraws that proposal* and presents a *modified final proposal* to maintain the status quo and not alter the existing contract language. Thus, Article 10.3 of the Memorandum of Agreement would continue to state, as it does currently:

10.4 COMPENSATION

- B. 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 hours of compensatory time off.

(Assoc. Exh. 242; City Exh. 9-1)

ISSUE 10: COMPENSATORY TIME – SWORN

Summary: POA proposal to increase compensatory time bank accumulation from 80 to 120 hours

Article 10.3 of the Memorandum of Agreement sets forth the compensatory time off accruals for sworn employees, and currently states:

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 hours of compensatory time off.

(Assoc. Exh. 96; City Exh. 10-1.) The Association has proposed increasing the maximum accumulation of compensatory time off to 120 hours from 80 hours. (Assoc. Exh. 97; City Exh. 10-1.) The Association's *final proposal* is, as follows:

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~~ 120 hours of compensatory time off.

(Assoc. Exh. 97; City Exh. 10-1.)

The Association's proposal is based on a survey of the comparative agencies. More than half have accruals over 80 hours, which range from 120 hours to 400 hours. (Assoc. Exh. 98)

ISSUE 11: COURT TIME – SWORN

- Summary:**
- (A) POA Proposal that court call back minimums should apply when the appearance is cancelled with less than 12 hours verified notice**
 - (B) City proposal that court call back minimums apply only when cancelled the same day**

Article 10.6 of the Memorandum of Agreement currently states:

10.6 COURT TIME

- A.⁵ Effective the first full pay period upon ratification, employees reporting for court duty shall be

⁵ Article 10.6 contained numbered sections 42, 43 and 44 instead of the listed "A, B, and C". A tentative agreement was reached on August 23, 2007 that re-numbered this section to be consistent with the remaining articles of the MOA.

guaranteed three hours minimum payment at time and one-half.

- B. Employees required to work through the lunch break while on court duty shall be credited with time worked. Duty free lunch periods shall not be compensable, to a maximum of thirty (30) minutes.
- C. Two or more court cases occurring within the minimum time period shall be subject to a single minimum payment.

(Assoc. Exh. 50.)

The evidence during the hearing revealed that if a court appearance is not cancelled by 5pm the night before that it would be cancelled the same day of the hearing. Thus, the City presented a modified proposal that stated:

- D. Employees scheduled for court appearances that are cancelled on the day the employee is scheduled to appear, s/he shall be eligible for the minimum payment in this section.**

(City Exhibit 11-1.)

The Association has determined that the City's proposal accomplishes the same goal as the Association's, and, therefore, agrees with the language proposed, and thus presents a **modified final proposal** identical to the City's proposal, as follows:

- D. Employees scheduled for court appearances that are cancelled on the day the employee is scheduled to appear, s/he shall be eligible for the minimum payment in this section.**

(City Exhibit 11-1.)

ISSUE 12: COURT TIME – SWORN

Summary: City proposal that compensation for telephonic DMV hearings not be subject to the court time minimum but be for actual hours worked only.

Currently, pursuant to Article 10.6, officers who attend any type of court hearing, including telephonic hearings held by the Department of Motor Vehicles (DMV) are subject to the guaranteed three hour minimum overtime compensation.

The City proposes to change the *status quo* and carve out an exception to the three hour court time minimum and compensate for appearances at telephonic DMV hearings by paying only for “actual hours worked.” (City Exh. 12-1)

There is no justification for the City’s proposed change to the current language and practice. First, it creates a disparity between the ranks when performing identical work because although the collective bargaining agreement covering the Staff Officers Association only closed within the last six months, and although the issue of telephonic hearings has existed for the last several years, the City did not propose a similar reduction in court overtime for the sergeants. (TR 739-740.) Therefore, if the City’s proposal is adopted, a sergeant who appeared telephonically would receive the three hour overtime minimum, but a rank-and-file police officer would receive pay only for the actual hours worked.

The compensation disparity between classifications is best illustrated by an example. As testified to by Captain Parkinson, the average time spent on the telephone during a DMV hearing is forty four (44) minutes. (TR 741) Assuming that both a police officer and a sergeant were subpoenaed to testify at the same DMV hearing, the officer would get paid overtime for three-

quarters of an hour, whereas the sergeant would receive three hours overtime as the minimum callback guarantee.

Further, the City's proposal fails to take into account the inconveniences and burdens placed on officers who are required to be available to testify at a DMV hearing, even telephonically. As noted by Captain Parkinson, the vast majority of drunk driving arrests occur at night, when officers are working the graveyard shift, but the testimony at the DMV hearing occurs during the day and during their normal sleep hours. (TR 738, 744-745)

This can have an incredible impact on the graveyard officer's ability to get sufficient rest. For example, as testified to by Officer Thomas King, he was required to testify telephonically at a DMV hearing during his non-working hours, following a graveyard shift. Officer King got off shift at 7:00 a.m., but the telephonic hearing was not scheduled until 8:45 a.m. Because Officer King normally would go straight to bed following a graveyard shift, he had to alter his normal sleep pattern to accommodate the telephonic appearance. It also interfered with his getting sufficient rest before being required to report to work at 7:00 p.m. that day. (TR 746-750.)

Similarly, the testimony of Officer John Villanti demonstrated that the City's proposed change is not justified. Officer Villanti was subpoenaed for 9:00 a.m., but they were not ready for him, and he had to wait around for over an hour, before they were ready. His total amount of time spent testifying was 15 minutes, but the entire process of preparing for, standing by, and testifying took more than two hours. (TR 753-755)

Given that testifying telephonically in DMV hearings creates the same types of inconveniences associated with other court testimony, and given the disparity between ranks that would occur if this provision were adopted, the City has utterly failed its burden of proof on this issue. As this is a City proposal and the purpose of this post-hearing brief is to set out the

Association's final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City's final proposals.

ISSUE 13 OVERTIME ASSIGNMENT – SWORN

Summary: City Proposal to add a new section regarding non-emergency overtime

Article 10.10 currently states:

10.10 OVERTIME ASSIGNMENT

- A. The Department, prior to each shift rotation, will post an overtime interest list. Planned overtime will be called from this list in order of seniority. Employees may add and/or delete their names from this list at any time.

The City proposes adding a new section to read:

- B. **An employee 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 employee on that shift for mandatory overtime.**

(City Exh. 18-1)

It is the Association's position that this change to the *status quo* is not justified, and seeks to correct a non-existent problem. The seniority system that has been in place is a valuable benefit that should not be discarded lightly. Moreover, adopting this provision would create a conflict within the Memorandum of Agreement, because Article 18 states that: "Overall seniority in a specific job classification . . . will prevail as the standard. All days off, vacation, holidays, and shift selections will be determined by overall seniority in a specific job classification..."

As this is a City proposal and the purpose of this post-hearing brief is to set out the Association's final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City's final proposals.

ISSUE 14: OVERTIME – NON-SWORN

Summary: POA Proposal to have all sworn overtime shall be compensated to the nearest five (5) minutes worked.

Article 11.3 of the Memorandum of Agreement currently states:

11.3 COMPENSATION

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 hours of compensatory time off.

(Assoc. Exh. 245; City Exh. 14-1)

During negotiations, the Association proposed changing that article to allow overtime to be calculated to the nearest five (5) minutes worked.

The Association hereby **withdraws that proposal** and presents a **modified final proposal** to maintain the status quo and not alter the existing contract language. Thus, Article 11.3 of the Memorandum of Agreement would continue to state, as it does currently:

11.3 COMPENSATION

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 hours of compensatory time off.

(Assoc. Exh. 245; City Exh. 14-1)

ISSUE 15 OVERTIME – NON-SWORN

Summary: City proposal to reduce compensatory time bank accumulations for Communications Technicians to 240 hours from 480 hours

Article 11.3 of the Memorandum of Agreement currently states:

11.3 COMPENSATION

Overtime shall 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 Communications Technician and 240 hours for all other non-sworn classifications

(Assoc. Exh. 258; City Exh. 15-1)

The City has proposed a 50% reduction in the number of compensatory hours that Communications Technicians can accumulate. The City's proposal is:

11.3 COMPENSATION

Overtime shall 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 Communications Technician and 240 hours~~ for all other non-sworn classifications

The City utterly failed to meet its burden of proof on this proposal. Indeed, it was just two years ago, in June 2004, that the City expanded the communication technician compensatory time back to 480 hours due to the shortage of communications personnel and the excessive overtime that they are required to work. (TR 899; Assoc. Exh. 253) The exact same staffing issues exist now. "Nothing has changed." (TR 903)

As this is a City proposal and the purpose of this post-hearing brief is to set out the Association's final proposals, the Association hereby reserves its right to present further

argument and evidence after it receives the post-hearing brief containing the City's final proposals.

ISSUE 16: OVERTIME NON-SWORN

Summary: City proposal to require a mandatory cash out at the end of the calendar year for all non-sworn accumulated compensatory time bank accruals

Article 11.3 of the Memorandum of Agreement currently states:

11.3 COMPENSATION

Overtime shall 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 Communications Technician and 240 hours for all other non-sworn classifications

(Assoc. Exh. 512; City Exh. 16-1)

The City has proposed a mandatory cash-out of all accumulated compensatory time. The City's proposal reads as follows:

11.3 COMPENSATION

Overtime shall 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 Communications Technician and~~ 240 hours for all other non-sworn classifications.

Accumulated compensatory time not used by the last pay day in December of each calendar year shall be paid to the employee on the first pay day in January of the following calendar year.

(City Exh. 16-1)

Implementation of this proposal would create a huge disparity between the non-sworn and the sworn classifications, as the non-sworns would be required to reduce their accumulated time banks to zero each year, but the sworn classification would not.

Moreover, as amply demonstrated by the testimony of Shaana Lichty, the proposed provision is impractical. Communications Technicians sign up for vacations a year in advance. For example, in September 2007, the Communications Technicians signed up for their scheduled time off in the year 2008, which includes reservations for the use of compensatory time. But, according to the City's proposal, at the end of 2007, the Communications Technicians compensatory time bank, for which planned time off has already been reserved, would be reduced to zero. (TR 927-928.) As a result, this proposal is impractical and not well thought out. Consequently, the status quo, as advocated by the Association, should be maintained.

As this is a City proposal and the purpose of this post-hearing brief is to set out the Association's final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City's final proposals.

ISSUE 17 OVERTIME NON-SWORN

- Summary:**
- (A) POA Proposal that court call back minimums should apply when the appearance is cancelled with less than 12 hours verified notice**
 - (C) City proposal that court call back minimums apply only when cancelled the same day**

Article 11.6 of the Memorandum of Agreement currently states:

11.6 COURT TIME

- A. Effective the first full pay period upon ratification, employees reporting for court duty shall be guaranteed three hours minimum payment at time and one-half.
- B. Employees required to work through the lunch break while on court duty shall be credited with time worked. Duty free lunch periods shall not be compensable, to a maximum of thirty (30) minutes.

- C. Two or more court cases occurring within the minimum time period shall be subject to a single minimum payment.

(Assoc. Exh. 51.) The MOA does not currently contain any language concerning what, if any, court time is paid when a court appearance is cancelled. Thus, the Association proposes adding a subsection (D) to extend the 3 hour minimum court time guarantee to court appearances that are cancelled less than 12 hours ahead. The Association proposed:

- D. *Employees scheduled for court appearances that are cancelled with less than twelve (12) hours notice to the employee shall be guaranteed three hours minimum payment at time and one-half.***

(Assoc. Exh. 52; City Exh. 17-1)

The evidence during the hearing revealed that if a court appearance is not cancelled by 5pm the night before, that it would be cancelled the same day of the hearing. Thus, the City presented a modified proposal that stated:

- D. *Employees scheduled for court appearances that are cancelled on the day the employee is scheduled to appear, s/he shall be eligible for the minimum payment in this section.***

(City Exhibit 17-1.)

The evidence during the hearing revealed that if a court appearance is not cancelled by 5pm the night before that it would be cancelled the same day of the hearing. Thus, the City presented a modified proposal that stated:

- D. *Employees scheduled for court appearances that are cancelled on the day the employee is scheduled to appear, s/he shall be eligible for the minimum payment in this section.***

(City Exhibit 11-1.)

The Association has determined that the City's proposal accomplishes the same goal as the Association's, and, therefore, agrees with the language proposed, and thus presents a modified final proposal identical to the City's proposal, as follows:

- D. Employees scheduled for court appearances that are cancelled on the day the employee is scheduled to appear, s/he shall be eligible for the minimum payment in this section.**

(City Exhibit 11-1.)

ISSUE 18 OVERTIME NON-SWORN

Summary: City proposal regarding mandatory overtime

Article 11.9 currently states:

11.9 OVERTIME ASSIGNMENT

- A. The Department, prior to each shift rotation, will post an overtime interest list. Planned overtime will be called from this list in order of seniority. Employees may add and/or delete their names from this list at any time.

(City Exh. 18-1.) The City proposes adding a new section to read:

- C. An employee 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 employee on that shift for mandatory overtime.**

(City Exh. 18-1)

It is the Association's position that this change to the *status quo* is not justified, and seeks to correct a non-existent problem. The seniority system that has been in place is a valuable benefit that should not be discarded lightly. Moreover, adopting this provision would create a conflict within the Memorandum of Agreement, because Article 18 states that: "Overall

seniority in a specific job classification . . . will prevail as the standard. All days off, vacation, holidays, and shift selections will be determined by overall seniority in a specific job classification...”

As this is a City proposal and the purpose of this post-hearing brief is to set out the Association’s final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City’s final proposals.

ISSUES 19 & 20: EDUCATION INCENTIVE

- Summary:**
- (A) Joint Proposal to delete language referencing July 1, 1981**
 - (B) Joint Proposal: Reinstate the education incentive program for sworn employees;**
 - (C) POA Proposal: Include POST Certificates**
 - (D) POA Proposal: Effective date January 1, 2006**
 - (E) City Proposal: Effective date January 1, 2007**

Article 14 of the Memorandum of Agreement currently provides for an educational incentive benefit for non-sworn employees only. That section states:

The educational incentive pay plan shall continue as described below for 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 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.

The Association's *final proposal* extends that benefit to sworn employees and including POST certificates in the program, as follows:

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

- B. *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.

(Assoc. Ex. 11; City Exhibit 19-2)

The City agrees that the education incentive benefit should be extended to sworn personnel, but disagrees that it should be extended to include POST certificates.⁶ The City's proposal reads:

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

- C. *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*

⁶ As the purpose of this post-hearing brief is to set out the Association's final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City's final proposals.

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.

The inclusion of the POST certificates as part of the education incentive program is supported by the industry standard. Indeed, as amply demonstrated by Association Exhibits 17-28, and City Exhibits 19-3 through all except two of the total eleven combined comparative jurisdictions have education incentives for sworn personnel which include POST certificates.

ISSUE 21: EDUCATION INCENTIVE

Summary: (A) POA Proposal to delete 2 units per year re-qualification requirement
(B) City Proposal to eliminate section in its entirety

Article 14 of the Memorandum of Agreement currently states in Section F:

NEW EMPLOYEES

1. The basic benefit for employees hired on or after July 1, 1981, 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.

This provision requires that, once an employee achieves the education benefit, he or she must continue to take college courses in order to re-qualify each year to continue receiving the benefit. The Association's final proposal is to eliminate the requalification requirement, as follows:

3. 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.

The justification for the elimination of this provision was amply demonstrated by the testimony of Shaana Lichty. Ms. Lichty testified that she is entitled to the education incentive in that she has a Bachelor of Arts in English from the University of California at Santa Barbara. (TR 107) As a result, under the Memorandum of Agreement, she receives 5.26% in additional compensation. (*Id.*)

However, in order to maintain her entitlement, Ms. Lichty is required to re-qualify each year by taking three college units. (TR 108). Although she spent four years at a university, and before that took courses at Cuesta College and having taught business courses there, Ms. Lichty is required to “scrape up from the bottom of the barrel classes that I have, in effect, taught before, just because they’re computer related” and so therefore job relative. (TR 108)

Maintaining the annual three unit requalification is additionally difficult given Ms. Lichty’s schedule as a communications technician. First, that requirement means that she is unavailable to fill vacant shifts and assist with the ever present staffing crisis in the Communications Center. (TR 109) Additionally, the shift rotations do not coincide with the

college semesters and so it is “tricky” to find courses that fit into her schedule for two rotations. (TR 109) It is very “difficult to find classes because [given my shift schedule] I can only take a class that’s offered one night a week.” (*Id.*)

Thus, there is ample justification for eliminating the annual unit requalification requirement for the educational incentive program.

At the outset of these arbitration proceedings, the City’s position was that the education incentive provisions should be “simplified”. See, Joint Exhibit 4 at page 4-3, Item 21. At the arbitration hearing, the City presented, for the first time, language that *eliminated* not simplified, a significant benefit, that is, the five percent step increase in section F(1) of Article 14. (City Exhibit 21-2.)

The City’s proposal⁷ should be rejected as outside the permissible scope of the hearing. The final proposal presented at impasse was *simplification* of a benefit not *elimination* of a benefit. This unfair and improper tactic warrants rejection of the City’s proposal and maintenance of the status quo.

Moreover, the City’s new proposal, presented for the first time on the final day of the arbitration hearings, was targeted at a single Association Board member: Barbara Sims. This is nothing short of a thinly disguised form of regressive bargaining in retaliation for the Association having exercised its right to initiate the impasse procedures.

⁷ As this is a City proposal and the purpose of this post-hearing brief is to set out the Association’s final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City’s final proposals.

There is no justification for the City's proposal.⁸ The City claimed at arbitration that this was a "simplification" because the provision is "difficult to administer and track for people". (TR 932.) But, there is only *one* unit member who is eligible for this benefit: Barbara Sims. (TR 934. Ms. Sims has not yet achieved her college degree, but is working to do so. Indeed, Ms. Sims testified that "I work very hard to maintain those nine units every year" while still working her fair share of the overtime shifts that have to be filled. (TR 934-935) Because the City's proposal does not do as it professes – simplify things – but instead eliminates a benefit that applies to only one unit member, the City has utterly failed its burden of proving that its proposed change to the *status quo* is warranted.

ISSUE 22: EDUCATION INCENTIVE

Summary: POA Proposal: Delete provision prohibiting receipt of education incentives for education received on City time

TENTATIVE AGREEMENT REACHED: 12/21/07 , as follows:

Section E: NON-APPLICABILITY. Educational incentives shall generally not be paid for education received 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: HEALTH CARE INSURANCE

Summary: POA Proposal to increase the monthly contributions for Cafeteria Plan benefits

⁸ As this is a City proposal and the purpose of this post-hearing brief is to set out the Association's final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City's final proposals.

Section 16.1 of the Memorandum of Agreement currently fixes the contributions that the City makes to the Cafeteria Plan benefits below the current cost of those benefits for unit members. That section states:

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:	\$415.00
Employee Plus One:	\$754.00
Family:	\$995.00

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

Employees shall be eligible for the City contributions set forth above based on the number of dependents they enrolling the PERS Health Benefit Program. Employees opting out of health coverage as provided for below shall also receive payment at the employee only level.

(Assoc. Exh. 61; City Exh. 24-1)

The Association's *final proposal* includes a formula by which health care contributions can be adjusted each year in order to insure that employee contributions to the medical, dental and vision benefits are maintained, rather than eroded. The Association's *final proposal* is, as follows:

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:	\$415.00	<u>\$478.22</u>
Employee Plus One:	\$754.00	<u>\$879.67</u>
Family:	\$995.00	<u>\$1,152.20</u>

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

Employees shall be eligible for the City contributions set forth above based on the number of dependents they enrolling the PERS Health Benefit Program. Employees opting out of health coverage as provided for below, shall also receive payment at the employee only level.

The formula for this proposal is contained at Association Exhibit 247, as follows:

POA Example of Calendar Year 2008 Formula 100% Employee + 90% Dependent City Paid Effective 12/01/07	
Employee Classification	POA 2008 Proposed Tiered Rates
Employee Only	\$504.05
Employee + One	\$931.99
Employee + Two (Family)	\$1,221.42
Formula Example	
Employee Only	\$504.05 = 100% paid
Employee + 1	\$504.05 + \$427.94 = \$931.99 (100% Emp paid & 90% Dependent Cost) 90% of Dependent Cost = \$427.94
Employee + 2 (Family)	\$504.05 + \$717.37 = \$1,221.42 (100% Emp paid & 90% Dependent Cost) 90% of Dependent Cost = \$717.37
Employee Only Rate Example:	\$504.05 Total Monthly Cost - Health, Dental, Vision, Life Ins.
Employee Only	\$504.05 100% Paid
Employee + 1 Tiered Rate Example:	\$979.54 Total Monthly Cost - Health, Dental, Vision, Life Ins.
Employee + 1	\$979.54 - \$504.05 = \$475.49 X 90% = \$427.94 + \$504.05 = \$931.99
Family Tiered Rate Example:	\$1,301.13 Total Monthly Cost - Health, Dental, Vision, Life Ins.
Employee + Two (Family)	\$1,301.13 - \$504.05 = \$797.08 X 90% = \$717.37 + \$504.05 = \$1,221.42

As shown by both the internal and external comparable data, the Association's cafeteria plan proposal is both reasonable and justified. (Assoc. Exh. 209-213.)

The City presented during the arbitration hearings an alternate proposal regarding the cafeteria plan benefit that set a fixed amount during the term of the contract, without regard for potentially escalating health care costs. The City's proposal thus causes an erosion of the benefit over the life of the contract, whereas the Association's proposal provides for a reasonable method of maintaining the benefit at a reasonable level. As the purpose of this post-hearing brief is to set out the Association's final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City's final proposals.

ISSUE 26 PEMCHA

Summary: Equal PEMCHA Contributions

Article 16.2 of the Memorandum of Agreement currently states:

A. PERS Health Benefit Program

The City has elected to participate in the PERS Health Benefit Program with the “unequal contribution option” 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.

(Assoc. Exh. 214)

The purpose of the Association’s proposal is to secure compliance with Government Code section 22892. (Assoc. Exh. 217; TR 779-785) As a result, the Association’s ***final proposal*** is, as follows:

A. PERS Health Benefit Program

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 City has elected to participate in the PERS Health Benefit Program with the “unequal contribution option” 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.~~

(Assoc. Exh. 215)

As the purpose of this post-hearing brief is to set out the Association's final proposals, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City's final proposal related to PEMCHA benefits.

ISSUE 27 HEALTH CARE – OPT OUT

Summary: Eliminate assessment placed in the Retiree Health Insurance Account

Article 16.2 B of the Memorandum of Agreement currently states:

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 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.

(Assoc. Exh. 219)

The Association seeks to eliminate the charge made to opt-outs for the \$16.00 PEMCHA obligation, and its final proposal is to modify Article 16.2, as follows:

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 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.~~

(See, Assoc. Exh. 220)

As demonstrated by the correspondence directed to the Association from PERS dated November 20, 2003 (Assoc. Exh. 221), "there is no PEMCHA requirement placed on employees who do not elect to participate in PEMCHA coverage."

Currently, the City takes the \$16.00 assessed against those individuals who opt-out of the Cafeteria Plan and places it into a "so-called retiree health insurance account, and then the debits that are paid out to CalPERS are for the PEMHCA responsibility to CalPERS for retirees." (TR 788) In essence, the City is taking back from opt-out employees in order to defer a cost to another set of employees. It is this practice of "robbing Peter to pay Paul" that the Association proposes be ended.

During the arbitration proceedings, the City indicated that it would be "willing to eliminate" the opt-out assessment if the Association would be willing to cap the amount received by those who opt-out of the program. (City Exh. 27-1) The Association did not accept this

exchange of benefits. As a result, it is less than clear what the City's current proposal is on Issue 27. Therefore, the Association hereby reserves its right to present further argument and evidence after it receives the post-hearing brief containing the City's final proposals.

ISSUE 28 RETIREE HEALTH

Summary; POA proposal for the City to provide retiree health benefits

The Association's original retiree health proposal was to incorporate the language of Government Code section 22893 into the collective bargaining agreement. (Assoc. Exh. 126) During the hearing, the Association presented a modified proposal that mirrored the statutory language. (Assoc. Exh. 140)

The Association hereby modifies the previously presented proposal in light of the significant costs associated with the broad range of covered employees. Therefore, the Association presents the following as its ***final modified proposal*** on retiree health care:

Post-Retirement Health Benefit Coverage

Notwithstanding Article 16.2(A) [PERS 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 service at retirement as shown in the following table:

<u>Credited Years of Service</u>	<u>Percentage of Employer Contribution</u>
<u>10</u>	<u>50</u>
<u>11</u>	<u>55</u>
<u>12</u>	<u>60</u>
<u>13</u>	<u>65</u>
<u>14</u>	<u>70</u>
<u>15</u>	<u>75</u>
<u>16</u>	<u>80</u>
<u>17</u>	<u>85</u>
<u>18</u>	<u>90</u>

This subdivision shall apply to:

- All employees who retire from City service for service or disability after this section becomes applicable;
- ~~All employees who retired for disability before this section became applicable; and~~
- ~~All employees who retired for service with 20 or more years of service credit entirely with the City before this section became applicable. The contribution payable by the City to such previously retired employees shall be paid only if it is greater than, and made in lieu of, a contribution payable to the annuitant by another employer.~~

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.

For each annuitant with enrolled family members, the employer shall contribute an additional 90 percent of the weighted average of the additional premiums required for enrollment of those family members, during the benefit year to which the formula is applied, in the four health benefit plans that had the largest unit member enrollment, excluding family members, during the previous benefit year. Only the enrollment of, and premiums paid by, unit member employees and annuitants enrolled in basic health benefit plans shall be counted for purposes of calculating the employer contribution under this section.

The Association's modified proposal significantly reduces the costs associated with retiree health care, as it would only apply to those disabled or retired for service with ten or more years of service with the City, and would provide no medical benefit for spouses or dependents.

The City has the financial ability to provide the requested modified retiree medical benefit. Moreover, the external comparable data further justifies the benefit requested. Indeed, *all* of the combined comparable jurisdictions provide some form of a retiree health benefit.

(Assoc. Exh. 127)

ISSUE 29: LIFE INSURANCE

Summary: POA Proposal to Increase Life Insurance to \$35,000

The current collective bargaining agreement contains no language regarding life insurance, although the City provides a \$20,000 life insurance policy. (TR 710). Somehow “over the course of the years...life insurance slipped out of the contract”. (TR 709, 714). The Association now seeks to fix that, as well as to increase the maximum benefit from \$20,000 to \$35,000. (TR 709) Thus, the Association proposes including the following language in the agreement:

16.2 INSURANCE COVERAGE

D. Life Insurance

City shall include life insurance premiums into the cafeteria plan benefits contribution providing for a \$35,000 policy for each employee covered by this agreement.

(Assoc. Exh. 143; City Exh. 29-1)

This proposal would place is supported by the internal comparables. Indeed, the SLOCEA unit has a \$50,000 life insurance premium available to its members, which is much higher than that being requested by the Association. (TR 710; Assoc. Exh. 144) External comparative data also supports this proposal. (Assoc. Exh. 144)

The cost to the City is *de minimis*. Currently, the cost is \$5.20 for the life insurance plan, calculated at 26 cents per thousand. (TR 710) This is a benefit already paid for by the City. (TR 714.

The Association's proposed benefit would cost \$9.10, which represents an increased cost to the City of only \$3.90 per member of the bargaining unit.

ISSUE 30 HEALTH CARE FOR SURVIVORS

Tentative Agreement Reached 12/21/2007, as follows:

Section 16.5 of the collective bargaining agreement will be modified to read as follows:

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 member~~ *an active employee* who dies ~~while in the line of duty~~ *as a result of a job-related illness or injury.*

ISSUE 31 SICK LEAVE CASH OUT

Summary: POA Proposal to increase the sick leave cash out upon an employee's death from 25% to 100%

Article 21.2 of the Memorandum of Agreement currently states:

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

A. Death – 25%

The Association has proposed increasing the sick leave cash out percentage upon an employee's death from 25% to 100%, as follows:

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

B. Death – ~~25%~~ 100%

This proposal has a minimal cost to the City, as the benefit only accrues if an active employee dies while still serving the City. It will be rarely invoked and, indeed, in the department's history only one employee, fifteen years ago, would have been entitled to the benefit. (TR 717-718; Assoc. Exh. 160; City Exh. 31-1)

Currently, the sick leave cash out upon death provided to the Association is less generous than that provided to other public safety employees. Indeed, the Fire Department and Battalion Chiefs each have a 50% sick leave cash out provision. (TR 716; Assoc. Exhibits 161–165) Moreover, non-sworn city employees also have a greater benefit than the police unit. (*Id.*)

ISSUE 32 SICK LEAVE

Summary: POA proposal to permit sick leave cash out upon disability retirement.

Article 21.2 of the Memorandum of Agreement does not currently permit an employee that retires for a disability to cash out his or her sick leave. That section currently states::

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

A. Death⁹ – 25%

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%

⁹ The Association proposed increasing the sick leave cash out upon death to 100% in Issue 31

3. After thirty years of continuous employment – 30%

The Association proposes adding a provision to permit sick leave cash out upon a disability retirement as follows:

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

- A. Death¹⁰ – 25%
- 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%
- C. **Job-related disability retirement and actual commencement of PERS benefits – 75% with maximum of 1000 hours payoff.**

(Assoc. Exh. 167; City Exh.32-1 to 32-3)

This proposal is justified by the internal comparisons. Indeed, the Fire unit has a similar provision to that which the Association is seeking: a 75 percent sick leave cash out for job-related disability up to a maximum of 1,000 hour payoff. (TR 721; Assoc. Exh. 168-169) Additionally, the Battalion Chiefs unit has a 50% disability retirement sick leave cash out benefit. (Assoc. Exh. 168) This proposal is further justified by the external comparisons. Using the combined comparable agencies, six of the eleven provide for a sick leave cash out upon retiring for a disability. (Assoc. Exh. 168)

ISSUE 33 SICK LEAVE

Summary: POA proposal to permit an employee to exhaust his or her sick leave prior to commencing a medical retirement.

¹⁰ The Association proposed increasing the sick leave cash out upon death to 100% in Issue 31

Article 21.2 of the Memorandum of Agreement does not currently permit an employee that retires for a disability to cash out his or her sick leave. That section currently states::

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

- A. Death¹¹ – 25%

- B. Retirement and actual commencement of PERS benefits:
 - 4. After twenty years of continuous employment – 20%
 - 5. After twenty-five years of continuous employment – 25%
 - 6. After thirty years of continuous employment – 30%

The Association proposes adding a provision to permit sick leave cash out upon a disability retirement as follows:

D.¹² 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.

Pursuant to the Association's proposal, the ability to use sick leave would not occur until *after* the employee's workers compensation benefits were exhausted.¹³

Additionally, it is consistent with Government Code section 21163, which permits a disability retirement to be delayed until after sick leave has been exhausted. (Assoc.

Exh. 186) The benefit is also commensurate with those provided by the external comparable jurisdictions. (Assoc. Exh. 187)

¹¹ The Association proposed increasing the sick leave cash out upon death to 100% in Issue 31

¹² The Association proposed adding a subsection C to provide a cash out benefit upon disability retirement in Issue 32.

¹³ The City argued that the Association's proposal would violate the Personnel Rules because it prohibits an employee from receiving sick leave benefits while receiving workers compensation benefits. However, that provision would not be impacted due to the fact that the commencement of sick leave would not occur until after the workers compensation benefits expired. Moreover, the City is permitted to negotiate greater benefits in the collective bargaining agreement than are provided for in the Personnel Rules.

This proposal falls within the rubric of “the right thing to do.” Employee’s who have their careers shortened due to injuries or other life-altering circumstances during the course of their employment should be entitled to the benefit of the sick leave accrued while an active employee.

ISSUE 34: SICK LEAVE CONFIDENTIALITY

Summary: POA proposal to identify sick leave usage as confidential

Article 21.2 of the Memorandum of Agreement does not currently permit an employee that retires for a disability to cash out his or her sick leave. That section currently states::

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

- A. Death¹⁴ – 25%
- B. Retirement and actual commencement of PERS benefits:
 - a. After twenty years of continuous employment – 20%
 - b. After twenty-five years of continuous employment – 25%
 - c. After thirty years of continuous employment – 30%

The Association original proposed adding a provision that would deem sick leave usage confidential and not subject to reporting in personnel evaluations without “conclusive proof of abuse.” (Assoc. Exh. 200; City Exhibit 34-2.) The Association hereby submits a **final modified proposal** as follows:

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

As shown by Association Exhibits 201 and 202, the City has a practice of including sick leave usage in performance evaluations. The Association takes exception to his practice

¹⁴ The Association proposed increasing the sick leave cash out upon death to 100% in Issue 31

because an employee may legitimately have been required to use an above-average amount of sick leave but, nonetheless, may have a negative mark on his or her record by virtue of an unexplained series of unfortunate events.

For example, one employee received a lower rating than she otherwise should have due to events beyond her control that necessitated an unusually high usage of sick leave. (Assoc. Exh. 202). This employee had the misfortune of suffering two tragedies in one year – the death of a child and her husband having a heart attack. (TR 728) If the standard proposed by the Association had been in place, this employee would have been rated as she should have been in the area of work habits (exceeds expectations), and would have had no mention of her sick leave usage because it was clear that the circumstances did not amount to an abuse.

ISSUE 35: FAMILY LEAVE

Summary: POA Proposal to increase from 16 to 48 hours the amount of sick leave per year an employee can use to care for a member of his/her immediate family.

Article 22.1 of the Memorandum of Agreement currently states:

An employee may take up to 16 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.

(City Exhibit 35-1)

The Association proposes increasing the available sick leave that a unit member can use to care for a member of his or her immediate family to 48 hours. The Association's proposal reads:

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.

This proposed change is justified by both internal and external comparisons. Internally, both the Fire Unit and the Battalion Chief's unit are permitted to use more than 16 hours of sick leave to care for an immediate family. Indeed, they are given 24 hours and 33.6 hours, respectively. (Assoc. Exh. 228).

The combined group of external comparative agencies also supports this change. Indeed, eight (8) of the eleven (11) comparative jurisdictions have provisions that exceed the 16 hours permitted here. Indeed, two agencies, Chico and Petaluma, permit an employee to use their entire sick leave accumulation to care for an immediate family member, four jurisdictions (Monterey, Santa Barbara, Santa Cruz, and Santa Maria) have the same benefit that the Association here is seeking – the ability to use up to 48 hours of sick leave to care for a family member. Finally, Pleasanton (40 hours) and Gilroy (50 hours) also have a substantially similar benefit to the one being sought by the Association. (Assoc. Exh. 228). As a result, there is ample justification for the Association's proposal.

ISSUE 36: FAMILY LEAVE

Summary: POA Proposal to increase the amount of sick leave available to care for a family member that is a part of the employee's household from 40 to 48 hours

Article 22.2 of the Memorandum of Agreement currently states:

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

(City Exhibit 36-1)

The Association proposes increasing the available sick leave from 40 hours to 48 hours, as follows:

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

(City Exhibit 36-1)

This proposal would bring consistency to the sick leave provisions and also is amply justified by the external comparative agencies, many of which are permitted to use 48 hours of sick leave to care for a member of the employee's household. (Assoc. Exh. 228.)

ISSUE 37: FAMILY LEAVE

Summary: Extend section to include domestic partners; clean up unnecessary language

The parties reached a tentative agreement on Article 22.3 of the Memorandum of Agreement, as follows:

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

The only remain question was whether the Association's proposal to delete the phrase "instead of the annual maximums set forth in paragraphs 22.1 and 22.2" should be deleted. That language was merely cleanup language. As a result of the tentative agreement reached, the Association hereby *withdraws* its proposal to eliminate that cleanup language.

ISSUE 38: SALARY SURVEY AGENCIES

Summary: POA Proposal to include a list of comparative agencies in the Agreement

Article 27.2 of the Memorandum of Agreement currently states:

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

(Assoc. Exh. 64)

Given that the City has established a practice of using different comparative agencies for different bargaining units and employee groups in the City, there is no single set of “same survey agencies” upon which the parties can rely. As a result, the Association proposes modifying the language to include the historic data set used for the police unit. Thus, the Association’s *final proposal* is to modify Section 27.2, as follows:

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.

(Assoc. Exh. 65)

As demonstrated by Association Exhibits 66 and 67 demonstrate, the specific survey agencies used by the City have morphed over time, and include multiple different compilations of agencies. Thus, it is no longer possible to identify a set of “same survey agencies” that are to

be used in accordance with Section 27.2. As a result, the *status quo* is no longer a viable provision.

In order to facilitate negotiations and avoid protracted processes such as were experienced in this most recent bargaining session, the Association believes that it is “important to identify the universe” through a data set of agencies for comparability. (TR 339-340) Indeed, the City has agreed to include specific (yet different) data sets of comparative agencies in both the Fire MOA (Assoc. Exh. 79-80), the Battalion Chief’s MOA (Assoc. Exh. 81) and the City Employees Association MOA (TR 341) Thus, the internal comparisons support similarly listing an identified set of comparison agencies in the police agreement.

The data set proposed by the Association is commonly referred to as the “Gilroy 9”. (TR 346) This is a data set that began with the use of the original “Gilroy 8”, during prior negotiations, evolved into the “Gilroy 12”, and then was reduced back to a more manageable set, the “Gilroy 9”. (TR 345-346)

The City proposes using the Fire data set for the police negotiations, but that is not an appropriate comparable list for salary survey cities due to the fact that Chico and Davis do not comport to the index factors on comparability in the same way as the Association’s proposed jurisdictions. (TR 348) More importantly, that is a data set tailored to provide a favorable outcome to Fire personnel, specifically due to the existence of a firefighter/paramedic classification which is used as a benchmark for that unit. (TR 348)

The Association developed its proposed list based on the standard criteria used for comparability purposes. First, it looked to the proximity of the agency from the Highway 101 corridor, and whether it is a local agency driven by tourism. (Assoc. Exh. 71). Next, it looked at the per capita revenue streams for each agency. (Assoc. Exh. 68-70) Based on that rankings

from per capita revenue, Neither Davis nor Chico are comparative agencies to San Luis Obispo. (Assoc. Exh. 70).

The Association also compared the size of the applicable police departments and the ratio of police officers per 1,000 in population. (Assoc. Exh. 72) Also considered were the crime statistics for each agency (Assoc. Exh. 73) and the median home prices (Assoc. Exh. 74 and 75). Using all these factors, it is clear that the data set proposed by the Association (the “Gilroy 9”) is contains more comparable jurisdictions than the City’s “Chico 9” or fire-centric list.

ISSUE 39: GRIEVANCE PROCEDURE

Summary: POA Proposal to provide final and binding arbitration for discipline

Article 31 of the Memorandum of Agreement does not currently provide for binding arbitration with respect to discipline appeals. The Association’s final proposal is to include the specific disciplinary appeals procedure, culminating in final and binding arbitration, in the Memorandum of Agreement, as follows:

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 his/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.

32.1 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.

(Assoc. Exh. 2)

The Association's proposal does two significant things: first, it codifies in one location all the rules and regulations pertaining to disciplinary actions. Presently, there is not a single location where all the information can easily be accessed by Association members. Rather, the provisions are spattered throughout the Municipal Code. (Assoc. Exh. 3)

Second, the section clearly establishes the same appeal provision as for contract grievances – the right to appeal to a hearing officer selected from a list provided by the State Mediation and Conciliation Service. The Association's proposal has the disciplinary appeal process handled through Article 31.7 of the Memorandum of Agreement, which states:

The employee will have five business days following receipt of the city administrative officer's decision to submit a written request to the human resource director for review of the decision. The human resource director will obtain a list of five potential hearing officers from the State Mediation and Conciliation Service. Then following a random determination of which party (city or appellant) begins, parties shall alternately strike one name from the list until only one remains.

(Assoc. Exh. 1)

This process will bring stability to the disciplinary appeals process and provide for uniformity of grievance handling within the unit, and conforms to the present industry standard.

ISSUE 40: FST WORK SCHEDULE

Summary: POA Proposal to define Field Service Technician (FST) work schedule as a 4/10 Schedule

Article 3.4 of the Memorandum of Agreement is silent as to the work schedule for employees in the Field Service Technician classification. However, Article 38 contains specific provisions concerning the work schedules for other classifications. The Association seeks to cure this oversight and presents its final proposal as follows:

38.4 Field Service Technicians Alternative Work Schedule shall be defined as a 4/10 work plan consisting of four days worked o 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.

(Assoc. Exh. 56 and 58).

The Field Services Technicians currently work a 9/80 schedule, with one of the FST's being off every Friday. (TR 193)

ISSUE 41: FST WORK SCHEDULE

Summary: POA Proposal for a paid 30 minute lunch

Article 38.4 of the Memorandum of Agreement currently states:

Field Service Technicians will be entitled to a thirty minute unpaid lunch break.

(Assoc. Exh. 56).

The Association's *final proposal* is to change that language to provide for a 30 minute paid lunch break, as follows:

A paid lunch period of thirty (3) minutes shall be provided subject to immediate emergency call back.

(Assoc. Exh. 58)

Like patrol officers who receive a paid lunch period, Field Services Technicians (FSTs) spend the majority of their time in the field handling various types of calls. (TR 193). The FSTs carry a radio, respond to calls, wear a uniform, and work in a marked patrol unit. (TR 193-194.)

The FSTs are subject to frequent call-backs during their lunch period. As testified to by John Caudill, the scheduled lunch period is frequently interrupted if there's a need to respond to a traffic accident or other call for service. (TR 196) Additionally, the FST lunch period is interrupted to provide replacement equipment to the on-duty police officers. FST Caudill testified:

We almost daily get interruptions at our door [during lunch], either equipment requests from officers, because a piece of equipment is either broke, needs replacement, they have a problem with their unit that needs to be addressed. They can't go back on patrol until it's looked at. We get calls from dispatch to help people in the lobby.

Up until recently, I was the only one in the Department certified to do child safety checks on the seats, and I got frequently interrupted during the lunch hour for a number of those, and still do....

(TR 195)

These frequent interruptions during the lunch break compel that the FST's be compensated for this thirty (30) minute period. Under the Fair Labor Standards Act, if an employee is not "completely relieved of duty" during meal periods, then Section 785.19 of the DOL's regulations require that the meal periods be paid. In order to be excluded from hours

worked under the FLSA, a meal period must be of at least 30 minutes in duration and must actually *be provided* to employees. In addition, employees who perform actual work during their meal periods, will usually have meal periods counted as “hours worked.”

ISSUE 42: INVESTIGATIONS WORK SCHEDULE

Summary: Paid thirty (30) minute lunch period for investigations personnel

Article 38.5 of the Memorandum of Agreement currently provides:

Investigations – Division Work Schedule

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.

(Assoc. Exh. 60)

The Association has proposed providing a paid lunch period for the investigations unit.

Therefore, its *final proposal* is, as follows:

Investigations – Division Work Schedule

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 ~~un~~paid lunch.

(Assoc. Exh. 60)

Members of the investigation unit remain on-call during their lunch period. As testified to be Charles Riedel:

We’re assigned a cell phone. Were assigned a detective car. And with the cell phone that we’re issued by the Department, you know, we’re to use it to contact witnesses, we have to be available for calls from the Department, for any issues that come up, any cases that arise during that [lunch] time period.

(TR 207) Detective Riedel testified that often the investigators are required to work through lunch when a case is assigned right at lunch time. Additionally, the detectives are routinely contacted by witnesses during the lunch period, because that's when the witness is free to return a detective's call. (TR 208)

These requirements that the investigations unit remain available to respond to calls and witnesses during lunch, along with the frequent interruptions during the lunch break, compel that the detectives be compensated for this thirty (30) minute period. Under the Fair Labor Standards Act, if an employee is not "completely relieved of duty" during meal periods, then Section 785.19 of the DOL's regulations require that the meal periods be paid. In order to be excluded from hours worked under the FLSA, a meal period must be of at least 30 minutes in duration and must actually *be provided* to employees. In addition, employees who perform actual work during their meal periods, will usually have meal periods counted as "hours worked."

ISSUE 43: INVESTIGATIONS WORK SCHEDULE

Summary: City proposal to include briefings as part of the work day

The City has proposed including roll-call briefings as part of the work day for investigations personnel. The Association reserves the right to respond to this proposal after it sees the final proposal submitted by the City.

ISSUE 44 APPENDIX CLEAN-UP

Summary: City proposal to delete or incorporate language from Appendices C through F into appropriate articles in the MOU

Tentative agreement reached on December 21, 2007 that would incorporate all appendices except D, which pertains to the Flexible Benefit Plan. Appendix D would remain, but the other appendices would be incorporated as proposed in City Exhibit 44-1 through 44-13.

CONCLUSION

Based on the foregoing, the San Luis Obispo Police Officers Association respectfully requests that this Arbitrator decide each issue by selecting the Association's final proposals on each of the above-listed items.

Dated: February 22, 2008

Respectfully Submitted,

BERRY | WILKINSON | LAW GROUP

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Attorneys for San Luis Obispo Police Officers
Association

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