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SAN LUIS OBISPO POLICE OFFICERS ASSOCIATION

IN CHARTER SECTION 1107 ARBITRATION PROCEEDINGS

BEFORE MATTHEW GOLDBERG

IN THE MATTER OF A CHARTER SECTION 1107)
ARBITRATION PROCEEDING BETWEEN THE)
)
)
San Luis Obispo Police Officers Association)
)
and the)
)
City of San Luis Obispo)
)
)
_____)

HEARING DATES:
October 15 and 16, 2007
December 17 – 21, 2007

FINAL PROPOSALS AND REBUTTAL ARGUMENTS

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 parties agreed that the process for so doing included initial final proposals, and then rebuttal arguments from each party.

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

FINAL PROPOSALS AND REBUTTAL ARGUMENT

ISSUE 1: TERM

ASSOCIATION'S FINAL PROPOSAL:

ARTICLE 47: TERM OF AGREEMENT

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

REBUTTAL ARGUMENT:

While the Association and the City agree that a four-year contract term is appropriate, the language proposed by the Association should be adopted rather than the City's proposal because the Association's language is consistent with that which has historically been used in the contract. In contrast, the City's proposed language diverts significantly from the *status quo*. Having presented no evidence as to why language diverting from the *status quo* should be adopted, the City has failed to meet its burden of proof that the modification is necessary and appropriate.

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.

The Association's proposed language simply substitutes the previous effective and expiration dates with the new effective and expiration dates, as follows:

This Agreement shall become effective ~~July 1, 2004~~ **January 1, 2006** and shall continue in full force and effect until expiration at midnight, ~~December 31, 2005~~ **December 31, 2009**.

The City's proposed language diverts from the *status quo* by setting the effective date as the Agreement "is formally approved by the City Council or ten (10) days after an arbitration award is issued, whichever is later..." The proposed language is fatally flawed as it would not create a seamless transition of contract terms. The practical effect of the City's proposal would be to create a gap between the end of the prior contract and the start of the successor contract, i.e., from January 1, 2006 until sometime in mid-2008. In so doing, the City seeks to shorten the term of the agreement from four years to less than two. Thus, because the language proposed does not comport with its stated purpose of creating a four year contract term, it should be rejected.

Moreover, the City submitted no evidence during the arbitration hearing that would support the language presented in its final arguments. Indeed, the final proposal presented by the City is markedly different from that previously submitted during the arbitration hearing. The City, having presented no evidence during the hearing to support the modified prefatory language, has utterly failed to support its final proposal with evidence as to why the shift from the *status quo* is appropriate and necessary.

In contrast, and in an effort to meet on common ground wherever possible, the Association submitted as its final proposal language that was identical to that on which the City presented evidence during the arbitration hearing. (See City Exhibit 1-1).

It is clear that the City's purpose in modifying the language from its original proposal is that it seeks to blend Issue 1 (Term) with Issue 2 (Retroactivity). Not only does the City's proposed language give it two bites at the retroactivity apple, but it could also potentially create an internal conflict within the Agreement if the City's final proposal on Issue 2 is not adopted.

ISSUE 2: RETROACTIVITY

ASSOCIATION'S FINAL PROPOSAL:

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. . . .

REBUTTAL ARGUMENT:

The Association's final 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) in order to effectuate the purpose of Article 1.1, which is to identify the beginning date of the Agreement.

The City misrepresents the Association's proposal when it states that the Association's language seeks to make *all* provisions of the agreement retroactive. That is incorrect. The Association and the City have reached a number of tentative agreements that have effective dates *after* the term of the agreement commences. None of that is changed by the final proposal presented by the Association. Provisions of the Agreement that cannot or should not be implemented retroactively are reflected with alternate effective dates.

The City argues that the *status quo* should be altered because certain provisions of the Agreement cannot be retroactively implemented. However, that argument is being made in a vacuum because the City failed to present any evidence during the hearing to show that there are any sections of the agreement that are the subject of pending controversies where retroactivity might be at issue.

Moreover, the City's argument has a major flaw: it ignores the fact that the grievance procedure requires that the employee notify his or her supervisor "*within 15 business days of the occurrence of the grievance.*" Thus, even if a revised provision of the Agreement were to be

enacted as a result of any arbitration award being issued, a grievance seeking retroactive application would be untimely since the incident giving rise to the grievance would have occurred more than fifteen (15) days prior to the operative date on which the contract agreement was finalized. Thus, the City's argument is nothing other than a manipulative effort to create uncertainty by crafting an illusory issue that has no tangible connection to the realistic and practical consequences of the proposal.

ISSUE 3: RETROACTIVITY (Preamble)

ASSOCIATION'S FINAL PROPOSAL:

No change to the current language or practice.

REBUTTAL ARGUMENT:

The City has proposed a change to the *status quo*, in that it seeks to add a new subsection to the Memorandum of Agreement making it 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, thereby excluding anyone who left City employment during the period that the contract remained unresolved. 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.

In its Final Argument, the City opines that it "would be extremely burdensome" to "track down each former employee." But, the City failed to introduce any evidence whatsoever during the hearing to support this argument.

Remarkably, in its Final Argument the City appears to have forgotten that it proposed this new contract language and, that it bears the burden of proof on this proposal. Apparently

forgetting that this proposal was proffered by the City, not the Association, the City argues that its review of comparable agency agreements “has not revealed any other agency that includes such a proposal in its contract.” Thus, it is clear that there is no external data supporting implementation of this proposal, and the City has failed its burden of proof.

The City’s improper effort to shift the burden of proof on this issue is further reflected in its statement that: “The Association has not put forward any evidence demonstrating why the City should be required to utilize City finances to compensate those who were fired or resigned.” (City’s Final Argument at p. 4)

The Association was not required to introduce any evidence to support the *status quo*; rather, the City was required to introduce evidence demonstrating why the *status quo* should be changed. Thus, the City – not the Association – was obligated to introduce evidence with respect to the financial savings that would occur as a result of its proposal and/or the “undue burden” that will result if this proposal is not adopted. But, the City did not introduce a scintilla of evidence supporting these arguments. Indeed, there is no evidence in the record that even identifies the number of employees impacted by the City’s proposal. Thus, it is nothing other than sheer speculation as to whether there is one single employee that the City would be required to track down and pay, or one-hundred such employees. Consequently, the City has utterly failed to meet its burden of proof on this issue and the *status quo* should be maintained.

ISSUE 4: SALARY

ASSOCIATION'S FINAL PROPOSAL:

Section 7.1 Rules Governing Salary Increases

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 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 **6**). Steps 1 through **6** equals 95% of the next highest step, computed to the nearest \$1.00.

REBUTTAL ARGUMENT:

The City argues that the Association put forward no evidence supporting this change. That is incorrect. The Association placed ample evidence into the record demonstrating that the City historically utilized a five step salary range for the police classification. (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.)

During the previous interest arbitration settlement resulting in the 2000-2004 MOA, the City agreed to compress what were then 9 steps for police officer to 7. Most police officers

moved upwards two full steps. The POA proposal is the final incremental return to the industry standard of 5 steps for police officer with the 6th step reserved for MPO or Corporal equivalent."

The City further argues that the proposal is not supported by the comparables. That is also incorrect. 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

ASSOCIATION'S FINAL PROPOSAL:

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.

REBUTTAL ARGUMENT:

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.)

Contrary to the City's argument, enacting a "benchmark" would not prevent similar equity adjustments if, in the future, a particular classification falls below the market-level. A benchmark is simply a base line upon which all else is measured. Indeed, the dictionary

definition of the term “benchmark” is “a standard of excellence, achievement, etc., against which similar things must be measured or judged” See, *The American Heritage® Dictionary of the English Language, Fourth Edition*. Houghton Mifflin Company, 2004. 16 Mar. 2008.

<Dictionary.com <http://dictionary.reference.com/browse/benchmark>>. Thus, the benchmark is nothing more than a measure to evaluate the current market in which applicable raises should be evaluated, not a ceiling on that which can be imposed or agreed.

ISSUE 6: SALARY INCREASES – SWORN

ASSOCIATION’S FINAL PROPOSAL:

2006		
January 1, 2006	5.28%	Sworn Classification (Police Officer)
	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

REBUTTAL ARGUMENT:

Contrary to the City's argument, the Association's proposal for sworn salary increases is not fatally flawed. The Association has submitted a final offer on the remaining issue in dispute – the salary increases to be provided to sworn employees – that can be independently adjudicated. What the Association has not done is to capitalize on the issue by issue submissions to obtain a windfall or an excessive salary increase for sworn employees.¹

While the Association has projected that a 10.82% salary increase is necessary for all classifications in order not to further erode its market position, but, in fairness and reasonableness, it offset the sworn proposal by 5.54% and instead proposed only a 5.28% raise should the Education Incentive program is extended to sworn employees through the adoption of Issue #20. Since in its Final Proposal the City has agreed to extend the Education Incentive to the sworn classification², the issue can be decided as submitted and the offset will automatically be applied. Consequently, the Association has removed the asterisk from its proposal.³

¹ Had the Association wished to manipulate this issue-by-issue arbitration process to its economic advantage, it would have simply accepted the City's proposal on Education Incentive (thereby guaranteeing a 5.26% increase for some of its members albeit not as many than would be entitled with the POST certificates included), dropped the contingency on the salary proposal, and reinstated the 10.82% original proposal without the offset. However, the Association opted not to do that as such a manipulation would have resulted in a salary package well above that which is its target goal: the top quartile.

² The City and the Association both agree that the Education Incentive should be applied to sworn officers, but disagree as to the specific length of the retroactive benefit (January 2006 versus 2007) and the criteria used (i.e., the inclusion of POST certificates or college degrees alone), there remains no further dispute over whether the offset is appropriate.

³ Notably, the Association has removed the asterisk regardless of whether it is the City's final proposal or the Association's final proposal that is adopted, even though substantially fewer employees will qualify for the education incentive benefit under the City proposal (which applies only college degrees) than under the Association proposal (which applies to both college degrees and POST certificates).

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 proffered during the arbitration hearing.

As shown by the evidence presented, 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

The Association’s proposal phases in the goal of reaching the top quartile of the comparable jurisdictions. Using standard total compensation data, the January 2006 proposed salary increase adjusts the Association’s position in the market to slightly above the *average* of the Gilroy 9 data set, comfortably above the average but below the top quartile in the combined

data set, and in the top quartile of the Chico 9/Fire set propounded by the City. This was 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

In contrast, the City’s final proposal for salary adjustments in 2006 (3% in January 2006 and 2% in July 2006) artificially delays and compresses the salaries paid to San Luis Obispo officers. In the first half of the year, including the applicable education incentive from Issue #20 and using the City’s proposed wage increase, sworn personnel would remain well below average on the Gilroy 9 data set, and only slightly above the average on the Chico9/Fire and Combined data sets, as follows:

Market position as of January 1, 2006 using the City's proposed 3% raise:

Salary	Jan -06 Increase	New Salary	Health	Ed (5.26%)	Uniform	Total
6,226	3.00%	6,413	1,152	345	83	7,993

GILROY 9	
Gilroy	9274
Pleasanton	8612
85th Percentile	8598
Napa	8542
75th Percentile	8542
Santa Barbara	8188
Average	8102
Santa Cruz	8049
Median	8049
San Luis Obispo	7993
Salinas	7950
Monterey	7453
Petaluma	7556
Santa Maria	7301

CHICO 9	
Pleasanton	8612
Napa	8542
85th Percentile	8443
Santa Cruz	8049
75th Percentile	8049
San Luis Obispo	7993
Salinas	7950
Average	7728
Petaluma	7556
Median	7556
Monterey	7453
Chico	7344
Santa Maria	7301
Davis	6748

COMBINED	
Gilroy	9274
Pleasanton	8612
85th Percentile	8577
Napa	8542
75th Percentile	8365
Santa Barbara	8188
Santa Cruz	8049
San Luis Obispo	7993
Salinas	7950
Median	7950
Average	7911
Petaluma	7556
Monterey	7453
Chico	7344
Santa Maria	7301
Davis	6748

When the City's proposed July 2006 is implemented, San Luis Obispo's market position adjusts slightly more towards the goal of the Association's 2006 wage proposal, but not completely:

Salary	Jul – 06 Increase	New Salary	Health	Ed (5.26%)	Uniform	Total
6,413	2.00%	6541	1,152	345	83	8121

GILROY 9	
Gilroy	9274
Pleasanton	8612
85th Percentile	8598
Napa	8542
75th Percentile	8542
Santa Barbara	8188
San Luis Obispo	8121
Average	8102
Santa Cruz	8049
Median	8049
Salinas	7950
Monterey	7453
Petaluma	7556
Santa Maria	7301

CHICO 9	
Pleasanton	8612
Napa	8542
85th Percentile	8443
San Luis Obispo	8121
Santa Cruz	8049
75th Percentile	8049
Salinas	7950
Average	7728
Petaluma	7556
Median	7556
Monterey	7453
Chico	7344
Santa Maria	7301
Davis	6748

COMBINED	
Gilroy	9274
Pleasanton	8612
85th Percentile	8577
Napa	8542
75th Percentile	8365
Santa Barbara	8188
San Luis Obispo	8121
Santa Cruz	8049
Salinas	7950
Median	7950
Average	7911
Petaluma	7556
Monterey	7453
Chico	7344
Santa Maria	7301
Davis	6748

If the City's proposal for 2006 is adopted, it would ultimately result in a total compensation adjustment for the year 2006 that is slightly under that proposed by the Association. Specifically, the Association's proposal for a 5.28% increase results in a total compensation package beginning in January 2006 at \$8135; whereas the City's proposed staggered raise results in the officers earning \$143 less in total compensation at the end of the initial six month period (\$7993 versus \$8135) and \$14 less in a total compensation package during the second half of the year. (\$8121 versus \$8135).

While these dollar value differences may seem slight in the first year of the contract, they become incredibly significant in the second year of the contract.

After implementing the January 2006 wage increase (whether the one proposed by the City or the one proposed by the Association), in order for the Association to reach its goal of the top quartile for the calendar year 2007 would require a total salary adjustment of 12%. (TR 686-687). In order to reduce the cost of that proposal, the Association’s final 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

In marked contrast stands the City's 4% proposal going into effect in July 2007, which places the Association well below average on all the comparable jurisdiction lists:

July 06 Salary	July 07 Increase	New Salary	Health	Ed (5.26%)	Uniform	Total
6413	4.00%	6670	1,152	345	83	7905

GILROY 9	
Gilroy	9644
Pleasanton	9040
Santa Barbara	9033
Napa	8761
Median	8599
Santa Cruz	8599
Average	8560
Salinas	8292
Petaluma	8206
Monterey	8126
San Luis Obispo	7905
Santa Maria	7341

CHICO 9 / Fire List	
Pleasanton	9040
Napa	8761
Santa Cruz	8599
Salinas	8292
Median	8206
Petaluma	8206
Average	8161
Monterey	8126
San Luis Obispo	7905
Chico	7629
Davis	7455
Santa Maria	7341

COMBINED	
Gilroy	9644
Pleasanton	9040
Santa Barbara	9033
Napa	8761
Santa Cruz	8599
Average	8375
Salinas	8292
Median	8292
Petaluma	8206
Monterey	8126
San Luis Obispo	7905
Chico	7629
Davis	7455
Santa Maria	7341

Thus, the City's statement that its salary offer places the Association at a position "comfortably above average" (City's Brief at p. 8) on "any list that has been used" is patently incorrect because, in reality, the City's proposal for the second year (2007) places the Association *well below average* using *all* of the comparable data sets.

Both the City and the Association have proposed 5% increases for years 2008 and 2009, with the main difference being whether the increases are implemented in January (Association) or July (City). Both proposals are clearly designed to keep the Association in the market position established in year 2 of the contract because the data available for the comparison cities into 2008 and 2009 is not complete.

In evaluating which proposal is most appropriate, it is clearly the second year that is the deciding factor. Indeed, it will mean the difference between being competitive at the top quartile, or well below the market average.

As set forth in the Association's opening brief, being positioned in the top quartile of the comparative agencies is appropriate for multiple reasons. First, it is critical to recruitment and retention, and to avoid market erosion. Additionally, San Luis Obispo police officers do not receive specialty or shift differential pay at the same frequency as the comparative agencies. Third, San Luis Obispo is oft-reported as one of the least affordable areas to live in the nation. 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 using similar costing. (TR 445; Assoc. Exh. 86.)

The City's proposal should be rejected as its arguments in support are fundamentally flawed. First, as shown above, it is based on a false assumption – that it places the Association

“comfortably above average”. In reality, it places the Association *well below average* on all of the comparative lists.

Second, the City claims it is internally appropriate because the percentage raises offered are similar to those provided to other bargaining groups. But, just looking at the pure percentages is deceiving. Fire is in the top quartile of its comparative agencies, and only requires a minimal adjustment to stay there, whereas the Police require a significant adjustment to reach the same goal. Thus, the City is comparing apples to oranges. Since the City presented no evidence identifying whether the Police Association was similarly situated in placement on the comparative lists, its argument that similar percentage adjustments are required fails.

The City further claims its pay raise is justified because it does not have a recruitment and retention problem. (City’s Brief at p. 9.) Even assuming that to be true, it is undisputed that there is a state-wide recruiting and retention problem for the law enforcement field, which is supported by the City’s own analysis of the comparative data, which it characterized as follows:

Some of the anecdotal information gathered from other agencies reflects problems with retention and recruitment. For example, Monterey reported that it lost 12 officers to other agencies from 2006-2007. Santa Barbara reported that it lost 10 officers to other employers in 2006. Santa Cruz, which has only 94 sworn personnel, reported that it currently has 17 sworn vacancies and that it has instituted a \$10,000 referral fee to help recruit additional officers.

(City’s Brief at p. 9)

Using these three City-chosen agencies for comparison, San Luis Obispo’s salaries are below Santa Barbara but above both Santa Cruz (which hovers at the average) and Monterey (which hovers below the average). Under the Association’s proposal, San Luis Obispo would maintain its market position with respect to these agencies. But, if the City’s proposal is adopted, San Luis Obispo would drop well below the average, and well below even the lowest

paid of these agencies. Thus, by so dramatically altering the Association’s position in the market, it is reasonable to forecast that the significant recruiting and retention problems suffered by these comparable agencies are only a hair’s breadth away from occurring in this agency.

ISSUE 7 SALARY INCREASES – NON-SWORN

ASSOCIATION’S FINAL PROPOSAL:

2006		
January 1, 2006	5.28%	Sworn Classification (Police Officer)
	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

REBUTTAL ARGUMENT:

The Association's proposal for a 10.82% salary increase for non-sworn classification is both fair and reasonable, and achieves the Association's ultimate goal of bringing the wages paid to the members of the San Luis Obispo Police Department into the top quartile of the comparison cities proffered during the arbitration hearing.

As shown in response to Issue # 6, 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"). The Association's proposal phases in its stated goal by moving first to just slightly above the *average* in 2006, and then reaching the top quartile in 2007, and then projecting raises in 2008 and 2009 that will maintain that position. All the arguments detailed in Issue #6 are hereby incorporated by reference as though fully set forth.

As identified in response to Issue #6, the City's proposed salary increases would place the Association well below average in 2007, creating an impossible hole out of which the Association would not ever be able to climb. Indeed, the City's proposal for the second year (2007) places the Association well below average using *all* of the comparable data sets. Thus, the City's statement that its salary offer places the Association on "any list that has been used" at a position "comfortably above average" (City's Brief at p. 8) is patently incorrect.

The City further claims its pay raise is justified because it does not have a recruitment and retention problem. (City's Brief at p. 9.) As stated in response to Issue #6 and incorporated herein by reference, even assuming that to be true, the City's own analysis of the comparative data proves the recruitment problem that exists in the comparative jurisdictions of Santa Barbara,

Monterey, and Santa Cruz. (City's Brief at p. 9) As it presently stands, San Luis Obispo's salaries are below Santa Barbara but above both Santa Cruz (which hovers at the average) and Monterey (which hovers below the average). Under the Association's proposal, San Luis Obispo would maintain its market position with respect to these agencies. But, if the City's proposal is adopted, San Luis Obispo would drop well below the average, and well below even the lowest paid of these agencies. Thus, by so dramatically altering the Association's position in the market, it is reasonable to forecast that the significant recruiting and retention problems suffered by these comparable agencies are only a hair's breadth away from occurring in this agency.

The City argues that there is no justification for a 10.82% raise for the non-sworn classification in the first year of the contract -- 2006. As shown above, that amount is justified as being of the equivalent value of the non-sworns who are getting a part of their adjustment through the education incentive. Thus, equity and fairness compels the higher amount for the non-sworn classification.

Additionally, the higher adjustment is appropriate due to the severe staffing problem facing the non-sworn Communications Technician classification. Attracting and maintaining qualified communications technicians has become such a problem that the City authorized over hiring and, 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) Thus, the failure to provide competitive salaries would only make the already severe staffing crisis worse.

The City claims that the raises presented in the Communications Technician classification would end up 0.40% above the average by July 2007. (City Exhibit 7-15.) However, as shown during the testimony and through Association Exhibit 225, the City has “joked its stats” by not including in the calculations the salaries paid to three of the nine Fire comparative agencies: Monterey, Salinas, and Santa Cruz. Once those agencies are factored into the equation, the City’s wage proposal drops to 2% below the average as of July 2007.

City’s Calculation:
(City Exh. 7-15)

Chico	5689
Davis	6134
Monterey	
Napa	6576
Petaluma	6799
Pleasanton	7754
Salinas	
Santa Cruz	
Santa Maria	5432

Average:	6397
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City Proposal:	6423
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Percent from the Average	0.40%
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Association’s Calculation:
(Assoc. Exh. 225)

Chico	5689
Davis	6134
Monterey	7021
Napa	6576
Petaluma	6799
Pleasanton	7754
Salinas	7021
Santa Cruz	6404
Santa Maria	5432

Average:	6537
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City Proposal:	6423
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Percent from the Average	-2%
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(Association Exhibit 225.)

Contrary to the City’s argument, the 10.82% salary increase is necessary to keep the Communications Technician position competitive. As further shown by Association Exhibit

225, by November 2007 the Communications Technician classification will have fallen well below average using both the Gilroy 9 and Fire/Chico 9 data sets:

Ranking as of November 2007 with City's Proposed Increases:

CHICO 9	
Pleasanton	8,249
Salinas *	7,021
Monterey *	7,021
Petaluma	6,843
Average	6,797
Napa	6,712
Santa Maria	6,594
Davis	6,565
San Luis Obispo	6,423
Santa Cruz (SCCECC)	6,404
Chico	5,760

GILROY 9	
Pleasanton	8,249
Gilroy	7,781
Salinas *	7,021
Monterey *	7,021
Average	6,973
Petaluma	6,843
Napa	6,712
Santa Maria	6,594
San Luis Obispo	6,423
Santa Cruz (SCCECC)	6,404
Santa Barbara	6,129

Average
6797
-374
-6%

(6% below Average)

Average
6,973
-550
-9.00%

(Association Exhibit 225.) Based on the above, it is clear that the City's argument that its proposal "meets the average" and is "fair" when considered against the external comparisons is patently incorrect. (See, City's Brief at p. 12)

There is absolutely no justification for dropping the Communications Technician classification to 6% below the average on the City's hand-picked list. As a result, the City's proposal must be rejected.

ISSUE 8: MASTER POLICE OFFICER

TENTATIVE AGREEMENT:

The parties are in accord, and therefore a tentative agreement has been reached, that the language of Article 8.4 should be modified as follows:

8.4 Master Police Officer

1. One full year at Step 6⁴ 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. 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.

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.

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

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 7⁵.

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.

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)

ASSOCIATION’S FINAL PROPOSAL:

8.4 Master Police Officer

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

REBUTTAL ARGUMENT:

Without question, the distinction between the City’s proposal that this section be effective “the date this Agreement is formally approved by the City Council or an arbitration award is issued” and the Association’s proposal that it be effective January 1, 2006 is *de minimis* – 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)

⁵ If the Arbitrator grants Issue 4 in favor of the Association, the “7” referenced here would have to be changed to “6”

The City's argument is that retroactivity of the benefit should be denied because it is Officer Dunn's own fault that he did not qualify for Master Police Officer sooner. The City misses the point. The purpose of this provision is not to punish individuals for the career choices made, but to expand the availability of the benefit to those who have achieved the skills, experiences, and education that qualifies them to be a Master Police Officer, even if one of the specialty assignments was performed at a prior agency.

ISSUE 9: OVERTIME – SWORN

ASSOCIATION'S FINAL PROPOSAL

Proposals **WITHDRAWN** by both parties.

REBUTTAL ARGUMENT:

In the Final Proposals submitted on February 22, 2008, the Association **WITHDREW** its proposal to modify the manner in which overtime is calculated, and the City **WITHDREW** its counter-proposal on this issue. Consequently, this issue no longer requires adjudication and the *status quo* must be maintained.

Any attempt by the City in its rebuttal arguments to reinstate its prior proposal would be improper. Moreover, the City did not meet its burden of proof with respect to its withdrawn proposal to calculate overtime using the FLSA *de minimis* standard. Other than veiled references to the donning and doffing litigation brought by the Association, the City produced no other evidence demonstrating that there was a need to change the current overtime practices. Since that FLSA litigation settled and includes provisions that post-shift overtime be calculated in accordance with the current practice, there is no justification for the change. Indeed, permitting the City to reinstitute its prior proposal and then granting it would run counter to the negotiated settlement agreement.

Moreover, imposition of the *de minimis* standard would create considerable confusion. Supervisors would have no clear guidelines to follow, and overtime would be managed on a case-by-case basis. In other words, the granting of overtime would be subject to the ability of each supervisor to understand the *de minimis* standard and would be based on an individual supervisor's subjective interpretations of the *Lindow* case which was submitted by the City as Exhibit 9-6.

ISSUE 10: COMPENSATORY TIME – SWORN

The Association **ACCEPTS** the City's revised final proposal increasing the maximum accrual of compensatory time from eighty (80) hours to one hundred (100) hours, and **WITHDRAWS** its proposal to increase the maximum accrual of compensatory time to one hundred twenty (120) hours.

ISSUE 11: COURT TIME – SWORN

The Association **ACCEPTS** the City's final proposal.

ISSUE 12: COURT TIME – SWORN

ASSOCIATION'S FINAL PROPOSAL:

No change to the current language or practice.

REBUTTAL ARGUMENT

The City has failed to meet its burden of proof that a change to the *status quo* is warranted. 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.

Noticeably missing from the City's argument is any identifiable reason why it is appropriate to have a disparity between the ranks when performing identical work. The City steadfastly avoids the fact that that it recently closed the collective bargaining agreement with the Staff Officers Association where it did not propose, let alone implement, a similar reduction in court overtime for the sergeants. (TR 739-740.) As a result, if the City's proposal is adopted, a sergeant who appears telephonically would receive the three hour overtime minimum, but a rank-and-file police officer would receive pay only for the actual hours worked. Such a disparity runs counter to the City's argument that through its proposal "officers will receive fair compensation" for the DMV telephonic appearances.

Further, the City's proposal steadfastly ignores the inconveniences and burdens placed on officers who are required to be available to testify at a DMV hearing, even telephonically. The only real difference between DMV telephonic appearances and regular court appearances is attire. Since the City is of the opinion that getting dressed for work is a *de minimis* task, this argument fails.

Moreover, there is no fundamental difference between a telephonic and regular court appearance for a graveyard officer – the officer must still remain awake and ready to perform the task. As demonstrated thorough the evidence presented at the hearing and in the Association's final arguments, a graveyard officer would still have to alter his normal sleep pattern to accommodate the telephonic appearance, which substantially interferes with the ability to get sufficient rest before being required to report to work at 7:00 p.m. that day. (TR 746-750.) It is precisely this type of inconvenience that the court call back pay was designed to address. Thus, the *status quo* should be maintained.

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's proposal should not be adopted.

ISSUE 13 OVERTIME ASSIGNMENT – SWORN

ASSOCIATION'S FINAL PROPOSAL:

No change to the current language or practice.

REBUTTAL ARGUMENT

The City's argument in support of its proposal to modify the manner in which non-emergency overtime is assigned is that the Association has erred by balancing its priorities in the interests of seniority. To the contrary: it is the Association's position that modifying the seniority system should only occur when there is a tangible, demonstrated reason to do so. Because the City has utterly failed its burden of proof and seeks to correct a non-existent problem, the seniority system should not be discarded.

The only "proof" cited by the City in support of this change to the *status quo* was the testimony provided by Captain Parkinson. (City's Brief at p. 21) However, Captain Parkinson did not cite a single instance in which a less senior officer was "overburdened" with overtime obligations, or in which a less senior officer would have benefited by this provision. Indeed, a review of the portion of the transcript cited, pages 868-869, shows that the testimony only spoke in generalities and that not a single instance was cited where an individual officer complained about or was negatively impacted by the current system.

The City further argues that the proposal is necessary to address "the safety concerns that arise when officers are ordered to work overtime shifts that are opposite their current schedules." (City's Brief at p. 21.) Again, the City failed to present any evidence whatsoever to support this

argument. It did not cite to a single instance in which an officer was ordered to work an overtime shift that was the opposite of his or her current schedule, let alone that it created a safety risk. The reason no evidence was put on: because none exists. Rather, the evidence demonstrated the exact opposite: that the City routinely permits officers to sign up for voluntary overtime opposite their regular shift thereby demonstrating that their safety risk argument is an illusory justification unsupported by actual practice.

Nor did the City cite to a single instance in which an officer appeared at work so tired or overburdened that he or she was unable to perform the overtime shift. The City has a longstanding requirement that officers must be given at least ten hours rest between shifts. (TR 882-84; City's Brief at p. 22). These factors have been sufficient to mitigate the purported problem and demonstrate that the City's proposal is completely unnecessary.

Finally, adoption of this proposal would create an inequity between sworn and non-sworn employees. Currently, the overtime assignment provisions of the Memorandum of Agreement are identical. The City originally submitted identical proposals changing the non-emergency overtime shift sign-up provisions for both sworn and non-sworn employees. The City in its Final Proposals and Arguments WITHDREW the identical provision for non-sworn employees (Issue #18; See City's Brief at p. 27), but left it intact for sworn employees. The City has presented no evidence supporting a difference in treatment between classifications.

For the foregoing reasons, the City has failed to meet its burden of proof on this issue and, as a result, the proposed change to the *status quo* should be rejected.

ISSUE 14: OVERTIME – NON-SWORN

ASSOCIATION’S FINAL PROPOSAL

Proposals **WITHDRAWN** by both parties.

REBUTTAL ARGUMENT:

In the Final Proposals submitted on February 22, 2008, the Association **WITHDREW** its proposal to modify the manner in which overtime is calculated, and the City **WITHDREW** its counter-proposal on this issue. Consequently, this issue no longer requires adjudication and the *status quo* must be maintained.

Any attempt by the City in its rebuttal arguments to reinstate its prior proposal would be improper. Moreover, the City did not meet its burden of proof with respect to its withdrawn proposal to calculate overtime using the FLSA *de minimis* standard. Other than veiled references to the donning and doffing litigation brought by the Association, the City produced no other evidence demonstrating that there was a need to change the current overtime practices. Since that FLSA litigation settled and includes provisions that post-shift overtime be calculated in accordance with the current practice, there is no justification for the change. Indeed, permitting the City to reinstate its prior proposal and then granting it would run counter to the negotiated settlement agreement.

Moreover, imposition of the *de minimis* standard would create considerable confusion. Supervisors would have no clear guidelines to follow, and overtime would be managed on a case-by-case basis. In other words, the granting of overtime would be subject to the ability of each supervisor to understand the *de minimis* standard and would be based on an individual supervisor’s subjective interpretations of the *Lindow* case which was submitted by the City as Exhibit 9-6.

ISSUE 15 OVERTIME – NON-SWORN

ASSOCIATION’S FINAL PROPOSAL:

Section 11.3 COMPENSATION

A. Overtime hours shall, at the employee’s option, be compensated in cash at time and one-half the employee’s regular rate of pay or in time off compensated at time and one-half. Maximum accrual of compensatory time shall be ~~480~~ **360** hours for Communications Technician and 240 hours for all other non-sworn classifications

REBUTTAL ARGUMENT

The City has proposed a 50% reduction (from 480 to 240) in the number of compensatory hours that Communications Technicians can accumulate, but has utterly failed to articulate why, even though “nothing has changed” (TR 903), that would justify reversal of the Agreement to increase the cap from 240 to 480 that was negotiated just two years ago. As set forth in the Association’s opening brief, 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)

Even though the exact same staffing issues exist now, the Association recognizes the concern the City has related to the liability such a large accrual creates, both in potential unfunded costs and also the potential impact on staffing. Thus, in an effort to meet the City half-way, the Association has modified its proposal to split the difference, and reduce the maximum compensatory time off accrual to 360 hours from 480 hours.

Such a compromise is preferable over the City’s proposal, which would negatively impact the one Association member who has accrued over the 240 cap proposed by the City: Shaana Lichty. As testified to at the hearing, Ms. Lichty works long hours in order to assist in the staffing crisis, and that has been tolerable based on the promise that she will be able to take

additional time off in the future when the staffing crisis has been averted. The City now seeks to renege on its original incentive for Ms. Lichty to work so hard – the increased accrual maximum negotiated in 2004 – and reward her hard work by prohibiting her from accruing additional time and requiring her to cash out that which she has already accumulated over the maximum. By adopting the Association’s final proposal as presented herein, that disturbing and punitive result can be averted while still assisting the City in controlling its unfunded liability.

ISSUE 16: OVERTIME NON-SWORN

Because the City **WITHDREW** this proposal in its Final Proposals and Arguments, no rebuttal argument is necessary.

ISSUE 17 OVERTIME NON-SWORN

ASSOCIATION’S FINAL PROPOSAL

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

REBUTTAL ARGUMENT

The City’s final argument with respect to this provision states: “The issues raised by this provision are identical to the issues raised under Issue #11. Accordingly, the City incorporates by reference its Final Argument for Issue # 11.” (City’s Brief at p. 26)

The only problem is that the proposed language is not the same between Issue #11 and Issue #17. The language the City presented in connection with Issue #17 states:

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

starts at scheduled subpoena time and ends at the conclusion of the employee's testimony.

However, the language the City presented in connection with Issue #11 states:

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

The differences are substantial. The City's proposal in Issue #17 is fully retroactive, where the City's proposal in Issue #11 is not. Moreover, the proposed language in Issue #17 contains the odd and completely out of place statement that "Work time starts at scheduled subpoena time and ends at the conclusion of the employee's testimony." No evidence or argument supports that phrase and the only logical conclusion is that it was mistakenly inserted.

That being said, in response to Issue # 11 the Association **ACCEPTED** the City's final proposal. Since the Association agrees that Issues #11 and #17 are identical, it has presented its own final proposal identical to that accepted in response to Issue # 11.

ISSUE 18 OVERTIME NON-SWORN

Because the City **WITHDREW** this proposal in its Final Proposals and Arguments, no rebuttal argument is necessary.

ISSUE 19: EDUCATION INCENTIVE

ASSOCIATION'S FINAL PROPOSAL:

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

- A. BASIC BENEFITS. Education incentive pay shall not begin until one year after employment with the City of

San Luis Obispo, but credit will be given for approved education obtained prior to that time. Effective January 1, 2006, the basic benefit for ~~employees hired prior to July 1, 1984~~, 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)

REBUTTAL ARGUMENT:

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.

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.*

Although the City argues that including POST certificates would undermine its education goals, noticeably absent from its evidence is any data concerning whether the inclusion of POST certificates would increase the availability of the benefit to Association members. Moreover, as shown by Association Exhibit 125, it is not possible to achieve an Intermediate or Advanced POST Certificate without completing a requisite amount of education coupled with on-the-job experience. The inclusion of “Education Points” along with experience has transformed the Intermediate and Advanced POST Certificate process into one that encourages sworn personnel to gain a greater level of education.

For example to obtain an Intermediate POST Certificate, a peace officer must satisfy one of the following eligibility combinations:

Degree or Education Points	and	Law Enforcement Experience	plus	Training Points
Bachelor Degree	<i>and</i>	2 years	<i>plus</i>	0
Associate Degree	<i>and</i>	4 years	<i>plus</i>	0
45 Education Points	<i>and</i>	4 years	<i>plus</i>	45
30 Education Points	<i>and</i>	6 years	<i>plus</i>	30
15 Education Points	<i>and</i>	8 years	<i>plus</i>	15

(Association Exhibit 125)

To obtain an Advanced Intermediate POST Certificate, a peace officer must satisfy one of the following eligibility combinations:

Degree or Education Points	and	Law Enforcement Experience	plus	Training Points
Master Degree	<i>and</i>	4 years	<i>plus</i>	0
Bachelor Degree	<i>and</i>	6 years	<i>plus</i>	0
Associate Degree	<i>and</i>	9 years	<i>plus</i>	0
45 Education Points	<i>and</i>	9 years	<i>plus</i>	45
30 Education Points	<i>and</i>	12 years	<i>plus</i>	30

(Association Exhibit 125)

Because POST Regulation 9070(c) defines “Education Points” as: (A) one college semester unit equals education point or (B) one college quarter unit equals two-thirds of an education point, the City’s education goals are easily met by including POST Certificates in the Education Incentive Program.

ISSUE 20: EDUCATION INCENTIVE

ASSOCIATION'S FINAL PROPOSAL:

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. **Effective January 1, 2006,** 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)

REBUTTAL ARGUMENT:

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.

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.*

Although the City argues that including POST certificates would undermine its education goals, noticeably absent from its evidence is any data concerning whether the inclusion of POST certificates would increase the availability of the benefit to Association members. Moreover, as shown by Association Exhibit 125, it is not possible to achieve an Intermediate or Advanced

POST Certificate without completing a requisite amount of education coupled with on-the-job experience. The inclusion of “Education Points” along with experience has transformed the Intermediate and Advanced POST Certificate process into one that encourages sworn personnel to gain a greater level of education.

For example to obtain an Intermediate POST Certificate, a peace officer must satisfy one of the following eligibility combinations:

Degree or Education Points	Law Enforcement Experience	Training Points
Bachelor Degree	<i>and</i> 2 years	<i>plus</i> 0
Associate Degree	<i>and</i> 4 years	<i>plus</i> 0
45 Education Points	<i>and</i> 4 years	<i>plus</i> 45
30 Education Points	<i>and</i> 6 years	<i>plus</i> 30
15 Education Points	<i>and</i> 8 years	<i>plus</i> 15

(Association Exhibit 125)

To obtain an Advanced Intermediate POST Certificate, a peace officer must satisfy one of the following eligibility combinations:

Degree or Education Points	Law Enforcement Experience	Training Points
Master Degree	<i>and</i> 4 years	<i>plus</i> 0
Bachelor Degree	<i>and</i> 6 years	<i>plus</i> 0
Associate Degree	<i>and</i> 9 years	<i>plus</i> 0
45 Education Points	<i>and</i> 9 years	<i>plus</i> 45
30 Education Points	<i>and</i> 12 years	<i>plus</i> 30

(Association Exhibit 125)

Because POST Regulation 9070(c) defines “Education Points” as: (A) one college semester unit equals education point or (B) one college quarter unit equals two-thirds of an education point, the City’s education goals are easily met by including POST Certificates in the Education Incentive Program.

ISSUE 21: EDUCATION INCENTIVE

ASSOCIATION'S FINAL PROPOSAL:

1. 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.

REBUTTAL ARGUMENT:

The Association has proposed a significant simplification of the education benefit: the elimination of the “annual qualification” requirement 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. The City clearly agrees that the Association has amply met its burden of proof because it similarly proposes eliminating the annual requalification requirement. Thus, the Association’s proposal should be adopted.

The City’s proposal should be rejected as without ample evidence to support it. The City is proposing eliminating the 5% step increase for non-sworn employees who do not presently have a degree but are working toward one. While the City’s offer to grandfather in the one and only current unit member – Barbara Sims – who utilizes the benefit, it still bears the burden of proving that the *status quo* should be altered and the benefit eliminated as to all future non-sworn employees who have not yet obtained their degrees. The City has utterly failed to articulate any reasonable justification for its proposal.

First, the proposal runs against the arguments raised by the City in response to Issues 19 and 20, that it values formal education achievement and employees who obtain college degrees.

Second, despite the overwhelming evidence that there is only *one* unit member who is eligible for this benefit, the City maintains that it is “unduly burdensome”, “very time consuming” and “difficult to administer and track for people”. (City’s Brief at 32; TR 932.) The monitoring of one employee for this benefit does not create the kind of overwhelming burden the City is using as its justification.

Finally, the City did not introduce any evidence whatsoever to support its argument that the contract provision has been used to double dip when an employee has an A.A. degree and is

working toward a bachelor's degree. Consequently, the City has utterly failed its burden of proving any legitimate justification to modify *status quo*, and its proposal should be rejected accordingly.

ISSUE 22: EDUCATION INCENTIVE

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.

ISSUE 23: EDUCATION INCENTIVE

The Association **WITHDRAWS** this proposal.

ISSUES 24: HEALTH CARE INSURANCE

ASSOCIATION'S FINAL PROPOSAL:

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.

REBUTTAL ARGUMENT:

In its argument, the City argues that the formula is confusing. But, it is not. The formula is clear as shown 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. The City’s proposal should, therefore, be rejected.

ISSUE 25: HEALTH CARE INSURANCE

ASSOCIATION’S FINAL PROPOSAL:

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.

REBUTTAL ARGUMENT:

In its argument, the City argues that the formula is confusing. But, it is not. The formula is clear as shown 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
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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. The City’s proposal should, therefore, be rejected.

ISSUE 26 PEMCHA

ASSOCIATION'S FINAL PROPOSAL

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 (PEMCHA). 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*

REBUTTAL ARGUMENT:

In its final proposal, the Association has eliminated the ambiguity in the contract language that was at the heart of the City's opposition. The City acknowledges that it has an obligation to reach the statutory minimum in its PEMCHA contributions. Since this proposal comports with the City's statutory obligations, whereas the City's proposal does not, it should be adopted.

ISSUE 27 HEALTH CARE – OPT OUT

ASSOCIATION’S FINAL PROPOSAL:

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. ~~These 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.~~

REBUTTAL ARGUMENT:

The City agrees that elimination of the \$16 opt out assessment is appropriate. But, the City seeks to establish a *quid pro quo* by establishing a cap on the amount received by those who opt-out of the program. (City’s Brief at p. 43) The City has utterly failed its burden of proof on this issue. Other than claiming it is an “equitable compromise”, the City introduced no evidence whatsoever during the hearing to support such a cap. It introduced no neither internal nor external comparison data. It introduced no financial analysis that would support such a cap. Indeed, it never even introduced data that identified the number of individuals within the police unit who opt out of the medical plan and receive cash *in lieu* of the benefit.

The City’s proposal was supported by no evidence or justification other than it simply prefers to have a cap in place. More should be required to so significantly alter the *status quo*. As a result, the City’s proposal to cap the cafeteria plan benefit should be rejected.

ISSUE 28 RETIREE HEALTH

ASSOCIATION’S FINAL PROPOSAL:

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:

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

This subdivision shall apply to:

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

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

REBUTTAL ARGUMENT:

In recognition of the City's concerns about the retiree health proposal originally presented by the Association, and in an effort to compromise in a reasonable and financially responsible manner, a *substantial* modification of the proposed benefit has been proffered by the Association.

The modified benefit applies only 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. This proposal would even remove the benefit from the hypothetical example provided by Mr. Strobridge during his testimony of the one-year employee who was shot in the head during a bank robbery and then retired for a disability. As compelling as a lifetime medical benefit would be in those circumstances, that proposed benefit was overly generous and extraordinarily costly.

The substantial modification to the benefit provides an incentive to employees to remain in the City service. Indeed, unless the employee remained for a minimum of ten (10) years, he or she would not qualify.

Also, it provides a benefit only to current employees, not employees whose service has already ended.

Contrary to the City's argument, the external comparable data justifies the benefit requested. Indeed, *all* of the combined comparable jurisdictions provide some form of a retiree health benefit in excess of that provided by the City. (Assoc. Exh. 127) Moreover *two* of the comparable jurisdictions – Pleasanton and Davis – provide a 100% retiree medical benefit for the employee plus at least one dependent. (Assoc. Exh. 127) This external comparability data justifies the request for an improved retiree medical benefit. Given the substantial modification

proposed by the Association coupled with the staggeringly smaller cost such a reduced benefit would entail, the Association's proposal should be granted.

ISSUE 29: LIFE INSURANCE

The Association **ACCEPTS** the City's Final Proposal.

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

ASSOCIATION'S FINAL PROPOSAL:

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%~~ **100%**

REBUTTAL ARGUMENT:

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)

ISSUE 32 SICK LEAVE

ASSOCIATION'S FINAL PROPOSAL

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. ...
- 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% of accumulated sick leave up to a maximum cash-out of 1000 hours (i.e., 75% of 1333.34 hours).**

REBUTTAL ARGUMENT:

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

ASSOCIATION'S FINAL PROPOSAL:

D.⁶ *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.*

REBUTTAL ARGUMENT:

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.⁷

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)

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.

The City's argument that the provision would contravene the personnel rules is unpersuasive. The City is permitted by contract to increase benefits through a Memorandum of Understanding. Consequently, its argument that the proposal runs counter to the Personnel Rules must be disregarded as unpersuasive.

⁶ The Association proposed adding a subsection C to provide a cash out benefit upon disability retirement in Issue 32.

⁷ 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.

ISSUE 34: SICK LEAVE CONFIDENTIALITY

ASSOCIATION'S FINAL PROPOSAL:

- A. **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.**

REBUTTAL ARGUMENT

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 this practice 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. The Association in its final proposal has eliminated the word “conclusive” which was at the heart of the City’s objections to the provision.

Recognizing that the Association has a legitimate concern about the documentation of sick leave usage in evaluations and the unfairness of the City’s current practice, the City has proposed language permitting reference to sick leave usage in performance evaluations “where there exists an indication of abuse or when the use of sick leave negatively impacts work performance.” While the City acknowledging the problem is a first step in correcting it, the language proposed is too uncertain and too ambiguous to be of any real value. Can an “indication” of abuse simply be the number of sick leave hours taken? What does “negatively impact work performance” mean? Doesn’t any absence of an employee from the job cause a negative impact because the work isn’t being completed or others are obligated to perform tasks that otherwise would have been handled by the absent employee?

The City's proposed language is so vague and ambiguous that it would be impossible to implement, whereas the Association's language is more reasonable and appropriate to resolving the pending problem of negative inferences based on legitimate uses of sick leave.

ISSUE 35: FAMILY LEAVE

ASSOCIATION'S FINAL PROPOSAL:

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.

REBUTTAL ARGUMENT:

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

ASSOCIATION'S FINAL PROPOSAL:

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)

REBUTTAL ARGUMENT:

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

TENTATIVE AGREEMENT:

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.

ISSUE 38: SALARY SURVEY AGENCIES

ASSOCIATION'S FINAL PROPOSAL:

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)

REBUTTAL ARGUMENT:

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 and a modification is appropriate.

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 most closely parallels those traditionally used by the City during negotiations with its police unit. The City’s proposal that the Fire data set is should be applicable to police negotiations was unsupported by any demographic or other data

demonstrating the comparability of those jurisdiction. Rather, the evidence clearly revealed that the 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

ASSOCIATION’S FINAL PROPOSAL:

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)

REBUTTAL ARGUMENT:

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.

Third, the process spelled out in the proposed section clearly parallels the process specified in the Municipal Code. Indeed, the City in its arguments utterly fails to identify any manner in which the Association's proposal differs in any significant way from the process outlined in the Municipal Code.

The City seeks to compromise by incorporating by reference the Municipal Code sections. The City's proposal fails to cure the defect that exists in the process: employees will still be required to slog through multiple municipal code sections along with the Memorandum of Agreement in order to determine his or her disciplinary appeal rights. Also, by incorporating the Municipal Code references into the Agreement, the City is preventing any proposed modification to those procedures that might impact non-sworn or other City employees for the life of the Association's agreement. Thus, it has locked itself into the existing procedures and cannot modify the Municipal Code even for employees outside the bargaining unit. As a result, the City's proposal is nonsensical and impractical.

ISSUE 40: FST WORK SCHEDULE

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

ASSOCIATION'S FINAL PROPOSAL:

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

REBUTTAL ARGUMENT:

The City incorrectly argues that the proposed 4/10 schedule will place additional burdens on Field Services Technicians when one is on vacation or calls in sick. However, the current

FST schedule is a 9/80 shift, which presents the identical problem. Since there are only two Field Services Technician, there is simply no way around the fact that when one is on vacation or calls in sick, the remaining technician has more responsibilities and burdens. Thus, the main justification for opposing the schedule change is one that presently exists with the current schedule.

ISSUE 41: FST WORK SCHEDULE

The Association **ACCEPTS** the City's proposal.

ISSUE 42: INVESTIGATIONS WORK SCHEDULE

ASSOCIATION'S FINAL PROPOSAL:

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)

REBUTTAL ARGUMENT:

The City did not and cannot rebut the evidence presented by the Association that members of the investigation unit remain on-call during their lunch period, and are often interrupted. Indeed, the City concedes the issue by agreeing that interrupted time should be paid.

Ironically, rather than simply incorporate the lunch period into the regular work period, the City proposes to *increase* its costs by paying *overtime* for interrupted lunch periods. This is non-sensical and fiscally imprudent. Additionally, it will create an administrative burden, include an unnecessary layer of bureaucracy, and, therefore, escalated costs for the preparation and processing of a multitude of overtime requests that will be submitted. . Therefore, the

Association considers the City's proposal well intentioned but impractical and unreasonable. For those reasons, the City's proposal should be rejected and the Association's proposal adopted.

ISSUE 43: INVESTIGATIONS WORK SCHEDULE

ASSOCIATION FINAL PROPOSAL:

No change to contract language or practice.

REBUTTAL ARGUMENT:

Presently, the roll call briefing is part of the schedule worked and compensation received by investigators. The City's proposal *reduces* the compensation paid by 15 minutes of overtime each day. Thus, the City bears the burden of proving that the reduction of benefit and the change from the *status quo* is warranted.

The City has utterly failed to meet its burden of proof. The City introduced absolutely no evidence supporting its proposal. It presented no cost savings information, identified no problem or reason why elimination of attendance at roll call briefing was necessary or appropriate.

Thus, the City is seeking, without any supporting evidence or justification, to exchange a long-standing practice and benefit for a provision that gives the City the ability to change and adjust investigator shift schedules at a whim and caprice.

Moreover, the City's last minute tactic of creating a new proposal never before presented has effectively deprived the Association of the opportunity to present evidence that would demonstrate that the proposal is ill-advised and impractical. Such last minute sand-bagging should not be countenanced, and that tactic, coupled with the City's failure to present any supporting evidence whatsoever, should result in the proposal being rejected.

ISSUE 44 APPENDIX CLEAN-UP

TENTATIVE AGREEMENT:

Incorporate Appendices C and E in Article 38.

Incorporate Appendix F in Article 7.

City has **WITHDRAWN** its proposal to delete Appendix D.

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, and reject the City's proposals.

Dated: March 18, 2008

Respectfully Submitted,

BERRY | WILKINSON | LAW GROUP

By: Alison Berry Wilkinson
Attorneys for San Luis Obispo Police Officers
Association

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