

ATTACHMENT A

IN THE FACTFINDING PROCEEDINGS PURSUANT TO PHOENIX CITY CODE

AMERICAN FEDERATION OF STATE,
COUNTY, AND MUNICIPAL EMPLOYEES,
LOCAL 2384 (UNIT 2)

Union,

&

CITY OF PHOENIX,

Employer

FACTFINDING REPORT AND ADVISORY RECOMMENDATIONS

Factfinder: Najeeb N. Khoury

Appearing For the Union: Jennifer Kroll & Dan Bonnett, Martin & Bonnett, P.L.L.C.

Appearing For the City: Heidi Gilbert, City Attorney's Office

Hearing Dates: April 1 & 2, 2021

BACKGROUND

This factfinding proceeding involves the City of Phoenix's Unit 2. Unit 2 consists of skilled trades positions, and is represented by AFSCME Local 2384 ("AFSCME" or "Union"). There are approximately 1,700 budgeted positions in Unit 2. The parties are bargaining for a Memorandum of Understanding (MOU) that will run from July 1, 2021-June 30, 2023. Pursuant to the City's Code and the Phoenix Employment Relations Board's Rules, the parties submitted their disputes to factfinding and selected me as the factfinder. The factfinding hearing occurred on April 1 & 2, 2021 in Phoenix, Arizona.

ANALYTICAL FRAMEWORK

Unlike interest arbitration, where a third-party neutral sets the terms of a new contract, a third party neutral in a factfinding simply provides recommendations. This in essence makes factfinding an extension of bargaining. Ultimately, absent an imposition of terms by the employer, the parties must persuade one another of their positions, and the neutral factfinder provides an outside perspective to help the parties along.

For non-economic issues, neutral factfinders have typically required the party seeking a change to the *status quo* to carry the burden of persuasion, and I will follow that convention. In analyzing each non-economic issue, I will be asking two questions. First, should the *status quo* be changed? The party proposing the change must demonstrate that there is a problem with the *status quo* or that the *status quo* can be improved. Second, does the proposed language solve the problem or enhance the *status quo*? If the answer to this second question is no, I will either recommend the *status quo* or provide a different proposed solution that better addresses the issue identified in the first question.

ISSUES AND RECOMMENDATIONS

Article 3, Section 3-1 (Wages):

The City's last offer was a 2% ongoing wage increase and a 3% one-time monetary enhancement for 2021-2022, and a 1.5% ongoing wage increase and a 2.5% one-time monetary enhancement for 2022-2023 plus language stating that the City Council could consider using American Rescue Plan Act ("ARPA") money for further enhancements. However, .5% of ongoing money and .5% of one-time money in 2021-2022 is contingent on the Union accepting what the City has called its transparency package.

1 The Union's last offer was a 2.5% ongoing wage increase and a 3% one-time monetary
2 enhancement for 2021-2022, and a 2.5% ongoing wage increase and a 3% one-time monetary
3 enhancement for 2022-2023. The Union also asks that there be additional wage enhancements if
4 projected revenues increase year-over-year. The Union further proposes that the parties meet
5 and confer regarding any ARPA money that will be used for wage enhancements.
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7 By way of background, a 1% increase in total compensation for all bargaining units costs
8 the City approximately \$18.8 million across all funds and approximately \$11.8 million to its
9 general fund; a 1% increase in total compensation for Unit 2 employees costs the City
10 approximately \$1.7 million across all funds and approximately \$360,000 to its general fund.
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12 **City's Position On Economics:**

13 The City argues that its proposal is generous and in keeping with what other units have
14 agreed upon. The City acknowledges that it is in a fiscally sound position, having a \$153 million
15 surplus in its general fund. The City, however, emphasizes that \$98 million of the surplus is in
16 one-time money and only \$55 million is ongoing, and that one-time money should not be used to
17 pay ongoing costs. The City states that this surplus only reached its current level because federal
18 regulations allowed it to transfer one-time funding from the Coronavirus Relief Fund (CRF) to
19 the general fund to offset public safety salaries.
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21 The City produces a yearly trial budget after receiving initial input from community
22 stakeholders and City Council members. After a trial budget is presented, the community is
23 allowed to provide input on the trial budget, which then turns into a proposed budget and
24 ultimately an adopted budget. There are often significant changes between a trial budget and the
25 adopted budget. City Manager Ed Zuercher testified that the current Trial Budget for the 2021-
26 2022 budget year seeks to balance community needs for service, organizational needs for
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1 infrastructure to provide those services, and fair compensation for City employees. He also
2 noted that the City's population is growing, and that the City anticipates needing to hire more
3 employees to provide services. The City's current Trial Budget dedicates 77% of its general
4 fund surplus or \$118 million to employee compensation enhancements, which is in excess of the
5 70% of its surplus that it dedicated to enhanced compensation in the previous round of
6 negotiations.
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8 In addition to employee compensation enhancements, the Trial Budget dedicates funds
9 to Public Safety Reform & Responsiveness, COVID Relief & Resiliency, Climate Change &
10 Heat Readiness, Affordable Housing & Homelessness, Building Community and Responding to
11 Growth, and Administrative Accountability. Assistant City Manager Jeff Barton testified that
12 any economic enhancements beyond the current offer would require the City to make
13 commensurate cuts to its other priorities which are reflected in the Trial Budget, as the City is
14 legally required to have a balanced budget. Barton also noted that the City has long-term
15 pension obligations which are projected to worsen, with approximately 26% of general fund
16 costs going to pension obligations by 2025-2026.
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19 The City also points out that other bargaining units have already agreed to the offer
20 currently before Unit 2 and that they have "Most Favored Nations" language in their agreements,
21 meaning that the City would be obligated to give the other units increases beyond what their
22 current agreements contemplate.
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24 Budget and Research Director Amber Williamson testified that the City exercises best
25 practices in its budgeting. Therefore, it does not include new or additional revenue streams that
26 have not been realized. She further testified that the City's projected and actual numbers have
27 been historically close, and that the City of Phoenix prides itself on its budgeting accuracy. She
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acknowledged that revenues from recreational marijuana sales and ARPA money are not in the 2021-2022 Trial Budget, as these are new sources of revenue.

Union's Position on Economics

AFSCME argues that its members were asked to sacrifice in hard times, and that they did so willingly; therefore, now that there is a sizeable surplus it is only right that the City offer a better economic package. After the Great Recession, Unit 2 took 3.2% in concessions in its 2010-2012 MOU, had 1.6% of concessions restored in its 2012-2014 MOU; took an additional 2.5% in concessions in its 2014-2016 MOU; received 4.2% restoration of concessions in its 2016-2019 MOU; and finally received 3.5% wage increases in its 2019-2021 MOU. While the last MOU finally got Unit 2 past its concessions, the real dollar wages of its members are still well behind 2010 wages due to inflation. AFSCME points out that the current offer of 3.5% on-going money over two years will not keep up with CPI, which is projected to be about 2% a year, and that while one-time money is good, it does not help keep up with inflation.

AFSCME notes that increases to Unit 2 do not have the same impact on the general fund as increases to other units, especially sworn units. AFSCME has worked with the City on pension reform for the civilian pension system. Consequently, the civilian pension system is not projected to grow appreciably as a percentage of the general fund in the next five years. Further, a good percentage of Unit 2's salaries are not charged to the general fund, as many employees work in non-general fund, enterprise departments.

Laurie Ann Atienza, Labor Economist for AFSCME, testified that the City's audited financials demonstrate that the City is financially healthy, and that revenues show steady, healthy growth with consistent surpluses. Atienza opined that the City's audited financial statements demonstrate that it can absorb compensation enhancements especially in light of its \$153 million

1 surplus, the \$416 million ARPA money coming to the City, and the expectations that the
2 Phoenix area will continue to experience population, employment and income growth.

3 Finally, AFSCME notes that the Trial Budget does not account for any increases in
4 revenue due to recreational marijuana sales, which were recently legalized in Arizona, and does
5 not include the \$416 million in ARPA funds; therefore, AFSCME believes there should be more
6 money available for economic enhancements, especially in the second year of the MOU.
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8 **Recommendation on Economics**

9 One can certainly understand each side's position. The Union believes it has sacrificed a
10 great deal to help the City during hard times, and that it is not the source of the City's long-term
11 pension problems, having agreed to pension reform initiatives. The City wants to treat all of its
12 bargaining units equitably when it comes to across-the-board total compensation increases, and
13 will not agree to provide higher total compensation increases to civilian employees even if those
14 increases have a less dramatic impact on its long-term projections than increases to sworn
15 employees. The Union wants on-going increases that, at a minimum, keep up with inflation.
16 The City wants to maintain as much long-term flexibility as possible, and is therefore offering
17 large one-time sums, which do not have a compounding impact on its future budgets and are not
18 pensionable.
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20 Further, the City does not want to give economic enhancements beyond what it has
21 agreed to with other units given that those other units have "Most Favored Nations" language;
22 however, Unit 2 believes it is not similarly situated to those other units given many of its unit
23 members are not paid through the general fund. The City is following what it believes is
24 budgeting best practice by not including the unrealized ARPA and recreational marijuana funds;
25 the Union responds that there is certainty that those funds will be realized during the life of this
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1 MOU. The City argues that nothing precludes the Council from dedicating some ARPA money
2 to economic enhancements, but the Union counters that it wants an opportunity to meet about
3 any such enhancements.
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5 Given the uncertainty of the times we are in (with the pace of re-openings and increased
6 economic activity not being certain), I recommend that the parties take a cautious approach but
7 allow for the opportunity for further economic enhancements during the life of the MOU. It is
8 also not lost on me that other units have already settled for what the City is offering the Union,
9 and that it is difficult for the City to offer more to one unit than what other units have agreed
10 upon. Therefore, I will recommend that the parties settle on a 2% ongoing wage increase and a
11 3% one-time monetary enhancement for 2021-2022, and a 1.5% ongoing wage increase and a
12 2.5% one-time monetary enhancement for 2022-2023 with reopener language to allow for
13 discussion of further enhancements.
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15 This recommendation, however, is not contingent on the Union accepting the City's
16 "transparency package." This is because I will not be recommending those proposals as drafted.
17 Further, I do not believe any party calculated a precise monetary value for the "transparency
18 package," but were simply using the monetary number as an incentive. Therefore, I will be
19 making my recommendations on those proposals as stand-alone recommendations and based on
20 what I believe makes sense for each proposal.
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22 The facts do support a finding that with the ARPA money and, to a lesser extent, the
23 recreational marijuana revenue, there will be additional revenues during the MOU that can help
24 bridge the gap between the parties' proposals, and that these additional revenues are not
25 accounted for in the Trial Budget, meaning additional economic enhancements based on these
26 revenues will not impact the City's other priorities outlined in the Trial Budget. I recognize that
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1 it is hard to know the precise allowable uses for ARPA money at this point and that the amount
2 of revenue to be generated by recreational marijuana sales is an open question. For this reason,
3 any concrete economic enhancements tied to these new sources of revenue are premature.
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5 I, therefore, recommend that the parties agree to an economic reopener allowing the
6 parties to discuss further enhancements based on acceptable uses of ARPA money and any
7 realized revenue from recreational marijuana sales. I do not recommend adopting the City's
8 language that it will evaluate the ARPA money and unilaterally provide a non-specified
9 percentage of premium pay. It is a fundamental right of unions to be able to meet and confer
10 with employers over economic enhancements. Finally, I do not recommend that the parties agree
11 to AFSCME's language that economic enhancements will automatically be tied to increased
12 revenue. Rather, the re-opener language should be clear that the parties are required to meet over
13 further economic enhancements based on the new revenue, but no negotiated outcome is
14 predetermined by such language.
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16 **Article 2: Section 2-1(C): (Grievance Committee)**
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18 This is part of the City's transparency package. The City proposes altering the Grievance
19 Committee language so that the President of AFSCME Local 2384 or his/her designee does not
20 sit on the committee that reviews Unit 2 grievances. Under the MOU, AFSCME may select to
21 have a grievance heard by an arbitrator or through the Grievance Committee. The Grievance
22 Committee is currently made up of an appointee of the City Manager, a City department director
23 and the president of the local or the president's designee. The committee submits findings and
24 advisory recommendations to the City Manager, who makes the final determination on the
25 grievance.
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1 The City worries that the optics of the AFSCME Local 2384 president hearing Unit 2
2 grievances is troublesome; therefore, the City proposes having the president of a different union
3 sit on the committee to hear AFSCME Local 2384 grievances. The Union provided some
4 counter language but is essentially advocating no change to the language.
5

6 I recommend no change to the language. The City offered no evidence that there has
7 been a problem in the current set-up other than potential optics. If a member of the public were
8 to complain about the setup, it would provide an opportunity to educate that interested member
9 of the public and explain why the setup serves the interest of the City. Notably, an election by
10 the Union to use the Grievance Committee process saves the City and the Union the expense of
11 going to arbitration, and the Union is more likely to select the Grievance Committee route if it
12 has representation on the committee. Moreover, any concern that the Union is deciding its own
13 disputes is offset by the fact that management has two representatives on the committee and that
14 the committee ultimately just makes recommendations to the City Manager.
15

16 Additionally, the City's proposal of having a different union president sit on the
17 committee is highly unorthodox. The MOU is a contract between AFSCME Local 2384 and the
18 City. It is unclear why the president of a local that has no interest in the contract between the
19 parties (and who is not a professional neutral trained in deciding contractual disputes) should
20 have a role in the dispute resolution process. Certainly, in my experience, I have never seen such
21 a setup before.
22

23 **Article 1: Section 1-4(E): (Purging Evaluations--10 years)**

24 The City proposes eliminating language that says: "Upon request, performance
25 evaluations over 10 years old will be purged from a unit member's personnel file after 10 (ten)
26 years as an active employee." In its proposal, the City states the reason for the proposal is "to
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1 mirror the current practice of maintaining performance evaluations electronically.” The Union
2 counters that the language should say that a unit member could still ask that “all performance
3 evaluations 10 years old be placed into an inactive file, prohibiting them from being utilized for
4 any performance evaluations or promotional opportunities.”

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6 I recommend adopting the Union’s language. Placing old performance evaluations in
7 inactive status eliminates any concern that physical documents are required to be produced and
8 then destroyed. There is no reason why electronic documents cannot be marked inactive.
9 Further, there is no reason why 10-year-old performance evaluations (as opposed to serious
10 discipline) should be used for any purpose.
11

12 **Article 1: Section 1-4(E): (Purging Discipline--5 years)**

13 The MOU currently precludes the City from considering discipline that is over five years
14 old in any process, i.e., discipline that is over five years old cannot be considered in making
15 progressive discipline or promotional determinations. The City argues that this has created
16 problems both with the public wanting accountability and with other employees who are losing
17 out on promotional opportunities despite having clean records. Specifically, the City points to
18 some embarrassing or egregious acts of misconduct that have occurred that the City believes
19 should not be disregarded after five years. The City emphasizes that its proposal would just give
20 it the discretion to review old discipline.
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23 The Union responds that the City has the authority to bypass progressive discipline for
24 serious misconduct and that if the City chooses to give an employee a second chance, the
25 employee should have a chance at a clean slate. The Union also argues that the push for
26 transparency is due to cases involving police officers, and there have not been serious problems
27 with Unit 2 members and old discipline. Moreover, the Union notes that unit members have
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1 relied on this MOU language in either settling or choosing not to challenge discipline in the past,
2 knowing that the discipline had a shelf life.

3 The parties did make steps toward each other on this proposal. The City agreed that only
4 suspensions over five years (and not any type of discipline) should be used. The City also stated
5 it would respect settlement agreements containing the five-year limitation language, it would
6 exclude discipline that is defined as moral turpitude, it would consider the frequency and severity
7 of misconduct, and it would notify an employee if the old discipline was a factor in non-selection
8 for a promotional opportunity.
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10 The parties were still in disagreement over whether certain types of suspensions should
11 fall under the five-year language. Namely, the parties were in disagreement over whether
12 discipline should last past five years if it is based on abusive or threatening behavior, on
13 intentionally falsifying records, or on actions that bring discredit or embarrassment to the City.
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15 The Union made clear that its movement was tied to certain economic enhancements that
16 the City did not make.
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18 Given the increased public focus on police misconduct, “me-too” issues, and other
19 changing workplace expectations, it makes sense to change the *status quo* and allow the City to
20 be able to consider serious misconduct despite its age. However, it also makes sense that not
21 every type of discipline should be “evergreen.” Moreover, employees who are bypassed for
22 promotions based on discipline that is over five years old should have an avenue to contest the
23 issue.
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25 Of the types of suspensions that the parties had not come to a conditional agreement on, I
26 believe that falsifying records is the type of misconduct that should not have a sunset date on it.
27 I have some concern regarding the language involving abusive or threatening behavior,
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specifically as it applies to stewards engaged in union activities. It is well-established that stewards have wide latitude when representing union members: “Many disciplinary actions are set aside or reduced because the cause for the discipline (often abusive language in heated exchanges with supervisors) emerged from, or was related to, union steward duties.” Of course, this does not mean that anything goes and “while a steward’s conduct in the course of union business is protected, the immunity is not absolute, and discipline of stewards in extreme situations has been upheld even though the basis for the discipline was related to the employee’s conduct as a steward.” *See Elkouri & Elkouri, How Arbitration Works*, 5-74 to 5-75 (Kenneth Mays, ed., BNA Books 8th Ed. 2016). The City’s response to this concern undoubtedly is that only discipline that is upheld can be used five years down the line; however, the Union’s response is that this language might chill the steward’s activity. I think a compromise is to include this language (as discouraging abusive behavior in the workplace is extremely important) but have some clarifying language about protected union activity. I, however, do not recommend the inclusion of discipline based on actions that bring “discredit or embarrassment to the City.” This is new language from the Personnel Rules, and there are no cases yet that explain what type of conduct falls under this language. One can easily argue that any misconduct brings embarrassment to the City, and including this language might then mean all suspensions that are over five years can be used.

Moreover, if an employee is notified that old discipline was a factor in non-selection for a promotional opportunity, the employee should have the right to question whether the decision makes sense so that the employee is not forever precluded for future promotions without an ability to raise a defense.

1 Finally, I find the argument that employees relied on the current MOU language in
2 making decisions regarding entering settlements or contesting discipline to be persuasive. While
3 the employer is not proposing a retroactive imposition of discipline, the employees did rely on
4 the rules as they were at the time, and it would be unfair to change the rules retroactively.
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6 For these reasons, I recommend that the parties adopt language allowing the City on a
7 moving forward basis to use suspensions that are over five years and are based on Personnel
8 Rules 21b2 (with some mention of union steward rights), 21b4, 21b5, 21b13, 21b14, 21b15,
9 21b18, and 21b20; that any settlement agreement which mentions the five-year limitation be
10 respected; and that any employee who is notified that discipline over five years old is a factor in
11 a denied promotion be able to submit a non-binding appeal on the matter.
12

13 **Article 1: Sections 1-4(A) and (B): (Investigations and Discipline)**

14 The City proposes replacing the entire sections dealing with investigations and discipline.
15 It claims that this is cleanup language and meant to create consistency with the process that
16 occurs with other civilian units. The City argues that no rights are being lost or protections
17 curtailed by the new language. The Union counter proposed with language that would require
18 the City to provide a unit member with all materials in the City's possession before conducting
19 an investigatory interview. The Union basically is asking that civilians receive the protections
20 afforded in the Police Officer Bill of Rights.
21

22 I do not recommend that civilians be given the same rights as the Police Officer Bill of
23 Rights. There are many variables in an investigation and there may be legitimate reasons why
24 management does not want to share all documents during the investigation stage. In terms of
25 adopting the City's proposed changed language, it is unclear to me whether the Union had any
26 objections to the proposal or if the parties simply needed more time to iron out acceptable
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1 language. Therefore, I recommend that the parties work together to agree upon language that
2 reflects the current practice of investigations, with the understanding that any newly agreed upon
3 language should clarify current rights and should not curtail any existing rights.

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5 **Article 1: Sections 1-4(E) and (G): (Purging/Inactive Reference)**

6 As I understand the proposal, the City wants to replace text with a graph that shows when
7 various documents can be removed from certain files and made inactive from other files. Xavier
8 Frost, Deputy Human Resources Director—Labor Relations, testified that the City is simply
9 trying to have whatever process is agreed upon be reflected in the chart. I am sure that the point
10 of confusion for the Union is that the proposed chart incorporates the proposed changes to the
11 five-year old discipline discussed above. My recommendation is that the parties adopt a chart
12 that reflects whatever the parties ultimately agree upon in the other sections of the MOU.
13 However and to be clear, the move from text to a chart by itself is not meant to change anything
14 substantively.
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17 **Article 6: Section 6-7(F) (Four Corners)**

18 The City is proposing language that would eliminate any past written or verbal
19 agreement. Janice Pitts, Deputy Human Resources Director—Employee Relations, testified that
20 there have been occasions when unions have called upon old agreements. Yet, no specific
21 examples were given. Further, the City did not provide a list of agreements it was asking the
22 Union to forego. My recommendation is for the City to identify any old agreements it has with
23 the Union and discuss them on a case-by-case basis rather than asking the Union to waive
24 unidentified rights. Therefore, I am recommending the *status quo* language.
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1 **Article 5: Section 5-9B: (Benefits)**

2 The City proposes eliminating language for use of sick leave in certain situations. The
3 City stated in its proposal that it wanted to eliminate the language because it was “no longer
4 applicable with Earned Paid Sick Time State Law.” However, it became clear from the
5 testimony of Mario Ayala, President of AFSCME Local 2384, that the current language covers
6 situations not covered by the new state law and that the contractual language provides other
7 additional rights. Xavier Frost testified that the different types of sick leave usages could lead to
8 confusion and abuse; however, there were no concrete examples presented of abuse. I, therefore,
9 recommend maintaining the *status quo* language.
10

11 **Article 1: Section 1-6: (New Positions/Classifications)**

12 The City’s proposal struck out the entirety of the existing language and proposed new
13 language. However, it is not clear why it did this. The City did include new language stating it
14 would give written notice to the Union thirty days in advance of a position being reallocated or
15 reclassified out of the unit. It appears from the testimony of Ayala that the Union, in addition to
16 notice, wants an opportunity to discuss the reallocation or reclassification of such positions. The
17 Union is not asking for a meet and confer or any veto power.
18

19 The Union proposed that it be allowed eight classification studies per year for the unit
20 rather than the one study provided for in the current language. Janice Pitts testified that the City
21 does not have the resources to conduct that many studies, and that the City is in the process of
22 doing a high-level classification study of all its positions. The Union responds that such a
23 citywide study will take a long time to complete and many of its positions are paid below market
24 rates.
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1 I recommend that the parties work together on cleanup language. I also recommend that
2 the City give 30 days' notice of reallocations or reclassifications which will take positions out of
3 the unit and meet with the Union within that 30-day time period to discuss the reallocations or
4 reclassifications. Any such meeting shall not prevent the reallocation or reclassification.
5 Moreover, as a compromise, I recommend that the parties agree to two classification studies per
6 year. This should not overwhelm the City and acknowledges the importance of classification
7 studies.
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9 **Article 1: Section 1.3 J (Janus Related Litigation)**

10 The parties are discussing the inclusion of new language to account for a possible court
11 order related to litigation involving release time. From the presentations at the hearing, the
12 outstanding issue seems to be whether the Union will have a chance to meet with the City to
13 discuss implementing any court order that might require a change in how release time is given.
14 The Union acknowledges that any process for giving input would have to be expedited given the
15 need to be in compliance with an enforceable court order, if one exists. My recommendation is
16 that the parties agree to meet and discuss ways of implementing an enforceable court order if one
17 is issued. While the Union's written proposal called for any dispute going to arbitration, it is
18 unclear that the arbitration process could move fast enough to ensure the parties are in
19 compliance with a court order in a timely manner. The parties should discuss alternative
20 methods by which they might meet and come to a speedy resolution. This might include agreeing
21 to factfinding.
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23 **Union Proposal #27: Fairness Agreement**

24 AFSCME Local 2384 is asking for a "Most Favored Nations" clause that will ensure it is
25 treated equitably to other units. The written proposal indicates the "Most Favored Nations"
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1 proposal was contingent on the parties not going to factfinding; however, at the hearing, the
2 Union made clear the proposal is still on the table. I see no reason why AFSCME Local 2384
3 should not receive the same protection that other units received. I certainly see no reason why
4 such a clause should be conditioned on a unit not exercising its right to go to factfinding. For this
5 reason, I recommend inclusion of a “Most Favored Nations” clause.
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7 **Article 1, Section 1-3(I): (Fair and Impartial Grievance Language)**

8 The Union proposes allowing all unit members to grieve any treatment that is not fair and
9 impartial. The City acknowledged at the factfinding that it highly values a respectful workplace
10 and has methods for addressing allegations of unfair treatment. However, the City’s position,
11 which is not an uncommon one, is that the grievance process should be limited to contractual
12 violations. My recommendation is that the parties discuss a way outside the grievance process
13 that the Union can bring forth and track concerns regarding unfair treatment.
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15 **Article 2, Section 2-1(B): Grievance Language**

16 The Union seeks to expand the definition of a grievance to include unacceptable
17 workplace conduct and abuse of title or authority. The City stated that it does not tolerate such
18 behavior but that addressing these issues through the grievance process is not the proper forum.
19 Again, my recommendation is that the parties discuss a way outside the grievance process that
20 the Union can bring forth and track concerns regarding abusive supervisors or managers.
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22 The Union also seeks language that the City be required to give an explanation should it
23 dismiss a grievance on procedural grounds. Xavier Frost testified that this should be occurring. I
24 recommend adopting this part of the Union’s proposal so that reasons are consistently given for
25 denials of grievances.
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1 **Article 1, Section 1-3: (Union Rights)**

2 The Union seeks language making Union release time count as time worked in the unit
3 member's job classification. The Union stated that it has concerns that a steward who goes on
4 release time during a probationary period after a promotion and is on release time for a lengthy
5 period of time risks not passing probation upon return from release time due to someone not
6 approving of his/her union activity. The City responds that if there is evidence of such a thing
7 occurring, the Union steward could file a charge with PERB. The Union responds that proving
8 someone did not pass probation due to union animus is a difficult proposition.
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11 The Union poses a hypothetical but there is no evidence of a steward returning from
12 release time and then failing probation. For this reason, I recommend the *status quo* language. I
13 also make this recommendation because I am hesitant to recommend language that might
14 impinge on the Civil Service Board's jurisdiction and because a union steward would be able to
15 file a charge with PERB if there is evidence of union animus.
16

17 **CONCLUSION**

18 I discussed the issues that the parties focused on at the hearing. I recommend that the
19 *status quo* remain if there any issues on which the parties did not orally present and on which I
20 did not comment. I sincerely hope that these recommendations assist the parties in reaching a
21 negotiated settlement.
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24 Date: April 7, 2021

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26 Najeeb N. Khoury
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