Attachment C

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April 19, 2019

Via Regular and E-Mail
[mayor.gallego@phoenix.gov] this date to:

Mayor Kate Gallego
City of Phoenix, Mayor's Office
200 West Washington Street, 11th floor
Phoenix, Arizona 85003

Re: AFSCME Local 2384 (2019-2021 MoU)
Our File No. 1109-050

Dear Mayor Gallego and Members of the Phoenix City Council:

My law firm is counsel for Local 2384 of the American Federation of State, County and Municipal Employees, AFL-CIO ("Local 2384"). As you know, Local 2384 is the certified representative of the 1,517 (or so) City employees in Field Unit II concerning their wages, hours and working conditions. Pursuant to § 2-212(A)(2)(b) of the Phoenix City Code, Local 2384 represents those:

> Employees in positions classed as "field" includ[e] labor, custodial, trades and equipment operation [working in the] Phoenix Convention Center Department; Aviation Department; Water Services Department; Engineering Department; Housing Conservation, Elderly Housing and Occupancy, Conventional Housing and Disbursed Housing Divisions of the Urban Neighborhood Improvement and Housing Department; Equipment Management and Facilities Maintenance Divisions of the Public Works Department; Library Department (library guards only); Management Information Systems Department; Real Estate and Materials Management Divisions of the Finance Department; Traffic Signal Construction and Maintenance Section of the Street Transportation Department.

Presently, the most pressing disputes between City Management ("management") and Local 2384 pertain to economics as well as management's ill-informed and heavy-handed insistence that Local 2384 accede to its demand to alter the language of four (4) separate sections of the parties' existing Memorandum of Understanding ("MoU"). Pursuant to §§ 2-219(J)(2) and (K)(1) of the Phoenix City Code, Local Union 2384 respectfully requests that you adopt, in relevant part, the well-reasoned decision issued by the neutral fact-finder, Steven M. Guttell, Esq., a copy of which is attached as Exhibit A.

As for the economics proposal, Local 2384 is reluctantly willing to accept the identical package that all of the City's other units will be receiving, both in terms of the length of the MoU (two-years) and the amount of the proposed pay raise (whatever that ultimately turns out to be). Management prides itself on the fact that the fortunes of all City workers rise and fall in unison and, in that spirit, Local 2384 is not asking the City Council to adopt the economic proposal that it sought at fact-finding.

That being said, as of this date Local 2384 has been offered the lowest wage proposal out of all the Units. Upon information and belief, Units 1, 3, and 7 have received a 2.25% annual increase plus a 1% one-time payment in year-one and a 1.25% annual increase and a 1.0% one-time payment in year-two. Police and Fire have been offered a 2.0% annual increase plus a 1.0% one-time payment in year-one and a 1.50% annual increase plus a 1.0% one-time payment in year-two. Inexplicably, Local 2384 has only been offered a 2.0% annual increase plus a 1.0% one-time payment in year-one and 1.0% annual increase plus a 1.0% one-time payment in year-two. Local 2384 believes that it is being blackballed by city management for not agreeing to its flawed revisions to the MoU, which are discussed in more detail in the following pages.

Another item that Local 2384 is unwilling to accept is the proposed and unseemly .25% penalty that management seeks to impose on Local 2384 for having had the audacity to exercise the rights expressly given to it under the City Code to take its concerns to fact-finding for a neutral evaluation of the parties' respective positions. *See, e.g.*, attached Exhibit B. In his Report and Advisory Recommendations (pp. 11-12), the neutral fact-finder correctly determined that Local 2384's forthcoming pay raise should not be docked because "[a] unit should be allowed to exercise rights under City ordinances without fear of penalty." The fact-finder's determination in this regard was correct and the City Council ought to affirm his rationale and, in so doing, expressly dissuade management from going down this unfortunate road in future negotiating cycles.

As for management's proposed changes to the language of specific sections of the MoU - these

are issues Two,[1] Three,[2] Four[3] and Five[4] in the attached Report and Advisory Recommendations (pp. 12-19) - the City Council ought to concur with the neutral fact-finder's recommendation that each of these proposals be rejected as being unnecessary, unwise or both. As the proponent for changing the language of the existing MoU, management has the burden of proving, first to the neutral fact-finder (which it failed to do) and the City Council (which it cannot do), the need to change the status quo. *See generally*, Brand, Labor Arbitration, The Strategy of Persuasion, (PLI, October 1987), p. 244.

By way of example, in 1988, Arbitrator Harvey Nathan clarified that an employer seeking a change to the contract must provide evidence "demonstrat[ing] that this provision has not worked and attempts at resolving the problems caused by this provision have failed." *Cnty. of Will (Sheriff)*, S-MA-88-9, p. 71 (1988 Nathan, Arb.).[5] He further stated that where a provision is not new and was freely agreed to by the parties, "[m]erely that the Employer now has second thoughts is insufficient to persuade us to alter the Agreement… while no provision is sacrosanct, there must be good and substantial reasons why a provision which has caused no problems for anyone should be removed simply because the present administrators would rather not have it there." *Id.* As explained by our neutral fact-finder, management cannot proffer either good or any substantial reasons for any of these proposed changes to the City's MoU with Local 2384.

As you can surmise, the point of fact-finding, like the one that took place on March 27 and 28, 2019, is to identify the major issues in a particular bargaining impasse dispute and seek a resolution of factual differences by an impartial expert, in this case, Mr. Guttell. *See generally* CCH, Labor Law Course 310 (24th ed. 1979); Roberts' Dictionary of Industrial Relations 139 (revised ed. 1971). In a fact-finding proceeding the parties have the prime responsibility for presenting data, with the fact-finder reserving the right to develop such additional or supplemental information as he deems proper in order to make his report and recommendations. *Id.* at 140. "Where a recommendation is made, particularly where it is unanimous, it exerts pressure on the parties to accept the recommendation." *Id.* That is precisely what needs to take place in the present case; the City Council should accept the fact-finder's well-reasoned recommendation.

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[1] A copy of M17 is attached hereto as Exhibit C.

[2] A copy of M4 is attached hereto as Exhibit D.

[3] A copy of M11 is attached hereto as Exhibit E.

[4] A copy of M6 is attached hereto as Exhibit F.

[5] This interest arbitration decision - which is ostensibly what we call "fact-finding" - can be located at www2.illinois.gov/ilrb/arbitration/Pages/default.aspx.

The PREAMBLE to the parties' MoU provides that "the well-being, dignity, respect, and morale of the employees of the City are benefited by providing employees an opportunity to participate in the formulation of policies and practices affecting the wages, hours, and working conditions of their employment[.]" Having convinced the neutral fact-finder, based on all of the evidence presented - including the testimony of, *inter alia*, the City's Chief Negotiator - that Local 2384's position *vis-à-vis* issues Two, Three, Four and Five in the attached Report and Advisory Recommendations (pp. 12-19) is wholly correct and that management's was wrong, it would be an affront to the hard-working members of Local 2384 for the City Council to simply ignore the attached recommendation.

Local 2384 remains optimistic that, with the City Council's forthcoming participation in the process, these issues can be amicably resolved in short order.

Sincerely yours,

Nicholas J. Enoch

Enclosures

NJE:cgs

cc: Mario Ayala [via e-mail only to: mayala@afscme2384.com]
Vice Mayor Jim Waring [via e-mail only to: council.district.2@phoenix.gov]
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EXHIBIT A

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FACT FINDER'S REPORT
AND
ADVISORY RECOMMENDATIONS

IN THE MATTER OF:

CITY OF PHOENIX
AND
AMERICAN FEDERATION OF STATE, COUNTY & MUNICIPAL EMPLOYEES (AFSCME), LOCAL 2384

DATE OF HEARING: March 27 & 28, 2019
PLACE OF HEARING: Phoenix, Arizona

FACT FINDER: Steven M. Guttell, Esq.
DATE OF REPORT: April 3, 2019

Filled with:
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INTRODUCTION

The parties to this Fact Finding are the City of Phoenix ("City"), and the American Federation of State, County and Municipal Employees Local 2384 ("AFSCME" or "Union"). AFSCME represents the City's employees in positions classed as "field" including labor, custodial, trades and equipment operation working in the Phoenix Convention Center Department; Aviation Department; Water Services Department; Engineering Department; Housing Conservation, Elderly Housing and Occupancy, Conventional Housing and Disbursed Housing Divisions of the Urban Neighborhood Improvement and Housing Department; Equipment Management and Facilities Maintenance Divisions of the Public Works Department; Library Department (library guards only); Management Information Systems Department; Real Estate and Materials Management Divisions of the Finance Department; Traffic Signal Construction and Maintenance Section of the Street Transportation Department, also known as "Unit II employees" in the meet and confer process. There are approximately 1,517 current employees in Unit II.

On March 11, 2019 the undersigned was selected by the parties to serve as fact finder pursuant to City of Phoenix City Code section 2-219 (H). The Code provides fact-finding as part of the meet and confer process over the terms of a memorandum of understanding ("MOU"). The fact finder is a neutral person who collects the facts and provides a report and advisory recommendation that the parties may accept, reject, or use as the basis for further negotiations. The report and advisory recommendations are a tool used within the meet and confer process to assist the parties' negotiations. The report and advisory recommendations are not a substitute for negotiations. If the parties fail to reach an agreement within five working days after the fact finder issues a report and advisory recommendation, the City Manager submits his own recommendation for settling the dispute to the Council. The Council, as the ultimate decision maker, may then impose written terms and conditions of employment that it deems to be in the public interest.[1]

[1] The fact finder is advised that when the matter comes before Council both Management and the Union have the opportunity to present their position in written and verbal form. Consequently, this Report does not contain extensive recitations and attachments.

The fact finder convened the proceedings in the City of Phoenix, 300 Meeting Room, 300 West Jefferson, on March 27 and 28, 2019. Pursuant to the procedures to implement Code Section 2-219 (H) the fact finder's report is due on Wednesday, April 3, 2019 (Monday, April 1, 2019 being a City holiday). The parties agreed that the Report may be submitted electronically with an electronic signature.

Those present and/or participating for the City of Phoenix at the hearing included the following:

Alisa A. Blandford, Esq., Office of the City Attorney

Shannon Bell, Esq., Office of the City Atty.

Jeff Barton, Budget and Resources Department Director

Joe Jatzkewitz, Finance Department Deputy Director

Tracy Reber, Budget and Resources Deputy Director

Jim Wine, Chief Negotiator

Ed Zeurcher, City Manager

Those present and/or participating for AFSCME at the hearing included the following:

Nicholas J. Enoch, Esq., Lubin & Enoch, P.C.

Corey R. Feltre, Esq., Lubin & Enoch, P.C.

Christopher Fox, AFSCME Fiscal Policy Analyst

Mario Ayala, AFSCME Local 2384 President

Exhibits:

The City submitted the following exhibits:

Compensation Package, (Management's Economic Proposal), M-14.

1. Proposal Costing.
2. City Manager's Trial Budget.
3. Management's Trial Budget Council Presentation.
4. Five Year General Fund Forecast.
    A. Attachment A: 5-Year General Fund Forecast (FY2016-17).

B. Dow falls 460 points as US recession indicator flashes red (March 22, 2019).

C. Summary of Total Pension (3/22/19).

5. 2017-18 Year-End General Fund Budget Results and 2019-20 Budget Calendar.

6. Wage and Benefit Projections.

A. 2019-2020 Wage and Benefit Projection for General Positions.

B. 2019-2020 Wage and Benefit Projection for Sworn Positions.

7. Personal Service Information 2009-10 through 2019-20.

8. Pension Cost History 2007-08 through 2019-20.

9. B&R Sample Employee: Increased Costs to City.

10. Comprehensive Annual Financial Report (CAFR) Excerpts.

11. Moody's Investors Service Credit Opinion (October 11, 2018).

12. Proposed Pension Plans Funding Policy.

A. Pension Systems Funding Policy (March 19, 2019).

Wages (Union's Economic Proposal) U-2.

13. Proposal Costing.

Additional Economic Proposals (M-13/U-8.).

Contract Length M-2/U-16.

Side Agreements M-17.

Release Time and Release Positions M-3/U-26.

14. Janus Excerpt.

Fair and Impartial Language M-4.

Overtime M-6.

Grievance Procedure M-11.

Remove Expired Language M-15.

The MOU, Memorandum of Understanding 2016-19.

And other information.

The Union submitted the following exhibits:

1. Report of Christopher Fox, Fiscal Policy Analyst.
2. Excepts of the 2016-2019 MOU for Units I, III, PLEA, PFFA, Unit 6, and Unit 7.

BACKGROUND

The current MOU commenced on July 1, 2016, and expires on June 30, 2019. The parties have been negotiating proposed revisions to their MOU for a number of months. Some revisions were adopted and some were dropped by one party or the other. When the fact finder was retained there were nine issues outstanding. The parties conferred prior to and during the fact finding with the result that there are five issues currently outstanding addressed in seriatim below:

1. Compensation Package (M-14/U-2) and Contract Length: 3 v. 2 years (M-2/U-16).[2]
2. Side Agreement Language (M-17).
3. Fair and Impartial Treatment Language (M-4).
4. Grievance Procedure (M-11).
5. Overtime (M-6).

MANAGEMENT/UNION PROPOSALS & , EXPLANATIONS AND FACT FINDER'S ADVISORY RECOMMENDATIONS

The fact finder has considered all of the information submitted and sets forth below the parties' proposals and explanations, and his discussion of the issues and advisory recommendation.

[2] The Compensation Package and Contract Length issues are addressed together as that is how they were presented at the fact finding.

Issue One
Compensation Package (M-14/U-2)
And
Contract Length: 3 v. 2 years (M-2/ U-16)

Management Proposal and Explanation:

Proposal - Compensation Package

The City's last and best offer before fact finding was a first year 2% ongoing total compensation increase, and a second year 1% ongoing total compensation increase.

During fact finding testimony was elicited that the City was prepared to make a proposal of a first year 2% total compensation increase with a 1% one-time payment, and a second year 1% ongoing total compensation increase with a 1% one-time payment. There was also testimony that a .25% ongoing total compensation "sweetener" would be provided to the first unit that signed an agreement and did not go to fact finding.

Proposal - Contract Length

The City is only willing to sign a two-year contract with its labor groups. Since the 1970's, the City has only had one, three-year contract period with its labor groups - the current contracts. The City seeks to return to its normal practice and has already signed one, two-year contract with a labor group for a 2019-2021 contract period.

City Explanation – Compensation Package and Contract Length

The overriding concern of the City is the current and future state of the economy. While the economy is expanding the economic consensus is that a downturn is on the horizon. Within a few months, the current expansion will have surpassed the length of all post-recession expansions in the history of the United States.

The City's proposal utilizes a significant percentage of the current surplus for compensation but does not dip into contingencies and reserves that need to be maintained for the

fiscal integrity of the City; particularly, the unfunded pension liability for civilian and public safety employees. The City has one of the largest unfunded pension liabilities of any major city in the country.

There is a surplus of $55 million available to the City; 60% of the surplus is going to employee compensation, 10% to pensions and 30% to service restorations.

The City's proposal is a prudent proposal and reflects the principal that all City employees be treated the same with regard to compensation; i.e. that all employees receive the same percentage increase.

The Union's proposal seeks $11 million out of the $55 million surplus; that is too much. Further, Unit II employees are paid at the high end when compared to other cities.

The Union wants the City to draw down its reserves. The City does not believe that that approach is prudent due to bond rating agency concerns, economic uncertainty and the effect that such action would have on other City Units.

Notwithstanding the current economic uncertainty, if the economy stays strong the City and Union will be able to bargain again in two years. If the Union is wrong and the economy contracts, employees will be laid off, services will be reduced, city maintenance will be deferred, and there could be public safety repercussions.

The current three-year contracts were entered into to give the City time to restore the concessions necessary due to the recession. The three-year contracts were a unique situation. The City is not comfortable forecasting out three years; particularly in the current economic environment.

Union Counterproposal and Explanation:

Proposal – Compensation

The Union proposes a first year 7% ongoing total compensation increase with a one-time payment of $1,000, a second year 7% ongoing total compensation increase, and a third year 5% ongoing compensation increase.

Proposal – Contract Length

The Union proposes that the MOU remain in effect for three years.

Union Explanation – Compensation Package and Contract Length

Employees have gone a very long time without a pay raise.

The amount of revenue available to the City at any one time is a political issue. The City can raise taxes and fees. It is simply a question of political will as to whether the City is willing to increase compensation to employees after they gave concessions in the past.

The City's economic outlook is too glum. There are funds available to the City in various contingency and reserve funds that should be made available for employee compensation.

A three-year contract is appropriate. All of the City's other bargaining units currently have three-year MOUs (2016 - 2019 MOUs) and there is simply no sound reason to change. With a two-year MOU the parties are essentially in a perpetual state of negotiation with resultant increased costs for both sides due to more frequent negotiations. A large number of peer cities in the southwest operate with contracts of three or more years.

The current MOU is effective for the period July 1, 2016, to June 30, 2019; a three-year period. The three-year contract duration is a negotiated benefit, which was proposed by the Union and accepted by the City in the last round of negotiations. The extra year was a compromise that allowed the City to restore concessions to Unit II workers over a longer time frame in

consideration of the City's budgetary constraints. The three-year contract duration allowed the City time to prepare for the additional financial commitment to its workforce and provide restored wages and benefits, ultimately making it a more attractive and competitive employer increasing its ability to retain high quality staff. In addition, the option for the three-year contract duration was attractive due to the extraordinary amount of time and effort required of the parties for each round of contract negotiations. By extending the duration of the contract by one year, the parties could settle into one contract before starting to negotiate the next. These factors have not changed since the last negotiation. With the negotiated change to three years in 2016, a new prevailing practice was established that should be maintained.

Fact Finder's Recommendation: Compensation Package (M-14/U-2)

Discussion:

The City's budget reflects a $55 million surplus. The City proposes to use that surplus for employee compensation (60%), pensions (10%) and services restoration (30%). The City expects to also increase the number of civilian employees.

The City's proposal in large measure treats all employees the same with regard to percent of compensation increase. That appears to be a major tenant of the City's employee compensation policy.

The Union's proposal for Unit II would utilize $11 million of the $33 million (60% of the $55 million) available for all employees. Simply stated, that is too much money considering that there are other units seeking raises, the City's unfunded pension obligations and the need to restore services.

The City is right to be concerned about the current state of the economy. The general view is that the country is heading into recession within the next 12 to 24 months. While Phoenix may not be hit as hard as other parts of the country, is just as conceivable that it could be hit harder.

If a recession does not occur and the City has done well financially, there will be a surplus available pay down pension costs and for future contracts; if the Union's demands are met and the economy contracts, the City could be left in a precarious financial condition.

The Bond rating agencies have not rated Phoenix negatively, however, Moody's rating places the City "on watch" reflecting at least some level of concern. Unfunded pensions are of great concern to financial analysts and can give rise to negative outlooks that have an adverse effect on Bond ratings and lead to an increase in borrowing costs. Phoenix has one of the largest unfunded pension liabilities of major cities in the country. The City is just now starting to aggressively pay down its pension obligations. Taking monies from contingencies or reserve funds, as suggested by the Union, is not economically prudent.

The Union's position that the City has flexibility if a challenging situation arises does not appear reasonable under the present circumstances. The flexibility suggested by the Union - layoffs, furloughs or midterm bargaining with concessions to avoid layoffs - may not be possible. The City's current economic situation was in some measure due to a lack of restraint in earlier years. If reserve funds and contingencies are reduced to pay for the Union's proposal there would be less flexibility going forward.

Returning to a two-year MOU would appear to be the prudent course of action. There will be a new census in 2020. The percentage of state funds available to the City is based upon its percent of the population in the State. Phoenix could lose significant state funds, not necessarily because it lost population, but because other municipalities have grown faster. While increased

population and greater economic activity in the state generally may increase the amount of money available to local governments, if the economy contracts, where the State has in general stated that it will not increase taxes, there could be a significant adverse effect on City finances.

The reference to other cities in the southwest having three-year contracts does not assist the analysis. Those contracts were all negotiated in mid-2018 or earlier - other than Albuquerque's that was negotiated in December 2018 and looks like it is the remainder of a two year contract. Further, the fact finder was provided no information about factors such as the other cities' political structure, ability to tax its residents, state funding availability and other matters that may reflect significant differences from Phoenix.

A principal tenant of the City's compensation policy is that all employees be treated the same with regard to compensation increases. While various employees may receive different pay due to their pay scale, the City does not differentiate in terms of percentages. The City does, however make available what it calls an incentive of .25% to the first unit to sign an agreement without going to fact finding. This offer was given to all units. Although characterized as an incentive by the City it can also be characterized as a penalty applied to units that exercise their rights - granted under the City Ordinance - to negotiate to impasse and seek fact-finding. A unit should be allowed to exercise rights under City ordinances without fear of penalty.

The amount of money for a .25% added increase is not great; approximately $82,500 of the $33 million available for compensation from the surplus.[3] The City's "incentive" is counter to its professed policy that all units are treated the same. It is also an ongoing increase; not a one-time payment. The fact finder recommends that if the .25% is provided to one unit that it should

[3] $33,000,000 x .0025 = $82,500.

be provided to all units without regard to whether a unit was the first to sign without going to fact finding.

Advisory Recommendation- Compensation Package (M-14/U-2)

It is the fact finder's recommendation that a fair and equitable compensation package would provide for a first year 2.25% total ongoing compensation increase with a 1% one-time payment, and second year 1% ongoing total compensation increase with a 1% one-time payment.

It is the fact finder's recommendation that the MOU be for a period of 2 years; 2019 – 2021.

Issue Two
Side Agreement Language (M17)

Management Proposal and Explanation:

At the present time there is no formalized structure in the MOU to deal with side agreements. The City believes that there needs to be a process and policy in place for managing side agreements during the term of the MOU so that both union and management know what side agreements are in effect at any given time. The City's proposal requires a mutually agreed upon expiration date for side agreements signed during the course of the MOU that could be extended past the expiration date if necessary. Any side agreements now in existence would continue in perpetuity. The proposal also provides that side agreements be signed by an authorized representative of the City Manager and the Union. The issue arose because, in a unit other than Unit II, an old side agreement that the City was not aware of was used in a grievance.

Union Counterproposal and Explanation:

The City's proposal would result in a change to the status quo. The current side agreement process is working fine. The City can direct management not to sign side agreements without an expiration date and direct management to centralize all side agreements.

Fact Finder's Recommendation: Side Agreement Language (M17):

Discussion:

As suggested by the Union, this proposal appears to be a solution seeking a problem. In one unit on one occasion a side agreement, not known to exist by management, was raised by an employee in a grievance. This is an internal City management issue and not one with which the Union - unless it sees a need, which it does not here - need be involved.

Advisory Recommendation- Side Agreement Language (M17).

The fact finder recommends that the City's proposed change be rejected.

Issue Three
Fair and Impartial Treatment Language (M-4)

Management Proposal and Explanation:

The City acknowledges that an employee should not suffer reprisal for exercising their rights granted by the MOU. The City's proposed language provides consistency with the MOU's current definition of a grievance, which involves a violation of the specific express terms of the MOU "for which there is no Civil Service or other specific method of review provided by State or City law". The proposal does not take away an avenue of complaint since grievances can only be brought under the MOU in any event. Other grievances can be brought under personnel rules, administrative regulations, or discrimination claims to the extent those processes apply.

The City's proposed language is also consistent with that in other labor agreements.

Union Counterproposal and Explanation:

This issue has not been a problem in the past. As written, the proposal would eliminate an avenue of complaint for employees. The language of the proposal provides that the fair and impartial protection and prohibition against reprisal only applies to a "specific expressed term" of

the MOU. The City would be making a unilateral determination on what is a "specific expressed term" of the MOU.

<u>Fact finder's Recommendation: Fair and Impartial Treatment Language (M-4):</u>

<u>Discussion:</u>

The existing language provides that unit members have a right to be treated in a fair and impartial manner. The City's proposed language, considered in conjunction with the City's proposal to change the definition of "Grievance" in Issue Four discussed below, could have the effect of limiting this protection.

The English language is ambiguous. In a document such as an MOU there are rights derived by implication from other rights explicitly set forth in the document. Any limitation on existing language could have the effect of Unit members losing protections that currently exist.

<u>Advisory Recommendation- Fair and Impartial Treatment Language (M-4).</u>

The fact finder recommends that no change be made to the current language.

<u>Issue Foue</u>

<u>Grievance Procedure (M-11)</u>

<u>Management Proposal and Explanation:</u>

The City's proposal adds clarity on what can be grieved under the terms of the MOU to streamline and better manage the City's grievance process. The City's proposal aligns dates to be more consistent with the grievance language being adopted by the other units. Aligning the unit's grievance dates makes it operationally more efficient for Labor

Relations to manage grievances as they move through the process. This would permit the employee and supervisor to mutually agree to move a grievance forward to the next step, or if the issue is not in the purview of the supervisor, it would allow the employee to move the grievance forward to expedite the issue. The City's proposal also adds MOU Step 2.5 which is an informal process that Union and Management have already been practicing.

The City's proposal will help to eliminate from the grievance management procedure those items under the MOU specifically not allowed to be grieved. The proposed change in dates will make it operationally more efficient for Labor Relations to manage grievances as they move through the process as the time changes occur at all levels and include both the supervisor as well as employee.

Union Counterproposal and Explanation:

The Union's counter offer was withdrawn.

The Union's concerns relate to a number of changes to the current MOU, four of which are addressed here.

1. The proposal changes the definition of Grievance. The proposed definition adds the word "administrative" to the term "methods of review", a word not previously included, and that the Union sees as limiting an employee's right to grieve.
2. The Union is concerned that the language providing that a grievance step can be skipped is vague and confusing (a concern with which the City seemingly agrees).
3. The Union is concerned that the proposed language could result in a grievance being found against an employee even if the rule violated by the employee is a violation of law.

The existing language provides that the arbitrator "shall neither add, detract from, nor modify the language of the Memorandum or of Department rules and regulations … ." That language does not prevent an arbitrator from determining that a rule is void as a matter of law. The proposed language binds the arbitrator to rules and regulations, and State and City law.

The Union is concerned that the if the rules and regulations are violative of federal law the City's proposal would mandate that the arbitrator must rule for the City, even if the rule or regulation violated federal law (and possibly also State and City law given the ambiguity in the language of the proposal).[4]

4. The Union is concerned with the reference to "Employer Grievances". That provision allows the City to go outside the MOU, while the changes to the MOU sought by the City limit the employee's ability to do the same.

Fact finder's Recommendation: Grievance Procedure (M-11):

Discussion:

The fact finder sees a number of issues with the new grievance procedure language. The fact finder addresses the issues in the order set forth above.

1. The new language deletes from the definition of grievance the reference to "State or City law". The elimination of "State or City law" from the definition results in a clause that broadly provides that if there is any method of review provided anywhere by any entity a grievance is not allowed. So, as suggested as a hypothetical by the Union in the fact finding hearing, if an employee in the Aviation Department were directed to change the lights on an active runway (presumably a violation of Federal Aviation Administration

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[4] See M-11, proposed language at Section 2-1, C. 4. B. i. and iii.

regulations) that possible safety violation (presumably in violation of the MOU) could not be grieved because it would be subject to "[an]other specific administrative method of review provided."[5]

2. The City acknowledges that the language allowing the parties to agree to skip a step is unclear.
3. The proposed language binding the arbitrator to the MOU and departmental rules and regulations is problematic. The current language binds the arbitrator to State and City law but does not address what occurs if there is a conflict between rules and regulations, and State and/or City law – or federal law. The Union is concerned that if a City rule or regulation is violative of federal law that the arbitrator would be bound by the City rule or regulation. The City's witness suggested that if there were an inconsistency between federal law and a rule or regulation that presumably the arbitrator would be bound by federal law as a matter of the "Law of Arbitration". (Fact finder quotes). The fact finder leaves it to counsel to address this issue in light of U.S. Supreme Court decisions regarding the scope of review and arbitrator authority, and the general proposition that an arbitrator is bound by the terms of the parties' agreement.
4. The Union is correct that the City's proposal limits the ability of the employee to grieve, while not limiting the City. Simply on the basis of fairness that proposal should be rejected.

Advisory Recommendation- Grievance Procedure (M-11)

The fact finder recommends that the City's proposal be rejected.

[5] M-11, Section 2-1 B. 1.

Issue Five
Overtime (M-6)

Management Proposal and Explanation:

The City's proposes calculating overtime on a weekly basis after 40 hours of work versus on a daily basis. . This will allow the City to go to a time and labor system in the future. The City's proposal also allows the opportunity for employees to flex their time within the week.

The City's proposal is an effort to provide flexibility for the employees to use flex time within the work week and to provide consistency of flex time across departments as well as employee units. To ensure that the flex time is optional, both the employee and supervisor must agree and execute a flex time agreement form.

Union Counterproposal and Explanation:

The Union's counter offer was withdrawn.

The Union notes that this proposal has not been costed by the City. The Union is concerned that the proposed provision would give a supervisor discretion to allow – or more importantly not allow - an employee to take flex time. The concern is that a supervisor could favor friends and disfavor others. The denial of flex time could not be grieved since it would be a matter of "discretion" granted to the supervisor. Granting such broad discretion in light of other City proposals to limit and employee's ability to file a grievance could prevent a grievance based on a denial of flex time.

The Union's proposal at the fact finding hearing is that the current language remain in place.

Fact finder's Recommendation: Overtime (M-6):

Discussion:

The Union's concern regarding an abuse of discretion by a supervisor in granting or denying flex time is well taken, particularly in light of other City proposals that appear to limit grievances. Further, to the extent the matter has been not been costed, and where overtime expense to the City may be reduced, the acceptance of this proposal could result in cost savings to the City that could be the subject of additional compensation discussions between the parties.

Advisory Recommendation- Overtime (M-6).

The fact finder recommends that no change be made to current MOU language.

CONCLUSION

The fact finder has reviewed the pre-hearing statements of the parties, and all facts and exhibits presented at the hearing. In addition, the fact finder has given due consideration to the positions and arguments presented by the parties regarding each issue at impasse.

This Fact Finder's Report and Advisory Recommendations only applies to those issues and sub- issues addressed in this Report and to no others.

Respectfully submitted and issued this 3rd day of April, 2016.

/s/ Steven M. Guttell
Steven M. Guttell, Esq.
Fact Finder

Certificate of Service

I hereby certify that in this 3rd day of April, 2019, a copy of the foregoing Fact-Finder's Report and Advisory Recommendations was served by electronic mail upon the persons set forth above; Kathy Schmidt, Alisa A. Brandford, Esq. and Nicholas J. Enoch, Esq.

/s/ Steven M. Guttell
Steven M. Guttell, Esq.
Fact Finder

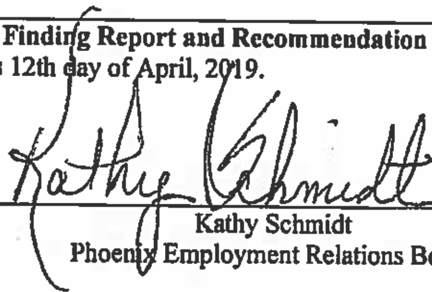
SERVED VIA PERSONAL SERVICE THE
12th DAY OF APRIL, 2019 ON:

City of Phoenix
Denise Archibald, City Clerk

City of Phoenix – Office of the Mayor
Lisa Fernandez, Chief of Staff

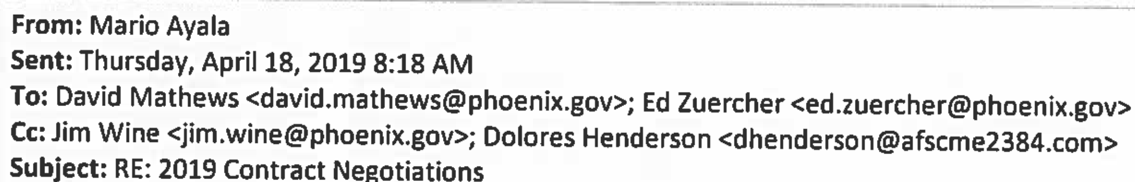
City of Phoenix – Office of the City Council
Penny Parrella, Executive Assistant to Phoenix City Council

Copy of the foregoing **Fact Finding Report and Recommendation for Unit 2, AFSCME 2384 delivered** to the above individuals this 12th day of April, 2019.



Kathy Schmidt
Phoenix Employment Relations Board

EXHIBIT B



From: Mario Ayala
Sent: Thursday, April 18, 2019 8:18 AM
To: David Mathews <david.mathews@phoenix.gov>; Ed Zuercher <ed.zuercher@phoenix.gov>
Cc: Jim Wine <jim.wine@phoenix.gov>; Dolores Henderson <dhenderson@afscme2384.com>
Subject: RE: 2019 Contract Negotiations

Good Morning Dave,

I am pleased to hear that the city values consistency. One important factor that must not be forgotten or overlooked is that the units do different types of work which have different needs. Therefore, they have different contract provisions for each unit that apply to their member's necessities. The work rules language in question has long been approved and supported by the City of Phoenix and by the City of Phoenix City council. We have reviewed council meetings and have inquired the city council and there's no evidence that the council has any desire to erode contract language that has long been applied and practiced between labor and management in our long-standing harmonious working relationship that we've developed for more than 40 years.

As for the .25%, please provide me with the proposal submitted to Unit II, including the time and date, that states the .25% will only be offered if Unit II does not go to fact finding. Our record contradicts your understanding. I'm confused as to why you continue to say that Unit II was offer the same incentive as all other units. Perhaps this is a misunderstanding because you weren't at the table during all the negotiations with our unit and only recently came onboard?

I would also like to point out that you are asking to us to be consistent, but you continue to refuse to be consistent by not offering Unit II the same offer that the City has proposed to Police and Fire. How is that consistency, Mr. Mathews? I would also like to point out that historically each Unit negotiates separate language, language that works for them and their membership.

If the other Units want to make changes to the language in their contract and the member's approved the changes, this should not entitle the City to force that language on to others. If in fact that is how the City would like to operate then

let's be consistent and in giving Unit II all the TA's that Police, Fire, Unit 1, Unit 3 and Unit 7 have agreed to. If we are trying to achieve consistency this is what should happen.

Also, in the spirit of being consistent, let's include the .25% given to Unit 1, Unit 3 and Unit 7, let's not forget the .50% offered to Unit 4 and Unit 5. I think then we would really be consistent based on the true meaning.

Again, we hope the City is willing to offer Unit II the same equal deal that it has been offered to all other Units and hope that we are not penalized for utilizing the process allotted to us by the ordinance.

Thank you,

Mario Ayala
President
AFSCME 2384
602-230-2301

From: David Mathews <david.mathews@phoenix.gov>
Sent: Wednesday, April 17, 2019 6:54 PM
To: Mario Ayala <mayala@afscme2384.com>; Ed Zuercher <ed.zuercher@phoenix.gov>
Cc: Jim Wine <jim.wine@phoenix.gov>; Dolores Henderson <dhenderson@afscme2384.com>
Subject: Re: 2019 Contract Negotiations

Good afternoon Mario,

Our position has not changed since we spoke on Monday. We were very clear with all of the groups that the 0.25% incentive was only available to any and all groups that signed a complete contract prior to fact finding.

As we discussed on Monday, we do not have a complete agreement with any group that includes an additional 0.5% ongoing in year two at this time. As I stated before, we would be willing to offer you the additional 0.5% ongoing in year two at this time if you agree to the work rules still on the table. These work rules have been agreed to with other groups and are needed to keep the MOU's consistant.

Please let me know if you would like to schedule a table meeting to discuss in more detail.

Thank you,

David Mathews

Sent from my Verizon, Samsung Galaxy smartphone

-------- Original message --------
From: Mario Ayala <mayala@afscme2384.com>
Date: 4/17/19 4:04 PM (GMT-07:00)
To: David Mathews <david.mathews@phoenix.gov>, Ed Zuercher <ed.zuercher@phoenix.gov>
Cc: Jim Wine <jim.wine@phoenix.gov>, Dolores Henderson <dhenderson@afscme2384.com>
Subject: Re: 2019 Contract Negotiations

Dave,

On Monday you stated and confirmed Police and Fire received a wage package with an additional .50% in year two. You also confirmed they would be penalized for exercising their rights and would not receive an additional .25%, because they chose to utilize the fact-finding process.

I asked you, if the city was planning to give Unit II the same proposal and would we be penalized and not receive the .25% for going to fact-finding. Your response was, that all Units were offered .25% for not going to fact-finding as it accrued additional costs to the City. Please explain what additional costs were accrued for the city and and what those costs were for.

The right to go to fact-finding is given to the all Meet and Confer Units via section 2-218 & 2-219 of the Ordinance. What policy or ordinance is the city using to punish bargaining units who exercise the fact-finding process?

You then stated, that you could get us the same wage package as Police and Fire, but we still had work rule items such as Fair and Impartial language and Grievance changes on the table.

What is the city's position on these items?

My understanding of our conversation on Monday the 15th, was that unless we agree to work rule items i.e. Fair and Impartial language, Grievance changes, Side agreement and Overtime/flex time, the City would not offer Unit II the same wage package as it has offered to both Fire and Police.

We agree with the fact-finder's report and see no need to change work rule items.

For clarity Mr. Mathews, I ask, will the City honor Favored Nations as supported by the city council? Will the city respect the Meet and Confer Ordinance without punishing Unit II for using the rights in the ordinance and for not conforming to city's demands to change work rule items?

Please clarify if this is or is not the direction from the City Manager.

Again, our team is committed to coming to a fair and equitable mutual agreement but we must not be punished for exercising our rights.

We look forward to hearing from you.

Thank you,

Mario Ayala
President
AFSCME 2384
602-230-2301

-------- Original message --------

From: David Mathews <david.mathews@phoenix.gov>
Date: 4/17/19 11:46 AM (GMT-07:00)
To: Mario Ayala <mayala@afscme2384.com>, Ed Zuercher <ed.zuercher@phoenix.gov>
Cc: Jim Wine <jim.wine@phoenix.gov>, Dolores Henderson <dhenderson@afscme2384.com>
Subject: RE: 2019 Contract Negotiations

Good morning Mario,

We discussed our position on the economic and work rule items over the phone this Monday April 15th. Please let me know if you would like to schedule a table meeting to discuss in more detail, or I am available by phone if that is easier.

Thank you,

David Mathews
Deputy HR Director
City of Phoenix
602-262-4665

From: Mario Ayala <mayala@afscme2384.com>
Sent: Wednesday, April 17, 2019 9:01 AM
To: Ed Zuercher <ed.zuercher@phoenix.gov>
Cc: Jim Wine <jim.wine@phoenix.gov>; David Mathews <david.mathews@phoenix.gov>; Dolores Henderson <dhenderson@afscme2384.com>
Subject: RE: 2019 Contract Negotiations

Ed,

We would love to but the issue is that your team has yet to bring any new information to the table from the last time we meet. We presented them with our wage counter proposal last Monday the 8th and we still have yet to receive any new direction. I know that your intent is to negotiate all Units equally. We will await to hearing from your team.

Thank you,

Mario Ayala
President
AFSCME 2384
602-230-2301

From: Ed Zuercher <ed.zuercher@phoenix.gov>
Sent: Wednesday, April 17, 2019 7:30 AM
To: Mario Ayala <mayala@afscme2384.com>
Cc: Jim Wine <jim.wine@phoenix.gov>; David Mathews <david.mathews@phoenix.gov>; Dolores Henderson <dhenderson@afscme2384.com>
Subject: Re: 2019 Contract Negotiations

Mario, My encouragement is to discuss this in person at the table. Our team will make themselves available any reasonable time. Thanks. Ed

Ed Zuercher

City Manager
City of Phoenix
Ed.zuercher@phoenix.gov
2017 Governing/Living Cities
Top Performing City

On Apr 17, 2019, at 7:09 AM, Mario Ayala <mayala@afscme2384.com> wrote:

Jim & Dave,

I am being told that both Police and Fire have been offered a different wage proposal than Unit II. Am I missing something here? Attached is the last wage proposal from the City.

Does this mean that different Units will receive different wage package? This is different from what the City has done historically. Please advise, if it is the City's intent to offer different wage packages to different Units.

Thank you,

Mario Ayala
President
AFSCME 2384
602-230-2301
<image001.jpg>

From: Jim Wine <jim.wine@phoenix.gov>
Sent: Monday, April 15, 2019 8:57 AM
To: Mario Ayala <mayala@afscme2384.com>; David Mathews <david.mathews@phoenix.gov>
Cc: Ed Zuercher <ed.zuercher@phoenix.gov>; Dolores Henderson <dhenderson@afscme2384.com>
Subject: RE: 2019 Contract Negotiations

Mario,

To my knowledge fire has not signed. jw

From: Mario Ayala [mailto:mayala@afscme2384.com]
Sent: Monday, April 15, 2019 8:02 AM
To: David Mathews <david.mathews@phoenix.gov>
Cc: Ed Zuercher <ed.zuercher@phoenix.gov>; Jim Wine <jim.wine@phoenix.gov>; Dolores Henderson <dhenderson@afscme2384.com>
Subject: 2019 Contract Negotiations

Dave,

Is this what Fire signed for?

Thank you,

Mario Ayala
President
AFSCME 2384

602-230-2301
<image001.jpg>

<Wage Proposal 4-8-19.pdf>

EXHIBIT C

PROPOSAL	Side Agreements M-17 Counter to U-11	Tentative Agreement Item Number	
CURRENT Article, Section, Sub-section & page	**Article 6, Section 6-7, Subsection F.**	NEW Article, Section, Sub-section, & page	**Same**

CURRENT LANGUAGE:

This Memorandum constitutes the total and entire agreements between the parties and no verbal statement shall supersede any of its provisions.

NEW LANGUAGE or CHANGE:

This Memorandum constitutes the total and entire agreements between the parties and no verbal statement shall supersede any of its provisions. **All side agreements executed during this MOU contract period will expire on or before the contract end date unless incorporated into the MOU or extended by mutual agreement.**

Any and all side agreements executed by the Union and the City after July 1, 2019 will contain the following:

- **Mutually agreed upon expiration date**
- **Signatures of the Union President and Labor Relations required**

Intent or problem to be resolved:

Side Agreements were developed for Management and Units to agree upon changes to a current MOU at a time other than during Negotiations. Some Side Agreements are used to pilot a change in a policy or a new program with the understanding that after the trial period the Side Agreement would either sunset or be incorporated into the MOU during the next Negotiations cycle. In practice, some Side Agreements that were to remain into effect were not incorporated into the newly negotiated Memorandum. This has created confusion for both Management and Labor.

Example(s) of how new language/change will be applied (perhaps as opposed to previous language):

Tentative Agreement:

Employee Union Chief Spokesperson	City Chief Spokesperson
Date	Time

EXHIBIT D

PROPOSAL	Fair and Impartial Language	Tentative Agreement Item Number	M4
CURRENT Article, Section, Sub-section & page	**Article 1, Section 1-4, Subsection I.**	**NEW** Article, Section, Sub-section, & page	**Same**

CURRENT LANGUAGE:

All unit members have the right to be treated in a manner which is fair and impartial. If a unit employee is suspended, it is understood that a suspension day is defined as eight (8) hours. For employees working a compressed workweek, the remaining hours of the workday would be accounted at the sole discretion of management.

NEW LANGUAGE or CHANGE:

All unit members have the right to be treated in a manner which is fair and impartial **in any matter associated with the rights of unit members under the specific expressed terms of the Memorandum of Understanding. No unit employee shall suffer reprisal for the exercise of rights granted by the MOU.**

If a unit employee is suspended, it is understood that a suspension day is defined as eight (8) hours. For employees working a compressed workweek, the remaining hours of the workday would be accounted at the sole discretion of management.

Intent or problem to be resolved:

The new language provides consistency with the MOU's current definition of a grievance which states in part that a grievance is claiming violations(s) of the specific express terms of the Memorandum for which there is no Civil Service or other specific method of review provided by State or City law. (Article 2 Section 2-1 Subsection B) The intent of the fair and impartial language is to protect employee rights under the terms of the MOU. It also makes clear that unit employees can exercise their rights as granted by the MOU without reprisal.

This clarification will make the processing of grievances more efficient for both Labor and Management.

Example(s) of how new language/change will be applied (perhaps as opposed to previous language):

For an employee grievance to move forward it must specify which rights of the employee were alleged to have been violated under the terms of the MOU.

Tentative Agreement:

Employee Union Chief Spokesperson	City Chief Spokesperson
Date	Time

EXHIBIT E

PROPOSAL	M-11	Tentative Agreement Item Number	
CURRENT Article, Section, Sub-section & page	Section 2-1 Grievance Procedure Page 28-34	NEW Article, Section, Sub-section, & page	.

CURRENT LANGUAGE:

Section 2-1. Grievance Procedure

The benefits granted by this Article shall not be interpreted or applied as requiring the employer to count as time worked, any hours or fractions of hours spent outside the employee's work shift in pursuit of benefits provided by this Article. The employer shall count as time worked any hours or fractions of hours spent within the employee's regular work shift in pursuit of benefits provided by this Article.

A. Informal Resolution

It is the responsibility of unit members who believe that they have a bona fide complaint concerning their working conditions to promptly inform and discuss it with their immediate (non-unit) supervisor in order to, in good faith, endeavor to clarify the matter expeditiously and informally at the employee's immediate supervisor level.

If such informal discussion does not resolve the problem to the unit member's satisfaction, and if the complaint constitutes a grievance as herein defined, the unit member may file a formal grievance in accordance with the following procedure.

B. Definition of Grievance

A "grievance" is a written allegation by a unit member, submitted as herein specified, claiming violation(s) of the specific express terms of this MOU for which there is no Civil Service or other specific administrative method of review provided by State or City law.

C. Procedure

In processing a formal grievance, the following procedure shall apply: Step I
The unit member shall reduce his grievance to writing by signing and completing all parts of the grievance form provided by the City, and submit it to his second-line supervisor designated by the City within fifteen (15) calendar days of the initial commencement of the occurrence being grieved or when the employee has reasonable cause to become aware of such occurrence. Either party may then request that a meeting be held concerning the grievance or they may mutually agree that no meeting be held. The supervisor shall, within ten (10) calendar days of having received the written grievance or such meeting, whichever is later, submit his response there to in writing, to the grievant and the grievant's representative, if any.
Step II

If the response of the first level of review does not result in resolution of the grievance, the grievant may appeal the grievance by completing, signing and presenting the City form to the

second level of review (Department Director designated by the City) within ten (10) calendar days of the grievant's receipt of the level one (1) response. Either party may request that a meeting be held concerning the grievance or may mutually agree that no meeting be held. Within ten (10) calendar days of having received the written grievance or the meeting, whichever is later, the second level of review shall submit his response to the grievance to the grievant and the grievant's representative, if any.

Step III

If the response of the second level of review does not result in resolution of the grievance, the grievant may, within ten (10) calendar days of the second level response, appeal the grievance by completing, signing and presenting the City form to the Grievance Committee. The Grievance Committee shall be composed of:
Chairman - A member of the City Manager's Office designated by the City Manager. Member - A City of Phoenix Department Director.
Member - The Business Manager of the Union or his designee.

At the beginning of each contract year, the Union and the City will each select five Department Directors to serve as Grievance Committee members. No selected Department Director will serve as a committee member when the grievance involves his/her department. Staff support to the Grievance Committee will be provided by the Human Resources Department. The Labor Relations Administrator and/or Deputy Director in Labor Relations will serve as an advisor to the committee.
The Grievance Committee shall, within ten (10) calendar days of receipt of the appeal, schedule a hearing regarding the grievance at which the grievant shall be afforded the opportunity to fully present his position and to be represented.
The Grievance Committee shall, within ten (10) calendar days of the conclusion of the hearing, make an advisory recommendation on the grievance and submit it to the City Manager for final determination for those employees who have elected to use this procedure instead of arbitration. In lieu of such hearing, the grievant and the Union may jointly invoke the following procedure by submitting written notice to the Labor Relations Division within ten (10) calendar days of the second level response.
If the grievant so elects and the parties mutually agree, the grievant may request the assistance of a Federal Mediation and Conciliation Service (FMCS) mediator to try to resolve the issue within a reasonable time. If no resolution is found during this process, the grievant may submit a request in writing within ten (10) calendar days of this finding to invoke the following procedure.
If the grievant so elects in writing within the above time limit, in lieu of such hearing, the grievance may be reviewed by an arbitrator. The parties, or their designated representative, shall agree on an arbitrator, and if they are unable to agree on an arbitrator within a reasonable time, either party may request FMCS to submit to them a list of seven (7) arbitrators who have had experience in the public sector.
The parties shall, within seven (7) calendar days of the receipt of said list, select the arbitrator by alternately striking names from said list until one name remains. Such person shall then become

the arbitrator. The arbitrator so selected shall hold a hearing as expeditiously as possible at a time and place convenient to the parties, and shall be bound by the following:
1) The arbitrator shall neither add to, detract from nor modify the language of the MOU or of departmental rules and regulations in considering any issue before him.

2) The arbitrator shall expressly confine himself to the precise issues submitted to him and shall have no authority to consider any other issue not so submitted to him.

3) The arbitrator shall be bound by applicable State and City law.

The grievance committee or the arbitrator shall submit findings and advisory recommendations to the grievant and to the City Manager. The cost of the arbitrator and any other mutually incurred costs shall be borne equally by the parties.

The City Manager, shall, within fourteen (14) calendar days of the receipt of the written findings and recommendations, make the final determination of the grievance and submit it in writing to the grievant and his/her designated representative.

D. Union Grievance

The Union may, in its own name, file a grievance that alleges violation by the City of the rights accorded to the Union by Article 1, Section 1-3. The Union shall file such grievance at Step II of the procedure.

E. Time Limits

Failure of City Management representatives to comply with time limits specified in Section C shall entitle the grievant to appeal to the next level of review. Failure of the grievant to comply with said time limits shall constitute abandonment of the grievance. Except however, that the parties may extend time limits by mutual written agreement in advance.

F. Notice to Union of Grievance Resolutions

The City will put the Union on notice of proposed final resolutions of grievances where the Union has not been designated as the grievant's representative for the purpose of allowing the Union to ascertain that a final resolution will not be contrary to the terms of this MOU.

G. The City will not discriminate against employees because of their exercise of rights granted by this Article.

H. Full-time and part-time employees are covered by this grievance procedure.

I. Employer grievances, should they occur as a result of official Union activities or actions, including the failure to act as required under this agreement, will be presented directly to the Union Business Manager, or his designee within fifteen (15) days of the date upon which the employer became aware of the situation prompting the grievance. The Business Manager, or his designee shall in each case provide a written answer within ten (10) calendar days from receipt of the grievance.

Unresolved employer grievances may be submitted to either the Grievance Committee or arbitration pursuant to Step III herein; provided, the employer bears the cost of the arbitrator.

J. Group Grievance

When more than one unit member claims the same violation of the same rights allegedly accorded by this MOU, and such claims arise at substantially the same time and out of the same circumstances, a single group grievance may be filed in the name of all such members. Such group grievance shall be filed at the Step II of this procedure which provides the next level of supervision having authority over all named grievants. Each unit member that is a party grievant must be named and must sign such group grievance.

K. The City will notify Grievant by mail, to Grievant's on file home address of the date, time, and place of his Grievance Committee hearing, and e-mail a copy of the letter to the Union Hall. Unless emergency circumstances apply, if either the City representative or Grievant does not appear at the Grievance Committee hearing, the party not appearing shall lose the grievance.

L. Non-disciplinary employee coachings and supervisory counselings provide clear expectations and proper notice to employees and do not in themselves amount to harm or damage and are therefore not subject to this grievance procedure.

NEW LANGUAGE or CHANGE:

Section 2-1: Grievance Procedure

It is understood by the parties that the benefits granted by this Article shall not be interpreted or applied as requiring the employer to count as time worked, any hours or fractions of hours spent outside the employee's work shift in pursuit of benefits provided by this Article. The employer shall count as time worked any hours or fractions of hours spent within the employee's regular work shift in pursuit of benefits provided by this Article.

A. Informal Resolution

1. **As a matter of good labor-management relations the parties encourage unit members who believe that they have a bona fide grievance to discuss and attempt to resolve it with their immediate non-unit supervisor.**

2. **If the above informal discussion is held and does not resolve the grievance, the unit member may file a formal grievance in accordance with the following procedure.**

B. Definition of Grievance

1. **A grievance is a written allegation by a unit member, submitted as herein specified, claiming violation(s) regarding the interpretation and/or application of the specific express terms of this Memorandum for which there is no Civil Service or other specific administrative method of review provided. However, disputes specifically excluded in other Articles of this Agreement from the Grievance and Arbitration procedure shall not be construed as within the definition set forth above and shall not be handled in accordance with this procedure. It is agreed that such excluded disputes are not grievable or arbitrable under the terms of this Article or under this contract.**

2. The City continues to retain the format used for grievances, including forms, technology, etc.

3. A grievance which does not meet the requirements set forth in this Article shall be null and void, and will not be processed in accordance with this procedure.

C. Procedure

All grievances covered by this Article shall be handled exclusively in the following manner:

A grievance must be reduced to writing, citing the specific Article and Section of this Memorandum alleged to have been violated.

1. Step 1

The unit member shall reduce the grievance to writing by signing and completing the grievance form provided by the City and submit it to the division head, or designee, within 14 calendar days of the initial commencement of the occurrence being grieved.

The division head, or designee, may investigate, further consider, and discuss the grievance with the grievant and the grievant's representative, if any, as deemed appropriate, and shall, within 14 calendar days of having received the written grievance, submit a response thereto in writing to the grievant. The parties by written mutual agreement may move the grievance to Step 2 of the grievance procedure.

2. Step 2

If the written response of the Step 1 does not result in a resolution of the grievance, the grievant may appeal the grievance by signing and completing the City form and presenting it to the department head, or designee within fourteen 14 calendar days of the grievant's receipt of the Step 1 response.

The department head, or designee, may further consider and discuss the grievance with the grievant and the grievant's representative, if any, as deemed appropriate, and shall, within 14 calendar days of having received the written grievance, submit a response thereto in writing to the grievant. The parties by written agreement may move the grievance to Step 3 of the grievance procedure.

3. Step 2.5

After the Step 2 response, but prior to review by the Grievance Committee, the parties involved may mutually agree to submit the grievance to Labor Relations. The grievance, as originally written and Step 1 and Step 2 responses, must be submitted to Labor Relations within 14 calendar days of receipt of the Step 2 response. Labor Relations shall, within 14 calendar days of the receipt of the grievance, meet with the department head, or designee, and the grievant and the grievant's representative, if any, in an attempt to resolve the grievance. Labor

Relations shall then submit a written response to all parties within 14 calendar days of the meeting.

4. Step 3

   a. If the written response of the Step 2 (or 2.5 if applicable) does not result in a resolution of the grievance, the grievant may, within 14 calendar days of the Step 2 response, appeal the grievance by signing and completing the City form and presenting it to Labor Relations. A Grievance Committee hearing will be scheduled at which the grievant shall be afforded the opportunity to fully present his position and to be represented.

      The Grievance Committee shall be composed of:

      Chairman – A member of the City Manager's Office designated by the City Manager.
      Member – A City function head on a rotating schedule.
      Member – The Union President, or designee.

      The Grievance Committee shall submit findings and advisory recommendation(s) to the City Manager. The City Manager shall make the final determination of the grievance and submit it in writing to the grievant and his designated representative.

   b. If the grievant so elects in writing within the above time limit, in lieu of such hearing the grievance may be reviewed by an arbitrator. The parties, or their designated representatives, shall agree on an arbitrator, and if they are unable to agree on an arbitrator within a reasonable time, either party may request the Federal Mediation and Conciliation Service to submit to them a list of 7 arbitrators who have had experience in the public sector. The parties shall, within 7 calendar days of the receipt of said list, select the arbitrator by alternately striking names from said list until one name remains. Such person shall then become the arbitrator. The arbitrator so selected shall hold a hearing as expeditiously as possible at a time and place convenient to the parties, and shall be bound by the following:

      i. The arbitrator shall be bound by the language of this Memorandum and departmental rules and regulations consistent therewith in considering any issue properly before him/her.

      ii. The arbitrator shall expressly confine him/herself to the precise issues submitted to him/her and shall have no authority to consider any other issue not so submitted to him/her.

      iii. The arbitrator shall be bound by applicable State and City law.

      iv. The cost of the arbitrator and any other mutually incurred costs shall be borne equally by the parties.

The arbitrator shall submit findings and advisory recommendations to the City Manager. The City Manager shall make the final determination of the grievance and submit it in writing to the grievant and his designated representative.

D. Time Limits

Failure of City Management representatives to comply with time limits specified in Paragraph C shall entitle the grievant to appeal to the next level of review; and failure of the grievant to comply with said time limits shall constitute abandonment of the grievance; except however, that the parties may extend time limits by mutual written agreement in advance of the deadline.

E. Union Grievance

The Union may, in its own name, file a grievance that alleges violation by the City of the rights accorded to the Union by the specific terms of Article 1-3 of this Memorandum. The Union shall file such grievance at Step 3 of this Procedure.

F. Group Grievance

When more than one unit member claims the same violation of the same rights allegedly accorded by this Memorandum, and such claims arise at substantially the same time and out of the same circumstances, a single group grievance may be filed in the name of all such members. Such group grievances shall be filed at the Step of this Procedure which provides the lowest level of common supervision having authority over all named Grievant's. Each unit member that is a party Grievant must be named and must sign such group grievance.

G. Employer Grievances

Should they occur as a result of official Union activities or actions, including the failure to act as required under the terms of this Memorandum, employer grievances will be presented directly to the Union president or any officer of the Union within 14 days of the occurrence prompting the grievance. The president, or designee, shall in each case provide a written answer within 14 days from receipt of the grievance. Unresolved employer grievances may be submitted to arbitration pursuant to Step 3.

H. Municipal Court

It is understood concerning the administration of this grievance procedure in the Municipal Court, specifically Step 2 that the designated "Department Head" is the Executive Court Administrator, and the "City Manager's Office" or "City Manager" shall mean the Presiding Judge, or his designee as provided in the procedure.

Intent or problem to be resolved:
To create consistency in the grievance process across all MOUs.

2019 Negotiations – AFSCME 2384/Unit 2

Example(s) of how new language/change will be applied (perhaps as opposed to previous language):

Tentative Agreement:

Employee Union Chief Spokesperson

City Chief Spokesperson

Date

Time

PROPOSAL	M-11	Tentative Agreement Item Number	
CURRENT Article, Section, Sub-section & page	Section 2-1 Grievance Procedure Pages 19-24	NEW Article, Section, Sub-section, & page	

CURRENT LANGUAGE:

It is understood by the parties that the benefits granted by this Article shall not be interpreted or applied as requiring the City to count as time worked any hours or fractions of hours spent outside the employee's work shift in pursuit of benefits provided by this Article. The City shall count as time worked any hours or fractions of hours spent within the employee's regular work shift in pursuit of benefits provided by this Article.

A. Informal Resolution

The parties agree that the first attempt to resolve employee complaints arising under this M.O.U. will be an informal discussion between the employee and his immediate non-Unit supervisor only.

It is the responsibility of Unit members who believe that they have a bona fide complaint concerning their working conditions to promptly inform and discuss it with their immediate (non-Unit) supervisor in order to, in good faith, endeavor to clarify the matter expeditiously and informally at the employee-immediate supervisor level.

If such informal discussion does not resolve the problem to the Unit member's satisfaction, and if the complaint constitutes a grievance herein defined, the Unit member may file a formal grievance in accordance with the following procedure.

B. Definition of Grievance

A "grievance" is a written allegation by a Unit employee, submitted as herein specified, claiming violation(s) of the specific express terms of this Memorandum for which there is no Civil Service or other specific method of review provided by State or City law.

C. Procedure

In processing a formal grievance, the following procedure shall apply:

Step I

The unit employee shall reduce his or her grievance to writing by completing all parts of the grievance form provided by the City, and submit it to the second line supervisor designated by the City or City designee within fifteen (15) calendar days of the initial commencement of the occurrence being grieved or when the employee had reasonable cause to become aware of such occurrence. **The City will assign a grievance number within ten (10) calendar days.** Either party may then request that a meeting be held concerning the grievance or they may mutually agree that no meeting be held. The second line supervisor shall, within ten (10) calendar days of having received the written grievance or such meeting, whichever is later, submit his response thereto in writing to the Grievant and the Grievant's representative, if any.

Step II

If the response of the first level of review does not result in resolution of the grievance, the grievant may appeal the grievance by completing the City form and presenting it to the second level of review, the Department Head or his designee, within ten (10) calendar days of the grievant's receipt of the level one response. Either party may request that a meeting be held concerning the grievance or may mutually agree that no meeting be held. Within ten (10) calendar days of having received the written grievance or the meeting, whichever is later, the second level of review shall submit his response to the grievance to the grievant and the grievant's representative, if any.

Step III

If the response of the second level of review does not result in resolution of the grievance, the grievant and Union may, within ten (10) calendar days of having received the Step II response, appeal the grievance by completing the City form and presenting it to the Grievance Committee. The Grievance Committee shall be composed of:

Chairman: A member of the City Manager's Office designated by the City Manager.

Member: A City of Phoenix Department Director.

Member: The President of the Local or the President's designee.

At the beginning of each contract year, the Union and the City will each select five Department Directors to serve as Grievance Committee members. No selected Department Director will serve as a committee member when the grievance involves his/her department. Staff support to the Grievance Committee will be provided by the Human Resources Department. The Labor Relations Administrator and/or Department Director in Labor Relations will serve as an advisor to the committee.

The Grievance Committee shall, within ten (10) calendar days of receipt of the appeal, schedule a hearing regarding the grievance at which the grievant shall be afforded the opportunity to fully present his position and to be represented. The Grievance Committee shall, within ten (10) calendar days of the conclusion of the hearing, make advisory recommendation on the grievance and submit it to the City Manager for final determination for those employees who have elected to use this procedure instead of arbitration.

In lieu of such hearing, the grievant and the Union may jointly invoke the following procedure by submitting the written notice to the Labor Relations Division within ten (10) calendar days of having received the Step II response. If the grievant and the Union so elect in writing within the above time limit, in lieu of such Grievance Committee hearing, the grievance may be reviewed by an arbitrator.

The parties or their designated representatives shall agree on an arbitrator, and if they are unable to agree on an arbitrator within a reasonable time, either party may request the Federal Mediation and Conciliation Service to submit to them a list of seven (7) arbitrators who have had experience in the public sector. The parties shall, within seven (7) calendar days of the receipt of said list, select the arbitrator by alternately striking names from the said list until one-name remains. Such person shall then become the arbitrator. The arbitrator so selected shall hold a hearing as expeditiously as possible at a time and place convenient to the parties, and shall be bound by the following:

1. The arbitrator shall neither add to, detract from, nor modify the language of the Memorandum or of Departmental rules and regulations in considering any issue properly before him.

2. The arbitrator shall be expressly confined to the precise issues submitted and shall have no authority to consider any other issue.

3. The arbitrator shall be bound by applicable State and City Law.

The arbitrator shall submit his findings and advisory recommendations to the grievant and the City Manager, or their designated representatives. The costs of the arbitrator and any other mutually incurred costs shall be borne equally by the parties.

Step IV

The City Manager shall, within ten (10) calendar days of the receipt of the arbitrator's written findings and recommendations, make the final determination of the grievance and submit it in writing to the grievant and designated representative.

D. Union Grievance

The Union may, in its own name, file a grievance that alleges violation by the City of the rights accorded to the Union by the specific terms of Article 1, Section 1-3 of this Memorandum. The Union shall file such grievance at Step III of the procedure. All other grievances must be filed and signed by Unit employees subject to the provisions of this Article.

E. Group Grievance

When more than one Unit employee claims the same violation of the same rights allegedly accorded by this Memorandum, and such claims arise at substantially the same time and out of the same circumstances, a single group grievance may be filed in the name of all such employees. Such group grievances shall be filed at the step of this procedure which provides the lowest level of common supervision having authority over all named grievants. Each Unit employee that is a party grievant must be named and must sign such group grievance.

F. Time Limits

Failure of the City Management representatives to comply with time limits specified in Section 2-1 C shall entitle the grievant to appeal to the next level of review; and failure of the grievant to comply with said time limits shall constitute abandonment of the grievance. Except, however, that the parties may extend time limits by mutual written agreement in advance.

G. Notice to Union of Grievance Resolution

The City will put the Union on notice of proposed final resolutions of grievances where the Union has not been designated as the grievant's representative for the purpose of allowing the Union to ascertain that a final resolution will not be contrary to the terms of this Memorandum.

The City will ensure that a copy of every MOU grievance filed by a Unit member, including the response from management, is forwarded to the Union at each step of the process.

H. The City will not discriminate or retaliate against employees because of their exercise of rights granted by this Article.

I. Employer grievances, should they occur as a result of official Union activities or actions, including the failure to act as required under this agreement, will be presented directly to the Union President or any Officer of the Union within ten (10) calendar days of the occurrence prompting the grievance, or within ten (10) calendar days of the date upon which the employer became aware of the situation prompting the grievance. The President, or designee, shall, in each case, provide a written answer within ten (10) calendar days from receipt of the grievance.

Unresolved employer grievances may be submitted to arbitration pursuant to Step III herein; provided that the employer shall bear the cost of the services of the arbitrator.

J. After the department head's decision, but prior to review by the Grievance Committee, the parties involved may mutually agree to submit the grievance to the Labor Relations Administrator. The grievance as originally written and the attached response from the department head must be submitted to the Labor Relations Division within ten (10) calendar days of receipt of the department head's answer. The Labor Relations Administrator shall meet with the department head, the employee, and his/her representatives, if any, in an attempt to resolve the grievance within ten (10) calendar days. The Labor Relations Administrator shall then submit written recommendations for resolution to the employee, his/her representatives, if any, and department head within ten (10) calendar days of the meeting.

If the parties are unable to resolve the grievance in accordance with this section, the employee may appeal the grievance to Step III within ten (10) calendar days from receipt of the Labor Relations Administrator's response.

The Union and the City agree to meet at regular intervals (as defined in Article 2 Section 2-2 Labor/Management Committee) to find ways to improve the grievance procedures.

NEW LANGUAGE or CHANGE:

Section 2-1: Grievance Procedure

It is understood by the parties that the benefits granted by this Article shall not be interpreted or applied as requiring the employer to count as time worked, any hours or fractions of hours spent outside the employee's work shift in pursuit of benefits provided by this Article. The employer shall count as time worked any hours or fractions of hours spent within the employee's regular work shift in pursuit of benefits provided by this Article.

A. Informal Resolution

1. **As a matter of good labor-management relations the parties encourage unit members who believe that they have a bona fide grievance to discuss and attempt to resolve it with their immediate non-unit supervisor.**

2. **If the above informal discussion is held and does not resolve the grievance, the unit member may file a formal grievance in accordance with the following procedure.**

B. Definition of Grievance

1. **A grievance is a written allegation by a unit member, submitted as herein specified, claiming violation(s) regarding the interpretation and/or application of the specific express terms of this Memorandum for which there is no Civil Service or other specific administrative method of review provided. However, disputes specifically excluded in other Articles of this Agreement from the Grievance and Arbitration procedure shall not be construed as within the definition set forth above and shall not be handled in accordance with this procedure. It is agreed**

that such excluded disputes are not grievable or arbitrable under the terms of this Article or under this contract.

2. The City continues to retain the format used for grievances, including forms, technology, etc.

3. A grievance which does not meet the requirements set forth in this Article shall be null and void, and will not be processed in accordance with this procedure.

C. Procedure

All grievances covered by this Article shall be handled exclusively in the following manner:

A grievance must be reduced to writing, citing the specific Article and Section of this Memorandum alleged to have been violated.

1. Step 1

The unit member shall reduce the grievance to writing by signing and completing the grievance form provided by the City and submit it to the division head, or designee, within 14 calendar days of the initial commencement of the occurrence being grieved.

The division head, or designee, may investigate, further consider, and discuss the grievance with the grievant and the grievant's representative, if any, as deemed appropriate, and shall, within 14 calendar days of having received the written grievance, submit a response thereto in writing to the grievant. The parties by written mutual agreement may move the grievance to Step 2 of the grievance procedure.

2. Step 2

If the written response of the Step 1 does not result in a resolution of the grievance, the grievant may appeal the grievance by signing and completing the City form and presenting it to the department head, or designee within fourteen 14 calendar days of the grievant's receipt of the Step 1 response.

The department head, or designee, may further consider and discuss the grievance with the grievant and the grievant's representative, if any, as deemed appropriate, and shall, within 14 calendar days of having received the written grievance, submit a response thereto in writing to the grievant. The parties by written agreement may move the grievance to Step 3 of the grievance procedure.

3. Step 2.5

After the Step 2 response, but prior to review by the Grievance Committee, the parties involved may mutually agree to submit the grievance to Labor Relations. The grievance, as originally written and Step 1 and Step 2 responses, must be submitted to Labor Relations within 14 calendar days of receipt of the Step 2

response. Labor Relations shall, within 14 calendar days of the receipt of the grievance, meet with the department head, or designee, and the grievant and the grievant's representative, if any, in an attempt to resolve the grievance. Labor Relations shall then submit a written response to all parties within 14 calendar days of the meeting.

4. Step 3

   a. If the written response of the Step 2 (or 2.5 if applicable) does not result in a resolution of the grievance, the grievant may, within 14 calendar days of the Step 2 response, appeal the grievance by signing and completing the City form and presenting it to Labor Relations. A Grievance Committee hearing will be scheduled at which the grievant shall be afforded the opportunity to fully present his position and to be represented.

      The Grievance Committee shall be composed of:

      Chairman – A member of the City Manager's Office designated by the City Manager.
      Member – A City function head on a rotating schedule.
      Member – The Union President, or designee.

      The Grievance Committee shall submit findings and advisory recommendation(s) to the City Manager. The City Manager shall make the final determination of the grievance and submit it in writing to the grievant and his designated representative.

   b. If the grievant so elects in writing within the above time limit, in lieu of such hearing the grievance may be reviewed by an arbitrator. The parties, or their designated representatives, shall agree on an arbitrator, and if they are unable to agree on an arbitrator within a reasonable time, either party may request the Federal Mediation and Conciliation Service to submit to them a list of 7 arbitrators who have had experience in the public sector. The parties shall, within 7 calendar days of the receipt of said list, select the arbitrator by alternately striking names from said list until one name remains. Such person shall then become the arbitrator. The arbitrator so selected shall hold a hearing as expeditiously as possible at a time and place convenient to the parties, and shall be bound by the following:

      i. The arbitrator shall be bound by the language of this Memorandum and departmental rules and regulations consistent therewith in considering any issue properly before him/her.

      ii. The arbitrator shall expressly confine him/herself to the precise issues submitted to him/her and shall have no authority to consider any other issue not so submitted to him/her.

      iii. The arbitrator shall be bound by applicable State and City law.

iv. The cost of the arbitrator and any other mutually incurred costs shall be borne equally by the parties.

The arbitrator shall submit findings and advisory recommendations to the City Manager. The City Manager shall make the final determination of the grievance and submit it in writing to the grievant and his designated representative.

D. Time Limits

Failure of City Management representatives to comply with time limits specified in Paragraph C shall entitle the grievant to appeal to the next level of review; and failure of the grievant to comply with said time limits shall constitute abandonment of the grievance; except however, that the parties may extend time limits by mutual written agreement in advance of the deadline.

E. Union Grievance

The Union may, in its own name, file a grievance that alleges violation by the City of the rights accorded to the Union by the specific terms of Article 1-3 of this Memorandum. The Union shall file such grievance at Step 3 of this Procedure.

F. Group Grievance

When more than one unit member claims the same violation of the same rights allegedly accorded by this Memorandum, and such claims arise at substantially the same time and out of the same circumstances, a single group grievance may be filed in the name of all such members. Such group grievances shall be filed at the Step of this Procedure which provides the lowest level of common supervision having authority over all named Grievant's. Each unit member that is a party Grievant must be named and must sign such group grievance.

G. Employer Grievances

Should they occur as a result of official Union activities or actions, including the failure to act as required under the terms of this Memorandum, employer grievances will be presented directly to the Union president or any officer of the Union within 14 days of the occurrence prompting the grievance. The president, or designee, shall in each case provide a written answer within 14 days from receipt of the grievance. Unresolved employer grievances may be submitted to arbitration pursuant to Step 3.

H. Municipal Court

It is understood concerning the administration of this grievance procedure in the Municipal Court, specifically Step 2 that the designated "Department Head" is the Executive Court Administrator, and the "City Manager's Office" or "City Manager" shall mean the Presiding Judge, or his designee as provided in the procedure.

2019 Negotiations – AFSCME 2384/Unit 2

Intent or problem to be resolved:
To create consistency in the grievance process across all MOUs.

Example(s) of how new language/change will be applied (perhaps as opposed to previous language):

Tentative Agreement:

Employee Union Chief Spokesperson

City Chief Spokesperson

Date

Time

EXHIBIT F

PROPOSAL	Overtime Definition	Tentative Agreement Item Number	M6
CURRENT Article, Section, Sub-section & page	**Unit 2 Article 3, Section 3-2 Subsection A**	NEW Article, Section, Sub-section, & page	**Same**

CURRENT LANGUAGE:

Overtime is defined as time assigned and worked beyond the regularly scheduled workweek or daily work shift; it being understood that overtime for Unit members who normally work a daily work shift of eight (8) consecutive hours, including a paid meal period on the job, is defined as time assigned and worked in excess of forty (40) hours in a seven (7) day work period, or eight (8) hours per daily shift including paid meal periods. In addition, when an employee is assigned and works two (2) eight (8) hour shifts, and/or two (2) ten (10) hour shifts, or any combination of the two shifts, the second of which commences less than twelve (12) hours after the regularly scheduled conclusion of the first, that amount of time falling within said twelve (12) hour period is deemed overtime for purposes of Section 3-2 D below, except, however, that such twelve (12) hour rule does not apply to regular shift change situations, relief positions, and positions in the classification of Event Services Worker at the Phoenix Convention Center. The twelve (12) hour rule also does not apply if an employee works less than a full shift either before or after his/her regular shift. **The twelve (12) hour rule will be removed from concessions and restored on July 1, 2017.**

NEW LANGUAGE or CHANGE:

Overtime is defined as time assigned and worked beyond the regularly scheduled work week ~~or daily work shift~~; it being understood that overtime for all unit members who normally work a daily work shift of eight (8) consecutive hours, including a paid meal period on the job, is defined as time assigned and worked more than forty hours in a ~~seven (7)~~ seven-day work period, ~~or eight (8) hours per daily shift~~ including paid meal periods. In addition, when an employee is assigned and works two (2) eight (8) hour shifts, and/or two (2) ten (10) hour shifts, or any combination of the two shifts, the second of which commences less than twelve (12) hours after the regularly scheduled conclusion of the first, that amount of time falling within said twelve (12) hour period is deemed overtime for purposes of Section 3-2 D below, except, however, that such twelve (12) hour rule does not apply to regular shift change situations, relief positions, and positions in the classification of Event Services Worker at the Phoenix Convention Center. The twelve (12) hour rule also does not apply if an employee works less than a full shift either before or after his/her regular shift. ~~The twelve (12) hour rule will be removed from concessions and restored on July 1, 2017.~~

Overtime for unit members assigned to a four ten work week schedule is defined as time assigned and worked beyond the regular scheduled forty hours per week.

Employees will have the ability to flex work hours within their forty-hour work week. Hours flexed cannot exceed a full daily shift. Flex time will only be allowed if both parties (employee and supervision) mutually agree and sign a department/city flex agreement

form prior to any flexing of hours. Consistent with the MOU overtime may also be offered if the flex time option is not available or additional hours are required in the employee's work week.

Intent or problem to be resolved:

There are two main issues this proposed TA is trying to accomplish. The first is a recognition that employees and supervisors would like to incorporate some flexibility for all employees during their work week. By calculating overtime after a forty-hour work week will allow employees the ability to flex work hours within the week. To ensure that this Flex time is optional it will only be allowed after the employee and supervision agree and it is documented by signing a department/city flex agreement form.

The second issue the new language addresses is to ensure there is a consistent application of flex time across departments as well as employee Units.

Example(s) of how new language/change will be applied (perhaps as opposed to previous language):

Tentative Agreement:

______________________________ ______________________________

Employee Union Chief Spokesperson City Chief Spokesperson

______________________________ ______________________________

Date Time