

IN THE SUPREME COURT

STATE OF ARIZONA

MARK GILMORE and MARK
HARDER,

Plaintiffs/Appellants,

v.

KATE GALLEGO, in her official
capacity as Mayor of the City of
Phoenix; JEFF BARTON, in his
official capacity as City Manager of
the City of Phoenix; and CITY OF
PHOENIX,

Defendants/Appellees,

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

Intervenor Defendant/Appellee.

Arizona Supreme Court
Case No. CV-23-0130-PR

Court of Appeals, Division One
Case No. 1 CA-CV 22-0049

Maricopa County Superior Court
Case No. CV2019-009033

DEFENDANTS/APPELLEES' RESPONSE TO

PLAINTIFFS/APPELLANTS' PETITION FOR REVIEW

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I. INTRODUCTION

Petitioners do not identify any legal issues of statewide importance or explain how the opinion below conflicts with existing law. Instead, they simply raise factual issues and contend the lower courts erred based on case-specific information in an extensive record. The lower courts thoroughly analyzed the facts and rejected Petitioners' claims based on the undisputed evidence and Petitioners' fatal admissions. This case does not merit further review, and the Court should deny Petitioners' request to merely reexamine the robust and fact-intensive record here.

Petitioners were not forced to fund release time or associate with intervenor American Federation of State, County and Municipal Employees (AFSCME), Local 2384 ("Union"). They admitted the City of Phoenix ("City") paid for release time and they were not deprived of any compensation due under the collective bargaining agreement ("CBA"). Petitioners were not injured.

Petitioners' Gift Clause claim fails under *Cheatham v. DiCiccio*, 240 Ariz. 314 (2016), and the longstanding principle that courts must take a "panoptic view" of the entire contract. Here, the CBA served a valid public purpose by defining the terms and conditions of employment for City employees, and Petitioners *admitted* the City received adequate consideration for the CBA.

II. BACKGROUND

A. Petitioners did not pay for release time.

Petitioners contend their compensation was reduced because release time was

“charged” as part of the “total compensation” package, but this did not mean Petitioners paid for release time or that their compensation was lower because of it. IR 70 ¶¶ 67-75, 84-94, 96; IR 100 (CSOF) ¶¶ 23-24, 26-27, 46-55. “Total compensation” refers to the sum of all economic items in a CBA (i.e., the total economic package) – not the compensation of individual employees. IR 70 ¶¶ 67-75, 87-94. *The City* paid for release time as part of the total cost of the CBA, as reflected in the CBA itself: “[t]he cost to the City for these release positions and release hours ... has been charged as part of the total compensation.” IR 9 & 10, Ex. A § 1-3(A) (emphasis added); IR 70 ¶¶ 31, 67-94; IR 100 ¶¶ 23, 26, 37-39.

Petitioners *admitted* the City paid for the CBA, including the release time thereunder, and that they did not (1) have a financial interest in “total compensation” beyond their personal wages and benefits, (2) have an interest in the wages and benefits of other employees, like those on release time, or (3) pay for their coworkers’ compensation even though it was part of “total compensation.” IR 70 ¶¶ 31, 79-94; IR 100 ¶¶ 23-24, 26-27, 37-39. Petitioners also conceded (1) they were not entitled to more than their personal compensation under the CBA, (2) they received all compensation due thereunder, and (3) release time did not cause them to receive less than what was promised. IR 70 ¶¶ 82, 87, 91-94, 96, 127-130; IR 100 ¶¶ 46-55. Thus, Petitioners “do not allege ... the City, the Union, or anyone else has failed to comply with [the CBA].” IR 60 & 66, Ex. 26 & Ex. 27 (Petitioners’

Declarations) ¶¶ 13-16. Moreover, Petitioners admitted they were not compelled to support or associate with the Union. IR 70 ¶¶ 139, 141-146, 157; IR 100 ¶¶ 24, 27, 40-43, 46-47, 53.

If City-funded release time were eliminated, the City Council or Manager would have discretion to reallocate the funds to another purpose unrelated to Petitioners' compensation. City Charter, Ch. III, § 9(A), Ch. XXV, §§ 14(F), 14(G); *see also* IR 70 ¶¶ 111-118, 120-125; IR 100 ¶¶ 13-15, 36, 48-55. Even Petitioners admitted the City “can do whatever it wants” with the funds and could reallocate them to another purpose. IR 70 ¶¶ 113-118, 122, 125; IR 100 ¶ 15. They also admitted the City did not promise and was not required to increase their compensation if release time were eliminated. IR 70 ¶¶ 117-118, 122-125, 127-129, 136; IR 100 ¶¶ 42-43, 48-51, 54-55.

B. The CBA served a valid public purpose, and Petitioners admitted it was supported by adequate consideration.

The CBA comprehensively governed the terms and conditions of employment for Unit II employees, and the City benefitted by procuring their services and confirming their agreement not to strike. IR 70 ¶¶ 3-6, 13, 18-19; *Gilmore v. Gallego*, ___ Ariz. ___, 2023 WL 2979302, ¶¶ 31, 34, 39 (App. 2023).

Petitioners *admitted* the City received adequate services from employees in exchange for the total cost of the CBA (i.e., “total compensation”). IR 70 ¶ 100; IR 100 ¶¶ 37-38. Thus, it is undisputed the City did not pay too much for the CBA, and

the total cost was not too high when compared to the City's benefits in return.

C. Release time was an integral part of the CBA because it was negotiated and funded as part of the contract and facilitated the City's collective bargaining obligations under the City Code.

The City's "Meet & Confer Ordinance" (City Code § 2-209, *et seq.*) governs the City's labor relations with Unit II. IR 70 ¶¶ 7-12. It recognizes that (1) "[t]he people of Phoenix have a fundamental interest in the development of harmonious and cooperative relationships between the City government and its employees," and (2) "full acceptance of the principle and procedure of full communication between public employers and public employee organizations can alleviate various forms of strife and unrest." City Code § 2-209. The Ordinance "obligate[s] the City, public employees, and their representatives ... to enter into discussions with affirmative willingness to resolve grievances and disputes relating to wages, hours and working conditions." *Id.*

In the CBA, the City and Union agreed "the well-being dignity, respect, and morale of the employees of the City are benefitted by providing employees an opportunity to participate in the formulation of policies and practices affecting the wages, hours, and working conditions of their employment." IR 70 ¶ 20. They also agreed the community "benefits from harmonious and cooperative relationships between the City and its employees." *Id.* ¶ 34; *see also id.* ¶¶ 16-17, 25-27. Thus, the parties "negotiated full-time release positions, and release hours, as an efficient

and readily available point of contact for addressing labor-management concerns,” and they agreed to “meet with affirmative willingness to resolve grievances and disputes relating to wages, hours and working conditions.” *Id.* ¶¶ 22, 33, 43; *see also id.* ¶¶ 28-46, 49-65.

The Union agreed to represent Unit II employees in grievances, collective bargaining, and other employment matters. *Id.* ¶¶ 23-25; *see also id.* ¶¶ 16-17, 41-44. It also agreed to designate representatives for (1) a Labor-Management Committee to “facilitate improved labor-management relationships by providing a forum for the free discussion of mutual concerns,” and (2) a Health and Safety Committee. *Id.* ¶¶ 26-27. “The full-time release positions agree[d] to participate in [the City’s] committees and task forces,” and the Union’s stewards “shall service grievances at ... job sites to which they are regularly assigned.” *Id.* ¶ 38.

The CBA specifies that release time would be used for activities that promote cooperative labor relations and provide a point of contact for addressing labor issues, including: (1) “ensuring representation for employees during administrative investigations and grievance/disciplinary appeal meetings,” (2) “participating in collaborative labor-management initiatives,” (3) “serving on ... task forces and committees,” (4) “facilitating communication,” (5) “assisting [employees] in understanding and following work rules,” (6) “administering the provisions of the [CBA],” and (7) attending “conferences, meetings, seminars, training classes and

workshops so that employees better understand issues such as City policies and practices, labor management partnerships, and methods of effective representation.” *Id.* ¶¶ 29, 36-37.

These activities help fulfill the labor relations objectives under the Meet & Confer Ordinance and the CBA, including: (1) facilitating collective bargaining, (2) opening channels of communication and providing workers with a means to express discontent, (3) providing management with information about worker preferences, (4) identifying and remedying inefficiencies, (5) developing trained and knowledgeable representatives to facilitate collective bargaining and dispute resolution, (6) informally resolving disputes, and (7) increasing employee satisfaction, resulting in greater productivity and reduced turnover. *Id.* ¶¶ 54-55; *see also id.* ¶¶ 41-44, 49-63. Petitioners admitted release time can advance these purposes. *Id.* ¶¶ 50-53, 57-63; IR 100 ¶¶ 44-45.

The City paid for release time because these activities promote positive labor relations and encourage employees to “give more of their time and energy and quality to the[ir] work.” IR 70 ¶¶ 41-46, 55-65, 103-104. Without release time, the City’s costs would be the same or higher because the City still would need to ensure the performance of these activities and coordinate with employee representatives through a less efficient mechanism, resulting in less effective and efficient communication, cooperation, and collective bargaining. *Id.* ¶¶ 45, 55, 64-65, 103-

104; IR 70 & 74, Ex. 12 (Frost Depo.) at 54:14-56:24, 82:13-83:13, 156:11-22; IR 70 & 75, Ex. 14 (Zuercher Depo.) at 24:1-25, 26:12-27:3, 50:23-51:23, 53:8-54:18, 55:4-56:6, 56:17-57:3, 57:22-58:3, 76:16-77:12, 87:5-20, 99:5-101:21.

III. THIS CASE WAS DECIDED CORRECTLY BELOW, AND THERE IS NO REASON TO ACCEPT REVIEW.

A. The record is clear that Petitioners did not pay for release time.

Petitioners contend “[t]he lower court erred on the threshold question of whether [they] fund release time.” Petition p.12. But Petitioners do not address the undisputed facts: (1) the City paid for release time; (2) Petitioners were not entitled to more than what was in the CBA; (3) they received all compensation to which they were entitled; (4) nothing was deducted from their compensation to pay for release time; and (5) they were not compelled to support or associate with the Union. IR 70 ¶¶ 31, 72-74, 79-83, 87-96, 127-129, 141-146, 157; IR 100 ¶¶ 20-21, 23-24, 26-27, 39-43, 46-55. Accordingly, the court of appeals unanimously held that Petitioners were not forced to pay for release time or support or associate with the Union. *Gilmore*, 2023 WL 2979302, ¶¶ 12-15, 18-22.

Petitioners contend *Cheatham* held that “release time is paid for by each individual employee” and that release time “is paid ‘[i]n lieu of increased hourly compensation or other benefits ... per unit member.’” Petition pp.8-9. This is incorrect, and Petitioners’ modified quotation misrepresents the quoted language. *Cheatham* did not hold or suggest that employees pay for release time. 240 Ariz. at

318-20, ¶¶ 14, 18-19. Instead, the Gift Clause was implicated only because *the City* paid for release time. *See, e.g., id.* ¶ 2 (release time employees “are still paid by the City”), ¶ 33 (“[t]he City’s payments for release time are supported by consideration”). In addition, this Court did not disturb the *Cheatham* trial court’s findings that (1) release time “is funded 100% by the City” and “not by union dues,” and (2) “[t]he MOU does not require the City to increase officer salary if release time is enjoined or removed.” IR 100 ¶¶ 9-11.

Next, Petitioners contend they pay for release time because the CBA says it was “charged as part of the total compensation.” But “this sentence summarizes ‘[t]he cost to the City’; it does not, somehow, show that Unit II employees pay for release time out of the employees’ personal compensation.” *Gilmore*, 2023 WL 2979302, ¶¶ 13-15; *see also* IR 70 ¶¶ 67-75, 79-96. Petitioners concede the City “pays” the wages of employees, including those on release time. Petition p.5; IR 70 ¶¶ 29-31, 48, 79-80, 92-93; IR 100 ¶¶ 23, 26, 39. Petitioners did not have an interest in other employees’ wages or any other part of “total compensation” beyond their personal wages and benefits. IR 70 ¶¶ 82, 87-91, 96, 127-129; IR 100 ¶¶ 46-55.

Finally, Petitioners contend they lost eight hours of vacation time to fund release time, but they admitted they were not entitled to these hours under the CBA, and nothing required the City to provide them if release time had been eliminated. IR 70 ¶¶ 114-117, 123-127; IR 100 ¶¶ 46-55; *Gilmore*, 2023 WL 2979302, ¶¶ 14-

15, 18. Petitioners had no right to compensation based on expired CBAs. *Gilmore*, 2023 WL 2979302, ¶ 18; *see also Abbott v. City of Tempe*, 129 Ariz. 273, 278-79 (App. 1981) (employee has no contractual right to past compensation); *Bennett ex rel. Ariz. State Pers. Comm'n v. Beard*, 27 Ariz. App. 534, 536-37 (1976) (same). And they had no right to additional compensation that was never promised or set forth in the CBA. *Orfaly v. Tucson Symphony Society*, 209 Ariz. 260, 264, ¶¶ 11-13 (App. 2004) (employees have no right to be paid in manner that differs from CBA); *Smith v. City of Phoenix*, 175 Ariz. 509, 514-15 (App. 1992) (similar).

B. Petitioners' Gift Clause challenge fails because they ignore the panoptic view requirement, and they admitted the CBA could serve a variety of public purposes and was supported by adequate consideration.

Cheatham recognized that “[a] panoptic view of the facts of each transaction is required.” 240 Ariz. at 318, 320-22, ¶¶ 10, 18, 25, 30-33. This requirement is well-established. *See Turken v. Gordon*, 223 Ariz. 342, 352, ¶ 47 (2010) (“panoptic view” is required to avoid “an overly technical view of the transaction”); *Kromko v. Ariz. Bd. of Regents*, 149 Ariz. 319 (1986) (analyzing entire agreement rather than individual provisions); *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 349-50 (1984) (“panoptic view ... is required”); *State v. Nw. Mutual Ins. Co.*, 86 Ariz. 50, 54 (1959) (courts must “strive for a panoptic view”).

Arizona’s approach is consistent with other jurisdictions. *See, e.g., Rozenblit v. Lyles*, 243 A.3d 1249, 1265-66 (N.J. 2021) (refusing to consider release time

provisions in isolation, and finding based on entire CBA that there was not an unconstitutional gift). This approach also aligns with the principle that courts will “construe a contract in its entirety.” *State v. R.J. Reynolds Tobacco Co.*, 206 Ariz. 117, 120, ¶ 12 (App. 2003). A party “will not be permitted to accept the benefits arising from certain terms of a contract while denying the effect of other terms.” *Joy Enterprises, Inc. v. Reppel*, 112 Ariz. 42, 45 (1975).

Thus, “we cannot consider particular provisions in isolation.” *Cheatham*, 240 Ariz. at 321-22, ¶¶ 30-32. “[R]elease time provisions must be assessed in light of the entire MOU, including the obligations imposed not only on [the union] but also on the employees” *Id.* at 320, ¶ 18. “This tracks the ‘general contractual principle’ that the City’s performance ... may be supported by consideration in the form of performance or promise by either the Union or the Unit II employees.” *Gilmore*, 2023 WL 2979302, ¶ 34. Further, courts “will not assume disproportionality of consideration.” *Wistuber*, 141 Ariz. at 350. “The burden of proof was on those who challenged th[e] contract,” and “[i]t was not the burden of the [public entity] to prove that its contract was reasonable.” *Id.*; see also *Maricopa Cty. v. State*, 187 Ariz. 275, 281 (App. 1996) (unsupported assertions did not show disproportionality, and trial court erred by misallocating burden to public entity).

As in *Cheatham*, the CBA here procured employee services, defined their terms and conditions of employment, confirmed their agreement not to strike, and

confirmed the Union’s commitment to represent employees under the Meet & Confer Ordinance. IR 70 ¶¶ 18-27; *Cheatham*, 240 Ariz. at 320-22, ¶¶ 23-27, 32-33. “[T]he City benefits from more efficient negotiations” by collectively bargaining with the Union rather than individual employees, and the Union agreed to be a centralized point of contact “with whom the City can deal on all labor-related matters.” *Cheatham*, 240 Ariz. at 320-21, ¶¶ 23-26; *see also* IR 70 ¶¶ 16-17, 23-29.

In addition, release time promotes cooperative labor relations and facilitates an open dialogue about employment issues. *Cheatham*, 240 Ariz. at 319-21, ¶¶ 15, 23-26; IR 70 ¶¶ 29, 33-46, 54-65; IR 70 & 74, Ex. 12 (Frost Depo.) at 54:14-56:24, 82:13-83:13; IR 70 & 75, Ex. 14 (Zuercher Depo.) at 24:1-25, 26:12-27:3, 99:5-101:21. Other jurisdictions also have recognized these benefits. *See, e.g., Rozenblit*, 243 A.3d at 1265-66 (release time is not an unconstitutional gift where it facilitates collective bargaining, helps resolve disputes, and promotes labor peace).

The City and Union submitted uncontroverted evidence that the CBA and its release time provisions served numerous public benefits, and Petitioners conceded these benefits occurred or were possible. IR 70 ¶¶ 16-29, 33-46, 49-65, 103-104; IR 100 ¶¶ 44-45. Petitioners also admitted the CBA was supported by adequate consideration. IR 70 ¶ 100; IR 100 ¶¶ 37-38. Thus, it is undisputed the City’s “give” did not exceed what it “gets” under the CBA. *Cf. Schires v. Carlat*, 250 Ariz. 371, 376, ¶ 14 (2021).

Relying on the dissent below, Petitioners contend the release time provisions should be analyzed as if they were a separate contract. But *Cheatham* expressly rejected this idea. 240 Ariz. at 320-22, ¶¶ 18, 25, 30-33. “[I]f such an agreement provided for paid vacation or personal leave time for public employees, the adequacy of the consideration received by the employer would not be evaluated by asking if the employees must use their time in a way that benefits the employer.” *Id.* at 322, ¶ 31. “[T]he consideration received by the employer is the work the employees generally agree to provide under the agreement” *Id.* Petitioners offer no reason for abandoning the panoptic view requirement, or why they should be allowed to attack the provisions they dislike while retaining the benefit of others.

Petitioners “disregard[] the fact that the parties bargained for the MOU as a single agreement” and that release time was part of the total compensation package. *Gilmore*, 2023 WL 2979302, ¶¶ 35, 37; *see also* IR 70 ¶¶ 18-28, 31-46, 67, 79-81. The provisions cannot be artificially separated from the CBA – they were an expressly integrated part of the contract and the City’s cost to fund it, so they must be evaluated as such. And the provisions were not foreign add-ons that had nothing to do with the CBA – they were intrinsically tied to the labor relations and collective bargaining process underlying the contract.

In addition, *Cheatham* recognized that a union’s commitment to be the authorized representative is consideration because it facilitates collective bargaining

and provides a mechanism for addressing labor disputes under the Meet & Confer Ordinance. 240 Ariz. at 319-24, ¶¶ 15, 23-26, 33, 39, 42; *see also* IR 70 ¶¶ 24-27, 33-39, 41-46, 54-65. If release time were eliminated, the City still would need to ensure employees are represented in labor-relations. IR 70 ¶ 45; *see also* IR 70 & 75, Ex. 14 (Zuercher Depo.) at 76:16-77:12, 99:5-101:21. Thus, the value of release time is the cost to otherwise meet the City’s obligations under the Meet & Confer Ordinance and the CBA, and the City’s costs would be the same or higher if paid release time were eliminated. *See* IR 70 ¶¶ 103-104; IR 70 & 74, Ex. 12 (Frost Depo.) at 54:14-56:24, 156:11-22; IR 70 & 75, Ex. 14 (Zuercher Depo.) at 50:23-51:23, 53:8-54:18, 55:4-56:6, 56:17-57:3, 87:5-20, 99:5-101:21.

Petitioners contend *Wistuber* requires the Union to perform specific duties in exchange for release time, but *Cheatham* rejected this argument. *Cheatham*, 240 Ariz. at 323, ¶¶ 37-39. “The MOU here, particularly when construed in light of the City Code provisions, clearly contemplates that release time will be used for activities related to [the Union’s] role as the authorized representative for the [employees]” *Id.* at 323, ¶ 39. “[T]he consideration received by the City is not indirect benefits, but instead the obligations the MOU itself imposes on both [the Union] and the [employees].” *Id.* at 324, ¶ 42.

Finally, Petitioners liken release time to the gift of a house and contend the court of appeals “created a loophole” through which “any gift or subsidy is

permissible as long as it is embedded within a larger contract.” Petition p.14. But Gift Clause cases turn on the specific circumstances of the transaction, and the hypothetical gift of a house is far removed from the facts and legal issues here. Unlike the gift of a house, release time is used to fulfill the mandates of the Meet & Confer Ordinance and to facilitate the collective bargaining process underlying the CBA. Petitioners also present their hypothetical in a vacuum without facts or context, and their hypothetical presents slippery slope and strawman logical fallacies – while the gift of a house ordinarily would create Gift Clause questions, it still would be subject to the fact-intensive analytical framework repeatedly affirmed by this Court in *Northwest Mutual*, *Wistuber*, *Kromko*, *Cheatham*, and *Schires*.

The Gift Clause is not designed to micromanage contractual negotiations or give taxpayers a line-item veto over every contract provision. Petitioners ignore the facts and circumstances of this transaction, and they attack the release time provisions without regard for the extensive record in this case and the uncontroverted evidence of a public purpose and adequate consideration. *Gilmore*, 2023 WL 2979302, ¶ 41; *cf. Schires*, 250 Ariz. at 375, ¶ 7; *Wistuber*, 141 Ariz. at 350. There is no reason for this Court to accept review to simply reexamine the factual record.

IV. ARCAP 21 NOTICE.

Defendants/Appellees request attorneys’ fees and costs under A.R.S. §§ 12-341 and 12-341.01.

DATED: July 19, 2023.

SHERMAN & HOWARD L.L.C.

By: /s/ Matthew A. Hesketh

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Sec. 9. Salaries generally.

A. The salaries applicable to all positions in the classified and unclassified civil service may be fixed, increased, decreased or modified by the Council only upon recommendation of the City Manager; provided, that the Council alone at the time it finally adopts the annual budget may fix, increase, decrease or modify the salaries applicable to any position in the classified or unclassified civil service, except the salaries of the Mayor and Members of the City Council, and except for those previously established by a duly executed and approved Memorandum of Understanding which does not exceed three years in duration.

B. No officer or employee shall be allowed any fees, perquisites, emoluments, rewards or compensation aside from the salary as fixed by law. All fees in connection with official duties shall be paid into the City Treasury daily.

(Election of 11-3-1981)

The Phoenix City Charter is current through the November 6, 2018 election.

Disclaimer: The City Clerk's Office has the official version of the Phoenix City Charter. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

[City Website: www.phoenix.gov](http://www.phoenix.gov)

[Code Publishing Company, A General Code Company](#)

Sec. 14. Strikes and binding arbitration prohibited.

A. The continued availability of City facilities and services is essential to the health, safety, and general welfare of all of the residents of the City and decisions relating to them should be informed management choices which are neither coerced by strikes nor imposed by third parties.

B. An employee of the City of Phoenix shall not in any manner participate in any strike against the City of Phoenix or any of its agencies.

C. Violation of this section by an employee of the City of Phoenix shall constitute a voluntary resignation from City employment and such employee forfeits and is no longer entitled to civil service, seniority, merit system or other employment protection. Following resignation by participating in a strike against the City of Phoenix, such employee shall not be eligible for rehire except by specific determination by the City Manager. Any employee thus rehired shall be placed in the class from which he resigned and in a pay grade at least one step below the one occupied at the time of resignation, except that an employee rehired under this paragraph who was at the lowest pay step in his class at the time of his resignation may be rehired at the pay step occupied at that time. Any employee rehired under the terms of this paragraph shall receive no increase in wages, salary, or employer contribution to any other benefits for a period of 12 months following his rehire.

D. A classified employee may have his alleged violation of this section adjudicated in accordance with the procedures used for testing terminations under the City of Phoenix civil service system. The only issue to be thus adjudicated shall be whether or not the employee violated this section.

E. Definitions.

1. "Employee" means any persons holding any position with the City of Phoenix, by hire or by appointment, and includes both classified and unclassified positions under the City's civil service system.

2. "Strike" means the failure to report for duty, the absence from one's position, the stoppage or deliberate slowing down of work or the withholding, in whole or in part, of the full, faithful and proper performance of the duties of employment, in concerted or contemporaneous action with others, for the purpose of inducing, influencing or coercing a change in the conditions, hours, compensation, rights, privileges or obligations of employment by the City of Phoenix.

F. The City of Phoenix may not use or agree to a method or procedure for determining the compensation, hours and conditions of employment of its employees, including binding interest or grievance arbitration, which prohibits the City Council or the City Manager from disapproving or altering such determinations. Alteration or disapproval by the City Council shall be by a simple majority of those members of the Council present and voting. Nor shall the City be subjected to such methods or procedures by any other governmental entity.

G. Except for the prohibition contained in paragraph F., above, all other decisions regarding methods or procedures for determining the compensation, hours, and conditions of employment of City of Phoenix employees are reserved to and are to be made by the City Council or the City Manager.

H. If any of the provisions of these amendments, or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of these amendments which can be given effect without the invalid provision or application, and to this end, the provisions of these amendments are declared to be severable.

I. The provisions of this article shall be self-executing.

(Election of 11-1-1983)

The Phoenix City Charter is current through the November 6, 2018 election.

Disclaimer: The City Clerk's Office has the official version of the Phoenix City Charter. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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Sec. 2-209. Findings and purpose.

The Phoenix City Council hereby finds and declares that:

1. The people of Phoenix have a fundamental interest in the development of harmonious and cooperative relationships between the City government and its employees;
2. Recognition by public employers of the right of public employees to organize, and full acceptance of the principle and procedure of full communication between public employers and public employee organizations can alleviate various forms of strife and unrest;
3. The City, its employees and employee organizations have a basic obligation to the public to assure the orderly and continuous operations and functions of government;
4. There neither is, nor can be, an analogy of status between public employees and private employees, in fact or law, because of inherent differences in the employment relationship arising out of the unique fact that the public employer was established by and is operated for the benefit of all the people and its authority and purpose derives not from contract nor the profit motive inherent in the principle of free private enterprise, but from the Constitution; State statutes; City Charter, ordinances, resolutions, and civil service rules and regulations.

It is the purpose of this ordinance to obligate the City, public employees, and their representatives, acting within the framework of the law, to enter into discussions with affirmative willingness to resolve grievances and disputes relating to wages, hours and working conditions. It is also the purpose of this ordinance to promote the improvement of employer-employee relations by providing a uniform basis for recognizing the right of public employees to join, or refrain from joining, organizations of their own choice and be represented by such organizations in their employer-employee relations and dealings with the City in accordance with the provisions of this ordinance. It is also the purpose of this ordinance that the results of agreements between the employer and the employees will be drafted into written memoranda of understanding. (Ord. No. G-1532, § 1; Ord. No. G-3303, § 2)

The Phoenix City Code is current through Ordinance G-7086, passed March 1, 2023.

Disclaimer: The City Clerk's Office has the official version of the Phoenix City Code. Users should contact the City Clerk's Office for ordinances passed subsequent to the ordinance cited above.

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Sec. 2-210. Definitions.

As used in this ordinance:

1. *Appropriate unit* means a group of employees designated as a single unit for the purpose of choosing an authorized representative to engage, in its behalf, in the meet and confer process.
2. *Authorized representative* means any employee organization which has been formally recognized by the public employer as representing a majority of the public employees of an appropriate unit, as defined herein, and is authorized to participate in the meet and confer process on behalf of an appropriate unit for the purpose of meeting and conferring on wages, hours and working conditions.
3. *Charge* means a written claim filed with the Phoenix Employment Relations Board alleging a violation of this ordinance.
4. *Confidential employee* means one whose responsibilities or knowledge in connection with the employee-management issues involved in meeting and conferring, grievance handling, or the content of union-management discussions would make his or her membership in a union incompatible with his or her official duties. Such individuals include staff employees reporting and accountable to those in management responsible for the conduct of union-management discussions, especially those relating to wage, hours or working conditions of union-represented employees, and any employee who assists and acts in a confidential capacity to a person who formulates, determines or effectuates labor-management policies.
5. *Employee organization* means any labor organization, union, association, fraternal order, or group, which represents or seeks to represent any public employee or group of public employees concerning wages, hours and working conditions.
6. *Fact-finding* means investigation of a dispute by an impartial third party resulting in recommendations for settlement.
7. *Grievance* means any dispute concerning the interpretation or application of a written memorandum of understanding. An impasse in meeting and conferring upon the terms of a proposed memorandum of understanding is not a grievance under the terms of this ordinance. In the absence of a mutually agreed upon procedure made a part of a finally approved memorandum of understanding, the revised Administrative Regulation 2.61 shall be the controlling procedure for resolving a grievance dispute.
8. *Impasse* means the failure of a designated representative of the public employer and a representative of an authorized employee organization to achieve agreement in the course of meeting and conferring.
9. *Managerial employee* means any employee involved in formulating, determining, or effectuating City or agency policies on behalf of the public employer, or any employee having a major role in employer-employee relations on behalf of the public employer, or any employee providing direct assistance in the foregoing functions.

10. *Mediation* means efforts by an impartial third party to assist in reconciling a dispute regarding wages, hours and working conditions between representatives of the public employer and the authorized representative through interpretation, suggestion and advice.
11. *Meet and confer* is the performance of the mutual obligation of the public employer through its chief administrative officer or his designee and the designees of the authorized representative to meet at reasonable times, including meetings in advance of the budget-making process; and to confer in good faith with respect to wages, hours and other terms and conditions of employment or any question arising thereunder, and the execution of a written memorandum of understanding embodying all agreements reached, but such obligation does not compel either party to agree to a proposal or the making of a concession. Notwithstanding the date an employee representative is certified and notwithstanding the date of expiration of any memorandum of understanding, the meet and confer process shall be completed in all instances on all economic items prior to the date set by law for tentative adoption of the annual budget. The duty to meet and confer includes the duty to submit any agreement reached on these matters to the public employer for action pursuant to this ordinance.
12. *Memorandum of understanding* means a written memorandum of understanding arrived at by the representatives of the City and an authorized representative, which shall be presented to the City Council and to the membership of the authorized employee organization for appropriate action.
13. *PERB* means the Phoenix Employment Relations Board established pursuant to this ordinance. "Board" means PERB.
14. *Professional employee* includes any employee (a) whose work is predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; involves the consistent exercise of discretion and judgment; requires knowledge of an advanced type in a field of science or learning customarily acquired by prolonged study in an institution of higher learning; or (b) attorneys at law or any other person who is registered as a qualified professional by a board of registration or other public body established for such purposes under the laws of Arizona.
15. *Public employee* means any person employed by the City of Phoenix excepting those persons classed as judicial, supervisory, or managerial employees; elected officials and appointive management officials; professional employees; temporary employees; and certain categories of confidential employees including those who have responsibility for administering the public employer-employee relations ordinance as a part of their official duties.
16. *Public employer* means the City of Phoenix, a municipal corporation, and its duly authorized officers and agents acting on behalf of the City of Phoenix.
17. *Representative of the public employer* means the City Manager or his designated representatives, managerial and supervisory employees acting on behalf of the public employer in the meet and confer process.
18. *Strike* means the failure by concerted action with others to report for duty, the concerted absence of employees from their positions, the concerted stoppage of work, mass picketing, or the concerted abstinence in whole or in part by any group of employees from the full, faithful, and proper performance of the duties of employment with a public employer, or the concerted engagement in a work action for the purpose of inducing, influencing, or coercing a change in wages, hours, or working conditions or terms of employment.

19. *Supervisory employee* means any employee having authority, in the interest of the public employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward or discipline other employees, or the responsibility to direct them in all major work aspects, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. (Ord. No. G-1532, § 2; Ord. No. G-1754, § 1; Ord. No. G-2404, § 1; Ord. No. G-3303, § 3; Ord. No. G-4243, § 1, 2000)

Cross reference—Definitions and rules of construction generally, § [1-2](#).

The Phoenix City Code is current through Ordinance G-7086, passed March 1, 2023.

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Sec. 2-212. Appropriate units.

A. In order to avoid the harmful effects of over fragmentation, the broadest possible units are hereby established which will insure an effective representation of employee interests and will promote the effectiveness and efficiency of City operations for purposes of meeting and conferring under the provisions of this ordinance. Public employees within the following categories shall constitute an appropriate unit:

1. Employees in positions classed as "office" including clerical and pre-professional.
2. *Employees in positions classed as "field" including labor, custodial, trades and equipment operation.* There are hereby established the following appropriate field units:
 - a. *Field Unit I*—Sanitation Division of the Public Works Department; District Operations, Golf Course, and Special Operations Divisions of the Parks and Recreation Department (excluding library guards); Administrative Services Division of the City Clerk Department; Human Services and Aging Services Divisions of the Human Resources Department; Street Maintenance Division and Sign Manufacturing, Maintenance, Street Marking and Parking Meter Sections of the Street Transportation Department.
 - b. *Field Unit II*—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.

The PERB shall determine whether any field classification within a department not listed above shall be included in Unit I or Unit II.

3. Police officers—Below the rank of Sergeant.
4. Firefighters—Up to and including the rank of Captain.

B. The PERB shall determine which positions covered by this ordinance shall be included within a particular appropriate unit as set forth above; and shall determine which positions shall be excluded from any appropriate unit through application of the definitions contained in Section [2-210](#) and terms of this section.

C. Notwithstanding subsection A(1) and A(2) of this section, the PERB shall, upon an appropriate petition to clarify, determine the appropriate field or office units when reorganization of the public employer or the addition or deletion of departments, divisions, activities, functions or services dictates a realignment of such units; provided, however, that there shall be one and no more than one office unit and two but no than two field units.

When due to reorganization of the public employer, the addition or deletion of departments, divisions, activities, functions or services, the field employees in a single division, activity, function or service are represented by more

than one authorized representative, the public employer or either authorized field unit representative may petition the Board to clarify.

D. The PERB may not find any unit is appropriate if such unit includes, together with other employees, any individual employed as a police officer. (Ord. No. G-1532, § 4; Ord. No. G-1580, § 1; Ord. No. G-1754, § 3; Ord. No. G-3303, § 5; Ord. No. G-4419, § 5, 2002; Ord. No. G-4872, § 2, 2007; Ord. No. G-5444, § 3, 2009; Ord. No. G-5444, § 3, 2009)

The Phoenix City Code is current through Ordinance G-7086, passed March 1, 2023.

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Sec. 2-214. Public employee rights.

- A. Public employees shall have the right to form, join and participate in any employee organization of their own choosing, or to refrain from forming, joining, or participating in same. Public employees shall not hold any elective or appointive office in any employee organization until the probationary period following their initial employment in a permanent position in the classified service has been successfully completed.
- B. Public employees shall have the right to be represented by an employee organization of their own choosing, to meet and confer through an authorized employee organization with their public employer in the determination of wages, hours and working conditions, and to be represented in the determination of grievances arising thereunder.
- C. This ordinance does not prevent any public employee from presenting his or her own grievance, in person or by legal counsel, to the public employer and having such grievance adjusted without the intervention of the authorized employee organization, if such an adjustment is not inconsistent with the terms of a current memorandum of understanding.
- D. Any authorized employee organization shall be eligible, upon agreement with the public employer, to have its periodic membership dues deducted and collected by the public employer from the salaries of those employees who present signed cards, in a form satisfactory to the public employer, authorizing the deduction of such dues. This deduction may be revoked by the employee at any time during the first week in January, or the first week in July, upon written notice of such revocation furnished to the public employer by the employee.
- E. The public employer may not entertain a written authorization on behalf of any other employee organization from any employee in said unit for the deduction and collection of dues.
- F. Confidential, managerial and professional employees and supervisors, judges and elected officials shall not be represented by any employee organization, nor shall such employees take an active role in the policy-making activities of an employee organization, nor shall such employees participate directly or indirectly in the meet and confer process except as representatives or assistants to the public employer. (Ord. No. G-1532, § 6; Ord. No. G-1754, § 5; Ord. No. G-2404, § 4; Ord. No. G-3303, § 7)

The Phoenix City Code is current through Ordinance G-7086, passed March 1, 2023.

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Sec. 2-215. Scope of memorandum of understanding.

A. The provisions contained in the 1988-90 and subsequent memoranda of understanding are mandatory subjects of bargaining. Other subjects are permissible subjects of bargaining and shall be discussed during collective bargaining. This paragraph is subject to the following:

1. Federal and State laws.
2. The authority and jurisdiction of the Phoenix Civil Service Board and of the Human Resources Official under chapter XXV, Charter of the City of Phoenix, shall not be diminished by the operation of this ordinance.
3. The impasse procedures of this ordinance shall not apply to permissive subjects of bargaining.

B. A memorandum of understanding may be executed for a period not to exceed three years.

C. A memorandum of understanding shall be signed by authorized representatives of the recognized employee organization and by the authorized representatives of the public employer. Such memorandum of understanding shall not become effective until approved by the Phoenix City Council. (Ord. No. G-1532, § 7; Ord. No. G-2285, § 1; Ord. No. G-3303, § 8; Ord. No. G-5444, § 3, 2009)

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Sec. 2-218. Meeting and conferring.

- A. The Council recognizes and affirms the unilateral right of each authorized employee organization to designate its representative(s) for meeting and conferring. The City Manager or his designee(s) shall serve as the City's representative(s) in the meet and confer process. The City Manager or his designee(s) shall meet and confer solely with the duly designated representative(s) of authorized employee organizations, and representative(s) of authorized employee organizations shall meet and confer solely with the designated representative(s) of the City Manager. Any deviation from this procedure shall constitute an unfair employment relations practice.
- B. On or before December 1 of any year in which meeting and conferring is authorized by this ordinance and the terms of memorandums of understanding in effect pursuant thereto, authorized employee organizations shall submit their proposed memorandum of understanding in writing to the City Manager or his designee, and shall file a copy thereof with the City Clerk as a public record.
- C. Thereafter, on or before December 8, each authorized employee organization shall be afforded the opportunity to make a presentation regarding its proposed memorandum of understanding and information in support thereof to a meeting of the City Council.
- D. At its next meeting, the City Council shall provide on its agenda an opportunity for public comment on the proposals of the authorized employee organization.
- E. On or before January 5, the City's designated representatives shall submit to the authorized employee organization the City's written response to its proposals and shall concurrently file copies thereof with the City Clerk as a public record.
- F. Upon agreement being reached on a memorandum of understanding between the representatives of the parties, it shall be immediately submitted to the City Council and the employee organization. If either the City Council or the employee organization fails to accept any part of the proposed memorandum of understanding, the entire memorandum is subject to renegotiation at the request of the City Manager or the authorized employee organization.
- G. After the proposed memorandum of understanding has been approved by the authorized employee organization, it shall be filed with the City Clerk of the City of Phoenix. At the earliest practicable date thereafter the City Council of the City of Phoenix shall provide on its agenda an opportunity for public comment on the terms of the memorandum of understanding prior to the Council acting thereon.
- H. In all cases where an authorized employee organization has not been certified prior to January 1, all meeting and conferring and impasse procedures on economic issues shall be concluded prior to the date set by the City Council for the tentative adoption of the annual budget for the following fiscal year. (Ord. No. G-1532, § 10; Ord. No. G-1754, § 8; Ord. No. G-1773, § 1; Ord. No. G-1885, § 1; Ord. No. G-3303, § 11)

The Phoenix City Code is current through Ordinance G-7086, passed March 1, 2023.

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EXHIBIT 26
PLAINTIFF'S STATEMENT OF FACTS

DECLARATION OF MARK GILMORE

I, Mark Gilmore, declare under penalty of perjury under the laws of the State of Arizona as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated in this declaration and am competent to testify regarding them.

2. I am a resident of Maricopa County residing in Peoria, Arizona.

3. I am a Plaintiff in the above-captioned matter.

4. I am employed as a heavy equipment mechanic by the City of Phoenix (“City”).

As a heavy equipment mechanic, I repair and maintain trucks and other types of construction equipment.

5. I have worked for the City for 14 years.

6. It is my understanding that the terms of my employment by the City are governed in part by the Memorandum of Understanding (“2019-2021 MOU”) that the City entered with the American Federation of State, County, and Municipal Employees, Local 2384, Field Unit II (“Union”) on May 22, 2019.

7. I am not a party to the 2019-2021 MOU.

8. I am not a member of the Union.

9. I never voted to ratify the 2019-2021 MOU.

10. Because I am not a member of the Union, I could not vote for or against the 2019-2021 even if I wanted to.

11. Because of my employment by the City, I have no choice but to have my employment governed by the 2019-2021 MOU.

12. If I could retain my employment by the City without being subject to the 2019-2021 MOU, I would do so.

13. In this action, I am not asserting any rights under the 2019-2021 MOU.

14. In this action, I do not allege, and do not intend to allege, that the City, the Union, or anyone else has failed to comply with any terms of the 2019-2021 MOU.

15. I have no reason to believe that the City and the Union have failed to comply with all of the terms of the 2019-2021 MOU and will continue to do so.

16. In this action, I am not alleging a breach of contract or asserting any contractual claim against the City of Phoenix, the Union, or anyone else.

17. Rather, through this action, I am challenging the constitutionality of government action that forces me to finance union "release time" as set forth in the Plaintiffs' Second Amended Complaint.

18. I have been able to file this lawsuit only because my counsel is representing me *pro bono*; if I were required to pay fees, I could not afford to pursue this litigation.

19. The possibility of paying attorney fees in the event that I do not prevail in litigation would discourage me from seeking redress for violations of constitutional rights associated with my employment by the City.

I declare that to the best of my knowledge the foregoing is true and correct.



Mark Gilmore

DATED: 5-27-20

EXHIBIT 27
PLAINTIFF'S STATEMENT OF FACTS

DECLARATION OF MARK HARDER

I, Mark Harder, declare under penalty of perjury under the laws of the State of Arizona as follows:

1. I am over the age of eighteen and have personal knowledge of the matters stated in this declaration and am competent to testify regarding them.
2. I am a resident of Maricopa County residing in Phoenix, Arizona.
3. I am a Plaintiff in the above-captioned matter.
4. I am employed as a heavy equipment mechanic by the City of Phoenix ("City").
5. I have worked for the City for 14 years.
6. It is my understanding that the terms of my employment by the City of Phoenix are governed in part by the Memorandum of Understanding ("2019-2021 MOU") that the City entered with the American Federation of State, County, and Municipal Employees, Local 2384, Field Unit II ("Union") on May 22, 2019.
7. I am not a party to the 2019-2021 MOU.
8. I am not a member of the Union.
9. I never voted to ratify the 2019-2021 MOU.
10. Because I am not a member of the Union, I could not vote for or against the 2019-2021 even if I wanted to.
11. Because of my employment by the City, I have had no choice but to have my employment governed by the 2019-2021 MOU.
12. If I could retain my employment by the City without being subject to the 2019-2021 MOU, I would do so.
13. In this action, I am not asserting any rights under the 2019-2021 MOU.

14. In this action, I do not allege, and do not intend to allege, that the City of Phoenix, the Union, or anyone else has failed to comply with any terms of the 2019-2021 MOU.

15. I have no reason not to believe that the City of Phoenix and the Union have complied with all of the terms of the 2019-2021 MOU and will continue to do so.

16. In this action, I am not alleging a breach of contract or asserting any contractual claim against the City of Phoenix, the Union, or anyone else.

17. Rather, through this action, I am challenging the constitutionality of government action that forces me to finance union “release time” as set forth in the Plaintiffs’ Second Amended Complaint.

18. I have been able to file this lawsuit only because my counsel is representing me *pro bono*; if I were required to pay fees, I could not afford to pursue this litigation.

19. The possibility of paying attorney fees in the event that I do not prevail in litigation would discourage me from seeking redress for violations of constitutional rights associated with my employment by the City.

I declare that to the best of my knowledge the foregoing is true and correct.


Mark Harder

DATED: 6-10-20

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MARK GILMORE; and MARK
HARDER,

Plaintiffs,

v.

KATE GALLEGO, in her official
capacity as Mayor of the City of Phoenix,
ED ZUERCHER in his official capacity
as City Manager of the City of Phoenix;
and CITY OF PHOENIX,

Defendants,

And

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

Intervenor Defendant.

Case No. CV2019-009033

**THE CITY DEFENDANTS' AND
THE UNION'S JOINT STATEMENT
OF FACTS IN SUPPORT OF THEIR
MOTIONS FOR SUMMARY
JUDGMENT ON ALL CLAIMS**

(Assigned to Hon. Daniel G. Martin)

Oral Argument Requested

The City Defendants and the Union submit this Joint Statement of Facts in support of their Motions for Summary Judgment filed concurrently herewith.

1 **I. The parties.**

2 1. Plaintiffs Mark Gilmore and Mark Harder are employed by the City of
3 Phoenix (the “City”). Second Amended Complaint (“SAC”) at ¶¶ 5-6; City Defendants’
4 Answer at ¶¶ 5-6; **Exhibit 3** (Frost Declaration) at ¶ 5; **Exhibit 9** (Deposition of M.
5 Gilmore) at 24:8-9; **Exhibit 10** (Deposition of M. Harder) at 18:6-11.

6 2. Plaintiff Gilmore does not reside within the city limits of the City of
7 Phoenix. **Exhibit 9** (Deposition of M. Gilmore) at 12:7-11.

8 3. For purposes of collective bargaining and labor relations, the City’s
9 workforce is divided into groups of employees known as “appropriate units” or simply
10 “units.” **Exhibit 3** (Frost Declaration) at ¶ 4; *see also* Phoenix City Code §§ 2-210(1), 2-
11 212.

12 4. Each unit may designate an authorized employee organization to act as the
13 representative for the unit’s employees in connection with collective bargaining and labor
14 relations with the City. **Exhibit 3** (Frost Declaration) at ¶ 4; *see also* Phoenix City Code
15 §§ 2-209(2), 2-210(2), 2-212, 2-214(A).

16 5. Plaintiffs both work within the unit of City employees known as Field Unit
17 II (“Unit II”), which consists of approximately 1,500 employees. SAC at ¶¶ 5-6; City
18 Defendants’ Answer at ¶¶ 5-6; Intervenor Defendant’s Answer at ¶¶ 5-6; **Exhibit 3** (Frost
19 Declaration) at ¶ 5; **Exhibit 12** (Deposition of X. Frost) at 34:14-19.

20 6. Unit II includes electricians, mechanics, maintenance workers, and others
21 who ensure the City’s processes and systems continue to operate. **Exhibit 3** (Frost
22 Declaration) at ¶ 6; **Exhibit 9** (Deposition of M. Gilmore) at 155:9-17; *see also* Phoenix
23 City Code § 2-212(A)(2)(b).

24 7. The City’s labor relations with Unit II are governed by the City’s Meet &
25 Confer Ordinance. **Exhibit 3** (Frost Declaration) at ¶ 7; *see also* Phoenix City Code §§ 2-
26 209, 2-212(A)(2)(b).

27 8. The Meet & Confer Ordinance recognizes the right of Unit II employees to
28 organize and to be represented by an authorized employee organization (a union) in

1 connection with collective bargaining and other labor relations matters. **Exhibit 3** (Frost
2 Declaration) at ¶¶ 7-8; *see also* Phoenix City Code § 2-209(2), 2-214.

3 9. The American Federation of State, County, and Municipal Employees,
4 AFL-CIO, Local 2384 (the “Union”) is the authorized employee organization that
5 represents all Unit II employees pursuant to the Meet & Confer Ordinance. **Exhibit 3**
6 (Frost Declaration) at ¶ 9; **Exhibit 12** (Deposition of X. Frost) at 25:9-13.

7 10. The Union acts as the representative of all Unit II employees for purposes
8 of collective bargaining and labor relations with the City, regardless of whether they are
9 members of the Union. **Exhibit 3** (Frost Declaration) at ¶ 9; *see also* Phoenix City Code §
10 2-210(2), 2-218.

11 11. Pursuant to the Meet & Confer Ordinance, the City and the Union engage
12 in collective bargaining to negotiate the terms and conditions of employment for all Unit
13 II employees, regardless of Union membership. SAC at ¶¶ 12-13; City Defendants’
14 Answer at ¶¶ 12-13; Intervenor Defendant’s Answer at ¶¶ 12-13; **Exhibit 3** (Frost
15 Declaration) at ¶¶ 9-10; **Exhibit 9** (Deposition of M. Gilmore) at 20:8-19; **Exhibit 7**
16 (Deposition of R. Brown) at 31:6-9.

17 12. This collective bargaining is known as the meet and confer process, and
18 the parties’ agreements are recorded in a collective bargaining agreement known as a
19 Memorandum of Understanding (“MOU”) between the City and Unit II. **Exhibit 1** (2019-
20 2021 MOU) at Section 1-1A; **Exhibit 3** (Frost Declaration) at ¶¶ 10-11; **Exhibit 12**
21 (Deposition of X. Frost) at 21:16-25, 24:2-5; **Exhibit 7** (Deposition of R. Brown) at
22 28:13-21.

23 13. The MOU is a contract that governs the terms and conditions of
24 employment, including but not limited to wages and benefits, for all Unit II employees for
25 the duration of the MOU, which typically lasts for two years. **Exhibit 3** (Frost
26 Declaration) at ¶ 11; **Exhibit 12** (Deposition of X. Frost) at 32:25-33:7, 33:19-24:9,
27 35:20-25.

28 14. The MOU does not become effective unless and until it is ratified by the

1 Union and is approved by a majority vote of the Phoenix City Council in open session.
2 **Exhibit 12** (Deposition of X. Frost) at 22:6-9, 132:12-24; *see also* Phoenix City Code §§
3 2-210(12), 2-215(C), 2-218(F), (G).

4 15. While the City and the Union meet and confer over the terms of the MOU,
5 neither party must reach an agreement, and any agreement reached must be approved and
6 adopted by the Phoenix City Council exercising its sole discretion. Thus, the City Council
7 makes the final determination as to how the City's funds are allocated in connection with
8 an MOU. **Exhibit 3** (Frost Declaration) at ¶¶ 18, 28; **Exhibit 13** (Deposition of X. Frost)
9 at 22:2-11, 121:18-123:77, 129:6-130:2, 132:12-24; **Exhibit 14** (Deposition of E.
10 Zuercher) at 13:11-24; *see also* Phoenix City Charter, Ch. III, § 9(A); Ch. XXV, § 14(F),
11 (G); Phoenix City Code §§ 2-210(11), (12); 2-213; 2-215(C); 2-218.

12 16. The City benefits from engaging in the meet and confer process, in part
13 because the City negotiates with the Union rather than separately negotiating with
14 individual employees. **Exhibit 3** (Frost Declaration) at ¶ 12; **Exhibit 12** (Deposition of X.
15 Frost) at 33:19-34:9, 35:20-25; **Exhibit 14** (Deposition of E. Zuercher) at 15:9-16:1.

16 17. The City also benefits from having the Union act as the labor
17 representative for all Unit II employees because this provides the City with a defined point
18 of contact for addressing labor relations matters and conflicts affecting Unit II employees.
19 **Exhibit 3** (Frost Declaration) at ¶ 12; **Exhibit 12** (Deposition of X. Frost) at 54:14-55:15,
20 56:6-9, 82:13-83:13, 156:11-22; **Exhibit 14** (Deposition of E. Zuercher) at 49:17-50:11,
21 55:4-56:6.

22 **II. The 2019-2021 MOU benefits the City and Unit II.**

23 18. On May 22, 2019, the City and Union entered into an MOU to
24 comprehensively govern the terms and conditions of employment for all Unit II
25 employees for the two-year period from July 1, 2019 through June 30, 2021 (the "2019-
26 2021 MOU"). SAC at ¶ 15; City Defendants' Answer at ¶ 15; Intervenor Defendant's
27 Answer at ¶ 15; **Exhibit 3** (Frost Declaration) at ¶ 13; **Exhibit 14** (Deposition of E.
28 Zuercher) at 14:19-16:1, 74:14-18; **Exhibit 7** (Deposition of R. Brown) at 28:13-24.

1 19. The City benefits under the 2019-2021 MOU by procuring the services of
2 Unit II employees, defining their terms and conditions of employment, and confirming
3 their agreement to not strike during the term of the contract. **Exhibit 1** (2019-2021 MOU)
4 at Preamble, Section 1-5(A)-(B); **Exhibit 3** (Frost Declaration) at ¶ 14; **Exhibit 14**
5 (Deposition of E. Zuercher) at 14:19-15:1.

6 20. In the Preamble of the 2019-2021 MOU, the parties also recognized that
7 “the well-being dignity, respect, and morale of the employees of the City are benefitted by
8 providing employees an opportunity to participate in the formulation of policies and
9 practices affecting the wages, hours, and working conditions of their employment.”

10 **Exhibit 1** (2019-2021 MOU) at Preamble.

11 21. In the 2019-2021 MOU, the City and the Union agreed that, except as
12 provided in the City’s Meet & Confer Ordinance or the 2019-2021 MOU, the City would
13 not have any obligation to meet and confer regarding the terms and conditions of
14 employment for Unit II employees during the term of the 2019-2021 MOU, which is a
15 benefit to the City. **Exhibit 1** (2019-2021 MOU) at Section 6-7(B); **Exhibit 3** (Frost
16 Declaration) at ¶ 14.

17 22. However, the parties still agreed to “continue to meet with affirmative
18 willingness to resolve grievances and disputes relating to wages, hours and working
19 conditions.” **Exhibit 1** (2019-2021 MOU) at Section 6-7(B).

20 23. In the 2019-2021 MOU, the City recognized the Union as the meet and
21 confer agent “for the purpose of representation regarding wages, hours, and other
22 conditions of employment for all employees in positions constituting Field Unit II.”
23 **Exhibit 1** (2019-2021 MOU) at Section 1-1A.

24 24. In the 2019-2021 MOU, the Union confirmed its agreement to represent all
25 Unit II employees (regardless of union membership) in the meet and confer process,
26 grievances, and other matters relating to employment rights and obligations. **Exhibit 1**
27 (2019-2021 MOU) at Section 1-4.

28 25. The City benefits under the 2019-2021 MOU through the Union’s

1 confirmation of its agreement to be the collective bargaining and labor representative for
2 all Unit II employees, regardless of whether they are members of the Union. **Exhibit 3**
3 (Frost Declaration) at ¶ 15; **Exhibit 12** (Deposition of X. Frost) at 54:14-55:15, 56:6-9,
4 82:13-83:13, 156:11-22; **Exhibit 14** (Deposition of E. Zuercher) at 23:16-25:1, 26:12-
5 27:3, 49:17-50:11, 55:4-56:6.

6 26. In the 2019-2021 MOU, the City recognized that it “values and benefits
7 from the participation of Union leaders on citywide task forces and committees, Labor-
8 Management work groups, and a variety of Health and Safety committees.” **Exhibit 1**
9 (2019-2021 MOU) at Section 1-3(A)(1); **Exhibit 3** (Frost Declaration) at ¶¶ 15, 25.

10 27. The Union agreed to designate representatives to serve on (1) a Labor-
11 Management Committee “to facilitate improved labor-management relationships by
12 providing a forum for the free discussion of mutual concerns,” and (2) a Health and Safety
13 Committee to assist the City’s efforts to provide for the health and safety of all Unit II
14 employees. **Exhibit 1** (2019-2021 MOU) at Section 2-3(A), 2-4(B); **Exhibit 3** (Frost
15 Declaration) at ¶¶ 15, 25; **Exhibit 9** (Deposition of M. Gilmore) at 20:8-19.

16 **III. Release time under the 2019-2021 MOU.**

17 28. As part of the 2019-2021 MOU, the City and the Union negotiated
18 provisions to govern “release time.” **Exhibit 3** (Frost Declaration) at ¶ 19; **Exhibit 14**
19 (Deposition of E. Zuercher) at 20:10-21:5; **Exhibit 7** (Deposition of R. Brown) at 28:13-
20 21.

21 29. While on release time, Union members and other Unit II employees are
22 released from their normal job duties but still paid at the same rate(s) of pay by the City to
23 perform activities that foster and promote cooperative labor relations and provide a point
24 of contact for addressing labor issues affecting Unit II employees. **Exhibit 3** (Frost
25 Declaration) at ¶ 20; **Exhibit 12** (Deposition of X. Frost) at 37:20-24, 40:16-42:12, 53:5-
26 8, 54:14-56:24, 82:13-83:13; **Exhibit 14** (Deposition of E. Zuercher) at 21:7-19, 24:1-25;
27 **Exhibit 7** (Deposition of R. Brown) at 24:4-22.

28 30. “Release time” is paid by the City in the form of continuing to pay, at the

1 same rate(s), the wages and benefits to those Unit II employees who are either on “full-
2 time release” or who draw from a bank of release time hours for specific reasons
3 permitted under the MOU. **Exhibit 1** (2019-2021 MOU), Section 1-3(A); **Exhibit 3**
4 (Frost Declaration) at ¶ 21; **Exhibit 12** (Deposition of X. Frost) at 45:9-23; **Exhibit 14**
5 (Deposition of E. Zuercher) at 21:7-19.

6 31. The City pays for this cost of release time through public funds. **Exhibit 3**
7 (Frost Declaration) at ¶ 21; **Exhibit 12** (Deposition of X. Frost) at 45:9-46:16, 76:23-
8 77:18, 109:13-110:3; **Exhibit 14** (Deposition of E. Zuercher) at 21:7-19, 23:8-14.

9 32. The release time provisions in the 2019-2021 MOU, including the amount,
10 terms, and conditions of release time, were negotiated during the meet and confer process
11 between the City and the Union. **Exhibit 2** (Reber Declaration) at ¶ 9; **Exhibit 3** (Frost
12 Declaration) at ¶ 19; *see also* **Exhibit 1** (2019-2021 MOU) at Preamble.

13 33. In the 2019-2021 MOU, the City and Union recognized that they had
14 “negotiated full-time release positions, and release hours, as an efficient and readily
15 available point of contact for addressing labor-management concerns.” **Exhibit 1** (2019-
16 2021 MOU) at Section 1-3(A); **Exhibit 7** (Deposition of R. Brown) at 121:23-25, 122:1-4.

17 34. In the 2019-2021 MOU, the City and Union recognized that the
18 community “benefits from harmonious and cooperative relationships between the City and
19 its employees.” **Exhibit 1** (2019-2021 MOU) at Section 1-3(A); **Exhibit 7** (Deposition of
20 R. Brown) at 117:3-10.

21 35. The 2019-2021 MOU provides for four full-time release positions and
22 3,183 additional release time hours for Unit II employees. **Exhibit 1** (2019-2021 MOU)
23 at Section 1-3(A)(1), (3).

24 36. Release time may be used for lawful union activities including, but not
25 limited to: (a) negotiating MOUs, (b) “ensuring representation for employees during
26 administrative investigations and grievance/disciplinary appeal meetings,” (c)
27 “participating in collaborative labor-management initiatives that benefit the City,” (d)
28 “serving on City and departmental task forces and committees,” (e) “facilitating

1 communication between . . . management and employees,” (f) “assisting [employees] in
2 understanding and following work rules,” and (g) “administering the provisions of the
3 [MOU].” **Exhibit 1** (2019-2021 MOU) at Section 1-3(A).

4 37. Release time also may be “used for authorized employees to prepare for
5 appeals and hearings and attend Union conferences, meetings, seminars, training classes
6 and workshops so that employees better understand issues such as City policies and
7 practices, conflict resolution, labor-management partnerships, and methods of effective
8 representation.” **Exhibit 1** (2019-2021 MOU) at Section 1-3(A).

9 38. In addition, “[t]he full-time release positions agree[d] to participate in [the
10 City’s] committees and task forces,” and the Union could designate stewards to “service
11 grievances at . . . job sites to which they are regularly assigned.” **Exhibit 1** (2019-2021
12 MOU) at Section 1-3(A)(1), (2); **Exhibit 3** (Frost Declaration) at ¶ 15.

13 39. City employees on release time, regardless of what tasks they are
14 performing, are required to adhere to all City policies and procedures. **Exhibit 13**
15 (Deposition of M. Ayala) at 44:6-13, 97:1-11; *see also* **Exhibit 1** (2019-2021 MOU) at
16 Section 1-3(A)(1).

17 **IV. Release time benefits the City and Unit II employees.**

18 40. The City benefits from the 2019-2021 MOU, including its release time
19 provisions. **Exhibit 1** (2019-2021 MOU) at Section 1-3(A); **Exhibit 3** (Frost Declaration)
20 at ¶¶ 22-27; **Exhibit 12** (Deposition of X. Frost) at 52:12-53:8, 54:14-56:24, 82:13-83:13,
21 156:11-22; **Exhibit 14** (Deposition of E. Zuercher) at 24:1-25, 26:12-27:3, 54:3-18,
22 55:22-56:6, 56:17-57:3, 58:21-61:5, 74:14-18, 87:5-20, 99:14-101:21.

23 41. Release time helps the City and the Union promote harmonious labor
24 relations and facilitate an open dialogue about employee preferences and concerns, and it
25 helps both the City and the Union fulfill their respective obligations under the City’s Meet
26 & Confer Ordinance. **Exhibit 1** (2019-2021 MOU) at Section 1-3(A); **Exhibit 3** (Frost
27 Declaration) at ¶ 22; **Exhibit 12** (Deposition of X. Frost) at 53:5-8, 54:14:56:24, 82:13-
28 83:13; **Exhibit 14** (Deposition of E. Zuercher) at 16:24-17:16, 24:1-25, 26:12-27:3, 37:8-

1 14, 50:2-8, 56:17-57:3, 58:21-61:5, 76:16-77:12, 87:5-20, 99:14-101:21.

2 42. Release time also helps the City and the Union give effect to the Meet &
3 Confer Ordinance’s purposes and accomplish the labor relations objectives outlined in the
4 2019-2021 MOU, which furthers the City Council’s policies of promoting cooperation.
5 **Exhibit 3** (Frost Declaration) at ¶ 23; **Exhibit 12** (Deposition of X. Frost) at 53:5-8,
6 54:14-56:24; **Exhibit 14** (Deposition of E. Zuercher) at 16:24-17:16, 24:1-25, 26:12-27:3,
7 54:3-18, 58:21-61:5, 76:16-77:12, 87:5-20, 99:14-101:21.

8 43. As recognized in the 2019-2021 MOU, release time benefits the City by
9 providing “an efficient and readily available point of contact for addressing labor-
10 management concerns.” **Exhibit 1** (2019-2021 MOU) Section 1-3(A); **Exhibit 3** (Frost
11 Declaration) at ¶ 24; **Exhibit 12** (Deposition of X. Frost) at 54:14-56:24, 82:13-83:13,
12 156:11-22.

13 44. In addition, the City benefits from release time because the Union agreed
14 that Unit II employees who are released on a full-time basis will participate on the City’s
15 committees and task forces. **Exhibit 3** (Frost Declaration) at ¶¶ 15, 25; **Exhibit 12**
16 (Deposition of X. Frost) at 54:14-56:24, 82:13-83:13; **Exhibit 14** (Deposition of E.
17 Zuercher) at 24:1-25, 54:3-18, 58:21-61:5, 87:5-20.

18 45. Without release time, City employees would still need to take time to
19 perform the functions that they currently perform while released. City Manager Ed
20 Zuercher testified that the City would likely spend more time tracking down employees to
21 perform these same tasks before the current release time regime was implemented.
22 **Exhibit 14** (Deposition of E. Zuercher) at 50:23-51:23, 53:8-20, 54:2-18, 55:22-56:6,
23 57:22-58:3, 76:16-77:12, 87:5-20, 99:14-101:21; **Exhibit 12** (Deposition of X. Frost) at
24 82:13-83:13, 156:11-22.

25 46. The City pays for release time based on a recognition of the benefits it
26 receives, including a harmonious relationship with its employees, which encourages
27 employees to “give more of their time and energy and quality to the[ir] work.” **Exhibit**
28 **14** (Deposition of E. Zuercher) at 24:1-25, 26:12-27:3, 50:2-8, 56:17-57:3, 58:21-61:5,

1 99:14-101:21; **Exhibit 12** (Deposition of X. Frost) at 53:5-8, 54:14-56:24, 82:13-83:13,
2 87:5-20.

3 47. Among other things, release time benefits City employees using, and
4 receiving payment for, release time because they are being paid for their release time
5 activities. **Exhibit 3** (Frost Declaration) at ¶¶ 20-21; **Exhibit 12** (Deposition of X. Frost)
6 at 45:11-46:6; **Exhibit 7** (Deposition of R. Brown) at 24:10-25:2.

7 48. When Unit II employees use release time for release time activities, they
8 are paid their regular rate of pay in their normal paychecks by the City for that time.
9 **Exhibit 1** (2019-2021 MOU) at Section 1-3; **Exhibit 3** (Frost Declaration) at ¶¶ 20-21;
10 **Exhibit 12** (Deposition of X. Frost) at 45:11-46:6; **Exhibit 7** (Deposition of R. Brown) at
11 24:10-25:2; **Exhibit 9** (Deposition of M. Gilmore) at 137:21-138:12; **Exhibit 19**
12 (Gilmore's Amended Responses to the Union's First Set of Discovery Requests) at p. 5
13 (RFA No. 5).

14 49. Release time is used in ways that benefit all Unit II employees, including
15 Unit II employees who are not members of the Union. **Exhibit 9** (Deposition of M.
16 Gilmore) at 40:19-22; **Exhibit 10** (Deposition of M. Harder) at 58:18-59:19, 70:7-19,
17 72:13-74:8, 75:4-13, 75:25-76:19, 93:12-94:15, 103:18-104:2; **Exhibit 12** (Deposition of
18 X. Frost) at 53:5-8, 54:14-56:24; **Exhibit 14** (Deposition of E. Zuercher) at 24:1-25,
19 26:12-27:3, 50:2-8, 54:3-18, 75:3-8; *see also* **Exhibit 7** (Deposition of R. Brown) at 25:3-
20 22.

21 50. Plaintiff Gilmore previously used release time when serving as a witness
22 in a grievance proceeding. Plaintiff Gilmore recalled that there were issues in the
23 workplace caused by a former City employee and that the Union had filed a grievance on
24 behalf of all Unit II employees. Plaintiff Gilmore testified that workplace conditions
25 improved upon the resolution of that grievance. **Exhibit 9** (Deposition of M. Gilmore) at
26 180:5-182:1.

27 51. Plaintiff Harder agreed that if the Union were to prevail in a grievance that
28 improved working conditions for all of Unit II, all Unit II employees would benefit.

1 **Exhibit 10** (Deposition of M. Harder) at 76:4-19.

2 52. Plaintiff Gilmore testified that informal resolution of grievances and other
3 employee concerns provides a benefit to both the City and employees. **Exhibit 9**
4 (Deposition of M. Gilmore) at 27:1-18.

5 53. Plaintiff Gilmore also testified release time can help facilitate collective
6 bargaining between the Union and the City. **Exhibit 9** (Deposition of M. Gilmore) at 27:1-
7 18, 23:13-25.

8 54. In addition to benefitting Unit II employees, release time serves a public
9 purpose and benefits the City in the following ways, among others: (a) reducing
10 administrative/economic friction by making it easier to schedule and facilitate collective
11 bargaining sessions, grievances and dispute resolution proceedings, and other labor-
12 management meetings at more convenient times; (b) promoting labor peace and
13 harmonious labor relations; (c) providing workers with the means to express discontent;
14 (d) opening channels of communication between workers and management; (e) providing
15 management with information about worker preferences; (f) identifying and potentially
16 remedying inefficiencies in the production process; (g) developing dependable, trained,
17 and knowledgeable representatives to help facilitate the collective bargaining process, the
18 dispute resolution process, and the promotion of harmonious labor relations; (h)
19 facilitating more efficient scheduling and a centralized method for collective bargaining
20 and resolving labor disputes and issues; (i) facilitating employee service on committees
21 and task forces; (j) gathering and providing feedback on management policies or
22 programs; (k) informally resolving disputes outside of the formal grievance process; and
23 (l) increasing employee satisfaction resulting in greater productivity and reduced turnover.

24 **Exhibit 1** (2019-2021 MOU) at Section 1-3(A); **Exhibit 3** (Frost Declaration) at ¶ 26;
25 **Exhibit 9** (Deposition of M. Gilmore) at 22:12-25, 23:1-4, 26:6-27:18, 30:9-22, 39:12-14,
26 40:8-22, 51:12-52:8, 150:16-23; **Exhibit 10** (Deposition of M. Harder) at 23:13-25, 25:5-
27 11, 25:19-24, 26:18-22, 28:4-8, 28:21-29:6, 31:4-19, 32:1-6, 49:3-10, 51:9-14, 52:1-6,
28 58:24-59:19, 65:13-66:7; **Exhibit 12** (Deposition of X. Frost) at 53:5-8, 54:14-56:24,

1 82:16-83:13; **Exhibit 14** (Deposition of E. Zuercher) at 16:24-17:16, 24:1-25, 26:12-27:3,
2 37:8-14, 50:2-11, 54:3-18, 55:22-56:6, 58:21-61:5, 77:2-12, 87:5-20, 99:14-101:21;
3 **Exhibit 11** (Deposition of Dr. Ward) at 47:2-24, 48:3-9, 54:20-21, 55:8-14, 55:24-4,
4 56:21-57:3, 113:14-114:5; **Exhibit 6** (Expert Report of Dr. Ward) at pp. 4-6.

5 55. The City's witnesses also testified that release time pays for itself by (a)
6 avoiding lawsuits and resolving disputes more efficiently, (b) facilitating collective
7 bargaining with the Union, and (c) making it more efficient to schedule meetings to
8 address labor disputes and other issues. **Exhibit 12** (Deposition of X. Frost) at 52:23-
9 53:8, 54:14-56:24, 77:20-78:15, 79:13-25, 82:16-83:13; **Exhibit 14** (Deposition of E.
10 Zuercher) at 24:20-25, 26:12-27:3, 53:8-56:6, 56:17-57:3, 87:5-20.

11 56. Dr. Bryce Ward testified that the existing literature about release time
12 supports the City's opinion that release time forms an important public benefit. **Exhibit**
13 **11** (Deposition of Dr. Ward) at 47:2-24, 48:3-9; *see also* **Exhibit 6** (Expert Report of Dr.
14 Ward) at pp. 3-8.

15 57. Plaintiffs agreed that it is possible the City benefits from funding release
16 time. **Exhibit 9** (Deposition of M. Gilmore) at 38:9-14; **Exhibit 10** (Deposition of M.
17 Harder) at 23:24-24:7.

18 58. Plaintiffs' expert, Robert Brown, testified that a harmonious relationship
19 between an employer and labor union can result in more informal problem-solving and
20 increased communication from employees about ideas to improve organizational
21 efficiency and other workplace concerns. **Exhibit 7** (Deposition of R. Brown) at 48:2-21.

22 59. Mr. Brown admitted that it is possible that release time could help improve
23 the City's labor relations with Unit II. **Exhibit 7** (Deposition of R. Brown) at 56:15-23.

24 60. Mr. Brown testified that it is more efficient for the City to have collective
25 bargaining with one union than to negotiate terms and conditions of employment
26 separately with individual employees. **Exhibit 7** (Deposition of R. Brown) at 147:6-9.

27 61. Mr. Brown testified that release time can help augment employees'
28 collective voice. **Exhibit 7** (Deposition of R. Brown) at 154:6-15.

1 62. Likewise, Plaintiffs testified that it is possible release time could help
2 employees improve or express their collective voice. **Exhibit 9** (Deposition of M.
3 Gilmore) at 42:6-8; **Exhibit 10** (Deposition of M. Harder) at 28:4-8.

4 63. Plaintiffs also concede that Unit II employees may benefit as a group from
5 these activities, which may lead to higher employee satisfaction and help the City recruit
6 and retain employees. **Exhibit 9** (Deposition of M. Gilmore) at 51:9-25; **Exhibit 10**
7 (Deposition of M. Harder) at 23:13-25, 26:5-22.

8 64. Conversely, eliminating paid release time could result in adverse
9 economic, administrative, and other consequences for the City and Unit II employees.
10 **Exhibit 3** (Frost Declaration) at ¶ 27; **Exhibit 12** (Deposition of X. Frost) at 77:20-78:15,
11 79:13-25, 82:16-83:13, 156:11-22; **Exhibit 14** (Deposition of E. Zuercher) at 24:20-25,
12 26:12-27:3, 53:8-56:6, 56:17-57:3; **Exhibit 11** (Deposition of Dr. Ward) at 49:19-24,
13 51:8-17, 76:17-77:2, 106:22-107:1; **Exhibit 7** (Deposition of R. Brown) at 65:1-22.

14 65. The adverse consequences of eliminating release time include, but are not
15 limited to, inefficiency, less effective communication and cooperation among the City and
16 Unit II, and lower wages and benefits for Unit II employees, including Plaintiffs. **Exhibit**
17 **12** (Deposition of X. Frost) at 77:20-78:15, 79:13-25, 82:16-83:13, 156:11-22; **Exhibit 14**
18 (Deposition of E. Zuercher) at 24:20-25, 26:12-27:3, 53:8-56:6, 56:17-57:3; **Exhibit 11**
19 (Deposition of Dr. Ward) at 49:19-24, 51:8-17, 76:17-77:2, 106:22-107:1; **Exhibit 7**
20 (Deposition of R. Brown) at 84:13-24; **Exhibit 9** (Deposition of M. Gilmore) at 67:15-18.

21 66. Plaintiff Gilmore earns \$29 per hour under the 2019-2021 MOU between
22 the Union and the City; under the previous MOU, he earned \$27 per hour or 7.4% less per
23 hour. **Exhibit 9** (Deposition of M. Gilmore) at 168:8-21.

24 **V. The City pays for release time under the 2019-2021 MOU.**

25 67. The cost of release time under the 2019-2021 MOU was “charged as part
26 of the total compensation detailed in” the 2019-2021 MOU. **Exhibit 1** (2019-2021 MOU)
27 at Section 1-3(A); **Exhibit 12** (Deposition of X. Frost) at 109:13-110:3, 123:19-124:15,
28 129:6-130:2; **Exhibit 14** (Deposition of E. Zuercher) at 73:2-74:4, 75:16-77:12, 87:5-20.

1 68. During the meet and confer process, the City and the Union exchange
2 proposals concerning the terms and conditions of employment to be governed under the
3 upcoming MOU. **Exhibit 2** (Reber Declaration) at ¶ 4; **Exhibit 12** (Deposition of X.
4 Frost) at 120:8-22.

5 69. Proposals that affect the City’s funding allocations to an employee unit are
6 known as “economic” proposals. **Exhibit 2** (Reber Declaration) at ¶ 6; **Exhibit 12**
7 (Deposition of X. Frost) at 47:3-13, 51:19-25, 76:23-77:18, 120:8-22.

8 70. Economic proposals are not limited to changes in employee wages, but
9 include any proposal that would need to be paid for by the City, such as tool allowances or
10 expenditures for equipment or infrastructure. **Exhibit 2** (Reber Declaration) at ¶ 6;
11 **Exhibit 3** (Frost Declaration) at ¶¶ 16-17.

12 71. The City refers to the sum of all economic items in an MOU as the “total
13 compensation” or the “total cost of compensation.” **Exhibit 3** (Frost Declaration) at ¶ 16;
14 **Exhibit 12** (Deposition of X. Frost) at 109:13-110:3; **Exhibit 14** (Deposition of E.
15 Zuercher) at 73:13-74:4.

16 72. The term “total compensation” is a term of art in the meet and confer
17 process that refers to the total economic package for a particular MOU. **Exhibit 3** (Frost
18 Declaration) at ¶¶ 16-17; **Exhibit 12** (Deposition of X. Frost) at 109:13-110:3; **Exhibit 14**
19 (Deposition of E. Zuercher) at 73:13-74:4; **Exhibit 7** (Deposition of R. Brown) at 130:10-
20 23; **Exhibit 10** (Deposition of M. Harder) at 21:1-22.

21 73. The total economic package means the total cost to the City to pay for an
22 MOU. **Exhibit 3** (Frost Declaration) at ¶ 16; **Exhibit 12** (Deposition of X. Frost) at
23 109:13-110:3; **Exhibit 14** (Deposition of E. Zuercher) at 73:13-74:4; **Exhibit 7**
24 (Deposition of R. Brown) at 130:10-23; **Exhibit 10** (Deposition of M. Harder) at 21:1-22.

25 74. The “total compensation” does not refer to the compensation of individual
26 Unit II employees, and Unit II employees do not share equally in the total compensation.
27 **Exhibit 3** (Frost Declaration) at ¶ 17; **Exhibit 12** (Deposition of X. Frost) at 109:13-
28 110:3; **Exhibit 14** (Deposition of E. Zuercher) at 75:16-77:12.

1 75. In some circumstances, there are certain economic items that would not be
2 a part of the wages or benefits of any City employees, but they still would be included in
3 the total compensation because they represent a cost to the City. **Exhibit 2** (Reber
4 Declaration) at ¶ 6; **Exhibit 3** (Frost Declaration) at ¶ 17.

5 76. At the beginning of the meet and confer process, the City Council or City
6 Manager has discretion to determine the total economic package that will be offered,
7 subject to final approval by the City Council. **Exhibit 3** (Frost Declaration) at ¶ 18;
8 **Exhibit 12** (Deposition of X. Frost) at 120:8-22.

9 77. The total economic package is not fixed at the beginning of the meet and
10 confer process. Like other terms and conditions of employment, the amount of the total
11 economic package is subject to negotiation and may change based on negotiations or
12 changing circumstances. **Exhibit 3** (Frost Declaration) at ¶ 18; **Exhibit 12** (Deposition of
13 X. Frost) at 109:13-110:3, 120:8-22, 121:18-124:15, 129:6-130:2, 132:12-24.

14 78. Plaintiffs admit the City may set this figure, at its discretion, similar to
15 how the City makes other funding decisions. **Exhibit 9** (Deposition of M. Gilmore) at
16 97:7-25, 98:1-24, 102:19-103:10; **Exhibit 10** (Deposition of M. Harder) at 43:2-25, 48:13-
17 21.

18 79. The funding for Unit II's total compensation package comes from taxpayer
19 dollars collected by the City. **Exhibit 9** (Deposition of M. Gilmore) at 97:7-20, 136:2-13;
20 **Exhibit 10** (Deposition of M. Harder) at 22:3-5, 22:12-23:6.

21 80. Plaintiffs testified that the City collects taxes, those collections become
22 City funds, and the City funds are then used to pay for the cost of the 2019-2021 MOU,
23 including release time. **Exhibit 9** (Deposition of M. Gilmore) at 97:7-20, 127:23-25,
24 128:19-21, 136:2-13; **Exhibit 10** (Deposition of M. Harder) at 38:25-39:4, 48:15-49:21,
25 50:6-12.

26 81. This is consistent with testimony from the City's Rule 30(b)(6)
27 representatives and Plaintiffs' expert. **Exhibit 8** (Deposition of T. Reber) at 57:19-21;
28 **Exhibit 3** (Frost Declaration) at ¶ 21; **Exhibit 12** (Deposition of X. Frost) 45:11-46:16,

1 51:19-52:7; **Exhibit 7** (Deposition of R. Brown) at 22:16-18, 24:4-9.

2 82. Plaintiffs admit that they have no ownership interest in the City's tax
3 revenue and public funds. **Exhibit 9** (Deposition of M. Gilmore) at 97:7-25, 98:1-24;
4 **Exhibit 10** (Deposition of M. Harder) at 43:2-25, 48:13-2.

5 83. Plaintiffs also acknowledge that the City has discretion to spend public
6 funds as it sees fit and that they have no authority to dictate or challenge the City's
7 funding decisions. **Exhibit 9** (Deposition of M. Gilmore) at 97:7-98:24, 102:19-103:10;
8 **Exhibit 10** (Deposition of M. Harder) at 43:2-25, 48:13-21.

9 84. The "total compensation" (i.e., the total cost to the City of the MOU) for a
10 unit of City employees does not result in equal wages and benefits for all employees. For
11 example, certain compensation, such as a uniform allowance or shift differential, may
12 benefit some but not all employees within the unit. **Exhibit 3** (Frost Declaration) at ¶ 17;
13 **Exhibit 8** (Deposition of T. Reber) at 82:7-12, 103:9-104:1; **Exhibit 12** (Deposition of X.
14 Frost) at 109:13-110:3; **Exhibit 14** (Deposition of E. Zuercher) at 75:16-77:12; **Exhibit 7**
15 (Deposition of R. Brown) at 73:15-74:22, 133:18-134:6; **Exhibit 9** (Deposition of M.
16 Gilmore) at 75:14-17; **Exhibit 10** (Deposition of M. Harder) at 32:8-21.

17 85. In addition, wage increases could go to only certain employees within the
18 unit and not others. **Exhibit 9** (Deposition of M. Gilmore) at 98:7-99:6; **Exhibit 10**
19 (Deposition of M. Harder) at 43:6-25.

20 86. Plaintiffs admit that they may not personally benefit from increases to total
21 compensation because such increases could be allocated to other employees. **Exhibit 9**
22 (Deposition of M. Gilmore) at 98:7-99:6; **Exhibit 10** (Deposition of M. Harder) at 43:6-
23 25.

24 87. Plaintiffs concede they have no interest in the "total compensation"
25 beyond what they are entitled to receive as their personal wages and benefits under the
26 MOU. **Exhibit 9** (Deposition of M. Gilmore) at 91:21-93:10; **Exhibit 10** (Deposition of
27 M. Harder) at 39:19-40:15.

28 88. Although other Unit II employees' wages and benefits are part of the total

1 compensation package under the 2019-2021 MOU, Plaintiffs testified that they do not
2 “finance” other Unit II employees’ wages because those wages are funded by the City’s
3 taxpayer revenue. **Exhibit 9** (Deposition of M. Gilmore) at 95:5-10; **Exhibit 10**
4 (Deposition of M. Harder) at 21:18-23:6.

5 89. Plaintiffs admitted that they do not “finance” their co-workers’ wages even
6 though those wages are part of the total compensation package for Unit II. **Exhibit 9**
7 (Deposition of M. Gilmore) at 97:7-20; **Exhibit 10** (Deposition of M. Harder) at 21:18-
8 23:6.

9 90. Plaintiffs admit that they do not have an interest in their coworkers’
10 compensation, which is part of the “total compensation.” **Exhibit 9** (Deposition of M.
11 Gilmore) at 91:21-93:10, 97:7-16; **Exhibit 10** (Deposition of M. Harder) at 39:19-40:15.

12 91. Plaintiffs admit that no money is deducted directly from their paychecks to
13 pay for release time under the 2019-2021 MOU. **Exhibit 18** (Harder’s Amended
14 Responses to the City Defendants’ Second Set of Discovery Requests) at pp. 4-5 (RFA
15 No. 6); **Exhibit 9** (Deposition of M. Gilmore) at 179:2-12; **Exhibit 10** (Deposition of M.
16 Harder) at 47:22-25, 57:21-58:2.

17 92. Plaintiff Gilmore admits that the City pays for total compensation,
18 including release time, through public funds. **Exhibit 9** (Deposition of M. Gilmore) at
19 90:17-91:1, 97:7-20, 102:19-103:10, 129:10-131:13.

20 93. Plaintiff Harder admits that it is the City’s money, not his or his
21 coworkers’ money, that is used to pay for release time. **Exhibit 10** (Deposition of M.
22 Harder) at 38:25-39:4.

23 94. Plaintiff Harder admits that it is not his “actual compensation under the
24 MOU that’s being used to finance release time, but some higher amount of compensation
25 that [he] would like to have if release time were eliminated.” **Exhibit 10** (Deposition of
26 M. Harder) at 54:10-55:1.

27 95. Mr. Brown testified that this litigation involves release time paid for by the
28 City. **Exhibit 7** (Deposition of R. Brown) at 84:13-24.

1 96. Similarly, Plaintiffs were not deprived of or required to return any vested
2 wages or benefits to pay for release time under the 2019-2021 MOU. **Exhibit 9**
3 (Deposition of M. Gilmore) at 88:8-12, 136:2-7; **Exhibit 10** (Deposition of M. Harder) at
4 48:1-4, 57:21-58:2.

5 97. Plaintiff Harder testified that he did not know how Unit II employees pay
6 for release time despite alleging in the Second Amended Complaint that Unit II employees
7 allegedly pay for release time. **Exhibit 10** (Deposition of M. Harder) at 38:10-18.

8 **VI. The City does not pay too much for the 2019-2021 MOU, and it receives**
9 **sufficient consideration from employee services.**

10 98. The total cost to the City associated with the 2019-2021 MOU for the
11 2020-2021 term year is \$168,569,000. **Exhibit 2** (Reber Declaration) at ¶ 13.

12 99. Plaintiffs do not believe individual Unit II employees are overcompensated
13 for their work. **Exhibit 17** (Gilmore's Responses to the City Defendants' Second Set of
14 Discovery Requests) at p. 6 (Response to RFA No. 9); **Exhibit 9** (Deposition of M.
15 Gilmore) at 149:15-150:7; **Exhibit 10** (Deposition of M. Harder) at 61:4-12.

16 100. Plaintiffs testified that the City gets a fair amount of services from Unit II
17 employees in exchange for Unit II's total compensation under the 2019-2021 MOU.
18 **Exhibit 9** (Deposition of M. Gilmore) at 150:9-14; **Exhibit 10** (Deposition of M. Harder)
19 at 61:7-25.

20 101. The annual total cost to the City for release time under the 2019-2021
21 MOU is \$499,000. **Exhibit 2** (Reber Declaration) at ¶ 13; **Exhibit 12** (Deposition of X.
22 Frost) at 76:23-77:18; **Exhibit 14** (Deposition of E. Zuercher) at 23:8-14 .

23 102. The total cost of release time under the 2019-2021 MOU represents 0.3%
24 of the total economic package for Unit II for the 2020-2021 term year. **Exhibit 2** (Reber
25 Declaration) at ¶ 13.

26 103. City Manager Zuercher explains that costing of release time is really
27 placing a value on the time the City needs to have representatives of Unit II employees
28 carry out the tasks that are required by the MOU and the Meet & Confer Ordinance.

1 **Exhibit 14** (Deposition of E. Zuercher) at 54:3-18, 73:9-74:4, 87:5-20.

2 104. The cost of release time to the City is the value of the “time” associated
3 with the full-time release positions and bank of hours used to meet the City’s obligations
4 under the MOU and Meet & Confer Ordinance to make sure that employees are properly
5 represented in labor management relations. **Exhibit 14** (Deposition of E. Zuercher) at
6 87:5-20, 99:5-101:8.

7 **VII. Plaintiffs have not been personally harmed by release time under the 2019-**
8 **2021 MOU.**

9 105. Plaintiff Harder testified that he is harmed by release time in only one way,
10 stating his belief that he would get some additional form of compensation if release time
11 were eliminated, which is more preferable to him. **Exhibit 10** (Deposition of M. Harder)
12 at 15:11-20, 19:14-23.

13 106. Plaintiff Gilmore alleged that he is harmed by release time because when a
14 Union steward uses release time during part of his ordinary shift, he may have to perform
15 the steward’s work. **Exhibit 9** (Deposition of M. Gilmore) at 69:5-22.

16 107. Plaintiff Gilmore testified that the only harm he personally suffers as a
17 result of release time is that he may have to perform the steward’s work. **Exhibit 9**
18 (Deposition of M. Gilmore) at 70:3-8.

19 108. Plaintiff Gilmore testified that he is seeking the elimination of release time
20 under the 2019-2021 MOU because he would like the funding used to pay for release time
21 reallocated to a future increase in his personal vacation hours, which he stated would serve
22 only as a personal benefit to him and not a benefit to the public. **Exhibit 9** (Deposition of
23 M. Gilmore) at 75:18-24, 105:6-21, 150:24-151:4, 152:7-11.

24 109. Similarly, Plaintiff Harder testified that he is seeking the elimination of
25 release time under the 2019-2021 MOU because he believes he would receive an increase
26 in his compensation or time off if release time were eliminated. **Exhibit 10** (Deposition of
27 M. Harder) at 15:11-16:13, 19:14-23.

28 110. Plaintiffs also admit that, if release time were eliminated, they want release

1 time payments to be redirected to increasing their compensation rather than some public
2 purpose. **Exhibit 9** (Deposition of M. Gilmore) at 75:18-24; **Exhibit 10** (Deposition of
3 M. Harder) at 18:20-25.

4 111. If City-funded release time were eliminated, the City would meet and
5 confer with the Union regarding the potential disposition of the value of the City's public
6 funds that had been allocated for release time, subject to direction from the City Council.
7 **Exhibit 3** (Frost Declaration) at ¶ 28; **Exhibit 12** (Deposition of X. Frost) at 122:5-
8 123:17; 129:6-130:2, 132:12-24; **Exhibit 14** (Deposition of E. Zuercher) at 75:16-77:12,
9 99:14-101:21; **Exhibit 10** (Deposition of M. Harder) at 18:20-25.

10 112. Ultimately, the City Council or City Manager would decide how the value
11 of these public funds would be reallocated, and there is no requirement, contractual
12 obligation, or guarantee that the funds would be reallocated to increasing the wages or
13 benefits of Unit II employees. **Exhibit 3** (Frost Declaration) at ¶ 28; **Exhibit 12**
14 (Deposition of X. Frost) at 122:24-123:17, 129:6-130:2, 132:12-24, 144:5-18; **Exhibit 14**
15 (Deposition of E. Zuercher) at 75:16-77:12, 86:11-18, 87:5-20, 99:14-101:21.

16 113. Plaintiffs testified that the City can choose how to spend its funds however
17 it wants. **Exhibit 9** (Deposition of M. Gilmore) at 97:21-99:6, 128:22-129:6, **Exhibit 10**
18 (Deposition of M. Harder) at 49:7-23.

19 114. Plaintiff Gilmore testified that if the Union and City must eliminate release
20 time under the 2019-2021 MOU, “[t]he City can do whatever it wants” with the funding
21 previously allocated to pay for that release time. **Exhibit 9** (Deposition of M. Gilmore) at
22 97:21-99:6, 128:22-129:6; *see also* **Exhibit 10** (Deposition of M. Harder) at 49:7-23
23 (testifying that the City can use its tax revenue “as they need it”).

24 115. Likewise, Plaintiff Harder testified that he does not know what the City
25 would do with the funds allocated to release time if release time were eliminated. **Exhibit**
26 **10** (Deposition of M. Harder) at 40:17-24.

27 116. Plaintiffs acknowledged that they do not have authority to dictate or
28 challenge how the City allocates funds or makes funding decisions. **Exhibit 15**

1 (Gilmore’s Corrected Responses to the City Defendants’ First Set of Discovery Requests)
2 at pp. 7-8 (NUI No. 4); **Exhibit 16** (Harder’s Responses to the City Defendants’ First Set
3 of Discovery Requests) at pp. 6-7 (NUI No. 4).

4 117. Plaintiffs acknowledged that there is no guarantee they would receive
5 higher wages than currently provided under the 2019-2021 MOU if release time were
6 eliminated. **Exhibit 9** (Deposition of M. Gilmore) at 97:21-99:6; **Exhibit 10** (Deposition
7 of M. Harder) at 54:22-55:1.

8 118. Plaintiffs admit that, if release time were eliminated, they would receive
9 no benefit if the City reallocated release time payments to some other public purpose.
10 **Exhibit 9** (Deposition of M. Gilmore) at 72:9-73:14, 74:24-75:17; **Exhibit 10** (Deposition
11 of M. Harder) at 45:11-16.

12 119. For example, Plaintiff Gilmore testified in his deposition that the City
13 recently created a new deputy director position at a cost to the City of \$150,000 per year.
14 Gilmore acknowledges that he received no benefit from this expenditure. **Exhibit 9**
15 (Deposition of M. Gilmore) at 72:9-73:14.

16 120. Mr. Brown testified that the MOU does not require the City to provide
17 additional compensation to Unit II employees if the release time provisions were
18 eliminated. **Exhibit 7** (Deposition of R. Brown) at 69:7-14.

19 121. If the Union and City had negotiated to eliminate release time from the
20 2019-2021 MOU, it would have been within the City’s discretion to determine whether to
21 credit the economic value of the eliminated release time back to the Union as part of
22 negotiations. **Exhibit 8** (Deposition of T. Reber) at 92:6-7, 106:19-22, 107:5-23; *see also*
23 **Exhibit 9** (Deposition of M. Gilmore) at 72:9-73:14.

24 122. If the Union and City eliminated release time under the 2019-2021 MOU,
25 the economic value of the eliminated release time would not necessarily or automatically
26 result in a wage increase or additional benefits to Plaintiffs or other Unit II employees.
27 **Exhibit 9** (Deposition of M. Gilmore) at 72:9-73:14; **Exhibit 10** (Deposition of M.
28 Harder) at 34:9-24, 42:18-43:18; **Exhibit 8** (Deposition of T. Reber) at 70:5-25, 92:6-17,

1 106:19-22, 107:5-23; **Exhibit 11** (Deposition of Dr. Ward) at 85:5-10.

2 123. If the Union and City eliminated release time under the 2019-2021 MOU,
3 it is possible that the economic value of the eliminated release time could result in an
4 increase in wages or benefits to Unit II employees other than Plaintiffs. **Exhibit 8**
5 (Deposition of T. Reber) at 70:5-25; **Exhibit 9** (Deposition of M. Gilmore) at 74:13-75:5;
6 **Exhibit 10** (Deposition of M. Harder) at 33:22-34:8, 43:20-25; *see also* **Exhibit 7**
7 (Deposition of R. Brown) at 73:15-74:22.

8 124. If the Union and City eliminated release time under the 2019-2021 MOU,
9 the City could reallocate the economic value of the eliminated release time to a purpose
10 other than Unit II's total compensation package. **Exhibit 8** (Deposition of T. Reber) at
11 92:6-17, 107:5-23; **Exhibit 7** (Deposition of R. Brown) at 111:17-113:1; **Exhibit 9**
12 (Deposition of M. Gilmore) at 97:21-99:6; 128:22-129:6; **Exhibit 10** (Deposition of M.
13 Harder) at 34:18-24.

14 125. Plaintiffs testified that the City did not promise to provide them with any
15 increase to their wages or benefits if release time were eliminated from the 2019-2021
16 MOU. **Exhibit 9** (Deposition of M. Gilmore) at 88:20-89:2, 94:18-23; **Exhibit 10**
17 (Deposition of M. Harder) at 40:5-15, 54:17-20.

18 126. Mr. Brown testified that the City can make "any kind of decision it wants"
19 with respect to spending funds, and the City makes those determinations based on an
20 assessment of relevant evidence. **Exhibit 7** (Deposition of R. Brown) at 112:17-25,
21 113:1.

22 127. Plaintiffs testified that they are not entitled to any wages or benefits other
23 than those specified in the 2019-2021 MOU. **Exhibit 9** (Deposition of M. Gilmore) at
24 93:7-10, 94:18-23; **Exhibit 10** (Deposition of M. Harder) at 57:4-9; *see also* **Exhibit 7**
25 (Deposition of R. Brown) at 31:1-5, 32:9-16.

26 128. Plaintiffs testified that they are receiving all benefits and wages they were
27 promised under the 2019-2021 MOU. **Exhibit 9** (Deposition of M. Gilmore) at 118:24-
28 119:2; **Exhibit 10** (Deposition of M. Harder) at 40:1-4, 54:4-8.

1 129. Plaintiffs admitted that release time is not causing them to receive lesser
2 wages or benefits than those promised in the 2019-2021 MOU. **Exhibit 9** (Deposition of
3 M. Gilmore) at 118:18-22; **Exhibit 10** (Deposition of M. Harder) at 54:10-15.

4 130. Mr. Brown testified that release time is not funded from employee pay
5 deductions. **Exhibit 7** (Deposition of R. Brown) at 108:20-25, 109:1-2.

6 131. Plaintiff Gilmore testified that his hourly wage is higher under the 2019-
7 2021 MOU than it was under the 2016-2019 MOU. **Exhibit 9** (Deposition of M.
8 Gilmore) at 168:8-21, 169:5-8.

9 132. Plaintiff Gilmore testified that when the Union is successful in advocating
10 for higher wages, all Unit II employees will benefit from the higher wages, not just Union
11 members. **Exhibit 9** (Deposition of M. Gilmore) at 40:8-22.

12 133. Plaintiffs also received additional one-time payments in 2019 and 2020
13 under the 2019-2021 MOU. **Exhibit 5** (CITY00003634); **Exhibit 9** (Deposition of M.
14 Gilmore) at 169:9-24; **Exhibit 10** (Deposition of M. Harder) at 22:12-15, 72:3-8.

15 134. Plaintiff Harder testified that the Union's use of release time to bargain for
16 higher wages for Unit II employees would benefit him. **Exhibit 10** (Deposition of M.
17 Harder) at 66:4-13, 70:7-19, 72:13-73:17.

18 135. Indeed, under the 2019-2021 MOU, Unit II employees received a higher
19 wage increase and two additional one-time payments than what the City originally
20 proposed. *Compare* **Exhibit 4** (CITY00001265) *with* **Exhibit 5** (CITY00003634); *see*
21 *also* **Exhibit 2** (Reber Declaration) at ¶¶ 10-11; **Exhibit 9** (Deposition of M. Gilmore) at
22 169:9-16; **Exhibit 10** (Deposition of M. Harder) at 22:12-17.

23 136. Plaintiffs testified that it is possible they will not personally benefit from
24 the elimination of release time. **Exhibit 9** (Deposition of M. Gilmore) at 107:22-108:9;
25 **Exhibit 10** (Deposition of M. Harder) at 45:11-6.

26 137. Plaintiff Gilmore could not answer basic and fundamental questions about
27 his claims and allegations. **Exhibit 9** (Deposition of M. Gilmore) at 79:10-81:15, 90:17-
28 91:1, 97:7-20, 102:19-103:10, 106:1-108:5, 115:4-20, 129:10-131:13, 131:15-132:23,

1 145:4-11, 147:17-148:13.

2 138. Plaintiff Harder could not answer basic and fundamental questions about
3 his claims and allegations. **Exhibit 10** (Deposition of M. Harder) at 41:11-42:17, 50:16-
4 52:7, 55:11-56:8, 61:14-25.

5 **VIII. Plaintiffs are not compelled to join or support the Union.**

6 139. No Unit II employee is required to join the Union. SAC at ¶¶ 5-6; City
7 Defendants' Answer at ¶¶ 5-6; **Exhibit 9** (Deposition of M. Gilmore) at 130:6-8; **Exhibit**
8 **10** (Deposition of M. Harder) at 51:2-14.

9 140. Under Section 1-3(G) of the 2019-2021 MOU, Union members have the
10 option to pay their union dues through a post-tax voluntary payroll deduction. Such
11 deductions appear as itemized deductions on employees' pay statements/stubs in the same
12 manner as any other post-payroll deduction like retirement, health insurance, FICA tax
13 and other deductions. **Exhibit 1** (2019-2021 MOU) at Section 1-3(G)(1); **Exhibit 9**
14 (Deposition of M. Gilmore) at 177:15-179:12; **Exhibit 10** (Deposition of M. Harder) at
15 47:22-48:1.

16 141. Plaintiffs are not currently members of the Union. SAC at ¶¶ 5-6; City
17 Defendants' Answer at ¶¶ 5-6; Intervenor Defendant's Answer at ¶¶ 5-6.

18 142. Plaintiffs do not pay dues or fees to the Union. **Exhibit 9** (Deposition of
19 M. Gilmore) at 75:23, 118:14-17, 130:9-12, 178:20-179:1; **Exhibit 10** (Deposition of M.
20 Harder) at 47:22-25, 51:2-9, 92:21-24.

21 143. Plaintiffs testified that they are not currently "forced to provide financial
22 support to the Union" as non-members. **Exhibit 9** (Deposition of M. Gilmore) at 117:23-
23 118:5; **Exhibit 10** (Deposition of M. Harder) at 47:19-25, 48:6-11.

24 144. Plaintiffs testified that they are not forced to adopt or endorse the Union's
25 position or viewpoints. **Exhibit 9** (Deposition of M. Gilmore) at 130:14-22, 146:17-21;
26 **Exhibit 10** (Deposition of M. Harder) at 51:11-18.

27 145. Plaintiff Harder testified that he is not forced to associate with the Union.
28 **Exhibit 10** (Deposition of M. Harder) at 50:22-25.

1 146. Plaintiffs testified that their names are not attached to what the Union says
2 or does. **Exhibit 9** (Deposition of M. Gilmore) at 131:2-4; **Exhibit 10** (Deposition of M.
3 Harder) at 51:19-23.

4 147. When asked, Plaintiffs could not identify any specific release time
5 activities under the 2019-2021 MOU with which they disagree that relate to their political
6 or ideological beliefs. **Exhibit 9** (Deposition of M. Gilmore) at 121:2-10, 203:11-204:2;
7 **Exhibit 10** (Deposition of M. Harder) at 98:7-99:2, 100:11-14.

8 148. When asked, Plaintiffs could not identify any specific release time
9 activities that have occurred under the 2019-2021 MOU with which they disagree, other
10 than buying lunch for employees, lobbying and “swinging deals,” promoting educational
11 opportunities for Union members, and trying to recruit members. **Exhibit 9** (Deposition
12 of M. Gilmore) at 198:15-199:14, 206:22-207:2; **Exhibit 10** (Deposition of M. Harder) at
13 98:7-99:2, 100:15-102:14, 102:24-103:1.

14 149. Plaintiff Harder testified that he would not benefit personally if the City
15 audited or tracked the use of release time under the 2019-2021 MOU. **Exhibit 10**
16 (Deposition of M. Harder) at 46:4-16, 47:2-15.

17 150. Plaintiff Gilmore testified that he does not know whether the City’s ability
18 to audit the Union’s use of release time would resolve his challenges to the existence of
19 release time under the 2019-2021 MOU. **Exhibit 9** (Deposition of M. Gilmore) at 115:4-
20 20.

21 151. Plaintiffs were previously dues-paying Union members. **Exhibit 19**
22 (Gilmore’s Amended Responses to the Union’s First Set of Discovery Requests) at p. 4
23 (RFA Nos. 1-3); **Exhibit 20** (Harder’s Amended Responses to the Union’s First Set of
24 Discovery Requests) at p. 4 (RFA Nos. 1-3).

25 152. Plaintiff Gilmore was aware that the MOUs in effect when he was a
26 member of the Union had three paid full-time release positions but did not contest those
27 provisions or vote against ratification of the MOU although he could have done so.
28 **Exhibit 9** (Deposition of M. Gilmore) at 158:25-159:9, 160:7-162:2.

1 153. Plaintiff Gilmore also never voiced his objection to paid release time to the
2 Phoenix City Council while it was considering ratification. **Exhibit 9** (Deposition of M.
3 Gilmore) at 211:13-212:8.

4 154. Plaintiff Gilmore himself utilized release time from this bank “for Local
5 2384 authorized business” on December 1, 2010, and Plaintiff Harder received Union
6 representation on multiple occasions. Mr. Gilmore used these release time hours to testify
7 as a witness in a personnel proceeding and received his normal rate of pay and benefits
8 while on release time. **Exhibit 9** (Deposition of M. Gilmore) at 180:2-181:2; **Exhibit 109**
9 (Deposition of M. Harder) at 83:1-21, 92:25-96:7.

10 155. Plaintiff Harder was aware that the MOUs in effect when he was a
11 member of the Union had release time provisions but did not contest those provisions or
12 vote against ratification of the MOU, although he could have done so. **Exhibit 10**
13 (Deposition of M. Harder) at 80:2-17.

14 156. Plaintiff Gilmore has not attempted to communicate with the Union since
15 2017 or 2018. **Exhibit 9** (Deposition of M. Gilmore) at 25:12-26:5.

16 157. Plaintiff Gilmore admits that he is not forced to pay union dues, join the
17 Union or adopt the Union’s position or viewpoint on issues. **Exhibit 10** (Deposition of M.
18 Gilmore) at 129:17-131:4.

19 **IX. Plaintiffs’ expert failed to conduct any investigation into the facts and**
20 **circumstances of the City’s labor relations with Unit II.**

21 158. Mr. Brown admitted that he did not interview representatives of the City or
22 any Unit II employees, including Plaintiffs, and he did not conduct any investigation into
23 (a) the City’s labor relations with Unit II, (b) whether release time has positive or negative
24 effects for the City’s labor relations with Unit II, or (c) whether release time promotes
25 positive labor relations between the City and Unit II. **Exhibit 7** (Deposition of R. Brown)
26 at 34:5-25, 35:1-7, 37:6-25, 49:1-11, 53:11-25, 56:4-14, 62:8-20, 86:22-25, 88:18-21,
27 93:2-5, 94:10-16, 102:14-17, 119:1-25, 121:18-21, 122:5-10, 124:1-17, 125:18-25, 126:5-
28 8, 132:10-23, 149:7-19, 159:24-25, 156:1-9, 164:2-5.

EXHIBIT 12

EXHIBIT 12

1 IN THE SUPERIOR COURT OF ARIZONA
2 IN AND FOR THE COUNTY OF MARICOPA

3)
4 MARK GILMORE; and MARK HARDER,)
5 Plaintiffs,)
6 vs.) Case No.
7) CV2019-009033
8 KATE GALLEGO, in her official)
9 capacity as Mayor of the City of)
10 Phoenix; ED ZUERCHER in his)
11 official capacity as City Manager)
12 of the City of Phoenix; and CITY)
13 OF PHOENIX,)
14 Defendants,)
15)
16 AMERICAN FEDERATION OF STATE,)
17 COUNTY AND MUNICIPAL EMPLOYEES,)
18 LOCAL 2384,)
19 Intervenor-Defendant.)
20)
21)
22)
23)
24)
25)

30(b)(6) DEPOSITION OF CITY OF PHOENIX BY XAVIER FROST
AND XAVIER FROST, INDIVIDUALLY

Phoenix, Arizona
January 19, 2021

Prepared by:
Meri Coash, RMR, CRR
Certified Reporter
Certification No. 50327

09:22:57-09:23:57 Page 18

1 THE WITNESS: I'm not quite positive of the
2 mechanics of the union's operations, but I would think
3 that the full-time release positions do have a reporting
4 structure to the president of the union.
5 BY MR. RICHES:
6 Q. To your knowledge, does the president of the
7 union on full-time release have a direct supervisor within
8 the City of Phoenix?
9 MR. DORAN: Same objections.
10 Go ahead.
11 THE WITNESS: Not to my knowledge.
12 BY MR. RICHES:
13 Q. You indicated that the City generally relies on
14 supervisors to ensure that employees are carrying out
15 their work duties for the City. Is that correct?
16 MR. DORAN: Object to form, foundation,
17 exceeds the scope in the notice of deposition for this
18 witness.
19 Go ahead.
20 THE WITNESS: Yes, sir.
21 BY MR. RICHES:
22 Q. Does the City have any other tracking mechanism
23 that tracks the hours that an employee has worked in a
24 given week?
25 MR. DORAN: Objection. Foundation. And

09:24:15-09:25:04 Page 19

1 exceeds the scope in the notice of deposition for this
2 witness.
3 Go ahead.
4 THE WITNESS: No, I can't think of a
5 tracking system we have for just general employee hours.
6 BY MR. RICHES:
7 Q. Are City of Phoenix employees required to submit
8 a time sheet on some regular basis?
9 MR. DORAN: Object to form, foundation,
10 exceeds the scope in the notice of deposition for this
11 witness.
12 Go ahead.
13 THE WITNESS: That's possible in some areas.
14 BY MR. RICHES:
15 Q. But not all City of Phoenix employees are
16 required to submit a time sheet?
17 MR. DORAN: Same objections.
18 Go ahead.
19 THE WITNESS: I would think that's accurate,
20 yes.
21 BY MR. RICHES:
22 Q. Okay. We'll get back to that.
23 As the deputy HR director, are you familiar
24 with the meet-and-confer process between the City of
25 Phoenix and its various labor unions representing various

09:25:16-09:26:31 Page 20

1 employee units?
2 MR. DORAN: Object to form.
3 Go ahead.
4 THE WITNESS: I'm aware of it, yes.
5 BY MR. RICHES:
6 Q. Do you know how many employee units there are in
7 the City of Phoenix?
8 A. You said meet and confer, so I would say there
9 are five meet-and-confer units.
10 Q. I think I missed that. I'm sorry. It could have
11 been my technology.
12 A. I believe you asked me about meet-and-confer
13 units and I said there are five meet-and-confer units.
14 Q. What are they?
15 MR. DORAN: Object to the form.
16 Go ahead.
17 THE WITNESS: Well, there's Units 1 through
18 5, Unit 1 being LIUNA; Units 2 and 3 being AFSCME units;
19 Unit 4 being the police unit, and Unit 5 being the fire
20 unit.
21 BY MR. RICHES:
22 Q. Did you say the fire unit for Unit 5?
23 A. Yes, sir.
24 Q. Is there a Unit 6?
25 A. There is a Unit 6 and Unit 7 under the

09:27:01-09:28:12 Page 21

1 meet-and-discuss ordinance.
2 Q. What's the meet-and-discuss ordinance?
3 A. It's an ordinance that resembles the
4 meet-and-confer ordinance with differences for those who
5 would fall under it.
6 Q. Could you describe in general terms what the
7 meet-and-confer process is?
8 MR. DORAN: Object to form.
9 Go ahead.
10 (Ms. Gilbert is now present via
11 videoconference.)
12 THE WITNESS: For clarification, are you
13 asking about the negotiation process that falls within the
14 meet-and-confer ordinance?
15 BY MR. RICHES:
16 Q. Sure. Yeah. If you could describe -- if you
17 could describe what the meet-and-confer process entails,
18 what your understanding of it is.
19 MR. DORAN: Object to the form.
20 Go ahead.
21 THE WITNESS: At its basic level, the City
22 of Phoenix meets with representatives of the various units
23 to negotiate a new contract, either MOU or an MOA
24 depending on whether we're talking about meet and confer
25 or meet and discuss.

09:28:28-09:29:28 Page 22

1 BY MR. RICHES:
 2 Q. What's the difference between meet and confer and
 3 meet and discuss?
 4 MR. DORAN: Object to form.
 5 Go ahead.
 6 THE WITNESS: In regards to negotiations, I
 7 think the big difference with meet and discuss, the
 8 contracts are ultimately approved by City of Phoenix
 9 council. And with the meet-and-discuss units, Units 6 and
 10 7, those contracts are ultimately approved by the city
 11 manager.
 12 (An off-the-record discussion ensued.)
 13 BY MR. RICHES:
 14 Q. Are you --
 15 MR. DORAN: Hi, Heidi.
 16 MS. GILBERT: Good morning, everybody.
 17 MR. RICHES: Good morning, Heidi.
 18 BY MR. RICHES:
 19 Q. Are you familiar with the collective bargaining
 20 process?
 21 MR. DORAN: Object to form.
 22 Go ahead.
 23 THE WITNESS: I'm generally familiar with
 24 the collective bargaining process.
 25 ///

09:29:50-09:30:29 Page 23

1 BY MR. RICHES:
 2 Q. Does collective bargaining in the City of -- does
 3 collective bargaining differ in any way than the
 4 meet-and-confer process you described in the City of
 5 Phoenix?
 6 MR. DORAN: Object to the form, foundation.
 7 Go ahead.
 8 THE WITNESS: I'm sorry. I'm not following
 9 that question. Could you restate it --
 10 BY MR. RICHES:
 11 Q. Sure.
 12 A. -- or rephrase it?
 13 Q. Sure.
 14 Are you aware of any differences between a
 15 collective bargaining process and the City of Phoenix's
 16 meet-and-confer process?
 17 MR. DORAN: Object to form, foundation,
 18 exceeds the scope in the notice of deposition for this
 19 witness.
 20 Go ahead.
 21 THE WITNESS: A collective bargaining
 22 process, say, in the private sector?
 23 BY MR. RICHES:
 24 Q. In the public sector.
 25 MR. DORAN: Same objections.

09:30:49-09:31:32 Page 24

1 Go ahead.
 2 THE WITNESS: Again, I'm not positive I'm
 3 following this question, but I would say our
 4 meet-and-confer process is a collective bargaining
 5 process.
 6 BY MR. RICHES:
 7 Q. Are you aware of any differences between what you
 8 understand to be the collective bargaining process in the
 9 public sector and the City of Phoenix's meet-and-confer
 10 process?
 11 MR. DORAN: Same objections.
 12 Go ahead.
 13 THE WITNESS: I think a meet-and-confer
 14 process with other municipalities or states might
 15 certainly have their own differences.
 16 BY MR. RICHES:
 17 Q. Do you know what an exclusive bargaining
 18 representative is?
 19 MR. DORAN: Object to form, foundation,
 20 exceeds the scope in the notice of deposition for this
 21 witness.
 22 Go ahead.
 23 THE WITNESS: I'm sorry. You said an
 24 exclusive bargaining -- I'm sorry. What was that term?
 25 ///

09:31:52-09:33:13 Page 25

1 BY MR. RICHES:
 2 Q. An exclusive bargaining representative.
 3 MR. DORAN: Same objections.
 4 Go ahead.
 5 THE WITNESS: I would assume it's a
 6 bargaining unit that is the sole exclusive representative
 7 of a group of employees.
 8 BY MR. RICHES:
 9 Q. Is AFSCME Local 2384 the exclusive bargaining
 10 representative for Unit 2 employees in the City of
 11 Phoenix?
 12 MR. BONNETT: Object to form.
 13 THE WITNESS: They are.
 14 BY MR. RICHES:
 15 Q. If I refer to "AFSCME" -- I'm sorry, if I refer
 16 to the "union," I will be referring to AFSCME Local 2384
 17 unless I specify another union or labor organization. Is
 18 that acceptable?
 19 A. That works for me.
 20 Q. Okay. Do you know when AFSCME Local 2384 became
 21 the exclusive bargaining representative for Unit 2?
 22 A. I do not.
 23 MR. RICHES: I'd ask the court reporter to
 24 identify the next exhibit in order, which we previously
 25 asked to be marked as Exhibit 41.

<p>09:40:35-09:45:23 Page 30</p> <p>1 five-minute break so I can pull that all together and 2 resend it. 3 MR. RICHES: That would be great. Thanks, 4 John. 5 MR. DORAN: Back on at 9:35? 6 MR. BONNETT: Works for me. Thanks. 7 (A recess ensued.) 8 BY MR. RICHES: 9 Q. Before we turn back to Exhibit 2, I just had a 10 couple of clarification questions. 11 In order for a union to be certified as an 12 exclusive bargaining representative, is it your 13 understanding that unit members or unit employees must 14 vote to certify that union as its exclusive bargaining 15 representative? 16 MR. DORAN: Object to form, foundation, 17 exceeds the scope of notice of deposition for this 18 witness. 19 Go ahead. 20 THE WITNESS: The process for certification, 21 to my memory, is outlined in the meet-and-confer 22 ordinance. I would certainly be concerned about taking 23 guesses without that document in front of me. But I would 24 assume that there would be a voting process. 25 ///</p>	<p>09:47:37-09:48:57 Page 32</p> <p>1 the 2019-2021 City of Phoenix-AFSCME 2384 MOU. If I refer 2 to other MOUs, I will specify which those are. And I'll 3 try to be clear about it. Okay? 4 A. Yes, sir. 5 Q. Were you familiar with this document before you 6 came in for your deposition today? 7 A. I have certainly referred to this document many 8 times over the past couple of years. 9 Q. Can you describe your knowledge and experience 10 that you have with different memoranda of understanding 11 between the City and labor organizations? 12 MR. DORAN: Object to form. 13 Go ahead. 14 THE WITNESS: I would say in the course and 15 scope of my job, I often have to refer to all of the 16 contracts. 17 BY MR. RICHES: 18 Q. As part of your -- I believe you testified 19 earlier part of your duties are also negotiating for the 20 City certain provisions that may end up within a final 21 Memorandum of Understanding. Is that correct? 22 A. For clarity sake, I do not in my position 23 negotiate with every union. But I do negotiate with 24 unions and would negotiate provisions. 25 Q. What is the purpose of an MOU?</p>
<p>09:46:01-09:47:17 Page 31</p> <p>1 BY MR. RICHES: 2 Q. And to your knowledge, did a voting process occur 3 when the unit was certified as the exclusive bargaining 4 representative for Unit 2 in November of 1976? 5 MR. DORAN: Same objections. 6 Go ahead. 7 THE WITNESS: Without something in front of 8 me one way or another to confirm, I would not want to take 9 a guess on that. 10 BY MR. RICHES: 11 Q. To your knowledge, have the employees of Unit 2 12 ever voted since November 19, 1976, to certify AFSCME 2384 13 as its exclusive bargaining representative? 14 MR. DORAN: Same objections. 15 Go ahead. 16 THE WITNESS: I would assume they have not. 17 BY MR. RICHES: 18 Q. Okay. Why don't we turn to Exhibit 2. And let 19 me know when you have that document in front of you. 20 A. I have it in front of me. 21 Q. Can you identify it? 22 A. It is the 2019 to 2021 Memorandum of 23 Understanding between AFSCME 2384 and the City of Phoenix. 24 Q. We'll be looking at a number of MOUs today. If I 25 refer just generally to "the MOU," I'll be referring to</p>	<p>09:49:17-09:50:22 Page 33</p> <p>1 MR. DORAN: Object to form, foundation, 2 exceeds the scope in the notice of deposition. 3 Go ahead. 4 THE WITNESS: I would say in a very broad 5 sense, it serves as a contract or agreement between the 6 employees, through their representatives, and the 7 employer. 8 BY MR. RICHES: 9 Q. Which employees are bound by an MOU? 10 MR. DORAN: Object to form, foundation, 11 exceeds the scope in the notice of deposition for this 12 witness. 13 Go ahead. 14 THE WITNESS: I think that might depend on 15 the provision. I mean, if we have a uniform allowance 16 provision and I don't get a uniform, I'm not bound by that 17 provision. 18 BY MR. RICHES: 19 Q. You indicated that this MOU is between the City 20 and Unit 2. Is that correct? 21 A. Correct. 22 Q. Does that mean that the terms of the MOU apply to 23 all of Unit 2 even if certain Unit 2 members are not also 24 members of the union? 25 MR. DORAN: Object to form.</p>

09:50:37-09:51:37 Page 34

1 Go ahead.

2 THE WITNESS: Yes.

3 BY MR. RICHES:

4 Q. So an MOU that is ratified between the City and

5 Unit 2 is binding on all Unit 2 employees regardless of

6 their union membership status. Is that correct?

7 MR. DORAN: Object to form.

8 Go ahead.

9 THE WITNESS: I would say that's correct.

10 BY MR. RICHES:

11 Q. Do you know how many Unit 2 employees there are?

12 A. Not without a document in front of me indicating

13 the number.

14 Q. If I were to say that at any given time there's

15 approximately 1,515 to 1,542 unit employees, does that

16 sound generally correct?

17 MR. BONNETT: Object to form and foundation.

18 Go ahead.

19 THE WITNESS: I have no reason to believe

20 otherwise.

21 BY MR. RICHES:

22 Q. Do you know how many dues-paying members of

23 Unit 2 have elected to join the union and pay membership

24 dues to the union?

25 MR. BONNETT: Object to form.

09:51:48-09:52:54 Page 35

1 Go ahead.

2 THE WITNESS: Again, I wouldn't know the

3 specific number without a document in front of me.

4 BY MR. RICHES:

5 Q. If I were to say that currently there's

6 approximately 671 dues-paying members to the union, would

7 that sound about correct?

8 MR. DORAN: Object to form, foundation.

9 Go ahead.

10 THE WITNESS: That would sound about

11 correct.

12 BY MR. RICHES:

13 Q. Is it fair to say, then, that there's several

14 hundred Unit 2 employees who are bound by the terms of

15 Exhibit 2 but have not elected to join the union?

16 MR. DORAN: Object to form, foundation.

17 Go ahead.

18 THE WITNESS: Yes, that would seem correct.

19 BY MR. RICHES:

20 Q. Can a Unit 2 employee elect to not be bound by

21 the terms of the MOU?

22 MR. DORAN: Object to form, foundation.

23 Go ahead.

24 THE WITNESS: No. They would be bound by

25 the contract.

09:53:06-09:54:07 Page 36

1 BY MR. RICHES:

2 Q. Can a Unit 2 employee who is not also a union

3 member elect not to be bound by the terms of the MOU?

4 MR. DORAN: Same objections.

5 Go ahead.

6 THE WITNESS: I'm sorry. Can you ask that

7 one more time?

8 BY MR. RICHES:

9 Q. Can you a Unit 2 employee who is not also a

10 member of the union elect to not be bound by the terms of

11 the MOU?

12 MR. DORAN: Same objections.

13 Go ahead.

14 THE WITNESS: No. Employees who would fall

15 within the definition of a Unit 2 employee would be bound

16 by the contract that is negotiated by AFSCME 2384.

17 BY MR. RICHES:

18 Q. Can a Unit 2 employee opt out of any portion of

19 the MOU?

20 MR. DORAN: Object to form, foundation.

21 Go ahead.

22 THE WITNESS: Not to my knowledge.

23 BY MR. RICHES:

24 Q. If you could turn to page 6 of Exhibit 2. It's

25 also Bates-stamped GIL, a bunch of zeros, and a 6. Let me

09:54:24-09:56:49 Page 37

1 know when you get there.

2 A. I am there.

3 Q. It's captioned "Section 1-3: Union Rights." Do

4 you see that?

5 A. I do.

6 Q. And then Subsection A is captioned "Union

7 Release." Do you see that?

8 A. Yes, sir.

9 Q. What is union release?

10 A. Union release is when certain employees perform

11 union duties in collaboration with the City of Phoenix on

12 a full-time basis.

13 Q. Well, it looks like Subsection 1 refers to

14 "Full-Time Release Positions." Does union release include

15 anything else apart from the full-time positions we just

16 referenced?

17 A. My apologies. I believe I misspoke.

18 Q. Did you need me to repeat the question?

19 A. That would be great.

20 Q. What, to your knowledge, does "union release"

21 refer to in the MOU?

22 A. It seems that "union release" refers to selected

23 employees performing union tasks in conjunction with the

24 city management.

25 Q. You testified that one form of union release are

09:57:10-09:58:44 Page 38

1 full-time release positions. Is that correct?
 2 A. Yes, full-time release exist.
 3 Q. And those are reflected in Subsection 1. Is that
 4 correct?
 5 A. Yes, sir.
 6 Q. And is it your understanding that if an employee
 7 is on full-time release, they are released from the jobs
 8 for which they were originally hired and work instead
 9 exclusively in full-time for a labor union?
 10 MR. DORAN: Object to form and foundation.
 11 MR. BONNETT: Object to form.
 12 MR. DORAN: Go ahead.
 13 THE WITNESS: When on full-time release,
 14 they would not perform their -- the job duties they were
 15 hired for, as you characterized it, unless they were
 16 working, say, like an overtime shift or -- it's probably
 17 just that, an overtime shift.
 18 BY MR. RICHES:
 19 Q. Are -- To your knowledge, are nonunion members
 20 eligible to serve in full-time release positions?
 21 MR. DORAN: Object to form, foundation.
 22 Go ahead.
 23 THE WITNESS: I think that might depend on
 24 the specific -- the specific union's bylaws whether
 25 something like that were permitted. But in general,

09:59:03-10:00:22 Page 39

1 that's not likely.
 2 BY MR. RICHES:
 3 Q. For Unit 2, for this MOU, to your knowledge, are
 4 nonunion members that are part of Unit 2 eligible to serve
 5 as full-time release employees?
 6 MR. DORAN: Object to form and foundation.
 7 Go ahead.
 8 THE WITNESS: I don't have anything to
 9 indicate one way or another, I would say, without maybe
 10 union bylaws in front of me that clarified that point.
 11 BY MR. RICHES:
 12 Q. From the City's perspective, would the City
 13 permit a nonunion member to serve in a full-time release
 14 position as is outlined in the MOU?
 15 MR. DORAN: Object to form.
 16 Go ahead.
 17 MR. BONNETT: And foundation.
 18 THE WITNESS: I don't even know that we
 19 would know that one way or another. If we were informed
 20 that someone had been elected president per se, we
 21 wouldn't go verify union membership.
 22 BY MR. RICHES:
 23 Q. So it's your testimony, then, that the City
 24 wouldn't verify who can and can't serve in full-time
 25 release positions?

10:00:38-10:01:47 Page 40

1 MR. DORAN: Object to form, foundation.
 2 Go ahead.
 3 THE WITNESS: I think that's too broad. I'm
 4 saying we wouldn't verify necessarily union membership if
 5 we were informed that the union had elected a new
 6 official.
 7 BY MR. RICHES:
 8 Q. How would you -- how would you characterize what
 9 the City would do to verify who's eligible to serve in a
 10 full-time release position?
 11 MR. DORAN: Object to form, foundation.
 12 Go ahead.
 13 THE WITNESS: For us, we would probably
 14 verify employment status with the City maybe.
 15 BY MR. RICHES:
 16 Q. And the City would -- Is it your testimony,
 17 then, that the City would not verify whether or not a
 18 Unit 2 employee was also a member of the union before
 19 being eligible to serve in a full-time release position?
 20 MR. DORAN: Object to form, foundation.
 21 Go ahead.
 22 THE WITNESS: I do not believe we would.
 23 BY MR. RICHES:
 24 Q. If you could turn to page 7. Do you see the
 25 third paragraph down that starts with "The Union, subject

10:02:12-10:03:27 Page 41

1 to departmental operation and scheduling factors?"
 2 A. I do.
 3 Q. This provision appears to grant 150 hours of paid
 4 leave for the union and its members to attend union
 5 seminars, lectures, and conventions. Is that your
 6 understanding of this provision?
 7 A. Yes, sir.
 8 Q. To your knowledge, can nonunion members receive
 9 any of these 150 hours to attend union seminars, lectures,
 10 and conventions?
 11 MR. DORAN: Object to form.
 12 Go ahead.
 13 THE WITNESS: I would have no reason to
 14 think it's limited to that. If the union chose to use
 15 those hours on someone who was not a union member, the
 16 City would not stop that.
 17 BY MR. RICHES:
 18 Q. Now, would that determination -- You said you
 19 would hope that the union would not -- I'm sorry, you said
 20 you hoped that if the union were to designate someone
 21 who's a nonunion member to use one of those 150 hours, you
 22 don't believe the City would object. Is that correct?
 23 MR. DORAN: Object to form.
 24 Go ahead.
 25 THE WITNESS: I'm sorry. Could you -- could

10:03:42-10:04:42 Page 42

1 you ask that again?
 2 BY MR. RICHES:
 3 Q. Is it your understanding that the union gets to
 4 determine who gets to use those 150 hours and not the
 5 City?
 6 MR. DORAN: Object to form, foundation.
 7 Go ahead.
 8 THE WITNESS: Within the parameters of that
 9 language that it's subject to departmental operation and
 10 scheduling factors and reasonable advance notice, but, I
 11 mean, there's no disqualifier or qualifier for union
 12 membership.
 13 BY MR. RICHES:
 14 Q. Is it also your understanding that the union gets
 15 to determine who is identified as a full-time release
 16 employee?
 17 MR. DORAN: Object to form, foundation.
 18 Go ahead.
 19 THE WITNESS: Yes, sir.
 20 BY MR. RICHES:
 21 Q. If you would flip ahead to page 8. Subsection 3
 22 identifies a "Bank of Union Release Hours." Do you see
 23 that?
 24 A. I see the heading, yes.
 25 Q. And this appears to grant 3,183 hours of paid

10:05:03-10:06:20 Page 43

1 release time in a bank of hours per MOU. Does that look
 2 correct to you?
 3 A. Per MOU, yes, that looks correct.
 4 Q. Is it your understanding that the union gets to
 5 determine who can use hours from the bank of release time
 6 hours?
 7 MR. DORAN: Object to form, foundation.
 8 Go ahead.
 9 THE WITNESS: With -- within the limitations
 10 discussed in that language subject to operational and
 11 scheduling factors and 72 hours' advance notice.
 12 BY MR. RICHES:
 13 Q. Taken as a whole, when you look at Subsection A,
 14 which describes union release, would you characterize
 15 union release as a benefit that is provided by the City?
 16 MR. DORAN: Object to form, foundation.
 17 Go ahead.
 18 THE WITNESS: I don't know that I would
 19 characterize it as a benefit. It's -- I would
 20 characterize it as just another process. I think a
 21 "benefit" is kind of a term of art, though.
 22 BY MR. RICHES:
 23 Q. What's your understanding of what a "benefit" is?
 24 MR. DORAN: Object to form, foundation.
 25 Go ahead.

10:06:45-10:07:41 Page 44

1 THE WITNESS: It depends on the context, I
 2 think. Many a times when an employee hears "benefit,"
 3 they think of the pay and insurance and those kinds of
 4 provisions that they receive.
 5 BY MR. RICHES:
 6 Q. For purposes of the meet-and-confer ordinance in
 7 the City of Phoenix, are you able to describe what certain
 8 benefits are and are not that might be included in the
 9 MOU?
 10 MR. DORAN: Object to form, foundation.
 11 Go ahead.
 12 THE WITNESS: I'm sorry. Could you ask that
 13 again?
 14 BY MR. RICHES:
 15 Q. For purposes of the meet-and-confer ordinance in
 16 the City of Phoenix, are you able to describe what may or
 17 may not constitute a benefit for purposes of including it
 18 in an MOU?
 19 MR. DORAN: Same objections.
 20 Go ahead.
 21 THE WITNESS: I don't know that I'm
 22 understanding the question correctly. I don't believe I
 23 could sit here and name everything that may be a benefit.
 24 BY MR. RICHES:
 25 Q. Would you characterize release time as a benefit

10:07:53-10:09:01 Page 45

1 within the MOU?
 2 MR. DORAN: Object to form.
 3 Go ahead.
 4 THE WITNESS: Again, I just characterize it
 5 as a process.
 6 BY MR. RICHES:
 7 Q. What do you mean by that?
 8 A. Process is outlined in the MOU that we follow.
 9 Q. Is there a cost associated with the release time
 10 provisions in the MOU?
 11 MR. BONNETT: Object to form and foundation,
 12 exceeds the scope in the notice of deposition for this
 13 witness.
 14 Go ahead.
 15 THE WITNESS: The full-time release
 16 employees continue to make their salary.
 17 BY MR. RICHES:
 18 Q. So is there a cost to the release time provisions
 19 that are outlined in the MOU?
 20 MR. DORAN: Same objections.
 21 Go ahead.
 22 THE WITNESS: If their continued salary is
 23 the cost, then yes.
 24 BY MR. RICHES:
 25 Q. So the City paying the salary of employees

<p>10:09:13-10:10:25 Page 46</p> <p>1 utilizing release time constitutes a cost. Is that 2 correct? 3 MR. DORAN: Same objections. 4 Go ahead. 5 THE WITNESS: The City pays that money, so I 6 suppose I would characterize it as a cost. 7 BY MR. RICHES: 8 Q. And would you characterize it as a cost -- would 9 you characterize the release time provisions as a cost to 10 the City? 11 MR. DORAN: Object to form and foundation, 12 exceeds the scope in the notice of deposition for this 13 witness. 14 Go ahead. 15 THE WITNESS: And that's -- It's the City 16 who pays for such things, so I suppose I would. 17 BY MR. RICHES: 18 Q. Turn to what's previously been identified as 19 Exhibit 15. 20 MR. DORAN: Which, Jon? 21 MR. RICHES: 15. 15. 22 MR. DORAN: Thank you. Thank you. 23 THE WITNESS: Okay. 24 BY MR. RICHES: 25 Q. Do you recognize this document?</p>	<p>10:12:10-10:13:24 Page 48</p> <p>1 year? 2 MR. BONNETT: Same objections. 3 Go ahead. 4 THE WITNESS: Well, the 499 is a combination 5 of these five line items, yes. 6 BY MR. RICHES: 7 Q. And do these five line items generally reflect 8 the release time provisions that we just discussed? 9 MR. DORAN: Same objections. 10 Go ahead. 11 THE WITNESS: Can you ask that question one 12 more time? 13 BY MR. RICHES: 14 Q. Do the costs that are reflected on Exhibit 15 15 reflect the costs to the City of Phoenix for the release 16 time provisions in the MOU? 17 MR. DORAN: Same objections. 18 Go ahead. 19 THE WITNESS: I don't know that I agree with 20 all of them being a reflection of release time 21 necessarily, such as 14,000 to attend schools, 22 conferences, workshops, and training. I don't know that 23 that's in everyone's definition of release time, but I 24 would say other items are. 25 ///</p>
<p>10:10:57-10:11:52 Page 47</p> <p>1 A. It appears to be a costing sheet from our budget 2 and research department. 3 Q. What's your understanding of what a costing sheet 4 is? 5 MR. DORAN: Object to form and foundation, 6 exceeds the scope in the notice of deposition for this 7 witness. 8 Go ahead. 9 THE WITNESS: In general, it's the money 10 identified or funds identified for the cost of various 11 things. In this time, there are specifically -- In this 12 piece of evidence, there are specifically five things that 13 budget and research has seemingly associated a cost to. 14 BY MR. RICHES: 15 Q. So is it accurate to say that the City of Phoenix 16 has assigned a cost to the release time provisions in the 17 MOU? 18 MR. DORAN: Object to form and foundation, 19 exceeds the scope in the notice of deposition for this 20 witness. 21 Go ahead. 22 THE WITNESS: That's seemingly accurate, 23 yes. 24 BY MR. RICHES: 25 Q. And does that cost appear to be \$499,000 per</p>	<p>10:13:58-10:14:57 Page 49</p> <p>1 BY MR. RICHES: 2 Q. And do you have any reason to dispute these 3 numbers as the cost of 499,000 per year -- For the 4 provisions that are outlined in the release time section 5 of the MOU, does the \$499,000 per year appear accurate to 6 you? 7 MR. DORAN: Object to form, foundation, 8 exceeds the notice of deposition for this witness. 9 Go ahead. 10 THE WITNESS: I have no reason to doubt 11 budget and research's number that they provided. 12 BY MR. RICHES: 13 Q. Is the City purchasing something for these 14 release time expenditures? 15 MR. DORAN: Object to form, foundation, 16 exceeds the scope of notice of deposition for this 17 particular witness. Jon, you know I don't make speaking 18 objections, but I think the whole costing thing -- You 19 had your shot with Tracy, and you did a fine job with 20 Tracy, but the costing issue is Tracy's; it's not 21 Xavier's. 22 MR. RICHES: Yeah, I will -- As a 23 negotiator, of course, Mr. Frost has intimate knowledge of 24 the different monetary values associated with release time 25 and other provisions of an MOU as part of his</p>

10:15:15-10:16:16 Page 50

1 responsibilities as a negotiator, so I intend to ask him
2 quite a few questions along those lines. Obviously, I
3 will avoid, you know, the specific technical-, financial-,
4 or research-type questions, but I will be asking him about
5 the cost of certain items for purposes of negotiating for
6 the City.
7 MR. DORAN: I hear you, but I think the
8 problem is that's nowhere in your notice with respect to
9 Xavier.
10 MR. RICHES: He's -- As you know, he's been
11 noticed in his individual capacity as well, so if he
12 doesn't have knowledge of it, then that's fine. But what
13 is noticed, of course, is the process of negotiating,
14 ratifying, and approving the MOU that's at issue in this
15 case, and what's intimately tied up in the negotiation of
16 this MOU is the cost of certain items and other items, so
17 I think that -- I think that is properly noticed.
18 MR. DORAN: Okay. As sort of a way to
19 short-circuit this, all I ask, then, is you lay more
20 foundation with respect as to whether he has knowledge or
21 doesn't have knowledge whether he's testifying as a
22 30(b)(6) on behalf of the City or he's just testifying
23 from his own personal knowledge. Okay?
24 MR. RICHES: Sure. Yeah, that's no problem.
25 MR. DORAN: Thank you.

10:16:31-10:17:34 Page 51

1 BY MR. RICHES:
2 Q. Mr. Frost, in your role as the deputy human
3 resources director, are you familiar with the different
4 costs that are associated with certain provisions of a
5 memorandum of understanding between the City and its labor
6 unions?
7 MR. DORAN: Object to form, foundation.
8 Go ahead.
9 THE WITNESS: Well, I'm certainly not
10 familiar with them all or much, if any, off the top of my
11 head. We would have to point to specific provisions. I
12 mean, that's the role of the budget and research
13 department to tell me what does cost money and what does
14 not and how much it does cost, if it does.
15 BY MR. RICHES:
16 Q. Were you involved in the negotiations of the
17 2019-2021 MOU between the City and Local 2384?
18 A. I was.
19 Q. And as part of that negotiation process, were
20 certain items costed in terms of what they would cost the
21 City to include in the MOU?
22 MR. DORAN: Object to form, foundation.
23 Go ahead.
24 THE WITNESS: Yes. Certainly some things
25 were costed out in a manner similar to Exhibit 15.

10:17:56-10:19:15 Page 52

1 BY MR. RICHES:
2 Q. And does it appear from Exhibit 15 the cost of
3 release time was costed out for purposes of the 2019 to
4 2021 MOU?
5 MR. BONNETT: Object to form, foundation.
6 Go ahead.
7 THE WITNESS: Yes, sir.
8 BY MR. RICHES:
9 Q. Now, if there is a cost to the City for the
10 release time provisions, as reflected in Exhibit 15, is
11 the City purchasing something for this cost?
12 MR. DORAN: Object to form, foundation,
13 exceeds the scope in the notice of this deposition for
14 this witness.
15 Go ahead.
16 THE WITNESS: Sorry, I'm not understanding
17 what would be meant by "purchasing something." Like a
18 tangible build? Or do we get a benefit in return?
19 Because if you're asking if we get a tangible -- something
20 handed to us, the answer would be no. If we get a benefit
21 from full-time release, then the answer would be yes.
22 BY MR. RICHES:
23 Q. Does the City receive any direct monetary benefit
24 in exchange for the release time expenditures that are
25 reflected in Exhibit 15?

10:19:23-10:20:30 Page 53

1 MR. DORAN: Object to form, foundation,
2 exceeds the scope in the notice of deposition for this
3 witness.
4 Go ahead.
5 THE WITNESS: The full-time release
6 positions perform a function, and through that function, I
7 think the City benefits in some ways that might have a
8 positive financial impact for us.
9 BY MR. RICHES:
10 Q. Has the City assigned any value to the benefits
11 that you just described?
12 MR. DORAN: Object to form, foundation,
13 exceeds the scope in the notice of deposition for this
14 witness.
15 Go ahead.
16 THE WITNESS: I suppose I've never seen a
17 dollar figure listed, but I would also add that some of
18 those things would be very difficult to capture, if not
19 impossible.
20 BY MR. RICHES:
21 Q. To your knowledge, has the City conducted any
22 investigations or studies to ascertain the value of the
23 release time provisions in the MOU?
24 MR. DORAN: Same objections.
25 Go ahead.

10:20:43-10:21:51 Page 54

1 THE WITNESS: The value being a benefit to
 2 the City? I'm sorry, can you be more specific?
 3 BY MR. RICHES:
 4 Q. Right. The value being the benefit to the City.
 5 Has the City ever conducted any investigation, research
 6 into what the value to the City is of the release time
 7 provisions in the MOU?
 8 MR. DORAN: Same objections.
 9 Go ahead.
 10 THE WITNESS: It's possible we have. I
 11 can't say that I've seen anything personally.
 12 BY MR. RICHES:
 13 Q. Is there anything in the MOU -- Strike that.
 14 You testified that it's your understanding
 15 that the release time provisions provide some benefit to
 16 the City. Is that correct?
 17 MR. DORAN: Object to form, foundation.
 18 Go ahead.
 19 THE WITNESS: Correct.
 20 BY MR. RICHES:
 21 Q. What are those benefits?
 22 A. Well, the union, through -- through those
 23 full-time release positions, they perform, you know,
 24 various functions that, you know, help us resolve disputes
 25 at a lower level. They act as an overall voice for

10:22:33-10:24:21 Page 55

1 employees, gives management kind of a direct channel of
 2 communication to, you know, roughly 14,000 employees. We
 3 have info -- or maybe "insight" is a better word -- for
 4 employee wants, needs, preferences when we develop
 5 policies or, you know, regulations and, again, hopefully
 6 identify problems at the lowest level before those things
 7 do become larger problems. So again, an economic impact
 8 would be where I would say it's clear there is an economic
 9 impact or a benefit, but what would be hard to actually
 10 quantify would be how many, you know, lawsuits or EEOC
 11 complaints has the union prevented because we've been able
 12 to address it early on. Again, the union gives employees
 13 an avenue to express their discontent as opposed to
 14 quitting or filing a lawsuit or filing an EEOC complaint
 15 or filing an OSHA complaint that then has a cost to us.
 16 Q. Okay. So you identified several different
 17 benefits of release time from your perspective. You
 18 indicated that one is to help resolve disputes, including
 19 at the lowest level. Is that correct?
 20 MR. DORAN: Object to form.
 21 Go ahead.
 22 THE WITNESS: Certainly we attempt to
 23 resolve disputes or conflicts at the lowest level.
 24 Obviously that can't always be successful 100 percent of
 25 the time.

10:24:33-10:25:22 Page 56

1 BY MR. RICHES:
 2 Q. You also indicated that one potential benefit of
 3 release time was to provide a voice to the unit of
 4 employees. Is that correct?
 5 A. Correct.
 6 Q. And another was that release time may help direct
 7 channels of communication between employees and
 8 management. Is that correct?
 9 A. Open channels, yes, correct.
 10 Q. You also testified that one other potential
 11 benefit of release time is that it provides insight with
 12 respect to employee wants and needs. Is that correct?
 13 MR. DORAN: Object to form.
 14 Go ahead.
 15 THE WITNESS: That's correct.
 16 BY MR. RICHES:
 17 Q. You also indicated that one other potential
 18 benefit of release time is that it may prevent certain
 19 complaints from evolving into more costly problems, such
 20 as lawsuits or EEO complaints, et cetera. Is that
 21 correct?
 22 MR. DORAN: Object to form.
 23 Go ahead.
 24 THE WITNESS: Correct.
 25 ///

10:25:46-10:27:13 Page 57

1 BY MR. RICHES:
 2 Q. Is there anything in the MOU that obligates the
 3 union to resolve disputes at the lowest level?
 4 MR. DORAN: Object to form.
 5 Go ahead.
 6 THE WITNESS: Not without looking. I do
 7 know that some contracts have some language regarding
 8 that. I'm not quite certain if all of them do. So I
 9 would want to, I guess, see that language in the Unit 2
 10 contract before I committed to an answer.
 11 BY MR. RICHES:
 12 Q. I'm referring to the MOU between the City and
 13 Unit 2, the 2019 to 2021 MOU. If I refer to the "MOU"
 14 going forward, that's the MOU I'm going to be referring
 15 to. Do you understand that?
 16 A. I do understand. Maybe I didn't articulate my
 17 response well. I'm saying I know some contracts have what
 18 I'll refer to as lowest-level language and some do not. I
 19 can't remember whether Unit 2 has that language or not, so
 20 I would want to refer to the MOU before I committed to
 21 answering that question.
 22 Q. Okay. If you like -- the MOU is Exhibit 2 -- you
 23 can refer to that MOU and answer the question after you've
 24 had an opportunity to do that.
 25 A. Okay. Can you bear with me a few moments?

11:06:51-11:07:48 Page 74

1 BY MR. RICHES:
2 Q. Why don't we turn ahead together to page 43. And
3 let me know when you get there.
4 A. Yes, sir.
5 Q. Do you see the Subsection B labeled "Vacation
6 Accumulation"?
7 A. I do.
8 Q. And does that provision appear to grant
9 additional hours of vacation leave to all Unit 2 employees
10 per year?
11 MR. DORAN: Object to form, foundation.
12 Go ahead.
13 THE WITNESS: Yes, sir. That seems
14 accurate.
15 BY MR. RICHES:
16 Q. Now, I notice that that provision is in bold.
17 Does a provision being in bold in an MOU have any
18 significance?
19 MR. DORAN: Object to form, foundation.
20 Go ahead.
21 THE WITNESS: That would typically indicate
22 it's new language to the particular contract.
23 BY MR. RICHES:
24 Q. Is it your understanding that these additional
25 leave hours were -- was new language that was adopted as

11:08:02-11:09:10 Page 75

1 part of the 2014-2016 MOU?
2 MR. DORAN: Object to form and foundation.
3 Go ahead.
4 THE WITNESS: I would have no reason to
5 believe otherwise.
6 BY MR. RICHES:
7 Q. Is it your understanding that there would be a
8 cost to the City of Phoenix to providing 8 hours of
9 additional vacation leave to all Unit 2 employees per
10 year?
11 MR. DORAN: Object to form and foundation.
12 Go ahead.
13 THE WITNESS: I would assume the City costed
14 that out on one of the forms we reviewed earlier.
15 BY MR. RICHES:
16 Q. Do you know if the City did, in fact, cost out
17 these additional vacation hours for the 2014-2016 MOU?
18 A. I would assume so, but I don't have the costing
19 sheet in front of me.
20 Q. And you testified earlier that the release time
21 provisions that previously existed for Unit 2 and
22 currently exist for Unit 2 in the 2019-'21 MOU don't exist
23 in this 2014-2016 MOU. Is that correct?
24 MR. BONNETT: Object to form, foundation.
25 Go ahead.

11:09:19-11:10:05 Page 76

1 THE WITNESS: That's correct. I don't see
2 that language.
3 BY MR. RICHES:
4 Q. Would it be correct to say, then, that when those
5 provisions of City-paid release time were eliminated, the
6 City had a cost savings for not having to fund those
7 release time provisions?
8 MR. DORAN: Object to form, foundation,
9 exceeds the scope in the notice of deposition for this
10 witness.
11 Go ahead.
12 THE WITNESS: I don't know that it's
13 accurate to say we had a cost savings -- the City had a
14 cost savings.
15 BY MR. RICHES:
16 Q. How would you -- how would you characterize it?
17 MR. DORAN: Object to form and foundation,
18 exceeds the scope in the notice of deposition for this
19 witness.
20 Go ahead.
21 BY MR. RICHES:
22 Q. Let me back up, Mr. Frost.
23 You testified earlier that Exhibit 15
24 reflected a cost to the City of Phoenix for the release
25 time provisions in the current MOU. Is that correct?

11:10:17-11:11:18 Page 77

1 MR. DORAN: Object to form.
2 BY MR. RICHES:
3 Q. Is that correct?
4 MR. DORAN: Object to form.
5 Go ahead.
6 THE WITNESS: Yes, sir.
7 BY MR. RICHES:
8 Q. And you indicated that that cost was
9 approximately \$499,000 per year. Is that correct?
10 MR. DORAN: Object to form, foundation,
11 exceeds the scope in the notice of deposition for this
12 witness.
13 Go ahead.
14 THE WITNESS: Approximately. I think I
15 debated at least one point on there and whether that
16 would -- I would personally categorize that as being a
17 release benefit. But in general, yes, that costing sheet
18 did cost items related to release.
19 BY MR. RICHES:
20 Q. So is it accurate to say that if those release
21 time provisions or similar release time provisions were
22 eliminated, then there would be a cost savings to the City
23 of Phoenix?
24 MR. DORAN: Object to form and foundation,
25 exceeds the scope in the notice of deposition for this

11:11:42-11:13:02 Page 78

1 witness.

2 Go ahead.

3 THE WITNESS: Again, I don't -- I don't know

4 that that's accurate. Number one, I don't know what would

5 happen with that -- the money, where that -- the cost is

6 outlined on Exhibit 15, I think it was -- whether that

7 would become some sort of savings or benefit to the City.

8 And I don't know that the -- if you were correct and those

9 were -- that number was a savings to the City, I don't

10 know that that is a greater economic benefit to the City

11 than some of the things I mentioned earlier. Again, if

12 we, you know, prevent a couple lawsuits, does the benefit

13 from -- the economic benefit from avoiding those lawsuits

14 outweigh the cost the City, you know, attributed to

15 full-time release? I don't know.

16 BY MR. RICHES:

17 Q. And, likewise, if the release time provisions

18 encouraged a lawsuit, there wouldn't be a cost savings

19 associated with that, would there?

20 MR. DORAN: Object to form, foundation,

21 exceeds the scope in the notice of deposition for this

22 witness.

23 Go ahead.

24 BY MR. RICHES:

25 Q. Let me ask you another way, Mr. Frost. It is

11:13:33-11:14:55 Page 79

1 your testimony that the City expends money on the

2 full-time release provisions that are reflected in the

3 2019-2021 MOU, correct?

4 A. I'm sorry. Can you ask that again?

5 Q. It was your testimony earlier that the City

6 spends money on the 2019 to 2021 release time provisions.

7 Is that correct?

8 MR. DORAN: Object to form.

9 Go ahead.

10 THE WITNESS: We have attributed the cost of

11 that, as we saw in Exhibit 15.

12 BY MR. RICHES:

13 Q. And if those release time provisions are

14 eliminated, that specific cost is also eliminated. Is

15 that correct?

16 MR. DORAN: Object to form, foundation,

17 exceeds the scope in the notice of deposition for this

18 witness.

19 Go ahead.

20 THE WITNESS: Very specifically, yes, if

21 full-time release were eliminated, the cost of full-time

22 release very specifically would not be there, but I'm also

23 saying that cost may be picked up in other places that

24 could hypothetically be more than any potential savings,

25 as you may have characterized it.

11:15:11-11:16:38 Page 80

1 BY MR. RICHES:

2 Q. And it is also true, is it not, that in the 2014

3 to 2016 MOU, the full-time release positions and the costs

4 associated with them were eliminated?

5 MR. DORAN: Object to form, foundation,

6 exceeds the scope in the notice of deposition for this

7 witness.

8 Go ahead.

9 THE WITNESS: The language related to

10 full-time release was clearly eliminated. How the

11 financial portion of that functions, like where that money

12 goes, is beyond my knowledge.

13 BY MR. RICHES:

14 Q. In the same document, the 2014 to 2016 MOU, there

15 was a new provision that granted 8 hours of leave to all

16 Unit 2 members. Is that not also correct?

17 A. Yes, sir.

18 Q. Was the additional leave that was provided to all

19 Unit 2 employees intended to compensate those employees

20 for the loss of the paid release time?

21 MR. DORAN: Object to form, foundation,

22 exceeds the scope in the notice of deposition for this

23 witness.

24 Go ahead.

25 THE WITNESS: I would assume it was an

11:17:01-11:18:13 Page 81

1 attempt to give the employees an equivalent of the

2 language that was removed.

3 BY MR. RICHES:

4 Q. To your knowledge, did paid release time exist

5 for Unit 2 employees prior to the 2014-2016 MOU?

6 MR. DORAN: Object to the form, foundation.

7 Go ahead.

8 THE WITNESS: My knowledge, we had a

9 full-time release system similar to what we have now

10 before that contract.

11 BY MR. RICHES:

12 Q. And that -- Strike that.

13 Did the elimination of those previously paid

14 release positions in the 2014 to 2016 MOU result in other

15 costs to the City associated with the loss of those paid

16 release time positions?

17 MR. DORAN: Object to form, foundation,

18 exceeds the scope in the notice of deposition for this

19 witness.

20 Go ahead.

21 THE WITNESS: I'm sorry. Could you ask that

22 one more time?

23 BY MR. RICHES:

24 Q. Maybe I'll put it a little simpler.

25 When the paid release time provisions were

11:18:32-11:19:33 Page 82

1 eliminated in the 2014-'16 MOU, did the City experience
 2 any higher cost associated with the elimination of those
 3 positions?
 4 MR. DORAN: Same objections.
 5 Go ahead.
 6 THE WITNESS: Well, I wasn't here and then
 7 definitely not in that position for that time period, so I
 8 don't know that I would have any direct knowledge of that
 9 one way or another. But I would say, again,
 10 hypothetically, it could have experienced a cost in a
 11 variety of ways.
 12 BY MR. RICHES:
 13 Q. Do you have any indirect knowledge as to whether
 14 the City did, in fact, experience higher costs during the
 15 period of the 2014 to 2016 MOU as a result of the
 16 elimination of paid release time?
 17 MR. DORAN: Object to form, foundation,
 18 exceeds the scope in the notice of deposition for this
 19 witness.
 20 Go ahead.
 21 THE WITNESS: I've heard discussion about
 22 the difficulties of that period and how difficult it was
 23 to schedule union folks for various things, committees,
 24 and what have you. So there's got to be some sort of
 25 administrative cost to the City for that. If we did

11:20:06-11:21:01 Page 83

1 receive, you know, a higher number of EEOC or OSHA
 2 complaints, lawsuits because the unions weren't
 3 functioning in the way that they -- as it was outlined
 4 prior to that while they were on full-time release, you
 5 know, that would clearly have a cost. There's, you know,
 6 employee morale issues. It was my understanding that
 7 employee morale was pretty low during that time. You
 8 know, studies show, you know, employees with lower morale
 9 aren't functioning as well as employees who have high
 10 morale. So could we have seen overtime cost or what I'll
 11 call cost of poor quality during that time? All of those
 12 things are possible. Again, we're kind of speaking in
 13 hypotheticals, but I think all of those are possible.
 14 BY MR. RICHES:
 15 Q. Let me clarify because I didn't intend to speak
 16 in hypothetical; what I am asking is actually quite
 17 specific.
 18 During the period of the 2014 to 2016 MOU,
 19 when the paid release time provisions were eliminated, do
 20 you have any knowledge that the City actually experienced
 21 higher costs associated with the elimination of those
 22 provisions?
 23 MR. BONNETT: Object to form, foundation,
 24 exceeds the scope in the notice of deposition for this
 25 witness.

11:21:33-11:22:51 Page 84

1 Go ahead.
 2 THE WITNESS: No. I don't have a document
 3 that I've been provided that outlines, you know, any kind
 4 of cost associated with that. What I'm saying is there
 5 certainly could have been a great deal of cost that we did
 6 not capture and could not capture.
 7 BY MR. RICHES:
 8 Q. I'm not asking if there could have been costs or
 9 theoretically there might be costs. What I'm asking is,
 10 to your knowledge, were there any additional costs
 11 associated with the elimination of the paid release time
 12 provisions in the 2014-2016 MOU?
 13 MR. DORAN: Objection. Asked and answered
 14 twice. The first time he told you this is what he heard
 15 but he did not know. The second time he said he does not
 16 personally know.
 17 Go ahead.
 18 THE WITNESS: I have not been provided a
 19 document or concrete costing to that effect.
 20 BY MR. RICHES:
 21 Q. To your knowledge, did the City, during the 2014
 22 to 2016 MOU, redirect any portion of what it had
 23 previously spent on the paid release time provisions
 24 replicating any of the purported benefits of those paid
 25 release time positions?

11:22:57-11:24:26 Page 85

1 MR. DORAN: Object to form, foundation,
 2 exceeds the scope in the notice of deposition for this
 3 witness.
 4 Go ahead.
 5 THE WITNESS: If I'm following that question
 6 correctly, the equivalent of the full-time release was
 7 converted into the 8 hours of additional vacation time
 8 accumulation that we see on page 43 of the MOU.
 9 BY MR. RICHES:
 10 Q. And it was your testimony earlier, was it not,
 11 that release time may provide certain benefits such as the
 12 ability to have communications with employees or resolve
 13 disputes at the lower level, et cetera? Is that correct?
 14 MR. DORAN: Object to form.
 15 Go ahead.
 16 THE WITNESS: Correct.
 17 BY MR. RICHES:
 18 Q. And when the paid release time provisions were
 19 eliminated, did the City spend money or take any other
 20 action to replicate those sorts of benefits?
 21 MR. DORAN: Object to form, foundation,
 22 exceeds the scope in the notice of deposition.
 23 Go ahead.
 24 THE WITNESS: I can't be sure one way or
 25 another.

<p>11:24:40-11:26:01 Page 86</p> <p>1 BY MR. RICHES: 2 Q. Is it part of your duties as the deputy director 3 of labor relations to ensure that there are good labor 4 relations between the City and Unit 2? 5 MR. DORAN: Object to form. 6 Go ahead. 7 THE WITNESS: I would say it's certainly 8 within my job duties to try to assure we have -- the city 9 management and its labor unions have the best relationship 10 we can. 11 BY MR. RICHES: 12 Q. What factors would you evaluate to determine if 13 labor relations were impaired in some way? 14 MR. DORAN: Object to form, foundation. 15 Go ahead. 16 THE WITNESS: Well, I think we would see 17 that in probably primarily our retention of employees. If 18 we have high turnover, that's probably an indication of a 19 labor relations issue. 20 BY MR. RICHES: 21 Q. So high turnover would be evidence of poor labor 22 relations. Is that correct? 23 A. Potentially. 24 Q. Anything else? 25 A. Again, potentially employee complaints,</p>	<p>11:27:43-11:28:43 Page 88</p> <p>1 BY MR. RICHES: 2 Q. Do you know if there was higher employee turnover 3 during the period of the 2014 to 2016 MOU for Unit 2 4 employees? 5 MR. DORAN: Object to form. 6 Go ahead. 7 THE WITNESS: I don't know either way. 8 BY MR. RICHES: 9 Q. If there was not higher turnover for Unit 2 10 employees during the 2014 to 2016 MOU, would that be 11 evidence that labor relations were not impaired during 12 that period of time? 13 MR. DORAN: Object to form, foundation. 14 Go ahead. 15 THE WITNESS: No, not necessarily. It's a 16 data indicator that would have to be reviewed in totality 17 of the circumstances. It could be an indicator of good or 18 bad labor relations. It can also be an indicator of 19 market, just availability of jobs. But again, it is an 20 indicator. 21 BY MR. RICHES: 22 Q. And it is your testimony, just so we're clear, 23 that high turnover is one indicator of poor labor 24 relations. Is that correct? 25 MR. DORAN: Object to form, foundation.</p>
<p>11:26:38-11:27:28 Page 87</p> <p>1 specifically from the employees: EEOC complaints, OSHA 2 complaints, lawsuits, that type of thing. 3 Q. So in addition to high turnover, employee 4 complaints, including EEOC complaints and OSHA complaints, 5 would also be evidence of poor labor relations. Is that 6 correct? 7 MR. DORAN: Object to form. 8 Go ahead. 9 THE WITNESS: Potentially. I mean, that 10 would have to be reviewed, researched. But potentially. 11 BY MR. RICHES: 12 Q. Anything else? 13 MR. DORAN: Object to form, foundation. 14 Go ahead. 15 THE WITNESS: Off the top of my head, no. 16 BY MR. RICHES: 17 Q. But to your knowledge, were labor relations 18 between the City and Unit 2 impaired in the way that you 19 describe them during the period of the 2014 to 2016 MOU? 20 MR. DORAN: Object to form, foundation, 21 exceeds the scope in the notice of deposition for this 22 witness. 23 Go ahead. 24 THE WITNESS: I don't have any information 25 either way.</p>	<p>11:29:02-11:29:55 Page 89</p> <p>1 Go ahead. 2 THE WITNESS: Potentially, yes. 3 BY MR. RICHES: 4 Q. And it's also your testimony that increased 5 employee complaints would be another indicator of poor 6 labor relations. Is that correct? 7 A. Again, potentially, yes. 8 Q. To your knowledge, were there increased employee 9 complaints during the period of the 2014 to 2016 MOU? 10 MR. DORAN: Objection. Form, foundation. 11 Go ahead. 12 THE WITNESS: I don't have any evidence one 13 way or another. 14 BY MR. RICHES: 15 Q. And if there weren't, in fact, increased employee 16 complaints during that period, is it also your testimony 17 that that would be evidence that labor relations were not 18 impaired during that period of time? 19 MR. DORAN: Object to form, foundation. 20 Go ahead. 21 THE WITNESS: Similar answer. It would 22 depend on the totality of the circumstances. It's only an 23 indicator. But potentially. 24 BY MR. RICHES: 25 Q. Does the City keep records of employee turnover?</p>

<p>11:54:53-11:55:55 Page 106</p> <p>1 Unit 2, all Unit 2 employees received 8 hours of 2 vacation -- additional vacation leave per year. Is that 3 correct? 4 MR. DORAN: Object to form and foundation. 5 Go ahead. 6 THE WITNESS: I actually don't know if they 7 received that additional 8 hours or not. 8 BY MR. RICHES: 9 Q. If I understood your testimony from earlier, you 10 had indicated that the purpose of eliminating the paid 11 vacation leave in the 2019 to 2021 MOU was to correct an 12 oversight because it was not previously eliminated at the 13 same time paid release time was eliminated. Is that 14 correct? 15 MR. DORAN: Object to form, foundation. 16 Go ahead. 17 THE WITNESS: Well, I'm certainly not 18 stating that emphatically as though I have firsthand 19 knowledge, but just based on the evidence in front of me, 20 that seems like a logical conclusion. 21 MR. RICHES: Thanks. 22 All right. Well, we have been going for a 23 little while longer. Is now a good time for a break, 24 everyone? 25 MR. DORAN: Yeah. Jon, I do have a request,</p>	<p>12:33:50-12:34:48 Page 108</p> <p>1 It's part of, I guess, what we would refer to as a total 2 comp package. 3 BY MR. RICHES: 4 Q. Does compensation include wages and benefits for 5 public employees? 6 MR. DORAN: Object to the form, foundation. 7 Go ahead. 8 THE WITNESS: I think that's safe to say, 9 yes. 10 BY MR. RICHES: 11 Q. Does it include anything else besides wages and 12 benefits? 13 MR. DORAN: Object to form, foundation. 14 Go ahead. 15 THE WITNESS: Well, without a strict 16 definition in front of me, potentially. I mean, there are 17 people who would view having an office as being a benefit. 18 So I don't know how strict or loose we want to be with the 19 term "compensation" or "benefit" or . . . 20 BY MR. RICHES: 21 Q. Why don't we turn to Exhibit 2. If you could let 22 me know when you have that in front of you. 23 A. Exhibit 2? 24 Q. Yes, sir. 25 A. All right. Got it.</p>
<p>11:56:06-12:33:29 Page 107</p> <p>1 and that's that we make the break -- if we're doing a 2 lunch break right now, we can make it short. I've got a 3 hard stop at 2:20. You have plenty of time still, but 4 let's make the lunch short, if we can. 5 MR. RICHES: Yeah, does everyone need a 6 lunch break? I was just anticipating 10, 15 minutes. But 7 we can press on if everyone has that preference. 8 Mr. Frost, we can get your input on that 9 too. 10 THE WITNESS: I don't mind a short lunch 11 break, but certainly more than 10, 15 minutes. If 12 30 minutes would do for everyone so I can go cram 13 something down? 14 MR. DORAN: That works for me. 15 (A recess ensued.) 16 BY MR. RICHES: 17 Q. Mr. Frost, when used in the context of labor 18 relations in the City of Phoenix, what does the word 19 "compensation" mean? 20 MR. DORAN: Object to form, foundation, 21 exceeds the scope in the notice of depo. 22 Go ahead. 23 THE WITNESS: I don't know that I've seen 24 anything that really defines "compensation." It's kind of 25 a term of art for different things employees receive.</p>	<p>12:35:09-12:36:52 Page 109</p> <p>1 Q. This is the 2019 MOU between the City and Unit 2, 2 correct? 3 A. Correct. 4 Q. Would you turn to page 6 of that exhibit? 5 A. Yes, sir. 6 Q. Could you read the last sentence under 7 Subsection A, "Union Release," beginning with "The cost to 8 the City"? 9 A. Sure. "The cost to the City for these release 10 positions and release hours, including all benefits, has 11 been charged as part of the total compensation detailed in 12 this agreement." 13 Q. What does the phrase "charged as part of total 14 compensation detailed in this agreement" mean? 15 MR. DORAN: Object to form, foundation. 16 Go ahead. 17 THE WITNESS: Well, I think in this context, 18 "total compensation" is again kind of a term of art for 19 the entire cost of this -- this MOU -- this contract. And 20 typically, how negotiations would work is we have a number 21 that we, you know, have agreed on. That number represents 22 the City's -- I guess what the City and the union have 23 agreed to be a package -- you know, a total compensation 24 package for that particular union for that particular 25 contract year. And thus, in this contract, the cost to</p>

12:37:15-12:38:04 Page 110

1 the City for release positions and release hours is costed
2 as part of that number, whatever that number was, that we
3 had agreed on.
4 BY MR. RICHES:
5 Q. Got it.
6 Was there a specific total compensation
7 number that was arrived at for purposes of the 2019-2021
8 MOU?
9 MR. DORAN: Object to form, foundation.
10 Go ahead.
11 THE WITNESS: I'm sorry. Could you ask that
12 one more time?
13 BY MR. RICHES:
14 Q. In your previous answer, you reflected a total
15 number for compensation -- total compensation increases.
16 Was there a number for the total compensation increases
17 that was ultimately arrived at for the 2019-2021 MOU?
18 MR. DORAN: Object to form.
19 Go ahead.
20 THE WITNESS: I'm certain we arrived at some
21 number.
22 BY MR. RICHES:
23 Q. Do you recall what it was?
24 A. Not off the top of my head.
25 Q. Could you turn ahead in Exhibit 2 to page 26?

12:38:33-12:40:26 Page 111

1 Let me know when you get there.
2 A. Okay.
3 Q. Okay. Do you see the section labeled "3-1:
4 Wages"?
5 A. I do.
6 Q. And the first sentence reads, "In year one, the
7 economic value of ongoing total compensation increases
8 will equal 2.0 percent."
9 A. Correct.
10 Q. What does that mean?
11 A. I guess just that in year one, they an received
12 ongoing total compensation increase -- you know, what we
13 might call a raise -- equaled to 2 percent.
14 Q. 2 percent of what? What does the 2 percent refer
15 to?
16 A. The total compensation of -- I would think all of
17 Unit 2 employees -- probably be a better B&R question than
18 one for me. But yeah, the total comp for Unit 2
19 employees, including wages, benefits.
20 Q. Okay. And it looks like in the second sentence
21 there was also a one-time payment equal to the economic
22 value of 1 percent of total compensation. Is that
23 correct?
24 A. Correct.
25 Q. So is it correct to say that in year one, there

12:40:47-12:42:24 Page 112

1 was a 3 percent total compensation increase to wages and
2 benefits under the MOU?
3 MR. DORAN: Object to form.
4 Go ahead.
5 THE WITNESS: I mean, there was obviously a
6 2 percent ongoing and a 1 percent one-time. But yes.
7 BY MR. RICHES:
8 Q. And is the -- is the -- You referred to a number
9 earlier in your answer about the number of the total
10 compensation package. Is that number the 2 and the
11 1 percent? Is that what you were referring to?
12 MR. DORAN: Object to form.
13 Go ahead.
14 THE WITNESS: No, that's a part of the
15 overall number.
16 BY MR. RICHES:
17 Q. What's the overall number you were referring to?
18 A. Well, the City and the union would negotiate -- I
19 don't know what the term would be, but some sort of total
20 package increase for, you know, the contract. We'll say
21 the overall contract. And through our negotiation
22 process, you know, that money gets split up into different
23 ways.
24 Q. And does --
25 A. That percentage, which is money. But yeah, that

12:42:44-12:43:15 Page 113

1 percentage would get divvied up.
2 Q. Now, did the City, in fact, arrive at a total
3 package increase for the 2019-2021 MOU?
4 MR. DORAN: Object to the form.
5 Go ahead.
6 THE WITNESS: I would say we would had to
7 have, yeah. Yes.
8 BY MR. RICHES:
9 Q. What was that total package increase in the
10 2019-2021 MOU?
11 MR. DORAN: Object to form, foundation.
12 Go ahead.
13 THE WITNESS: I don't recall off the top of
14 my head. I would have to see a document to refresh my
15 memory.
16 BY MR. RICHES:
17 Q. Is it reflected -- Is that total package
18 increase reflected within the MOU itself?
19 MR. DORAN: Object to form.
20 Go ahead.
21 THE WITNESS: No, I don't -- I don't believe
22 there's, as I'm understanding it, like a line item that
23 says here was the value of everything that you got in the
24 contract and added into a single line.
25 ///

12:52:36-12:53:51 Page 118

1 agreement regarding the total compensation increase for
 2 purposes of the 2019-2021 MOU?
 3 MR. DORAN: Object to the form.
 4 Go ahead.
 5 THE WITNESS: Yes.
 6 BY MR. RICHES:
 7 Q. And that increase was broken down into different
 8 economic proposals that all made up part of the total
 9 package. Is that correct?
 10 MR. DORAN: Object to form.
 11 Go ahead.
 12 THE WITNESS: Correct.
 13 BY MR. RICHES:
 14 Q. If money is allocated for one proposal such as
 15 paid release time, does that mean that it is not available
 16 for other types of economic proposals, such as wage
 17 increases?
 18 MR. DORAN: Object to the form.
 19 Go ahead.
 20 THE WITNESS: Possibly, but I think -- I
 21 think a problem that -- I should -- Let me rephrase that.
 22 I think there's more complexity there
 23 because when this contract language was negotiated and
 24 full-time release was maybe even initially negotiated, was
 25 that taken into account as in did the overall economic

12:54:16-12:55:11 Page 119

1 package to the union -- was it increased beyond what we
 2 would have to account for those full-time release
 3 positions? I couldn't say one way or another, but that's
 4 possible that we offset that, which would then have the
 5 result of the employees didn't miss out on any what I'll
 6 call dollars in pockets.
 7 BY MR. RICHES:
 8 Q. I think I understand.
 9 So in this case, you testified earlier that
 10 the cost of the full-time release positions for the term
 11 of the MOU is about 499,000 a year, or a million dollars
 12 for the duration of the MOU. Is that correct?
 13 MR. DORAN: Object to form.
 14 Go ahead.
 15 THE WITNESS: Roughly, yeah.
 16 BY MR. RICHES:
 17 Q. And you also testified that the City and the
 18 union basically agreed on a total compensation increase
 19 for the entire 2019-2021 MOU. Is that also correct?
 20 MR. DORAN: Object to form, foundation.
 21 Go ahead.
 22 THE WITNESS: That's correct.
 23 BY MR. RICHES:
 24 Q. Now, I realize you don't recall exactly what that
 25 number is off the top of your head, but could you assume

12:55:26-12:56:43 Page 120

1 for a moment that that total compensation increase was
 2 6 percent and, let's say, amounted to \$6 million? Can you
 3 assume that?
 4 MR. DORAN: Object to form.
 5 Go ahead.
 6 THE WITNESS: Okay. I'll assume that.
 7 BY MR. RICHES:
 8 Q. And you also testified that the cost of release
 9 time was charged against that total compensation increase,
 10 correct?
 11 MR. DORAN: Object to form.
 12 Go ahead.
 13 THE WITNESS: Well, let me add a clarifier
 14 in here. I want to make sure we understand the process.
 15 When we offer -- when the City offers an economic package
 16 and then we negotiate and sometimes that number goes up,
 17 any new proposals -- any new economic proposals would get
 18 costed to that package. In subsequent MOUs, that number
 19 doesn't get renegotiated out of the new economic proposal,
 20 so it's not like they have to recost -- the union does not
 21 have to recost every economic line item in their contract
 22 against that new package offering that we make.
 23 BY MR. RICHES:
 24 Q. I understand.
 25 But did I understand your testimony

12:57:06-12:59:11 Page 121

1 correctly that in this MOU, because of the language that
 2 exists under Clause 1-3, that the cost of the release time
 3 positions and release hours, including all benefits, in
 4 this MOU has been charged as part of the total
 5 compensation detailed in the agreement? Is that correct?
 6 MR. DORAN: Object to form.
 7 Go ahead.
 8 THE WITNESS: I'm sorry. What page was that
 9 on again?
 10 BY MR. RICHES:
 11 Q. Page 6.
 12 A. No, I don't think that's correct. It was costed
 13 when we added this language into whatever that total
 14 economic package was, but again, it's not like the union
 15 has to renegotiate all of these economic line items
 16 against the new economic package that we negotiate during
 17 a contract period.
 18 Q. Okay. Once an agreement is signed and ratified,
 19 total compensation is fixed for Unit 2. Is that correct?
 20 MR. DORAN: Object to the form.
 21 Go ahead.
 22 THE WITNESS: Well, that compensation, once
 23 council approves it, is a fixed number, but there's
 24 nothing to say that council couldn't continue to raise
 25 wages. For example, I think just a few weeks ago, council

12:59:36-13:00:54 Page 122

1 approved a wage increase to our electrician
 2 classification, so it's not a complete limitation of kind
 3 of wage increase authority.
 4 BY MR. RICHES:
 5 Q. Once a contract is ratified, does it guarantee
 6 essentially a floor to what wages will be? For example,
 7 if a wage increase is included, it can't go below that
 8 amount?
 9 MR. DORAN: Object to form.
 10 Go ahead.
 11 THE WITNESS: Under normal circumstances,
 12 but I would say if there were -- something unusual
 13 happened, the economy tanked out, for example, and the
 14 City said -- you know, again, for example, hypothetical,
 15 but if the City said, "We cannot afford to pay this
 16 2 percent increase and, if you hold our feet to that fire,
 17 we're going to have to lay off X amount of employees,"
 18 there might be an ability to kind of renegotiate that
 19 provision of the term. I don't know that for a fact.
 20 Again, this is kind of hypothetical. But under normal
 21 circumstances, yes, this is the raise that we would pay.
 22 That would be the floor, I think, as you called it.
 23 BY MR. RICHES:
 24 Q. If the City is spending a million dollars on
 25 release time, does that mean that other forms of

13:01:29-13:02:51 Page 123

1 compensation for Unit 2 are reduced by that amount?
 2 MR. DORAN: Object to form.
 3 Go ahead.
 4 THE WITNESS: Not necessarily. There's no
 5 guarantee over that money. Council ultimately approves,
 6 you know, where all of our money goes regardless of what
 7 agreement we make at the table. And if those release time
 8 positions went away tomorrow -- you know, we found
 9 ourselves at the end of a lawsuit and we were told to do
 10 away with full-time release positions -- although in the
 11 past, we chose to cut out an equivalent amount of that
 12 package and give it to employees in the form of some
 13 vacation leave, it looks like. Now, there's no guarantee
 14 that that's what would happen today or tomorrow or, you
 15 know, years from now. Because again, it's council that
 16 ultimately directs where our money goes, and council
 17 changes over time.
 18 BY MR. RICHES:
 19 Q. I didn't ask the question clear. I'm not asking
 20 what might happen if release time is eliminated. I'm
 21 asking because release time in this agreement is charged
 22 as part of total compensation, doesn't that mean
 23 necessarily that other forms of compensation were reduced
 24 by the value of release time?
 25 MR. DORAN: Object to the form, foundation.

13:03:12-13:04:48 Page 124

1 Go ahead.
 2 THE WITNESS: Well, I would say definitely
 3 not in this agreement because we had our package --
 4 whatever that number was. I think we said we would agree
 5 on 6 percent for the sake of conversation. Again, that
 6 6 percent was not reduced by the cost of release. Again,
 7 that would have been in a previous contract that such a
 8 thing would have happened where it was actually costed to
 9 our -- you know, our raise -- the offer of our raise,
 10 total economic package increase, which includes a raise.
 11 And again, that particular contract might have been costed
 12 to that overall economic number that we agreed to. Did
 13 they -- did they do something like, you know, raise the
 14 number the employees got to compensate for the cost of the
 15 release position? Potentially. I don't know either way.
 16 BY MR. RICHES:
 17 Q. Do you know who Lori Steward is?
 18 A. Lori Steward is a former employee of the City of
 19 Phoenix.
 20 Q. What was her role in the City of Phoenix?
 21 MR. DORAN: Objection. Foundation.
 22 Go ahead.
 23 THE WITNESS: I'm sure she had many roles,
 24 but I think her ending role was possibly labor relations
 25 administrator.

13:05:01-13:06:03 Page 125

1 BY MR. RICHES:
 2 Q. How does that position relate to your current
 3 position?
 4 MR. DORAN: Object to form and foundation.
 5 Go ahead.
 6 THE WITNESS: That position is not filled
 7 with the City. We don't have a labor relations
 8 administrator at this point. But that's the -- that was a
 9 position that used to do duties in relation to the unions,
 10 negotiating with the unions, problem-solving with the
 11 unions, what have you.
 12 BY MR. RICHES:
 13 Q. Do you know who Ms. Steward reported to?
 14 MR. DORAN: Object to foundation.
 15 Go ahead.
 16 THE WITNESS: I do not.
 17 BY MR. RICHES:
 18 Q. Do you know what the position of labor relations
 19 administrator -- do you know what position that position
 20 would typically report to?
 21 MR. DORAN: Object to form and foundation.
 22 Go ahead.
 23 THE WITNESS: Likely the HR director.
 24 BY MR. RICHES:
 25 Q. They would likely report to essentially your

13:06:12-13:08:06 Page 126

1 boss, correct?
 2 MR. DORAN: Object to form and foundation.
 3 Go ahead.
 4 THE WITNESS: Correct. But I don't know
 5 that that's always been the case one way or another.
 6 BY MR. RICHES:
 7 Q. You testified earlier that you were aware of a
 8 previous challenge to the practice of paid release time in
 9 a case called Cheatham v. DiCiccio. Is that correct?
 10 A. I only know it as Cheatham. But yes, I'm vaguely
 11 aware of it.
 12 Q. Are you aware that Ms. Steward testified on
 13 behalf of the City in that case?
 14 A. I believe I saw something about her testifying in
 15 that, yes.
 16 Q. What did you see about her testifying in that?
 17 A. I couldn't remember.
 18 Q. Could you go ahead and turn to Exhibit 3?
 19 MR. DORAN: It's going to take us a while to
 20 find a page here, Jon. Got any PTSD from this exhibit?
 21 MR. RICHES: It's before my time.
 22 THE WITNESS: Sorry. I don't see Exhibit 3
 23 in my emails, but I do remember there was an exhibit that
 24 was so large it had to be sent through, like, a Dropbox or
 25 something. If you'll bear with me, I'll try to find that

13:08:35-13:10:13 Page 127

1 real quick.
 2 MR. DORAN: I think it's a SendThisFile.
 3 THE WITNESS: Okay.
 4 MR. DORAN: Monday at 4:46 p.m. files at
 5 sendthisfile.com.
 6 THE WITNESS: Got it.
 7 BY MR. RICHES:
 8 Q. All right. Have you got that open?
 9 A. I do not. It looks like it's downloading off the
 10 system.
 11 MS. GILBERT: This is Heidi, John. It did
 12 take a moment to -- John, our John -- to download on our
 13 system. I did it this morning. It does take a minute or
 14 two.
 15 MR. DORAN: Got it. Thanks.
 16 BY MR. RICHES:
 17 Q. Would you flip ahead to page 122? That's in the
 18 upper right corner. And then in the lower right corner,
 19 the Bates number is CITY00004253.
 20 A. Almost there. 122. Okay.
 21 Q. All right. Can you see the question beginning on
 22 line 5 that begins "Now, that release time, for the
 23 full-time" -- Do you see that?
 24 A. I do.
 25 Q. Could you read that question?

13:10:36-13:11:43 Page 128

1 A. "Question: Now, that release time, for the
 2 full-time release positions, that was a benefit that
 3 was -- Unit 4 members agreed to accept that benefit, or
 4 they wanted that benefit in lieu of higher wages, right?"
 5 Q. Do you understand what that question is asking?
 6 MR. DORAN: Object to the form, foundation.
 7 Go ahead.
 8 THE WITNESS: I don't -- I don't know that I
 9 do. It's a little clumsy since it kind of trails off.
 10 BY MR. RICHES:
 11 Q. It appears --
 12 MR. DORAN: Be very careful when you state
 13 that a now-Supreme Court justice asked a clumsy question,
 14 Xavier.
 15 MR. RICHES: I wasn't going to give the
 16 admonition.
 17 BY MR. RICHES:
 18 Q. It appears to be -- it appears to be asking,
 19 Mr. Frost, that the full-time release positions were a
 20 benefit to all of Unit 4 in that case and that Unit 4
 21 wanted that benefit in lieu of higher wages.
 22 MR. DORAN: Object to form and foundation.
 23 Go ahead.
 24 THE WITNESS: Yeah, I guess I would say
 25 human nature is -- If the question is kind of trailing

13:11:59-13:13:27 Page 129

1 off like that, we would typically answer what the last
 2 part of the question is, which is "they wanted that
 3 benefit in lieu of higher wages, right?" And the answer
 4 is "That's correct."
 5 BY MR. RICHES:
 6 Q. It appears that it was Ms. Steward's position and
 7 testimony that release time was a benefit to the entire
 8 unit in lieu of higher wages. Is that also your
 9 understanding of paid release time?
 10 MR. DORAN: Object to form and foundation.
 11 Go ahead.
 12 THE WITNESS: Again, not necessarily for
 13 kind of the points that I've referred to earlier, which is
 14 I don't know what they did when this -- when the initial
 15 release time language was negotiated and whether they
 16 compensated for that. If the employees at that time were
 17 going to get 2 percent and then we were going to do
 18 release time, did they up that number to -- you know,
 19 whatever that number might be, 2.3 percent, to compensate
 20 for the full-time release positions? I don't know either
 21 way. But that's certainly a hypothetical that could have
 22 happened. And again, to a point that I made a little bit
 23 earlier, those dollars are not guaranteed to employees.
 24 Again, if full-time release ended tomorrow, that doesn't
 25 necessarily equate to dollars in pockets for employees.

13:13:47-13:15:39 Page 130

1 That would be a determination of city council and, I'm
2 sure, in conjunction with the city manager's office.
3 BY MR. RICHES:
4 Q. Could you move ahead to page 284 of the same
5 exhibit?
6 A. 284. All right. I have made it.
7 Q. Do you know who William Buividas is?
8 A. Yes.
9 Q. Who's he?
10 A. Right now, he is a police sergeant. I'm guessing
11 at the time he was probably police negotiator.
12 Q. Do you see the question that begins on line 19,
13 page 284?
14 A. Yes.
15 Q. Could you go ahead and read that question?
16 A. "So in lieu of getting higher compensation,
17 higher wages, or say a better dental insurance policy for
18 any given MOU, officers choose to accept release time?"
19 Q. Do you understand what -- what is being asked
20 there?
21 MR. DORAN: Object to form and foundation.
22 Go ahead.
23 THE WITNESS: I believe I do.
24 BY MR. RICHES:
25 Q. And the answer is "Yes." Is that correct?

13:15:54-13:17:08 Page 131

1 A. Well, the person who answered this did indicate
2 "Yes."
3 Q. Right. It appears that Mr. Buividas answered
4 "Yes."
5 So it's Mr. Buividas's testimony, in lieu of
6 getting higher compensation, officers chose to accept paid
7 release time instead. Is that also your understanding for
8 how release time operates for Unit 2?
9 MR. DORAN: Object to form and foundation.
10 Go ahead.
11 THE WITNESS: I think the answer is more
12 complex than that for, I guess, the reasons I have already
13 gone over a couple times. I don't know that it's a simple
14 yes or no, so I don't know that I agree with his testimony
15 or disagree. I just think it lacks complexity in the
16 answer.
17 BY MR. RICHES:
18 Q. You testified earlier that once a total
19 compensation increase is determined by the City, then the
20 parties negotiate over what sorts of things that total
21 compensation increase will be directed towards. Is that
22 correct?
23 MR. DORAN: Object to form.
24 Go ahead.
25 THE WITNESS: I'm sorry. Could you rephrase

13:17:20-13:18:00 Page 132

1 that question?
2 BY MR. RICHES:
3 Q. You had testified earlier that once a total
4 compensation increase has been determined in the
5 meet-and-confer process, the parties then negotiate over
6 how that compensation increase will be allocated. Is that
7 correct?
8 MR. DORAN: Object to form.
9 Go ahead.
10 THE WITNESS: Correct.
11 BY MR. RICHES:
12 Q. Who determines how the total compensation
13 increase will ultimately be allocated? The City or the
14 union with whom they're negotiating?
15 MR. DORAN: Object to form.
16 Go ahead.
17 MR. BONNETT: And foundation.
18 THE WITNESS: I would say ultimately, again,
19 city council decides where our money goes because it
20 really doesn't matter what I sign at the table with the
21 union as a negotiator. They have to ratify, if that's the
22 right term; they have to approve that contract; and there
23 is nothing that would stop them from doing away with any
24 of the provisions that we agreed to.
25 ///

13:18:47-13:20:14 Page 133

1 BY MR. RICHES:
2 Q. Would you turn to Exhibit 23, please.
3 A. Okay.
4 Q. Do you recognize this?
5 A. I don't know that I . . . I think I've seen it
6 or something like it before.
7 Q. This appears to be a position paper from the City
8 of Phoenix regarding a fact-finding dispute with
9 Local 2384 for this MOU. Does that look correct to you?
10 MR. DORAN: Jon, can I interrupt briefly?
11 And again, I apologize. What this appears to be is a
12 draft by inside city counsel rather than a final document.
13 And, frankly, it's extremely disturbing that it's been
14 distributed somehow. What I'd like to do is not junk up
15 your record and just make a running objection with respect
16 to any questions with respect to this document on the
17 grounds that it's attorney work product. It's inadvertent
18 disclosure at best, and it's attorney-client-privileged.
19 Okay?
20 MR. RICHES: Noted.
21 MR. DORAN: Thank you.
22 BY MR. RICHES:
23 Q. Could you turn to page 3 of Exhibit 23?
24 A. Okay.
25 Q. And do you see the first full paragraph, the

13:32:59-13:34:05 Page 142

1 on this page between Mr. Wine and Mr. Ayala regarding the
 2 paid release time positions. Do you see that discussion
 3 beginning with the paragraph, "No, you have all been
 4 around longer than me"?

5 MR. BONNETT: Object to form and foundation.

6 MR. DORAN: Actually, before we get there,
 7 Jon -- I'm guessing this is the last time I'll have a
 8 speaking objection -- at no time was Jim Wine authorized
 9 or empowered to reveal attorney-client discussions, so
 10 what he may or may not have said that supposedly
 11 represents what was discussed in the city attorney's
 12 office is privileged. The privilege has not been waived
 13 or authorized to be waived. I'm going to let you ask the
 14 question because it's out there, but I would like to have
 15 a standing objection with respect to privilege.

16 MR. RICHES: No problem.

17 MR. DORAN: Thank you.

18 BY MR. RICHES:

19 Q. If you could go down about halfway through the
 20 page beginning with Mr. Wine's statements that "We are not
 21 attorneys" -- Do you see that?

22 A. I do.

23 Q. And there Mr. Wine says, "We are not attorneys,
 24 but we were -- Specifically in our contract, it says that
 25 the cost -- Section 13, Section A, the cost to the City of

13:34:20-13:35:50 Page 143

1 the released position has been charged to the total of the
 2 position package agreement. The way I understand it,
 3 because it's costing an adding to your package, it's not
 4 added to the nonunion and union members."

5 Do you understand what Mr. Wine is referring
 6 to there?

7 MR. DORAN: Object to form and foundation.
 8 Go ahead.

9 THE WITNESS: Yeah. Again, very clumsy
 10 language, but I think I get the overall intent.

11 BY MR. RICHES:

12 Q. What is your understanding of what Mr. Wine is
 13 saying in that paragraph?

14 MR. DORAN: Object to form and foundation.
 15 Go ahead.

16 THE WITNESS: He seems to be indicating or
 17 trying to relay that release positions are costed to the
 18 package.

19 BY MR. RICHES:

20 Q. Does it appear that he's saying that because the
 21 release time positions are costed to the package, it's
 22 forcing all the unit members, nonunion and union alike, to
 23 pay for it and, therefore, could violate the Janus
 24 decision?

25 MR. DORAN: Object to form and foundation.

13:36:01-13:37:17 Page 144

1 Go ahead.

2 THE WITNESS: I don't know that I read all
 3 that into it.

4 BY MR. RICHES:

5 Q. Let me ask you, if release time is costed as part
 6 of total compensation, is it, therefore, forcing Unit 2
 7 members, nonunion or union, to pay for it?

8 MR. DORAN: Object to form and foundation.
 9 Go ahead.

10 THE WITNESS: No. Again, I think it's more
 11 complex than that for kind of the reasoning I have gone
 12 over before, that I just think it's more complicated than
 13 that because we don't know if we've already, you know,
 14 equalized that with the employees in some form or fashion.
 15 And, you know, once again, if release time ended, there's
 16 no guarantee that that money goes to the employees or ends
 17 up in -- again, what I refer to as dollars in pockets of
 18 the employees.

19 BY MR. RICHES:

20 Q. So your testimony is that you do not agree with
 21 Mr. Wine's characterization. Is that correct?

22 MR. DORAN: Object to form and foundation.
 23 Go ahead.

24 THE WITNESS: I don't know that I agree or
 25 disagree. It's so clumsy, I don't know what I would be

13:37:44-13:38:50 Page 145

1 agreeing or disagreeing to.

2 BY MR. RICHES:

3 Q. Could you turn ahead to the next exhibit,
 4 Exhibit 44.

5 (Deposition Exhibit 44 was marked for
 6 identification.)

7 THE WITNESS: 44. Yes, sir.

8 BY MR. RICHES:

9 Q. Do you recognize this document?

10 A. It appears to be more meeting notes from the
 11 March 12, 2019, negotiations.

12 Q. And those negotiations were regarding the
 13 2019-2021 MOU between the City and Unit 2?

14 MR. DORAN: Object to form and foundation.
 15 Go ahead.

16 THE WITNESS: Correct.

17 BY MR. RICHES:

18 Q. Could you turn to the second page of those notes,
 19 which are Bates-stamped ID000382.

20 A. Yes, sir.

21 Q. Boy, I am not going to have a good time when
 22 Mario testifies because I just can't get his last name
 23 out.

24 But do you see the first sentence where
 25 Mr. Ayala testifies, "You know the issue is that if we put

<p>13:51:53-13:52:49 Page 154</p> <p>1 Go ahead. 2 THE WITNESS: We have the list of -- 3 Obviously, this is intended to be the list that is not an 4 all-inclusive of examples of things that, you know, the 5 City thinks is acceptable use of PW time. I am not -- To 6 my memory, I don't think there's a list of things that 7 would be, you know, unacceptable use of union business 8 time. 9 BY MR. RICHES: 10 Q. Can nonunion members use PW time? 11 MR. BONNETT: Foundation. 12 THE WITNESS: I don't know one way or 13 another. I think that would be up to the union. 14 BY MR. RICHES: 15 Q. From your perspective, the use of PW time for 16 nonunion members would be the union's decision, not the 17 City's? 18 MR. DORAN: Object to form and foundation. 19 Go ahead. 20 THE WITNESS: Yeah, if the City wanted to 21 use union business time for an employee to do one of these 22 activities, again, we're not going to go verify union 23 membership and then raise questions based on what we would 24 find. 25 ///</p>	<p>13:55:01-13:56:37 Page 156</p> <p>1 THE WITNESS: Sorry. You would have to be 2 more specific. 3 BY MR. RICHES: 4 Q. You testified earlier that, in your view, paid 5 release time provided certain benefits to the City. Do 6 you recall that testimony? 7 MR. DORAN: Object to the form. 8 Go ahead. 9 THE WITNESS: I do recall that, yes. 10 BY MR. RICHES: 11 Q. Would the benefits that the City received from 12 paid release time also be achieved through the use of PB 13 time? 14 MR. DORAN: Object to the form, foundation. 15 Go ahead. 16 THE WITNESS: I'm -- I don't know the 17 answer to that one way or another. I would speculate that 18 if we had employees who were, you know, doing duties of 19 the position they were hired to do and then we kept 20 pulling those employees out of their job to try and 21 accomplish those same things, I don't know that that would 22 be as an effective of a system. 23 BY MR. RICHES: 24 Q. Can you turn to the last exhibit, 48. 25 (Deposition Exhibit 48 was marked for</p>
<p>13:53:30-13:54:57 Page 155</p> <p>1 BY MR. RICHES: 2 Q. This document also references the use of PB. 3 What's "PB"? 4 A. PB is city-approved business. I guess the 5 biggest differentiator being this wouldn't be charged to a 6 bank of hours that's agreed upon in the contract. But 7 also, city business is used for a very wide range of 8 things that are not what I would characterize as 9 union-related, such as if I were to interview for a 10 position, in theory, I should be putting in city business 11 time for the time of that interview. Or if I go to an 12 internal training, an employee should be putting in, you 13 know, city business time when they go to that training. 14 Q. Fair to say that uses of PB generally advance 15 certain interests of the City and some uses of PW might 16 not? 17 MR. DORAN: Object to form and foundation. 18 Go ahead. 19 THE WITNESS: Yeah, possibly. 20 BY MR. RICHES: 21 Q. You testified earlier about some of the purported 22 benefits of paid release time. Do you recall that 23 testimony? 24 MR. DORAN: Object to the form. 25 Go ahead.</p>	<p>13:56:53-13:58:11 Page 157</p> <p>1 identification.) 2 THE WITNESS: 48. Got it. 3 BY MR. RICHES: 4 Q. Do you recognize this document? 5 A. I do. 6 Q. What is it? 7 A. It's the form that the unions or the association 8 would use for a release time request. 9 Q. Do you see the last check-marked box, which is 10 bolded "Leave Code PW"? 11 A. I do. 12 Q. That reads, "This code is used for the 13 Union/Association to draw from a bank of hours and is 14 subject to union/association approval" Did I read 15 that correctly? 16 MR. BONNETT: Object to form. 17 BY MR. RICHES: 18 Q. Did I read that correctly? 19 A. Yes, sir. 20 Q. Is it accurate to say, then, that the union 21 approves the use of PW time and not the City? 22 MR. DORAN: Object to form and foundation. 23 Go ahead. 24 THE WITNESS: It's correct that the code is 25 used for the union or the association to draw from the</p>

EXHIBIT 14

EXHIBIT 14

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IN THE SUPERIOR COURT OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

MARK GILMORE; and MARK HARDER,)	
Plaintiffs,)	
vs.)	Case No.
)	CV2019-009033
KATE GALLEGO, in her official)	
capacity as Mayor of the City of)	
Phoenix; ED ZUERCHER in his)	
official capacity as City Manager)	
of the City of Phoenix; and CITY)	
OF PHOENIX,)	
Defendants,)	
AMERICAN FEDERATION OF STATE,)	
COUNTY AND MUNICIPAL EMPLOYEES,)	
LOCAL 2384,)	
Intervenor-Defendant.)	

DEPOSITION OF ED ZUERCHER

Phoenix, Arizona
February 1, 2021

Prepared by:
Meri Coash, RMR, CRR
Certified Reporter
Certification No. 50327

09:05:36-09:06:35 Page 10

1 A. I've been a city employee for 27-plus years, so I
2 started as a management intern, worked through various
3 levels called management assistant, became an assistant to
4 the city manager. I was a public transit director. I was
5 a deputy chief of staff and chief of staff to the mayor.
6 I was a deputy city manager and assistant city manager and
7 then city manager.
8 Q. What period of time were you the assistant city
9 manager?
10 A. From late 2009 until October of 2013.
11 Q. What were the ordinary duties of that position?
12 MR. DORAN: Object to the form and
13 foundation.
14 Go ahead.
15 THE WITNESS: I reported directly to the
16 city manager and had responsibility for several
17 departments on a day-to-day basis. I acted in the absence
18 of the city manager and basically took my direction from
19 him as to the departments and projects to work on and
20 oversee.
21 BY MR. RICHES:
22 Q. Did you also have responsibility over a human
23 relations component at the City of Phoenix in your
24 position as assistant city manager?
25 MR. DORAN: Object to form and foundation.

09:06:48-09:07:42 Page 11

1 Go ahead.
2 THE WITNESS: Well, again, we call it human
3 resources. Human relations is another thing. But human
4 resources I think is what you mean. And no, I did not
5 have direct responsibility for the human resources
6 department in that role.
7 BY MR. RICHES:
8 Q. What is what is the difference between human
9 relations and human resources in the City of Phoenix?
10 A. We have a human relations commission which in
11 some cities would be called human rights. It's really
12 about external -- external resident, citizen
13 relationships. Human resources is an internal thing that
14 most people call personnel.
15 Q. As the city manager, are you familiar with the
16 meet-and-confer process between the City and its various
17 labor organizations?
18 MR. DORAN: Object to the form.
19 Go ahead.
20 THE WITNESS: Yes.
21 BY MR. RICHES:
22 Q. And are you aware that AFSCME Local 2384 is the
23 exclusive bargaining representative for Unit 2 employees?
24 MR. DORAN: Object to the form.
25 Go ahead.

09:07:53-09:08:52 Page 12

1 THE WITNESS: Yes.
2 BY MR. RICHES:
3 Q. Are you also aware that the meet-and-confer
4 process results generally in the ratification or
5 imposition of a memorandum of understanding between the
6 City and, in this case, Unit 2?
7 MR. DORAN: Object to the form and
8 foundation.
9 Go ahead.
10 THE WITNESS: Yes.
11 BY MR. RICHES:
12 Q. I would like to show you what's previously been
13 marked Exhibit 2. Do you have the exhibits in front of
14 you?
15 A. One moment. Let me just make sure. Exhibit 2?
16 Q. Yes.
17 A. That's a contract with Unit 2?
18 Q. Yes. Can you identify that?
19 A. I have a memorandum of understanding 2019 to '21
20 between the City and AFSCME 2384.
21 Q. Yep. Do you recognize this document?
22 A. Yes.
23 Q. What is it?
24 A. It's the contract between 2384 and the City.
25 Q. Would you mind flipping ahead to page 52 of that

09:09:08-09:09:54 Page 13

1 document. The page number is in the center. Then what we
2 call a Bates stamp is in the lower right-hand corner,
3 which says "GIL000052."
4 A. Yes.
5 Q. Is that your signature in about the middle of the
6 page there?
7 A. Yes.
8 Q. Were you familiar with this document, then,
9 before coming into your deposition this morning?
10 A. Yes.
11 Q. Can you describe your knowledge and experience
12 regarding MOUs that the City has entered into with its
13 various labor unions?
14 MR. DORAN: Object to form, foundation.
15 Go ahead.
16 THE WITNESS: So we have negotiating teams
17 with each of our labor groups. We have five unions, of
18 which unit AFSCME is one of them for this group. We
19 have -- I have employees -- management employees who
20 negotiate the details of the contract over several months.
21 They keep me informed about that. And then when we come
22 to an agreement, we bring it to the city council for
23 ratification. And then at this point, I would sign that
24 document.
25 ///

09:10:22-09:11:07 Page 14

1 BY MR. RICHES:
2 Q. For the City of Phoenix, who ultimately
3 determines what is going to be presented to the city
4 council in terms of the agreement between the City and
5 Unit 2?
6 MR. DORAN: Object to form and foundation.
7 Go ahead.
8 THE WITNESS: Ultimately, it is the
9 responsibility of the city manager as the chief executive,
10 so it's mine.
11 BY MR. RICHES:
12 Q. Do you then make recommendations to the city
13 council in terms of what MOU should or should not be
14 ratified?
15 A. Yes.
16 MR. DORAN: Object to the form.
17 Go ahead.
18 BY MR. RICHES:
19 Q. How would you characterize the purpose of an MOU?
20 MR. DORAN: Object to form, foundation.
21 Go ahead.
22 THE WITNESS: Well, it lays out the wages,
23 the benefits, and working conditions for the employees of
24 the City that are covered by that particular unit. So
25 it's the rule book. It's the ground rules for our

09:11:24-09:11:58 Page 15

1 relationships and for our pay.
2 BY MR. RICHES:
3 Q. The MOU that's in front of you, Exhibit 2, this
4 MOU binds all Unit 2 employees. Is that correct?
5 MR. DORAN: Object to form.
6 Go ahead.
7 THE WITNESS: Yes.
8 BY MR. RICHES:
9 Q. Is it true that this MOU binds all Unit 2
10 employees even if those employees are not also members of
11 the union?
12 MR. DORAN: Object to form.
13 Go ahead.
14 THE WITNESS: Yes.
15 BY MR. RICHES:
16 Q. Can a Unit 2 employee elect not to be bound by
17 the terms of the MOU?
18 MR. DORAN: Object to form.
19 Go ahead.
20 THE WITNESS: No.
21 BY MR. RICHES:
22 Q. Can a Unit 2 employee elect to be bound by --
23 elect not to be bound by any portion of the MOU?
24 MR. DORAN: Object to form.
25 Go ahead.

09:12:17-09:13:22 Page 16

1 THE WITNESS: No, they cannot.
2 BY MR. RICHES:
3 Q. Could you please turn to page 6 of Exhibit 2.
4 A. Yes.
5 Q. Do you see the top of the page where it says,
6 "Section 1-3: Union Rights"?
7 A. Yes.
8 Q. Do you know why this section is captioned "Union
9 Rights"?
10 A. No.
11 Q. Does this section apply only to Local 2384, or
12 does it apply to all of Unit 2?
13 MR. DORAN: Object to form.
14 Go ahead.
15 THE WITNESS: Well, it -- I'm not sure what
16 you're getting at. It's the rights of the work group as
17 represented by a union as laid out in the city ordinance,
18 so it's the rights of the union to represent all the
19 members of that unit, I guess.
20 BY MR. RICHES:
21 Q. Do you see the Subsection A titled "Union
22 Release"?
23 A. Yes.
24 Q. Can you describe what union release is?
25 MR. DORAN: Object to form.

09:13:38-09:14:44 Page 17

1 Go ahead.
2 THE WITNESS: It would be hours granted to
3 elected representatives of the union to represent
4 employees or to conduct business on behalf of the unit
5 consistent with the MOU or with the City's meet-and-confer
6 ordinance.
7 BY MR. RICHES:
8 Q. Under Subsection A, there is a subsequent
9 Subsection 1 entitled "Full-Time Release Positions." Do
10 you see that?
11 A. Yes.
12 Q. What are full-time release positions?
13 A. Those are positions where the person is released
14 for a full year, which is 2,080 hours in our system, and
15 they are released from what their underlying job would be
16 to work on representing unit members in the City.
17 Q. Are nonunion employees of Unit 2 eligible to be
18 full-time -- eligible to be on full-time release?
19 MR. DORAN: Object to form and foundation.
20 Go ahead.
21 THE WITNESS: I mean, you would have to ask
22 that of the union. I don't know what their rules are for
23 that.
24 BY MR. RICHES:
25 Q. To your knowledge, would the -- does the City of

09:15:02-09:15:56 Page 18

1 Phoenix permit any Unit 2 employee to be on full-time
2 release even if they're not a member of the union?
3 MR. DORAN: Same objections.
4 Go ahead.
5 THE WITNESS: I don't know -- I don't know
6 that answer.
7 BY MR. RICHES:
8 Q. A little further ahead in that section over on
9 page 7, the third full paragraph down, that paragraph
10 indicates that the MOU grants 150 hours of paid leave to
11 attend union seminars, lectures, and conventions. Do you
12 see that paragraph?
13 A. Yes.
14 Q. Do you know if Unit 2 employees who are not
15 members of the union are eligible to draw from that
16 150 hours to attend union seminars, lectures, and
17 conventions?
18 A. I do not know.
19 MR. DORAN: Object to form and foundation.
20 THE WITNESS: I do not know.
21 BY MR. RICHES:
22 Q. Could you please go ahead to page 8. Just let me
23 know when you're there.
24 A. Yes.
25 Q. Do you see Subsection 3 entitled "Bank of Union

09:16:11-09:17:05 Page 19

1 Release Hours?"
2 A. Yes.
3 Q. What's a bank of union release hours?
4 MR. DORAN: Object to the form.
5 Go ahead.
6 THE WITNESS: It's a block of hours that's
7 granted for release beyond the full-time positions.
8 BY MR. RICHES:
9 Q. Who gets to decide or what entity gets to decide
10 which employees are eligible to draw from that bank of
11 hours?
12 MR. DORAN: Objection. Form, foundation.
13 Go ahead.
14 THE WITNESS: It doesn't say. But I would
15 go up to where it said at the beginning designated by the
16 executive board of the union, so I would anticipate that
17 the executive board of the union would have that
18 authority. But that's based on simply reading this
19 document.
20 BY MR. RICHES:
21 Q. Can the City decide who is eligible to draw from
22 that bank of release time hours?
23 MR. DORAN: Object to form and foundation.
24 Go ahead.
25 THE WITNESS: Only subject -- as it says,

09:17:20-09:18:18 Page 20

1 only subject to operational and scheduling factors.
2 BY MR. RICHES:
3 Q. Do you know if Unit 2 employees who are not also
4 members of the union can utilize that bank of release time
5 hours?
6 MR. DORAN: Object to form and foundation.
7 Go ahead.
8 THE WITNESS: I don't know.
9 BY MR. RICHES:
10 Q. Are these -- Would you characterize these
11 various release time provisions as benefits that are
12 provided by the City of Phoenix?
13 MR. DORAN: Object to form and foundation.
14 Go ahead.
15 THE WITNESS: Well, they're contained in the
16 contract, which defines work, wages, and benefits, so I
17 don't know what words I would use to define it. It's
18 just -- it's a -- it's part of the contract. It's part of
19 our contractual obligation.
20 BY MR. RICHES:
21 Q. Would you -- Are the release time provisions
22 provided to all Unit 2 employees, or are they applied to
23 Local 2384?
24 MR. DORAN: Object to form and foundation.
25 Go ahead.

09:18:32-09:19:12 Page 21

1 THE WITNESS: Well, release time is provided
2 in the contract with the representatives of all Unit 2
3 employees, so I don't know how you parse that out, but
4 it's a part of the agreement for all employees covered by
5 Unit 2.
6 BY MR. RICHES:
7 Q. Who is paying for the release time provisions
8 that are outlined in this section of the MOU?
9 MR. DORAN: Object to form, foundation.
10 Go ahead.
11 THE WITNESS: Well, they're city employees,
12 so the City is paying for it.
13 BY MR. RICHES:
14 Q. Is the City paying for it through paying normal
15 salary payments to the city employees who are eligible for
16 release time?
17 MR. DORAN: Object to form and foundation.
18 Go ahead.
19 THE WITNESS: Yes.
20 BY MR. RICHES:
21 Q. Has the City assigned a cost to these various
22 release time benefits?
23 MR. DORAN: Objection. Foundation.
24 Go ahead.
25 THE WITNESS: Yes.

09:19:23-09:20:16 Page 22

1 BY MR. RICHES:
2 Q. Do you know what that cost is?
3 A. Well, from reviewing the other -- the other
4 exhibits, I know we did a costing sheet, and my memory was
5 that it was about 500,000 per year at our last costing.
6 Q. I think you've got a pretty good memory.
7 Would you mind flipping ahead to Exhibit 15.
8 A. Yes.
9 Q. Do you recognize this?
10 A. Yes.
11 Q. What is this?
12 A. This is a costing sheet that our budget and
13 research department prepares to assist our human resources
14 team as they negotiate contracts.
15 Q. Is it your understanding that this document
16 reflects the cost to the City of Phoenix of the various
17 release time benefits that are outlined in the MOU?
18 MR. DORAN: Object to form, foundation.
19 Go ahead.
20 THE WITNESS: Yes.
21 BY MR. RICHES:
22 Q. There also might be times when I refer just to
23 "the MOU." If I'm referring just to "the MOU," I'm
24 referring to the 2019 to 2021 MOU between the City and
25 Unit 2. If I specify another MOU, I'll specify which

09:20:33-09:21:18 Page 23

1 other MOU I'm referring to. Does that make sense?
2 A. Understood. Yes.
3 Q. And along those lines, if I refer just to "the
4 union," I'll be referring to AFSCME Local 2384 unless I
5 specify a different labor organization. Does that also
6 make sense?
7 A. Yes.
8 Q. So is it your understanding that the City, then,
9 spends approximately \$499,000 per year on the release time
10 benefits that are outlined in the MOU?
11 MR. DORAN: Object to the form.
12 Go ahead.
13 THE WITNESS: Yes. Based on Exhibit 15,
14 yes.
15 BY MR. RICHES:
16 Q. Does the City receive any monetary benefit in
17 exchange for those expenditures?
18 MR. DORAN: Object to the form, foundation.
19 Go ahead.
20 THE WITNESS: Well, if you mean direct cash
21 return, no. But there are benefits to having these
22 positions and hours.
23 BY MR. RICHES:
24 Q. And what are those benefits?
25 A. I'm sorry. You broke up.

09:21:34-09:22:48 Page 24

1 Q. What are those benefits to having these positions
2 and hours?
3 A. Well, it starts with just a harmonious
4 relationship with our employees because the employees have
5 someone who they believe represents their interests at --
6 in this case at a line level. So just having someone in
7 their corner many times is what employees think. And what
8 that does is allows employees to, you know, feel that
9 they're working in a place that's fair. And when people
10 have a sense of fairness, that they're being treated
11 properly and fairly, they will give -- I think they will
12 give more of their time and energy and quality to the
13 work.
14 It also is a benefit because the rules we
15 have governing hours and how employees are paid and
16 treated are technical and complex, as you saw from the
17 previous exhibit. It's a big MOU. And so having people
18 who understand that as we work through employee rights is
19 also really valuable to us.
20 And then having people who can -- we can
21 work on working conditions and those sorts of things
22 allows us to have better working conditions for employees,
23 and when employees have a place where they feel safe, they
24 feel comfortable, then they're going to give more to the
25 employer, and that's a net benefit. But I can't put a

09:23:02-09:24:33 Page 25

1 specific dollar figure on that.
2 Q. I understand.
3 You testified that one of the benefits is
4 that employees, particularly line-level employees, as you
5 characterized them, have someone in their corner. Is that
6 correct?
7 A. Yes.
8 Q. Do you know how many employees there are in
9 Unit 2?
10 A. I would just be guessing to say a couple
11 thousand, maybe 2,500 to 3,000. I'm not sure exactly.
12 Q. Does about 1,500 sound correct?
13 MR. DORAN: Object to form, foundation.
14 Go ahead.
15 THE WITNESS: Yes.
16 BY MR. RICHES:
17 Q. Do you know how many of those 1,500 employees are
18 also dues-paying members of the union?
19 MR. DORAN: Form, foundation.
20 Go ahead.
21 THE WITNESS: I do not.
22 BY MR. RICHES:
23 Q. Now, you indicated you couldn't assign a monetary
24 value to the benefits that you outlined for release time.
25 Is that correct?

09:24:37-09:25:44 Page 26

1 MR. DORAN: Object to form.
 2 Go ahead.
 3 THE WITNESS: Yes. Yes.
 4 BY MR. RICHES:
 5 Q. Has the City ever conducted any studies or
 6 reports to try and -- try and assign some sort of value to
 7 these different release time benefits?
 8 MR. DORAN: Object to form, foundation.
 9 Go ahead.
 10 THE WITNESS: Not that I'm aware of.
 11 BY MR. RICHES:
 12 Q. How does the City ensure that the benefits that
 13 you identified are actually being provided?
 14 MR. DORAN: Object to form, foundation.
 15 Go ahead.
 16 THE WITNESS: Well, I think it's -- The
 17 evidence is in the work we do, so I evaluate it based on
 18 the fact that we get the job done. I do not have --
 19 Outside of our regular grievance process, I don't have
 20 employees who are angry and upset with management on a
 21 regular basis or even on a rare basis. The feedback I get
 22 from the community about the services that are provided
 23 are almost generally always positive. So, you know, I
 24 would -- I believe that I would hear from the council,
 25 from community members, and from employees if they

09:25:58-09:26:52 Page 27

1 believed that the working conditions, the situation that
 2 they worked in wasn't fair or wasn't something they wanted
 3 to be part of.
 4 BY MR. RICHES:
 5 Q. Is there anything in the 2019 to 2021 MOU between
 6 the City and Local 2384 that obligates the full-time
 7 release employees to perform specific activities for the
 8 City while they're using release time?
 9 MR. DORAN: Object to form, foundation.
 10 Go ahead.
 11 THE WITNESS: I would have to read it
 12 specifically to see. I'm not aware of it just generally.
 13 BY MR. RICHES:
 14 Q. Are you aware of any other city policy or
 15 directive that obligates the full-time release employees
 16 to perform specific activities for the City?
 17 MR. DORAN: Same objections.
 18 Go ahead.
 19 THE WITNESS: There could be something from
 20 human resources, but I couldn't tell you what that is
 21 exactly.
 22 BY MR. RICHES:
 23 Q. Is there anything in the MOU that obligates other
 24 union members who are using release time hours out of the
 25 bank to perform specific activities for the City while

09:27:02-09:27:53 Page 28

1 they're using release time?
 2 MR. DORAN: Objection. Form, foundation.
 3 Go ahead.
 4 THE WITNESS: I'd have to look at the
 5 specific language of the MOU to see what it says about
 6 that, but it would be laid out there if it existed.
 7 BY MR. RICHES:
 8 Q. To your knowledge, does it exist?
 9 MR. DORAN: Same objections.
 10 Go ahead.
 11 THE WITNESS: I'm not aware of it, no.
 12 BY MR. RICHES:
 13 Q. I want to talk for a moment about the full-time
 14 release positions for Unit 2. To your knowledge, does
 15 anyone in the City direct the daily activities of the
 16 full-time release employees?
 17 MR. DORAN: Object to form and foundation.
 18 Go ahead.
 19 THE WITNESS: No, I think that -- Well, let
 20 me answer it two ways. One is they have a relationship in
 21 some way back to the department that they're part of, but
 22 they would also have a relationship with human resources.
 23 But in terms of day-to-day activities, we have to be
 24 really careful about that because that can very easily get
 25 into management domination of union activities. So we're

09:28:10-09:29:01 Page 29

1 very careful about that, and that's governed by our
 2 Phoenix employee relations board.
 3 BY MR. RICHES:
 4 Q. What's management domination of union activity?
 5 A. It would be --
 6 THE WITNESS: Am I okay to answer?
 7 MR. DORAN: Yes.
 8 THE WITNESS: It would be directing -- or
 9 interfering in the operation of the employees with their
 10 obligations to represent their employees that is laid out
 11 in the MOU.
 12 BY MR. RICHES:
 13 Q. Is it your understanding that that would be a
 14 prohibition of some city policy or procedure?
 15 MR. DORAN: Objection. Form and foundation.
 16 Go ahead.
 17 THE WITNESS: I think it's a violation of
 18 the employee -- of the Phoenix employee relations
 19 ordinance, because there could be charges brought before
 20 the PERB for such actions.
 21 BY MR. RICHES:
 22 Q. Is it your understanding that if the City of
 23 Phoenix did attempt to direct the daily activities of the
 24 full-time release employees, that could result in some
 25 sort of charge before the PERB board?

09:33:33-09:34:25 Page 34

1 THE WITNESS: No.
2 BY MR. RICHES:
3 Q. When employees -- when Unit 2 employees are
4 utilizing hours out of the bank of hours, does the City
5 direct their activities?
6 MR. DORAN: Object to form, foundation.
7 Go ahead.
8 THE WITNESS: Out of the bank of hours, I
9 think the only -- the only thing -- and it says in the
10 contract somewhere -- subject to supervisor or operational
11 necessity. There's some language about that in there.
12 But other than that, no.
13 BY MR. RICHES:
14 Q. Is it your understanding, then, that while Unit 2
15 employees are utilizing hours out of the bank of hours,
16 their activities are being directed by union officers?
17 MR. DORAN: Object to form, foundation.
18 Go ahead.
19 THE WITNESS: That would be my
20 understanding.
21 BY MR. RICHES:
22 Q. Is it your understanding that Unit 2 employees
23 who are utilizing hours out of the bank of hours are being
24 supervised by the union and not by the City?
25 MR. DORAN: Object to form, foundation.

09:34:35-09:35:09 Page 35

1 Go ahead.
2 THE WITNESS: I really don't know the
3 details of individuals using bank of hours and how that's
4 done. That's not anything that's in my experience.
5 BY MR. RICHES:
6 Q. You did indicate that you ultimately have
7 responsibility over this MOU, correct?
8 A. Yes.
9 MR. DORAN: Object to form.
10 Go ahead.
11 THE WITNESS: Yes.
12 BY MR. RICHES:
13 Q. And you ultimately made a recommendation to
14 provide the union with 3,183 hours of paid release time,
15 correct?
16 MR. DORAN: Object to form, foundation.
17 Go ahead.
18 THE WITNESS: Yes.
19 BY MR. RICHES:
20 Q. Is your testimony, though, that you don't know
21 how those hours are utilized by Unit 2 employees?
22 MR. DORAN: Object to form and foundation.
23 Go ahead.
24 THE WITNESS: Well, if you're asking me how
25 every one of the 3,000-plus bank of hours is used, no, I

09:35:29-09:36:42 Page 36

1 don't. I don't know that any more than I know how all the
2 hours used by any group of employees of the 15,000 is used
3 on a daily basis. We have a system and a structure to
4 monitor that, but I don't personally know how those things
5 are all being used individually on a daily basis.
6 BY MR. RICHES:
7 Q. And that's what I'm asking about. What's the
8 system and structure you utilize to monitor how the
9 3,183 hours are actually being utilized by Unit 2 members?
10 MR. DORAN: Object to form and foundation.
11 Go ahead.
12 THE WITNESS: And in that case also, I don't
13 get involved in the operations of how people are released
14 as the steward or the representative. There are systems
15 worked out in the departments where -- and with our human
16 resources folks when and how people are released to
17 represent or do the duties outlined here. So the
18 mechanics of that, I can't really tell you about.
19 BY MR. RICHES:
20 Q. Are city employees evaluating Unit 2 employees
21 who are utilizing hours from the bank of hours?
22 MR. DORAN: Object to form and foundation.
23 Go ahead.
24 THE WITNESS: Well, by using bank of hours,
25 you're partly -- we would have people who are doing

09:37:06-09:37:45 Page 37

1 jobs -- I'll call it on the line, say an electrician, and
2 then maybe for two hours, I'm assuming they're asked to go
3 and represent somebody. So they're being evaluated for
4 their job as an electrician, but they're not being
5 evaluated for their job as representing someone under the
6 MOU.
7 BY MR. RICHES:
8 Q. And during the period of time they're released,
9 who is supervising their work activities?
10 MR. DORAN: Object to form and foundation.
11 Go ahead.
12 THE WITNESS: Well, they're working under
13 the -- they're working through their union to represent
14 someone as laid out for the employees' rights in the MOU.
15 BY MR. RICHES:
16 Q. So I've got the same question. Who, then, is
17 supervising their activities while Unit 2 employees are
18 released?
19 MR. DORAN: Same objections.
20 Go ahead.
21 THE WITNESS: So they would be working under
22 the umbrella of their union who's appointed them to be a
23 steward or whatever role they're fulfilling within their
24 union structure.
25 ///

<p>09:49:04-09:49:44 Page 46</p> <p>1 A. Yes. 2 Q. You testified earlier that it was your 3 understanding that the City had always funded the 4 full-time release positions in the bank of hours. Is that 5 correct? 6 MR. DORAN: Object to form. 7 Go ahead. 8 THE WITNESS: Yes, I think I said that. 9 BY MR. RICHES: 10 Q. And that was your understanding prior to having 11 reviewed this document, which eliminated the full-time 12 release hours from the City-funded bank of hours. Is that 13 correct? 14 MR. DORAN: Object to form, foundation. 15 Go ahead. 16 THE WITNESS: That's correct. 17 BY MR. RICHES: 18 Q. Is it your understanding that this MOU was the 19 first time that paid release had been eliminated in the 20 previous -- in the prior -- from the prior MOUs? 21 MR. DORAN: Object to form, foundation. 22 Go ahead. 23 THE WITNESS: Yes, that's my understanding. 24 BY MR. RICHES: 25 Q. Were the additional vacation hours intended to</p>	<p>09:51:13-09:52:08 Page 48</p> <p>1 response to the court -- court's ruling at the time. 2 BY MR. RICHES: 3 Q. Do you know why that was? 4 MR. DORAN: Object to form, foundation. 5 If you have anything that is 6 attorney-client-privileged, I'm instructing you not to 7 answer with respect to matters that you discussed with 8 city counsel or outside counsel. Otherwise, you can 9 answer. 10 Go ahead. 11 THE WITNESS: Okay. You've got to repeat 12 the question. Sorry. 13 BY MR. RICHES: 14 Q. Why was it that the MOU was structured such that 15 all Unit 2 employees would receive additional vacation 16 hours? 17 MR. DORAN: Same objections and same 18 admonition. 19 THE WITNESS: Well, we have to -- we have to 20 negotiate for all members of the unit irrespective of the 21 union, and as to specifically why it was that way, I don't 22 recall that, the why. 23 BY MR. RICHES: 24 Q. You were city manager during the period of time 25 that the 2014-2016 MOU was in effect between the City and</p>
<p>09:49:59-09:51:02 Page 47</p> <p>1 make up for the elimination of the paid release time 2 hours? 3 MR. DORAN: Object to form, foundation. 4 Go ahead. 5 THE WITNESS: Yeah, I think, again, under 6 the context of the court ruling that we were living with 7 where we were trying to -- just to navigate how to stay in 8 compliance with the court's rulings, I believe this is 9 the -- this is the agreement we came up with. 10 BY MR. RICHES: 11 Q. Was the purpose of those additional vacation 12 hours intended to compensate Unit 2 members for the 13 elimination of the paid release time positions? 14 MR. DORAN: Object to form and foundation. 15 Go ahead. 16 THE WITNESS: It was intended to provide a 17 way for -- under the court's ruling, for there to be union 18 positions and time to represent employees. 19 BY MR. RICHES: 20 Q. Why give all Unit 2 employees vacation hours 21 rather than give those hours directly to the union as the 22 City does now? 23 MR. DORAN: Object to form and foundation. 24 Go ahead. 25 THE WITNESS: Well, I think it was all in a</p>	<p>09:52:24-09:53:29 Page 49</p> <p>1 Unit 2, correct? 2 A. Yes. 3 Q. Did the elimination of the City-funded release 4 time result in higher costs to the City? 5 MR. DORAN: Object to form and foundation. 6 Go ahead. 7 THE WITNESS: Not in a way that I could 8 point you to a specific study of cost, no. 9 BY MR. RICHES: 10 Q. Did the City experience any cost increase to make 11 up for the services that were previously provided by 12 City-funded release time employees? 13 MR. DORAN: Object to form, foundation. 14 THE WITNESS: I'm not sure how to isolate 15 our cost increases in the way you describe. 16 BY MR. RICHES: 17 Q. You testified earlier that it was your belief 18 that City-funded release time provided certain benefits to 19 the City, including harmonious labor relations and 20 employees that you characterized as having someone in 21 their corner. During the course of the 2014 to 2016 MOU 22 when those City-funded release positions were eliminated, 23 did the City experience some cost increase somewhere else 24 to make up for those lost benefits? 25 MR. DORAN: Object to form and foundation.</p>

09:53:43-09:54:43 Page 50

1 Go ahead.

2 THE WITNESS: Well, I mean, I told you that

3 the benefits were nothing that I could specifically tie a

4 specific dollar amount to. The benefits of it have to do

5 with relationships and the effect that positive

6 relationships and equal and fair treatment or the belief

7 of that by employees, that the -- the benefits of that in

8 the workplace. So I can't point you to a checkbook or a

9 ledger that does that. We have costs that go up and down

10 all over the place, and I can't tie those costs directly

11 to what you're asking here.

12 BY MR. RICHES:

13 Q. Let me ask you this. You testified earlier that

14 it was your understanding that paid release time costs the

15 City approximately \$499,000 a year for Unit 2. Is that

16 correct?

17 MR. DORAN: Object to form, foundation.

18 Go ahead.

19 THE WITNESS: The costing sheet shows the

20 value of the time of those people who are released is

21 about \$500,000 a year.

22 BY MR. RICHES:

23 Q. Is it correct to say, then, that when those paid

24 release time provisions were eliminated in the 2014 to

25 2016 MOU, the City was saving approximately \$499,000 per

09:56:36-09:57:47 Page 52

1 A. I have that.

2 Q. Do you see the second full -- the second full

3 paragraph down on -- Oh, I'm sorry. Would you mind

4 turning to page 13 of Exhibit 11?

5 A. Okay.

6 Q. Is it your understanding that Exhibit 11 is the

7 report prepared by the City and the union's expert in this

8 case?

9 A. Yes.

10 Q. Do you recall being interviewed for this report?

11 A. Yes.

12 Q. If you could look at the second full paragraph

13 down on page 13. It looks like Mr. Ward indicated that

14 ". . . if release time is eliminated, I expect the City to

15 invest release time funds (potentially with additional

16 funds) toward replicating the benefits of release time

17 through other means." Do you see that sentence?

18 A. Yes.

19 Q. Did Mr. Ward ask you about this particular

20 circumstance if release time were eliminated?

21 MR. DORAN: Objection. Work product. But

22 that being said, Jon, if I could just have a running

23 objection with respect to attorney work product, I'm going

24 to let him answer all the questions with respect to what

25 he said to Bryce. Is that okay?

09:55:00-09:56:07 Page 51

1 year in costs that it otherwise would have incurred?

2 MR. DORAN: Object to form, foundation.

3 Go ahead.

4 THE WITNESS: No, that's not -- that

5 wouldn't be accurate to say that.

6 BY MR. RICHES:

7 Q. Why is that?

8 MR. DORAN: Same objection.

9 Go ahead.

10 THE WITNESS: Because those employees were

11 still working for the City and we were pulling them to

12 represent and do city -- the things defined in the MOU.

13 They were still being pulled to do those things, so that

14 cost didn't go away. We didn't cut those positions.

15 BY MR. RICHES:

16 Q. Got it.

17 So it's your testimony that the City did not

18 experience any cost saving when the City eliminated the

19 paid release time positions in the 2014 to 2016 MOU?

20 MR. DORAN: Object to form and foundation.

21 Go ahead.

22 THE WITNESS: That's correct. We did not

23 experience savings.

24 BY MR. RICHES:

25 Q. Would you mind turning to Exhibit 11.

09:57:56-09:59:20 Page 53

1 MR. RICHES: No problem.

2 MR. DORAN: Thank you.

3 THE WITNESS: I recall talking to Dr. Bryce,

4 but as far as specifically questions he asked me, I

5 couldn't recall those for you, so I have to rely on this

6 report just like you do.

7 BY MR. RICHES:

8 Q. Did you tell Mr. Bryce that if release time is

9 eliminated, you would expect the City to invest release

10 time funds toward replicating the benefits of release time

11 through other means?

12 A. I don't disagree that he's saying -- that he's

13 saying this. And just in terms of the context, I'd have

14 to think through it more. So I think what you're trying

15 to get to is the release positions aren't laid out in the

16 same way in the contract. Therefore, there's a savings.

17 But that's not what happened. We still pulled union

18 leadership and stewards to do the work of representing

19 employees, serving on city task forces, and so there

20 wasn't any savings there.

21 Q. Let's go in -- Mr. Ward writes that he expects

22 the City to redirect release time funds toward paying the

23 higher costs associated with the loss of benefits release

24 time provides. Do you agree with his statement there?

25 MR. BONNETT: Form.

09:59:30-10:00:46 Page 54

1 Go ahead.

2 MR. DORAN: Same objections.

3 THE WITNESS: So what you're redirecting

4 really is the time, so the release time costing that we've

5 been talking about, the 499, that's giving a value to the

6 time that's being spent. That time is important, and so

7 however you account for it, we need to direct that time.

8 And so how we pulled people to use that time might have

9 been different in practice, but it still resulted in their

10 time being spent on these activities because these

11 activities are required by the MOU, they're required by

12 management for better running of the City, health care, as

13 I mentioned before. So in the specific example we're

14 talking about, there really weren't any -- there wasn't

15 any time freed up to do it. In fact, maybe we spent more

16 time trying to track people down to get them assigned to

17 the tasks we needed, but I don't know that specifically

18 either, Jon.

19 BY MR. RICHES:

20 Q. I understood your testimony earlier to be that

21 there was no additional cost to the City when paid release

22 time was eliminated during the 2014 to 2016 MOU. Is that

23 correct?

24 MR. DORAN: Object to form and foundation.

25 THE WITNESS: Right. In the same way I said

10:00:57-10:02:05 Page 55

1 before, we don't have a specific study saying it was more

2 or less. That's fair, right.

3 BY MR. RICHES:

4 Q. So when Mr. Bryce indicates that he'd expect the

5 City to redirect release time funds toward paying higher

6 costs associated with the loss of release time, that is --

7 that is something that you would not agree with. Is that

8 correct?

9 MR. DORAN: Object to form and foundation.

10 Go ahead.

11 THE WITNESS: No, I think it's supposing we

12 said there would be nobody released to do something.

13 Then -- Okay. Then you've got to go -- So ostensibly, I

14 guess that's some sort of savings, but it really isn't

15 because you have to have that time spent anyway. So I

16 think this was -- it looks like it was maybe sort of a

17 theoretical -- trying to say if you stopped it, there's

18 not -- there's not money that comes into your hands

19 because you still need the time spent to do that work.

20 BY MR. RICHES:

21 Q. I understand.

22 And if you stopped it, is it also your

23 testimony, then, that the City would not incur higher

24 costs for having stopped it?

25 MR. DORAN: Object to form, foundation.

10:02:15-10:03:11 Page 56

1 THE WITNESS: I don't --

2 MR. DORAN: Go ahead.

3 THE WITNESS: I don't know that for sure.

4 My assumption is we've got to have that work done somehow,

5 and so we've got to go find people to do that. And it's

6 more clumsy to go find them just on an ad hoc basis.

7 BY MR. RICHES:

8 Q. Did you tell Mr. Ward that you thought the City

9 would experience higher costs if paid release time were

10 eliminated?

11 MR. DORAN: Object to form.

12 Go ahead.

13 THE WITNESS: I could have, depending on how

14 he asked the question and what the context of the question

15 was.

16 BY MR. RICHES:

17 Q. But you're testifying here today that you do not

18 believe that there would be higher costs, if paid release

19 time were eliminated, to the City?

20 MR. DORAN: Object to form and foundation.

21 Go ahead.

22 THE WITNESS: Well, again, it's a broad --

23 it's a broad -- it's a broad brush, right? So supposing

24 across the City without people being represented in an

25 efficient way, is there a cost to that? There could be

10:03:31-10:04:22 Page 57

1 based on how employees feel about the workplace. Would we

2 have to have more HR people running around trying to

3 manage this without that? That could be.

4 BY MR. RICHES:

5 Q. Let me ask you a little bit more concretely,

6 then, rather than what could be. In the 2014 to 2016 MOU

7 when paid release time was eliminated, it's your testimony

8 that the City did not experience higher costs as a result

9 of eliminating that paid release time. Isn't that

10 correct?

11 MR. DORAN: Object to form, foundation.

12 Go ahead.

13 THE WITNESS: Right. As I said, I'm not

14 aware of a direct line between that and higher costs.

15 BY MR. RICHES:

16 Q. And is it also your testimony that when paid

17 release time was eliminated in the 2014 to 2016 MOU, the

18 City did not use that money to replicate the benefits of

19 release time through some other means?

20 MR. DORAN: Object to form and foundation.

21 Go ahead.

22 THE WITNESS: Right. Because we didn't have

23 the money. We still had those employees. They were still

24 performing important tasks that they had to do to

25 represent employees and to serve on these management-labor

10:04:36-10:05:18 Page 58

1 committees, so there wasn't any money freed up for that.
 2 There was another way of accounting for it, but they were
 3 still providing that service that was very important.
 4 BY MR. RICHES:
 5 Q. So it's fair to say that the City was able to
 6 come up with an alternative means to serve the purported
 7 benefits of release time through the donated bank of
 8 hours?
 9 MR. DORAN: Object to form and foundation.
 10 Go ahead.
 11 THE WITNESS: Based on the MOU, we made it
 12 work.
 13 BY MR. RICHES:
 14 Q. Is it part of your responsibilities as the city
 15 manager to ensure good labor relations between the City
 16 and Unit 2?
 17 MR. DORAN: Object to form.
 18 Go ahead.
 19 THE WITNESS: Yes. It's -- Yes.
 20 BY MR. RICHES:
 21 Q. What factors would you evaluate to determine
 22 whether labor relations are in a good state?
 23 MR. DORAN: Object to form.
 24 Go ahead.
 25 THE WITNESS: So it's that we're able to

10:05:47-10:06:41 Page 59

1 talk through issues that we don't have excessive
 2 grievances that are taking time away from providing
 3 services; that, you know, I have an ongoing civil and
 4 professional relationship with the leadership of Unit 2;
 5 and that on the -- on the shop floor or in the department
 6 head level, that there's discussion happening, relations
 7 happening that keep things going smoothly that I'm not
 8 responding to -- excuse me -- I'm not responding to, you
 9 know, putting out fires regularly with that unit. And I'm
 10 not.
 11 BY MR. RICHES:
 12 Q. Is there anything else that you would -- that you
 13 would believe is a good indicator of positive labor
 14 relations between the City and Unit 2?
 15 MR. DORAN: Object to the form, foundation.
 16 Go ahead.
 17 THE WITNESS: Nothing further to add to the
 18 question, no.
 19 BY MR. RICHES:
 20 Q. So if I understand your testimony, it's the
 21 ability to talk through issues between the City and
 22 Unit 2. Is that correct?
 23 MR. DORAN: Object to the form.
 24 Go ahead.
 25 THE WITNESS: That's one part of it, yes.

10:06:53-10:07:54 Page 60

1 BY MR. RICHES:
 2 Q. Is it also correct that more grievances might be
 3 an indicator of poor labor relations -- or excessive
 4 grievances, as you indicated?
 5 MR. DORAN: Object to the form.
 6 Go ahead.
 7 THE WITNESS: That's an interesting
 8 question. I mean, in some cases more is worse, but in
 9 some cases more is more direct and honest conversations.
 10 It's about being able to resolve them in ways that make --
 11 resolve them in ways that result in ongoing work
 12 happening. So I wouldn't go directly to more is bad.
 13 It's more about the tenor of them and how many of them are
 14 getting resolved at what level.
 15 BY MR. RICHES:
 16 Q. And that's what you were referring to when you
 17 said excessive grievances, the tenor and how many are
 18 being resolved at what level?
 19 MR. DORAN: Object to form.
 20 Go ahead.
 21 THE WITNESS: Yes.
 22 BY MR. RICHES:
 23 Q. And then you also indicated that civic and
 24 professional relationships between the City and labor
 25 leaders of Unit 2 is another good indicator of good labor

10:08:08-10:22:38 Page 61

1 relations. Is that correct?
 2 MR. DORAN: Object to form.
 3 Go ahead.
 4 THE WITNESS: I think I said "civil," not
 5 "civic." But yes.
 6 BY MR. RICHES:
 7 Q. That makes more sense. Got it.
 8 To your knowledge, were labor relations
 9 between the City and Unit 2 impaired during the course of
 10 the 2014 to 2016 MOU?
 11 MR. DORAN: Object to the form.
 12 Go ahead.
 13 THE WITNESS: No, I don't have a sense that
 14 they were.
 15 MR. RICHES: We're right at about an hour
 16 and some change. Now might be a good time for a break if
 17 that works for everybody.
 18 MR. DORAN: Works for us.
 19 (A recess ensued.)
 20 BY MR. RICHES:
 21 Q. All right. Mr. Zuercher, you testified
 22 previously that the City of Phoenix has contracts with
 23 five separate labor organizations. Is that correct?
 24 MR. DORAN: Object to form.
 25 Go ahead.

<p>10:31:42-10:32:26 Page 70</p> <p>1 THE WITNESS: Correct. 2 BY MR. RICHES: 3 Q. In the current contract between the City and the 4 firefighters union, there is no City-funded release time, 5 correct? 6 MR. DORAN: Object to form. 7 Go ahead. 8 THE WITNESS: Correct. 9 BY MR. RICHES: 10 Q. Has the City experienced higher costs from 11 eliminating paid release time as is reflected in the 12 current contract? 13 MR. DORAN: Object to form, foundation. 14 Go ahead. 15 THE WITNESS: Not that I'm aware of, no. 16 BY MR. RICHES: 17 Q. Has the City redirected any possible cost savings 18 from release time to make up for the benefits provided -- 19 that were previously provided by paid release time? 20 MR. DORAN: Object to form and foundation. 21 Go ahead. 22 THE WITNESS: Well, I'm not sure that we 23 realized cost savings in dollars that we can spend. So 24 I'm not aware of there being dollars freed up that we 25 spent somewhere else.</p>	<p>10:33:27-10:34:21 Page 72</p> <p>1 between the City and its firefighters union from the 2 previous MOU to this MOU, correct? 3 MR. DORAN: Same objections. 4 Go ahead. 5 THE WITNESS: I have not seen a decline. 6 BY MR. RICHES: 7 Q. What about labor relations comparing Unit 2 to 8 the firefighters union? Are labor relations better with 9 Unit 2 than they are with the firefighters union? 10 MR. DORAN: Object to form and foundation. 11 Go ahead. 12 THE WITNESS: I don't think it's -- Well, 13 as I said earlier, the difference in labor units are 14 distinct, and so the issues you deal with are distinctly 15 different and the relationships are different because 16 people are different. So there's not the same leadership 17 in Unit 2 as in Unit 5 as in Unit 4, so all those 18 relationships are different, and I'm not going to 19 characterize one as better or worse than another. They're 20 different. 21 BY MR. RICHES: 22 Q. You're not able to do that? 23 MR. DORAN: Same objections. 24 Go ahead. 25 THE WITNESS: No.</p>
<p>10:32:35-10:33:18 Page 71</p> <p>1 BY MR. RICHES: 2 Q. I understand. 3 So it's your testimony that the City has not 4 realized any cost savings from having eliminated paid 5 release time with the firefighters union? 6 MR. DORAN: Object to form and foundation. 7 Go ahead. 8 THE WITNESS: I don't think that's what I 9 said. I don't know. 10 BY MR. RICHES: 11 Q. And you testified earlier that part of your 12 duties as city manager is to ensure good labor relations 13 between the City and its labor organizations, correct? 14 MR. DORAN: Object to the form. 15 Go ahead. 16 THE WITNESS: Correct. 17 BY MR. RICHES: 18 Q. To your knowledge, are labor relations between 19 the City and the firefighters union under the 2019-2021 20 MOU worse than they were under the previous MOU? 21 MR. DORAN: Object to form and foundation. 22 Go ahead. 23 THE WITNESS: No. 24 BY MR. RICHES: 25 Q. You have not seen any decline in labor relations</p>	<p>10:34:42-10:35:51 Page 73</p> <p>1 BY MR. RICHES: 2 Q. Could you turn back to Exhibit 2? 3 A. Yes. 4 Q. And this is the current MOU between the City and 5 Unit 2, correct? 6 A. Yes, 2019-2021. 7 Q. Can you flip ahead to page 6? 8 A. Okay. 9 Q. Do you see the last full sentence in Subsection A 10 titled "Union Release," the sentence beginning "The cost 11 to the City"?" 12 A. Yes. 13 Q. Would you mind reading that? 14 A. "The cost to the City for these release positions 15 and release hours, including all benefits, has been 16 charged as part of the total compensation detailed in this 17 agreement." 18 Q. Can you explain what that means? 19 A. Sure. 20 MR. DORAN: Object to form and foundation. 21 Go ahead. 22 THE WITNESS: Sure. So we -- It's our 23 practice to put -- to assign dollar figures to concrete 24 things in the MOUs to demonstrate the value of the 25 negotiated contract with the members. So it's a way that</p>

10:36:16-10:37:00 Page 74

1 we can stack things up into a final cost. Of course, they
 2 have different levels of concrete dollars in our hands or
 3 in our pockets, but it's a way to try to, over the broad
 4 contract, assign a value.
 5 BY MR. RICHES:
 6 Q. And did you assign a value for the release time
 7 positions and release time hours, including all benefits,
 8 in this MOU?
 9 MR. DORAN: Object to form and foundation.
 10 Go ahead.
 11 THE WITNESS: I believe one of the exhibits
 12 identified that as about \$499,000 per year.
 13 BY MR. RICHES:
 14 Q. You testified earlier that the purpose of the MOU
 15 was to benefit all the unit employees. Is that correct?
 16 MR. DORAN: Object to form.
 17 Go ahead.
 18 THE WITNESS: Correct.
 19 BY MR. RICHES:
 20 Q. And here the City spends about a million dollars
 21 on release time as part of total compensation in the MOU.
 22 Is that correct?
 23 MR. DORAN: Object to form.
 24 Go ahead.
 25 THE WITNESS: Correct. Over the two-year

10:38:14-10:38:54 Page 76

1 BY MR. RICHES:
 2 Q. If the value of that time were eliminated, would
 3 you expect its value to be paid as a benefit to the
 4 entirety of Unit 2?
 5 MR. DORAN: Object to form and foundation.
 6 Go ahead.
 7 THE WITNESS: Not necessarily. And that's a
 8 decision the council would make. But it would not
 9 necessarily be that direct.
 10 BY MR. RICHES:
 11 Q. Would that be a possibility?
 12 MR. DORAN: Object to form and foundation.
 13 Go ahead.
 14 THE WITNESS: It could be a lot of things.
 15 BY MR. RICHES:
 16 Q. Let me just ask you, what would you expect to
 17 happen if paid release time were eliminated by a court
 18 order, for example, in this MOU?
 19 MR. DORAN: Object to form and foundation.
 20 Go ahead.
 21 THE WITNESS: I'd expect we would have to
 22 sit down with the labor group in question, covered by the
 23 court order, and we would have to negotiate how those
 24 duties that we need are accomplished.
 25 ///

10:37:11-10:37:44 Page 75

1 period.
 2 BY MR. RICHES:
 3 Q. And is it also correct that you testified that
 4 release time is a benefit to all of Unit 2 and not just to
 5 Local 2384?
 6 MR. DORAN: Object to form.
 7 Go ahead.
 8 THE WITNESS: Correct.
 9 BY MR. RICHES:
 10 Q. Once this agreement is signed, total compensation
 11 under the agreement is fixed for Unit 2, correct?
 12 MR. DORAN: Object to form.
 13 Go ahead.
 14 THE WITNESS: Correct.
 15 BY MR. RICHES:
 16 Q. So if the City is spending a million dollars on
 17 the release time benefits, are other forms of compensation
 18 to Unit 2 reduced by that amount once total compensation
 19 is fixed?
 20 MR. DORAN: Object to form and foundation.
 21 Go ahead.
 22 THE WITNESS: Not necessarily because
 23 it's -- we're talking about value of time and cash money,
 24 and this is assigning value to time.
 25 ///

10:39:23-10:40:14 Page 77

1 BY MR. RICHES:
 2 Q. Would you expect that the value of release time
 3 as paid for through time would be reallocated to all
 4 Unit 2 employees?
 5 MR. DORAN: Object to form and foundation.
 6 Go ahead.
 7 THE WITNESS: Not necessarily. Because
 8 first thing we have to do is to make sure that we're
 9 covering what the ordinance requires us to do, which is to
 10 provide representation to people, to provide negotiation
 11 for members, and then the labor-management work that we do
 12 together, we have to provide for those things to happen.
 13 BY MR. RICHES:
 14 Q. Let me ask you about a more specific
 15 circumstance. We've already had an opportunity to discuss
 16 it a little bit. You testified earlier that paid release
 17 time for Unit 2 was eliminated in the 2014-2016 MOU,
 18 correct?
 19 MR. DORAN: Object to the form.
 20 Go ahead.
 21 THE WITNESS: In that specific manner, yes.
 22 But the work still got done.
 23 BY MR. RICHES:
 24 Q. And you testified that the City did not
 25 experience a cost increase as a result of the loss of paid

<p>10:49:20-10:50:08 Page 86</p> <p>1 certain benefits that are within an MOU? 2 MR. DORAN: Object to form and foundation. 3 Go ahead. 4 THE WITNESS: Yes. 5 BY MR. RICHES: 6 Q. Is it correct to say that one of those benefits 7 is paid release time? 8 MR. DORAN: Object to form and foundation. 9 THE WITNESS: Yes. 10 BY MR. RICHES: 11 Q. And if paid release time is not included as a 12 negotiated benefit in an MOU, does that mean necessarily 13 that higher wages and benefits will be provided for not 14 having provided that benefit? 15 MR. DORAN: Object to form and foundation. 16 Go ahead. 17 THE WITNESS: No, it does not necessarily 18 mean that. 19 BY MR. RICHES: 20 Q. So are you disagreeing with what you have told 21 Mr. Flatten when he interviewed you at the time of this 22 story? 23 MR. DORAN: Object to form and foundation. 24 THE WITNESS: I'm telling you I don't -- 25 What he's saying that I said and how he's characterized</p>	<p>10:51:47-10:52:44 Page 88</p> <p>1 does not cost the City any additional money. Is that 2 correct? 3 MR. DORAN: Object to form, foundation. 4 Go ahead. 5 THE WITNESS: The elimination does not cost 6 the City money? As best as I can decipher that, no. 7 BY MR. RICHES: 8 Q. Do you know who Lori Steward is? 9 A. Yes. 10 Q. Who is she? 11 A. Well, in this context, Lori was our labor 12 relations administrator, so her job was as the lead 13 negotiator for the City. 14 Q. What period of time was she the labor relations 15 administrator? 16 MR. DORAN: Objection. Foundation. 17 Go ahead. 18 THE WITNESS: I don't know. It was -- She 19 hasn't been with us for quite a while. I don't remember 20 when she left the City. 21 BY MR. RICHES: 22 Q. Do you recall Ms. Steward testifying during the 23 Cheatham litigation? 24 A. No. 25 MR. DORAN: Objection. Foundation.</p>
<p>10:50:23-10:51:38 Page 87</p> <p>1 it, I don't understand the context of it. I can't recall 2 it from 10 years ago. It doesn't make sense to me as it 3 is written. 4 BY MR. RICHES: 5 Q. It also looks like you had indicated -- or he 6 reported that you indicated that paid release time does 7 not end up costing the City anything extra. Do you know 8 what that means? 9 MR. DORAN: Object to form and foundation. 10 Go ahead. 11 THE WITNESS: Yes, I think as we discussed 12 earlier, it's time, and so there's a value of time, but 13 there's not a cash payment of time. And so if the Unit 2 14 in this case -- we're talking about them -- if the Unit 2 15 folks are putting their time to better relationships, 16 representing their members, serving on task forces, and 17 then they don't do that, it's not like we suddenly have 18 cash in our hands. In fact, we have to find people to go 19 and do those things that was being done. So it's not a 20 cash transaction like that. 21 BY MR. RICHES: 22 Q. So it is your testimony that the paid release 23 time does not cost the City any additional -- I'm sorry. 24 Scratch that. 25 That the elimination of paid release time</p>	<p>10:52:58-10:53:44 Page 89</p> <p>1 BY MR. RICHES: 2 Q. Would you mind turning to Exhibit 3? 3 A. I'm sorry, Exhibit -- which? 4 Q. 3. 5 A. Okay. I've got it. 6 Q. Would Ms. Steward, in her capacity as the labor 7 relations administrator, have reported to the office of 8 the assistant city manager and the city manager during her 9 period of employment? 10 MR. DORAN: Object to form, foundation. 11 Go ahead. 12 THE WITNESS: Lori Steward never reported to 13 me. 14 BY MR. RICHES: 15 Q. What was your role with the City of Phoenix on 16 January 25th, 2013? 17 MR. DORAN: Object to the form, foundation. 18 Go ahead. 19 THE WITNESS: On January 25th, 2013, I was 20 assistant city manager. 21 BY MR. RICHES: 22 Q. And Ms. Steward didn't report to you in that 23 capacity? 24 MR. DORAN: Object to form. 25 Go ahead.</p>

11:03:49-11:04:52 Page 98

1 in effect subject to the following"?

2 A. Yes.

3 Q. Why is it necessary for the City to enter into an

4 agreement regarding potential litigation involving Unit 2

5 First Amendment rights?

6 MR. DORAN: Object to form and foundation.

7 Go ahead.

8 THE WITNESS: Well, I think because of the

9 experience of the last decade of there being lawsuits

10 filed over union -- over union activity at the City of

11 Phoenix and the City's union relationships -- and I think

12 this was about -- this would have been after the Supreme

13 Court ruled on Janus, if I'm not mistaken -- so,

14 therefore, given our experience of facing regular

15 lawsuits, we set up a provision to be able to deal with

16 that in an organized way. And this would be -- this would

17 reflect that.

18 BY MR. RICHES:

19 Q. Was there a concern then at the City of Phoenix

20 that the U.S. Supreme Court's decision in Janus might

21 implicate the First Amendment rights of city employees?

22 MR. DORAN: Object to form, foundation.

23 Also, Ed, to the extent that it requires you

24 to divulge attorney-client-privileged information, I

25 instruct you not to answer. You can answer otherwise,

11:05:03-11:06:07 Page 99

1 though.

2 THE WITNESS: I think that gets into our

3 attorney-client-privileged conversation.

4 BY MR. RICHES:

5 Q. The second to last sentence in this agreement

6 indicates that "The City agrees it will act to preserve

7 the overall value and benefits of the labor agreement

8 between the Parties in both of the above processes unless

9 a Court Order prevents it from doing so." Do you know

10 what "preserve the overall value and benefits of the labor

11 agreement between the Parties" means?

12 MR. DORAN: Object to form and foundation.

13 Go ahead.

14 THE WITNESS: Sure. Again, so there is

15 value to time granted for representing employees,

16 labor-management conversations and dialogue, and serving

17 on city task forces, interview panels, and those sorts of

18 things, so we wanted to recognize that there's a value of

19 time invested in our relations. And we were going to do

20 what we could to preserve that value of that time

21 invested.

22 BY MR. RICHES:

23 Q. What would that mean to do what you could to

24 preserve the value of that time?

25 MR. DORAN: Object to form and foundation.

11:06:22-11:07:16 Page 100

1 Go ahead.

2 THE WITNESS: It could be anything, but it

3 relates to, you know, the fact that Unit 2 employees have

4 the right to representation. It's better for the City for

5 Unit 2 employees to be represented on the health care task

6 force when we're talking about how we might change their

7 health care benefits in a way that makes them happier to

8 be a city employee rather than more upset. So we try to

9 find a way that we're going to continue to have Unit 2

10 employees represented as they're required to under our

11 ordinance and we have labor-management conversations where

12 there's time for labor to be present in those

13 conversations and to be ready for them.

14 BY MR. RICHES:

15 Q. Is part of preserving the value -- the overall

16 value and benefits of the labor agreement -- would that be

17 preserving the value of the time for release time as an

18 additional benefit to the entire Unit 2?

19 MR. DORAN: Object to form and foundation.

20 Go ahead.

21 THE WITNESS: Yeah, it's preserving the time

22 invested and spent by employees representing other

23 employees in those labor-management conversations as well,

24 yes.

25 ///

11:07:44-11:08:54 Page 101

1 BY MR. RICHES:

2 Q. If that time benefit was eliminated, would the

3 value of that time be redirected in the form of additional

4 wages and benefits to Unit 2?

5 MR. DORAN: Object to form and foundation.

6 Go ahead.

7 THE WITNESS: No. We would -- we would have

8 to find a way to get that time invested in the outcome.

9 BY MR. RICHES:

10 Q. How would you go about doing that?

11 MR. DORAN: Object to form and foundation.

12 Go ahead.

13 THE WITNESS: I think this lays out that we

14 would negotiate that with the labor group. But the

15 ultimate result is that we need there to be representation

16 for employees as laid out in the labor ordinance. We need

17 input of employees, through their representatives, on

18 things like health care, interview panels, selections,

19 those sorts of things. And we need input of employees

20 when we're talking about making potential workplace

21 changes or shift changes or that sort of thing.

22 BY MR. RICHES:

23 Q. Would you need the union to engage in political

24 activities on behalf of the union?

25 MR. DORAN: Object to form and foundation.

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARK GILMORE; and MARK
HARDER,

Plaintiffs,

v.

KATE GALLEGO, in her official
capacity as Mayor of the City of Phoenix,
ED ZUERCHER in his official capacity
as City Manager of the City of Phoenix;
and CITY OF PHOENIX,

Defendants,

And

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

Intervenor Defendant.

Case No. CV2019-009033

THE CITY DEFENDANTS'

**(1) RESPONSE TO PLAINTIFFS'
SEPARATE STATEMENT OF
FACTS IN SUPPORT OF MOTIONS
FOR SUMMARY JUDGMENT NOS.
1-4; AND**

**(2) CONTROVERTING
STATEMENT OF FACTS IN
OPPOSITION TO PLAINTIFFS'
MOTIONS FOR SUMMARY
JUDGMENT NOS. 1-4**

(Assigned to Hon. Daniel G. Martin)

Pursuant to Rule 56(c)(3)(B), the City Defendants submit this (1) Response to Plaintiffs' Separate Statement of Facts in Support of Motions for Summary Judgment Nos. 1-4, and (2) Controverting Statement of Facts in Opposition to Plaintiffs' Motions for Summary Judgment Nos. 1-4, which preclude summary judgment in Plaintiffs' favor.

This response and controverting statement of facts ("City CSOF") is supported by the City Defendants' Motion for Summary Judgment ("City MSJ"), the City Defendants' and Union's Joint Statement of Facts ("Joint SOF"), and the City Defendants' Motion to Exclude the Opinions and Testimony of Plaintiffs' Expert Robert Brown ("City's Motion to Exclude"), all of which are incorporated by reference.

Response to Plaintiffs' Separate Statement of Facts

1. City Defendants' Response to PSOF 1

a. Undisputed.

2. City Defendants' Response to PSOF 2

a. Undisputed.

3. City Defendants' Response to PSOF 3

a. Undisputed.

4. City Defendants' Response to PSOF 4

a. Undisputed.

5. City Defendants' Response to PSOF 5

a. Disputed in part. Defendant agrees Plaintiffs are not members of the Union and do not pay Union dues. However, Plaintiffs do not fund release time. Joint SOF ¶¶ 31, 79-83, 86-96, 103-104, 112-130, 139-146; City CSOF ¶¶ 23, 26, 39, 40, 42, 43, 46, 47, 53-54.

6. City Defendants' Response to PSOF 6

a. Undisputed, subject to clarification. The Union is the “authorized representative” for Unit II and serves as Unit II’s exclusive meet and confer agent pursuant to and in accordance with the City’s Meet & Confer Ordinance. Joint SOF ¶ 9; City Code § 2-210(2).

7. City Defendants' Response to PSOF 7

a. Objection, relevance.
b. Undisputed, subject to clarification. The number of Union members within Unit II is subject to fluctuation.

8. City Defendants' Response to PSOF 8

a. Objection, relevance and PSOF, Ex. 34 lacks foundation.
b. Undisputed.

9. City Defendants' Response to PSOF 9

a. Objection, PSOF, Ex. 9 lack foundation and the assertion is unsupported

1 by the evidence cited. PSOF, Ex. 9 does not establish that the Union is a
2 “private political organization.”

3 b. Disputed in part. AFSCME is a “labor organization” or “employee
4 organization” that exists to advocate for all workers it represents, not
5 merely its members. Joint SOF ¶¶ 41-44, 49-53, 61-63, 99, 131-135, 154;
6 City Code §§ 2-209, 2-210(2), 2-214.

7 **10. City Defendants’ Response to PSOF 10**

8 a. Objection, assertion unsupported by the evidence cited. The Union’s
9 Motion to Intervene details numerous reasons why intervention was
10 necessary, none of which were to “ensure it continued to receive ‘release
11 time’ payments from the City of Phoenix for Unit 2 employees.”

12 b. Disputed. The Union intervened, in part, to protect its interest in enforcing
13 the terms of the 2019-2021 MOU and to protect its interests in fulfilling its
14 obligations under the MOU and the City’s Meet & Confer Ordinance,
15 including but not limited to its release time provisions. Union’s Motion to
16 Intervene at 8:3-22, 9:26-10:1, 10:22-11:6; Joint SOF ¶¶ 12-14, 19-28.

17 **11. City Defendants’ Response to PSOF 11**

18 a. Undisputed, subject to clarification. When a union is designated as the
19 exclusive representative, it has a duty to fairly represent all employees in
20 the bargaining unit, not merely those who voted affirmatively to be
21 represented by the Union. City Code §§ 2-209, 2-210(2), 2-212(A), 2-214,
22 2-217(E), 2-218; Joint SOF ¶¶ 9-11, 24-27.

23 **12. City Defendants’ Response to PSOF 12**

24 a. Undisputed, subject to clarification. It is not clear what Plaintiffs’ mean
25 by “very broad powers,” but the Union is “authorized to participate in the
26 meet and confer process on behalf of [Unit II] for the purpose of meeting
27 and conferring on wages, hours and working conditions.” City Code § 2-
28 210(2).

- 1 **13. City Defendants' Response to PSOF 13**
- 2 a. Undisputed.
- 3 **14. City Defendants' Response to PSOF 14**
- 4 a. Undisputed.
- 5 **15. City Defendants' Response to PSOF 15**
- 6 a. Objection, relevance, assertion unsupported by the evidence, and the cited
- 7 deposition testimony lacks foundation to establish the assertion. Neither
- 8 witness testified that there has not been a vote to certify or decertify the
- 9 Union since 1976, and neither witness established knowledge of such
- 10 information.
- 11 b. Undisputed, subject to the foregoing objections.
- 12 **16. City Defendants' Response to PSOF 16**
- 13 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
- 14 Frost merely stated that he could not identify any particular employees
- 15 who voted to ratify the Union in 1976 and are still working in Unit II.
- 16 b. Disputed. The City Defendants are without sufficient knowledge or
- 17 information to confirm or deny the assertions made. PSOF Ex. 6 at 28:14–
- 18 29:9.
- 19 **17. City Defendants' Response to PSOF 17**
- 20 a. Undisputed.
- 21 **18. City Defendants' Response to PSOF 18**
- 22 a. Undisputed, subject to clarification. The designated agent is the Union,
- 23 which may act through representatives, and is not merely one individual.
- 24 PSOF Phoenix City Code §§ 2-217(E), 2-218(A), (B); Joint SOF ¶¶ 15-16,
- 25 23-24.
- 26 **19. City Defendants' Response to PSOF 19**
- 27 a. Objection, relevance and assertion unsupported by the evidence. The City
- 28 Code does not establish that the City will be charged with an unfair labor

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practice.

b. Undisputed, subject to clarification. The City may not engage in direct dealing with employees over the terms and conditions of employment governed by the MOU. PSOF City Code § 2-218(A); Joint SOF ¶¶ 15-16, 23-24.

20. City Defendants’ Response to PSOF 20

a. Undisputed, subject to clarification. The Union engages in collective negotiations with the objective of achieving desirable terms and conditions of employment for all Unit II employees, regardless of Union membership. PSOF Phoenix City Code §§ 2-210(2), 2-218(A), City Charter, Ch. III, § 9(A); Joint SOF ¶¶ 15-16, 23-24.

21. City Defendants’ Response to PSOF 21

a. Undisputed, subject to clarification. Plaintiffs are not forced to subsidize the Union. Joint SOF ¶¶ 82, 86-87, 90-94, 96-97, 117, 120, 125, 127-129, 142-143; City CSOF ¶¶ 23, 26, 39, 40, 42, 43, 46, 47, 53-54.

22. City Defendants’ Response to PSOF 22

a. Undisputed.

23. City Defendants’ Response to PSOF 23

a. Undisputed.

24. City Defendants’ Response to PSOF 24

a. Objection, assertion unsupported by the evidence cited. Mr. Frost and Mr. Ayala merely stated that Plaintiffs are bound to the MOU, they said nothing of funding release time.
b. Disputed. Plaintiffs do not fund release time. PSOF Ex. 3 at 15:9-16:1; PSOF Ex. 6 at 36:9-22; PSOF Ex. 11 at 20:9–21:18; Joint SOF ¶¶ 15, 31, 57, 79-80, 82, 86-88, 90-94, 96-97, 117, 120, 125, 127-129, 142-143; City CSOF ¶¶ 23, 26, 39, 40, 42, 43, 46, 47, 53-54.

25. City Defendants’ Response to PSOF 25

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a. Undisputed.

26. City Defendants’ Response to PSOF 26

a. Undisputed.

27. City Defendants’ Response to PSOF 27

a. Objection, argumentative and assertion unsupported by the evidence cited.

The MOU speaks to the terms of release time use and says nothing about release time exclusively benefiting the Union. There is no evidence to support the assertion that release time exclusively benefits the Union, not the public. The bank of release time does not equate to two full-time positions, and there is a \$14,000 reimbursable allowance for specific training and related activities rather than a “direct payment” to the Union.

b. Disputed in part. The bank of release time hours does not equate to two full-time positions, and there is a \$14,000 reimbursable allowance for specific training and related activities rather than a “direct payment” to the Union. Release time benefits the City, Unit II employees, and the public in general, and fulltime release time employees do not “devote their entire time working for the Union instead of the public.” PSOF Ex. 2 §§ 1-3(A)(1), (3), 6-7(A); Joint SOF ¶¶ 13-66; City CSOF ¶¶ 22, 25, 28, 29, 30, 31, 44, 45.

28. City Defendants’ Response to PSOF 28

a. Undisputed, subject to clarification. When employees use release time, they receive their regular rate of compensation, whether they are paid salary or hourly. Joint SOF ¶¶ 29-31.

29. City Defendants’ Response to PSOF 29

a. Undisputed, subject to clarification. The annual total cost to the City to fund the release time provisions under the 2019-2021 MOU is \$499,000 per year. Joint SOF ¶ 102.

30. City Defendants’ Response to PSOF 30

- 1 a. Objection, relevance and foundation. Whether the City receives a “direct
2 cash return” is irrelevant to any issue in this case, the term is unclear and
3 ambiguous, and the cited deposition testimony lacks foundation for the
4 assertion.
- 5 b. Disputed in part. It is unclear what Plaintiffs mean by a “direct cash
6 return,” but the City receives monetary and other benefits from release
7 time. Joint SOF ¶¶ 45, 55, 60, 64-65; *see also id.* ¶¶ 33-38, 40-44, 46-54,
8 56-59, 61-63, 103-104; PSOF Ex. 6 at 52:9-53:19, 54:14-55:15, 77:20-
9 78:15, 79:13-25, 81:25-83:13.

10 **31. City Defendants’ Response to PSOF 31**

- 11 a. Objection, assertion is vague and ambiguous. The evidence cited details
12 the cost of the MOU, termed “total compensation,” not the forms of
13 compensation available to all Unit II employees.
- 14 b. Disputed in part. The cost of the MOU, including release time, is
15 represented by the financial figure termed “total compensation.” Total
16 compensation is a term of art that refers to the sum of all economic items
17 in an MOU – i.e., the total cost to the City to pay for an MOU. Total
18 compensation does not refer to the compensation of individual employees,
19 and Plaintiffs do not have a personal interest in total compensation beyond
20 their personal wages and benefits. PSOF Ex. 2 § 1-3(A); Joint SOF ¶¶ 67-
21 75, 79, 84, 87-90.

22 **32. City Defendants’ Response to PSOF 32**

- 23 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
24 Zuercher did not state that a replacement worker must be hired to perform
25 the duties of workers on release time.
- 26 b. Disputed in part. The City pays the salary and benefits of each person on
27 release time as well as the salary and benefits of other Unit II employees.
28 There is no evidence the City hires replacement workers to “perform the

1 duties” of the worker on release time. PSOF Ex. 3 at 104:2–18; Joint SOF
2 ¶ 48.

3 **33. City Defendants’ Response to PSOF 33**

4 a. Objection, assertion unsupported by the evidence cited. Mr. Frost testified
5 the money *could* be redirected to Unit II employees, but that determination
6 would be made by the City Council.

7 b. Disputed. The City Council has authority to redirect release time funds,
8 and it is not guaranteed the City Council would redirect those funds to
9 Unit II employees. PSOF Ex. 6 at 148:23–150:7; Joint SOF ¶¶ 82-90, 108-
10 118, 120, 122-124. Plaintiffs concede the City could redirect the funds to
11 other purposes if release time were eliminated. Joint SOF ¶¶ 113-120,
12 125-127.

13 **34. City Defendants’ Response to PSOF 34**

14 a. Objection, relevance and assertion unsupported by the evidence cited. The
15 testimony does not support the assertion that Mr. Ayala does not work in
16 his capacity of a Senior Utility Operator because he is on release time.

17 b. Disputed in part. Mr. Ayala does not perform the functions of a Senior
18 Utility Operator because he is currently serving as the Union President.
19 PSOF Ex. 11 at 7:14-20, 9:11-15, 23:18-19.

20 **35. City Defendants’ Response to PSOF 35**

21 a. Undisputed.

22 **36. City Defendants’ Response to PSOF 36**

23 a. Objection, relevance and assertion not supported by the evidence cited.
24 Mr. Ayala stated that while *he* was serving as Union Recording Secretary,
25 *he* was on release time.

26 b. Undisputed, subject to the foregoing objections and to clarification. Mr.
27 Ayala stated that while *he* was serving as Union Recording Secretary, *he*
28 was on release time. PSOF Ex. 11 at 9:11-15, 9:16-25, 25:8-12.

1 **37. City Defendants' Response to PSOF 37**

- 2 a. Objection, relevance.
3 b. Undisputed, subject to the foregoing objection.

4 **38. City Defendants' Response to PSOF 38**

- 5 a. Objection, assertion unsupported by the evidence cited. The MOU states:
6 "Four full-time release positions, designated by the Executive Board of the
7 Union, shall each be allowed up to 2,080 work hours per M.O.U. year,"
8 not that the Union President must be allowed this time.
9 b. Undisputed, subject to the foregoing objection.

10 **39. City Defendants' Response to PSOF 39**

- 11 a. Objection, assertion unsupported by the evidence cited. Mr. Ayala stated
12 that he is staffed in a full-time release position, he did not describe how he
13 devotes all of his time and he did not specify whether his activities only
14 benefit AFSCME.
15 b. Disputed in part. Mr. Ayala has not explained how he devotes all of his
16 time and which entities are benefitted from his work. PSOF Ex. 11 at
17 22:24–23: 19. Release time activities benefit the City, Unit II employees,
18 and the public. Joint SOF ¶¶ 16-17, 20-27, 29, 33-34, 36-38, 40-65.

19 **40. City Defendants' Response to PSOF 40**

- 20 a. Objection, assertion partially unsupported by the evidence. Unit II
21 employees are not generally engaged in "ordinary public-safety duties."
22 City Code § 2-212(A)(2)(b); Joint SOF ¶ 5.
23 b. Undisputed, subject to the foregoing objection.

24 **41. City Defendants' Response to PSOF 41**

- 25 a. Undisputed.

26 **42. City Defendants' Response to PSOF 42**

- 27 a. Objection, relevance and foundation.
28 b. Undisputed, subject to the foregoing objections.

1 **43. City Defendants' Response to PSOF 43**

2 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
3 Ayala explained that he works with City officials throughout his day, so he
4 does not “clock in or clock out” or file daily reports cataloging his
5 activities.

6 b. Disputed. Mr. Ayala meets with City officials throughout his day, so
7 oversight, supervision, and accountability are implicit in his activities.
8 PSOF Ex. 11 at 48:2–25; PSOF Ex. 3 at 37:16–24; PSOF Ex. 6 at 18:6–11.
9 Mr. Frost also testified that release time employees must follow the City’s
10 rules and regulations, but there are legal limitations on the City’s ability to
11 control release time. PSOF Ex. 6 at 61:5-23. Release time employees are
12 expected to perform activities that foster harmonious and cooperative labor
13 relations and further the Union’s obligations as Unit II’s meet and confer
14 representatives under the MOU and the City’s Meet & Confer Ordinance.
15 Joint SOF ¶¶ 29, 33-34, 36-38, 41-46, 54-55, 64-65. The MOU
16 specifically lists lawful activities that are expected to be performed on
17 release time, and release time employees are required to adhere to all City
18 policies and procedures. Joint SOF ¶¶ 36-39.

19 **44. City Defendants' Response to PSOF 44**

20 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
21 Ayala explained he is required to perform particular duties, such as attend
22 grievance meetings.

23 b. Disputed in part. While Mr. Ayala is not directed by the City with respect
24 to each individual task performed each day, he is expected to perform
25 certain duties and attend various meetings with the City. Mr. Ayala works
26 with City officials, so accountability is implicit in his duties. PSOF Ex. 11
27 at 41:21-42, 44:6-13, 48:2–25; 97:1-11; PSOF Ex. 3 at 37:16–24; PSOF
28 Ex. 6 at 18:6–11; *see also* Joint SOF ¶¶ 36-39.

1 **45. City Defendants' Response to PSOF 45**

- 2 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
3 Ayala explained that release time employees are required to adhere to all
4 City policies and procedures and that accountability is implicit in his
5 duties. PSOF Ex. 11 at 41:21-42, 44:6-13, 48:2-25, 97:1-11.
- 6 b. Disputed in part. Employees on release time must follow all City policies
7 and procedures, and Mr. Ayala testified that he is required to perform
8 certain tasks and that accountability is inherent in his duties. Joint SOF ¶¶
9 36, 39; PSOF Ex. 11 at 41:21-42, 44:6-13, 48:2-25, 97:1-11. Mr. Frost
10 also testified that release time employees must follow the City's rules and
11 regulations, but there are legal limitations on the City's ability to control
12 release time. PSOF Ex. 6 at 59:25-61:3, 61:5-23, 61:25-62:9, 63:16-23.

13 **46. City Defendants' Response to PSOF 46**

- 14 a. Objection, relevance and assertion unsupported by the evidence cited. The
15 City only answered that it does not control or direct activities of employees
16 on release time and employees on release time are not required to account
17 to the City for how release time is used.
- 18 b. Disputed in part. The City is aware of how release time is used when
19 employees on release time work with the City, whether that be through
20 meetings or collaborative projects. SOF ¶¶ 24, 26-27, 29, 36, 39; PSOF
21 Ex. 11 at 48:2-25; PSOF Ex. 3 at 37:16-24; PSOF Ex. 6 at 18:6-11.

22 **47. City Defendants' Response to PSOF 47**

- 23 a. Objection, relevance and assertion unsupported by the evidence cited, and
24 assumes facts not in evidence. Mr. Zuercher merely explained there is a
25 chain of command where all employees have supervisors.
- 26 b. Disputed. Mr. Zuercher did not testify that Mr. Ayala operates outside of a
27 chain of command. PSOF Ex. 3 at 32:4-25. Mr. Zuercher testified that
28 release time employees operate within a chain of command. *Id.*

1 **48. City Defendants' Response to PSOF 48**

- 2 a. Objection, relevance.
- 3 b. Disputed in part. Mr. Ayala meets with the City and City representatives
- 4 and reports to the City in that respect. He testified that he is required to
- 5 perform certain tasks and that accountability is inherent in his duties.
- 6 PSOF Ex. 11 at 41:21-42, 44:6-13, 48:2-25, 97:1-11; PSOF Ex. 3 at
- 7 37:16-24; PSOF Ex. 6 at 18:6-11. Mr. Frost also testified that release time
- 8 employees must follow the City's rules and regulations, but there are legal
- 9 limitations on the City's ability to control release time. PSOF Ex. 6 at
- 10 59:25-61:3, 61:5-23, 61:25-62:9, 63:16-23.

11 **49. City Defendants' Response to PSOF 49**

- 12 a. Objection, relevance and assertion unsupported by the evidence cited. The
- 13 testimony explained that it *could* lead to a PERB charge against the City.
- 14 b. Disputed in part. The City's mandate that the Union President provide an
- 15 accounting of his time *could* result in a PERB charge against the City.
- 16 PSOF Ex. 6 at 63:16-64:15.

17 **50. City Defendants' Response to PSOF 50**

- 18 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
- 19 Ayala merely stated that he has not received an official Performance
- 20 Management Evaluation since he became Union President.
- 21 b. Disputed in part. Mr. Ayala has not received an official Performance
- 22 Management Evaluation (PME) since becoming Union President. PSOF
- 23 Ex. 11 at 47:2-24; PSOF Ex. 6 at 62:11-63:14.

24 **51. City Defendants' Response to PSOF 51**

- 25 a. Objection, relevance.
- 26 b. Undisputed, subject to clarification and the foregoing objection. Top-
- 27 ranked supervisory employees do not report to direct supervisors. PSOF
- 28 Ex. 6 at 15:18-16:9.

- 1 **52. City Defendants' Response to PSOF 52**
- 2 a. Objection, relevance and the assertion is unsupported by the evidence
- 3 cited.
- 4 b. Disputed. Mr. Zuercher testified that release time employees have
- 5 supervisors within a chain of command. PSOF Ex. 3 at 32:4-18.
- 6 **53. City Defendants' Response to PSOF 53**
- 7 a. Objection, relevance and the assertion is unsupported by the evidence
- 8 cited.
- 9 b. Disputed Mr. Zuercher testified that release time employees have
- 10 supervisors within a chain of command. PSOF Ex. 3 at 32:4-18.
- 11 **54. City Defendants' Response to PSOF 54**
- 12 a. Objection, relevance.
- 13 b. Undisputed, subject to the foregoing objection.
- 14 **55. City Defendants' Response to PSOF 55**
- 15 a. Objection, relevance.
- 16 b. Disputed in part. Employees on release time must follow all City policies
- 17 and procedures. Joint SOF ¶¶ 36, 39. Mr. Frost also testified that release
- 18 time employees must follow the City's rules and regulations, but there are
- 19 legal limitations on the City's ability to control release time. PSOF Ex. 6
- 20 at 59:25-61:3, 61:5-23, 61:25-62:9, 63:16-23.
- 21 **56. City Defendants' Response to PSOF 56**
- 22 a. Objection, relevance.
- 23 b. Undisputed, subject to the foregoing objection.
- 24 **57. City Defendants' Response to PSOF 57**
- 25 a. Objection, relevance.
- 26 b. Undisputed, subject to the foregoing objection.
- 27 **58. City Defendants' Response to PSOF 58**
- 28 a. Objection, relevance.

1 b. Undisputed, subject to the foregoing objection.

2 **59. City Defendants' Response to PSOF 59**

3 a. Objection, relevance.

4 b. Undisputed, subject to clarification and the foregoing objection. The City
5 has no authority to remove Mr. Ayala from his position as Union
6 President. PSOF Ex. 6 at 65:14–66:14, 67:18–68:2.

7 **60. City Defendants' Response to PSOF 60**

8 a. Objection, relevance and the term “interfere” is vague and ambitious.

9 b. Undisputed, subject to the foregoing objections.

10 **61. City Defendants' Response to PSOF 61**

11 a. Objection, relevance and the assertion is vague and ambiguous.

12 b. Disputed. Release time is not used exclusively to support other labor
13 groups in other cities. Joint SOF ¶¶ 24-27, 33, 36-38, 50-54.

14 **62. City Defendants' Response to PSOF 62**

15 a. Objection, relevance, the assertion is vague and ambiguous, and assertion
16 unsupported by the evidence. Mr. Ayala merely stated that Tony
17 Navarrete, a state senator, used the Union hall at one point and that the
18 Union endorsed Mr. Navarrete.

19 b. Disputed. Release time is not used exclusively to support candidates for
20 political office. PSOF Ex. 11 at 113:22– 115:8; Joint SOF ¶¶ 29, 36-38,
21 44.

22 **63. City Defendants' Response to PSOF 63**

23 a. Objection, relevance, the cited exhibit lacks foundation, and assertion
24 unsupported by the evidence cited. The cited evidence merely states that
25 PEOPLE may support certain candidates.

26 b. Disputed. The cited exhibit does not does not establish that release time is
27 used to support individuals running for office or what the Union officials
28 know.

1 **64. City Defendants' Response to PSOF 64**

- 2 a. Objection, assertion unsupported by the evidence cited. The MOU requires
3 that release time may only be used for lawful purposes and employees on
4 release time must adhere to City policies and procedures.
- 5 b. Disputed. Release time may not be used for unlawful purposes and the
6 MOU sets forth examples of appropriate release time uses. Joint SOF ¶¶
7 24-27, 33, 36-39, 50-54. The Union also agreed to designate
8 representations to serve on various committees with the City and to fulfill
9 its obligations and duty of fair representation under the MOU and the
10 City's Meet & Confer Ordinance. *Id.* Employees on release time must
11 adhere to all City policies and procedures while on release time. PSOF
12 Ex. 2 § 1-3; Joint SOF ¶¶ 36, 39. Mr. Frost also testified that release time
13 employees must follow the City's rules and regulations, but there are legal
14 limitations on the City's ability to control release time. PSOF Ex. 6 at
15 59:25-61:3, 61:5-23, 61:25-62:9, 63:16-23

16 **65. City Defendants' Response to PSOF 65**

- 17 a. Objection. Assertion unsupported by the evidence cited. The City
18 witnesses only testified that they personally are unaware of any such
19 studies.
- 20 b. Disputed. The City are unaware of any such studies but cannot confirm or
21 deny whether such studies have been conducted. PSOF Ex. 3 at 26:5-10;
22 PSOF Ex. 6 at 54:5-11; PSOF Ex. 8 at 34:25-35:6. Mr. Frost testified that
23 it would be difficult to fully capture and analyze all of the benefits of
24 release time. PSOF Ex. 6 at 53:10-19.

25 **66. City Defendants' Response to PSOF 66**

- 26 a. Objection. Hearsay, and the assertion is vague and ambiguous because it
27 is not clear what is meant by the term "union speech." The assertion also
28 is argumentative and asserts legal conclusions in violation of Rule 56. The

exhibit cited lacks foundation and does not support the assertion

1
2 **67. City Defendants' Response to PSOF 67**

- 3 a. Objection, relevance.
4 b. Undisputed, subject to clarification and the foregoing objection. Union
5 leadership determines candidate support through extensive fact gathering,
6 not merely PEOPLE meetings. PSOF Ex. 11 at 110:9–111:6.

7 **68. City Defendants' Response to PSOF 68**

- 8 a. Objection, relevance and the cited exhibit lacks foundation.
9 b. Undisputed, subject to the foregoing objections.

10 **69. City Defendants' Response to PSOF 69**

- 11 a. Objection, relevance and assertion unsupported by the evidence cited. The
12 Answer merely states that the City admits release time under the MOU
13 *may be* used to engage in certain political activities.
14 b. Undisputed subject to clarification, and the foregoing objections. Release
15 time under the MOU may be used to engage in certain political activities.
16 PSOF Answer ¶ 18.

17 **70. City Defendants' Response to PSOF 70**

- 18 a. Objection, relevance and the cited exhibit lacks foundation.
19 b. Undisputed, subject to the foregoing objections.

20 **71. City Defendants' Response to PSOF 71**

- 21 a. Objection, relevance.
22 b. Undisputed, subject to the foregoing objection.

23 **72. City Defendants' Response to PSOF 72**

- 24 a. Objection, relevance.
25 b. Undisputed, subject to the foregoing objection..

26 **73. City Defendants' Response to PSOF 73**

- 27 a. Objection, relevance.
28 b. Undisputed, subject to the foregoing objection.

- 1 **74. City Defendants' Response to PSOF 74**
- 2 a. Objection, relevance.
- 3 b. Undisputed, subject to the foregoing objection.
- 4 **75. City Defendants' Response to PSOF 75**
- 5 a. Objection, relevance.
- 6 b. Undisputed, subject to the foregoing objection.
- 7 **76. City Defendants' Response to PSOF 76**
- 8 a. Objection, relevance and part of the assertion is unsupported by the
- 9 evidence.
- 10 b. Disputed in part, subject to the foregoing objection. The cited exhibits do
- 11 not demonstrate that Mr. Ayala attended all of the referenced calls and
- 12 meetings while on release time.
- 13 **77. City Defendants' Response to PSOF 77**
- 14 a. Objection, relevance.
- 15 b. Undisputed, subject to the foregoing objection.
- 16 **78. City Defendants' Response to PSOF 78**
- 17 a. Objection, relevance.
- 18 b. Undisputed, subject to the foregoing objection.
- 19 **79. City Defendants' Response to PSOF 79**
- 20 a. Objection, relevance.
- 21 b. Undisputed, subject to the foregoing objection.
- 22 **80. City Defendants' Response to PSOF 80**
- 23 a. Objection, relevance.
- 24 b. Undisputed, subject to the foregoing objection.
- 25 **81. City Defendants' Response to PSOF 81**
- 26 a. Objection, relevance and assertion unsupported by the evidence cited. The
- 27 cited evidence explains Mr. Ayala had one meeting with Ms. Stark on July
- 28 9, 2019.

1 b. Disputed. Mr. Ayala had one meeting with Ms. Stark on July 9, 2019.
2 PSOF Ex. 11 at 90:15–21; PSOF Ex. 15 at ID001361 (July 9, 2019).

3 **82. City Defendants’ Response to PSOF 82**

4 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
5 Ayala explained that the Union initially supported Ms. Stark’s candidacy.

6 b. Undisputed, subject to clarification and the foregoing objections. The
7 Union only initially supported Ms. Stark’s candidacy. PSOF Ex. 11 at
8 91:9–13.

9 **83. City Defendants’ Response to PSOF 83**

10 a. Objection, relevance and the cited exhibits lack foundation.

11 b. Undisputed, subject to the foregoing objections.

12 **84. City Defendants’ Response to PSOF 84**

13 a. Objection, relevance

14 b. Undisputed, subject to the foregoing objection.

15 **85. City Defendants’ Response to PSOF 85**

16 a. Objection, relevance

17 b. Undisputed, subject to the foregoing objection.

18 **86. City Defendants’ Response to PSOF 86**

19 a. Objection, relevance

20 b. Undisputed, subject to the foregoing objection.

21 **87. City Defendants’ Response to PSOF 87**

22 a. Objection, relevance

23 b. Undisputed, subject to the foregoing objection.

24 **88. City Defendants’ Response to PSOF 88**

25 a. Undisputed.

26 **89. City Defendants’ Response to PSOF 89**

27 a. Objection, assertion unsupported by the evidence cited. Mr. Ayala
28 explained the Executive Board determines which members will be on full-

1 time release time. Therefore, the Executive Board does not exclusively
2 determine how all release time is used.

- 3 b. Disputed. The Executive Board determines which members will be on full-
4 time release time, but the Executive Board does not dictate how the bank
5 of release time is used. The bank of release time may be used by many
6 different Unit II employees and for many different reasons. PSOF Ex. 11
7 at 50:20–25; Joint SOF ¶¶ 30, 36-38, 104.

8 **90. City Defendants’ Response to PSOF 90**

- 9 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
10 Ayala explained the Executive Board could determine what positions it
11 would or would not take regarding items before the City Counsel. The
12 term “items” is vague and ambiguous.
- 13 b. Undisputed, subject to clarification and the foregoing objections. The
14 Executive Board *sometimes* determines what positions it will and will not
15 take regarding items before the City Council. PSOF Ex. 11 at 89:19–25.

16 **91. City Defendants’ Response to PSOF 91**

- 17 a. Objection, relevance, the cited exhibit lacks foundation, and the assertion
18 is unsupported by the evidence cited. There is no evidence that this
19 activity was performed by employees on release time.
- 20 b. Disputed. There is no evidence that this activity was performed by
21 employees on release time.

22 **92. City Defendants’ Response to PSOF 92**

- 23 a. Objection, relevance.
- 24 b. Undisputed, subject to the foregoing objection.

25 **93. City Defendants’ Response to PSOF 93**

- 26 a. Objection, relevance
- 27 b. Undisputed, subject to the foregoing objection.

28 **94. City Defendants’ Response to PSOF 94**

- 1 a. Objection, relevance
- 2 b. Undisputed, subject to the foregoing objection.

3 **95. City Defendants' Response to PSOF 95**

- 4 a. Objection, relevance
- 5 b. Undisputed, subject to the foregoing objection.

6 **96. City Defendants' Response to PSOF 96**

- 7 a. Objection, relevance and the cited exhibit lacks foundation.
- 8 b. Undisputed, subject to the foregoing objections.

9 **97. City Defendants' Response to PSOF 97**

- 10 a. Objection, relevance and the cited exhibit lacks foundation.
- 11 b. Undisputed, subject to the foregoing objections.

12 **98. City Defendants' Response to PSOF 98**

- 13 a. Objection, relevance and the cited exhibit lacks foundation.
- 14 b. Undisputed, subject to the foregoing objections.

15 **99. City Defendants' Response to PSOF 99**

- 16 a. Objection, assertion unsupported by the evidence cited. The City answered
- 17 that release time may be used to lobby for or against legislation at the state
- 18 and local level.
- 19 b. Disputed in part. Release time *may* be used to lobby for or against
- 20 legislation at the state and local level. Release time is also used for many
- 21 other purposes. PSOF Answer ¶ 19; Joint SOF ¶¶ 27, 30, 33-38, 50, 54,
- 22 60-65, 104.

23 **100. City Defendants' Response to PSOF 100**

- 24 a. Objection, relevance.
- 25 b. Undisputed, subject to the foregoing objection.

26 **101. City Defendants' Response to PSOF 101**

- 27 a. Objection, relevance.
- 28 b. Undisputed, subject to the foregoing objection.

1 **102. City Defendants' Response to PSOF 102**

2 a. Undisputed.

3 **103. City Defendants' Response to PSOF 103**

4 a. Undisputed.

5 **104. City Defendants' Response to PSOF 104**

6 a. Undisputed, subject to clarification. Between November 2020 to January
7 2021, Mr. Ayala used roughly 80% of his release time to prepare for
8 negotiating the terms of the MOU. PSOF Ex. 11 at 74:11–17.

9 **105. City Defendants' Response to PSOF 105**

10 a. Undisputed, subject to clarification. Release time also is used for many
11 other purposes. Joint SOF ¶¶ 27, 30, 33-38, 50, 54, 60-65, 104.

12 **106. City Defendants' Response to PSOF 106**

13 a. Undisputed, subject to clarification. Release time is used by Union
14 members to engage in many activities, including recruitment of new
15 members to the Union. Release time can be used for many other purposes.
16 PSOF Answer ¶ 20; PSOF Ex. 11 at 67:3–68:24; Joint SOF ¶¶ 30, 33-38,
17 50, 54, 60-65, 104.

18 **107. City Defendants' Response to PSOF 107**

19 a. Objection, assertion unsupported by the evidence cited. The evidence cited
20 explains that release time may be used to engage in many activities,
21 including the filing and processing of grievances, as well as employee
22 participation in the grievance arbitration process.

23 b. Undisputed subject to clarification. Release time is used by Union
24 members to engage in many activities, including the filing and processing
25 of grievances, as well as employee participation in the grievance
26 arbitration process. Release time may be used for many other purposes.
27 PSOF Ex. 11 at 53:4–55:8; PSOF Answer ¶ 63; Joint SOF ¶¶ 30, 33-38,
28 50, 54, 60-65, 104.

1 **108. City Defendants' Response to PSOF 108**

2 a. Objection, assertion unsupported by the evidence cited. The statement
3 merely explains the Union may file a grievance against the City that
4 alleges violations by the City of the rights accorded to the Union by the
5 specific terms of Article 1 Section 1-3 of the MOU.

6 b. Disputed in part. The Union may file a grievance against the City that
7 alleges violations by the City of the rights accorded to the Union by the
8 specific terms of Article 1 Section 1-3 of the MOU. PSOF Ex. 15 at
9 ID001417; PSOF Ex. 11 at 60:18–61:9.

10 **109. City Defendants' Response to PSOF 109**

11 a. Objection, assertion unsupported by the evidence cited. Mr. Zuercher
12 stated that *he* was not aware of a contractual agreement. Mr. Frost stated
13 that the Union does agree to voice employee concerns, participate in board
14 committees, and resolve grievances.

15 b. Disputed. The Union agrees to voice employee concerns, participate in
16 board committees, and resolve grievances. The City receives numerous
17 benefits in exchange for the MOU. PSOF Ex. 6 at 57:2–59:21; PSOF Ex. 3
18 at 27:5–28:11; Joint SOF ¶¶ 18-27. Release time employees are expected
19 to perform activities that foster harmonious and cooperative labor relations
20 and further the Union's obligations as Unit II's meet and confer
21 representatives under the MOU and the City's Meet & Confer Ordinance.
22 Joint SOF ¶¶ 29, 33-34, 36-38, 41-46, 54-55, 64-65. The MOU specifically
23 lists lawful activities that are expected to be performed on release time,
24 and release time employees are required to adhere to all City policies and
25 procedures. Joint SOF ¶¶ 36-39.

26 **110. City Defendants' Response to PSOF 110**

27 a. Objection, lacks foundation and the assertion is unsupported by the
28 evidence. Mr. Frost testified that he did not know whether the MOU has

1 an obligation to resolve disputes at the lowest level.

- 2 b. Disputed. The MOU anticipates that release time will be used to provide
3 an “efficient and readily available point of contact for addressing labor-
4 management concerns,” which includes among other things attempting to
5 resolve disputes at the lowest level if possible. Joint SOF ¶¶ 33-34, 36, 38,
6 41-43, 54.

7 **111. City Defendants’ Response to PSOF 111**

- 8 a. Objection, lacks foundation and the assertion is not supported by the
9 evidence cited. Mr. Frost explained that the MOU *requires* the Union to
10 file grievances, participate in the grievance process, and participate in
11 boards and committees, which all provide insight into Unit II employees’
12 problems or concerns.

- 13 b. Disputed. The MOU anticipates that release time will be used to provide
14 an “efficient and readily available point of contact for addressing labor-
15 management concerns,” which includes among other things “ensuring
16 representation of employees,” “facilitating communication between . . .
17 management and employees,” and “administering the provisions of the
18 MOU.” Joint SOF ¶¶ 33-34, 36, 38, 41-43, 54. The natural consequence
19 of release time uses results in the communication of City employee
20 problems, concerns, and preferences. The City receives numerous benefits
21 in exchange for the MOU. PSOF Ex. 6 at 58:17–25; Joint SOF ¶¶ 18-27.

22 **112. City Defendants’ Response to PSOF 112**

- 23 a. Objection, lacks foundation and the assertion is not supported by the
24 evidence cited. Mr. Frost explained that the MOU *requires* the Union to
25 file grievances, participate in the grievance process, and participate in
26 boards and committees, which all provide insight into Unit II employees’
27 problems or concerns and helps to prevent issues from escalating.

- 28 b. Disputed. The MOU anticipates that release time will be used to provide

1 an “efficient and readily available point of contact for addressing labor-
2 management concerns,” which includes among other things “ensuring
3 representation of employees,” “participating in collaborative labor-
4 management initiatives,” “facilitating communication between . . .
5 management and employees,” “assisting [employees] in understanding and
6 following work rules,” and “administering the provisions of the MOU.”
7 Joint SOF ¶¶ 33-34, 36, 38, 41-43, 54. The natural consequence of release
8 time is to resolve some disputes before they escalate to costly grievances
9 and higher level disputes.

10 **113. City Defendants’ Response to PSOF 113**

- 11 a. Undisputed.

12 **114. City Defendants’ Response to PSOF 114**

- 13 a. Objection. Mr. Brown’s opinions and testimony are unreliable and
14 inadmissible under Rule 702 for the reasons set forth in the City’s Motion
15 to Exclude.
- 16 b. Disputed. Mr. Brown’s opinions are not based on any investigation into
17 the labor relations between the City, the Union, and Unit II. His opinion is
18 based on other circumstances, but he admits these circumstances differ
19 from the circumstances of this case, and he provides no basis for
20 extrapolation. The City benefits from paid release time in numerous ways,
21 and the City receives substantial consideration for paid release time. Joint
22 SOF ¶¶ 16-17, 20, 23-27, 29, 33-34, 36-38, 40-46, 49-56, 64-65. Plaintiffs
23 and Mr. Brown conceded these benefits. Joint SOF ¶¶ 57-63.

24 **115. City Defendants’ Response to PSOF 115**

- 25 a. Objection, relevance.
- 26 b. Undisputed, subject to clarification and the foregoing objection. City-paid
27 release time was not included in the 2014-2016 MOU between the City
28 and the Union in the same form as it was included in preceding MOUs.

1 **116. City Defendants' Response to PSOF 116**

- 2 a. Objection, relevance and assertion unsupported by the evidence cited. The
3 MOU only explains that Unit II employees could voluntarily donate their
4 vacation leave to release time.
- 5 b. Disputed in part. Under the 2014-2016 MOU, employees could voluntarily
6 donate their vacation leave to release time. PSOF Ex. 7 § 1-3.

7 **117. City Defendants' Response to PSOF 117**

- 8 a. Objection, relevance and the witness testimony lacks foundation.
- 9 b. Undisputed, subject to clarification. The City Defendants do not dispute
10 the quoted testimony. The City Defendants do not concede that the
11 elimination of release time will automatically result in any increase in
12 compensation. Joint SOF ¶¶ 111-125.

13 **118. City Defendants' Response to PSOF 118**

- 14 a. Objection, relevance. The 2014-2016 Wage & Benefit Package is no
15 longer applicable because the 2014-2016 MOU has expired. The
16 document is irrelevant because it has nothing to do with Plaintiffs' current
17 wages and benefits.
- 18 b. Undisputed, subject for the foregoing objection. The City Defendants do
19 not concede that the elimination of release time will automatically result in
20 any increase in compensation. Joint SOF ¶¶ 111-125.

21 **119. City Defendants' Response to PSOF 119**

- 22 a. Objection, relevance. The 2016-2019 Wage & Benefit Package is no
23 longer applicable because the 2016-2019 MOU has expired. The
24 document is irrelevant because it has nothing to do with Plaintiffs' current
25 wages and benefits
- 26 b. Undisputed, subject to the foregoing objection. The City Defendants do
27 not concede that the elimination of release time will automatically result in
28 any increase in compensation. Joint SOF ¶¶ 111-125.

1 **120. City Defendants' Response to PSOF 120**

- 2 a. Objection, relevance and the witness testimony lacks foundation.
- 3 b. Disputed. During the 2014-2016 MOU, release time was still used
- 4 through employee-donated vacation time, so Mr. Zuercher believed labor
- 5 relations were not impaired. PSOF Ex. 3 at 61:8-14. Mr. Frost testified
- 6 that he heard certain activities associated with labor relations were more
- 7 difficult during that time. PSOF Ex. 6 at 82:16-83:13.

8 **121. City Defendants' Response to PSOF 121**

- 9 a. Objection, relevance and the witness testimony lacks foundation.
- 10 b. Disputed. Mr. Frost testified that he heard certain activities associated with
- 11 labor relations were more difficult during that time, and he testified that
- 12 there is an administrative cost associated with that. PSOF Ex. 6 at 82:16-
- 13 83:13.

14 **122. City Defendants' Response to PSOF 122**

- 15 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
- 16 Zuercher merely stated he could not point to a specific study of cost to
- 17 determine whether the elimination of City-funded release time resulted in
- 18 higher costs to the City.
- 19 b. Disputed. Mr. Zuercher merely stated that he is unaware of studies that
- 20 detail whether the elimination of City-funded release time resulted in
- 21 higher costs to the City. Mr. Frost testified that he heard certain activities
- 22 associated with labor relations were more difficult during that time, and he
- 23 testified that there is an administrative cost associated with that. PSOF Ex.
- 24 6 at 82:16-83:13.

25 **123. City Defendants' Response to PSOF 123**

- 26 a. Objection, relevance and the witness testimony lacks foundation.
- 27 b. Undisputed, subject to clarification. The City Defendants do not dispute
- 28 the quoted testimony. The City Defendants do not concede that the

1 elimination of release time will automatically result in any increase in
2 compensation. Joint SOF ¶¶ 111-125.

3 **124. City Defendants' Response to PSOF 124**

- 4 a. Objection, relevance, witness testimony lacks foundation, and assertion
5 unsupported by the evidence cited. Mr. Frost merely stated that the 2019-
6 2021 MOU included paid release time provisions.
- 7 b. Disputed. The agreement simply reflects that the vacation hours were
8 eliminated. Mr. Frost explained that he did not have firsthand knowledge,
9 and he did not testify to a direct causal relationship. PSOF Ex. 6 at 103:4-
10 104:7. The City Defendants do not concede that the elimination of release
11 time will automatically result in any increase in compensation. Joint SOF
12 ¶¶ 111-125.

13 **125. City Defendants' Response to PSOF 125**

- 14 a. Objection, relevance and exhibit lacks foundation.
- 15 b. Undisputed, subject to clarification. Total compensation refers to the cost
16 of the entire MOU to the City, and the cost of the MOU includes its release
17 time provisions. PSOF Ex. 2 § 1-3(A); PSOF Ex. 30; Joint SOF ¶¶ 67, 71-
18 75, 79, 84. The City Defendants do not concede that the elimination of
19 release time will automatically result in any increase in compensation.
20 Joint SOF ¶¶ 111-125.

21 **126. City Defendants' Response to PSOF 126**

- 22 a. Objection, relevance and assertion unsupported by the evidence cited. The
23 assertion involves a different bargaining unit, with different circumstances,
24 and operating under a different contract. Mr. Zuercher testified that
25 different bargaining units have different characteristics and circumstances,
26 making it difficult to compare them. PSOF Ex. 3 at 72:7-20.
- 27 b. Disputed. Mr. Zuercher testified that different bargaining units have
28 different characteristics and circumstances, making it difficult to compare

1 them. PSOF Ex. 3 at 72:7-20. The Firefighters MOU provides, “The
2 Phoenix City Council has determined, and Unit 5 agrees, there are specific
3 activities that confer a public benefit; a dual public/private purpose or an
4 exclusively public purpose, for which up to two (2) Unit 5 (IAFF)
5 members may be released and will perform these duties under City
6 Business.” City Business Time is used for many of the same purposes as
7 release time at issue here. PSOF Ex. 20 at 3-4; Joint SOF ¶¶ 30, 36-38,
8 104.

9 **127. City Defendants’ Response to PSOF 127**

10 a. Objection, relevance and assertion unsupported by the evidence cited. The
11 MOU says nothing about the elimination of prior provisions in favor of
12 different provisions. The assertion involves a different bargaining unit,
13 with different circumstances, and operating under a different contract. Mr.
14 Zuercher testified that different bargaining units have different
15 characteristics and circumstances, making it difficult to compare them.
16 PSOF Ex. 3 at 72:7-20.

17 b. Disputed. Mr. Zuercher testified that different bargaining units have
18 different characteristics and circumstances, making it difficult to compare
19 them. PSOF Ex. 3 at 72:7-20. The Firefighters MOU provides, “The
20 Phoenix City Council has determined, and Unit 5 agrees, there are specific
21 activities that confer a public benefit; a dual public/private purpose or an
22 exclusively public purpose, for which up to two (2) Unit 5 (IAFF)
23 members may be released and will perform these duties under City
24 Business.” City Business Time is used for many of the same purposes as
25 release time at issue here. PSOF Ex. 20 at 3-4; Joint SOF ¶¶ 30, 36-38,
26 104.

27 **128. City Defendants’ Response to PSOF 128**

28 a. Objection, relevance and assertion unsupported by the evidence cited. The

1 language in the MOU merely explains each employee will receive 8.5
2 hours of additional vacation time, and nothing is said about the reason for
3 these hours. The assertion involves a different bargaining unit, with
4 different circumstances, and operating under a different contract. Mr.
5 Zuercher testified that different bargaining units have different
6 characteristics and circumstances, making it difficult to compare them.
7 PSOF Ex. 3 at 72:7-20.

8 b. Disputed. Mr. Zuercher testified that different bargaining units have
9 different characteristics and circumstances, making it difficult to compare
10 them. PSOF Ex. 3 at 72:7-20. The Firefighters' MOU says nothing about
11 the reason for employee vacation hours. The City is without sufficient
12 information to determine why the Firefighters MOU has vacation time,
13 and therefore, disputes the fact assertion. PSOF Ex. 20 at § 5-5.

14 **129. City Defendants' Response to PSOF 129**

15 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
16 Zuercher merely stated that he was not aware of how relations with the
17 firefighters' union was affected after the elimination of release time. The
18 assertion involves a different bargaining unit, with different circumstances,
19 and operating under a different contract. Mr. Zuercher testified that
20 different bargaining units have different characteristics and circumstances,
21 making it difficult to compare them. PSOF Ex. 3 at 72:7-20.

22 b. Disputed. Mr. Zuercher testified that different bargaining units have
23 different characteristics and circumstances, making it difficult to compare
24 them. PSOF Ex. 3 at 72:7-20. The record does not establish the state of
25 labor relations with the firefighters' union. PSOF Ex. 3 at 68:23-69:2,
26 70:3-8, 71:18-23.

27 **130. City Defendants' Response to PSOF 130**

28 a. Objection, relevance and assertion unsupported by the evidence cited.

1 While the firefighters have received pay raises, nothing is said of the
2 significance of those raises and how the parties negotiated those terms.
3 The assertion involves a different bargaining unit, with different
4 circumstances, and operating under a different contract. Mr. Zuercher
5 testified that different bargaining units have different characteristics and
6 circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-
7 20.

8 b. Disputed in part. Mr. Zuercher testified that different bargaining units
9 have different characteristics and circumstances, making it difficult to
10 compare them. PSOF Ex. 3 at 72:7-20. The firefighters received a raise in
11 their most recent MOU. The record does not establish why the firefighters'
12 union received a wage increase or what effect release time may have had
13 on the meet and confer negotiations. PSOF Ex. 20 § 3-1.

14 **131. City Defendants' Response to PSOF 131**

15 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
16 Zuercher merely stated that he was not aware of how the Firefighters'
17 MOU donated release time vs. paid release time affected City costs. Mr.
18 Zuercher testified that different bargaining units have different
19 characteristics and circumstances, making it difficult to compare them.
20 PSOF Ex. 3 at 72:7-20.

21 b. Disputed. Mr. Zuercher testified that different bargaining units have
22 different characteristics and circumstances, making it difficult to compare
23 them. PSOF Ex. 3 at 72:7-20. The record does not establish whether or
24 not the elimination of paid release time in the firefighters' MOU resulted
25 in cost savings or higher costs. PSOF Ex. 3 at 70:10-15; Joint SOF ¶¶ 64-
26 65.

27 **132. City Defendants' Response to PSOF 132**

28 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.

1 Zuercher did not state the City experienced savings from eliminating
2 release time in the 2019-2021 Firefighters' MOU, and he stated he could
3 not speak to reinvestment of the theoretical savings.

- 4 b. Disputed. Mr. Zuercher testified that different bargaining units have
5 different characteristics and circumstances, making it difficult to compare
6 them. PSOF Ex. 3 at 72:7-20. The record does not establish that the City
7 experienced cost savings from the elimination of release time. PSOF Ex. 3
8 at 70:17-25; Joint SOF ¶¶ 64-65.

9 **133. City Defendants' Response to PSOF 133**

- 10 a. Objection, relevance. Mr. Zuercher testified that different bargaining units
11 have different characteristics and circumstances, making it difficult to
12 compare them. PSOF Ex. 3 at 72:7-20.
- 13 b. Undisputed, subject to the foregoing objection. Mr. Zuercher testified that
14 different bargaining units have different characteristics and circumstances,
15 making it difficult to compare them. PSOF Ex. 3 at 72:7-20.

16 **134. City Defendants' Response to PSOF 134**

- 17 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
18 Zuercher merely state he was not aware whether the City experienced
19 higher costs from eliminating paid release time. Mr. Zuercher testified
20 that different bargaining units have different characteristics and
21 circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-
22 20.
- 23 b. Disputed. Mr. Zuercher testified that different bargaining units have
24 different characteristics and circumstances, making it difficult to compare
25 them. PSOF Ex. 3 at 72:7-20. The record does not establish that the City
26 experienced cost savings from the elimination of release time. PSOF Ex. 3
27 at 70:17-25; Joint SOF ¶¶ 64-65.

28 **135. City Defendants' Response to PSOF 135**

- 1 a. Objection, relevance and assertion unsupported by the evidence cited. Mr.
2 Zuercher merely state he was not aware whether the City experienced
3 higher costs from eliminating paid release time. Mr. Zuercher testified
4 that different bargaining units have different characteristics and
5 circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-
6 20.
- 7 b. Disputed. Mr. Zuercher testified that different bargaining units have
8 different characteristics and circumstances, making it difficult to compare
9 them. PSOF Ex. 3 at 72:7-20. The record does not establish that the City
10 experienced cost savings from the elimination of release time. PSOF Ex. 3
11 at 70:17–25; Joint SOF ¶¶ 64-65.

12 **136. City Defendants' Response to PSOF 136**

- 13 a. Objection, relevance, foundation, and assertion unsupported by the
14 evidence cited. Mr. Zuercher merely stated he was not aware whether
15 those cities have paid release time. Plaintiffs lay no foundation for
16 comparing the circumstances of other cities.
- 17 b. Disputed. The record does not establish whether or not other cities have
18 release time.

19 **137. City Defendants' Response to PSOF 137**

- 20 a. Objection, relevance, foundation, and assertion unsupported by the
21 evidence cited. Mr. Zuercher merely stated he was not aware whether
22 those cities have paid release time and he was not familiar with their labor
23 relations. Plaintiffs lay no foundation for comparing the circumstances of
24 other cities.
- 25 b. Disputed. The record does not establish whether or not other cities have
26 been able to achieve harmonious labor relations without release time, and
27 even if they had, whether it is to the same level of extent as the City and
28 also taking into consideration the differences between the cities.

1 **138. City Defendants’ Response to PSOF 138**

- 2 a. Objection, assertion unsupported by the evidence cited. Ms. Reber stated
3 that total compensation represents the total cost of the MOU to the City,
4 she did not say that release time is part of employee pay and benefits.
5 b. Disputed. Release time is not part of compensation (i.e. wages and
6 benefits). The cost of the MOU, including its release time provisions,
7 employee pay, and other costs of the MOU are represented by the term of
8 art “total compensation,” which describes the cost to the City of the entire
9 MOU. PSOF Ex. 8 at 77:25–78:19, 79:21–80:15; Joint SOF ¶¶ 67, 71-75,
10 79, 84.

11 **139. City Defendants’ Response to PSOF 139**

- 12 a. Objection, assertion unsupported by the evidence cited. Ms. Reber merely
13 explained that she believed compensation generally refers to pensions,
14 direct pay, deferred compensation, vacation buyback, health and dental
15 benefits.
16 b. Undisputed subject to clarification, employee compensation is not
17 synonymous with the term of art “total compensation,” and that term of art
18 does not describe the various forms of compensation and benefits received
19 by employees. PSOF Ex. 9 at 77:25–78:19; Joint SOF ¶¶ 67, 71-75, 79,
20 84.

21 **140. City Defendants’ Response to PSOF 140**

- 22 a. Objection, relevance and the cited testimony lacks foundation. There is no
23 foundation laid for the cited testimony, which involved a different
24 bargaining unit, under a different contract, at a different period in time.
25 The testimony did not relate to Unit II or the 2019-2021 MOU. Mr.
26 Zuercher testified that different bargaining units have different
27 characteristics and circumstances, making it difficult to compare them.
28 PSOF Ex. 3 at 72:7-20.

1 b. Disputed. Mr. Zuercher testified that different bargaining units have
2 different characteristics and circumstances, making it difficult to compare
3 them. PSOF Ex. 3 at 72:7-20. Mr. Zuercher explained that total
4 compensation refers to the economic package and not necessarily wages
5 and benefits, which provides additional context to the cited testimony.
6 Similarly, Mr. Frost explained that the issue is more nuanced and that total
7 compensation refers to the economic package. PSOF Ex. 6 at 109:13-
8 110:3, 118:7-12, 118:14-19, 120:13-23, 122:24-124:15, 129:6-130:2,
9 134:12-135:15. Thus, total compensation does not refer to the personal
10 compensation of individual employees. Joint SOF ¶¶ 67, 71-75, 79, 84.

11 **141. City Defendants' Response to PSOF 141**

12 a. Objection, relevance, foundation, hearsay, and assertion unsupported by
13 the evidence. In that 2011 article, Mr. Zuercher did not state that release
14 time is part of employee compensation. Mr. Zuercher said, "if Union
15 officials trade release hours for lower overall wage and benefits packages
16 for their members, it does not end up costing the City anything extra." Mr.
17 Zuercher's purported statement about a hypothetical illustration was not a
18 statement on the MOU or the facts at issue here. Moreover, there is no
19 evidence Mr. Zuercher actually made the comments attributed to him.
20 PSOF Ex. 3 at 82:9-24.

21 b. Disputed. Mr. Zuercher did not state that paid release time is part of total
22 compensation to all unit employees. PSOF Ex. 22 at GIL002597. Mr.
23 Zuercher's purported statement about a hypothetical illustration was not a
24 statement on the MOU or the facts at issue here. Moreover, there is no
25 evidence Mr. Zuercher actually made the comments attributed to him.
26 PSOF Ex. 3 at 82:9-24. Total compensation does not refer to the personal
27 compensation of individual employees. Joint SOF ¶¶ 67, 71-75, 79, 84.

28 **142. City Defendants' Response to PSOF 142**

- 1 a. Objection, assertion unsupported by the evidence cited. The evidence
2 shows the City was aware that the language may result in a legal challenge
3 under *Janus*, not that the City was particularly concerned that free
4 expression was infringed upon.
- 5 b. Disputed in part. The City generally recognized there could possibly be a
6 legal challenge under *Janus*. PSOF Ex. 6 at 100:2–18, 138:19–139:24;
7 PSOF Ex. 23 at CITY00000077; PSOF Ex. 24 at ID00349; PSOF Ex. 25.

8 **143. City Defendants’ Response to PSOF 143**

- 9 a. Objection, assertion unsupported by the evidence cited. Mr. Frost merely
10 stated that the City considered donated release time, rather than City-
11 funded release time.
- 12 b. Disputed. The City considered donated release time, rather than City-
13 funded release time, but ultimately declined to take that action. PSOF Ex.
14 6 at 98:9–100:18.

15 **144. City Defendants’ Response to PSOF 144**

- 16 a. Objection, assertion unsupported by the evidence cited. Mr. Zuercher
17 merely explained the difference between donated release time and City
18 Business Time. There was no discussion of paid release time.
- 19 b. Disputed. The City has never performed a cost benefit analysis between
20 City Business Time as opposed to paid release time. The City derives
21 substantial direct benefits from City-funded release time. PSOF Ex. 3 at
22 43:24–45:1; Joint SOF ¶¶ 18-39.

23 **Controverting Statement of Facts**

24 1. “All Unit employees and stewards have the right to have the Union serve
25 as their ‘meet and confer’ representative as set forth in the Meet and Confer Ordinance
26 without discrimination or retaliation based on membership or non-membership in the
27 Union or any other organization.” *See* Joint SOF, Ex. 1 (2019-2021 MOU) Section 1-4
28 (A).

1 2. The City Code provides, “an authorized employee organization shall serve
2 as the meet and confer agent of all public employees in the appropriate unit. Such
3 employee organization must represent fairly and without discrimination all employees in
4 the unit without regard to whether such employees are members of the authorized
5 employee organization. **City CSOF, Exhibit 1** (Phoenix City Code § 2-217(e)).

6 3. Under the 201-2021 MOU, Unit II employees received a 2.38% wage
7 increase for FY 2019-2020, which had a total economic cost to the city of \$3,220,000. *See*
8 Joint SOF, Ex. 2 (Reber Declaration) at ¶ 11; Joint SOF, Ex. 5 (CITY 00003634).

9 4. Under the 2019-2021 MOU, Unit II employees received a 1.78% wage
10 increase for FY 2020-2021, which had a total economic cost to the City of \$2,466,000.
11 *See* Joint SOF, Ex. 2 (Reber Declaration) at ¶ 11; Joint SOF, Ex. 5 (CITY00003634).

12 5. Under the 2019-2021 MOU, Unit II employees each received a one-time
13 payment of \$682 during FY 2019-2020, which had a total economic cost to the City of
14 \$1,639,000. *See* Joint SOF, Ex. 2 (Reber Declaration) at ¶ 11; Joint SOF, Ex. 5
15 (CITY00003634).

16 6. Under the 2019-2021 MOU, Unit II employees each received a one-time
17 payment of \$683 during FY 2020-2021, which had a total economic cost to the City of
18 \$1,641,000. *See* Joint SOF, Ex. 2 (Reber Declaration) at ¶ 11; Joint SOF, Ex. 5
19 (CITY00003634).

20 7. The wage increases and one-time payments for Unit II employees under
21 the 2019-2021 MOU had a combined total economic cost to the City of \$8,936,000. Joint
22 SOF, Ex. 2 (Reber Declaration) at ¶ 11; Joint SOF, Ex. 5 (CITY00003634).

23 8. The release time provisions represented 0.28% of the total cost in
24 *Cheatham*. *See Cheatham v. DiCiccio*, 240 Ariz. 314, 322, ¶ 33 (2016) (indicating that
25 release time represented cost to City of \$1.7 million in relation to the MOU’s total cost to
26 the City of \$660 million).

27 9. In *Cheatham*, the trial court specifically found that release time “is funded
28 100% by the City” and that “[r]elease time is funded by taxpayers, not by union dues.”

1 **City CSOF, Exhibit 2** (Under Advisement Ruling filed on June 6, 2012 in *Cheatham, et*
2 *al. v. Gordon, et al.*, Maricopa County Superior Court Case No. CV2011-021634) at 3;

3 **City CSOF, Exhibit 3** (Under Advisement Ruling filed on April 23, 2013 in *Cheatham,*
4 *et al. v. Gordon, et al.*, Maricopa County Superior Court Case No. CV2011-021634) at 5.

5 10. The *Cheatham* trial court also found “Since the injunctions, the City has
6 not adjusted Unit 4 salaries to reflect the loss of release time and include that money in
7 officers’ pay. The City acknowledges that reductions in one area of the MOU do not
8 automatically trigger increases in officer salaries. The MOU does not require the City to
9 increase officer salary if release time is enjoined or removed.” **City CSOF, Exhibit 4**
10 (Under Advisement Ruling filed on January 29, 2014 in *Cheatham, et al. v. Gordon, et*
11 *al.*, Maricopa County Superior Court Case No. CV2011-021634) at 4.

12 11. Plaintiffs’ expert agreed with the factual finding in the *Cheatham* trial
13 court and admits that “the elimination of release time in *Cheatham* did not automatically
14 result in a raise in employee wages.” **City CSOF, Exhibit 5** (Deposition of R. Brown) at
15 144:21-145:3.

16 12. Plaintiffs’ expert testified he “would not say that there is an automatic
17 correlation” between release time and employee wages and benefits, and he testified
18 (incorrectly) that release time is not a part of employee compensation because it is not a
19 mandatory subject of bargaining (unlike employee wages and benefits). **City CSOF,**
20 **Exhibit 5** (Deposition of R. Brown) at 140:9-141:9.

21 13. Plaintiffs’ expert agreed that reduction in one area of the MOU do not
22 automatically trigger increases in officer salaries and admitted that “the elimination of
23 release time in *Cheatham* did not automatically result in a raise in employee wages. **City**
24 **CSOF, Exhibit 5** (Deposition of R. Brown) at 143:6-19.

25 14. Plaintiffs’ expert testified that costing is “different” from compensation,
26 and he “disagreed” that “release time is simply a redirection by employees of their
27 compensation for the particular purpose of release time.” **City CSOF, Exhibit 5**
28 (Deposition of R. Brown) at 140:9-24.

1 15. Plaintiffs admit that release time funds could be redirected to unrelated
2 public purposes, such as equipment or infrastructure. **City CSOF, Exhibit 6** (Deposition
3 of M. Gilmore) at 98:13-99:1, 105:23-25; **City CSOF, Exhibit 7** (Deposition of M.
4 Harder) at 34:18-22.

5 16. Plaintiff Harder testified that if the city audited the activities on release
6 time, it would not benefit him personally. **City CSOF, Exhibit 6** (Deposition of M.
7 Harder) at 47:2-15.

8 17. Plaintiff Gilmore “asserts that he is harmed by release time because part
9 of Plaintiff’s compensation under the MOU is being used to finance release time
10 activities. . . . Because the City is forcing Plaintiff to finance release time activities as
11 part of total compensation under the MOU . . . Plaintiff’s [rights] statutes are harmed.”
12 **City CSOF, Exhibit 8** (Gilmore’s Corrected Response to the City Defendants’ First
13 Discovery Requests) at NUI No. 2.

14 18. Plaintiff Harder asserts “asserts that he is harmed by release time because
15 part of Plaintiff’s compensation under the MOU is being used to finance release time
16 activities. . . . Because the City is forcing Plaintiff to finance release time activities as
17 part of total compensation under the MOU . . . Plaintiff’s [rights] statutes are harmed.”
18 **City CSOF, Exhibit 9** (Harder’s Response to the City Defendants’ First Discovery
19 Requests) at NUI No. 2.

20 19. Apart from their allegation that they are compelled to associate with the
21 Union because the Union is the exclusive representative of all Unit II employees,
22 Plaintiffs do not allege they are forced to associate with the Union in any other way. **City**
23 **CSOF, Exhibit 6** (Deposition of M. Gilmore) at 129:17-130:4; **City CSOF, Exhibit 7**
24 (Deposition of M. Harder) at 50:22-52:7.

25 20. Plaintiffs admit they are not forced to join, support, or associate with the
26 Union. **City CSOF, Exhibit 6** (Deposition of M. Gilmore) at 129:17-130:4; **City CSOF,**
27 **Exhibit 7** (Deposition of M. Harder) at 50:22-52:7.

28 21. Plaintiffs admit neither the City nor the Union has breached the 2019-

1 2021 MOU. *See* PSOF Ex. Nos. 26 and 27 at ¶¶ 13-16.

2 22. Mr. Gilmore testified as follows:

3 Q. Could the union attempt to advocate on behalf of Unit 2
4 employees as a whole?

5 MR. RICHES: Objection as to form. Go ahead.

6 THE WITNESS: That is their job.

7 BY MR. HESKETH:

8 Q. That's what the union is supposed to be doing?

9 A. Correct.

10 Q. And advocate on behalf of Unit 2 employees with respect to
wages?

11 A. Unit 2 employees who are members.

12 Q. But if the union were successful in advocating on behalf of
13 union members for a higher wage increase, that would benefit all of
Unit 2, would it not?

14 A. Yes, that would.

15 **City CSOF, Exhibit 6** (Deposition M. Gilmore) at 40:7-22.

16 23. Mr. Gilmore testified as follows:

17 Q. So the money that pays for release time starts off with taxpayers
18 and then it goes to the City. Are we on the same page so far?

19 A. Yes.

20 Q. Now, take me through the ownership of that money until it pays
for release time?

21 MR. RICHES: Objection as to form. Go ahead if you can.

22 THE WITNESS: Who owns the money before it goes there? Is that
23 the question?

24 BY MR. HESKETH:

25 Q. Yeah. So it starts with taxpayers, then it goes to the City. Who
owns the money next?

26 MR. RICHES: Objection as to form. Go ahead if you can.

27 THE WITNESS: It would go to release time, in the bank.

28 BY MR. HESKETH:

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Q. So it goes from taxpayers to City, straight to release time?

A. Yes.

Q. And you agree with me that the City's tax revenue does not belong to Unit 2 employees?

MR. RICHES: Objection as to form. Go ahead and answer if you can.

THE WITNESS: The tax revenue is used however they want. It's not –

BY MR. HESKETH:

Q. Yeah, that money belongs to the City, and the City gets to choose what to do with it?

A. Correct

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 128:1-129:6.

24. Mr. Gilmore testified as follows:

Q. But you're not -- you're not forced to be a member of the union, right?

A. No.

Q. You're not forced to pay dues or fees to the union, right?

MR. RICHES: Objection as to form.

THE WITNESS: No.

BY MR. HESKETH:

Q. You're not forced to adopt the union's position or viewpoints, right?

MR. RICHES: Objection as to form.

THE WITNESS: No.

BY MR. HESKETH:

Q. You're not forced to endorse the union's positions or viewpoints, are you?

MR. RICHES: Objection as to form.

THE WITNESS: A non-union member, no.

BY MR. HESKETH:

Q. Your name isn't attached to what the union says or does, right?

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A. Say that again.

Q. Your name is not attached to what the union says or does, right?

A. My name, no.

Q. Do you think someone who hears what the union says or sees what the union does will think that you have endorsed that?

MR. RICHES: Objection as to form.

THE WITNESS: I don't know.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 130:6-131:9.

25. Mr. Harder testified as follows:

Q. All right. Mr. Harder, if the union used release time to advocate for better working conditions for Unit 2, that would be a good thing for you, right?

MR. RICHES: Objection as to form.

THE WITNESS: Possibly.

BY MR. HESKETH:

Q. If the union used release time to advocate for higher wages for you, that would be a good thing for you, right?

A. Right.

Q. So if the union were using release time in those ways, that would not harm you, right?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: Right.

BY MR. HESKETH:

Q. And you don't know whether the union does use release time in those ways, right?

A. I do not.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 36:18-37:11.

26. Mr. Harder testified as follows:

Q. And some of that tax revenue is used to pay for release time?

A. Yes.

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Q. And that money goes directly from the City to paying for release time?

MR. RICHES: Objection as to form.

THE WITNESS: As far as I know, yes.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 50:6-12.

27. Mr. Harder testified as follows:

Q. Paragraph 62 states, "When the government compels an individual to associate with others, and that compulsion leads to the monetary endorsement of political views, the message expressed must be 'viewpoint neutral.'" Did I read that correctly?

A. Yes.

Q. You're not alleging that the City is forcing you to associate with the union, are you?

MR. RICHES: Objection as to form.

THE WITNESS: No.

BY MR. HESKETH:

Q. You're not forced to be a member of the union, right?

A. No.

Q. You're not forced to pay dues or fees to the union, right?

MR. RICHES: Objection as to form. Go ahead.

THE WITNESS: No.

BY MR. HESKETH:

Q. You're not forced to adopt the union's positions or viewpoints, right?

MR. RICHES: Objection as to form.

THE WITNESS: No.

BY MR. HESKETH:

Q. You're not forced to endorse the union's position or viewpoints, are you?

A. No.

Q. Your name isn't attached to what the union says or does, right?

MR. RICHES: Objection as to form. If you understand, go ahead.

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THE WITNESS: As far as I know, no.

BY MR. HESKETH:

Q. Do you think someone who hears what the union says or see what the -- Sorry, let me back up. Do you think someone who hears what the union says or sees what the union does will think you have endorsed it?

MR. RICHES: Objection as to form.

Go ahead and answer if you can.

THE WITNESS: I don't know.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 50:16-52:7.

28. Mr. Harder testified as follows:

Q. And we were talking about the statement on page 5 that your free expression and associational rights as well as your rights under Arizona's Right to Work statutes are harmed. Do you remember that?

A. Yes.

Q. And I asked you what that meant, and I believe your answer was that Arizona is a right-to-work state and the union doesn't provide very much benefit to you. Did I understand that correctly?

A. Right.

Q. But you agree with me that you're not forced to be a member of the union, right

A. Right, unless -- unless you need help

Q. But there are things that the union does that could benefit you, right?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: Right.

BY MR. HESKETH:

Q. For example, if the union successfully negotiates for a higher wage increase for Unit 2 employees, that would benefit you, right?

MR. RICHES: Objection as to form. Go ahead.

THE WITNESS: Right.

BY MR. HESKETH:

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Q. If there are unsafe working conditions in your workplace and the union gets the City to fix those, that would benefit you, right?

A. Right.

Q. If you have a supervisor who is giving you problems and the union addresses that situation with the City and gets the City to fix it, that would benefit you, right?

MR. RICHES: Objection as to form.

Go ahead if you can.

THE WITNESS: Right.

BY MR. HESKETH:

Q. All of those things could happen, right?

A. Could.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 58:5-59:19.

29. Mr. Harder testified as follows:

Q. And the last column indicates that the difference is that the City of Phoenix is 3.1 percent higher than the other agencies, right?

A. That's what it says.

Q. Would you agree with me that this appears to indicate that the City has increased its wages for its employees in a greater amount over this time period shown on this document than the other agencies surveyed?

A. Yes.

Q. Is it possible that the City has done that because the unions have used release time to bargain more effectively with the City?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: I don't know if they have or not.

BY MR. HESKETH:

Q. Is it possible that they may have?

A. Possible.

Q. If the union had used release time in that way, that would be good for you, right?

MR. RICHES: Objection as to form.

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THE WITNESS: Yes.

BY MR. HESKETH:

Q. Because it resulted in a wage increase for you that's higher than other cities in Arizona, right?

MR. RICHES: Objection.

Go ahead if you can.

THE WITNESS: Yes.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 65:9-66:13.

30. Mr. Harder testified as follows:

Q. Do you know whether release time could have helped the union negotiate for that higher wage increase?

MR. RICHES: Objection as to form. Go ahead.

THE WITNESS: I don't know.

BY MR. HESKETH:

Q. Could it have?

A. Possibly.

Q. And if it did, that would have been good for you, right?

MR. RICHES: Objection as to form. Go ahead.

THE WITNESS: Yes.

BY MR. HESKETH:

Q. All right. Looking further down on Exhibit 9, Do you see where it says "One-Time Costs"?

A. Yes.

Q. And do you see where it says item number A?

A. Yes.

Q. And the description for Item A is a "one-time payment of \$682 made to all full-time employees in fiscal year 2019-20"?

A. Yes.

Q. Do you see that?

A. Yes, I have.

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Q. And that was the one-time payment that we talked about earlier, right?

A. Right.

Q. And you received that payment, right?

A. Right.

Q. And to the right on Exhibit 9 of that description, under the column All Funds, do you see the figure 1,639,000?

A. Yes.

Q. That item is not on Exhibit 8, correct?

A. Right.

Q. And further down, do you see on Exhibit 9 where it has item C?

A. Yes.

Q. And the description of that item is "One-time payment of \$683 made to all full-time employees in fiscal year 2020-21"?

A. Right.

Q. And then to the right, under the column All Funds, there's the figure 1,641,000. Do you see that?

A. Yes, I do.

Q. And that is the second one-time payment that was made to Unit 2 employees under the current MOU. Is that correct?

A. Yes, it was.

Q. Did you receive that payment?

A. Yes, I did.

Q. And that item that we were just talking about, the second one-time payment in fiscal year 2020-2021, that is not shown on Exhibit 8, right?

A. Right.

Q. Is it possible that the union successfully bargained for those one-time payments that the City did not originally intend to give to Unit 2 employees?

MR. RICHES: Objection as to form. Go ahead if you can.

THE WITNESS: Possible.

BY MR. HESKETH:

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Q. Is it possible that release time helped the union do that?

MR. RICHES: Objection as to form. Go ahead if you can.

THE WITNESS: Possible.

BY MR. HESKETH:

Q. And if the union did use release time in that way, that would be a good thing for you, right?

MR. RICHES: Objection as to form.

THE WITNESS: Yes.

BY MR. HESKETH:

Q. Because you received these two payments that you wouldn't have otherwise gotten, right?

MR. RICHES: Same objection.

THE WITNESS: Right.

BY MR. HESKETH:

Q. So if release time did help the union in that way, release time has actually benefitted you by increasing your wages, right?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: Possible.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 70:7-73:17.

31. Mr. Harder testified as follows:

Q. The MOU specifies that Unit 2 employees are to be treated fairly and that individual Unit 2 employees are not to be given preferential or special treatment, right?

A. Right.

Q. So if the MOU says that a certain employee gets the benefit of, say, a shift bid, you would get that same benefit, right?

MR. RICHES: Objection as to form.

Go ahead if you can.

THE WITNESS: Right.

BY MR. HESKETH:

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Q. And if the MOU says you get to do a shift bid in a certain way, you get that benefit even though you're not a union member, right?

MR. RICHES: Sorry, just -- objection. I'm not sure I understood what you said there, Matt. Shift what?

MR. HESKETH: Shift bid.

MR. RICHES: Shift bid. Okay, I'm sorry.

Go ahead.

BY MR. HESKETH:

Q. So if the MOU says that you get to do a shift bid in a certain way, you get the benefit of that even though you're not a union member, right?

A. Right.

Q. And if the union were to prevail in a grievance, all Unit 2 employees would get the benefit of that, right?

MR. RICHES: Objection as to form.

Go ahead if you can.

THE WITNESS: Right.

BY MR. HESKETH:

Q. Including you, right?

MR. RICHES: Same objection.

You can answer.

THE WITNESS: Right.

BY MR. HESKETH:

Q. Could release time help the union prevail during a grievance?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: Possibly.

BY MR. HESKETH:

Q. If release time did help the union prevail during a grievance, that would benefit you, right?

MR. RICHES: Objection as to form. Go ahead.

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THE WITNESS: Depends on what it's on.

BY MR. HESKETH:

Q. If it allowed the union to prevail in a grievance that was related to you in some way, that would benefit you, right?

MR. RICHES: Objection as to form. If you can, go ahead.

THE WITNESS: Possibly.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 75:4-77:7.

32. Mr. Gilmore testified as follows:

Q. Okay. So you want the eight hours back and you don't want there to be any release time. Do I understand correctly?

A. Yes.

Q. Anything else?

A. No.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 105:6-11.

33. Mr. Gilmore testified as follows:

Q. So if the City were to take the money from release time and spend it on infrastructure that has a public benefit and that gives the City a relatively equal value, would that solve the gift clause claim?

...

A. I still don't know if it would.

Q. If the City did that, how would that benefit you personally?

A. It wouldn't.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 107:22-108:9.

34. Mr. Gilmore testified as follows:

Q. What about the eight hours? If you got eight hours of vacation time, how would that benefit the public?

....

A. It wouldn't -- the benefit wouldn't be for the public.

....

Q. But if you got eight more hours of vacation time, would the public get more services?

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A. Me, personally, it'd be the same.

Q. Would the cost to the public of the MOU be any less if you got eight more hours of vacation?

....

A. It'd still be the same.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 150:24-152:8.

35. Mr. Harder testified as follows:

Q. . . . I understand your position, that you believe if release time were eliminated you would get a benefit from having increased time off or some other compensation-related benefit. Aside from that, would the elimination of release time benefit you in any other way?

....

A. Not that I know of.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 19:14-23.

36. Mr. Harder testified as follows:

Q. Is it possible that the City could take the money that was allocated for release time and invest in infrastructure or equipment that's used by Unit 2 employees?

A. Possibly.

Q. If it did that, would your compensation increase?

A. No.

Q. Would you benefit from that?

....

A. No.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 34:18-35:3.

37. Mr. Gilmore testified as follows:

Q. We previously talked about the term "total compensation," right?

A. Yes, previously.

Q. And Unit 2 has a total compensation under the MOU, right?

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A. Yes, they do.

Q. That total compensation, do you think that amount is too high?

....

A. No. No, I don't.

Q. Okay. The City gets a fair amount of services from Unit 2 employees for the total compensation under the MOU?

....

A. Yes.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 149:19-150:14.

38. Mr. Harder testified as follows:

Q. What about the total compensation for Unit 2 as a whole, that economic package that we were talking about before, is that too much for Unit 2?

....

A. No.

Q. Does the City get a fair amount of services from Unit 2 employees in exchange for that economic package?

....

A. As far as I know, yes.

Q. The economic cost of the MOU to the City is not too high for what the City gets from Unit 2 employees?

....

A. As far as I know, yes.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 61:7-25.

39. Mr. Harder testified as follows:

Q. If we were to track ownership of the money that is eventually used to pay for release time, it starts with taxpayers, right?

MR. RICHES: Objection as to form.

Go ahead if you can.

THE WITNESS: Yes.

BY MR. HESKETH:

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Q. And then the taxpayers pay taxes and that money then becomes money of the City, right?

A. Right.

Q. And the City owns that tax revenue, right?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: Right.

BY MR. HESKETH:

Q. Then what happens to that money?

MR. RICHES: Objection as to form. Go ahead and answer if you can.

THE WITNESS: They use it as they need it.

BY MR. HESKETH:

Q. Let me make sure I understand. The City uses it to pay for release time?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: They could, but they use it to buy trucks and to pay their employees -- and to pay their employees.

BY MR. HESKETH:

Q. So the City uses its tax revenue to pay for basically everything the City does?

MR. RICHES: Objection as to form. Go ahead.

THE WITNESS: Right.

BY MR. HESKETH:

Q. And some of that tax revenue is used to pay for release time?

A. Yes.

Q. And that money goes directly from the City to paying for release time?

MR. RICHES: Objection as to form.

THE WITNESS: As far as I know, yes.

1 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 48:22-50:12.

2 40. Mr. Gilmore testified as follows:

3 Q. So there is no line item showing on your current paystubs any
4 amount being withheld for union dues. Is that correct?

5 A. Correct.

6 **City CSOF, Exhibit 6** (Deposition of M. Gilmore) at 178:23-179:1.

7 41. Mr. Gilmore testified as follows:

8 Q. But you're not forced to adopt the union's position, right?

9 Mr. Riches: Objection as to form. Go ahead.

10 The Witness: Not the union's position, no.

11 **City CSOF, Exhibit 6** (Deposition of M. Gilmore) at 146:17-21.

12 42. Mr. Harder testified as follows:

13 Q. You agree with me that there is not a line item deduction from
14 your paycheck or pay stub to provide financial support to the
15 union, right?

16 A. Not that I know of.

17 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 47:22-25.

18 43. Mr. Harder testified as follows:

19 Q. Okay. And there is no deduction from your check for union
20 dues anymore because you're not a member of the union anymore,
21 correct?

22 A. Right.

23 Q. Okay. And there's no other deduction from your check under
24 the 2019-2021 MOU for anything related to the union. Is that
25 correct?

26 A. Yes.

27 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 92:17-24.

28 44. Mr. Harder testified as follows:

Q. Do you know if release time might help facilitate that
bargaining process?

MR. RICHES: Objection as to form. Go ahead and answer if you
can.

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THE WITNESS: Yes.

BY MR. HESKETH:

Q. Yes, you know? Or yes, it could help? A. Yes, it could help.

Q. Release time could help facilitate collective bargaining?

A. Yes, it could help.

Q. If release time does help facilitate collective bargaining, would that be a good thing for the City?

MR. RICHES: Objection as to form. If you can answer, go ahead.

THE WITNESS: I don't know.

BY MR. HESKETH:

Q. Could it be a good thing for the City?

MR. RICHES: Same objection.

THE WITNESS: Possibly.

BY MR. HESKETH:

Q. Do you know whether release time helps the City communicate more efficiently or effectively with Unit 2 employees?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: No, I do not.

BY MR. HESKETH:

Q. Do you know whether release time helps the City resolve labor disputes more efficiently or effectively?

A. No, I do not.

Q. Do you know whether release time helps the City informally resolve disputes before they become grievances?

MR. RICHES: Objection as to form.

Go ahead if you can.

THE WITNESS: No, I do not.

BY MR. HESKETH:

Q. Could it help in that way?

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MR. RICHES: Same objections.

Go ahead.

THE WITNESS: I don't know.

BY MR. HESKETH:

Q. Do you know whether release time allows the City to get better information about employee preferences?

MR. RICHES: Objection as to form.

THE WITNESS: Possibly, I'm not for sure.

BY MR. HESKETH:

Q. But it could?

A. Possibly.

Q. Do you know whether other Unit 2 employees use release time to tell the City about ways the City can improve its processes?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: I do not know.

BY MR. HESKETH:

Q. Do you know whether other employees use release time to tell the City about their concerns with their working conditions?

A. I do not know.

Q. Is it possible?

A. Yes.

Q. Do you think release time benefits the union?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: Possible.

BY MR. HESKETH:

Q. If release time does benefit the union, does that mean it does not benefit the City?

MR. RICHES: Objection as to form. Go ahead if you can.

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THE WITNESS: I don't know.

BY MR. HESKETH:

Q. Is it possible that release time could benefit both the union and the City?

MR. RICHES: Same objection.

Go ahead.

THE WITNESS: Possible, but I'm not for sure though.

BY MR. HESKETH:

Q. Is it possible that the City could benefit from doing things that help or benefit the union?

MR. RICHES: Objection as to form.

Go ahead if you understand.

THE WITNESS: Possible.

BY MR. HESKETH:

Q. Do you know what employee voice is?

A. No, I do not.

Q. If I described employee voice in very general terms as the ability of employees to collectively express their views about their workplace and employment, would that be a fair assessment in your view?

A. Yes.

Q. If we use that definition, do you know whether the union helps Unit 2 employees express their employee voice?

MR. RICHES: Objection as to form.

Go ahead.

THE WITNESS: I do not.

BY MR. HESKETH:

Q. Did you say you don't know?

A. Right.

Q. Is it possible that release time helps the union facilitate Unit 2 employees expressing their employee voice?

MR. RICHES: Objection as to form.

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Go ahead.

THE WITNESS: I couldn't tell you. I don't know if it does or not.

THE COURT REPORTER: I couldn't tell you. I don't know if it does or not?

MR. RICHES: I think it was "I do not know if it does or not."

BY MR. HESKETH:

Q. If the union did tell the City about employee concerns, would that be a good thing for the City?

MR. RICHES: Objection as to form.

Go ahead if you can.

THE WITNESS: Possibly.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 23:13-28:19.

45. Mr. Gilmore testified as follows:

Q. But it is possible that an employee could go to the union before going to OSHA and address a problem with the workplace?

A. Yes, it's possible.

Q. Do you know whether release time could help improve employee voice?

A. Possibly.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 42:2-8.

46. Mr. Gilmore testified as follows:

Q. . . . But there is not a line item deduction from your paycheck to provide financial support to the union?

A. Correct.

Q. Are you receiving fewer wages or benefits than what was promised in the MOU as a result of release time?

...

A. I don't believe so.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 118:14-119:2.

47. Mr. Gilmore testified as follows:

Q. It's not that the City is forcing Unit 2 employees to take money out of what they've been guaranteed under the MOU, right?

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A. No money is taken out of me.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 136:9-13.

48. Mr. Gilmore testified as follows:

Q. What you're challenging in this case is that you would like to continue to receive an additional eight hours every year, right?

....

A. Yes.

....

Q. The City has not told you that you will get an additional eight hours every year, right?

A. Currently, no.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 88:8-89:2.

49. Mr. Gilmore testified as follows:

Q. Did the City make a commitment to pay you those eight hours?

A. No.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 94:21-23.

50. Mr. Gilmore testified as follows:

Q. So, Mr. Gilmore, the question is, are you legally entitled to anything more than the wages and benefits specified in the MOU?

A. Anything other than the MOU, no.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 93:7-10.

51. Mr. Gilmore testified as follows:

Q. And you don't know what the City would do with the money that's allocated for release time if release time were eliminated?

A. Correct, I don't know.

City CSOF, Exhibit 6 (Deposition of M. Gilmore) at 113:8-11.

52. Mr. Harder testified as follows:

Q. Have you received all of the wages and benefits that were promised to you under the MOU?

A. As far as I know, yes.

1 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 39:19-21.

2 53. Mr. Harder testified as follows:

3 Q. You agree with me that there is not a line item deduction from
4 your paycheck or pay stub to provide financial support to the
5 union, right?

6 A. Not that I know of.

7 Q. So you would agree with me that money is not being taken out
8 of your pocket to pay for release time?

9

10 A. Not that I know of.

11 Q. Are you receiving fewer wages or benefits than what is
12 promised in the MOU as a result of, quote, being forced to provide
13 financial support to the union, end quote?

14

15 A. Not that I know of.

16 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 47:22-48:11.

17 54. Mr. Harder testified as follows:

18 Q. It's not your actual compensation under the MOU that's being
19 used to finance release time, but some higher amount of
20 compensation that you would like to have if release time were
21 eliminated, right?

22

23 A. Right.

24 Q. The City never promised to pay you that higher amount, right?

25

26 A. Right.

27 Q. And if release time were eliminated, there's no guarantee that
28 you would actually receive that higher amount, right?

. . . .

A. Right.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 54:22-55:1.

55. Mr. Harder testified as follows:

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Q. You're not saying, though, that you were entitled to something more than what's set forth in the MOU, right?

A. No.

Q. And you have received everything that's set forth in the MOU, right?

A. As far as I know, yes.

Q. If release time were eliminated, you don't know whether your benefits or wages would increase, right?

....

A. Right.

City CSOF, Exhibit 7 (Deposition of M. Harder) at 57:4-14.

RESPECTFULLY SUBMITTED this 7th day of May, 2021.

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