

IN THE SUPREME COURT

STATE OF ARIZONA

MARK GILMORE and MARK
HARDER,

Plaintiffs/Appellants,

v.

KATE GALLEG0, 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

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I. OPENING STATEMENT.

Justice Bolick recently cautioned that courts should be wary of invitations to “assert expansive policymaking powers that are reserved by the Arizona Constitution to the people and their elected representatives.” *Torres v. JAI Dining Servs.*, __ Ariz. __, 536 P.3d 790, 798, ¶ 30 (2023) (Bolick, J., concurring). “In both the federal and state constitutional settings, the primary policymaking power resides, unquestionably, in the legislature.” *Id.* at 799-800, ¶¶ 34-36 (Bolick, J., concurring) (noting the “separation of powers ramifications of usurping, displacing, or subjugating the legislature’s policymaking role”).

“It is not the prerogative of the courts to substitute their judgment for that of the body which our system of government vests with primary responsibility for determining how best to serve public health, safety and welfare.” *City of Phoenix v. Fehlner*, 90 Ariz. 13, 17 (1961). Relevant here, the wisdom of a city council’s methods “is a legislative, not a judicial, question.” *Home Builders Ass’n v. City of Scottsdale*, 187 Ariz. 479, 482 (1997). This applies with no less force when the Phoenix City Council approves a comprehensive collective bargaining agreement (“CBA”), which is “a long-term relational contract governing the whole employment relationship.” *Cheatham v. DiCiccio*, 240 Ariz. 314, 322, ¶ 30 (2016); IR 70 ¶ 15.

The City Council made the legislative policy decision that the City benefits by paying for release time as part of the CBA. Yet Petitioners ask the Court to carry

out their political preferences by enacting a ban on release time. The request is a dangerous attempt to interfere with the legislative policy choices of municipal bodies. This is not the forum for waging political battles over policy, and the Court should reject Petitioners' invitation to second-guess the City Council's legislative choices. *See Tucson Elec. Power Co. v. Round Valley Unified Sch. Dist. No. 10*, 163 Ariz. 532, 534 (App. 1990) ("Courts do not determine the wisdom of public expenditures; voters do"); *cf. Turken v. Gordon*, 223 Ariz. 342, 346, ¶ 14 (2010) ("courts owe significant deference to the judgments of elected officials").

Regardless, Petitioners' claims are unsupported and mutually exclusive. Either Petitioners pay for release time (despite their extensive testimony to the contrary), or the City does. If Petitioners pay, then the Gift Clause is not implicated. If the City does, then Petitioners could not have been injured or compelled to support or associate with the Union. Petitioners cannot have it both ways. In reality, the City paid for release time and complied with the Gift Clause.

The record is clear that Petitioners were not forced to subsidize or associate with the Union. They admitted, repeatedly, that the City paid for release time. They admitted, repeatedly, that release time did not cause them to receive less than what was promised. They affirmatively declared that the City did nothing to violate their contract of employment. They suffered no injury of any kind.

Petitioners also attempt to shift their burden of proving a Gift Clause violation,

and they distort the requirement that courts must take a “panoptic view” of the entire contract. Their claim fails under the correct framework and the undisputed facts.

First, a public purpose is lacking in only “those rare cases” where a public entity “unquestionably abused” its discretion, and multiple courts have found a public purpose in cases like this. *See, e.g., Cheatham*, 240 Ariz. at 320-21, ¶¶ 22-27; *Gilmore v. Gallego*, 255 Ariz. 169, 178, ¶¶ 26-28 (App. 2023); *Rozenblit v. Lyles*, 243 A.3d 1249, 1265-66 (N.J. 2021).

Second, Petitioners did not present evidence of inadequate consideration. Courts “will not assume disproportionality,” and “[i]t was not the [City’s] burden ... to prove that its contract was reasonable.” *Wistuber v. Paradise Valley Unified Sch. Dist.*, 141 Ariz. 346, 350 (1984). Petitioners admitted the City received adequate consideration for the total cost of the CBA, including release time. IR 70 ¶ 100; IR 100 (CSOF) ¶¶ 37-38. Under a panoptic view analysis, the City’s “give” did not exceed what it “gets.” *Cf. Schires v. Carlat*, 250 Ariz. 371, 376, ¶ 14 (2021).

Even if release time were eliminated, the City still would need to ensure employees are represented in labor relations under the Meet & Confer Ordinance. IR 70 ¶¶ 45, 103-104; *see also* IR 70 & 75, Ex. 14 (Zuercher Depo.) at 53:8-54:18, 76:16-77:12, 99:5-101:21. Thus, the value of release time is the City’s cost to otherwise fulfill its obligations under the Ordinance, and Petitioners do not challenge the constitutionality of these obligations. The City’s witnesses testified, without

contradiction, that the City would spend at least as much attempting to fulfill these obligations without release time. IR 70 ¶¶ 45, 103-104; IR 70 & 75, Ex. 14 (Zuercher Depo.) at 50:23-51:23, 53:8-54:18, 55:4-57:3, 87:5-20, 99:5-101:21.

The Gift Clause is not a tool to micromanage contractual negotiations or wield a line-item veto. This would violate the separation of powers and wreak havoc on complex municipal contracts with crisscrossing bundles of promises. IR 70 ¶¶ 11-15. Here, the release time provisions were integral to the collective bargaining and labor relations underpinning the CBA. They cannot be artificially isolated. In any case, release time conferred a public benefit that was proportional to the cost.

II. PETITIONERS WERE NOT FORCED TO SUPPORT, SUBSIDIZE, OR ASSOCIATE WITH THE UNION.

A. The City did not violate Petitioners’ constitutional rights or their right to work because they did not pay for release time.

Relying on *Janus v. AFSCME, Council 31*, 138 S. Ct. 2448 (2018), Petitioners allege they were forced to support the Union because they were compelled to “fund” release time. IR 9 ¶¶ 33-36, 52-57, 65. As they conceded before the court of appeals, “their free speech and association and right to work claims each rest on the foundation that plaintiffs (not the City) pay for release time.” *Gilmore*, 255 Ariz. at 175-76, ¶¶ 12, 19; *see also* IR 70 ¶¶ 108-110; IR 100 ¶¶ 17-18, 32, 35.

These claims fail based on the undisputed facts: (1) the City paid for release time; (2) Petitioners received everything to which they were entitled under the

effective CBA, and they had no right to anything more; (3) nothing was deducted from their compensation to pay for release time; and (4) they were not compelled to support or associate with the Union. IR 70 ¶¶ 31, 79-82, 91-96, 117, 127-130, 139, 141-146, 157; IR 100 ¶¶ 20-21, 23-24, 26-27, 39-43, 46-55; *cf.* IR 100 ¶¶ 9-11, 13-14. Indeed, Petitioners alleged “[t]he City finances the benefits of release time ... through city tax revenue.” IR 9 ¶ 39 (emphasis added); *cf. Cheatham*, 240 Ariz. at 320, ¶ 19 (release time subject to Gift Clause because “a public entity is making payments”). And they concede the provisions were “paid for with public funds” and were negotiated “not as part of employee compensation.” Petition for Review at 4.

Petitioners contend they lost compensation because they had eight hours of additional vacation time under a prior CBA. But the old CBA expired, and Petitioners admitted the City (1) never promised to provide more vacation time under the effective CBA, and (2) had no obligation to provide more vacation time if release time were eliminated. IR 70 ¶¶ 114-117, 120, 125-127; IR 100 ¶¶ 48-55.

In addition, Petitioners’ compensation was higher under the 2019-2021 CBA – e.g., they received more from new one-time payments than if the City’s release time funding had been divided equally among Unit II employees. IR 70 ¶¶ 101, 131-135; IR 100 ¶¶ 3-7. The Union may have bargained for these payments instead of more vacation time, and drawing comparisons to expired CBAs is both artificial and arbitrary. *Cf.* IR 70 ¶¶ 76-77.

Petitioners get no further with arguments about “total compensation.” The City and Union (the contracting parties) submitted uncontroverted evidence that this term of art refers to the City’s total cost to pay for the CBA. IR 70 ¶¶ 67-75, 79. “The cost to the City” was “charged as part of the total compensation.” IR 70 & 71, Ex. 1 (2019-2021 MOU) § 1-3(A) (emphasis added); IR 70 ¶¶ 28-31, 48, 67, 79-81, 92-95; IR 100 ¶¶ 23, 26, 39. Petitioners had no interest in “total compensation” beyond their personal wages and benefits – e.g., they had no interest in the wages and benefits of other Unit II employees, such as those on release time. IR 70 ¶¶ 74-75, 82, 84-90, 127-129; IR 100 ¶¶ 46-55. The City’s allocation of its own resources does not implicate or infringe on Petitioners’ rights. IR 70 ¶¶ 78, 82-83, 113-116.

B. The Court should reject Petitioners’ attempt to manufacture an ongoing entitlement to compensation from an expired CBA.

If Petitioners prevail, it would imply a perpetual right to compensation from expired contracts, and employees could argue (like Petitioners) that they are entitled to more compensation than set forth in the effective CBA. This is completely at odds with basic principles of employment law and collective bargaining.

Petitioners had no right to more than what was promised in the 2019-2021 CBA. *See 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); *Abbott v. City of Tempe*, 129 Ariz. 273, 278-79 (App. 1981) (similar). Nor did they have a continuing right to compensation from expired CBAs. *See Paczosa v. Cartwright*

Elem. Sch. Dist., 222 Ariz. 73, 77, ¶¶ 15-17 (App. 2009) (employee has no right to past compensation from expired contract). “[A]n expired contract has by its own terms released all its parties from their respective contractual obligations....” *Litton Financial Printing Div. v. N.L.R.B.*, 501 U.S. 190, 205-06 (1991). Courts routinely apply this principle to CBAs. *See, e.g., CNH Indus. N.V. v. Reese*, 138 S. Ct. 761, 763 (2018) (“contractual obligations will cease ... upon termination of the [CBA]”).

Petitioners had no claim to expired or hypothetical compensation, and they admitted the City was not obligated to increase their compensation if release time were eliminated. IR 70 ¶¶ 94, 96, 111-118, 120, 125-129; IR 100 ¶¶ 47-55; *Paczosa*, 222 Ariz. at 77, ¶¶ 15-17; *Orfaly*, 209 Ariz. at 264, ¶ 12 (“neither the record nor the law supports any contention that appellants reasonably expected to be paid in a manner different than that described in the contract”). Petitioners were not injured.

C. This case is not like *Janus*.

Janus held that “[no] payment to the union may be deducted from a nonmember’s wages” because this compels the employee to subsidize the union’s speech. 138 S. Ct. at 2459-60, 2486 (emphasis added). Unlike *Janus*, Petitioners were not forced to pay Union dues or fees. IR 70 ¶¶ 142-143; IR 100 ¶¶ 40, 42-43. They testified that they “were not forced to financially support the Union” or “adopt the Union’s positions or viewpoints,” and their names were not attached to what the Union says or does. *Gilmore*, 255 Ariz. at 177, ¶ 21; *see also id.* at 175-77, ¶¶ 14,

20-22; IR 70 ¶¶ 96, 139, 141-147, 157; IR 100 ¶¶ 20, 24, 27, 40-43, 46-47, 53-55.

Moreover, *Janus* does not prevent the City from allocating public funds to activities that citizens dislike. The government “has the right to ‘speak for itself’” and “is entitled to promote a program [or] espouse a policy.” *O’Brien v. Village of Lincolnshire*, 955 F.3d 616, 624-25 (7th Cir. 2020). “‘Compelled support of government’ – even those programs of government one does not approve – is of course perfectly constitutional” *Id.* at 623. “[E]very appropriation ... uses public money in a manner to which some taxpayers object,” and “government could not function if taxpayers could refuse to pay taxes if they disagreed.” *May v. McNally*, 203 Ariz. 425, 430, ¶ 22 (2002); *see also id.* at 427-28, 430-31, ¶¶ 8, 21-28.

Finally, *Janus* reaffirmed that public sector unions may be the exclusive representative of non-union employees.¹ 138 S. Ct. at 2478; *see also id.* at 2467-68, 2485 n.27 (“States can keep their labor-relations systems exactly as they are”); *Mentele v. Inslee*, 916 F.3d 783, 789 (9th Cir. 2019) (similar).

III. THE CBA DOES NOT VIOLATE THE GIFT CLAUSE.

A. Petitioners disregard the panoptic view requirement.

The “panoptic view” requirement is well-established. *See, e.g., Cheatham*,

¹ Petitioners have hinted on appeal that exclusive representation somehow forced them to associate with the Union’s release time activities. But this is not what they alleged or disclosed below, and they were not forced to speak or associate with the Union. IR 70 ¶¶ 108-110, 141-146, 157; IR 100 ¶¶ 17-18, 20, 24, 27, 32, 35, 40-43, 46-47, 53-55; *Gilmore*, 255 Ariz. at 175-77, ¶¶ 12, 14, 19-22.

240 Ariz. at 318, 320-22, ¶¶ 10, 18, 25, 30-33. So is 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); *see also Goodman v. Newzona Inv. Co.*, 101 Ariz. 470, 473 (1966) (“each and every part must be read in the light of the other parts”).

A “panoptic view” means “we cannot consider particular provisions in isolation.” *Cheatham*, 240 Ariz. at 322, ¶ 31. This is “particularly appropriate with respect to a collective bargaining agreement, which is not merely an exchange of discrete promises, but instead is ‘a long-term relational contract’ governing the whole employment relationship.” *Id.* at 321-22, ¶¶ 30-32. Thus, “release 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.

These requirements are necessary because contracts are often, if not always, a collection of overlapping promises. *See, e.g., Schade v. Diethrich*, 158 Ariz. 1, 6-9 (1988) (finding consideration from myriad crisscrossing promises). The analysis falls apart if the promises are analyzed in isolation. For example, “if such an agreement provided for paid vacation or personal leave time for public employees, the adequacy of the consideration ... would not be evaluated by asking if the employees must use their time in a way that benefits the employer.” *Cheatham*, 240 Ariz. at 322, ¶ 31. “[T]he consideration received by the employer is the work the employees generally agree to provide under the agreement” *Id.* Further, the fact

that a provision may also result in a private benefit is irrelevant to whether the public benefits are grossly disproportionate to the cost. *Id.* at ¶ 32.

Petitioners offer no reason for abandoning the panoptic view requirement. The Court recently reiterated the “duty to faithfully apply precedent unless ‘the reasons for it’ no longer exist or it is ‘clearly erroneous or manifestly wrong.’” *Torres*, 536 P.3d at 794, ¶ 13; *see also id.* at 807, ¶ 69 (Timmer, V.C.J., dissenting) (noting importance of precedent where “many cases over several decades have relied”). Nothing has changed to justify a departure. This Court and other jurisdictions have recently employed comprehensive analyses consistent with the panoptic view requirement. *See Schires*, 250 Ariz. at 374-78, ¶¶ 2-4, 10-12, 19-22 (comprehensively analyzing economic development agreement); *Rozenblit*, 243 A.3d at 1265-66 (refusing to consider release time provisions in isolation because they are “part of an agreement as a whole”).

Discarding these principles would destroy the consistency and predictability necessary for parties to negotiate complex contracts. *See Laurence v. Salt River Project*, 255 Ariz. 95, 100, ¶ 17 (2023) (stare decisis “is rooted in the public policy that people should be able to rely on judicial precedent to know their rights and order their conduct accordingly”); *Torres*, 536 P.3d at 809, ¶ 76 (Timmer, V.C.J., dissenting) (“this Court should not readily disregard long-adhered-to cases”). Local officials are already constrained by the fear of being second-guessed. Petitioners

ask the Court to compound this uncertainty by requiring each provision in complex contracts to be linear and self-contained, or else risk elimination. But contracts are a collection of crisscrossing promises that must be considered as a whole. The Court should reject Petitioners' artificial and unrealistically narrow view, which seeks to interfere with legislative policy choices in violation of the separation of powers.

B. Release time was integral to the CBA and the City's labor relations with Unit II – it was not pretext for a gift.

Petitioners simply assume *ipso facto* that release time is a gift. They also impermissibly isolate release time without considering the rest of the CBA. They do not explain why release time is so divorced from the subject matter of the CBA that it is effectively pretext for a gift.

Petitioners rely on extreme hypotheticals involving a house, Lamborghini, or some other clear gratuity hidden within a larger contract, but release time is nothing like these gifts. If the release time provisions were simply pretext for a gift, and not an integral part of the contract, there may be reason to separately evaluate them. But release time is directly germane to a CBA; mansions and sports cars are not.

Here, the provisions were not foreign add-ons outside the scope of the CBA – they were integral to the entire labor relationship. Release time helps the City to (1) fulfill its obligations under the City Code, (2) promote positive labor relations, and (3) implement a readily available point of contact for collective bargaining and addressing labor disputes. IR 70 ¶¶ 32-34, 36-38, 41-46, 54-65; *see also Rozenblit*,

243 A.3d at 1266 (release time “is intimately tied to fulfilling the public purpose”).

There is no support for Petitioners’ argument that the provisions were separately negotiated and funded, apart from the CBA. *Contra* Petition for Review at 14. The parties negotiated release time as part of their collective bargaining negotiations, and the provisions were expressly integrated parts of the CBA and the City’s cost to fund it. IR 70 ¶¶ 28, 32, 67; *see also id.* ¶¶ 28-39, 43-48, 80, 92-93.

C. The CBA served a public purpose and had adequate consideration.

Petitioners did not present admissible evidence to meet their burden. *See Schires*, 250 Ariz. at 374, ¶ 7 (“party asserting a Gift Clause violation bears the burden of proving it”). They also failed to controvert the City’s and Union’s evidence. IR 70 at ¶¶ 13-27, 29, 33-46, 49-65, 103-104; IR 100 ¶¶ 25, 28, 44. Petitioners relied on their expert’s report, but he simply made conclusory statements without factual support. IR 70 ¶¶ 158-159. This is insufficient to survive summary judgment. *See Florez v. Sargeant*, 185 Ariz. 521, 526-27 (1996). The City also moved to exclude the expert because he failed to conduct an adequate investigation. IR 89, IR 127. The superior court denied the motion as moot (IR 128), but the expert should be disregarded here for the same reasons. IR 70 ¶¶ 158-159; *State ex rel. Montgomery v. Miller*, 234 Ariz. 289, 298-99, ¶¶ 19, 22-27 (App. 2014).

Regardless, the CBA was the product of collective bargaining, which promotes better labor relations and allows employees to participate in formulating

their terms and conditions of employment. IR 70 ¶¶ 11-17, 20. The CBA also procured employee services, defined their terms and conditions of employment, confirmed their agreement not to strike, and obtained important promises from the Union, including its agreement to represent employees. IR 70 ¶¶ 6, 18-27, 33-38, 40; *Cheatham*, 240 Ariz. at 320-21, ¶¶ 23-27.

For consideration, the question is “whether a comprehensive examination of the agreement reveals that the expenditure is grossly disproportionate to the benefit.” *Cheatham*, 240 Ariz. at 321-22, ¶¶ 30-32, 34 (emphasis added). Petitioners ignored the rest of the CBA and presented no evidence of gross disproportionality. *See Maricopa Cty. v. State*, 187 Ariz. 275, 281 (App. 1996) (court erred by misallocating burden to public entity, and unsupported assertions did not show disproportionality). They admitted the CBA’s total cost was not too much and that the City received fair consideration. IR 70 ¶¶ 99-100; IR 100 ¶¶ 37-38. Thus, Petitioners admitted adequate consideration under the panoptic view requirement, and the percentage cost of the release time provisions here is roughly identical to the percentage in *Cheatham*, 240 Ariz. at 322, ¶ 33; *see also* IR 70 ¶¶ 101-102.

D. The release time provisions should not be analyzed in isolation, but they also served a public purpose and had adequate consideration.

The CBA specifies that the parties “negotiated full-time release positions, and release hours, as an efficient and readily available point of contact for addressing labor-management concerns.” IR 70 ¶ 33; *see also id.* ¶¶ 28-46, 49-65. As this

Court recognized, “the City benefits from more efficient negotiations” by collectively bargaining with the Union, 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, ¶ 23; *see also* IR 70 ¶¶ 16-17, 23-25, 29, 33-34, 36, 43, 54-56, 58-63. The City and Union provided substantial and uncontroverted evidence of the public benefits, and Petitioners conceded many occurred or were possible.² IR 70 ¶¶ 20, 26-27, 29, 33-34, 36-46, 49-65, 103-104; IR 100 ¶¶ 28, 44-45.

Thus, the City pays for release time to further the City Council’s policies of promoting cooperation and peaceful labor relations, which encourages employees to “give more of their time and energy and quality to the[ir] work.” IR 70 ¶¶ 41-46. This is backed by substantial economic and empirical research. IR 70 ¶¶ 54, 56, 58-61; IR 70 & 72, Ex. 6 (Ward Report) at 3-10, 12-14; IR 70 & 74, Ex. 11 (Ward Depo.) at 47:2-24, 50:7-51:22, 55:5-56:4, 56:21-57:3, 113:14-114:5. The policy choice is far from an unquestionable abuse of discretion. *Cf. Schires*, 250 Ariz. at 375, ¶¶ 8-9 (courts “can consider both direct and indirect benefits” and “give significant deference to the judgment of elected officials”); *see also Cheatham*, 240 Ariz. at 320-21, ¶¶ 23-27; *Wistuber*, 141 Ariz. at 348-50; *Rozenblit*, 243 A.3d at

² Petitioners and their expert conceded release time may improve efficiency by facilitating collective bargaining and may improve labor relations and augment employees’ collective voice, which can lead to higher employee satisfaction, recruitment, and retention. IR 70 ¶¶ 50-52, 57-63; IR 100 ¶¶ 28, 44-45.

1265-66 (release time serves public purpose by facilitating collective bargaining and resolution of disputes, which promotes labor peace and stability).

Petitioners complain about allegedly improper uses and a purported lack of accountability, but they refuted these arguments during their depositions (IR 70 ¶¶ 147, 149-150; IR 100 ¶ 16), and the arguments were rejected in *Cheatham*, 240 Ariz. at 321-23, ¶¶ 25-26, 37-39. It is irrelevant whether the Union also benefits or uses release time for political activities. Petitioners do not argue release time is used exclusively for these purposes, and “[t]he fact that [private parties] also benefit, even primarily, does not alter the public purposes of the City’s expenditures.” *Schires*, 250 Ariz. at 376, ¶ 12. “[T]he improper use of release time would not establish that the [CBA] violates the Gift Clause (just as the prospect of a breach does not mean a contract is contrary to public policy or lacks consideration), but instead that ... the City might have reason to complain” *Cheatham*, 240 Ariz. at 323-24, ¶ 41. And Petitioners do not allege the Union has breached the CBA. IR 100 ¶ 21.

Petitioners rely on *Kromko v. Ariz. Bd. of Regents*, 149 Ariz. 319 (1986), but that case involved the private operation of a university hospital pursuant to a statute that required supervision and control. *Id.* at 320-21. *Kromko* noted the hospital’s operations were subject to this supervision, but it did not hold that the Gift Clause requires it, and *Cheatham* rejected a similar argument. *Cheatham*, 240 Ariz. at 323, ¶¶ 36-39. It is not realistic to require full operational control over the way in which

a public contract is performed. This would defeat the purpose of contracting with an outside provider and interfere with the contractor's independent operations.

In any event, the City's witnesses testified about the resulting positive effects on labor relations. IR 70 ¶¶ 41-42, 45-46, 54-55, 64-65; IR 70 & 74, Ex. 12 (Frost Depo.) at 52:9-53:8, 54:14-56:24; IR 70 & 75, Ex. 14 (Zuercher Depo.) at 23:8-24:25, 26:12-27:3, 53:8-54:18, 55:4-57:3, 57:22-58:3, 58:21-59:10, 99:5-101:21.

With respect to consideration, Petitioners concede in their response to the State's amicus brief that nonpecuniary benefits must be considered.³ And there are practical limitations to quantifying the objective, fair-market value of positive labor relations, unlike the economic development agreements in *Schires* and *Turken*. The City's and Union's expert explained that "one would need to understand how the world without release time differs from the world with release time (ideally over a long period)," and Petitioners' expert did not perform such a valuation. IR 70 & 72, Ex. 6 (Ward Report) at 3, 9-13; IR 70 ¶ 158; IR 70 & 73, Ex. 7 (Brown Depo.) at 54:9-13, 62:8-22, 65:1-22 ("I don't know how to investigate something that hasn't happened"), 102:14-17, 119:1-25, 121:18-21, 124:1-17, 125:18-126:8, 157:6-25.

³ Petitioners contend City Manager Ed Zuercher testified that "release time has no monetary value." Response to Shierholz Amicus Brief at 7. This is not true. Mr. Zuercher testified that release time provides benefits although there is not a direct pecuniary return, and "costing" release time is a way of valuing it. IR 70 ¶¶ 103-104; IR 70 & 75, Ex. 14 (Zuercher Depo.) at 23:16-25:1, 53:21-54:18, 55:4-56:6, 76:16-77:12, 87:5-20, 99:5-101:21; *see also* IR 70 ¶¶ 41-42, 45-46, 55, 64-65.

Although the public benefits of positive labor relations are difficult to quantify with precision, the benefits are no less real. It cannot be a per se violation simply because the public benefit is intangible or hard to quantify – like with fire and police departments, public education, libraries, arts and culture, or even the judiciary. Yet the expenditures for these public goods provide essential macrolevel value, even if the value is difficult to quantify or if private parties also benefit. And the City Council’s legislative policy choices should not be disturbed. *Cf.* IR 70 ¶¶ 14-15.

Unlike the plaintiffs in *Schires*, who presented an expert opinion that the government “received no value from its agreements,” Petitioners offered no evidence of gross disproportionality. *Cf. Schires*, 250 Ariz. at 378, ¶ 22. The City’s and Union’s evidence of adequate consideration is uncontested.

Petitioners did not rebut testimony that the benefits justify the cost by helping to (1) facilitate collective bargaining, (2) efficiently resolve grievances and other disputes, and (3) avoid lawsuits, labor charges, and workplace complaints. IR 70 ¶ 55; *see also id.* ¶¶ 41-46, 54-65; IR 70 & 74, Ex. 12 (Frost Depo.) at 54:14-56:24; IR 70 & 75, Ex. 14 (Zuercher Depo.) at 24:1-25, 26:12-27:3, 53:8-54:18, 58:21-61:5, 87:5-20, 99:5-101:21. The City’s and Union’s expert opined that “[i]f eliminating release time reduces productivity, increases turnover, increases management costs, etc., by even a small amount, the cost would likely dwarf the savings from eliminating release time.” IR 70 & 72, Ex. 6 (Ward Report) at 12-13; IR 70 & 74,

Ex. 11 (Ward Depo.) at 49:15-24, 106:13-107:21. Thus, release time is like an insurance policy – a mechanism to avoid or mitigate costs and liability.

In addition, the Union’s release time duties generate direct benefits by augmenting employees’ “collective voice.” IR 70 & 72, Ex. 6 (Ward Report) at 4-6, 8; IR 70 & 74, Ex. 11 (Ward Depo.) at 47:2-24, 55:5-14, 113:14-114:5; IR 70 & 74, Ex. 12 (Frost Depo.) at 54:14-56:24. This “[p]rovid[es] workers the means to express discontent other than quitting,” and “increase[es] employee education and knowledge, helping the City provide benefits and working conditions that are better matched to employee preferences, increasing job satisfaction, reducing turnover, improving recruitment, and increasing productivity.” IR 70 & 72, Ex. 6 (Ward Report) at 3-8. These benefits “increase the efficiency of City operations, saving money and improving quality,” and “paying for [release time] directly is the most practical and least risky option to ensure the ongoing benefits.” IR 70 & 72, Ex. 6 (Ward Report) at 4-6, 11-12; IR 70 & 74, Ex. 11 (Ward Depo.) at 49:15-51:7, 76:17-77:2; IR 70 & 74, Ex. 12 (Frost Depo.) at 52:9-53:8, 54:14-56:24, 82:13-83:13.

Importantly, if release time were eliminated, the City still would need to ensure employees are represented in labor relations. IR 70 ¶¶ 45, 103-104; *see also* IR 70 & 75, Ex. 14 (Zuercher Depo.) at 76:16-77:12, 99:5-101:21. The City’s costs would be the same or higher if paid release time were eliminated – for example, the City still would need employees to handle the same activities and would suffer

higher costs from inefficient scheduling and difficulty finding available representatives. IR 70 ¶ 45; IR 70 & 74, Ex. 12 (Frost Depo.) at 156:11-22; IR 70 & 75, Ex. 14 (Zuercher Depo.) at 50:23-51:23, 53:8-54:18, 55:4-57:3, 87:5-20, 99:5-101:21. This uncontroverted fact means the objective, fair-market value of release time is not grossly disproportionate to the cost. *Cf. Wistuber*, 141 Ariz. at 348, 350 (finding adequate consideration based on evidence that release time activities would need to be performed at higher cost if release time were eliminated).

Petitioners contend the Union did not promise to provide any direct benefits, but the CBA identifies specific uses of release time that directly benefit the City. IR 70 ¶¶ 36-38. Petitioners complain these are only examples and not contractual commitments, but *Cheatham* rejected this argument: “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” *Cheatham*, 240 Ariz. at 323, ¶ 39 (emphasis added). “[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.

Moreover, the Union expressly agreed to represent all Unit II employees in the meet and confer process, grievances, and other workplace matters. IR 70 ¶¶ 24-25. The Union’s stewards “shall service grievances at ... job sites to which they are regularly assigned.” IR 70 & 71, Ex. 1 (2019-2021 MOU) at § 1-3(A)(2) (emphasis

added). “The full-time release positions agree[d] to participate in [the City’s] committees and task forces,” and the Union 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. IR 70 ¶¶ 26-27, 38, 44, 54.

These commitments ensure employees are represented in labor relations as required by the Meet & Confer Ordinance, and they distinguish this case from the indirect benefits in *Schires*. Petitioners complain the CBA lacks specificity, but the Gift Clause does not require such detailed minutiae. *Cf. Rozenblit*, 243 A.3d at 1266 (although CBA “does not set forth in detail the manner in which the releasees fulfill their responsibilities, their duties directly relate to the resolution of employer-employee disputes and the promotion of labor peace”). As *Cheatham* recognized, there is adequate consideration because release time facilitates collective bargaining and provides a mechanism for addressing labor disputes, “even if [the CBA] does not specify minutely how release time will be used.” 240 Ariz. at 319-24, ¶¶ 15, 23-26, 33, 37-39, 42; *see also* IR 70 ¶¶ 23-27, 33-34, 36-39, 41-46, 54-65, 103-104.

IV. CONCLUSION.

Petitioners seek to interfere with the City Council’s legislative policy choices. The judicial process is not designed to impose political preferences or second-guess these choices, and Petitioners’ claims fail under longstanding precedent.

DATED: November 21, 2023.

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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 GALLEG0, 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.

I. The parties.

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

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

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

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

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

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

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

8. The Meet & Confer Ordinance recognizes the right of Unit II employees to 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

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

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

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

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

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

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

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

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

27. The Union agreed to designate representatives to serve on (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 to assist the City’s efforts to provide for the health and safety of all Unit II employees. **Exhibit 1** (2019-2021 MOU) at Section 2-3(A), 2-4(B); **Exhibit 3** (Frost Declaration) at ¶¶ 15, 25; **Exhibit 9** (Deposition of M. Gilmore) at 20:8-19.

III. Release time under the 2019-2021 MOU.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

81. This is consistent with testimony from the City's Rule 30(b)(6) representatives and Plaintiffs' expert. **Exhibit 8** (Deposition of T. Reber) at 57:19-21; **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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**

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

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

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

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

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

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

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

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

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

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

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

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

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

128. Plaintiffs testified that they are receiving all benefits and wages they were promised under the 2019-2021 MOU. **Exhibit 9** (Deposition of M. Gilmore) at 118:24-119:2; **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,

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

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

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

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

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

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

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

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

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

145. Plaintiff Harder testified that he is not forced to associate with the Union. **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.

1 159. Mr. Brown has never served as an expert witness on behalf of a union, and
2 he stated he would likely never agree to serve in that capacity. Since 1987, Mr. Brown
3 has exclusively worked on the side of management, and Mr. Brown has never worked with
4 the City of Phoenix or any other comparable city in the State of Arizona. **Exhibit 7**
5 (Deposition of R. Brown) at 13:18-20, 18:8-19, 54:1-13, 157:6-25.

6 RESPECTFULLY SUBMITTED this 26th day of March, 2021.

7 **SHERMAN & HOWARD L.L.C.**

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CERTIFICATE OF SERVICE

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EXHIBIT 6

EXHIBIT 6

Expert Report of Dr. Bryce Ward

Gilmore and Harder v. Gallego, Zuercher, City of Phoenix,
and AFSCME Local 2384

CASE NO. CV2019-009033



September 18, 2020

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I. SUMMARY

A. Qualifications

I am a founder of ABMJ Consulting (ABMJ), which provides economic and statistical analysis for complex litigation. I am also a Research Associate at the University of Montana. I have also served as a Senior Research Professor, Visiting Assistant Professor or a Visiting Adjunct Professor at the University of Montana, Lewis and Clark College, the University of Oregon, and Portland State University, where I taught courses in microeconomic theory, statistics and econometrics, public economics, labor economics, social networks and social skills, and environmental economics. I have testified on economic matters in administrative, legislative, and court proceedings, and I have presented papers at professional proceedings on economics. I received a Ph.D. in economics from Harvard University. Attached as Exhibit A is my *curriculum vitae*.

My work specific to this report and any subsequent testimony is compensated at \$400 per hour. My compensation is not dependent on the outcome of this matter.

B. Background and Assignment

It is my understanding that Plaintiffs' lawsuit alleges that, among other things, the inclusion of City paid release time in the City of Phoenix's Memorandum of Understanding with AFSCME 2384 ("MOU") violates Arizona law primarily because paid release time fails to serve a public purpose (and thus allegedly constitutes an illegal gift) and because the funds for release time are obtained by reducing employee compensation (and thus allegedly constitutes illegal compelled speech).

Attorneys representing both the City of Phoenix ("City") and AFSCME 2384 ("Union") retained me and asked me to provide opinions on the economics and costs/benefits of release time and to evaluate the expert report of Mr. Robert Brown and the evidence he offers in support of the Plaintiffs' positions.

C. Information Considered

I base my opinions described in this report on my past experience and education as well as on the materials specific to this matter that I reviewed and considered. These materials are detailed in the report text, but include:

- Expert report of Robert Brown dated July 14, 2020
- Memorandum of Understanding 2019-2021 between City of Phoenix and American Federation of State, County, and Municipal Employees Local 2384, AFL-CIO covering Field Unit II
- Phoenix City Code Sec. 2-209
- Second Amended Complaint

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- Summary of total cost of release time as a percent of budget (Unit 2 Release Time with % of Total Comp.pdf)
- Interviews of City employees: Ed Zuercher, Jeff Barton, and Tracy Reber
- *Cheatham v. DiCiccio*, 240 Ariz. 314 (2016)
- Expert report of Robert Brown dated August 10, 2012
- Declaration of Robert Brown dated July 13, 2013
- Expert report of William Bruce Aitchison dated June 20, 2012
- Deposition transcript William Aitchison dated January 18, 2013
- Cheatham hearing transcript May 25, 2012
- Cheatham hearing transcript January 25, 2013
- Cheatham hearing transcript November 25-26, 2013
- Economic literature on the effects of unions, including: Freeman R, Medoff J. (1984). *What Do Unions Do*. N.Y. Basic Books; Barrows, T. S. (2017). What do unions do?: a twenty-year perspective. Routledge; Doucouliagos, H., Freeman, R. B., & Laroche, P. (2017). The economics of trade unions: A study of a research field and its findings. Taylor & Francis; Lyon, M. A. (2020). Bounded Unions: How Restrictive Labor Policies Affect Teachers, Students, and Progressive Politics (Doctoral dissertation, Columbia University); Blanchflower, D. G., & Bryson, A. (2020). Now Unions Increase Job Satisfaction and Well-being (No. w27720). National Bureau of Economic Research; Choi, Y., & Chung, I. H. (2016). Voice effects of public sector unions on turnover: Evidence from teacher contracts. *Public Personnel Management*, 45(2), 213-233.
- Studies and commentary on release time, including: Reilly, T., & Singla, A. (2017). Union Business Leave Practices in Large US Municipalities: An Exploratory Study. *Public Personnel Management*, 46(4), 342-367. Bullock, K. (2007). Official time as a form of union security in federal sector labor-management relations. *AFL Rev.*, 59, 153; Snow, C. J., & Abramson, E. M. (1983). Rights to Official Time for Unions Representing Federal Employees. *Case W. Res. L. Rev.*, 34, 17; U.S. Government Accountability Office, GAO-17-105, Union Activities: VA Could Better Track the Amount of Official Time Used by Employees 6 (2017); Written testimony of Darrel M. West, Vice President of Governance Studies and Director of the Center for Technology Innovation at the Brookings Institution before A Hearing of the Subcommittee on Government Operations of the U.S. House Committee on Oversight and Government Reform “Union Time on the People’s Dime: A Closer Look at Official Time” May 24, 2018; U.S. Government Accountability Office, GAO-15-9, Actions Needed to Improve Tracking and Reporting of the Use and Cost of Official Time, October 2014.
- Literature on conflict and conflict resolution, including: Moffitt, M. L. (2005). Disputes as opportunities to create value. *The Handbook of Dispute Resolution*, 173; Menkel-Meadow, C. J., Porter-Love, L., Kupfer-Schneider, A., & Moffitt, M. (2018). *Dispute resolution: Beyond the adversarial model*. Aspen Publishers.

D. Summary of Opinions

Based on my analysis and review of materials related to this case, I proffer the following opinions at this time. Should new information become available I may revise my analysis, my opinions, or both.

Cities and unions include release time in collective bargaining agreements, in part, to obtain the benefits from providing employees with collective voice. Economic theory and empirical evidence suggest that providing employees with collective voice benefits the employer by:

- Providing workers the means to express discontent other than quitting;
- Opening channels of communication between workers and management;
- Providing management information about worker preferences so that the mix of conditions, rules, and compensation better matches worker preferences;
- Identifying and potentially remedying inefficiencies in the production process.

Collectively, these benefits help the employer be more efficient (get more output for less money) by increasing job satisfaction, reducing turnover (and associated costs), increasing productivity, etc. The City cites a nearly identical list of benefits as the justification for including release time in their MOUs. The existence of such benefits has been confirmed by studies of release time and by courts.

Release time is a common feature of municipal collective bargaining agreements. A recent study found it was included in 87 percent of a selection of collective bargaining agreements obtained from 77 large US cities. The fact that release time is common suggests that Phoenix is not alone in its belief that the benefits of release time justify the costs.

The Plaintiffs' claims that release time does not serve a public purpose and that paying release time reduces the Plaintiffs' compensation are unsupported. The Plaintiffs' expert, Mr. Brown, supports his arguments for these positions with faulty logic unsupported by relevant facts or evidence. In particular, Mr. Brown fails to establish a clear description of what the world would look like without release time. He does not show that eliminating release time would allow the City to provide higher quality services at a lower cost, nor does he show that eliminating release time would lead to higher compensation for the Plaintiffs.

Careful consideration of the assumptions implicit in Mr. Brown's arguments shows they are illogical and unsupported by evidence or accepted economic or other academic theories. For instance, Mr. Brown's claim that eliminating City paid release time would generate more wages for the Plaintiffs entails two key assumptions, neither of which are supported. First, the assumption that the elimination of release time results in the same ability or willingness to distribute that money to Unit II employees is not supported. In

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order for his assumption to be true, the elimination of release time must not reduce the City's ability or willingness to pay (i.e., the size of the pie must remain the same or increase). Mr. Brown presents no evidence that supports this assumption. Second, the City must choose to transfer savings from eliminating release time to wages (i.e., the wages slice of the pie must increase). Mr. Brown presents no evidence that either of these assumptions would occur. Basic economic reasoning and my interviews with City staff, however, suggests that neither assumption is likely to hold.

Thus, Mr. Brown fails to undermine the evidence that government provided release time benefits the City and the public. He also fails to establish that eliminating release time would increase Plaintiffs' wages (in fact, the opposite is more likely).

II. THE BENEFITS OF RELEASE TIME

In public agencies, employees are sometimes granted release from their regular work duties to participate in labor relations activities. This time goes by various names -- release time, official time, union business leave, etc., but the practice is widespread. It exists in the federal government, and, according to one recent study of the 77 largest cities in the U.S., 166 out of 190 collective bargaining agreements examined (or 87 percent) included some form of release time.¹

The details of release time vary from contract-to-contract. In the matter at hand, release time includes four full-time paid release positions and an additional bank of paid hours available for other Union members to use under certain conditions.² The City calculates that the annual total cost of release time for Unit II under the current MOU equals \$499,000.³ This amount represents 0.3 percent of the total economic package for Unit II.

The MOU states that release time serves to promote "harmonious and cooperative relationships between the City and its employees" and that release positions and release hours facilitate "an efficient and readily available point of contact for addressing labor-management concerns."⁴ It further identifies examples of release time activities. These include:

- Ensuring representation of employees during administrative investigations and grievance/disciplinary appeal meetings with management;
- Participating in collaborative labor-management initiatives that benefit the City and the members;
- Serving on City and departmental task forces and committees;

¹ Reilly, T., & Singla, A. (2017). Union Business Leave Practices in Large US Municipalities: An Exploratory Study. *Public Personnel Management*, 46(4), 342-367.

² MOU, Section 1-3, A & B.

³ Unit 2 Release Time with % of Total Comp.pdf

⁴ MOU, Section 1-3, A.

- Facilitating effective communication between City and Department management and employees;
- Assisting members in understanding and following work rules;
- Administering the provisions of the Memorandum of Understanding;
- Prepare for appeals and hearings;
- Attend Union conferences, meetings, seminars, training classes, and workshops so that employees better understand issues such as City policies and practices, conflict resolution, labor-management partnerships, and methods of effective representation.⁵

My interviews with City employees confirm that the City believes that these activities serve to increase the efficiency of City operations, saving money and improving quality.⁶

The City and Union's perspective on the benefits of release time to the City and public is grounded in the economic literature on labor unions. This literature acknowledges that unions (like most large social and economic institutions) may generate positive and negative effects for employers. Unions' positive effects generally stem from their ability to provide employees with collective voice.⁷ The collective voice theory of unions posits that unions help create a more satisfied, cooperative, and productive workforce by:

- Providing workers a means to express discontent other than quitting;
- Opening channels of communication between workers and management;
- Providing management information about worker preferences so that the mix of conditions, rules, and compensation better matches worker preferences;
- Identifying and remedying inefficiencies in the production process.⁸

Empirical research confirms that unions may generate these benefits. For instance, recent studies have shown that unionized workplaces are associated with greater productivity, greater job satisfaction, improved health and safety, and lower turnover.⁹

⁵ MOU, Section 1-3, A.

⁶ Interviews of Ed Zuercher and Jeff Barton; see also Phoenix City Code Sec. 2-209.

⁷ Freeman R, Medoff J. (1984). *What Do Unions Do*. N.Y. Basic Books.

⁸ Freeman and Medoff (1984); Barrows, T. S. (2017). What do unions do?: a twenty-year perspective. Routledge; Doucouliagos, H., Freeman, R. B., & Laroche, P. (2017). The economics of trade unions: A study of a research field and its findings. Taylor & Francis.

⁹ E.g., Doucouliagos, Freeman, Laroche (2017), Lyon, M. A. (2020). Bounded Unions: How Restrictive Labor Policies Affect Teachers, Students, and Progressive Politics (Doctoral dissertation, Columbia University); Blanchflower, D. G., & Bryson, A. (2020). Now Unions Increase Job Satisfaction and Well-being (No. w27720). National Bureau of Economic Research; Choi, Y., & Chung, I. H. (2016). Voice effects of public sector unions on turnover: Evidence from teacher contracts. *Public Personnel Management*, 45(2), 213-233; Dean, A., Venkataramani, A., & Kimmel, S. (2020). Mortality Rates From COVID-19 Are Lower In Unionized Nursing Homes: Study examines mortality rates in New York nursing homes. *Health Affairs*, 10-1377; Morantz, A. D. (2013). Coal mine safety: Do unions make a difference?. *ILR Review*, 66(1), 88-116.

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Relatively few studies examine release time specifically; however, investigations of release time cite benefits similar to those listed above for collective voice. During interviews, City staff mentioned a variety of benefits from release time. A partial list includes:

- Union release time promotes the development of dependable, trained, knowledgeable representatives with whom the City has relationships;
- Union release time allows for more (and more efficient) communication between management and employees because of a uniform and centralized method of resolving disputes and addressing labor issues and because representatives collect and disseminate information up (from employees to management) and down (from management to employees) so management does not have to talk to thousands of employees separately.
- Union release time also increases communication and efficiency by making scheduling much easier.
- Union release time facilitates employees serving on committees like the Health Care Task Force or health and safety committees.
- Employees on Union release gather and provide feedback on management policies or programs that are or might adversely affect production or create inefficiencies, such as working on joint solutions and improving health and safety policies and programs.
- Union release time also helps facilitate the entire collective bargaining process.¹⁰

Collectively, these benefits improve the efficiency of City services by increasing employee education and knowledge, helping the City provide benefits and working conditions that are better matched to employee preferences, increasing job satisfaction, reducing turnover, improving recruitment, and increasing productivity.

The testimony and decision in the *Cheatham* case identified similar benefits.¹¹ For instance, among other things, the Court in the *Cheatham* case noted that release time benefits the City by facilitating efficient negotiations, facilitating the resolutions of grievances and other employer-employee issues under the MOU, and establishing an identified representative for employees in employment-related issues.¹² Broadly, the Court concluded with respect to another City of Phoenix labor organization who also has release time positions: “a public purpose may be served by PLEA’s representational activities to the extent they promote improved labor relations and employment conditions for public safety officers.” In addition, witnesses testified in the *Cheatham* case that the cost savings generated by release time more than offset the costs.¹³

¹⁰ Interviews of Ed Zuercher and Jeff Barton.

¹¹ Other courts have reached similar conclusions, e.g., *Greenberg et al v. County of Suffolk et al* (index 610524-17), 5/14/2020.

¹² *Cheatham v. DiCiccio*, 240 Ariz. 314 (2016), para 23-26. Para. 23 also notes it serves a public-purpose to the extent it helps secure services.

¹³ See, e.g., Valenzuela testimony 1/25/2015, p. 180; Aitchison testimony 1/18/2013, pp. 27-32.

Other research on release time finds similar benefits.¹⁴ For instance, a 2014 Government Accountability Office report on release time (aka official time) in the federal government found:

“... agency management and union officials at three selected agencies—SSA, Treasury, and VA—told us about several benefits related to official time, such as (1) improving labor-management relations, and (2) reducing agency costs ... according to both management and union officials, official time has helped improve labor-management relations between management and unions because they work jointly to develop solutions or improvements to address workplace challenges. For example, some of the Treasury union officials we met with said that management involved their unions early on in the process when making suggestions to streamline or fine tune workplace processes, such as installing a new performance management system and updating existing procedures. In addition, they also told us that official time has helped to create an environment where the workforce can be more engaged and have their voices heard. Treasury officials told us that official time improves the agency’s efficiency and accomplishment of the mission because union officials communicate goals to the organization. SSA management officials told us that allowing official time provides a stable work environment for SSA employees while SSA union officials said that official time has played a critical role in improving SSA as a workplace. For example, they explained that SSA unions were able to negotiate “flexi-place” arrangements with agency management using official time to allow employees to work from home. VA union officials told us that official time has allowed them to help agency management establish workforce policies related to telework.

Second, according to both management and union officials, the use of official time by union representatives to address issues, such as potential unfair labor practices, equal employment opportunity complaints, and grievances with employees, has led to agency cost savings. For example, management and union officials at Treasury and VA told us that having official time has resulted in fewer unfair labor practices and grievances filed by employees because they are usually resolved at the lowest level of management. Specifically, VA union officials told us that a VA union conducted a study of its 22 local chapters and found reductions in grievances and unfair labor practices because of official time. In addition, VA management officials said that having on-site union representation and support helps lessen and resolve disputes more quickly, thereby assisting the department in moving forward with its mission. Similarly, SSA union officials

¹⁴ For instance, see Bullock, K. (2007). Official time as a form of union security in federal sector labor-management relations. *AFL Rev.*, 59, 153; Snow, C. J., & Abramson, E. M. (1983). Rights to Official Time for Unions Representing Federal Employees. *Case W. Res. L. Rev.*, 34, 17; U.S. Government Accountability Office, GAO-17-105, *Union Activities: VA Could Better Track the Amount of Official Time Used by Employees* 6 (2017); Written testimony of Darrel M. West, Vice President of Governance Studies and Director of the Center for Technology Innovation at the Brookings Institution before A Hearing of the Subcommittee on Government Operations of the U.S. House Committee on Oversight and Government Reform “Union Time on the People’s Dime: A Closer Look at Official Time” May 24, 2018.

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also said that official time has helped to resolve employee issues before escalating to formal grievances or equal employment opportunity complaints.”¹⁵

Thus, when governments include release time in collective bargaining agreements, they are (at least in part) seeking the benefits from providing employees with collective voice. Given that release time is very common among large municipalities (87 percent of large cities' collective bargaining agreements allow it), this suggests that Phoenix is not alone in its belief that voice benefits provided by release time justify the cost.¹⁶

III. PLAINTIFFS' CLAIMS

My understanding of the Plaintiffs' claims is that release time does not serve a public purpose and that paying release time reduces the Plaintiffs' wages.¹⁷ In the remainder of this report, I address both of these claims.

By way of brief summary, both claims are unsupported. The Plaintiffs' expert, Mr. Brown, supports his arguments with faulty logic unsupported by relevant facts or evidence. In particular, Mr. Brown fails to establish a clear description of what the world would look like without release time, something that is necessary for a determination regarding whether release time serves a public purpose. He does not show that eliminating release time would allow the City to provide higher quality services at a lower cost, nor does he show that eliminating release time would lead to higher wages for the Plaintiffs.

At the outset, I note that Mr. Brown authored an almost identical report in 2012.¹⁸ I find it surprising that Mr. Brown's opinions and reasoning are impervious to changing circumstances. Neither the passage of time, nor changing economic conditions, nor different unions or bargaining conditions affect Mr. Brown's opinions or reasoning.

A. Mr. Brown fails to show that release time does not serve a public purpose.

Mr. Brown's opinions about release time are confusing and inconsistent. First, he argues that release time does not benefit the City (and the public) because unions do not have the same objectives as employers.¹⁹ Second, he argues that the City needs to impose strict

¹⁵ U.S. Government Accountability Office, GAO-15-9, Actions Needed to Improve Tracking and Reporting of the Use and Cost of Official Time, October 2014.

¹⁶ Reilly & Singla (2017).

¹⁷ Case No. CV2019-009033, Second Amended Complaint for Declaratory and Injunctive Relief; Expert Report of Robert Brown date July 15, 2020.

¹⁸ Expert report of Robert Brown dated August 10, 2012

¹⁹ Brown 2020 report, pp. 8-9, 12-13.

accountability on release time to avoid various potential abuses.²⁰ Then, he argues that release time is valuable, but the City should not pay for it.²¹ Finally, he argues that the City offers more release time than is necessary.²² Thus, it appears that Mr. Brown believes that release time generates benefits, but only if the City does not directly pay for it and only in particular, highly regulated amounts.

1. The presence of conflict is not evidence that release time does not serve a public purpose.

Mr. Brown argues that conflict between the City and the Union is inevitable because the Union's objectives differ from the City's. Mr. Brown notes that the Union sometimes takes positions in opposition to management (e.g., seeking to overturn discipline, failing to reach an agreement at the bargaining table, etc.). Based on these conflicts, Mr. Brown argues that release time does not help the City. According to Mr. Brown, if release time is supposed to promote harmony, any evidence of conflict indicates it does not work.

This logic is unsound. The presence of (or potential for) disagreement is irrelevant.²³ Generally, economists do not expect any employee, whether they are represented by a union or not, to have objectives identical to their employer. Some level of workplace conflict is inevitable. The City and the Union recognize this. They do not argue that release time will eliminate conflict. Instead they argue that release time provides means to reduce and resolve conflict more efficiently and efficaciously.²⁴ As such, one cannot point to evidence of conflict and make any inference about release time's efficacy.

To negate the efficacy of release time as articulated by the City, one would need to show that it does not work to improve relations, reduce conflict, solve problems, etc., and to do that in an academic and theoretically acceptable manner, one would need to understand how the world without release time differs from the world with release time (ideally over a long period). Specifically, Mr. Brown's theory only makes sense if he could show that the City could achieve the same (or better) quality of outcomes at the same (or lower) costs without release time. In other words, to justify his assertions, Mr. Brown would need to demonstrate that release time is ineffective—that its net benefits do not justify the costs. Mr. Brown does not do this.

²⁰ Brown 2020 report, pp. 9-12.

²¹ Brown 2020 report, pp. 12-13

²² Brown 2020 report, pp. 13-14.

²³ Allowing for productive disagreement is, in part, the point. Without voice, employees quit, do not share their perspective, do not bother pointing out flaws in the production process, etc.

²⁴ In my interview, Mr. Zuercher noted that short-term adversarial discussions often promote positive outcomes over the long-run. I often make a similar point in courses and consulting engagements where I discuss workplace conflict. The fact that conflict can be productive is well-supported in the academic literature on conflict and conflict resolution. E.g., Moffitt, M. L. (2005). Disputes as opportunities to create value. *The Handbook of Dispute Resolution*, 173; Menkel-Meadow, C. J., Porter-Love, L., Kupfer-Schneider, A., & Moffitt, M. (2018). *Dispute resolution: Beyond the adversarial model*. Aspen Publishers.

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Mr. Brown provides no evidence that establishes that the net public benefits of the release time are small. When addressing a similar question in 2013, Mr. Brown claimed that developing such evidence would be “pretty close to impossible.”²⁵

At various points, Mr. Brown seems to concede the potential that release time generates benefits. Mr. Brown claims that release time is unnecessary because, after 40 years, policies and procedures have been established to minimize conflict and that release time should not be required to resolve conflict in a supposedly cooperative workplace.²⁶ However, he fails to discuss the potential role for release time in creating these conditions, nor does he provide any evidence that suggests that release time is not required to maintain or advance these conditions, particularly in light of the fact that circumstances change (e.g., the Great Recession or COVID-19).

While Mr. Brown’s position that release time does not benefit the City is unsupported, the evidence described in section II supports the City and the Union’s determination that release time yields public benefits. Mr. Brown provides no analysis that undermines this evidence, nor does he demonstrate that release time does not (or cannot) deliver public benefits. Thus, to the extent Mr. Brown seeks to argue that the existence of release time does not benefit the City, his argument rests on speculation, faulty logic and lacks empirical support.

2. Speculation about the effects of marginal release hours is not evidence of their efficacy.

Mr. Brown makes two arguments about the efficacy of release hours at the margin. First, Mr. Brown complains that the City lacks accountability for the use of release time. He argues that the purported lack of accountability means that the Union *might* use release time to advance the Union’s private interests.²⁷ Later, Mr. Brown argues that the City offers too much release time. Relying only on his experience (in other jurisdictions), Mr. Brown claims that “the number of release time positions and hours in this MOU are not necessary to maintain ‘labor peace’ and productivity.”²⁸ Both of these arguments have the same core point--some release time *might* fail to generate public benefits. It is essential to note that Mr. Brown provides no evidence demonstrating that release time fails to create benefits. He merely argues that it is *possible* that *some* release time might be used for some purpose *he believes* is unlikely to serve a public purpose.

Mr. Brown’s arguments about accountability are speculative. Mr. Brown asserts that without strong accountability measures abuse will occur, but he does not prove this. Mr. Brown cites a few anecdotal examples (from many years ago in an entirely different location) that he believes show abuse of release time. However, pointing to a few random

²⁵ Brown testimony 1/25/2013, p. 218.

²⁶ Brown 2020 report, p. 13.

²⁷ Brown 2020 report, p. 9.

²⁸ Brown 2020 report, p. 13.

examples does not establish that improper use of release time is inevitable (or even likely).²⁹

Mr. Brown's arguments about the level of release time are also unfounded. Mr. Brown finds it implausible that the specified number of hours are required to "resolve day-to-day conflicts."³⁰ In this statement, Mr. Brown evaluates the amount of release time based on an incomplete understanding of what release time entails. As discussed previously, the MOU and the accumulated evidence on release time document that release time is used for far more than resolving day-to-day conflicts.

More broadly, Mr. Brown concludes that the City provides more hours than necessary to serve the public purpose based solely on his experience in other jurisdictions several years ago without any analysis comparing the other jurisdictions to the City of Phoenix today.³¹ Mr. Brown does not report that he used a scientifically accepted method to study the effectiveness of different amounts of release time across jurisdictions and determined that the amount provided by the City exceeds the optimal level for a group like Unit II. Mr. Brown also does not document the likelihood that release hours for Unit II are actually "wasted." Given that the optimal amount of release time likely varies from situation to situation and Mr. Brown's lack of direct experience in this particular situation, Mr. Brown's experience elsewhere does not provide a reliable foundation to opine on the appropriate level here.

3. By paying for release time directly, the City ensures that it exists at the level it finds beneficial.

Mr. Brown claims that the types of work (and objectives) obtained from paid release time could also be achieved using unpaid (or union paid) release time.³² In prior testimony, Mr. Brown stated that he believes "there is some value ... to at least unpaid release time so that there can be some functioning of the labor management relationship."³³ As such, Mr. Brown seems to concede that release time yields benefits. His issue with release time is who "pays" for it.

However, Mr. Brown's claim that unpaid release time would yield the same type of work and satisfy the City's objectives rests on unstated assumptions. For unpaid release time to create the same benefits for the City, one must assume the quantity and quality of the

²⁹ The City could have inserted language stating "thou shalt not do X while on release time" or imposed some formal means of oversight that might satisfy Mr. Brown. The fact that it has not is telling. It suggests that the City trusts that the Union will not abuse its release time allotment or it suggests that the City does not think that implementing a formal oversight mechanism would find sufficient abuse to justify the cost of creating and maintaining such a system.

³⁰ Brown 2020 report, p. 13.

³¹ The only specific examples Mr. Brown cites in his report come from the State of New Mexico and the City of Albuquerque from many years ago.

³² Brown report, p. 13.

³³ Brown testimony 1/25/2013, p. 236.

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release time remains sufficient to generate the same (or better) output at the same or lower costs. Mr. Brown provides no evidence that demonstrates that this would occur.

For release time to generate benefits, sufficient financial resources must be available to compensate people to provide it. It makes sense for the City to provide these resources. Forcing the Union to pay for this time may lead to insufficient provision due to the well-documented potential for unions to suffer from a free-rider problem.³⁴ These potential free-rider problems coupled with the benefits release time provides the City likely explains why the vast majority of cities that offer release time, like the City of Phoenix, pay for it directly.³⁵ If cities want to ensure that they enjoy the benefits of release time, directly paying for it is the most practical and least risky option to ensure the ongoing benefits of release time.

B. Mr. Brown fails to show that the elimination of release time would result in higher compensation.

The Plaintiffs claim that they finance release time via foregone compensation. Stated more simply, the Plaintiffs believe that if release time were eliminated, their wages would increase.

In support of this position, Mr. Brown argues that employee compensation is a residual.³⁶ He argues that the City first determines the amount of money it is willing to pay to obtain a settlement. Then, all the costs of different proposals that are not direct wages are costed and subtracted from the amount City is willing to pay. The remainder is available for employee wages. As such, if release time were eliminated, more money would be paid in wages.³⁷

For this argument to hold, two key assumptions must hold. First, the elimination of release time must not reduce the City's ability or willingness to pay (i.e., the size of the pie must remain the same or increase). Second, the City must choose to transfer savings from eliminating release time to wages (i.e., the wages slice of the pie must increase). Mr. Brown presents no evidence that either of these assumptions would hold.

There is no reason to expect the size of the pie available to the Union would remain the same (or grow) in a world without release time. The City's ability and willingness to pay is a function of the benefits it receives from release time. If the City believes release time

³⁴ Olson, M., (1965). "The logic of collective action", Harvard University Press, Cambridge, MA; Reilly and Singla (2017).

³⁵ According to the agreements examined by Reilly and Singla (2017), the city pays for release time in 87 percent of the agreements where it exists.

³⁶ Brown 2020 report, pp. 7-8.

³⁷ I note that Mr. Brown took a different view of release time and the determinants of compensation in his 2013 testimony. See, e.g., Brown testimony 1/25/2013 pp. 216:5-14, 216:23-217:17; Brown testimony 11/25/2013 pp. 131:25-132:5, 164:18-166:16. He provides no discussion that explains what prompted his opinion to change.

is beneficial, then we should expect it to respond to its loss when determining its willingness to pay.

Release time for Unit II costs the City only \$499,000. This amounts to 0.3 percent of the total economic package for Unit II. If eliminating release time reduces productivity, increases turnover, increases management costs, etc., by even a small amount, the cost increase would likely dwarf the savings from eliminating release time. Thus, without the benefits of release time, the City's ability and willingness to pay for compensation would likely shrink.

Specifically, if release time is eliminated, I expect the City to invest release time funds (potentially with additional funds) toward replicating the benefits of release time through other means. Additionally, I expect the City might redirect release time funds (potentially with additional funds) toward paying the higher costs associated with the loss of benefits release time provides to the City. When interviewed, the City mentioned that it would likely respond to the loss of release time in both of these ways.³⁸

There is also no reason to expect the City to increase the share of the pie that goes to wages. First, the City is under no obligation in the existing MOU to transfer savings from eliminating release time to wages.³⁹ The Council could decide to put that money toward other purposes entirely (such as increasing reserves for a possible recession or improving infrastructure, facilities, etc.) or to non-wage economic items in the current or successor MOU (e.g., tool allowance, uniforms).⁴⁰

Second, the City may decide that allocating additional money toward wages is unnecessary or even counterproductive. While Mr. Brown's description of the bargaining process is vaguely accurate, it lacks crucial nuance.⁴¹ In particular, wages are not merely determined by what is left over after everything else is taken out first. The City (like other jurisdictions I have worked with) bargains to ensure that wages allow it to attract and retain employees while not overpaying.⁴² I do not expect eliminating release time to make workers more productive, to make jobs at other employers more attractive, or to make any other change to market forces that would likely put pressure on the City to increase wages.

I also note that the loss of release time can affect the Union's bargaining ability. Suppose the loss of paid release time were to weaken or eliminate the Union, reduce the skill of Union negotiators, or create a less collaborative relationship with management. In that case, Plaintiffs' wages may fall below what would have occurred with release time.

³⁸ Interview of Ed Zuercher.

³⁹ Interview with Ed Zeucher.

⁴⁰ I also note that even if the City decided to increase wages because release time was eliminated, nothing guarantees that this increase would apply to the Plaintiffs (specifically) or to specific employees (more generally).

⁴¹ Interview with Ed Zeucher, Interview with Jeff Barton.

⁴² Interview with Ed Zeucher.

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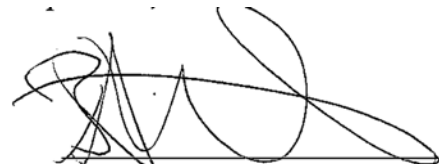
As such, it seems very unlikely that eliminating release time would lead to higher wages or total compensation for Unit II employees.

IV. CONCLUSION

In sum, the City's view that paid release time benefits the City and the public is a common view with much support. Investigations into release time consistently identify the benefits like those cited by the City. These benefits fit within a larger scholarly literature on the potential benefits of unions.

The Plaintiffs' expert, Mr. Brown, provides no evidence that demonstrates that paid release time fails to serve a public purpose. He does not present any evidence that shows the public would enjoy better services at lower costs if release time were eliminated.

Mr. Brown's argument that eliminating paid release time would increase Plaintiffs' wages is also unsupported. Mr. Brown does not provide any evidence or reasoning that suggests that the elimination of release time would compel the City to increase wages. In particular, Mr. Brown fails to consider how the loss of the benefits provided by release time might affect the City's ability and willingness to pay for Unit II's services.

A handwritten signature in black ink, appearing to read 'Bryce A. Ward', with a large, stylized flourish at the end.

Bryce A. Ward
September 18, 2020

EXHIBIT 11

EXHIBIT 11

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Missoula, Montana
January 18, 2021

Coash & Coash, Inc.
602-258-1440 www.coashandcoash.com

10:11:25-10:12:16 Page 46 1 BY MS. ASTOR: 2 Q. Did you review the state of labor relations 3 after -- I asked that already. I'm sorry. 4 Do you have any evidence that labor 5 relations between the union and the City got worse after 6 the elimination of taxpayer-funded release time? 7 MR. BONNETT: Form and foundation. 8 MR. HESKETH: Form and foundation. 9 THE WITNESS: I'm certain Mr. Brown doesn't 10 talk about it, so -- And then, like I said, I only 11 learned about it recently, and the only piece of evidence 12 that certainly might speak to that -- but I don't know for 13 sure -- is that when given the opportunity to go back to 14 paid release time, they went back to paid release time. 15 BY MS. ASTOR: 16 Q. Are you aware of any grievances that were filed 17 as a result of the elimination of taxpayer-funded union 18 release time? 19 MR. HESKETH: Form and foundation. 20 THE WITNESS: No. 21 BY MS. ASTOR: 22 Q. Do you know if there was a strike when that 23 happened? 24 MR. HESKETH: Form and foundation. 25 THE WITNESS: Not that I'm aware of, no.	10:14:02-10:15:14 Page 48 1 end. Just -- I just meant the very last phrase that you 2 used with regard to Cheatham. 3 THE WITNESS: Oh, I'm sorry, yes. And the 4 Cheatham court also agreed that release time -- and I have 5 no -- I have not seen any evidence that suggests that 6 given that weight, that one should not conclude that 7 release time yields public benefits. And my opinion is 8 that Mr. Brown does not provide sufficient evidence to 9 push back on the weight of that existing evidence. 10 BY MS. ASTOR: 11 Q. Do you have direct evidence that it does provide 12 an important public benefit besides the fact that they put 13 it in place? 14 A. I mean, the answer would be the same. It's not 15 just that they put it in place. It's that other people 16 have put it in place, and when you ask people, they say 17 "Well, we get these benefits," and it fits within this 18 larger scheme of things. 19 Q. Isn't it true that the benefits that you're 20 discussing that you believe the Phoenix -- City of Phoenix 21 believes are good can be achieved through voluntary 22 contributions versus City-paid contributions? 23 MR. BONNETT: Form and foundation. 24 MR. HESKETH: Form. 25 THE WITNESS: In theory, it might be
10:12:34-10:13:25 Page 47 1 BY MS. ASTOR: 2 Q. And it's your opinion that release time serves an 3 important public benefit? 4 A. It is my opinion that the City believes that 5 release time forms an important public benefit, and that 6 the City -- rationale that the City cites has foundation 7 in a larger literature both on release time and on 8 collective voice, so I have no reason to dispute the 9 City's claim that release time serves a public benefit. 10 Q. But is -- 11 (Overlapping speakers.) 12 THE WITNESS: -- the Cheatham case. 13 THE COURT REPORTER: I'm sorry. Repeat 14 that. 15 THE WITNESS: Sorry. My opinion is that the 16 City agreed that release time yields benefits; that the 17 City is not alone in thinking that; that there is basis -- 18 that the rationale that the City cites is the same 19 rationale that maps into other discussions of release time 20 that one can find in published literature and has the same 21 basis as a theory called -- known as collective voice, 22 which undergirds a lot of the research on labor-management 23 relations with respect to unions. And I wish I said it 24 the same way twice, but something to that effect. 25 THE COURT REPORTER: I'm sorry. It was the	10:15:32-10:16:16 Page 49 1 possible. In practice, I'm highly skeptical. 2 BY MS. ASTOR: 3 Q. So you haven't seen instances where the union 4 paid for its own release time? 5 MR. HESKETH: Form and foundation. 6 THE WITNESS: That might happen in unions 7 where you have almost a hundred percent union membership, 8 where -- or dues-paying membership. But the problem with 9 voluntary systems is what we call the free rider problem, 10 and so it's very easy to for someone to say, "Well, you're 11 supposed to take this and then donate it back," and then 12 to just not donate it back and then not end up with the 13 release time doing what it needs to be doing. 14 BY MS. ASTOR: 15 Q. But with having a different payer change the 16 benefit you believe release time provides? 17 A. Yes. So it -- 18 MR. HESKETH: Form and foundation. 19 THE WITNESS: Sorry. So yes. You know, to 20 the extent that release time is an input into a production 21 process where there are outputs, if you're not getting 22 paid to put those inputs in, the expectation is that less 23 input will be put in and then you will get less output 24 out. 25 ///

10:16:48-10:18:13 Page 50 1 BY MS. ASTOR: 2 Q. Could you rephrase that in a more simple form? 3 MR. HESKETH: Form. 4 THE WITNESS: Could you ask the question 5 again? 6 BY MS. ASTOR: 7 Q. Okay. If Party X pays for something, why is that 8 any different than Party Y paying for something? 9 MR. HESKETH: Form and foundation. 10 THE WITNESS: Okay. What we're talking 11 about -- So we're talking about release time, and the 12 question is release time is -- people use that time. That 13 is an input into a production process, right? So in this 14 case, release time is used to do labor-management stuff 15 broadly. I won't get into the details, but they're in my 16 report. Okay. So that requires time and effort, right? 17 It doesn't just happen. The idea is that somebody has to 18 do work. So when somebody does work, the expectation is 19 that people will only do work when they get paid to do 20 work. And so the question between City-paid and 21 non-City-paid release time is do you get the same amount 22 of money to pay the people to do the work? And my 23 concern -- right? So I said in theory, it might be 24 possible if -- Yeah, if you had a requirement where the 25 City paid the union people and the union people were	10:20:11-10:20:46 Page 52 1 between the City and the union? 2 A. Yes. 3 Q. And you didn't gather any other data about the 4 specific interactions between Unit 2 specifically and the 5 City? 6 MR. BONNETT: Form. 7 THE WITNESS: You were shuffling papers. I 8 couldn't hear. 9 BY MS. ASTOR: 10 Q. Oh, sorry. 11 You didn't gather any other data about the 12 specific interactions between the Unit 2 specifically and 13 the City? 14 A. Other than was in the interviews? 15 Q. Right. The interviews. 16 MR. HESKETH: Form. 17 THE WITNESS: I mean, I guess there were 18 some things that Mr. Brown refers to in his report that 19 might speak to something in that regard. But mostly, I 20 relied on the interviews. 21 BY MS. ASTOR: 22 Q. And the other experts' expert documents, correct? 23 A. That is correct. 24 MR. HESKETH: Form. 25 ///
10:18:35-10:19:52 Page 51 1 required to donate the money, then yeah, you could say 2 that would be the same outcome. But as I understand it, 3 there's no way to require the union members to donate 4 their time to the pool. As such, some of them will say, 5 "Why should I donate to the pool?" It's called the free 6 rider problem, and it is a well-documented potential issue 7 with these types of systems. 8 And so the concern in practice is that when 9 you move to the voluntary system, the City will give the 10 money to pay for the output of release time but the 11 donations to fund the release time won't be made, and so 12 the actual output of release time will not be funded 13 sufficiently because there won't be enough -- you know, 14 there's not enough money to pay the workers to do the 15 work, and so in practice, what you end up with is less 16 funding for release time, which means less output for the 17 release time work, which means the City's likely going, 18 "Why are we paying this money for output that we're not 19 getting?" So in practice, my opinion is that it is 20 unlikely to work without some form of mechanism that 21 forces the union members to donate the money that they got 22 to fund the release time. 23 BY MS. ASTOR: 24 Q. Is it your opinion that your interviews that you 25 conducted give you adequate information about interactions	10:21:10-10:22:03 Page 53 1 BY MS. ASTOR: 2 Q. Now, regarding your interview with Ed Zuercher, 3 you do realize that he's a named defendant in this 4 lawsuit, correct? 5 A. I guess. I don't actually remember that, but it 6 makes sense, so sure. 7 Q. And you realize that he would have a reason to 8 discuss release time in the most positive light? 9 MR. BONNETT: Form and foundation. 10 MR. HESKETH: Form and foundation. 11 THE WITNESS: No, I don't know if I agree 12 with that. 13 BY MS. ASTOR: 14 Q. Regarding your interviews with Jeff Barton, you 15 do realize he's a management-level city employee with the 16 City of Phoenix who is a named -- and the City is a named 17 defendant in this case. Is that correct? 18 MR. HESKETH: Form. 19 THE WITNESS: Yes, the City is a named 20 defendant, and Jeff Barton works for the City. 21 BY MS. ASTOR: 22 Q. And you realize that he would have a reason to 23 discuss release time in the most positive light. Is that 24 correct? 25 MR. HESKETH: Form and foundation.

10:22:09-10:22:58 Page 54 1 THE WITNESS: I don't think I agree with 2 that, no. 3 BY MS. ASTOR: 4 Q. And regarding your interviews with Tracy Reber, 5 you do realize she is a management-level city employee 6 with the City of Phoenix and the City is the named 7 defendant in this case. Is that correct? 8 MR. BONNETT: Form. 9 MR. HESKETH: Form and foundation. 10 THE WITNESS: That is correct. 11 BY MS. ASTOR: 12 Q. You realize she would have a reason to discuss 13 release time in the most positive light? 14 A. I don't agree. 15 MR. HESKETH: Form and foundation. 16 BY MS. ASTOR: 17 Q. So you say that release time makes people more 18 effective communicators. Is that correct? 19 MR. HESKETH: Form. 20 THE WITNESS: I state that release time 21 might be used to make people more effective communicators. 22 BY MS. ASTOR: 23 Q. What would be the basis of employee voice if it 24 wasn't communications? 25 MR. BONNETT: Form.	10:24:53-10:25:47 Page 56 1 release time was used for. And then the literature that I 2 cite that also discusses various interviews with people 3 about release time cites similar types of outputs from the 4 input that is release time. 5 BY MS. ASTOR: 6 Q. And aside from reading general studies and 7 interviewing three city officials, what actual direct 8 evidence did you gather that supports your contentions? 9 MR. BONNETT: Form. 10 THE WITNESS: I mean, I view that as direct 11 evidence, so that is direct evidence that they believe 12 that that happens. 13 BY MS. ASTOR: 14 Q. Three interviews with city officials, one of whom 15 is a named defendant, and studies? 16 A. Studies of release time where they interviewed 17 people about the effects of release time. 18 Q. Were a -- Sorry. 19 A. Hold on. I'm not done. 20 Q. Sorry. 21 A. And then, you know, the fact that what they 22 say -- what the City says, what the City cites in the MOU 23 as what they get from it directly aligns with larger 24 literature on collective voice in labor-management 25 relations that kind of literally cites almost identical,
10:23:18-10:24:34 Page 55 1 MR. HESKETH: Form. 2 THE WITNESS: Well, define what you mean by 3 "an effective communicator." 4 BY MS. ASTOR: 5 Q. You believe release time allows people to better 6 develop their demands and communicate them. Is that 7 correct? 8 A. Yes, I believe that release time can be used to 9 facilitate the functions of collective voice, which means, 10 you know, both collecting information from employees and 11 passing it on to union and taking information from 12 management and passing it on to union. It is a potential 13 way of -- it is a means of facilitating some forms of 14 communication. 15 Q. And that belief, is that based on evidence or an 16 assumption? 17 MR. BONNETT: Form. 18 THE WITNESS: I believe there is evidence to 19 support the claim that release time can be used to 20 facilitate those ends, yes. 21 BY MS. ASTOR: 22 Q. What evidence did you gather? 23 MR. BONNETT: Form. 24 THE WITNESS: My interviews with the City. 25 They mentioned very specific things that they feel that	10:26:04-10:27:12 Page 57 1 you know, theoretic benefits that then there is empirical 2 support that seems to suggest that that actually can 3 occur. 4 Q. Theoretical benefits, correct? Is that what you 5 just said? 6 A. No. I said that there's -- the collective voice 7 lays out a theory, a hypothesis. And the hypothesis that 8 the City is ascribing to is in the MOU and what it tells 9 me as the basis in a well-established theory for which 10 there is evidence, that providing employees with 11 collective voice can yield benefits to the employer and 12 then to the production process. 13 Q. Is that evidence that you gathered from the -- 14 Phoenix's relationship with Unit 2? 15 A. I mean, are you saying that did we conduct an 16 experiment with Unit 2 where we were -- you know, saw what 17 happened within and without release time? No, I did not 18 do that. 19 Q. So you didn't investigate pre- and post 20 relationship in this matter? 21 MR. HESKETH: Form and foundation. 22 THE WITNESS: Like I mentioned earlier, the 23 only pre-/post evidence that I had gathered is that there 24 was a temporary period during which there was a lawsuit 25 going on that, when the lawsuit was resolved and they were

Mark Gilmore vs. Kate Gallego
CV2019-009033

Dr. Bryce Ward
January 18, 2021

11:05:16-11:06:12 Page 74 1 BY MS. ASTOR: 2 Q. Okay. So if you would open Exhibit 2, please. 3 A. Okay. 4 Q. And go to page 6. It's headed "Section 1-3: 5 Union Rights." 6 A. Okay. 7 Q. Next big block under "Union Release" -- 8 A. Okay. 9 Q. -- there's the last sentence that starts with 10 "The cost to the City." Can you please read that out 11 loud? 12 A. "The cost to the City for these release positions 13 and release hours, including all benefits, has been 14 charged as part of the total compensation detailed in this 15 agreement." 16 Q. So the release time here is part of the total 17 compensation, according to this MOU. Is that correct? 18 MR. HESKETH: Form and foundation. 19 THE WITNESS: I mean, it charges -- I can 20 read it back to you. It just says, look, these release 21 positions have been charged as part of total compensation. 22 BY MS. ASTOR: 23 Q. And can you please define what "total 24 compensation" means? 25 MR. BONNETT: Foundation.	11:07:38-11:08:43 Page 76 1 reason to believe that if release time was eliminated, 2 that it would be given back to the employees in the form 3 of higher compensation? 4 A. That is correct. 5 Q. Do you remember your interview with Ed Zuercher? 6 A. Yeah. 7 Q. What if he said that union officials trade 8 release time for a -- lower overall wages and benefit 9 packages? Would you believe it would go back to 10 employees, then? 11 MR. BONNETT: Foundation. 12 MR. HESKETH: Form and foundation. 13 THE WITNESS: No, I wouldn't. 14 BY MS. ASTOR: 15 Q. You don't believe Ed Zuercher? 16 MR. HESKETH: Form and foundation. 17 THE WITNESS: I think that there's an 18 unstated assumption that kind of underlies a lot of the 19 discussion that leads to a lot of confusion, which is the 20 amount of money that's paid to union, including release 21 time, is that amount of money paid to obtain a certain 22 amount of output. And my concern is that if you don't 23 include release time and you don't get the benefits of 24 release time, the City would say the ability to pay would 25 be affected; i.e., they might incur higher cost, they
11:06:20-11:07:22 Page 75 1 THE WITNESS: In my -- in my world or in 2 their world? 3 BY MS. ASTOR: 4 Q. In their world. 5 MR. HESKETH: Foundation. 6 MR. BONNETT: Same. 7 THE WITNESS: You would have to ask them. I 8 assume it has something to do with the amount of money 9 paid to the union, but I sometimes find they use this term 10 a little bit in a way that is confusing to me. 11 BY MS. ASTOR: 12 Q. What would you assume it means? 13 A. To an economist, total compensation is the amount 14 of money paid to workers in exchange for the work that 15 they provide or the output that they provide. 16 Q. And what's your level of connection with this 17 document? How well do you understand it? 18 A. I mean -- 19 MR. HESKETH: Form. 20 THE WITNESS: Sorry. Mostly, I read it to 21 understand just what they meant by release time and why 22 they included it, why they offer release time. That was 23 the main purpose for me in this document. 24 BY MS. ASTOR: 25 Q. Okay. It's your expert opinion that there's no	11:08:58-11:10:05 Page 77 1 might get less output; therefore, they wouldn't be able to 2 pay as much. The other thing is why would they need to 3 raise wages? Wages are set in the market, right? When 4 I've been retained by employer side for collective 5 bargaining or arbitration-type purposes, the main reason 6 they hire me is because they don't want to pay more money 7 than they need to pay to attract and retain a qualified 8 workforce in order to -- sufficient to produce the level 9 of output that they're targeting. And so what they pay me 10 for is to come in and evaluate their contracts, to sit 11 there and say, "Okay. Well, here's how much you're paying 12 your workers. Here's the likelihood that you're going to 13 have workers who are going to be like 'I don't want to 14 work for you anymore because there's a better job down the 15 street,' or 'I'm not going to apply to you because there's 16 better jobs around.'" 17 And so I don't see anything about changing 18 release time that would say to the City, "Yeah, you've got 19 to get these guys higher wages." So both the 20 ability-to-pay side is affected and, you know, the 21 willingness to pay. There's no reason why the City should 22 sit there and say, "Yes, of course we should raise wages 23 because we've gotten rid of this thing," right? I don't 24 see the mechanism or the logic that supports that 25 conclusion.

11:15:50-11:16:45 Page 82 1 BY MS. ASTOR: 2 Q. But you don't know what they mean here? 3 MR. BONNETT: Form. 4 MR. HESKETH: Form and foundation. 5 THE WITNESS: I provided all the context 6 that I think I can provide for that question. 7 BY MS. ASTOR: 8 Q. Without the context, is that a yes or a no? 9 MR. BONNETT: Form. 10 THE WITNESS: I don't understand your 11 question. That's basically what I'm saying. You're using 12 terms that -- labor relations, which I don't know -- I 13 don't put myself into the labor relations group. I put 14 myself into the labor economics group of which labor 15 relations can be a part of it. But like you said, there 16 may be some official term that I don't know, so I'm going 17 to keep myself in the footing where I am comfortable. And 18 I have provided that context. 19 BY MS. ASTOR: 20 Q. Okay. So you assume the City will invest release 21 time funds towards replicating the benefits of release 22 time. Is that correct? 23 MR. BONNETT: Form. 24 THE WITNESS: One of the things that I would 25 expect to happen if release time were not provided at the	11:18:38-11:19:52 Page 84 1 A. I don't know what data I would analyze that would 2 provide me that answer that is consistent and accessible 3 to someone like me. 4 Q. So did you do, like, a progression analysis like 5 you did in ITSCI [verbatim] versus Longshoremen? 6 MR. BONNETT: Foundation. 7 THE WITNESS: There I have data that I could 8 use to answer that particular question. Now, one, in 9 theory -- like I said, in theory, you could answer this 10 question if you had exogenous shocks or non- -- you know, 11 something external put the pressure onto these types of 12 arrangements and you had complete information on all the 13 details of compensation and all of the other details of 14 government budgeting. Now, having tried to do analyses 15 that are at least even sort of like this, I can tell you 16 that they are extremely hard. And given how small release 17 time is as a share of budget, my guess is that you would 18 never be able to, in a statistical analysis, detect the 19 effects. Now, maybe I'm wrong, but my expectation sitting 20 here is that it's very difficult to establish 21 statistically what would happen. And I don't think we 22 have the conditions to even -- So we don't have the data. 23 We don't have the conditions where we're seeing exogenous 24 shocks to these types of arrangements to be able to then 25 go and see, okay, well, this is how people respond. So
11:17:02-11:18:17 Page 83 1 level that the City deemed appropriate. 2 BY MS. ASTOR: 3 Q. One of the things. What are the other things you 4 would expect to happen? 5 A. Well, they might also just brace for higher 6 costs, right? So one option is to say, "Well, how can I 7 replicate this through other means?" Another option is to 8 say, "Well, look, we can't replicate it. We can't figure 9 out an efficient way to replicate it. But we're concerned 10 that it's now going to cost us more money to generate the 11 same level of output." And so that money that currently 12 would then go to release time might now go to fill that 13 gap. They also could just say, "You know what? We've got 14 other things we want to do that are more important," and 15 they can take the money and put it over there, right? So 16 they have -- they have the choice about what to do given 17 the trade-offs that they face across a whole host of 18 different options. 19 Q. Which means you're not sure? 20 A. Do I know definitively what they would do? No, 21 because we haven't actually seen what happens if you 22 eliminate paid release time for a long period of time. So 23 no, I don't know what they would do because nobody knows 24 what they will do. 25 Q. Did you do a data analysis on this?	11:20:10-11:21:22 Page 85 1 without that information -- And again, you know, my job 2 is to sit there and say, well, you guys -- Mr. Brown did 3 not prove that this would happen. He's claiming that it 4 would go to wages. And I'm saying I don't think so. 5 Economic theory and my experience tells me that there's 6 no -- there's no mechanism that leads to higher wages. 7 And so I -- My opinion is that the City would likely 8 respond not by increasing wages but by doing something 9 else, and those something else are then outlined in my 10 report. 11 BY MS. ASTOR: 12 Q. And that is based on theory and three interviews 13 and Dr. Brown's report? 14 A. And my experience working with other 15 jurisdictions when they prepare for collective bargaining. 16 Q. But not in helping them actually bargain, but in 17 the theory of it? 18 MR. BONNETT: Form. 19 THE WITNESS: What I was usually brought in 20 to do is -- that they would sit there and be like they 21 wanted -- You know, on the union side, when I worked for 22 unions, usually I helped them assess ability to pay, 23 evaluate the financials of the party on the other side so 24 that, you know, if they claim poverty, we have some 25 ability to understand whether or not, you know, yeah,

11:57:06-11:58:14 Page 106 1 the release time benefits, doesn't that mean other forms 2 of compensation to Unit 2 in the MOU are reduced by that 3 amount? 4 MR. HESKETH: Form and foundation. 5 THE WITNESS: No, it doesn't. 6 BY MS. ASTOR: 7 Q. Okay. So if you could, please, go back to your 8 expert report. Page 13. That's Exhibit 11. 9 A. Okay. 10 Q. And if you'll go back to that same block of text, 11 the one that starts with "Specifically." 12 A. Yeah. 13 Q. Read the second sentence in that paragraph, 14 please, starting with "Additionally." 15 A. "Additionally, I expect the City might redirect 16 release time funds (potentially with additional funds) 17 towards paying the higher costs associated with the loss 18 of benefits release time provides to the City." 19 Q. All right. So you believe there are higher costs 20 that are associated with not giving union members release 21 time. Is that correct? 22 A. So if release time generates the benefits that 23 the City articulates and release time is not funded 24 adequately to generate those benefits, then yes, it's very 25 likely that costs would go up through turnover or	11:59:55-12:01:13 Page 108 1 BY MS. ASTOR: 2 Q. Which is why it's important to carefully examine 3 the data set of a particular group of people. Isn't that 4 correct? 5 MR. HESKETH: Form. 6 THE WITNESS: Depends on the question you're 7 trying to answer. 8 BY MS. ASTOR: 9 Q. If you are looking at whether or not something is 10 going to eliminate higher costs, would it not be important 11 to carefully examine all the data that might lead to those 12 higher costs? 13 A. I mean, if you're trying to quantify them 14 specifically, then -- in the real world, then yeah, you've 15 got to account for other factors. But all I'm saying is 16 the presumption should be that there's going to be higher 17 costs, because again, for all the reasons we talked about 18 when we talked about the benefits of release time, the 19 reason the City is willing to pay release time is because 20 it is an input to their production process and it wants to 21 ensure that that release time is provided at a certain 22 level so that it can ensure the continued efficient 23 operation of that production process. And so, you know, I 24 don't need to do a complicated analysis to say, look, 25 here's the production function, and if we monkey with that
11:58:34-11:59:44 Page 107 1 management costs or any number of other things. 2 Q. But there are a lot of variables to consider when 3 determining what causes higher turnover, management costs, 4 that kind of thing, correct? 5 A. Yeah. Those are certainly outcomes that have 6 many inputs. 7 Q. Did you consider those here? 8 A. All I'm saying is that the loss of release time 9 has the potential to raise costs, and if you -- Certainly 10 if you accept the City's position that it's generating 11 these benefits, the expectation is that the loss of those 12 benefits means that there's going to be consequences in 13 terms of higher costs. So I don't need to consider other 14 things. What I'm saying is that controlling for all that, 15 say hold all that stuff constant -- right? -- the question 16 is what is release time doing? And if release time is 17 generating benefits in terms of lowering turnover, 18 improving labor-management relations, or any of the list 19 of things that I cite earlier in my report, then the loss 20 of those benefits should show up in some form, likely 21 increase other costs. 22 Q. So there are a lot of variables that go into any 23 human behaviors. Isn't that correct? 24 MR. HESKETH: Form. 25 THE WITNESS: Yeah.	12:01:34-12:02:40 Page 109 1 production function, what do we think's going to happen? 2 Right? I'm not making an empirical claim; I'm making a 3 theoretical claim. Basically, I'm saying Mr. Brown should 4 have thought about this stuff, right? If he's going to 5 argue that this is going to turn into compensation, he 6 needs to account for this potential effect, right? That's 7 my position. My position is -- I'm not here presenting a 8 statistical analysis. If I were, then yes, we could raise 9 this question of what did I consider, what did I not 10 consider. I'm here basically saying that to answer the 11 question that Mr. Brown needs to answer, he should have 12 tried to answer that question and he would have found that 13 it's really hard. But at a bare minimum, he should 14 have -- in the process of doing it, should have attempted 15 to account for these types of effects. And my presumption 16 is -- my prior, without somebody coming to me and saying, 17 "Well, here. Here's a high-quality study that shows that 18 you're wrong" -- right? -- my belief, based upon 19 experience and theory, suggests that what I've argued in 20 my report is what we should assume is the likely outcome. 21 And now Mr. Brown is welcome to prove me 22 wrong. I would happily consider whatever evidence he 23 would have to provide me. But what we have based on what 24 we already know, given that that question is hard to 25 answer, certainly suggests that we should not assume that

12:02:56-12:04:13 Page 110 1 compensation for Unit 2 members would go up if you got rid 2 of paid release time. I think that's highly unlikely 3 given the information available to us as we sit here right 4 now. 5 Q. So it's fair to say you did a theoretical 6 analysis? 7 A. No. My job was to -- In this section of my 8 report, I'm evaluating Mr. Brown's report. I'm saying he 9 hasn't done the analysis he needs to establish the facts 10 given that the weight of the existing evidence both in 11 theory and empirics and experience and, you know, what the 12 City itself says is that he's wrong. My job is to say, 13 like, he hasn't done his job. My job is not to 14 affirmatively prove what would happen. That's Mr. Brown's 15 job. My job in this report, this section of my report, is 16 directly in response to what Mr. Brown claims. I am 17 saying he has not done the job. He has not considered the 18 relevant factors and ruled them out. 19 Q. To prove him wrong, don't you -- Never mind. 20 Let's go forward. 21 Did you look at whether or not Phoenix's 22 sister city had higher costs associated with dealing with 23 their unions who did not have release time? 24 MR. HESKETH: Form and foundation. 25 MR. BONNETT: Join.	12:05:16-12:15:43 Page 112 1 nonrelease employees would have endured in the same type 2 of investigation? 3 MR. BONNETT: Form and foundation. 4 MR. HESKETH: Form and foundation. 5 THE WITNESS: No analysis to test the 6 hypothesis. 7 MS. ASTOR: Thank you. 8 Can I have five minutes? 9 (A recess ensued.) 10 MS. ASTOR: All right. So at this time, we 11 have no additional questions, but in light of the union's 12 or the City's questions, we may. 13 MR. HESKETH: Dan, do you want to -- what do 14 you want to do? 15 MR. BONNETT: Well, we were anticipating 16 that you might have more questions and that Matt and I 17 might want to put our heads together after your line of 18 questioning was finished to determine whether we might 19 have questions, which, notwithstanding the last break, we 20 haven't done, so I would suggest we go back on break 21 again, give us maybe 10 minutes, and we'll reconvene. 22 MS. ASTOR: Perfect. 23 (A recess ensued.) 24 MR. HESKETH: All right. I don't have very 25 much.
12:04:22-12:05:06 Page 111 1 THE WITNESS: No, I do not have that data. 2 BY MS. ASTOR: 3 Q. Did you look at the difference in cost associated 4 with the firefighters union, which has no release time, 5 and this union? 6 MR. BONNETT: Form. 7 MR. HESKETH: Form. 8 THE WITNESS: I disagree with your 9 characterization of the firefighters union. I believe 10 they have release time and that it is being paid by the 11 City. 12 BY MS. ASTOR: 13 Q. Did you tease out all the possible higher costs 14 that you assume will be there in this and subtract any 15 cost savings that might accrue because of the removal of 16 release time? 17 A. No. 18 Q. Did you ever calculate the cost of employee 19 morale for those employees who were not union members and, 20 therefore, could not receive release time? 21 A. I did not conduct that analysis. 22 Q. Did you calculate the higher costs associated 23 with morale lost due to differential treatment of 24 employees on full-time release who did not receive the 25 same punishments for inappropriate behaviors than	12:25:44-12:26:49 Page 113 1 EXAMINATION 2 BY MR. HESKETH: 3 Q. Hello, Dr. Ward. As you know, my name is Matt 4 Hesketh. In this case, I'm an attorney representing the 5 City of Phoenix, Mayor Kate Gallego, and City Manager Ed 6 Zuercher. Just a few follow-up questions. 7 To your knowledge, have you ever testified 8 inconsistently with an expert report that you authored? 9 A. No. 10 Q. You were asked about the benefits of release time 11 that accrued to the union as opposed to the City. Do you 12 recall that? 13 A. I do. 14 Q. If Unit 2 employees used release time to advocate 15 on behalf of Unit 2 employees, either individually or as a 16 whole, could that also be good for the City? 17 A. Yes. 18 Q. How? 19 A. As I specified in my report, sometimes that 20 advocacy allows the union to surface potential safety 21 problems or inefficiencies in the production process. It 22 might allow the City to understand what compensation it 23 really should offer, right? So sometimes there's a mix of 24 different types of benefits and wages that you can offer, 25 and a lot of times, it's helpful for the employees to come

12:27:04-12:27:56 Page 114

1 to the City and say, "This is what we want, so don't give
2 us that over there. Give us what we want."
3 I'm sure there's other things that I'm
4 forgetting, but I feel like I do detail some of that in my
5 report if I've forgotten anything.

6 Q. You were also asked about different funding
7 models for release time. Do you recall that?

8 A. Yes.

9 Q. Ms. Astor asked you questions about different
10 funding mechanisms under previous MOUs and in connection
11 with other bargaining units.

12 A. Yes.

13 Q. Does the fact that there are different funding
14 models mean that paid release time is ineffective?

15 A. No.

16 Q. Does it mean that paid release time doesn't
17 provide a public benefit?

18 A. No.

19 MR. HESKETH: That's all I have.

20 MS. ASTOR: Can I object to the last --

21 Sorry. Never mind. I want to object to the last one. It
22 requires a legal conclusion.

23 MR. BONNETT: I don't have any questions, if
24 you're waiting for me.

25 MS. ASTOR: I think we're good.

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1 MR. BONNETT: Do you need us to put on the
2 record that the witness will read and sign?
3 (The deposition was concluded at 12:28 p.m.)
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DR. BRYCE WARD

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1 STATE OF ARIZONA)
2 COUNTY OF MARICOPA)
3
4 BE IT KNOWN that the foregoing proceedings
5 were taken before me; that the witness before testifying
6 was duly sworn by me to testify to the whole truth; that
7 the foregoing pages are a full, true, and accurate record
8 of the proceedings all done to the best of my skill and
9 ability; that the proceedings were taken down by me in
10 shorthand and thereafter reduced to print under my
11 direction.

12 I CERTIFY that I am in no way related to any
13 of the parties hereto nor am I in any way interested in
14 the outcome hereof.

15 [X] Review and signature was requested.
16 [] Review and signature was waived.
17 [] Review and signature was not requested.

18 I CERTIFY that I have complied with the
19 ethical obligations set forth in ACJA 7-206(F)(3) and
20 ACJA 7-206 (J)(1)(g)(1) and (2). Dated at Phoenix,
21 Arizona, this 1st day of February, 2021.

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25

Meri Coash, RMR, CRR
Certified Reporter
Arizona CR No. 50327

Page 117

1 I CERTIFY that Coash & Coash, Inc., has
2 complied with the ethical obligations set forth in
3 ACJA 7-206 (J)(1)(g)(1) through (6).
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COASH & COASH, INC.
Registered Reporting Firm
Arizona RRF No. R1036

EXHIBIT 12

EXHIBIT 12

30(b)(6) City of Phoenix, Xavier Frost - January 19, 2021 1
Xavier Frost, Individually

[illegible]

17 30(b)(6) DEPOSITION OF CITY OF PHOENIX BY XAVIER FROST
AND XAVIER FROST, INDIVIDUALLY

Phoenix, Arizona
January 19, 2021

23 Prepared by:

24 Meri Coash, RMR, CRR

25 Certified Reporter

Certification No. 50327

Coash & Coash, Inc.
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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	09:25:16-09:26:31 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
09:24:15-09:25:04 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	09:27:01-09:28:12 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 ///	09:30:49-09:31:32 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 ///
09:29:50-09:30:29 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.	09:31:52-09:33:13 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.

09:40:35-09:45:23	Page 30	09:47:37-09:48:57	Page 32
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 ///		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?	
09:46:01-09:47:17	Page 31	09:49:17-09:50:22	Page 33
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		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.	

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.	09:53:06-09:54:07 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
09:51:48-09:52:54 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.	09:54:24-09:56:49 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,	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
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?	10:02:12-10:03:27 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	10:06:45-10:07:41 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
10:05:03-10:06:20 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.	10:07:53-10:09:01 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

10:09:13-10:10:25 Page 46 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?	10:12:10-10:13:24 Page 48 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 ///
10:10:57-10:11:52 Page 47 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	10:13:58-10:14:57 Page 49 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

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.	10:17:56-10:19:15 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?
10:16:31-10:17:34 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.	10:19:23-10:20:30 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	10:24:33-10:25:22 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 ///
10:22:33-10:24:21 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.	10:25:46-10:27:13 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 8 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	11:09:19-11:10:05 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?
11:08:02-11:09:10 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.	11:10:17-11:11:18 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	11:15:11-11:16:38 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
11:13:33-11:14:55 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.	11:17:01-11:18:13 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	11:21:33-11:22:51 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?
11:20:06-11:21:01 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.	11:22:57-11:24:26 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.

11:24:40-11:26:01	Page 86	11:27:43-11:28:43	Page 88
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,		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.	
11:26:38-11:27:28	Page 87	11:29:02-11:29:55	Page 89
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.		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?	

11:54:53-11:55:55	Page 106	12:33:50-12:34:48	Page 108
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,		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.	
11:56:06-12:33:29	Page 107	12:35:09-12:36:52	Page 109
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.		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	

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?	12:40:47-12:42:24 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
12:38:33-12:40:26 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	12:42:44-12:43:15 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	12:55:26-12:56:43	Page 120
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		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	
12:54:16-12:55:11	Page 119	12:57:06-12:59:11	Page 121
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		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	13:03:12-13:04:48 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.
13:01:29-13:02:51 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.	13:05:01-13:06:03 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	13:10:36-13:11:43 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
13:08:35-13:10:13 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?	13:11:59-13:13:27 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?	13:17:20-13:18:00 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 ///
13:15:54-13:17:08 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	13:18:47-13:20:14 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	13:36:01-13:37:17	Page 144
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		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	
13:34:20-13:35:50	Page 143	13:37:44-13:38:50	Page 145
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.		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	

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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 ///		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	
13:53:30-13:54:57	Page 155	13:56:53-13:58:11	Page 157
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.		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	

EXHIBIT 14

EXHIBIT 14

Ed Zuercher - February 1, 2021

1

IN THE SUPERIOR COURT OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARK GILMORE; and MARK HARDER,

Plaintiffs,

vs.

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.

Case No.
CV2019-009033

DEPOSITION OF ED ZUERCHER

Phoenix, Arizona

February 1, 2021

Prepared by:

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Certified Reporter
Certification No. 50327**Coash & Coash, Inc.**
602-258-1440 **www.coashandcoash.com**

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.	09:07:53-09:08:52 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
09:06:48-09:07:42 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.	09:09:08-09:09:54 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	09:12:17-09:13:22 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.
09:11:24-09:11:58 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.	09:13:38-09:14:44 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	09:17:20-09:18:18	Page 20
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		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.	
09:16:11-09:17:05	Page 19	09:18:32-09:19:12	Page 21
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,		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	09:21:34-09:22:48 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
09:20:33-09:21:18 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.	09:23:02-09:24:33 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	09:27:02-09:27:53 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
09:25:58-09:26:52 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	09:28:10-09:29:01 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.	09:35:29-09:36:42 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
09:34:35-09:35:09 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	09:37:06-09:37:45 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 ///

09:49:04-09:49:44 Page 46 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	09:51:13-09:52:08 Page 48 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
09:49:59-09:51:02 Page 47 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	09:52:24-09:53:29 Page 49 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.

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

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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

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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

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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

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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	10:06:53-10:07:54 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
10:05:47-10:06:41 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.	10:08:08-10:22:38 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.

10:31:42-10:32:26 Page 70 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.	10:33:27-10:34:21 Page 72 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.
10:32:35-10:33:18 Page 71 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	10:34:42-10:35:51 Page 73 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

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

10:49:20-10:50:08 Page 86 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	10:51:47-10:52:44 Page 88 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.
10:50:23-10:51:38 Page 87 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	10:52:58-10:53:44 Page 89 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.

11:03:49-11:04:52	Page 98	11:06:22-11:07:16	Page 100
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,		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 ///	
11:05:03-11:06:07	Page 99	11:07:44-11:08:54	Page 101
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.		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 GALLEG0, 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

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

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

10. City Defendants’ Response to PSOF 10

- a. Objection, assertion unsupported by the evidence cited. The Union’s Motion to Intervene details numerous reasons why intervention was necessary, none of which were to “ensure it continued to receive ‘release time’ payments from the City of Phoenix for Unit 2 employees.”
- b. Disputed. The Union intervened, in part, to protect its interest in enforcing the terms of the 2019-2021 MOU and to protect its interests in fulfilling its obligations under the MOU and the City’s Meet & Confer Ordinance, including but not limited to its release time provisions. Union’s Motion to Intervene at 8:3-22, 9:26-10:1, 10:22-11:6; Joint SOF ¶¶ 12-14, 19-28.

11. City Defendants’ Response to PSOF 11

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

12. City Defendants’ Response to PSOF 12

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

13. City Defendants' Response to PSOF 13

- a. Undisputed.

14. City Defendants' Response to PSOF 14

- a. Undisputed.

15. City Defendants' Response to PSOF 15

- a. Objection, relevance, assertion unsupported by the evidence, and the cited deposition testimony lacks foundation to establish the assertion. Neither witness testified that there has not been a vote to certify or decertify the Union since 1976, and neither witness established knowledge of such information.

- b. Undisputed, subject to the foregoing objections.

16. City Defendants' Response to PSOF 16

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Frost merely stated that he could not identify any particular employees who voted to ratify the Union in 1976 and are still working in Unit II.

- b. Disputed. The City Defendants are without sufficient knowledge or information to confirm or deny the assertions made. PSOF Ex. 6 at 28:14–29:9.

17. City Defendants' Response to PSOF 17

- a. Undisputed.

18. City Defendants' Response to PSOF 18

- a. Undisputed, subject to clarification. The designated agent is the Union, which may act through representatives, and is not merely one individual. PSOF Phoenix City Code §§ 2-217(E), 2-218(A), (B); Joint SOF ¶¶ 15-16, 23-24.

19. City Defendants' Response to PSOF 19

- a. Objection, relevance and assertion unsupported by the evidence. The City Code does not establish that the City will be charged with an unfair labor

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

1 a. Undisputed.

2 **26. City Defendants' Response to PSOF 26**

3 a. Undisputed.

4 **27. City Defendants' Response to PSOF 27**

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

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

12 b. Disputed in part. The bank of release time hours does not equate to two
13 full-time positions, and there is a \$14,000 reimbursable allowance for
14 specific training and related activities rather than a "direct payment" to the
15 Union. Release time benefits the City, Unit II employees, and the public
16 in general, and fulltime release time employees do not "devote their entire
17 time working for the Union instead of the public." PSOF Ex. 2 §§ 1-
18 3(A)(1), (3), 6-7(A); Joint SOF ¶¶ 13-66; City CSOF ¶¶ 22, 25, 28, 29, 30,
19 31, 44, 45.

20 **28. City Defendants' Response to PSOF 28**

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

24 **29. City Defendants' Response to PSOF 29**

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

28 **30. City Defendants' Response to PSOF 30**

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

31. City Defendants’ Response to PSOF 31

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

32. City Defendants’ Response to PSOF 32

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Zuercher did not state that a replacement worker must be hired to perform the duties of workers on release time.
- b. Disputed in part. The City pays the salary and benefits of each person on release time as well as the salary and benefits of other Unit II employees. 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.

37. City Defendants' Response to PSOF 37

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

38. City Defendants' Response to PSOF 38

- a. Objection, assertion unsupported by the evidence cited. The MOU states:
“Four full-time release positions, designated by the Executive Board of the Union, shall each be allowed up to 2,080 work hours per M.O.U. year,”
not that the Union President must be allowed this time.
- b. Undisputed, subject to the foregoing objection.

39. City Defendants' Response to PSOF 39

- a. Objection, assertion unsupported by the evidence cited. Mr. Ayala stated that he is staffed in a full-time release position, he did not describe how he devotes all of his time and he did not specify whether his activities only benefit AFSCME.
- b. Disputed in part. Mr. Ayala has not explained how he devotes all of his time and which entities are benefitted from his work. PSOF Ex. 11 at 22:24–23: 19. Release time activities benefit the City, Unit II employees, and the public. Joint SOF ¶¶ 16-17, 20-27, 29, 33-34, 36-38, 40-65.

40. City Defendants' Response to PSOF 40

- a. Objection, assertion partially unsupported by the evidence. Unit II employees are not generally engaged in “ordinary public-safety duties.” City Code § 2-212(A)(2)(b); Joint SOF ¶ 5.
- b. Undisputed, subject to the foregoing objection.

41. City Defendants' Response to PSOF 41

- a. Undisputed.

42. City Defendants' Response to PSOF 42

- a. Objection, relevance and foundation.
- b. Undisputed, subject to the foregoing objections.

43. City Defendants' Response to PSOF 43

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Ayala explained that he works with City officials throughout his day, so he does not “clock in or clock out” or file daily reports cataloging his activities.
- b. Disputed. Mr. Ayala meets with City officials throughout his day, so oversight, supervision, and accountability are implicit in his activities. PSOF Ex. 11 at 48:2–25; PSOF Ex. 3 at 37:16–24; PSOF Ex. 6 at 18:6–11. Mr. Frost also testified that release time employees must follow the City’s rules and regulations, but there are legal limitations on the City’s ability to control release time. PSOF Ex. 6 at 61:5-23. Release time employees are expected to perform activities that foster harmonious and cooperative labor relations and further the Union’s obligations as Unit II’s meet and confer representatives under the MOU and the City’s Meet & Confer Ordinance. Joint SOF ¶¶ 29, 33-34, 36-38, 41-46, 54-55, 64-65. The MOU specifically lists lawful activities that are expected to be performed on release time, and release time employees are required to adhere to all City policies and procedures. Joint SOF ¶¶ 36-39.

44. City Defendants' Response to PSOF 44

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Ayala explained he is required to perform particular duties, such as attend grievance meetings.
- b. Disputed in part. While Mr. Ayala is not directed by the City with respect to each individual task performed each day, he is expected to perform certain duties and attend various meetings with the City. Mr. Ayala works with City officials, so accountability is implicit in his duties. PSOF Ex. 11 at 41:21-42, 44:6-13, 48:2–25; 97:1-11; PSOF Ex. 3 at 37:16–24; PSOF Ex. 6 at 18:6–11; *see also* Joint SOF ¶¶ 36-39.

45. City Defendants' Response to PSOF 45

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Ayala explained that release time employees are required to adhere to all City policies and procedures and that accountability is implicit in his duties. PSOF Ex. 11 at 41:21-42, 44:6-13, 48:2-25, 97:1-11.
- b. Disputed in part. Employees on release time must follow all City policies and procedures, and Mr. Ayala testified that he is required to perform certain tasks and that accountability is inherent in his duties. Joint SOF ¶¶ 36, 39; PSOF Ex. 11 at 41:21-42, 44:6-13, 48:2-25, 97:1-11. Mr. Frost also testified that release time employees must follow the City's rules and regulations, but there are legal limitations on the City's ability to control release time. PSOF Ex. 6 at 59:25-61:3, 61:5-23, 61:25-62:9, 63:16-23.

46. City Defendants' Response to PSOF 46

- a. Objection, relevance and assertion unsupported by the evidence cited. The City only answered that it does not control or direct activities of employees on release time and employees on release time are not required to account to the City for how release time is used.
- b. Disputed in part. The City is aware of how release time is used when employees on release time work with the City, whether that be through meetings or collaborative projects. SOF ¶¶ 24, 26-27, 29, 36, 39; PSOF Ex. 11 at 48:2-25; PSOF Ex. 3 at 37:16-24; PSOF Ex. 6 at 18:6-11.

47. City Defendants' Response to PSOF 47

- a. Objection, relevance and assertion unsupported by the evidence cited, and assumes facts not in evidence. Mr. Zuercher merely explained there is a chain of command where all employees have supervisors.
- b. Disputed. Mr. Zuercher did not testify that Mr. Ayala operates outside of a chain of command. PSOF Ex. 3 at 32:4-25. Mr. Zuercher testified that release time employees operate within a chain of command. *Id.*

48. City Defendants' Response to PSOF 48

- a. Objection, relevance.
- b. Disputed in part. Mr. Ayala meets with the City and City representatives and reports to the City in that respect. He testified that he is required to perform certain tasks and that accountability is inherent in his duties. PSOF Ex. 11 at 41:21-42, 44:6-13, 48:2-25, 97:1-11; PSOF Ex. 3 at 37:16-24; PSOF Ex. 6 at 18:6-11. Mr. Frost also testified that release time employees must follow the City's rules and regulations, but there are legal limitations on the City's ability to control release time. PSOF Ex. 6 at 59:25-61:3, 61:5-23, 61:25-62:9, 63:16-23.

49. City Defendants' Response to PSOF 49

- a. Objection, relevance and assertion unsupported by the evidence cited. The testimony explained that it *could* lead to a PERB charge against the City.
- b. Disputed in part. The City's mandate that the Union President provide an accounting of his time *could* result in a PERB charge against the City. PSOF Ex. 6 at 63:16-64:15.

50. City Defendants' Response to PSOF 50

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Ayala merely stated that he has not received an official Performance Management Evaluation since he became Union President.
- b. Disputed in part. Mr. Ayala has not received an official Performance Management Evaluation (PME) since becoming Union President. PSOF Ex. 11 at 47:2-24; PSOF Ex. 6 at 62:11-63:14.

51. City Defendants' Response to PSOF 51

- a. Objection, relevance.
- b. Undisputed, subject to clarification and the foregoing objection. Top-ranked supervisory employees do not report to direct supervisors. PSOF Ex. 6 at 15:18-16:9.

52. City Defendants' Response to PSOF 52

a. Objection, relevance and the assertion is unsupported by the evidence cited.

b. Disputed. Mr. Zuercher testified that release time employees have supervisors within a chain of command. PSOF Ex. 3 at 32:4-18.

53. City Defendants' Response to PSOF 53

a. Objection, relevance and the assertion is unsupported by the evidence cited.

b. Disputed Mr. Zuercher testified that release time employees have supervisors within a chain of command. PSOF Ex. 3 at 32:4-18.

54. City Defendants' Response to PSOF 54

a. Objection, relevance.

b. Undisputed, subject to the foregoing objection.

55. City Defendants' Response to PSOF 55

a. Objection, relevance.

b. Disputed in part. Employees on release time must follow all City policies and procedures. Joint SOF ¶¶ 36, 39. Mr. Frost also testified that release time employees must follow the City's rules and regulations, but there are legal limitations on the City's ability to control release time. PSOF Ex. 6 at 59:25-61:3, 61:5-23, 61:25-62:9, 63:16-23.

56. City Defendants' Response to PSOF 56

a. Objection, relevance.

b. Undisputed, subject to the foregoing objection.

57. City Defendants' Response to PSOF 57

a. Objection, relevance.

b. Undisputed, subject to the foregoing objection.

58. City Defendants' Response to PSOF 58

a. Objection, relevance.

b. Undisputed, subject to the foregoing objection.

59. City Defendants' Response to PSOF 59

a. Objection, relevance.

b. Undisputed, subject to clarification and the foregoing objection. The City has no authority to remove Mr. Ayala from his position as Union President. PSOF Ex. 6 at 65:14–66:14, 67:18–68:2.

60. City Defendants' Response to PSOF 60

a. Objection, relevance and the term “interfere” is vague and ambitious.

b. Undisputed, subject to the foregoing objections.

61. City Defendants' Response to PSOF 61

a. Objection, relevance and the assertion is vague and ambiguous.

b. Disputed. Release time is not used exclusively to support other labor groups in other cities. Joint SOF ¶¶ 24-27, 33, 36-38, 50-54.

62. City Defendants' Response to PSOF 62

a. Objection, relevance, the assertion is vague and ambiguous, and assertion unsupported by the evidence. Mr. Ayala merely stated that Tony Navarrete, a state senator, used the Union hall at one point and that the Union endorsed Mr. Navarrete.

b. Disputed. Release time is not used exclusively to support candidates for political office. PSOF Ex. 11 at 113:22– 115:8; Joint SOF ¶¶ 29, 36-38, 44.

63. City Defendants' Response to PSOF 63

a. Objection, relevance, the cited exhibit lacks foundation, and assertion unsupported by the evidence cited. The cited evidence merely states that PEOPLE may support certain candidates.

b. Disputed. The cited exhibit does not does not establish that release time is used to support individuals running for office or what the Union officials know.

64. City Defendants' Response to PSOF 64

- a. Objection, assertion unsupported by the evidence cited. The MOU requires that release time may only be used for lawful purposes and employees on release time must adhere to City policies and procedures.
- b. Disputed. Release time may not be used for unlawful purposes and the MOU sets forth examples of appropriate release time uses. Joint SOF ¶¶ 24-27, 33, 36-39, 50-54. The Union also agreed to designate representations to serve on various committees with the City and to fulfill its obligations and duty of fair representation under the MOU and the City's Meet & Confer Ordinance. *Id.* Employees on release time must adhere to all City policies and procedures while on release time. PSOF Ex. 2 § 1-3; Joint SOF ¶¶ 36, 39. Mr. Frost also testified that release time employees must follow the City's rules and regulations, but there are legal limitations on the City's ability to control release time. PSOF Ex. 6 at 59:25-61:3, 61:5-23, 61:25-62:9, 63:16-23

65. City Defendants' Response to PSOF 65

- a. Objection. Assertion unsupported by the evidence cited. The City witnesses only testified that they personally are unaware of any such studies.
- b. Disputed. The City are unaware of any such studies but cannot confirm or deny whether such studies have been conducted. PSOF Ex. 3 at 26:5-10; PSOF Ex. 6 at 54:5-11; PSOF Ex. 8 at 34:25-35:6. Mr. Frost testified that it would be difficult to fully capture and analyze all of the benefits of release time. PSOF Ex. 6 at 53:10-19.

66. City Defendants' Response to PSOF 66

- a. Objection. Hearsay, and the assertion is vague and ambiguous because it is not clear what is meant by the term "union speech." The assertion also is argumentative and asserts legal conclusions in violation of Rule 56. The

exhibit cited lacks foundation and does not support the assertion

67. City Defendants' Response to PSOF 67

- a. Objection, relevance.
- b. Undisputed, subject to clarification and the foregoing objection. Union leadership determines candidate support through extensive fact gathering, not merely PEOPLE meetings. PSOF Ex. 11 at 110:9–111:6.

68. City Defendants' Response to PSOF 68

- a. Objection, relevance and the cited exhibit lacks foundation.
- b. Undisputed, subject to the foregoing objections.

69. City Defendants' Response to PSOF 69

- a. Objection, relevance and assertion unsupported by the evidence cited. The Answer merely states that the City admits release time under the MOU *may be* used to engage in certain political activities.
- b. Undisputed subject to clarification, and the foregoing objections. Release time under the MOU may be used to engage in certain political activities. PSOF Answer ¶ 18.

70. City Defendants' Response to PSOF 70

- a. Objection, relevance and the cited exhibit lacks foundation.
- b. Undisputed, subject to the foregoing objections.

71. City Defendants' Response to PSOF 71

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

72. City Defendants' Response to PSOF 72

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

73. City Defendants' Response to PSOF 73

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

74. City Defendants' Response to PSOF 74

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

75. City Defendants' Response to PSOF 75

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

76. City Defendants' Response to PSOF 76

- a. Objection, relevance and part of the assertion is unsupported by the evidence.
- b. Disputed in part, subject to the foregoing objection. The cited exhibits do not demonstrate that Mr. Ayala attended all of the referenced calls and meetings while on release time.

77. City Defendants' Response to PSOF 77

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

78. City Defendants' Response to PSOF 78

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

79. City Defendants' Response to PSOF 79

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

80. City Defendants' Response to PSOF 80

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

81. City Defendants' Response to PSOF 81

- a. Objection, relevance and assertion unsupported by the evidence cited. The cited evidence explains Mr. Ayala had one meeting with Ms. Stark on July 9, 2019.

b. Disputed. Mr. Ayala had one meeting with Ms. Stark on July 9, 2019. PSOF Ex. 11 at 90:15–21; PSOF Ex. 15 at ID001361 (July 9, 2019).

82. City Defendants' Response to PSOF 82

a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Ayala explained that the Union initially supported Ms. Stark's candidacy.

b. Undisputed, subject to clarification and the foregoing objections. The Union only initially supported Ms. Stark's candidacy. PSOF Ex. 11 at 91:9–13.

83. City Defendants' Response to PSOF 83

a. Objection, relevance and the cited exhibits lack foundation.

b. Undisputed, subject to the foregoing objections.

84. City Defendants' Response to PSOF 84

a. Objection, relevance

b. Undisputed, subject to the foregoing objection.

85. City Defendants' Response to PSOF 85

a. Objection, relevance

b. Undisputed, subject to the foregoing objection.

86. City Defendants' Response to PSOF 86

a. Objection, relevance

b. Undisputed, subject to the foregoing objection.

87. City Defendants' Response to PSOF 87

a. Objection, relevance

b. Undisputed, subject to the foregoing objection.

88. City Defendants' Response to PSOF 88

a. Undisputed.

89. City Defendants' Response to PSOF 89

a. Objection, assertion unsupported by the evidence cited. Mr. Ayala explained the Executive Board determines which members will be on full-

time release time. Therefore, the Executive Board does not exclusively determine how all release time is used.

- b. Disputed. The Executive Board determines which members will be on full-time release time, but the Executive Board does not dictate how the bank of release time is used. The bank of release time may be used by many different Unit II employees and for many different reasons. PSOF Ex. 11 at 50:20–25; Joint SOF ¶¶ 30, 36-38, 104.

90. City Defendants’ Response to PSOF 90

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Ayala explained the Executive Board could determine what positions it would or would not take regarding items before the City Counsel. The term “items” is vague and ambiguous.
- b. Undisputed, subject to clarification and the foregoing objections. The Executive Board *sometimes* determines what positions it will and will not take regarding items before the City Council. PSOF Ex. 11 at 89:19–25.

91. City Defendants’ Response to PSOF 91

- a. Objection, relevance, the cited exhibit lacks foundation, and the assertion is unsupported by the evidence cited. There is no evidence that this activity was performed by employees on release time.
- b. Disputed. There is no evidence that this activity was performed by employees on release time.

92. City Defendants’ Response to PSOF 92

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

93. City Defendants’ Response to PSOF 93

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

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.

102. City Defendants' Response to PSOF 102

- a. Undisputed.

103. City Defendants' Response to PSOF 103

- a. Undisputed.

104. City Defendants' Response to PSOF 104

- a. Undisputed, subject to clarification. Between November 2020 to January 2021, Mr. Ayala used roughly 80% of his release time to prepare for negotiating the terms of the MOU. PSOF Ex. 11 at 74:11–17.

105. City Defendants' Response to PSOF 105

- a. Undisputed, subject to clarification. Release time also is used for many other purposes. Joint SOF ¶¶ 27, 30, 33-38, 50, 54, 60-65, 104.

106. City Defendants' Response to PSOF 106

- a. Undisputed, subject to clarification. Release time is used by Union members to engage in many activities, including recruitment of new members to the Union. Release time can be used for many other purposes. PSOF Answer ¶ 20; PSOF Ex. 11 at 67:3–68:24; Joint SOF ¶¶ 30, 33-38, 50, 54, 60-65, 104.

107. City Defendants' Response to PSOF 107

- a. Objection, assertion unsupported by the evidence cited. The evidence cited explains that release time may be used to engage in many activities, including the filing and processing of grievances, as well as employee participation in the grievance arbitration process.
- b. Undisputed subject to clarification. Release time is used by Union members to engage in many activities, including the filing and processing of grievances, as well as employee participation in the grievance arbitration process. Release time may be used for many other purposes. PSOF Ex. 11 at 53:4–55:8; PSOF Answer ¶ 63; Joint SOF ¶¶ 30, 33-38, 50, 54, 60-65, 104.

108. City Defendants' Response to PSOF 108

- a. Objection, assertion unsupported by the evidence cited. The statement merely explains the Union may file a grievance against the City that alleges violations by the City of the rights accorded to the Union by the specific terms of Article 1 Section 1-3 of the MOU.
- b. Disputed in part. The Union may file a grievance against the City that alleges violations by the City of the rights accorded to the Union by the specific terms of Article 1 Section 1-3 of the MOU. PSOF Ex. 15 at ID001417; PSOF Ex. 11 at 60:18–61:9.

109. City Defendants' Response to PSOF 109

- a. Objection, assertion unsupported by the evidence cited. Mr. Zuercher stated that *he* was not aware of a contractual agreement. Mr. Frost stated that the Union does agree to voice employee concerns, participate in board committees, and resolve grievances.
- b. Disputed. The Union agrees to voice employee concerns, participate in board committees, and resolve grievances. The City receives numerous benefits in exchange for the MOU. PSOF Ex. 6 at 57:2–59:21; PSOF Ex. 3 at 27:5–28:11; Joint SOF ¶¶ 18-27. Release time employees are expected to perform activities that foster harmonious and cooperative labor relations and further the Union's obligations as Unit II's meet and confer representatives under the MOU and the City's Meet & Confer Ordinance. Joint SOF ¶¶ 29, 33-34, 36-38, 41-46, 54-55, 64-65. The MOU specifically lists lawful activities that are expected to be performed on release time, and release time employees are required to adhere to all City policies and procedures. Joint SOF ¶¶ 36-39.

110. City Defendants' Response to PSOF 110

- a. Objection, lacks foundation and the assertion is unsupported by the evidence. Mr. Frost testified that he did not know whether the MOU has

an obligation to resolve disputes at the lowest level.

- b. Disputed. The MOU anticipates that release time will be used to provide an “efficient and readily available point of contact for addressing labor-management concerns,” which includes among other things attempting to resolve disputes at the lowest level if possible. Joint SOF ¶¶ 33-34, 36, 38, 41-43, 54.

111. City Defendants’ Response to PSOF 111

- a. Objection, lacks foundation and the assertion is not supported by the evidence cited. Mr. Frost explained that the MOU *requires* the Union to file grievances, participate in the grievance process, and participate in boards and committees, which all provide insight into Unit II employees’ problems or concerns.
- b. Disputed. The MOU anticipates that release time will be used to provide an “efficient and readily available point of contact for addressing labor-management concerns,” which includes among other things “ensuring representation of employees,” “facilitating communication between . . . management and employees,” and “administering the provisions of the MOU.” Joint SOF ¶¶ 33-34, 36, 38, 41-43, 54. The natural consequence of release time uses results in the communication of City employee problems, concerns, and preferences. The City receives numerous benefits in exchange for the MOU. PSOF Ex. 6 at 58:17–25; Joint SOF ¶¶ 18-27.

112. City Defendants’ Response to PSOF 112

- a. Objection, lacks foundation and the assertion is not supported by the evidence cited. Mr. Frost explained that the MOU *requires* the Union to file grievances, participate in the grievance process, and participate in boards and committees, which all provide insight into Unit II employees’ problems or concerns and helps to prevent issues from escalating.
- b. Disputed. The MOU anticipates that release time will be used to provide

an “efficient and readily available point of contact for addressing labor-management concerns,” which includes among other things “ensuring representation of employees,” “participating in collaborative labor-management initiatives,” “facilitating communication between . . . management and employees,” “assisting [employees] in understanding and following work rules,” and “administering the provisions of the MOU.” Joint SOF ¶¶ 33-34, 36, 38, 41-43, 54. The natural consequence of release time is to resolve some disputes before they escalate to costly grievances and higher level disputes.

113. City Defendants’ Response to PSOF 113

- a. Undisputed.

114. City Defendants’ Response to PSOF 114

- a. Objection. Mr. Brown’s opinions and testimony are unreliable and inadmissible under Rule 702 for the reasons set forth in the City’s Motion to Exclude.
- b. Disputed. Mr. Brown’s opinions are not based on any investigation into the labor relations between the City, the Union, and Unit II. His opinion is based on other circumstances, but he admits these circumstances differ from the circumstances of this case, and he provides no basis for extrapolation. The City benefits from paid release time in numerous ways, and the City receives substantial consideration for paid release time. Joint SOF ¶¶ 16-17, 20, 23-27, 29, 33-34, 36-38, 40-46, 49-56, 64-65. Plaintiffs and Mr. Brown conceded these benefits. Joint SOF ¶¶ 57-63.

115. City Defendants’ Response to PSOF 115

- a. Objection, relevance.
- b. Undisputed, subject to clarification and the foregoing objection. City-paid release time was not included in the 2014-2016 MOU between the City and the Union in the same form as it was included in preceding MOUs.

116. City Defendants' Response to PSOF 116

- a. Objection, relevance and assertion unsupported by the evidence cited. The MOU only explains that Unit II employees could voluntarily donate their vacation leave to release time.
- b. Disputed in part. Under the 2014-2016 MOU, employees could voluntarily donate their vacation leave to release time. PSOF Ex. 7 § 1-3.

117. City Defendants' Response to PSOF 117

- a. Objection, relevance and the witness testimony lacks foundation.
- b. Undisputed, subject to clarification. The City Defendants do not dispute the quoted testimony. The City Defendants do not concede that the elimination of release time will automatically result in any increase in compensation. Joint SOF ¶¶ 111-125.

118. City Defendants' Response to PSOF 118

- a. Objection, relevance. The 2014-2016 Wage & Benefit Package is no longer applicable because the 2014-2016 MOU has expired. The document is irrelevant because it has nothing to do with Plaintiffs' current wages and benefits.
- b. Undisputed, subject for the foregoing objection. The City Defendants do not concede that the elimination of release time will automatically result in any increase in compensation. Joint SOF ¶¶ 111-125.

119. City Defendants' Response to PSOF 119

- a. Objection, relevance. The 2016-2019 Wage & Benefit Package is no longer applicable because the 2016-2019 MOU has expired. The document is irrelevant because it has nothing to do with Plaintiffs' current wages and benefits
- b. Undisputed, subject to the foregoing objection. The City Defendants do not concede that the elimination of release time will automatically result in 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

elimination of release time will automatically result in any increase in compensation. Joint SOF ¶¶ 111-125.

124. City Defendants' Response to PSOF 124

- a. Objection, relevance, witness testimony lacks foundation, and assertion unsupported by the evidence cited. Mr. Frost merely stated that the 2019-2021 MOU included paid release time provisions.
- b. Disputed. The agreement simply reflects that the vacation hours were eliminated. Mr. Frost explained that he did not have firsthand knowledge, and he did not testify to a direct causal relationship. PSOF Ex. 6 at 103:4-104:7. The City Defendants do not concede that the elimination of release time will automatically result in any increase in compensation. Joint SOF ¶¶ 111-125.

125. City Defendants' Response to PSOF 125

- a. Objection, relevance and exhibit lacks foundation.
- b. Undisputed, subject to clarification. Total compensation refers to the cost of the entire MOU to the City, and the cost of the MOU includes its release time provisions. PSOF Ex. 2 § 1-3(A); PSOF Ex. 30; Joint SOF ¶¶ 67, 71-75, 79, 84. The City Defendants do not concede that the elimination of release time will automatically result in any increase in compensation. Joint SOF ¶¶ 111-125.

126. City Defendants' Response to PSOF 126

- a. Objection, relevance and assertion unsupported by the evidence cited. The assertion involves a different bargaining unit, with different circumstances, and operating under a different contract. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20.
- b. Disputed. Mr. Zuercher testified that different bargaining units have 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

language in the MOU merely explains each employee will receive 8.5 hours of additional vacation time, and nothing is said about the reason for these hours. The assertion involves a different bargaining unit, with different circumstances, and operating under a different contract. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20.

- b. Disputed. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20. The Firefighters' MOU says nothing about the reason for employee vacation hours. The City is without sufficient information to determine why the Firefighters MOU has vacation time, and therefore, disputes the fact assertion. PSOF Ex. 20 at § 5-5.

129. City Defendants' Response to PSOF 129

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Zuercher merely stated that he was not aware of how relations with the firefighters' union was affected after the elimination of release time. The assertion involves a different bargaining unit, with different circumstances, and operating under a different contract. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20.
- b. Disputed. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20. The record does not establish the state of labor relations with the firefighters' union. PSOF Ex. 3 at 68:23–69:2, 70:3–8, 71:18–23.

130. City Defendants' Response to PSOF 130

- a. Objection, relevance and assertion unsupported by the evidence cited.

While the firefighters have received pay raises, nothing is said of the significance of those raises and how the parties negotiated those terms. The assertion involves a different bargaining unit, with different circumstances, and operating under a different contract. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20.

- b. Disputed in part. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20. The firefighters received a raise in their most recent MOU. The record does not establish why the firefighters' union received a wage increase or what effect release time may have had on the meet and confer negotiations. PSOF Ex. 20 § 3-1.

131. City Defendants' Response to PSOF 131

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Zuercher merely stated that he was not aware of how the Firefighters' MOU donated release time vs. paid release time affected City costs. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20.
- b. Disputed. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20. The record does not establish whether or not the elimination of paid release time in the firefighters' MOU resulted in cost savings or higher costs. PSOF Ex. 3 at 70:10-15; Joint SOF ¶¶ 64-65.

132. City Defendants' Response to PSOF 132

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr.

Zuercher did not state the City experienced savings from eliminating release time in the 2019-2021 Firefighters' MOU, and he stated he could not speak to reinvestment of the theoretical savings.

- b. Disputed. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20. The record does not establish that the City experienced cost savings from the elimination of release time. PSOF Ex. 3 at 70:17-25; Joint SOF ¶¶ 64-65.

133. City Defendants' Response to PSOF 133

- a. Objection, relevance. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20.
- b. Undisputed, subject to the foregoing objection. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20.

134. City Defendants' Response to PSOF 134

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Zuercher merely state he was not aware whether the City experienced higher costs from eliminating paid release time. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20.
- b. Disputed. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20. The record does not establish that the City experienced cost savings from the elimination of release time. PSOF Ex. 3 at 70:17-25; Joint SOF ¶¶ 64-65.

135. City Defendants' Response to PSOF 135

- a. Objection, relevance and assertion unsupported by the evidence cited. Mr. Zuercher merely state he was not aware whether the City experienced higher costs from eliminating paid release time. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20.
- b. Disputed. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20. The record does not establish that the City experienced cost savings from the elimination of release time. PSOF Ex. 3 at 70:17–25; Joint SOF ¶¶ 64-65.

136. City Defendants' Response to PSOF 136

- a. Objection, relevance, foundation, and assertion unsupported by the evidence cited. Mr. Zuercher merely stated he was not aware whether those cities have paid release time. Plaintiffs lay no foundation for comparing the circumstances of other cities.
- b. Disputed. The record does not establish whether or not other cities have release time.

137. City Defendants' Response to PSOF 137

- a. Objection, relevance, foundation, and assertion unsupported by the evidence cited. Mr. Zuercher merely stated he was not aware whether those cities have paid release time and he was not familiar with their labor relations. Plaintiffs lay no foundation for comparing the circumstances of other cities.
- b. Disputed. The record does not establish whether or not other cities have been able to achieve harmonious labor relations without release time, and even if they had, whether it is to the same level of extent as the City and also taking into consideration the differences between the cities.

138. City Defendants' Response to PSOF 138

- a. Objection, assertion unsupported by the evidence cited. Ms. Reber stated that total compensation represents the total cost of the MOU to the City, she did not say that release time is part of employee pay and benefits.
- b. Disputed. Release time is not part of compensation (i.e. wages and benefits). The cost of the MOU, including its release time provisions, employee pay, and other costs of the MOU are represented by the term of art "total compensation," which describes the cost to the City of the entire MOU. PSOF Ex. 8 at 77:25–78:19, 79:21–80:15; Joint SOF ¶¶ 67, 71-75, 79, 84.

139. City Defendants' Response to PSOF 139

- a. Objection, assertion unsupported by the evidence cited. Ms. Reber merely explained that she believed compensation generally refers to pensions, direct pay, deferred compensation, vacation buyback, health and dental benefits.
- b. Undisputed subject to clarification, employee compensation is not synonymous with the term of art "total compensation," and that term of art does not describe the various forms of compensation and benefits received by employees. PSOF Ex. 9 at 77:25–78:19; Joint SOF ¶¶ 67, 71-75, 79, 84.

140. City Defendants' Response to PSOF 140

- a. Objection, relevance and the cited testimony lacks foundation. There is no foundation laid for the cited testimony, which involved a different bargaining unit, under a different contract, at a different period in time. The testimony did not relate to Unit II or the 2019-2021 MOU. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20.

b. Disputed. Mr. Zuercher testified that different bargaining units have different characteristics and circumstances, making it difficult to compare them. PSOF Ex. 3 at 72:7-20. Mr. Zuercher explained that total compensation refers to the economic package and not necessarily wages and benefits, which provides additional context to the cited testimony. Similarly, Mr. Frost explained that the issue is more nuanced and that total compensation refers to the economic package. PSOF Ex. 6 at 109:13-110:3, 118:7-12, 118:14-19, 120:13-23, 122:24-124:15, 129:6-130:2, 134:12-135:15. Thus, total compensation does not refer to the personal compensation of individual employees. Joint SOF ¶¶ 67, 71-75, 79, 84.

141. City Defendants' Response to PSOF 141

a. Objection, relevance, foundation, hearsay, and assertion unsupported by the evidence. In that 2011 article, Mr. Zuercher did not state that release time is part of employee compensation. Mr. Zuercher said, "if Union officials trade release hours for lower overall wage and benefits packages for their members, it does not end up costing the City anything extra." Mr. Zuercher's purported statement about a hypothetical illustration was not a statement on the MOU or the facts at issue here. Moreover, there is no evidence Mr. Zuercher actually made the comments attributed to him. PSOF Ex. 3 at 82:9-24.

b. Disputed. Mr. Zuercher did not state that paid release time is part of total compensation to all unit employees. PSOF Ex. 22 at GIL002597. Mr. Zuercher's purported statement about a hypothetical illustration was not a statement on the MOU or the facts at issue here. Moreover, there is no evidence Mr. Zuercher actually made the comments attributed to him. PSOF Ex. 3 at 82:9-24. Total compensation does not refer to the personal compensation of individual employees. Joint SOF ¶¶ 67, 71-75, 79, 84.

142. City Defendants' Response to PSOF 142

- a. Objection, assertion unsupported by the evidence cited. The evidence shows the City was aware that the language may result in a legal challenge under *Janus*, not that the City was particularly concerned that free expression was infringed upon.
- b. Disputed in part. The City generally recognized there could possibly be a legal challenge under *Janus*. PSOF Ex. 6 at 100:2–18, 138:19–139:24; PSOF Ex. 23 at CITY00000077; PSOF Ex. 24 at ID00349; PSOF Ex. 25.

143. City Defendants’ Response to PSOF 143

- a. Objection, assertion unsupported by the evidence cited. Mr. Frost merely stated that the City considered donated release time, rather than City-funded release time.
- b. Disputed. The City considered donated release time, rather than City-funded release time, but ultimately declined to take that action. PSOF Ex. 6 at 98:9–100:18.

144. City Defendants’ Response to PSOF 144

- a. Objection, assertion unsupported by the evidence cited. Mr. Zuercher merely explained the difference between donated release time and City Business Time. There was no discussion of paid release time.
- b. Disputed. The City has never performed a cost benefit analysis between City Business Time as opposed to paid release time. The City derives substantial direct benefits from City-funded release time. PSOF Ex. 3 at 43:24–45:1; Joint SOF ¶¶ 18-39.

Controverting Statement of Facts

1. “All Unit employees and stewards have the right to have the Union serve as their ‘meet and confer’ representative as set forth in the Meet and Confer Ordinance without discrimination or retaliation based on membership or non-membership in the Union or any other organization.” See Joint SOF, Ex. 1 (2019-2021 MOU) Section 1-4 (A).

2. The City Code provides, “an authorized employee organization shall serve as the meet and confer agent of all public employees in the appropriate unit. Such employee organization must represent fairly and without discrimination all employees in the unit without regard to whether such employees are members of the authorized employee organization. **City CSOF, Exhibit 1** (Phoenix City Code § 2-217(e)).

3. Under the 201-2021 MOU, Unit II employees received a 2.38% wage increase for FY 2019-2020, which had a total economic cost to the city of \$3,220,000. *See* Joint SOF, Ex. 2 (Reber Declaration) at ¶ 11; Joint SOF, Ex. 5 (CITY 00003634).

4. Under the 2019-2021 MOU, Unit II employees received a 1.78% wage increase for FY 2020-2021, which had a total economic cost to the City of \$2,466,000. *See* Joint SOF, Ex. 2 (Reber Declaration) at ¶ 11; Joint SOF, Ex. 5 (CITY00003634).

5. Under the 2019-2021 MOU, Unit II employees each received a one-time payment of \$682 during FY 2019-2020, which had a total economic cost to the City of \$1,639,000. *See* Joint SOF, Ex. 2 (Reber Declaration) at ¶ 11; Joint SOF, Ex. 5 (CITY00003634).

6. Under the 2019-2021 MOU, Unit II employees each received a one-time payment of \$683 during FY 2020-2021, which had a total economic cost to the City of \$1,641,000. *See* Joint SOF, Ex. 2 (Reber Declaration) at ¶ 11; Joint SOF, Ex. 5 (CITY00003634).

7. The wage increases and one-time payments for Unit II employees under the 2019-2021 MOU had a combined total economic cost to the City of \$8,936,000. Joint SOF, Ex. 2 (Reber Declaration) at ¶ 11; Joint SOF, Ex. 5 (CITY00003634).

8. The release time provisions represented 0.28% of the total cost in *Cheatham*. *See Cheatham v. DiCiccio*, 240 Ariz. 314, 322, ¶ 33 (2016) (indicating that release time represented cost to City of \$1.7 million in relation to the MOU’s total cost to the City of \$660 million).

9. In *Cheatham*, the trial court specifically found that release time “is funded 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
11 wages?

12 A. Unit 2 employees who are members.

13 Q. But if the union were successful in advocating on behalf of
14 union members for a higher wage increase, that would benefit all of
15 Unit 2, would it not?

16 A. Yes, that would.

17 **City CSOF, Exhibit 6** (Deposition M. Gilmore) at 40:7-22.

18 23. Mr. Gilmore testified as follows:

19 Q. So the money that pays for release time starts off with taxpayers
20 and then it goes to the City. Are we on the same page so far?

21 A. Yes.

22 Q. Now, take me through the ownership of that money until it pays
23 for release time?

24 MR. RICHES: Objection as to form. Go ahead if you can.

25 THE WITNESS: Who owns the money before it goes there? Is that
26 the question?

27 BY MR. HESKETH:

28 Q. Yeah. So it starts with taxpayers, then it goes to the City. Who
owns the money next?

MR. RICHES: Objection as to form. Go ahead if you can.

THE WITNESS: It would go to release time, in the bank.

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.

1 Q. And that money goes directly from the City to paying for release
time?

2 MR. RICHES: Objection as to form.

3 THE WITNESS: As far as I know, yes.

4 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 50:6-12.

5 27. Mr. Harder testified as follows:

6 Q. Paragraph 62 states, "When the government compels an
7 individual to associate with others, and that compulsion leads to the
monetary endorsement of political views, the message expressed
8 must be 'viewpoint neutral.'" Did I read that correctly?

9 A. Yes.

10 Q. You're not alleging that the City is forcing you to associate with
the union, are you?

11 MR. RICHES: Objection as to form.

12 THE WITNESS: No.

13 BY MR. HESKETH:

14 Q. You're not forced to be a member of the union, right?

15 A. No.

16 Q. You're not forced to pay dues or fees to the union, right?

17 MR. RICHES: Objection as to form. Go ahead.

18 THE WITNESS: No.

19 BY MR. HESKETH:

20 Q. You're not forced to adopt the union's positions or viewpoints,
21 right?

22 MR. RICHES: Objection as to form.

23 THE WITNESS: No.

24 BY MR. HESKETH:

25 Q. You're not forced to endorse the union's position or viewpoints,
are you?

26 A. No.

27 Q. Your name isn't attached to what the union says or does, right?

28 MR. RICHES: Objection as to form. If you understand, go ahead.

1 THE WITNESS: As far as I know, no.

2 BY MR. HESKETH:

3 Q. Do you think someone who hears what the union says or see
4 what the -- Sorry, let me back up. Do you think someone who hears
5 what the union says or sees what the union does will think you
6 have endorsed it?

7 MR. RICHES: Objection as to form.

8 Go ahead and answer if you can.

9 THE WITNESS: I don't know.

10 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 50:16-52:7.

11 28. Mr. Harder testified as follows:

12 Q. And we were talking about the statement on page 5 that your
13 free expression and associational rights as well as your rights under
14 Arizona's Right to Work statutes are harmed. Do you remember
15 that?

16 A. Yes.

17 Q. And I asked you what that meant, and I believe your answer was
18 that Arizona is a right-to-work state and the union doesn't provide
19 very much benefit to you. Did I understand that correctly?

20 A. Right.

21 Q. But you agree with me that you're not forced to be a member of
22 the union, right

23 A. Right, unless -- unless you need help

24 Q. But there are things that the union does that could benefit you,
25 right?

26 MR. RICHES: Objection as to form.

27 Go ahead.

28 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:

1 Q. If there are unsafe working conditions in your workplace and
2 the union gets the City to fix those, that would benefit you, right?

3 A. Right.

4 Q. If you have a supervisor who is giving you problems and the
5 union addresses that situation with the City and gets the City to fix
6 it, that would benefit you, right?

7 MR. RICHES: Objection as to form.

8 Go ahead if you can.

9 THE WITNESS: Right.

10 BY MR. HESKETH:

11 Q. All of those things could happen, right?

12 A. Could.

13 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 58:5-59:19.

14 29. Mr. Harder testified as follows:

15 Q. And the last column indicates that the difference is that the City
16 of Phoenix is 3.1 percent higher than the other agencies, right?

17 A. That's what it says.

18 Q. Would you agree with me that this appears to indicate that the
19 City has increased its wages for its employees in a greater amount
20 over this time period shown on this document than the other
21 agencies surveyed?

22 A. Yes.

23 Q. Is it possible that the City has done that because the unions have
24 used release time to bargain more effectively with the City?

25 MR. RICHES: Objection as to form.

26 Go ahead.

27 THE WITNESS: I don't know if they have or not.

28 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.

1 THE WITNESS: Yes.

2 BY MR. HESKETH:

3 Q. Because it resulted in a wage increase for you that's higher than
4 other cities in Arizona, right?

5 MR. RICHES: Objection.

6 Go ahead if you can.

7 THE WITNESS: Yes.

8 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 65:9-66:13.

9 30. Mr. Harder testified as follows:

10 Q. Do you know whether release time could have helped the union
11 negotiate for that higher wage increase?

12 MR. RICHES: Objection as to form. Go ahead.

13 THE WITNESS: I don't know.

14 BY MR. HESKETH:

15 Q. Could it have?

16 A. Possibly.

17 Q. And if it did, that would have been good for you, right?

18 MR. RICHES: Objection as to form. Go ahead.

19 THE WITNESS: Yes.

20 BY MR. HESKETH:

21 Q. All right. Looking further down on Exhibit 9, Do you see where
22 it says "One-Time Costs"?

23 A. Yes.

24 Q. And do you see where it says item number A?

25 A. Yes.

26 Q. And the description for Item A is a "one-time payment of \$682
27 made to all full-time employees in fiscal year 2019-20"?

28 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.

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?

1

2 A. Me, personally, it'd be the same.

3 Q. Would the cost to the public of the MOU be any less if you got
4 eight more hours of vacation?

5

6 A. It'd still be the same.

7 **City CSOF, Exhibit 6** (Deposition of M. Gilmore) at 150:24-152:8.

8 35. Mr. Harder testified as follows:

9 Q. . . . I understand your position, that you believe if release time
10 were eliminated you would get a benefit from having increased
11 time off or some other compensation-related benefit. Aside from
12 that, would the elimination of release time benefit you in any other
13 way?

14

15 A. Not that I know of.

16 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 19:14-23.

17 36. Mr. Harder testified as follows:

18 Q. Is it possible that the City could take the money that was
19 allocated for release time and invest in infrastructure or equipment
20 that's used by Unit 2 employees?

21 A. Possibly.

22 Q. If it did that, would your compensation increase?

23 A. No.

24 Q. Would you benefit from that?

25

26 A. No.

27 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 34:18-35:3.

28 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?

. . . .

1 A. Yes, they do.

2 Q. That total compensation, do you think that amount is too high?

3

4 A. No. No, I don't.

5 Q. Okay. The City gets a fair amount of services from Unit 2
6 employees for the total compensation under the MOU?

7

8 A. Yes.

9 **City CSOF, Exhibit 6** (Deposition of M. Gilmore) at 149:19-150:14.

10 38. Mr. Harder testified as follows:

11 Q. What about the total compensation for Unit 2 as a whole, that
12 economic package that we were talking about before, is that too
13 much for Unit 2?

14

15 A. No.

16 Q. Does the City get a fair amount of services from Unit 2
17 employees in exchange for that economic package?

18

19 A. As far as I know, yes.

20 Q. The economic cost of the MOU to the City is not too high for
21 what the City gets from Unit 2 employees?

22

23 A. As far as I know, yes.

24 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 61:7-25.

25 39. Mr. Harder testified as follows:

26 Q. If we were to track ownership of the money that is eventually
27 used to pay for release time, it starts with taxpayers, right?

28 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
union, right?

15 A. Not that I know of.

16 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 47:22-25.

17 43. Mr. Harder testified as follows:

18 Q. Okay. And there is no deduction from your check for union
19 dues anymore because you're not a member of the union anymore,
correct?

20 A. Right.

21 Q. Okay. And there's no other deduction from your check under
22 the 2019-2021 MOU for anything related to the union. Is that
correct?

23 A. Yes.

24 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 92:17-24.

25 44. Mr. Harder testified as follows:

26 Q. Do you know if release time might help facilitate that
bargaining process?

27 MR. RICHES: Objection as to form. Go ahead and answer if you
28 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.

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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2 A. No money is taken out of me.

3 **City CSOF, Exhibit 6** (Deposition of M. Gilmore) at 136:9-13.

4 48. Mr. Gilmore testified as follows:

5 Q. What you're challenging in this case is that you would like to
6 continue to receive an additional eight hours every year, right?

7

8 A. Yes.

9

10 Q. The City has not told you that you will get an additional eight
11 hours every year, right?

12 A. Currently, no.

13 **City CSOF, Exhibit 6** (Deposition of M. Gilmore) at 88:8-89:2.

14 49. Mr. Gilmore testified as follows:

15 Q. Did the City make a commitment to pay you those eight hours?

16 A. No.

17 **City CSOF, Exhibit 6** (Deposition of M. Gilmore) at 94:21-23.

18 50. Mr. Gilmore testified as follows:

19 Q. So, Mr. Gilmore, the question is, are you legally entitled to
20 anything more than the wages and benefits specified in the MOU?

21 A. Anything other than the MOU, no.

22 **City CSOF, Exhibit 6** (Deposition of M. Gilmore) at 93:7-10.

23 51. Mr. Gilmore testified as follows:

24 Q. And you don't know what the City would do with the money
25 that's allocated for release time if release time were eliminated?

26 A. Correct, I don't know.

27 **City CSOF, Exhibit 6** (Deposition of M. Gilmore) at 113:8-11.

28 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
union, right?

5 A. Not that I know of.

6 Q. So you would agree with me that money is not being taken out
7 of your pocket to pay for release time?

8

9 A. Not that I know of.

10 Q. Are you receiving fewer wages or benefits than what is
11 promised in the MOU as a result of, quote, being forced to provide
financial support to the union, end quote?

12

13 A. Not that I know of.

14 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 47:22-48:11.

15 54. Mr. Harder testified as follows:

16 Q. It's not your actual compensation under the MOU that's being
17 used to finance release time, but some higher amount of
compensation that you would like to have if release time were
eliminated, right?

18

19 A. Right.

20 Q. The City never promised to pay you that higher amount, right?

21

22 A. Right.

23 Q. And if release time were eliminated, there's no guarantee that
24 you would actually receive that higher amount, right?

25

26 A. Right.

27 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 54:22-55:1.

28 55. Mr. Harder testified as follows:

1 Q. You're not saying, though, that you were entitled to something
2 more than what's set forth in the MOU, right?

3 A. No.

4 Q. And you have received everything that's set forth in the MOU,
5 right?

6 A. As far as I know, yes.

7 Q. If release time were eliminated, you don't know whether your
8 benefits or wages would increase, right?

9

10 A. Right.

11 **City CSOF, Exhibit 7** (Deposition of M. Harder) at 57:4-14.

12 RESPECTFULLY SUBMITTED this 7th day of May, 2021.

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