INTEREST ARBITRATION PURSUANT TO SECTION 1007
OF THE CITY OF WATSONVILLE CHARTER

In the Matter of:

INTERNATIONAL ASSOCIATION OF
FIREFIGHTERS LOCAL 1272

Union,

and

CITY OF WATSONVILLE, CALIFORNIA.

City.

OPINION AND AWARD
OF THE ARBITRATION BOARD

Hearing Dates: August 13, 14, 16 and 17, 2018
October 10, 11, 12 and 13, 2018
Hearing Location: Watsonville, California
Date of Award: July 23, 2019

BOARD MEMBERS

Union Member: Tony Spitaleri
City Member: Michael McDougall
Neutral Member: John B. LaRocco

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OPINION OF THE BOARD

I. INTRODUCTION

The International Association of Firefighters Local 1272 (Union) and the City of Watsonville, California (City) are parties to this interest arbitration pursuant to Section 1007 of the Watsonville City Charter. The interest arbitration determines the contents of the successor Memorandum of Understanding between the Union and the City.

The fifth paragraph of City Charter Section 1007 provides for the establishment of an Arbitration Board to resolve a Union-City bargaining impasse. The Union appointed Mr. Tony Spitaleri as its member of the Arbitration Board. The City appointed Mr. Michael McDougall as its member of the Arbitration Board. The City and the Union jointly appointed the undersigned Arbitrator as the Chair and Neutral Member of the Arbitration Board (Board).

Davis & Reno by Alan Davis represented the Union. Sloan Sakai Yeung & Wong by Jeffrey Sloan, Justin Otto Sceva and Eunice Y. Lee represented the City.

The Board held hearings on August 13, 14, 16, and 17, 2018 and October 10, 11, 12, and 13, 2018 in Watsonville. The hearing was transcribed by a court reporter. The parties received a transcript of the hearing. The evidentiary record consists of eight volumes of transcript and over 200 documentary exhibits.

On January 15, 2019, the Union and the City simultaneously submitted their Last, Best and Final Offer (“Final Offer” or “LBFO”) on each of the ten issues still outstanding and unresolved as of that date. More specifically, the Union and the City submitted final offers on the following issues: salary adjustments; longevity pay; educational incentive pay; overtime; recognition; paramedic program; promotional process; management rights; grievance procedure;
and, enactment. The parties reached an agreement on promotional process after the parties submitted their LBFOs. Nine issues remain.

The parties simultaneously filed post hearing briefs on May 1, 2019 and the matter was deemed submitted to the Board.

The Board met on June 17, 2019 to vote on the LBFOs for each issue.

The last Memorandum of Understanding (MOU) between the parties ran from July 1, 2015 to June 30, 2017. This MOU is attached hereto and marked Appendix A.

The Union and the City agreed that the successor Memorandum of Understanding shall have a four year term running from July 1, 2017 to June 30, 2021.\(^1\) The parties reached tentative agreements on many subjects. A list of tentative agreements are attached hereto, marked Appendix B, and the tentative agreements shall be incorporated into the 2017-2021 MOU.

The issue presented to the Board is what shall be the contents of the 2017-2021 MOU.

II. PRE-HEARING PROCEDURES

The parties commenced negotiation on a successor MOU prior to the expiration of the 2015-2017 MOU. In February, 2018, the Union declared a bargaining impasse. At the time, the negotiators were working off the City’s comprehensive proposal dated July 3, 2017 and the Union’s comprehensive proposal dated December 7, 2017. These proposals have been superseded by the parties’ LBFOs.

The declaration of impasse resulted in the establishment of this Board.

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\(^1\)Absent an agreement on the duration of the MOU, it would be difficult, if not impossible, for the parties to construct coherent LBFOs.
The Board conducted telephone conference calls with the parties on March 26, 2018; July 20, 2018; and, August 3, 2018 to assist the parties in preparing for the interest arbitration hearing.

III. CHARTER SECTION 1007

Charter Section 1007 prohibits the members of the bargaining unit from engaging in a strike or any work stoppage. While the Charter does not expressly so state, the strike prohibition implicitly means that the City cannot lockout bargaining unit members. Instead of permitting economic weapons like a strike and lockout, Section 1007 provides that all bargaining disputes must be peacefully resolved by interest arbitration. Charter Section 1007 is attached hereto and marked Appendix C.

Charter Section 1007 directs the Board to select a LBFO on each outstanding issue by majority vote. In making these selections, the Board must consider “... those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the City and its ability to meet the cost of the award.”

Charter Section 1007 makes this decision binding on the parties provided that, during the 10 calendar days following the issuance of this decision, the parties may modify any part, or all, of the Board’s decision. During this 10 day period, the parties may not publicly disclose the Board’s decision.
IV. OVERVIEW AND THE BOARD’S PRELIMINARY OBSERVATIONS

The City of Watsonville is a small city, with a population of 54,100. Despite being small in comparison to other California cities, the City is a full service public entity. The firefighters’ bargaining unit, consisting of 36 members, is also small in comparison to many other local labor organizations in California.

It is vitally important that the City provide its residents with high quality fire and medical protection services. It is equally important that the City pay firefighters for their unique skills, talents, dedication and exposure to dangerous situations within the City’s financial capabilities and in accord with the local labor market.

In this Board’s judgment, the parties should have negotiated an agreement without resorting to interest arbitration. During and after the arbitration hearing, the parties had numerous opportunities to make their own deal. The Board repeatedly warned the parties that taking the case to an interest arbitration decision would not be in the best interests of either party.

The LBFO procedure restricts this Board from adopting MOU terms that are consistent with the Board’s findings and recommendations. The Board is forced to select the LBFO closest to the Board’s finding on each issue. The procedure is designed to encourage the parties to reach an agreement. The City should be extremely apprehensive that the Board will select the Union’s LBFO on most or all of the issues. The Union ought to be similarly apprehensive that the Board will select the City’s LBFO on most, if not all, of the issues. This mutual fear is supposed to propel the parties to reach an agreement. In other words, the last, best, final offer system should deter the parties from using interest arbitration, and if invoked, should induce a settlement before
the Board’s decision. Unfortunately, this negative incentive did not work. Consequently, the Board is confronted with several last, best, final offers which are extremely different.

Besides the disparate final offers, the system of selecting one party’s final offer artificially distorts collective bargaining. In this case, it will be apparent that one party did not receive as much as it should have. This places one party in the position of being even further behind at the next round of bargaining. It also places the prevailing party in a better position than the prevailing party should have been going into the next round of bargaining. This is why it was so critical for the parties to cut their own deal. The next round of bargaining is unlikely to be cooperative and productive. In this Board’s opinion, the last, best, final offer system undermines collective bargaining.

Interest arbitration is expensive. One wonders if the resources the City and the Union diverted to interest arbitration could have been utilized to achieve mutual benefits.

V. BACKGROUND AND SUMMARY OF THE FACTS

A. The City and the Firefighters’ Bargaining Unit

The City Manager is Matthew Huffaker. He is the City’s lead negotiator.2 At the time of the arbitration hearing, the Fire Chief was Pablo Barreto.

The Union’s President is Matt Ryan. Matt McCollum is a Fire Captain on the Engine Company and has twenty-three years of service. He is a former Union President. Fire Captain Almita Schaefer is the Union Secretary. She has been employed with the Department

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2Huffaker was recently appointed City Manager. He served two years as Assistant City Manager.
since 2007. McCollum, Almita Schaefer and Fire Captain Corey Schaefer are members of the Union’s negotiating team.

The Watsonville Fire Department operates two fire stations: Station 1 and Station 2. A Truck Company and an Engine Company are housed in Station 1 and an Engine Company is housed in Station 2. The regular shift staffing level is 12 employees with a minimum staff of nine employees.

Even though the Department maintains the rank and classification of Firefighter, Corey Schaefer testified that the Department only hires firefighters with the paramedic license, which effectively means that the active ranks are Captain, Engineer and Firefighter/Paramedic. Currently, the bargaining unit has 36 members. The Union has represented the firefighters for decades.

Schaefer estimated that the firefighters handle 15 calls per day on average. From August 1, 2017 to July 31, 2018, the Fire Department handled 5,066 calls. 3,807 were medical calls. The Department responded to 100 fire calls.

Schaefer testified that rescue and emergency medical services constitute the vast majority of calls. McCollum related that the night between the first two days of the arbitration hearing was extremely busy with an unusually high number of both fire and medical calls. To handle the high call volume, the Department received assistance from neighboring departments and districts.

B. The Two Major Factual Issues

Two factual issues dominate this bargaining dispute. First, what are the jurisdictions that are comparable to the City to identify “... other employees performing similar
services . . .” as specified in Charter Section 1007. Second, what is the financial condition of the City, including “. . . its ability to meet the cost of the award” as specified in Charter Section 1007.

C. **Background on Comparable Jurisdictions**

The parties’ current collective bargaining agreement does not set forth the list of comparable agencies. The parties do not have any embedded past practice of using any particular array of agencies for a comparative analysis. However, in the past, the City generally considered the following five jurisdictions to be comparable to Watsonville: City of Monterey, City of Salinas, City of Santa Cruz, City of Morgan Hill, and the City of Gilroy. Thus, for the first time, the parties are attempting to establish a list of comparable jurisdictions. They could not agree. Each party developed its own list. While they concur on several agencies, there are some major differences.

The Union’s list of comparable agencies is: Aptos/La Selva Fire Department, Central Fire Protective District of Santa Cruz County, City of Gilroy, City of Hollister, City of Milpitas, City of Monterey, City of Morgan Hill (Cal Fire), City of Mountain View, North County Fire Protection District, City of Palo Alto, City of Salinas, Santa Clara County Fire District and City of Santa Cruz. At the hearing, the Union added the City of Seaside to its list.

The City’s list of comparable agencies is: Aptos/La Selva Fire Department, Central Fire Protection District of Santa Cruz County, City of Gilroy, City of Hollister, City of Monterey, City of Morgan Hill (Cal Fire), City of Salinas, City of Santa Cruz, City of Seaside, North County Fire Protection District, and Scotts Valley Fire Protection District.
The overlap is Aptos/La Selva Fire Department, Central Fire Protection District of Santa Cruz County, City of Gilroy, City of Hollister, City of Monterey, City of Morgan Hill (Cal Fire), North County Fire Protection District, City of Salinas, City of Santa Cruz, and the City of Seaside.

The primary differences are the Union’s inclusion of jurisdictions in the Silicon Valley (Milpitas, Palo Alto, Mountain View and Santa Clara County) and the City’s inclusion of Scott’s Valley Fire Protection District.

The experts for both parties presented data and gave opinions on their comparative analyses. The City used a cutoff date of April 1, 2018 for its data collection and the Union used the start of the interest arbitration hearing as the cutoff date for its data collection. Both experts made comparisons predicated on total compensation with only slight variances in computing total compensation.

The Union retained Kenneth Akins, Principal Consultant at University Research and Associates, to select jurisdictions comparable to the City which constitute an appropriate labor market. Akins selected the Union’s list of comparable jurisdictions by considering cities that had populations no more than 50% greater than Watsonville and no more than 50% less than Watsonville and, the jurisdiction had to be within a 1.5 hour driving distance of Watsonville. Akins derived the last criteria by starting with the commute times of firefighters residing outside the City. The average commute time was 54 minutes which Akins rounded up to one hour and multiplied it by 1.5 to reach the one and one-half hour outer distance boundary. Akins also included the five cities the City historically used albeit, he had misgivings about Morgan Hill and Salinas.
Based on the data from the Union's list of comparable agencies, firefighters/paramedics are 20.02% behind market. Fire Engineers are 16.76% below market. Fire Captains are 20.82% below market.

Akins used Watsonville police officers as an internal comparison. Police officers' wages are more than 10% higher than firefighter's wages.

Akins highlighted the differences between the data he collected and the data presented by the City. Akins related that those differences concern the cutoff date, longevity pay, and overtime. Akins suggested the City's data was stale since it ended in April, 2018. Akins updated his data with recent wage increases in the Union's list of jurisdictions with some of the data going out to 2020. The increases slated to go to firefighters in Santa Clara County and Palo Alto are significantly greater than the wage increases in the other jurisdictions such as Hollister. Akins stated that he used the maximum amount of longevity pay available in the other jurisdictions while the City used the ten year amount for comparison. Akins did not know how many Watsonville firefighters qualified for the maximum amount of longevity pay. Akins included overtime in his computation for some of the agencies because the overtime was guaranteed in the firefighters' schedule. He did not include overtime payments in those jurisdictions where overtime was not built into the schedule.

Initially, Seaside was not on the Union's list, but Akins added it during the hearing. Akins observed that since Seaside was close to the average, it did not have a significant impact on the relative standing of Watsonville firefighters among the Union's array of jurisdictions. Akins did not include Scotts Valley in the Union's list of comparable jurisdictions because it serves only 20,000 people, although he acknowledged that two City firefighters
recently left the City for Scotts Valley. Akins included Mountain View, Milpitas, Palo Alto and Santa Clara County (all jurisdictions in Silicon Valley) because they fit his selection criteria. Akins acknowledged that most of the Silicon Valley jurisdictions have substantial differences in property values, standard of living and poverty rates when compared to Watsonville. He also acknowledged that the selection of the Silicon Valley jurisdictions drove up the average total compensation. Last, Akins acknowledged that these Silicon Valley jurisdictions do not use Watsonville in their labor market comparability analysis because there are enough jurisdictions close to the cities to construct an appropriate labor market. While Akins vigorously advocated for the Union’s list of agencies, he acknowledged the City’s expert used suitable criteria to develop the City’s list of comparable jurisdictions.

The City retained Shellie Anderson of Bryce Consulting to not only construct a firefighter’s labor market, but also to conduct a comprehensive wage survey and market comparison for all classes and classifications of City employees.

To select fire service jurisdictions similar to Watsonville, Anderson chose the agencies historically used by the City and considered the following factors: the employer’s size, employers that offer full services, population, geographic proximity, general fund expenditures, and demographics. Anderson selected seven jurisdictions to be added to the five cities. She emphasized that the 12 selected jurisdictions are likely to be competing with Watsonville for hiring and retaining fire personnel and so, she opined that the city’s list truly constitutes the local labor market.

According to the City’s data, a Fire Captain is 16.94% behind the median and 11.3% behind the mean. A Fire Engineer is 14.68% behind the median and 12.10% behind the
mean. A firefighter/paramedic is 10.14% behind the median and 6.4% behind the mean. On average, fire personnel are 12.3% behind the median and 8.4% behind the mean.

Anderson compiled data for the most recent compensation increases in the City’s list of comparable agencies which ran from 1% to 6% in 2017 and 2018. Monterey, Morgan Hill, Salinas and Santa Cruz had the largest increases in 2017 and 2018 at approximately 5% to 6%.

For the comprehensive survey, Anderson used the above lists of comparable agencies excluding Aptos, Central Fire, North County and Scotts Valley. For other classifications, she looked at other jurisdictions. For example, for the classification of Librarian, Anderson included Santa Clara County. Anderson’s citywide survey revealed that virtually every classification was below the median and mean. Several groups were 20% to 30% below market.

D. Background on the City’s Financial Condition

Russ Branson, a Director with PFM Group Consulting, LLC, provided demographic data and economic background information on the City and delved into the City’s current and projected financial condition.\(^3\) At the onset, Branson opined that the City is in a “long term weak economic position” because it was hit hard by the great recession. Branson predicted that the economic growth and positive business cycle could end soon which would undermine the City’s recovery from the great recession.

The City lags in key economic indicators to other cities in the Santa Cruz-

\(^3\)The City retained Branson as its expert on municipal finances.
Watsonville MSA. Compared to the MSA, the City has more than twice as high unemployment; 70% of the median household income; 50% of per capita income; and, 58% of the median home value. The poverty rates for the MSA and the City are relatively close at 15.1% and 17.6% respectively.

Branson performed a demographic comparison between the City and several cities on the City’s list of comparable jurisdictions. The median household earnings for the cities was $68,511 while Watsonville was last at $49,487. Watsonville’s median home value is $361,000 while the median home value of the comparable cities is $582,700. Branson noted that although Watsonville median home values rose since 2013, the City is still far below the 2007 median home value of $586,500. Branson compared the per capita tax revenue (for FY 2016) between Watsonville and the other cities. Watsonville’s per capita tax revenue was $446 which was the lowest amount. Monterey had the highest per capita tax revenue at $1,985.00 while Hollister had the second lowest per capita tax revenue at $512. Branson opined that the tax revenue data demonstrates that the City has fewer resources to provide its residents with City services.

Watsonville voters approved Measure G, a 0.5% sales tax increase, in 2014. Unless renewed or extended, Measure G will expire on June 30, 2021. Measure G revenues must be spent on public safety.

Branson related that anticipated revenues from Measure G for FY 2019 are $3.9 million with 60% ($2.4 million) funding 12 police positions and 40% ($1.5 million) funding eight firefighter positions. Branson represented that 16.7% of fire funding for FY 2019 comes from Measure G.
With regard to the City’s current financial condition, Branson noted that general fund revenues are budgeted for FY 2019 at 44.3 million. 77.8% of revenue comes from property and sales taxes, excluding the revenue from Measure G. Branson stated that property tax revenue is budgeted at $11.2 million for FY 2019, up from $10.1 million in actual revenue for FY 2017. Similarly, sales tax revenue was $9.2 million in FY 2017 and is budgeted at $10.2 million for FY 2019. Last, Branson noted that the revised forecast for 2019 cannabis tax revenue is $225,000 which is much less than originally expected.

The City expends almost 80% of the General Fund for employee salaries and employee benefits. Salaries for firefighters is expected to consume 17% of General Fund expenditures for FY 2019. Branson found that City contributions to CalPERS are budgeted at 14% of General Fund expenditures, the second largest expense after salaries. The budgeted amount for FY 2019 is $6.2 million up from the actual contribution of $5 million in FY 2017. Health insurance is the third largest General Fund expense which is expected to consume 11% of the budget for FY 2019. The expense is expected to be $4.7 million which is higher than the actual expense of $3.2 million in FY 2017.

Branson projected pension costs through FY 2023. He calculated that the City’s total CalPERS contribution would increase by 53.8% from FY 2019 to FY 2023, which amounts to an 11.4% annual increase. The projected cost for FY 2019 is $6.4 million and the projected cost for FY 2023 is $9.8 million. Separating out the City’s contribution for fire pensions, Branson calculated a compound annual growth of 9.7% from FY 2019 to FY 2023 which translates to a dollar increase from $1.8 million to $2.6 million. Branson pointed out that the pension costs are rising even though the annual growth for the funded ratio of pension costs is
decreasing by 2.3%. However, the unfunded liability grew at an annual rate of 11.3% from FY 2011 to FY 2016. Branson opined that one of the City’s problems is that Watsonville has a very low ratio of active employees to retirees. The City’s ratio is about 0.86 active employer to retirees in the fire department (37 active members and 43 retirees), while the ratio for CalPERS agencies is 1.33. According to Branson, this ratio places further strain on the City’s ability to pay future pension contributions for fire department employees.

Branson made some comparisons between health and retirement benefits provided to firefighters as compared to some private sector plans. Branson was not surprised that the health and retirement benefits are more generous in the public sector than in the private sector. He noted that the City no longer contributes to retiree medical benefits.

Branson related that the City’s unreserved fund balances were negative in FY 2010. The balance reached a positive $6 million in FY 2017. The City adopted a policy goal in February, 2018 of maintaining 20% of expenses in reserve. The FY 2017 balance was 15.2% of General Fund expenses.

Branson predicted deficits to the General Fund beginning in FY 2019 even without any firefighter salary increases. He forecasted a $0.5 million General Fund deficit for FY 2019 and cumulative deficits amounting to $8.4 million by FY 2023. The City, Branson asserted, will have to draw on the fund reserve to cover the annual deficits.

Branson examined and analyzed the City’s June 30, 2018 Comprehensive Annual Financial Report (CAFR) as well as the mid-year budget report for FY 2019.

Branson noted that the City more than reached its goal of attaining a 20% reserve. Branson contended that even though the General Fund balances increased substantially (an
unassigned fund balance of $10.342 million which is a 25% balance reserve), the present
balances do not allot for the $9 million growth in pension costs by fiscal year 2023 or for monies
to pay a lawsuit settlement or the cost of giving wage increases to employees in other bargaining
units.

With regard to the 2019 budget, Branson observed that as wage increases are paid
and vacant positions filled, the City will likely absorb a negative net return of close to his
forecasted amount of $3 million.

Branson characterized the City’s financial future as uncertain. According to
Branson, the City has not taken the increases in employee compensation and pension
contributions into account. He opined “The money is there today, but we know that it won’t be
there tomorrow”.

Branson performed a cost analysis of the firefighters’ salary proposal prior to the
interest arbitration hearing. Branson computed cumulative cost of the Union’s proposal to be
29.97%, or an annual cost by FY 2021 of $1,276,676. Branson opined that expending this sum
of money would substantially deepen the City’s projected deficit. Branson stated that even with
the City’s proposal (at the time of arbitration), the annual cost by FY 2020 would rise by 5.98%.
He calculated the three year cost difference between the City’s proposal and the firefighters’
proposal at $2,481,358. He further opined that the City lacks the capacity to pay the cost of the
Union’s compensation proposals because a $1 million annual expenditure would exacerbate the
impending budget deficit. Branson concluded that the positive developments recited in the 2018
CAFR do not reflect the City’s ability to pay the compensation increases sought by the Union.
He opined that any reduction in the projected amount of future revenue would result in staff
reductions or compensation concessions.

Branson opined that the firefighters’ pay proposal is out of alignment with increases received by management personnel and other employee groups. Managers received a 3% increase on July 1, 2017 and a 2% increase on July 1, 2018. The unionized employee groups received the following: clerical and technical employees 4% on July 1, 2017; public works employees 3% on July 1, 2017, and, 2% on July 1, 2018 and 3.75% on July 1, 2019; police received 5% at the top step only on July 1, 2017 and a 3% general increase on July 1, 2018 offset by a 3% PERS contribution.

Branson concluded that the City cannot fund the Union’s wage proposal and would have difficulty funding the City’s wage proposal.

The Union’s financial expert, Timothy F. Riley, CPA, extensively analyzed the City’s financial condition over the last five years, but did not make any firm projections on the City’s future financial condition except to opine that based on the past data, the City could afford to pay the Union’s compensation proposals.

Reilly found that the percentage of total expenses devoted to public safety fluctuated from 46.18% to 57.74% during the five year period from FY 2013 through FY 2017.

Reilly calculated a 2017 current asset to liability ratio at 4.62 which was well above the 2.95 ratio in 2013, leading Reilly to opine that the City’s good financial health is illustrated by the strong, positive ratios.

Reilly stated that government activities unrestricted cash and investments increased from $16.3 million to $28.3 million due to revenues exceeding expense (net) of non-monetary expenses. During the five year period, tax revenues increased by 5.05%, albeit Reilly
noted that the dollar amount was about the same as in 2007.\textsuperscript{4} Despite the revenue contraction, the City still has unrestricted resources to finance ongoing expenses. Reilly opined that government activity resources “are healthy”. The unrestricted General Fund balance was $6 million in FY 2017 rising from $1.6 million in FY 2013. Reilly emphasized that the General Fund’s cash and investment balance, and the unrestricted fund balances, are “healthy”.

Reilly stated that the large net pension liability is not a new event. The City has been aware of the pension liability for some time. Reilly wrote that the net pension liability is merely an estimate of future payouts with many such payouts not due for up to 50 years. Reilly pointed out that the City enjoys supplemental property tax revenues that are specifically earmarked for the City’s retirement expenses and contributions.

Akins did not dispute the City’s projection that the fire pension costs will rise from $1,324,640 in 2017-2018 to $2,633,240 in 2021-2022. Akins opined while the City’s retirement costs are rising, the increases will reach a point where the percentage amount of increase will gradually decrease. He also stressed that the City’s retirement costs are not as great as other jurisdictions which implicitly places the City in a better financial position in future years. Akins opined that the pension contribution increases were a small percentage of the City’s total operating costs.

Reilly reviewed the June 30, 2018 CAFR. He computed adjusted GAAP revenues and adjusted GAAP expenditures to the 2017 and 2018 unrestricted fund balance ratio to adjusted revenues and a 25.19% unrestricted fund balance ratio to adjusted expenditures. He

\textsuperscript{4} Reilly stated that Watsonville was hit hard by the recession leading to a substantial decrease in property values and a corresponding decrease in property tax revenue.
observed that the FY 2018 ratio of 25.19% was a substantial improvement from 15.3% in FY 2017.⁵ Reilly opined that the “. . . growing ratios are symbolic of the City’s growing and stronger financial health”. Overall, Reilly stated the City’s financial position is “strong” and “improved significantly” over the past five years.

Reilly calculated the annual cost of the Union’s pre-arbitration hearing proposal at $450,541 for 2019, $699,244 for 2020 and $922,395 for 2021. Reilly concluded that the City can fund these amounts due to rising tax revenues. Aside from this conclusion, Reilly did not offer any opinion on the City’s future financial condition.

Huffaker related that Watsonville is a full service city with a “lean” structure. While it has the same population as Santa Cruz, its employee base is approximately one-half of the employee base of Santa Cruz.

Branson and Huffaker provided a long list of deferred maintenance projects and capital improvements. Branson opined that the City is funding only a small fraction of the City’s capital needs.

Huffaker stressed that competing with the need to give raises to all City employees is $18 million of unfunded projects. This includes updating the IT Department, police station (women’s locker), solid waste facility, Community Development and Parks and Recreation and many others.⁶ Roads, sidewalks and parking lots are in need of substantial repair, if not replacement. The City needs a third fire station. The Solid Waste facility, which needs a new roof, has pumps that are 20 years old. Huffaker noted that taking the cost of a 1%

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⁵ Reilly assumed that the City did not receive any one-time contributions. Branson represented that one-third of the fund balance increase was attributed to a one-time $1.3 million transfer from the State of California.

⁶ A survey revealed that City employees are craving for updated/state-of-the-art technology.
raise to firefighters could replace the roof on the Solid Waste facility. Huffaker denied that a roof was more important than paying firefighters a fair wage.

Parks are not maintained and have ongoing issues because of non-compliance with the Americans with Disabilities Act. Huffaker compared the status of Watsonville parks to Morgan Hill parks. He emphasized Morgan Hill parks are robust because Morgan Hill enjoys a 131% recovery rate on park fees. Watsonville residents, Huffaker asserts, cannot afford high fees since Watsonville’s median household income is 50% of Morgan Hill’s median household income.

Huffaker declared that freezing the spending on capital projects saves $600,000 a year. He stressed that these projects will have to be soon addressed.

Huffaker declared that the City’s ability to increase its tax revenue is limited. Because of the low median age (29) and the low median income of City residents, retailers such as Trader’s Joes do not want to locate in Watsonville. Land use regulations restrict an increase in parcels subject to property tax. Also, the City is stymied by lawsuits that prevent redevelopment.

Huffaker testified the City has a high sales tax rate of 9.25% and it cannot go any higher without state legislative approval. He asserted that if Measure G is not renewed, the economic consequences to public safety services would be catastrophic.

VI. SALARY ADJUSTMENTS

A. The 2015-2017 MOU, Section 7.1

The first sentence of Section 7.1 states: “There will be no salary adjustments conferred during the term of this contract.”
B. The Union’s LBFO on Salary Adjustments

7.1 Salary Adjustments

There will be no salary adjustments during the term of this contract.

Effective July 1, 2017, no increase in base salary.

Effective July 1, 2018, no increase in base salary.

Effective on the date of the arbitration award, all members of the bargaining unit shall receive a twelve percent (12%) increase in base salary.

Effective July 1, 2019, all members of the bargaining unit shall receive an additional three and one-half percent (3.5%) increase in base salary.

Effective July 1, 2020, all members of the bargaining unit shall receive an additional three and one-half percent (3.5%) increase in base salary.

Effective on the date of the arbitration award, a lump sum payment of five thousand dollars ($5,000) shall be made to each member of the bargaining unit.

Effective on July 1, 2019, a lump sum payment of five thousand dollars ($5,000) shall be made to each member of the bargaining unit.

Job classifications and salaries for the term of this Agreement are attached in Appendix A.

[The changes in MOU Section 7.1 are struck out or underlined. The Union’s Final Offer is shown in its entirety.]

C. The City’s LBFO on Salary Adjustments

7.1 Salary Adjustments

There will be no salary adjustments conferred during the term of this contract.

7.1.1 In addition to the salary increases and equity adjustments set forth in sections 7.1.2 and 7.1.3 below, a total of $62,500 shall be made available to the bargaining unit as a one-time bonus.
to be distributed equally among all unit members.

7.1.2 Effective the later of July 1, 2019 or the first full pay period on or after the date the Agreement is both ratified by the Union and approved by the City Council:

a. **All unit members shall be conferred an eight percent (8.0%) salary increase.**

b. **The City shall confer an additional one percent (1.0%) equity adjustment for employees in the classification of Fire Captain, for a total increase of nine percent (9.0%).**

7.1.3 **Effective July 1, 2020, all unit members shall be conferred an additional salary increase of three percent (3.0%).**

7.1.4 **Battalion Chiefs [contingency]: In the event that Battalion Chiefs are included in the bargaining unit, their salary adjustment per subsection 7.1.2 shall be reduced by any increases already conferred to their classification for 2017/18 and/or 2018/19.**

7.1.5 Job classifications and salaries for the term of this Agreement are attached in Appendix A.

D. **Background on Salary Adjustments**

A 1% salary increase for all firefighters costs the City $42,597.

Corey Schaefer testified that the firefighters last received a wage increase in 2007. He related that Union members absorbed a 10% pay cut to save six positions after the six incumbents were served with layoff notices in 2009. Seven years later, the 10% reduction was added back to firefighters’ salaries.

Schaefer declared that raises for firefighters are long overdue. McCollum quoted

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7 Schaefer acknowledged that most City employees reduced their work week from 40 to 32 hours which was equivalent to the 10% pay cut. Due to public safety, firefighters could not work fewer hours.
the former City Manager as saying “We’re not going to get you caught up today, but it’s going to happen” in reference to how far behind the firefighters are in the comparable labor market. Schaefer acknowledged that during negotiations, City negotiators frequently referred to the rising costs of public safety pensions and the problems caused by continuing to defer infrastructure rehabilitation expenditures.

Huffaker acknowledged during the great recession all employees, including fire department employees, made substantial sacrifices. Fire Department employees contributed 7.5% to their pension and endured no salary increase for eight years.

The Union members actively campaigned for Measure G, the half-cent sales tax increase. Corey Schaefer serves on the Oversight Committee for monitoring Measure G expenditures. Measure G will continue to be a vital source of revenue to fund the police and fire departments, at least until June, 2021.

Branson calculated that the annual average base wage of a City firefighter was $82,911 and the annual average earnings (including overtime and premiums) at $105,936. Branson asserted that these high earnings contrast with the median annual earnings of a Watsonville resident which is $25,773. Branson opined that the contrast creates a poor image for the City and its firefighters. Huffaker asserted that the contrast could make it more difficult for the City to persuade voters to renew or extend Measure G.

Corey Schaefer stated that it is “preposterous” to compare firefighters’ salaries to the wages earned by City residents. Schaefer stressed that the firefighters are professionals who deserve, at the very least, a market wage. He elaborated that other professionals do not reduce their fees based on the lower income levels of Watsonville residents.
Huffaker testified that for the 2017-2019 cycle of labor agreements, the City was able, for the first time in many years, to modestly raise wages. The City understood that all its employees lagged behind the labor markets. Huffaker wanted to quickly implement the modest raises and then conduct a city-wide comprehensive study to determine what other equity increases might be feasible. Huffaker represented that the City intends to apply the results of the Bryce Consulting comprehensive survey throughout the City work force to the extent the City can afford to bring City workers close to the median in the applicable labor market.

Huffaker concluded that the City’s earlier, modest offer of 3% the first year and 2% the second year to the firefighters was in line with the amounts agreed to with other bargaining units. Huffaker emphasized that the police officers accepted the modest increase. They received a 5% step increase (for the officers topped out at the highest step) and a 3% increase in the second year that was partially offset by a 3% increase in their PERS contributions which amounted to an overall wage increase of approximately 1.5%. Huffaker stated that hiring police officers is increasingly competitive while it is not yet that competitive when hiring firefighters.

Huffaker emphasized that the funding for the Union’s 28% offer simply is not available in the City’s budget and would put firefighters above the labor market.

The City reached an agreement with the non-safety personnel unit represented by the Service Employees International Union, Local 521. The contract is for two years through December, 2020. The agreement provides for equity adjustments for those classifications more than 10% below the market median to bring them within 70% of the market. Those
classifications less than 10% below the median receive a 6% COLA. The agreement includes small longevity bonuses and new educational incentives.

E. The Union’s Position on Salary Adjustments

The firefighters have not received a wage increase since 2007. They were forced to absorb a 10% decrease in wages for seven years beginning in 2009. The City must now compensate them for this sacrifice. Given the absence of any wage increase over the last dozen years, the Union’s LBFO is necessary to bring firefighters to the labor market norm.

The comparability data supports the Union’s proposal. The Union identified 13 comparable jurisdictions and added Seaside. As Akins related, commute time is an important barometer for determining the firefighters’ labor market. Therefore, there is ample justification for his selection of the cities. The City takes exception to some of the jurisdictions in Silicon Valley yet, the City used the County of Santa Clara in the Bryce Survey to determine comparable salaries for librarians. The Union reasonably included the five historical cities even though Akins had some legitimate concerns about the comparability of Morgan Hill and Salinas.

Watsonville firefighters are far behind the total compensation for comparable firefighters even if one analyzes just those five jurisdictions. The Gilroy firefighters are 7.9% above Watsonville firefighters, the Monterey firefighters are 14.5% above the Watsonville firefighters; the Santa Cruz firefighters are 21.5% above the Watsonville firefighters; and even though Salinas is not truly comparable, Salinas firefighters are 3.5% above the Watsonville firefighters.

Turning to the Union’s comparable jurisdictions, a firefighter/paramedic is anywhere from 19% to 23% behind the median or mean. The Union’s LBFO would merely have
the firefighters catch up to the average wage of the comparable jurisdictions. They should be above the mean.

Even if the Board uses the City’s comparable jurisdictions, firefighters are 13.57% behind their counterparts and Fire Captains are 16.94% below the median in the City’s market. The City’s LBFO would continue to place them well below the median and mean.

The City’s analysis is incomplete and outdated. The City does not taken into account recent wage increases in Hollister, Morgan Hill, Salinas, Monterey and Santa Cruz.

The City contends the Bryce Consulting Survey is an internal pattern, but a better comparison would be with the Watsonville police officers. They have the same PERS pension benefits as firefighters. Proposition G revenue applies to both. Watsonville police officers are more than 10% ahead of the firefighters in total compensation.

The recently negotiated SEIU MOU is not relevant because it is unclear how the equity raises will be calculated. More specifically, no employee will be brought up to the median. Focusing solely on the SEIU MOU disregards prior increases afforded to the bargaining unit. They received 5% in 2017-2018 while firefighters did not receive any increase.

The City has the ability to pay the Union’s LBFO. The Board should defer to, and rely on, Reilly’s expert opinion inasmuch as he has extensive experience in governmental accounting and has prepared financial analysis for many cities and counties.

Reilly looked at 5 years of data to reach the unassailable conclusion that the City has the ability to pay the Union’s LBFO. Reilly pointed to several important factors.

Tax revenues grew from $26.2 million to $35.2 million between 2013 and 2018. The City is obtaining revenue from many tax sources, including the sales tax, use tax, transient
occupancy tax, utility tax and cannabis tax. Measure G provides a continuous stream of revenue for public safety.

By June, 2018, the City’s assets exceeded liabilities by $234 million. The 2018 CAFR reported an annual increase in the City’s net position from $124.5 million to $129.2 million which is a significant increase. This provides the City with an unrestricted net position of $475,329 as of June 30, 2018, up from a negative $3.3 million in 2017. Reilly opined that the City has significant, unrestricted net resources available to finance ongoing expenses and salary increases.

Reilly reported that the City’s General Fund actual revenues exceeded adopted budget revenues for four of the last five years. For 2018, the favorable revenue variance was $2.8 million. From FY 2017 year to FY 2018, the City’s General Fund cash and investments increased from $10 million to $13.9 million. By 2017, the unrestricted fund balances and percentage of total expenditures was 15.30% and then realized a spectacular increase to 25.19% based on data in the 2018 CAFR. The percentage of the unrestricted balance as a percentage of total revenue went up from 14.87% to 22.8%. Under both the Moody’s rating system and the Standard and Poor’s methodology, these percentages demonstrate a very strong fund balance.

Concurring with Reilly, the City’s Administrative Services Director wrote in a February 2019 memorandum that the City is in “an increasingly positive financial situation”. The Director indicated that the City is meeting the City Council’s goal of having a fund reserve equal to or greater than 20% of operating expenditures. In the same memo, the Director pointed out that Measure G revenues are exceeding expenditures by $400,000 allowing funds to be set aside for planned capital improvements and vehicle purchases in future years. In addition, the
City, according to the Director, can expect substantial revenues, perhaps as great as $13 million per fiscal year, from the cannabis tax. In the report accompanying the 2018 CAFR, the Director did not even hint that the City could not afford fair wage increases for its firefighters. The positive outlook in the Director’s report is contrary to Branson’s testimony. In essence, the Director validates Reilly’s opinion.

The City’s expert gave an inaccurate portrayal of the City’s financial condition. Branson acknowledged that there is an ongoing economic expansion yet, he predicts, without any basis, that it is just a positive business cycle and that a severe downturn is imminent. Even though Branson recognized the accuracy of Reilly’s financial analysis, he wrongly concluded that the City’s financial position is uncertain.

The City found, in February 2019, that it had more than sufficient revenues to provide a 11% salary increase for firefighters. The City failed to come forward with any reliable evidence that it does not have the same revenues available to fund the Union’s proposal.

Last, the Union submits that an increase in firefighters’ wages is more important than the City Manager’s priorities. The City Manager suggested that a roof is more important than providing a 1% salary increase to the members of the firefighters’ bargaining unit. It is hard to believe that the City treats its firefighters at the same priority level as a building roof. The City Manager provided a list of infrastructure improvements that the City purportedly ignored for several years. Yet, none of these projects were budgeted in prior years or have been budgeted for FY 2019-2020. Items that have not even been presented to the City Council in a line item budget are irrelevant. The Union acknowledges that there will always be competing interests for public money. However, the City must be reminded that Watsonville residents
highly value their public safety services. The passage of Measure G signifies that the City’s residents’ single most important priority is public safety.

F. The City’s Position on Salary Adjustments

The City contends its list of comparable agencies is more suitable to making a salary adjustment decision because the City developed a truly comparable labor market. The City’s comparability data supports the City’s LBFO and shows that the Union’s LBFO is excessive.

The City’s LBFO is consistent with internal comparabilities, as reflected by the Bryce Survey and the recently negotiated SEIU agreement. The City’s LBFO exceeds the equity adjustments and 6% increases specified in the SEIU agreement. On the other hand, the Union’s LBFO is at least 7.15% above the SEIU agreement which would cause serious internal inequity. The SEIU agreement contains a one-time, unit wide bonus of $30,000 which is less than the City’s LBFO of $62,500. The SEIU contract illustrates the excessiveness of the Union’s bonus of $370,000 ($10,000 times 37 firefighters). Also, the City’s LBFO provides firefighters with increases far greater than those afforded police officers.

In sum, while the City concedes that the firefighters are behind the market median, and the City’s LBFO will not bring them to the median, it will bring them to within 70% of the median which corresponds with the SEIU agreement.

The City contends it would be imprudent for the City to pay the firefighters anywhere near the market median at this point in time. Therefore, the median may not be the correct target.

The City contends that the Union’s approach to selecting comparable jurisdictions
was not rationale and produces an extreme result due to the inclusion of Silicon Valley jurisdictions as well as the exclusion of Scotts Valley, a nearby district. The City charges that Akins devised an arbitrary standard of a one and one-half hour commute to encompass jurisdictions with demographics grossly dissimilar to Watsonville’s demographics. He ignored those firefighters who reside in Watsonville and have no commute. If local firefighters are considered, the commute time is 46 minutes which would place Silicon Valley outside of the sphere of commuting. Silicon Valley jurisdictions have different demographics, different revenue sources (and more abundant revenue sources) and a different tax base, especially a different property tax base, than Watsonville. Therefore, the City submits that its list of jurisdictions is accurate and the Union’s list is not defensible.

Next, the Union’s proposal jeopardizes the financial condition of the City. The firefighters’ LBFOs on all economic proposals would increase the City’s cost by 42.6% or $1,811,580. The City’s LBFO on the economic issues increases costs 14.03%, or a dollar amount increase of $597,481.

While the City is not in a desperate financial condition due to the significant sacrifices by employees during the great recession, it is still facing huge increases in the CalPERS contributions by FY 2023. More significantly, the City must try to address the significant unmet needs of the infrastructure repair and capital projects. The City has other personnel needs because, for example, the police department is understaffed.

Maintaining revenue for public safety depends on what happens when Measure G sunsets at the end of FY 2020-2021. Property tax revenue is also unpredictable. It is only 1% above the level of revenue back in 2008. Finally, the City’s LBFO would also allow the City to
maintain its policy of a General Fund reserve of at least 20%.

Branson’s analysis and forecasts were superior to Reilly’s backward looking examination of the City finances. Branson found that the City’s revenue growth is restricted while expenses are rising. He declared, without refutation, that the demographics of Watsonville are different from the demographics of the cities in the Union’s list of comparable jurisdictions. Branson enumerated a litany of factual factors leading to his conclusion that the City’s future financial condition is uncertain.

Charter Section 1007 requires the Board to consider the City’s overall financial condition as well as its specific ability to fund the Union’s LBFO. To reiterate, both analyses show that the City’s LBFO is stretching the City’s ability pay while the Union’s LBFO is excessive and unaffordable.

The Union uses the consumer price index for the San Francisco-Oakland-Hayward metropolitan area which shows a 3.9% increase from June, 2017 to June, 2018. While the City does not contest the accuracy of the data, using the Bay Area Metropolitan District is flawed because Watsonville is out of the District and the CPI is influenced by rapidly increasing costs in the Bay Area. The CPI for the “west all urban consumers” is a more accurate measurement, shows a 3.6% increase during the same period. Regardless of which CPI is used, the City’s LBFO is well above either CPI’s cost of living increases.

In sum, the City contends it cannot pay for the Union’s LBFO and the City’s LBFO provides firefighters with increases that will get them to 70% of the labor market median.
G. The Board’s Opinion and Award on Salary Adjustments

Normally, an interest arbitration board does not have to decide which jurisdictions are comparable to the public entity that is the party to the arbitration. Usually, the comparable jurisdictions are enumerated in the collective bargaining agreement or the parties have established a past practice of using certain agencies. Unfortunately, the Union and City herein have a wide disagreement on comparable jurisdictions.

The gravamen of the disagreement is whether or not any or all of the Silicon Valley jurisdictions on the Union’s list of comparables should be used in the comparability analysis. For several reasons, the Board finds that, except for one jurisdiction, the Silicon Valley agencies do not constitute reasonable or appropriate comparators. The City’s list of comparable jurisdictions is more appropriate than the Union’s list with the arguable addition of Santa Clara County.

The Silicon Valley jurisdictions of Milpitas, Mountain View, and Palo Alto are disparate from Watsonville with regard to cost of living, ability to pay, and revenue sources. Most notably, none of these jurisdictions use Watsonville as a comparable city. Santa Clara County is arguably an appropriate addition to the list because it is in close proximity to Morgan Hill and Gilroy and Bryce Consulting used Santa Clara County for the librarian classification. For purposes of this Decision, the Board includes Santa Clara County, although the Board estimates that Santa Clara County does not have a significant affect on the City’s computations of the means and medians. Scotts Valley is an appropriate comparable agency since at least one ex-city firefighter is employed at Scotts Valley and Scotts Valley is in close geographic
proximity to the City.\textsuperscript{8}

The Board emphasizes that its finding on the list of comparables is limited to resolving this bargaining impasse. Our decision should not be construed as equivalent to writing this list into the MOU.

Watsonville firefighters are far below the median.\textsuperscript{9} Fire personnel are 13% behind the median. The Fire Captain is furthest from the median (17% below). The Board understands that it is probably unrealistic to bring the firefighters up to the median in a single bargaining round without causing chaos to City finances and internal equities. However, the Board finds that the firefighters must come closer to the median than the 70% proposed by the City. The Board recommends that the firefighters come within 80\% - 85\% of the comparable jurisdictions.

Of course, the amount of salary adjustments and other economic components of the Agreement must be within the ambit of the City's capacity to pay.

Branson and Reilly agree that the City struggled to get through, and recover from, the great recession. The lengthy economic downturn hit City finances hard. They tend to agree that the finances improved since 2013. Reilly pointed out the healthy, almost robust, ratios and the City attained a 25\% reserve in the General Fund. Reilly persuasively testified that the present ratios are positive and the 2018 CAFR portrays a stable present financial picture for the City. Put simply, the City has not been in this strong of a financial position for many years.

Reilly's opinion did not set forth any future prognostications. Branson predicted

\textsuperscript{8}The Board notes that Akins and Anderson expressed some concern about including the five historical cities. In the future, the parties should consider deleting one or two of these jurisdictions from the list of comparables.

\textsuperscript{9}The Board prefers to use the median as opposed to the mean in making comparisons between Watsonville and the labor market. The median reduces the influence of outliers.
that the City may be heading into challenging and troublesome financial times.

This Board is concerned about four future adverse influences on the City’s present financial stability.

The first problem is the quickly escalating amount of the City’s pension contribution.\textsuperscript{10} The pension contributions will grow by $9 million by FY 2023. The City’s contributions to the fire pension will increase from $1.8 million to $2.6 million from FY 2019 to FY 2023.\textsuperscript{11} These increases will eventually level off and may even subside, but in the next five to six years, the City is confronted with the formidable problem of how to pay for substantial increases of its contribution to the PERS pension fund. This substantial future liability must be taken into account when determining how much salary adjustments and other economic benefits the City can reasonably afford. Contrary to the Union’s arguments, the future pension liability is real and will handicap the City’s capacity to increase wages in the next ten years.

Next, the Board is concerned about the inability of the City to expand its property tax base. The evidence demonstrates that the City is unlikely to add many real estate parcels to the property tax roles in the near future due to regulatory and land use constraints. Since the City will not be able to expand its tax base, the only way for property taxes to generate more revenue is for the value of taxable real estate to increase and for some turnover in that real estate. The Board notes that 2018 median home value is still below the 2007 median home value. The absence of a revenue stream from the expansion of the property tax base is an impairment on the City’s finances.

\textsuperscript{10}The Board believes that all of the comparable jurisdictions will face this problem. The problem may not be solvable.
\textsuperscript{11}The public safety pension is a valuable and generous benefit. This Board encourages the parties to preserve it for future retirees.
Third, the Board is concerned that the amount of expected tax revenue from the new cannabis tax has been inflated. Branson correctly opined that the City will likely have to discount the amount of revenue it receives from this tax for FY 2019. As the Union points out, the Director gave, in a memo accompanying the 2018 CAFR, a confident prediction that an uptick in cannabis tax revenue would occur in FY 2019-2020. If the revenue increases materialize, the parties can take it into account in the next round of bargaining.

The last concern is Measure G. If the revenue from Measure G ends, the City’s financial situation and public safety services will suffer devastating deterioration.

The next consideration in evaluating the City’s financial condition is the economic status of City employees. Besides firefighters, virtually all City employees are far below the median as demonstrated by the Bryce Consulting comprehensive survey. The City must address this gross under compensation of all City employees. Consequently, other employee groups are properly competing with firefighters for raises from limited funds. The Board finds that public safety employees have priority over other workers, but the Union must be sensitive to internal inequities. It would be very difficult for this Board to justify awarding the firefighters an increase that was quadruple the percentage increases afforded to other City employees. The Board observes that the economic status of all City employees should take some precedence over other City needs like rehabilitation of infrastructure albeit, the infrastructure needs cannot be forever ignored.

Based on this Board’s evaluation of the City’s financial condition, and the quantum percentages that firefighters are well below the median of the comparable jurisdictions, the Board recommends the following salary increases to the firefighters: 15% to 15.75% for Fire
Captains; 14% to 14.25% for firefighters/paramedics and Fire Engineers; and a 3% to 3.5% bonus for all ranks.

The Union’s proposed bonus of $10,000 per bargaining unit member is very excessive and could be characterized as a “poison pill” for its LBFO. It is impossible for the City to absorb a $360,000 unbudgeted expenditure during FY 2019-2020. Moreover, the Union’s lump sum is equivalent to a one-time 8.5% increase in wages. It is simply too costly.12

Although the City’s LBFO on salary adjustments is inadequate, and the Union’s LBFO on salary adjustments is excessive, the City’s LBFO is closer to the Board’s recommendation than the Union’s LBFO. Therefore, the Board must select the City’s LBFO.

The Board voted 2-1 to incorporate the City’s LBFO into the 2017-2021 MOU.

VII. LONGEVITY PAY

A. The 2015-2017 MOU

The 2015-2017 MOU does not contain any longevity pay. The parties concur that a new MOU Section 7.12 shall contain longevity pay.

B. The Union’s LBFO on Longevity Pay

7.12 Longevity Pay

Effective July 1, 2017, any employee with at least ten (10) years of service as a sworn member of the department with the City of Watsonville shall receive a two percent (2%) longevity pay premium. Any employee with at least fifteen years of service shall receive an additional one and one-half percent (1.5%) longevity pay premium (for a total three and one-half percent longevity pay premium). Any employee with at least twenty years of service shall receive an additional one and one-half percent (1.5%) longevity pay premium (for a total of five percent pay premium.)

[Section 7.12 is new, underlined and is shown in its entirety.]

12The City can fund a 3% to 3.5% bonus and will still have a 20% reserve in the General Fund.
C. The City’s LBFO on Longevity Pay

7.12 Longevity Pay

Effective with the first full pay period on or after this Agreement (effective 7/1/17) is ratified by the Union and approved by the City Council, any employee with at least fifteen (15) years of service as a sworn member of the department with the City of Watsonville shall receive one and one-half percent (1.5%) longevity pay premium.

D. Background on Longevity Pay

Corey Schaefer stressed that longevity pay rewards bargaining unit members who have accumulated long-time service and experience. He acknowledged, however, that firefighters do not leave the Department very frequently because if they go to another agency, they have to reset their seniority clock to their date of hire. Almita Schaefer did not know of any firefighter who left the Department after ten years of service.

With regard to recruitment, McCollum asserted that 90 applicants for three vacancies is insufficient because other departments may be getting 1,000 applicants. He claimed that not every applicant is qualified. As to retention, McCollum iterated that two firefighters left the Department at the time of the arbitration hearing and two others recently went to higher paying departments.

The City’s statistics on resignations indicate that 12 fire employees resigned between 2007 and 2018 which is only about one per year or an average turnover rate of 3.9%. The average turnover rate in public sector jobs is 9.5%. The City had, on average, about 20 applicants for each vacancy between 2008 and 2018. Most recently, 91 people applied for three vacancies in 2016.
E. The Union’s Position on Longevity Pay

The Union proposes introducing longevity pay into the MOU effective July 1, 2017.

Corey Schaefer testified that the purpose of longevity pay is to recognize the firefighters who have put in the lengthy time to make the Department successful. The longevity pay keeps experienced firefighters. Once a firefighter is experienced, the Department should have a strong interest in making certain that that firefighter has a long, rewarding career with the Department. Two firefighters left the Department to receive more compensation even though they start as the most junior members in their new departments. Longevity pay will help retard this retention problem

Longevity pay is found in many of the comparable jurisdictions.

The longevity pay is also a small reward for veteran City firefighters whose overall compensation is far behind the average salaries of firefighters in the comparable jurisdictions.

F. The City’s Position on Longevity Pay

While the Union’s LBFO is too costly and is wholly unnecessary for recruiting and retaining firefighters, the City offers a modest longevity program. The City understands that keeping experienced firefighters is important and so, it is willing to alter the status quo and pay firefighters for their length of service.

The retroactive portion of the Union’s proposal costs about $130,000 or constitutes a 3.1% salary bonus. The retroactive portion of the Union’s proposal is effectively an increase in the bonus for the more senior firefighters. It is not longevity pay.
By FY 2020-2021, the annual cost of the Union’s proposal will be approximately $64,000. These high costs are unnecessary because the Department does not have a recruitment and retention problem. Firefighters stay with the City because if they resign and move to another department, they have to start at the bottom of the seniority roster.

The Fire Department has no difficulty recruiting and retaining firefighters. Branson presented statistics that the turnover rate in the fire department between FY 2016 and FY 2019 was about 4%, with a quit rate of 2.9%. According to Branson, 4% turnover was well below the national benchmark turnover rate of 18%. Branson found that the Department had nine open recruitment firefighter positions and one open Battalion Chief position between 2008 and 2019. For three vacancies in 2016, the City received 91 applications and for one vacancy in 2015, the City received 43 applications.

The comparability data does not support the Union’s final offer. Five of the City’s comparable agencies do not pay any longevity premium and two agencies (Monterey and Morgan Hill) pay a longevity premium only when an employee reaches 20 years of service. The Union’s proposal of providing a 5% differential for employees with 20 or more years of service would be significantly higher than what is paid by any comparable agency.

The City submits that it is more equitable for available money to fund across the board wage increases instead of providing unnecessary premiums for only some members of the bargaining unit. Every dollar spent on longevity premiums is one dollar less that can be spent on increased wages for all firefighters.

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13 Between 2016 and 2018, the Fire Department had three resignations and one retirement.
The City contends that its final offer is appropriate because it augments the status quo of no longevity pay, but avoids being an excessively rich benefit.

G. The Board’s Opinion and Award on Longevity Pay

Unfortunately, like the excessive bonus that the Union placed in its salary adjustment LBFO, the Union has a “poison pill” component in its longevity pay LBFO. The Union’s LBFO makes longevity pay retroactive to July 1, 2017. The purpose of longevity pay is to recognize loyal, productive and experienced firefighters as opposed to a mechanism for awarding a retroactive pay increase. Consequently, the Board cannot select the Union’s LBFO.

As of 2018, the City has not experienced a recruitment or retention problem in the fire department. However, there are subtle signs that this may become an issue in the near future. Two or three firefighters recently departed. If the pool of qualified applicants for vacancies becomes smaller, a recruitment problem may arise.

The Board finds that but for retroactivity, the Union’s LBFO on longevity pay to be reasonable. The Board notes that the parties can rearrange the percentages at the next bargaining round. If a retention problem develops, they may wish to target the younger, but still experienced, firefighters who are at the tenth year. A veteran firefighter with twenty or more years of service is unlikely to leave due to the loss of substantial seniority.

To reiterate, the retroactivity portion of the Union’s proposal disqualifies the Union’s LBFO from being selected. Therefore, the Board must adopt the City’s LBFO on longevity pay.

The Board voted 2-1 to incorporate the City’s LBFO into the 2017-2021 MOU.
VIII. EDUCATIONAL INCENTIVE PAY

A. The 2015-2017 MOU, Section 7.4

MOU Section 7.4.1 sets the educational incentive pay cap at 8%. The elements of incentive pay are: 3% for an Associate Degree or a Bachelor’s Degree in a fire protection field; 2% for maintaining EMT-1(A) or EMT-1(P) certification; 3% for completion of the educational requirements for the Fire Officer’s series of the California Fire Service Training and Education System (CFSTES). Section 7.4.6 contains a continuing education condition for maintaining incentive pay for the Associate’s degree or Bachelor’s degree.

B. The Union’s LBFO on Educational Incentive Pay

7.4 Educational Incentive Pay

7.4.1 Upon completion of one (1) year of service, fire safety employees shall be eligible for the following educational bonuses up to a maximum of eight nine percent (89%) (9%) of base salary.

7.4.2 An employee who earns an associate degree or a bachelor’s degree in the fire protection field from an accredited college shall receive bonus pay equal to three percent (3%) of that employee’s base salary.

7.4.3 An employee who maintains current certification as an EMT-1(A) or EMT-1(P) shall receive bonus pay equal to two five percent (25%) (5%) of that employee’s base salary.

7.4.3 An employee who earns a BA/BS degree from an accredited college shall receive bonus pay equal to one and a half percent (1.5%) of that employee’s base salary.

7.4.4 Effective July 1, 2011, An employee who successfully completes all of the educational requirements for the Fire Officer’s series identified in the California Fire Service Training and Education System (CFSTES) through the Office of the California State Fire Marshal shall receive bonus pay equal to three percent (3%) of that employee’s base salary.
7.4.5 An employee who successfully completes all of the educational requirements for the Chief Fire Officer’s series identified in the California Fire Service Training and Education System (CFSTES) through the Office of the California State Fire Marshal shall receive bonus pay equal to one and a half percent (1.5%).

7.4.56 In no case shall any employee receive combined education incentive bonus pay which exceeds eight nine percent (8 9%) of that employee’s base salary. The City shall assist the firefighters as much as practical in gaining admission to the courses and/or programs listed above. The City shall not incur any liability for overtime for any firefighter attending these courses unless that firefighter is directed to attend by the Fire Chief. The firefighter shall provide for the necessary time to attend these courses through normal shift-trade and leave policies of the Department, if required. With the advance approval of the Chief, employees shall be allowed to utilize accrued time off, outside of original picks, to complete the education.

7.4.67 In order to maintain the incentive pay for an Associate or Bachelor’s Degree and/or Fire Academy Training specified in the MOU, continuing education shall be required. The annual continuing educational requirements shall include the satisfactory completion of a minimum of forty (40) hours or two (2) college quarter units (or equivalent semester units) of course work approved by the Fire Chief or designated representative. With the advance approval of the Chief, employees shall be allowed to utilize accrued time off, outside of original picks, to complete the education. A Firefighter who fails to meet the continuing education requirements for any fiscal year shall lose the fiscal year’s incentive pay. If the Firefighter should successfully complete the continuing education requirement in a future year, the appropriate incentive pay shall be reinstated.

[The changes in MOU Section 7.4 are struck out or underlined. The Union’s Final Offer is shown in its entirety.]

C. The City’s LBFO on Educational Incentive Pay

NOTE (not for inclusion in MOU): We understand the parties to be in agreement regarding changes marked in bold italics below. The City otherwise proposes to maintain status quo, and rejects all other modifications proposed by Local 1272.
7.4 Educational Incentive Pay

7.4.1 Upon completion of one (1) year of service, fire safety employees shall be eligible for the following educational bonuses up to a maximum of eight percent (8%) of base salary.

7.4.2 An employee who earns an associate degree or a bachelor’s degree in the fire protection field from an accredited college shall receive bonus pay equal to three percent (3%) of that employee's base salary.

7.4.3 An employee who maintains current certification as an EMT-1(A) or EMT-1(P) shall receive bonus pay equal to two five percent (2%) of that employee's base salary.

7.4.4 Effective July 1, 2011, an employee who successfully completes all of the educational requirements for the Fire Officer’s series identified in the California Fire Service Training and Education System (CASTES) through the Office of the California State Fire Marshal shall receive bonus pay equal to three percent (3%) of that employee’s base salary.

7.4.5 In no case shall any employee receive combined education incentive bonus pay which exceeds eight percent (8%) of that employee's base salary. The City shall assist the firefighters as much as practical in gaining admission to the courses and/or programs listed above. The City shall not incur any liability for overtime for any firefighter attending these courses unless that firefighter is directed to attend by the Fire Chief. The firefighter shall provide for the necessary time to attend these courses through normal shift-trade and leave policies of the Department, if required. With the advance approval of the Chief, employees shall be allowed to utilize accrued time off, outside of original picks, to complete the forty-hour training requirement.

7.4.6 In order to maintain the incentive pay for an Associate or Bachelor’s Degree and/or Fire Academy Training specified in the MOU, continuing education shall be required. The annual continuing educational requirements shall include the satisfactory completion of a minimum of forty (40) hours or two (2) college quarter units (or equivalent semester units) of course work approved by the Fire Chief or designated representative. With the advance approval of the Chief, employees shall be allowed to utilize accrued time off, outside of original picks, to complete the forty-hour training requirement. A Firefighter who fails to meet the continuing education requirements for any fiscal year shall lose
the fiscal year’s incentive pay. If the Firefighter should successfully complete the continuing education requirement in a future year, the appropriate incentive pay shall be reinstated.

D. **Background on Education Incentive Pay**

Almita Schaefer testified that if an employee takes the time to pursue their education to a Bachelor’s degree, it reflects the employee’s professionalism and should be financially rewarded. Separating the Associate’s degree from the BA recognizes that an employee must exert more time and energy to acquire a BA.

Baretto testified that it is unnecessary for a firefighter to possess a Bachelor’s degree in order to effectively function as a firefighter at any of the three ranks. Baretto stated that a BA or BS is only required for his position. Baretto declared that the firefighters, Engineers and Captains are equipment trained, tactically trained and safety trained. These types of training can be completed without a BS or BA degree.

E. **The Union’s Position on Educational Incentive Pay**

The Union’s LBFO appropriately revises some of the educational incentives by deleting one, adding another and splitting up the Associate’s Degree and Bachelor’s Degree.

Almita Schaefer testified that raising the maximum incentive pay from 8% to 9% was to recognize employees for their educational accomplishments. An employee’s educational achievements enhances the professionalism of the Department. Therefore, raising the maximum incentive to 9% shows that the Department appreciates the efforts of its firefighters to continue to learn.

Contrary to the City’s charge that 9% will have a severe financial impact, the 1% increase is reasonable. Even if there is some cost to the City, it is outweighed by the benefits to
employees. The pay of the firefighters is so far behind their counterparts that a small increase will serve the dual purpose of encouraging them to obtain a Bachelor’s degree and move them slowly toward their counterparts.

F. The City’s Position on Educational Incentive Pay

At the onset, the City notes that its reference to a “40 hour training requirement” in Section 7.4.6 of its LBFO was an inadvertent error. The City apparently accepts the Union’s proposal of “education” in Section 7.4.6.

The City is uncertain about the cost of the Union’s proposal although it acknowledges that the elimination of the premium for EMT certification may result in a savings to the City. The City represents that, even though few firefighters currently have the Chief Fire Officer certificate, the certificate is easy to obtain and so, the City may eventually pay the 1.5% premium to every member of the bargaining unit. At this time, the City may save money under the Union’s LBFO.

The City contends its proposal comports with those comparable jurisdictions that offer educational incentive pay. The City points out that the average maximum of educational pay is 4% and so, an increase from 8% to 9% is excessive. The City states that the current 3% premium for either an Associate’s Degree or a Bachelor’s Degree is well above the average and only two of the comparable jurisdictions afford incentive pay for the Fire Officer training.

The City alleges that the Union’s proposal contains an inequity. By deleting the requirement that the major for a BA must be a Fire Safety subject, a firefighter with a Bachelor’s Degree in a non-Fire Safety major will receive more educational incentive pay than a firefighter with a Bachelor’s degree in Fire Protection. More specifically, the City states that a firefighter
with a Bachelor’s Degree in Fire Protection receives only 1.5% while a firefighter with an Associate’s Degree in a Fire Protection subject and a Bachelor’s Degree with any subject receives 4.5% premium.

The City also opposes the segmentation of the Bachelor’s Degree from the Associate’s Degree arguing that a Bachelor’s Degree does not promote any important department interest.

G. The Board’s Opinion and Award on Educational Incentive Pay

The Board notes that many students directly enroll in a Bachelor’s program and do not obtain an Associate’s degree even though they earned the credit hours for the Associate’s degree. The Union’s proposal will now encourage firefighters to first pursue the Associate’s degree in a fire protection field and then a Bachelor’s degree in any field. An incentive to obtain a higher degree is appropriate. As the Union contends, an educated work force increases the professionalism of the Department. Higher education also provides a firefighter with an expansion of knowledge and better judgment.

The Board holds that not restricting the major for Bachelor’s degree to the fire protection field is reasonable. There are many college majors that help increase the professionalism, knowledge, analytical ability and communication skills of a firefighter such as leadership; biology; geriatrics; business; mechanical engineering; and, communication studies.

As the City points out, the Union’s LBFO is difficult to cost. The cost will be 1% of compensation (at the most). The actual cost may be substantially less and perhaps, no cost at all. Thus, the Board recommends the Union’s LBFO. This is a modicum increase to induce firefighters to acquire certification and continue their university educations.
The Board voted 2-1 to incorporate the Union’s LBFO into the 2017-2021 MOU.

IX. OVERTIME

A. The 2015-2017 MOU, Section 7.6.4

Section 7.6.4 presently reads:

Overtime will be rank for rank, except:

The Chief may first assign an employee in a lower rank to fill in for the position if there is an eligible employee available from the Temporary Upgrade ("TU") list if currently on shift and does not create overtime and will be evaluated at the end of the contract. If there is no employee available on shift from the TU list or available based on rank for rank, the Chief may assign any qualified employee on the overtime list. If there are no employees available after offering based on these options, the Chief may utilize the force hire list.

B. The Union’s LBFO on Overtime

7.6.4 Overtime will be rank for rank, except:

The Chief may first assign an employee in a lower rank to fill in for the position and act out of class if there is an eligible employee available and approved by the Fire Chief from the Temporary Upgrade ("TU") list if currently on shift and does not create overtime, and will be evaluated at the end of the contract. If there is no employee available on shift from the TU list or available based on rank for rank, the Chief may assign any qualified employee on the overtime list. An eligible employee is defined as those who have completed minimum courses, task book requirements, and/or has successfully passed promotional exams for the upgraded classification. TU’s may need to attend required training in order to maintain their qualifications. The required training will be funded by the City. If there are no employees available after offering based on these options, the Chief may utilize the force hire list.

[The changes in MOU Section 7.6.4 are struck out or underlined. The Union’s Final Offer is shown in its entirety. There are no changes to Sections 7.6.1, 7.6.2 or 7.6.3.]
C. The City’s LBFO on Overtime

7.6.4 Overtime will be rank for rank, except:

The Chief may first assign an employee in a lower rank to fill in for the position and act out of class if there is an eligible employee available and approved by the Fire Chief from the Temporary Upgrade ("TU") list if currently on shift and does not create overtime and will be evaluated at the end of the contract. If there is no employee available on shift from the TU list or available based on rank for rank, the Chief may assign any qualified employee on the overtime list. An eligible employee is defined as one who has completed minimum courses, and task book requirements, or has successfully passed promotional exams for the upgraded classification. Those acting out of class may need to attend required training in order to maintain their qualifications. The required training will be funded by the City. If there are no employees available after offering based on these options, the Chief may utilize the force hire list.

D. Background on Overtime

The parties agree that an employee must have completed the minimum courses to be eligible to work out of class in an upgraded classification. They disagree about the task book requirements and successfully passing a promotional exam although they agree that both are relevant to working out of class. The disagreement centers on whether the task book requirement and successfully passing a promotional exam are both required for an employee to be qualified for an upgrade or if one or the other can qualify the employee for an upgrade.

The City’s LBFO contains the conjunctive “or” while the Union’s LBFO has the conjunctive “and”.
E. The Union’s Position on Overtime

The Union contends that in the past, it cooperated with the Department by agreeing to the language in Section 7.6.4 to reduce overtime costs which McCollum stated was getting out of hand. However, now the Department is abusing the provision which requires a revision.

A firefighter must complete training. The task book completion only partially prepares a firefighter for a higher class position. It is logical that the person temporarily working in a higher class should have passed the promotional exam for the upgraded position that the employee temporarily occupies. This ensures that the person acting out of class is truly qualified for the position.

McCollum explained that once an employee completes the training and the task book, they can be upgraded to a position whether or not they want to perform the duties of the upgraded position. They may be uninterested in performing those duties. They may not be ready to perform those duties. McCollum declared that the Union wants someone who actually passed the test because that firefighter sincerely wants to work in the position. McCollum asserted that if you put someone in a position who does not want the job or does not want to do the work, it may not be the safest situation for other employees. Safety should be a paramount concern for the City.

F. The City’s Position on Overtime

The City seeks to keep the status quo which makes the task book requirement and successful completion of the promotional exams as alternative paths for an employee to become qualified to work out of class.
The Union’s proposal would effectively nullify a policy that permits the fire department to avoid overtime. Under existing Section 7.6.4, the Department can assign a qualified employee to perform an absent employee’s duties so long as moving the employee upward does not cause staffing to drop below the minimum. Since current staffing is 12 employees per shift with minimum staffing set at nine, the buffer of three provides some flexibility to upgrade an employee rather than calling in a higher class employee on overtime. Mandating that an employee is only eligible to work in the higher class if the employee has passed the promotional exam would shrink the pool of employees eligible to work out of class. With fewer eligible employees, overtime costs increase. The City estimates the cost of the Union’s proposal at $400,000 per year.

There is not any operational necessity for employees in a lower class to pass a promotional exam to receive a mandatory out of class assignment. Completing the task book is sufficient to ensure an employee is qualified, especially since the parties concur that any potential out of class assignment must be approved by the Fire Chief. McCollum tried to justify the Union’s proposal by saying that those who have completed the promotional exam sincerely desire to work in the higher classification and if someone has not taken the exam, their quality of work or their attention to safety might be less when they are forced into an upgrade. Since it wants to change the status quo, the Union must present reliable evidence that it is unsafe for a worker to upgrade to a higher class simply because a worker has not passed the promotional exam. The Union did not submit such evidence.
G. The Board’s Opinion and Award on Overtime

Section 7.6.4 has worked remarkably well in controlling the Fire Department’s overtime expenditures. The Union acknowledged that in prior years, the amount of overtime had become uncontrollable. The Union’s LBFO would again place the Department in situations where it would have to call employees to work on overtime to fill a vacancy when an on duty employee, who has completed the textbook and the minimum courses, is available to occupy the vacancy without endangering minimum staffing. The Board finds that an annual cost of $400,000 is unacceptable when the only evidence submitted by the Union was the anecdotal assumption that some employees, who have not taken the promotional examination, will be performing work that they do not desire to perform.\footnote{The Board does not want to resurrect an era of uncontrollable overtime.} Firefighters are professionals. The Board expects professionals to perform the work that they are assigned.

The Union’s proposal might create logistical problems. The Union’s LBFO might require the City to conduct more promotional exams than are necessary. If a promotional exam has not been given for several years, there may not be anybody available to work out of class in a higher level position.

Last, reducing overtime not only helps the City save money, but it also provides a better quality of life for firefighters. Firefighters can count on having leisure time instead of being called into work on their days off. This Board understands that the Fire Chief can abuse the Chief’s discretion under this provision. Completing the task book is not actually performing the higher class work. If this abuse occurs, the parties must revisit how this provision operates.
As of now, the Union has not met its burden of proving that Section 7.6.4 should be substantively modified. Therefore, the Board recommends that the City’s language is most appropriate.

The Board voted 2-1 to incorporate the City’s LBFO into the 2017-2021 MOU.

X. RECOGNITION

A. The 2015-2017 MOU, Section 2.1

The present Section 2.1 reads:

City hereby recognizes the Watsonville Professional Firefighters, affiliated with the International Association of Firefighters, Local 1272, as the only bargaining representative of all employees in the classification of Fire Captain, Fire Engineer, and Firefighter.

B. The Union’s LBFO on Recognition

2.1 City hereby recognizes the Watsonville Professional Firefighters, affiliated with the International Association of Firefighters, Local 1272, as the only bargaining representative of all employees in the classification of Fire Captain, Fire Engineer, and Firefighter, Battalion Chief, Fire Inspector, and others as amended into the representation unit from time to time under existing law.

[The changes in MOU Section 2.1 are struck out or underlined. The Union’s Final Offer is shown in its entirety. There are no changes to section 2.2.]

C. The City’s LBFO on Recognition

NOTE (not for inclusion in MOU): It is our understanding that the parties are in agreement regarding the additions to Section 2.1 shown in bold underlined italics below. Per our pre-arbitration proposal, the County rejects Local 1272’s further proposal to also add “Battalion Chiefs” to the list of included classifications.
2.1 City hereby recognizes the Watsonville Professional Firefighters, affiliated with the International Association of Firefighters, Local 1272, as the only bargaining representative of all employees in the classifications of Fire Captain, Fire Engineer, and Firefighter, Fire Inspector, and others as amended into the representation unit from time to time under existing law.

D. Background on Recognition

The City has not filled a Battalion Chief position since 2009. When they were last employed, the Battalion Chiefs were ensconced in the management bargaining unit. Since 2009, the duties of a Battalion Chief have essentially been split between Division Chiefs and Fire Captains assigned as Duty Captains.

The City recently conducted a promotional exam with the objective of reinstituting Battalion Chief positions. The exam provides an opportunity for Captains to achieve promotions to Battalion Chiefs.

During bargaining, the Union proposed placing the Battalion Chiefs in the firefighters’ bargaining unit. The City accepted the Union’s proposal. The parties entered into a tentative agreement in July, 2017. Later, the City withdrew from the tentative agreement.

E. The Union’s Position on Recognition

Baretto conceded that when the negotiators consulted him, he did not have an opinion on whether Battalion Chiefs should be included or excluded from the firefighters’ bargaining unit. Apparently, the Fire Chief later changed his mind.

Battalion Chiefs are more akin to Fire Captains than to Division Chiefs. The Division Chiefs are separately assigned to oversee training, fire prevention, and administrative logistics. The Battalion Chiefs supervise the line ranks of Fire Captain, Engineer, Firefighter
and Paramedic. They impose discipline when needed, schedule work and tasks, respond to
emergencies and act as an incident commander. Presently, the Duty Captain performs many of
the functions of the Battalion Chief except imposing formal discipline. Like a Battalion Chief,
a Fire Captain and/or Duty Captain has supervisory oversight and can be utilized in an incident
command situation.

The Battalion Chiefs will work a 56 hour shift, along with their subordinates.
McCullum stressed that Battalion Chiefs directly supervise Fire Captains. Schaefer indicated
Battalion Chiefs best fit with their subordinates. Moreover, the Union anticipates that the City
will temporarily upgrade a Captain to a Battalion Chief vacancy which shows the closeness of
their duties.

Most importantly, the City must be required to honor the tentative agreement it
made with the Union in July, 2017. Withdrawing from the tentative agreement was not a
manifestation of good faith bargaining.

F. The City’s Position on Recognition

The City argues that the inclusion or exclusion of Battalion Chiefs in the
firefighters’ bargaining unit is a subject matter that is not within the mandatory scope of
in the firefighters’ unit is a permissive bargaining subject. The Union cannot bring a permissive
bargaining subject to impasse and by doing so, engages in bad faith bargaining. City and County
of San Francisco, (2004) PERB Decision No. 1608-M. Therefore, the City argues that the issue
is not properly a matter for this interest arbitration proceeding. The City alleges that the Board
cannot decide the issue.
The City established an employer-employee relations resolution under the Meyers-Milias-Brown Act which sets forth rules for recognition and unit modification. The Union has not complied with the employer-employee relations resolution to remove Battalion Chiefs from their existing unit.

The City’s withdrawal from the tentative agreement is irrelevant. The bargaining ground rules provided that no tentative agreement is binding on the parties absent an overall agreement on a successor MOU. Since that did not occur, the City could withdraw from the tentative agreement at any time. Withdrawal from the tentative agreement may or may not be bad faith bargaining, but that issue is not before the Board. Moreover, the City made a legitimate mistake by entering into the tentative agreement. It did so without thorough discussions at the bargaining table concerning the ramifications of placing Battalion Chiefs in the same unit as firefighters. The City neglected the resolution for modifying units and, as discussed in the next paragraph, the actual duties of a Battalion Chief.

Upon reconsideration, the City prefers to keep Battalion Chiefs in the management unit. The Fire Chief testified that he makes the final decisions in discipline. He emphasized that the Battalion Chief is responsible for the Department when the Fire Chief is absent. The Fire Chief stressed that the Battalion Chief should be in the management group. Among other criteria, the employer-employee relations resolution provides that a community of interest is necessary for including disparate classifications in the same bargaining unit. In this case, the Battalion Chiefs do not share community of interest with the firefighters. A Battalion Chief is an executive who makes decisions of the Fire Chief in the absence of the Fire Chief, recommends disciplinary sanctions, and handles budgets. Thus, the Battalion Chiefs’
community of interest is with other City managers which is why they must remain in the management unit.

G. The Board’s Opinion and Award on Recognition

The City has unclean hands. It abruptly reneged on a tentative agreement to place the Battalion Chiefs in the Union’s bargaining unit. Regardless of the negotiation ground rules, the City’s withdrawal from the tentative agreement hardly promotes cooperative collective bargaining.

This Board must comply with the law. The Public Employment Relations Board has held that, under the Meyers-Milias-Brown Act, unit modification is a permissive subject for bargaining. *City of Davis*, *supra*. Therefore, the parties were free to bargain on the issue and reach an agreement. After the City reneged on the tentative agreement, the Union progressed the issue to impasse. However, this Board cannot pass judgment on this issue because we are an impasse resolution panel and a permissive subject cannot be taken to impasse. *City and County of San Francisco*, *supra*. In sum, the Board lacks jurisdiction to adopt the Union’s LBFO.

The Board recommends that the parties jointly follow the employer-employee relations resolution rules to legally move the Battalion Chiefs into the Union’s bargaining unit. The Union persuasively argued that Battalion Chiefs have a strong community of interest with Fire Captains because they work the same shift, they have overlapping responsibilities, and they need to closely coordinate their activities.

The Board voted 2-1 to incorporate the City’s LBFO into the 2017-2021 MOU.
XI. PARAMEDIC PROGRAM

A. The 2015-2017 MOU

The 2015-2017 MOU sets forth a Paramedic Program in Section 16. The parties agree to move this subject to Section 7.13.

Section 16.1 provides that a licensed and accredited paramedic receive a 10% hourly differential “... if assigned to paramedic duties by the Fire Chief.” Section 16 provides that an Engineer and Captain with a paramedic certification are eligible to receive a monthly stipend of $150.

The current Section 16 does not contain language on staffing levels. Section 16 does not mention “Support Paramedic”.

B. The Union’s LBFO on Paramedic Program

7.13 Paramedic Program

1. Each employee who is licensed by the State of California and accredited by the County of Santa Cruz as a Primary/Firefighter Paramedic shall be eligible to receive a paramedic differential of 10% of their hourly rate for their assigned step, if assigned to paramedic duties by the Fire Chief.

2. Each employee who is licensed by the State of California and accredited by the County of Santa Cruz and designated as a Support Paramedic shall be eligible to receive a paramedic differential of 7% of their base pay a two hundred and fifty dollar ($250) monthly stipend.

3. The city agrees to maintain a minimum of nine (9) Primary Paramedics, and nine (9) Support Paramedics.

4. Support Paramedics can hold the position of Fire Engineer, Fire Captain, or Duty Captain. To be eligible for this stipend, each person must successfully bid by department seniority for the Support Paramedic positions.
5. Each in service suppression apparatus will have at least one Primary/Firefighter Paramedic assigned.

6. The Fire Chief may assign Support Paramedics to temporarily fill Firefighter Paramedic vacancies when the department does not have other available Primary Firefighter Paramedic personnel on duty. In cases where Duty Captain, Fire Captain or Fire Engineer support medics are required to work as Firefighter Paramedics for more than two hours in a shift, they will act as Firefighter Paramedics and not in their regular classification.

7. If the performance or behavior of a paramedic is under investigation by the Fire Department or County Medical Director, the employee shall be removed from paramedic duties during the investigation, however, the paramedic differential pay will not be suspended until the investigation is complete. If the investigation results in a finding of misconduct, the employee will be removed from the paramedic program and paramedic incentive pay will immediately cease.

8. Paramedics, except for those who promoted from the position of Fire Fighter prior to June 20, 2003, may not decertify from paramedic status for at least five years from the date of hire, except in the case of promotion. Thereafter, paramedics may request decertification provided that the action will not reduce the number of paramedics then in active work status to less than nine. If a paramedic wishes to decertify, an open filing period will be posted announcing the decertification in which other paramedics may also request decertification. In the event there is more than one paramedic requesting decertification, the decision to decertify will be made on seniority in the rank of Paramedic/Fire Fighter.

9. Paramedics may apply for promotional opportunities within the Department for which they meet the minimum qualifications.

10. The City will make every effort to ensure continuing education and required certifications will be provided on duty. In the event that required training is on an off duty day, the paramedic shall be compensated by regular time and one half. Required certifications shall not be counted towards an employee's education incentive.

a. In either case, on duty or off duty, the employer shall pay the cost of tuition, as well as any associated costs, i.e.
required textbooks, mileage, meals and lodging when appropriate.

b. Paramedics shall utilize local training opportunities when possible to keep additional costs associated with the class at a minimum.

11. Paramedic Preceptor Program

The City will pay paramedic preceptors a flat fee based on EMS School reimbursement to the City (usually about $900 - $1000 per student). Paramedics serving as preceptors shall be selected by the Fire Chief.

12. For each employee who is licensed by the State of California and accredited by the County of Santa Cruz as a Primary Firefighter Paramedic or a Support Paramedic in the Engineer and Captain ranks assigned to Support medic, the City will pay for the costs associated with maintaining the paramedic certification, including class fees and payment of overtime to take classes if necessary. Members in the Engineer and Captain ranks assigned to support medic who possess a valid paramedic license shall be eligible for a premium rate of up to one-hundred and fifty dollars ($150) per month at the discretion of the Chief.

[The changes in MOU Section 7.13 have been added or moved from MOU Section 16.0 and are struck out, underlined or double underlined. The Union’s Final Offer is shown in its entirety.]

C. The City’s LBFO on Paramedic Program

NOTE (not for inclusion in MOU): The parties have agreed to move the location of this provision from Section 16 to a new Section 7.13; changes marked below refer to the text of the existing Section 16.

7.13.6 Paramedic Program

7.13.1: Each employee who is licensed by the State of California and accredited by the County of Santa Cruz as a paramedic shall be eligible to receive a paramedic differential of 10% of their hourly rate for their assigned step, if assigned to paramedic duties by the Fire Chief.
7.13.2: Each in-service suppression apparatus will have at least one Primary/Firefighter Paramedic assigned at planned special events, and will make reasonable efforts to staff two engines and a truck with at least one Primary/Firefighter Paramedic at all times.

7.13.32: If the performance or behavior of a paramedic is under investigation by the Fire Department or County Medical Director, the employee shall be removed from paramedic duties during the investigation, however, the paramedic differential pay will not be suspended until the investigation is complete. If the investigation results in a finding of misconduct, the employee will be removed from the paramedic program and paramedic incentive pay will immediately cease.

7.13.43: Paramedics, except for those who promoted from the position of Fire Fighter prior to June 20, 2003, may not decertify from paramedic status for at least five years from the date of hire, except in the case of promotion. Thereafter, paramedics may request decertification provided that the action will not reduce the number of paramedics then in active work status to less than nine. If a paramedic wishes to decertify, an open filing period will be posted announcing the decertification in which other paramedics may also request decertification. In the event there is more than one paramedic requesting decertification, the decision to decertify will be made on seniority in the rank of Paramedic/Fire Fighter.

7.13.54: Paramedics may apply for promotional opportunities within the Department for which they meet the minimum qualifications.

7.13.65: The City will make every effort to ensure continuing education and required certifications will be provided on duty. In the event that required training is on an off-duty day, the paramedic shall be compensated by regular time and one half. Required
certifications shall not be counted towards an employee's education incentive.

a. In either case, on duty or off duty, the employer shall pay the cost of tuition, as well as any associated costs, i.e. required text books, mileage, meals and lodging when appropriate.

b. Paramedics shall utilize local training opportunities when possible to keep additional costs associated with the class at a minimum.

7.13.76: Paramedic Preceptor Program

The City will pay paramedic preceptors a flat fee based on EMS School reimbursement to the City (usually about $900 - $1000 per student). Paramedics serving as preceptors shall be selected by the Fire Chief.

7.13.87: For employees in the Engineer and Captain ranks, the City will pay for the costs associated with maintaining the paramedic certification, including class fees and payment of overtime to take classes if necessary. Members in the Engineer and Captain ranks who possess a valid paramedic license shall be eligible for a premium rate of up to one-hundred and fifty dollars ($150) - two-hundred dollars ($200) per month at the discretion of the Chief.

7.13.9 In the event that a Fire Engineer or Fire Captain is assigned to primary paramedic duties for more than 2 hours, the employee will be paid a paramedic differential of 10% of their hourly rate while serving in that capacity.
D. **The Union's Position on Paramedic Program**

Almita Schaefer explained the Union’s paramedic program proposal makes a differentiation between the Primary Paramedic and the Support Paramedic to permit doubling resources at the scene where there is more than one serious injury. For example, at an accident scene, multiple patients may require advanced life support care. The Primary Paramedic is the first person to touch the injured party and then directs the emergency treatment. The Support Paramedic will help provide an equal quality of care to all victims and become a Primary Paramedic when necessary.

American Medical Response (AMR) responds to a majority of medical and accident calls. The AMR paramedic is certified just like the Department paramedic. But, if AMR is late or unavailable, the Support Paramedic is an added resource.\(^{15}\) Since 75% of the fire department calls are medical, the formal establishment of a Support Paramedic will keep an apparatus in service if the Primary Paramedic must transport a patient to a hospital. Therefore, the Union’s proposal guarantees a higher quality of service.

The Union’s proposal provides that an employee designated as a Support Paramedic receive a 7% differential. The proposal also provides that a Primary Paramedic receive the 10% differential at all times. The Department’s practice is to only hire firefighters who are already certified as paramedics and so, the Union’s proposal is not an undue burden on the City.

The Union’s proposal ensures a minimum staffing level for both groups of paramedics to prevent unsafe operations.

\(^{15}\)Amelita Schaefer testified AMR can sometimes be delayed up to 45 minutes.
The Union's LBFO is necessary because the Department is under-utilizing the personnel who are qualified to act as Support Paramedics. It makes sense, the Union argues, to take advantage of the available skills and knowledge of its employees and to compensate them for performing the Support Paramedic function.

Last, the Union's proposal raises the monthly stipend from $150 to $250 a month. This raise is long overdue. The Union’s proposal removes language alluding to the Chief's discretion. The past practice is that all eligible employees receive the stipend.

E. The City's Position on Paramedic Program

The City is trying to meet the Union halfway with a reasonable compromise on the monthly stipend. Raising the monthly stipend from $150 to $200 will cost the City $5,400 per year. The Union’s proposal to increase the stipend to $250 per month would double the cost to $10,800 per year.

The additional costs of the Union’s proposal are unknown because it depends on how many firefighters the City hires in the future and who possess the paramedic license, but are not assigned paramedic duties. These firefighters, who would not be performing paramedic duties, would receive the 10% premium under the Union’s LBFO. At this time, this potential cost is theoretical. However, the City does not want to be bound to pay, in the future, for work an employee does not perform.

The City’s contract with Santa Cruz County requires the City to have one advanced life support paramedic in the City within a designated response time. The Department staffs its two engine companies with at least one paramedic each. Any additional staffing is above and beyond what the County contract requires. AMR responds with a licensed paramedic
at the scene for any emergency call within categories B through E. The concept of a Support Paramedic can be derived from the contract with the County because the Primary Medic is the one that is in charge and first touches the patient. Therefore, one could call the AMR paramedic a Support Medic because that paramedic engages in transportation. While Support Paramedics do not appear in the MOU, Section 16.0.7 does refer to an Engineer or Captain providing paramedic services (in support) when assigned by the Fire Chief.

The City currently provides a minimum of nine primary paramedics. The Union failed to present any evidence that placing this staffing level in the MOU is related to workload or safety. Moreover, the Department staffs three paramedics per shift and operates three shifts so the City is following the Union’s proposal. However, unusual situations could arise which could impair the Fire Chief’s discretion to appropriately handle a particular call.

The Union’s LBFO is not consistent with the comparable agencies. Only Salinas has a minimum staffing provision for paramedics in the MOU and only Gilroy pays a premium for what is described as a Support Paramedic.

The Union’s LBFO is vague and ambiguous. The phrase “designated support paramedic” leaves unclear what level of discretion the Fire Chief retains in this process of designation. The seniority provision is ambiguous because it could be read to require nine Support Paramedics yet, such a requirement is seemingly inconsistent with the rest of the Union’s LBFO. In addition, the Fire Chief needs to assign Support Paramedics where needed. The seniority bidding process may be cumbersome since senior employees may not be assigned when (or where) Support Paramedics are needed. Next, the phrase act as firefighter paramedic and not in their regular classification raises a question of whether the Union is requiring the
Department to backfill the position occupied by the acting firefighter/paramedic.

The City’s proposal is reasonable. Like with stipend, the City is attempting to meet the Union’s proposal with a compromise by providing that a Support Paramedic who acts as a Primary Paramedic after more than two hours will receive the 10% premium for that shift.

F. The Board’s Opinion and Award on Paramedic Program

The Board notes that the Union’s LBFO strikes a reference to a 7% differential for a Support Paramedic.\textsuperscript{16} Therefore, the only premiums before this Board is the 10% differential and the monthly stipend. The Board specifically finds that Support Paramedics shall not receive a separate 7% differential.

Providing the 10% differential after 2 hours is compensating employees for the work that they actually perform. Thus, the Board views the Union proposal 7.13.6 the same as City proposal 7.13.9 albeit, the latter is better worded.

Extending the 10% differential per Union proposal 7.13.1 may impact future hires when the employee is a firefighter, but not assigned as a Primary Paramedic yet, holds the paramedic license and accreditation. The Board advises the City to address this problem, if it arises, in a future bargaining round. The parties might consider a lesser differential for these new hires to encourage them to maintain the license. As of the arbitration hearing, the only operative rank is Firefighter/Paramedic so the present cost is, as the City states, theoretical.

Raising the monthly stipend to $250 compensates Engineers and Captains for the time and effort to undergo recurrent training and certification to continue to be paramedics. The raise is not an undue financial burden on the City.

\textsuperscript{16}The Union referred to this differential in its post hearing brief.
The staffing provisions in the Union’s LBFO merely codify existing practice. If the City takes an apparatus out of service, it is no longer subject to the minimum staffing provision. If the staffing requirement has unintended consequences, the parties can address any problems in the next round of bargaining.

The Union came forward with persuasive examples that its program will lead to a higher quality of care at an accident scene when more than one injured person needs advanced life support treatment.

The seniority provision is consistent with an employees’ status as a fire agency. Seniority is a valuable benefit and foments retention. In any event, the City should have been following seniority in the past. It is unlikely that seniority will impair day-to-day operations, but if so, the parties can address any problem in the next round of bargaining. The City contends that one or two phrases in the Union’s LBFO are ambiguous. If clarity is needed, the parties can work on the language.

The Board voted 2-1 to incorporate the Union’s LBFO into the 2017-2021 MOU.

XII. MANAGEMENT RIGHTS

A. The 2015-2017 MOU, Section 11

The present Section 11 contains an introductory sentence followed by a list of 20 management rights.

B. The Union’s LBFO on Management Rights

All City rights, under state law and City Charter, and all City rights which existed prior to the recognition of the Firefighters Local 1272 shall remain vested with the City unless expressly abridged by this M.O.U. These rights include but are not
limited to:

- the exclusive right to determine the mission of its constituent departments, commissions, boards;

- set standards and levels of service;

- determine the procedures and standards of selection for employment and promotions; subject to meet and confer requirements on changing promotional standards;

- direct its employees;

- subject to meet and confer requirements, establish and enforce dress and grooming standards;

- subject to meet and confer requirements, determine the methods and means to relieve its employees from duty because of lack of work or other lawful reasons;

- maintain the efficiency of governmental operations;

- subject to meet and confer requirements, determine the methods, means and numbers and kinds of personnel by which government operations are to be conducted;

- determine the content and intent of job classifications;

- determine methods of financing;

- subject to meet and confer requirements, determine style and/or types of City-issued wearing apparel, equipment or technology to be used;

- subject to meet and confer requirements, determine and/or change the facilities, methods, technology, means, organizational structure and size and composition of the work force and allocate and assign work by which the City operations are to be conducted;

- subject to meet and confer requirements, determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operations of the City;
subject to meet and confer requirements, to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice;

subject to meet and confer requirements, establish and modify productivity and performance programs and standards;

discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees for just cause in accordance with applicable law;

subject to meet and confer requirements, establish employee performance standards including, but not limited to, quality and quantity standards, and to require compliance therewith;

take all necessary actions to carry out its mission in emergencies; and

exercise complete control and discretion over its organization and the technology of performing its work.

[The changes in MOU Section 11.0 are struck out, underlined or double underlined and are shown in their entirety.]

C. The City’s LBFO on Management Rights

All City rights, under state law and charter, and all City rights which existed prior to the recognition of the Firefighters Local 1272 shall remain vested with the City, unless expressly abridged by this M.O.U. These rights include but are not limited to:

• the exclusive right to determine the mission of its constituent departments, commissions, boards;

• set standards and levels of service;

• determine the procedures and standards of selection for employment and promotions; subject to meet and confer requirements on changing promotional standards;

• direct its employees;

• establish and enforce dress and grooming standards;
• determine the methods and means to relieve its employees from duty because of lack of work or other lawful reasons;

• maintain the efficiency of governmental operations;

• determine the methods, means and numbers and kinds of personnel by which government operations are to be conducted;

• determine the content and intent of job classifications;

• determine methods of financing;

• determine style and/or types of City-issued wearing apparel, equipment or technology to be used;

• determine and/or change the facilities, methods, technology, means, organizational structure and size and composition of the work force and allocate and assign work by which the City operations are to be conducted;

• determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operations of the City;

• to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice;

• establish and modify productivity and performance programs and standards;

• discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees in accordance with applicable law;

• establish employee performance standards including, but not limited to, quality and quantity standards, and to require compliance therewith;

• take all necessary actions to carry out its mission in emergencies; and

• exercise complete control and discretion over its organization and the technology of performing its work.
D. **Background on Management Rights**

The current management rights clause (Section 11) has been in the MOU since 1987. The LBFOs of the City and the Union call for deletion of the phrase “... and all city rights which existed prior to the recognition of the firefighters Local 1272 ...” from the introductory paragraph of Section 11.

E. **The Union’s Position on Management Rights**

At the onset, the Union proposes eliminating the phrase “but are not limited to” from the introductory paragraph of Section 11 because it is overly broad. The rights listed in Section 12 are very comprehensive.

Next, the Union’s proposal is designed to conform the management rights clause to the Meyers-Milias-Brown Act. The Union proposes adding the meet and confer requirements to those rights which fall within the ambit of wages, hours and working conditions. See *California Government Code* Sections 3504 and 3505. The Union argues that nine of the 19 bullet points pertain to wages, hours and working conditions. The City may argue that staffing levels are not subject to the meet and confer requirement, but pursuant to *Firefighters Union Local 1186, International Association of Firefighters v. City of Vallejo*, 12 Cal.3d 609 (1964) staffing is a legitimate subject for the meet and confer requirements if there is an impact on safety or workload.

Next, the Union proposes adding the just cause standard to the City’s right to discipline employees. The Union does not quarrel with the City’s right to discipline employees, but the Union wants to make certain that discipline is assessed according to the universally recognized standard of just cause. The Union also wants to confirm that in disciplinary actions,
the City has the burden of proving that it has just cause to discipline an employee.

The management rights clause has remained unchanged for many years. The Union’s proposal brings the provision up to date with applicable law.

F. The City’s Position on Management Rights

The Union’s proposed changes to Section 11 are unnecessary and likely would not result in any substantive change to the meaning of Section 11. Proposing to add “city” before “charter” is unnecessary because the clear context of the word “charter” is the City’s Charter. Next, the Union wants to delete the phrase “but are not limited to”. This change could affect the meaning of the provision. Absent an express modifier, the City’s management rights are not limited to those listed examples. It possesses management rights that are implicit.

The City is unclear about the Union’s reason for adding the phrase “subject to meet and confer requirements” in front of nine of the enumerated bullet points in Section 11. If the Union is merely providing that the City has a duty to obey state law, the phrase is unnecessary. The City acknowledges that it must provide the Union with notice and an opportunity to bargain before making any changes within the mandatory scope of bargaining pursuant to the Meyers-Milius-Brown Act. California Government Code Sections 3504.5 and 3505. If the phrase is intended to create bargaining obligations on the City above and beyond state law, the amendment is inappropriate. The rights listed in Section 11 are core managerial prerogatives. The City is concerned that imposing new bargaining obligations would significantly impair its managerial rights. For example, the Fire Chief needs discretion to establish and modify work schedules and assignments to serve the citizens of the City. Forcing the Fire Chief to negotiate over such decisions (as opposed to the negotiable effects of the
decision) would make decision making impossible.

The Union wants to insert “just cause” into the management rights provision. The City’s personnel rules already require that the City discipline employees for just cause and consequently, adding it to the management rights clause is wholly unnecessary. While adding just cause would not amend the standard for disciplining non-probationary employees, the phrase could affect probationary employees where the City currently has the absolute right to terminate or demote a probationary employee for any reason or even no reason. The City’s Municipal Code allows the City to reject a probationary employee during the probationary period without right of appeal. The City is concerned that if there is a conflict between a MOU provision and the Code, the MOU provision would control.

Since most of the Union’s proposed changes to the management rights clause are unnecessary, and since it did not present any evidence to support the changes, the City contends that its status quo version of the management rights clause is appropriate with the deletion of the phrase referring to rights prior to Union representation.

G. The Board’s Opinion and Award on Management Rights

The management rights clause has been in the Agreement for many years. The phrase in the introductory sentence became obsolete. Deleting the reference to City rights which existed prior to the advent of the Union is a necessary amendment since neither party could articulate those prior City rights. Beyond this amendment, further changes are unwarranted.

The Union has not come forward with any evidence that it has been unfairly prejudiced by the management rights clause. The Union seeks to modify many of the
enumerated rights with the caveat “subject to meet and confer requirements”. The Meyers-Milias-Brown Act remains fully applicable to this bargaining unit. The Union is free to invoke the Meyers-Milias-Brown Act whenever it alleges that the City has made a unilateral change in wages, hours and working conditions.

More significantly, the Union did not prepare a blanket (all encompassing) meet and confer proviso. The Board can envision situations under the management rights where the Union did not add the meet and confer terminology that could involve wages, hours and working conditions. The absence of the express phrase on some bullet points could be construed as the Union waiving its right to meet and confer.

Last, the “just cause” amendment is superfluous. The City knows that it must have just cause to impose discipline on a permanent City employee. The City is rightly concerned that the addition of “just cause” can conceivably be construed to cover probationary employees.

The Board recommends, and decides, that the City’s LBFO is more reasonable than the Union’s LBFO.

The Board voted 3-0 to incorporate the City’s LBFO into the 2017-2021 MOU.

XIII. GRIEVANCE PROCEDURE

A. The 2015-2017 MOU

The present MOU does not contain a grievance procedure.

Charter Section 1007 provides, “The City, through its duly authorized representatives, shall negotiate in good faith with the recognized fire department employee organization on all matters relating to wages, hours, and other terms and conditions of City
employment, including the establishment of procedures for the resolution of grievances, submitted by either employee organization over the interpretation or application of any negotiated agreement including a provision for binding arbitration of those grievances.”

B. The Union’s LBFO on the Grievance Procedure

The City and Local 1272 agree to establish a grievance procedure as follows:

1. Definition: A grievance is any complaint or dispute regarding the application or interpretation of this Memorandum of Understanding, rules, regulations, policies, or procedures relating to wages, hours, or other conditions of employment.

2. Any non-probationary employee represented by the Union may file and process a grievance. Such aggrieved employees may be represented by the union or may represent themselves in preparing and presenting their grievance at any level of review. The Union may file a grievance on behalf of an employee or when a union right not directly related to an individual employee becomes a dispute.

3. Written Grievances shall be submitted on forms which are mutually agreeable to the City and the Union. The employee or the Union shall deliver a copy of a written grievance to the Human Resources Department.

4. The time limits specified in this section may be extended by mutual agreement in writing of by the aggrieved employee or the Union and by the reviewer concerned. Should a decision not be rendered within a stipulated time limit, the aggrieved employee may immediately appeal to the next step.

5. The grievance procedure steps are set forth in the paragraphs that follows. If a grievance is related to a promotional process to positions within the representation unit, Step I shall begin at Step III to the Fire Chief and, if not resolved at Step III, the grievance may be appealed to Step IV.

a. Step I. The aggrieved employee or the Union will first attempt to resolve the grievance through informal discussions with the immediate supervisor by the end of the seventh calendar day following the discovery of the incident upon which the grievance is based. Every attempt will be made to settle the issue at this level.
b. Step II. If the grievance is not resolved through informal discussion, it may be submitted in writing to the Division Chief (Fire Chief for Captain grievances) within seven calendar days of the informal discussion. This time period may be extended if both parties mutually agree. The Division Chief will have seven calendar days from the receipt of the grievance to review and prepare a written response. If the grievance is denied, the response shall contain the reasons therefore.

c. Step III. If the grievance is not resolved in Step II, it may be submitted in writing to the Fire Chief within seven calendar days of receipt of the Division Chief’s (or the Chief’s) written response. The Fire Chief will have seven calendar days from receipt of the grievance to review the matter and prepare a written response. If the grievance is denied, the response shall contain the reasons therefore.

d. Step IV. If the grievance is not resolved in Step III, the aggrieved employee or the Union may submit the grievance to the City Manager or to binding grievance arbitration for final determination. All Step IV appeals must be filed in writing at the Human Resources Department Office within seven working days of receipt of the Fire Chief’s response under Step III. All hearings before the City Manager shall be pursuant to the City of Watsonville’s Personnel Rules and Regulations.

e. In the event the aggrieved employee or the Union decides to proceed to arbitration, he/she, if acting without Union Representation, or the Union, if acting on behalf of an employee or its members, shall select jointly with the Director of Human Resources and arbitrator. If the parties are unable to agree on an arbitrator, they shall jointly request a panel of five qualified and experienced arbitrators from the State Mediation and Conciliation Service. Upon receipt of the list of arbitrators, the names shall be alternately struck until one name remains who shall serve as arbitrator. The arbitrator shall be jointly contacted by the parties.

The arbitrator shall have jurisdiction and authority to interpret, apply, or determine compliance with the provisions of the Memorandum of Understanding and such Personnel System rules, regulations, policies, procedures, City ordinances, or resolutions or City Charter provisions relating to terms or conditions of
employment, wages, or fringe benefits, as may hereafter be in effect in the City insofar as may be necessary to the determination of grievances appealed to the arbitrator. The arbitrator shall be without power to make any decision contrary to, or inconsistent with or modifying in any way, the terms of this Memorandum of Understanding. The arbitrator shall be without authority to require the City to delegate or relinquish any powers which by State law or City Charter the City cannot delegate or relinquish. Copies of the arbitrator’s decision shall be submitted to the City, the Union and/or the aggrieved employee. The arbitrator, court reporter and other All direct arbitration costs emanating from relating to the arbitration procedure shall be shared equally by the City, the Union or the aggrieved employee in the event such employee is not represented by the Union. Each party shall bear its own costs as determined by the arbitrator.

[Section 24.0 is new and set forth in its entirety. Changes from the Union’s December 27, 2017, Last, Best and Final Offer, are shown with strikeouts and double underlining.]

C. The City’s LBFO on the Grievance Procedure

NOTE (not for inclusion in MOU): The Union designated its proposal on Grievance Procedure as Section 24 of the MOU, which reflects their prior proposal to add a new Staffing Levels provision at Section 21 but does not account for the parties’ agreement to delete the current Section 16 and move the text of that Section (with revisions) into a new Section 7.13. In reality, because of the parties’ agreement to delete the current Section 16 and Local 1272’s withdrawal of its proposal for a new Section 21, the Grievance Procedure proposal should be inserted as Section 22.

If the City’s proposal is awarded, we will suggest to Local 1272 that the two main sections of this Section (Grievance/Discipline) be placed in two separate Sections of the MOU, with renumbering as appropriate and without substantive change. Absent Union approval to that formatting issue, placement will remain as set forth herein.

22.0 Grievance Procedure

22.1 Grievance Procedure (Other Than Disciplinary Matters)
22.1.1 Purpose of the Grievance Procedure

This grievance procedure shall be used to resolve disputes regarding the interpretation or application of this Memorandum of Understanding. The Union, an employee, or both ("Union/employee") shall have a right to initiate an informal complaint leading to filing of a formal grievance, pursuant to the procedure below.

All other disputes (other than disciplinary disputes subject to Section 22.2 below) shall be exclusively subject to the grievance procedure set forth in City rules (Personnel Rules and Regulations, Rule 17).

22.1.1 Time Limits

a. Time is of the essence in processing grievances. Any grievance that is not timely initiated or not timely advanced to the next step shall be deemed waived. Should the City not render a decision within the stipulated time period for any step, the grievance shall be deemed denied. In such an event the Union/employee may move the grievance to the next step, with the calculation of days for filing at the next step to begin with the specified deadline for the City response at the previous step, provided however that only the Union may request that a grievance progress to arbitration (formal grievance procedure Step 4).

b. The time limits specified in this section may be extended by mutual agreement in writing of the aggrieved employee or the Union, and the reviewer concerned.

22.1.2 Informal Discussion of Grievances

a. When the Union/employee disputes the interpretation or application of any provision of this MOU, the Union/employee shall raise the issue in writing and informally discuss the matter with the employee's immediate supervisor within fourteen (14) calendar days
from the date of the incident or decision generating the dispute. If the matter is not satisfactorily resolved after such discussion, the Union/employee shall have the right to file a formal grievance.

b. When the subject of the grievance was not within the control of the immediate supervisor, the Union/employee may, in lieu of this informal step, initiate a grievance at Formal Step 1 within fourteen (14) calendar days from the date of the incident or decision generating the grievance.

22.1.3 Formal Grievance Procedure

The formal grievance procedure shall be used to resolve a Union/employee grievance not resolved at the informal step.

a. Formal Step 1: The Union/employee shall have the right to present a formal grievance, in writing, either within (a) fourteen (14) calendar days after the conclusion of the informal discussion of the grievance, or (b) 21 calendar days after the Union/employee's initial presentation of the informal complaint to the employee's supervisor, whichever date is earlier. The formal grievance shall be presented to the Fire Manager designated by the Chief, with a copy to the Deputy City Manager. A written Step 1 response shall be issued within fourteen (14) calendar days of presentation of the Step 1 grievance.

b. Formal Step 2: If not resolved at Formal Step 1, the grievance may be presented to the Fire Chief within fourteen (14) calendar days after receipt of the Step 1 response. The Fire Chief shall discuss the grievance with the Union and/or the employee. Within fourteen (14) calendar days after receipt of the formal grievance, the Fire Chief shall render a written decision regarding its merits. If the Fire Chief's decision does not
satisfactorily resolve the grievance, the Union and/or employee may present the formal grievance to the City Manager or his/her designee within fourteen (14) calendar days after receipt of the Chief's response.

c. Formal Step 3: When the Union/employee presents a formal grievance to the City Manager or his/her designee, the City Manager or his/her designee shall discuss the grievance with the Union/employee. Within fourteen (14) days after meeting with the Union/employee, the City Manager or his/her designee shall render a written decision regarding its merits. The decision of the City Manager or his/her designee shall resolve the grievance and no further review of the subject matter of the grievance shall occur absent a timely request for arbitration.

d. Formal Step 4 (Arbitration):

If the decision of the City Manager or his/her designee does not satisfactorily resolve the grievance, the Union may invoke arbitration by filing a written request with within fourteen (14) calendar days after receipt of the Step 3 response.

Only the Union may determine whether to take a grievance to arbitration.

In the event the Union proceeds to arbitration, the Union and Deputy City Manager shall jointly select an arbitrator. If the parties are unable to agree on an arbitrator, they shall jointly request from the State Conciliation Service a list of five (5) arbitrators who are members of the American Academy of Arbitrators. Upon receipt of that list of arbitrators, names shall be alternately struck until one name remains who shall serve as arbitrator. The arbitrator shall be jointly contacted by the parties.
The arbitrator shall have jurisdiction and authority to interpret, apply, or determine compliance with the provisions of the Memorandum of Understanding. The arbitrator shall be without power to make any decision contrary to, inconsistent with or that in any way modifies the terms of this Memorandum of Understanding. The arbitrator shall be without authority to require the City to delegate or relinquish any powers which by State law or City Charter the city cannot delegate or relinquish. Copies of the arbitrator's decision shall be submitted to the City, the Union and/or the aggrieved employee. All direct costs emanating from the arbitration procedure shall be shared equally by the City and the Union. The Arbitrator's decision shall be final and binding.

22.1.4 No Reprisals

The City shall not institute any reprisals against any employee or any representative resulting from the use of the grievance procedure.

22.2 Disciplinary Matters

22.2.1 Legitimate Reasons for Disciplinary Action

Disciplinary action consists of discharge, involuntary demotion, suspension, reduction in salary (other than deferred merit increases), written reprimand, transfer for purposes of punishment, or denial of promotion for grounds other than merit. Discipline will not be imposed except upon a showing of cause which may include but shall not be limited to the following:

a. Violation of State or federal law, City Rules, ordinances, and/or Administrative Rules and Regulations;

b. Failure to properly perform assigned duties;

c. Theft of City property;
d. Insubordination;

e. Conviction of a felony, or conviction of a misdemeanor relating to the employee’s fitness to perform assigned duties;

f. Unauthorized absence from employment;

g. Tardiness;

h. Failure to maintain satisfactory working relationships with other employees or the public;

i. Reporting for work, or being at work, under the influence of or in possession of alcohol, or non-prescribed controlled substances;

j. Use of non-prescribed controlled substances while not at work;

k. Improper use of City funds;

l. Unauthorized use of City property;

m. Falsification of records;

n. Failure to properly care for City property;

o. Acceptance of any gift, reward or other form of compensation in addition to regular compensation for performance of official duties;

p. Misstatement of material fact;

q. Indolence, carelessness or negligence;

r. Failure to maintain any employment qualification;

s. Discourteous treatment of the public;

t. Failure to comply with safety standards;
u. Abuse of sick leave;

v. Other failure of good behavior either during or outside of employment such that the employee's conduct causes discredit to the City.

22.2.2 Disciplining Authority

The Fire Chief shall have the responsibility to institute disciplinary action, to schedule and conduct any predisciplinary conference and to recommend the imposition of disciplinary action.

22.2.3 Notice of Proposed Suspension, Reduction in Salary, Demotion, Dismissal, or Transfer for Purposes of Punishment

a. Prior to recommending the imposition of any disciplinary action, the Fire Chief shall notify the employee in writing of the nature of the proposed disciplinary action and its proposed effective date, the reason for the proposed disciplinary action, any specific charges against the employee, and of the employee's right to receive copies of the written documents and materials upon which the proposed disciplinary action is based, and of the employee's right to respond to the charge, either orally or in writing. The Fire Chief shall evaluate the employee's response (if any) and the materials provided to the employee and shall make a final decision subject to appeal.

b. If an employee requests or is required to meet with a Fire Chief or supervisor and such meeting involves the possible imposition of disciplinary action against the employee, the employee shall, upon request, be entitled to have a representative present at such meeting.

22.2.4 Hearings on Appeal of Disciplinary Actions – Suspension of More than Five days, Reduction in Salary, Demotion, or Dismissal
a. Appeals regarding the disciplinary actions specified in heading 22.2.4 above (i.e., Suspension, Reduction in Salary, Demotion, Dismissal) shall be conducted in accordance with Government Code section 3254.5 and the Administrative Procedures Act ("APA," Government Code section 11500 et seq.).

b. Appeal, if any, must be initiated within fourteen (14) calendar days after the Fire Chief issues the final Notice of Discipline in Section 22.2.3(a) above. Failure to file a timely Notice of Appeal constitutes a waiver of the employee’s right to a hearing. Upon filing of a timely appeal, the process defined in the APA, including the specific provisions in subsections (c) to (e) below, shall apply.

c. An Administrative Law Judge (ALJ) alone shall preside over the hearing in accordance with Government Code section 11512. Within 30 days after the case is submitted to him or her, the ALJ shall prepare a proposed written decision to be submitted to the City Manager.

d. Within 60 days of receipt by the City Manager of the ALJ’s proposed decision, the City Manager may take any of the following actions:

i. Adopt the proposed decision in its entirety.

ii. Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.

iii. Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the City Manager under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.
iv. Reject the proposed decision and refer the case to the same ALJ, if reasonably available, otherwise to another ALJ, to take additional evidence. If the case is referred to the ALJ pursuant to this subparagraph, he or she shall prepare a revised proposed decision based on the additional evidence and the transcript and other papers that are part of the record of the prior appeal hearing.

v. Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties the City Manager may decide the case upon the record without including the transcript.

e. The City Manager’s decision will be reduced to writing and shall be final and binding on the parties administratively. The City Manager’s written decision shall be served on the parties. The City Manager’s decision shall be subject to judicial review pursuant to Code of Civil Procedure, section 1094.5. The petition shall be filed within 30 days after the last day upon which reconsideration can be ordered.

22.2.5 Appeal on Lesser Forms of Discipline

a. Disciplinary actions lesser than those specified in subsection 22.2.4 above shall be governed by the informal hearing procedures provided in Government Code sections 11445.10 - 11445.60.

b. The City Manager shall serve as the presiding officer.

c. The parties may meet to create specific procedures for appeal pursuant to this subsection 22.2.5. Absent agreement, the City Manager shall follow the requirements of Government Code sections 11445.10 - 11445.60.
on a case by case basis, and maintains such discretion to determine the parameters of the informal hearing as the APA allows.

22.2.6 Evaluations, Letters of Warning and Denials of Promotion On Grounds Other than Merit Evaluations, warning letters, and denial of promotion on grounds other than merit are not subject to appeal pursuant to this Article.

22.2.7 No Abridgment of Statutory Rights

Nothing in subsections 22.2.5 – 22.2.7 shall abridge the rights of appeal afforded to bargaining unit members under the Firefighters Procedural Bill of Rights Act, Government Code section 3250 et seq.

D. Background on the Grievance Procedure

The current MOU does not contain any grievance procedure or any process governing disciplinary appeals. Since the MOU is silent, the firefighters’ bargaining unit is covered by the appeal procedures in the City’s personnel rules.

Pursuant to these rules, the City’s Personnel Commission hears employee appeals from a suspension, demotion, dismissal or other disciplinary action. After a hearing, the Personnel Commission issues written findings and recommendations.

City Personnel Rule 17 governs grievances concerning alleged violations of the MOU and alleged violations of the City’s Personnel Rules. The procedure excludes complaints about performance evaluations, written reprimands, policy decisions of the City Council, and disciplinary actions. There is a four step process: (1) informal discussion with the immediate supervisor; (2) informal discussion with the supervisor’s superior; (3) formal written grievance
to the Department Head (the Fire Chief); and, (4) appeal of the Fire Chief’s decision to the City Manager.

The City Manager is the final decision maker.

E. The Union’s Position on the Grievance Procedure

McCollum testified that when he was Union President, the Union progressed several grievances to the City Manager and not one grievance was decided in the Union’s favor. McCollum was particularly concerned about a grievance over upgrading qualified people which the City Manager improperly denied. McCollum insisted that the Union needs impartial review of disciplinary actions.

The purpose of a collective bargaining agreement is to make the terms of the agreement binding on labor and management so that neither party can alter those terms. For decades, labor and management have enacted grievance procedures in their collective bargaining agreements and these grievance procedures almost always culminate in binding arbitration to ensure that the parties honor the contract.

Charter Section 1007 supports the Union’s proposal. Section 1007 provides, in pertinent part, for the parties to resolve grievances with “a provision for binding arbitration”. Therefore, the City must agree to a grievance procedure ending in binding arbitration to comply with its own Charter.

The City Manager decides all disputes over the interpretation and application of MOU language. Since the City is a party to the MOU, the City Manager can arbitrarily control

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17The Union has not prevailed in any grievance presented to the City under McCollum’s successors as Union President.
the application of the MOU. The City Manager can alter the MOU by making decisions that are contrary to the terms of the MOU. The Union submits that the City would deem the process unfair and biased if the Union was the final decision maker on contract interpretation grievances.

Among the comparable agencies selected by the Union, six of the jurisdictions have agreements with binding arbitration in their grievance procedures.

In discipline cases, the City’s LBFO imposes, on the Union and the firefighters, a lengthy, cumbersome and expensive procedure under the Administrative Procedures Act which ends with a proposed decision which the City Manager can (and will) always reject. The City’s proposal is simply a restatement of the status quo except that it adds some unnecessary and expensive steps. In the end, the City Manager still controls how the MOU will be interpreted and applied in discipline cases.

The Union’s proposal permits a firefighter to appeal discipline to an arbitrator or to follow the City personnel rules.

In sum, the Union seeks a dispute resolution process where the final decision maker is neutral and impartial.

F. The City’s Position on the Grievance Procedure

The City presented evidence that the Union initiated about nine grievances between 2007 and 2018. None were progressed beyond the Department level. The City contends that the Union did not present any evidence that the current grievance system is unfair or inadequate. The Union did not bring forward any evidence demonstrating that the City Manager has been other than impartial in handling grievances. Therefore, the present system of resolving disputes is working well. Nevertheless, the City contends that its LBFO on the
grievance procedure represents significant movement from its prior proposals and is an improvement over the status quo procedures.

The City’s LBFO establishes two grievance tracks. The first concerns grievances alleging a MOU violation and the second concerns grievances appealing a disciplinary action.

The City’s LBFO for grievances alleging a MOU violation ends with final and binding arbitration.\(^{18}\)

The City’s LBFO on disciplinary appeals mirrors, to a large degree, the disciplinary appeal process set forth in the Firefighters’ Bill of Rights (FBOR). *California Government Code* Section 3250 *et. seq.* The FBOR grants firefighters the right to an informal hearing for any discipline that is less than a suspension of five days. The FBOR provides for a formal hearing, in accord with the Administrative Procedures Act, for appeals of discipline where the penalty was greater than a suspension of five days. The Administrative Procedures Act provides for a hearing before an administrative law judge.

Under the City’s LBFO, discipline of a suspension of five days or less would be decided by the City Manager. Discipline greater than a five day suspension is appealed to an administrative law judge who would issue a proposed decision. The City’s proposal then vests the City Managers with several options. The City Manager can adopt or reject the administrative law judge’s decision. In the end, the City Manager’s decision is final. The City’s proposal is designed to balance the existing rules with the FOBR.

The City argues that its proposal addresses the concerns of the Union about

\(^{18}\)The Board notes that the City’s proposal for selecting an arbitrator refers to the American Academy of Arbitrators. The Board believes that the City meant the National Academy of Arbitrators.
contract interpretation grievances even though none of the other bargaining units in the City have grievance procedures that culminate in binding arbitration. Among the City’s comparable jurisdictions, only four have binding arbitration for both alleged contract violations and disciplinary appeals.¹⁹

The City has several concerns, but two in particular, concerning the Union’s proposal. The first is that the Union’s procedure broadly covers matters well beyond violations of the MOU. Under the Union’s proposal, a bargaining unit member could grieve, for example, a performance evaluation. The Union’s proposal also permits an individual employee to progress a grievance to binding arbitration. The City is apprehensive that it could be inundated with a flood of grievances from individuals.

The City refutes the Union’s argument that Charter Section 1007 requires the parties to agree to a dispute resolution procedure that contains the binding arbitration clause. Section 1007 only imposes a duty to negotiate a dispute resolution procedure without any requirement for the parties to reach an agreement on a procedure containing binding arbitration.

G. The Board’s Opinion and Award on the Grievance Procedure

The absence of grievances or the under-utilization of the procedure set forth in the personnel rules does not necessarily mean that the present system is satisfactory or fair. It is highly likely that firefighters do not bring grievances because of the futility, that is, the strong perception that the grievance will be denied. When management controls the outcome of a grievance procedure and the final disciplinary appeal, the employees lose confidence in the

¹⁹One jurisdiction has binding arbitration for grievances of alleged MOU violations, but not disciplinary appeals. Another jurisdiction has binding arbitration for disciplinary appeals, but not for contract interpretation cases.
fairness and integrity of the grievance system. Thus, it is time for a substantial change. The question is which party has developed the better grievance procedure.

The Charter provides the starting point for the Board's analysis. Section 1007 expressly alludes to a grievance procedure “including a provision for binding arbitration”. The provision, as the City avers, is a requirement to negotiate in good faith over a grievance procedure. However, the express allusion to “binding arbitration” creates a strong inference that the parties should adopt binding arbitration. It is not conclusory, but it is highly suggestive. The past practice of City Managers denying grievances shows a need to follow the Charter's inference.

The City's proposal for using binding arbitration for contract cases, while laudatory, does not address the City Manager's bias and prejudgment in discipline cases. The City reviews its own decision. It is highly unlikely that the City would reverse its own decision.

In sum, the Union demonstrated that its proposal is the most appropriate procedure.

The Board is concerned that the Union's LBFO allows an “aggrieved employee” to progress a grievance to arbitration. This could result in arbitrating frivolous grievances. In most collective bargaining agreements, the labor organization is the gatekeeper to arbitration. This ensures there is some meaningful evaluation of both the merits of the grievance and the likelihood of success. The Board recommends the adoption of the Union’s LBFO with the deletion of the provision permitting individuals to submit a grievance to binding arbitration.

The Board voted 2-1 to incorporate the Union’s LBFO into the 2017-2021 MOU.
XIV. ENACTMENT

A. The Union’s LBFO on Enactment

This agreement shall become effective upon ratification by the City Council of the City of Watsonville, and shall remain in full force and effect until June 30, 2017 2021, or until a new agreement has been executed. However, in the event the electorate does not renew Proposition G, there shall be a opener on the subject of wages only. The City and Association will begin bargaining for a successor MOU no later than March, 2017 2021.

The MOU and all of its provision shall govern all terms and conditions of employment until a successor MOU is executed.

[The changes to the first paragraph of Section 25, shown in red font were agreed to by the parties and the arbitration panel on October 13, 2018. The second paragraph remains unresolved.]

[The parties have agreed to amend Appendix A to show the classification pay ranges consistent with the arbitration and award.]

[All tentative agreements are to be incorporated into the final award.]

B. The City’s LBFO on Enactment

NOTE (not for inclusion in MOU): This provision currently appears at Section 23. Local 1272 previously renumbered it in its proposals as Section 25, based on its proposal to add a new “Staffing Levels” provision at Section 21 and Grievance Procedure at Section 24, combined with it failing to account for the parties’ agreement to move the current Section 16 (with revisions) into Section 7.13. Under the City’s final proposals, current Sections 17-22 are to be renumbered to 16-21 to reflect the parties’ agreement to move the current Section 16 into a new Section 7.13, and the proposed Grievance Procedure would be inserted as Section 22. Accordingly, this provision would remain at Section 23.

Other than changes necessary to reflect the new dates for MOU expiration and commencement of successor negotiations, the City proposal is to maintain status quo for this provision. The City rejects IAFF’s proposal to add a second paragraph/sentence stating “The MOU and all of its provisions shall govern all terms and conditions of employment until a successor MOU is executed.”
C. The Board’s Opinion and Award

The City accepts the Union’s LBFO on enactment. Therefore, the Board directs the parties to incorporate the Union’s LBFO into the 2017-2021 MOU.

XV. CONCLUSION

The Board certifies that this decision is in compliance with Charter Section 1007.

AWARD AND ORDER

The Board renders the following Order:

1. The 2017-2021 MOU shall contain:
   
a. The City’s LBFO on Salary Adjustments;
   
b. The City’s LBFO on Longevity Pay;
   
c. The Union’s LBFO on Educational Incentive Pay;
   
d. The City’s LBFO on Overtime;
   
e. The City’s LBFO on Recognition;
   
f. The Union’s LBFO on Paramedic Program;
   
g. The City’s LBFO on Management Rights;
   
h. The Union’s LBFO on the Grievance Procedure; and,
   
i. The Union’s LBFO on Enactment.

2. The tentative agreements, listed in Appendix B, shall be incorporated into the 2017-2021 MOU.

3. Pursuant to Charter Section 1007, the Board orders the parties to “...take whatever action is necessary to carry out and effectuate the award.”

4. The ten day period described in Charter Section 1007 commences to run from the date stated below.
5. The Board retains jurisdiction over this case should a dispute arise over the language, numbering or terminology of the LBFO that the Board selected on each issue. This retention of jurisdiction shall expire six months from the date stated below. The substance of this Award and Order is final and binding.

Dated: July 23, 2019

I concur with Parts V, VII, IX, X, XI

________________________ of this Decision.

I concur with Parts VI, VII, IX, X, XI

________________________ of this Decision.

I dissent to Parts VI, VII, IX, XI

________________________ of this Decision.

I dissent to Parts VIII, XI, XII

________________________ of this Decision.

Tony Spitaleri
Union Member

Michael McDougall
City Member

John B. LaRocco
Chair and Neutral Member
Arbitrator
DISSENTING REBUTTAL TO THE AWARD OF THE BOARD
Member of the Arbitration Board for the Union

Tony Spitaleri
Field Service Representative
International Association of Fire Fighters

I disagree with most of the Board’s Opinion and Award.

In addressing the opinion of the board, the Chair (Neutral Member) has misrepresented my opinion on certain points of the last best offer arbitration.

For example; The Chair on the record and in his award document on page 5 has stated, “In the Boards opinion, the last, best, final offer undermines collective bargaining”. I do not share this opinion. I am a strong proponent of Interest arbitration for Fire Fighters and Police Officers. Public safety officers have no laws in which to resolve their contract issues. If there is no agreement (unlike other union or associations) Fire Fighters and Police Officers do not have the ability to strike.

The Chair again misrepresented my opinion, when he stated on page 33 in his award document: “This Board is concerned about four future adverse influences on the City’s present financial stability”.

First problem is the quickly escalating amount of the City’s pension contribution.
Second the Board is concerned about the inability of the city to expand its property tax base. Third the board is concerned that the amount of expected tax revenue from the new cannabis tax has been inflated. Forth Measure G. If the revenue from Measure G ends, the City’s financial situation and public safety services will suffer devastating deterioration.

I don’t share these concerns; testimony was given on each of these items but for the most part was based on conjecture and there was no factual evidence to the contrary presented to the board.

The Chair has stated he is not in favor of the last best offer Interest Binding Arbitrator
DISSENTING REBUTTAL TO THE AWARD OF THE BOARD
Member of the Arbitration Board for the Union

The Board’s Opinion and Award on Salary Adjustments
I did not vote for the Chair decision.

One of the most important factors in the provision of the City Charter Section 1007 (COMPULSORY ARBITRATION FOR THE FIRE DEPARTMENT EMPLOYEE DISPUTES) is the financial condition of the City and its ability to meet the cost of the award. The evidence by each party showed the city’s financial ability to meet the fire fighter last best offer and did not introduce evidence that the city could not. The city took the position that the board should look at other factors that are not contained in Charter. The City wanted the board to consider infrastructure such as new roofs, windows, locker rooms, bathrooms, future pension cost, and property tax base. The other major factor the Board must consider are wages, hours, and other terms and It is well document by the City Manager, members of the managers staff, and city expert witnesses that the fire fighters’ wages are well below other fire fighters doing similar service. The city again wanted the board to look at other factors not contain in the Charter. The city wanted the board to consider wages other workers skilled or non-skilled employed in other occupations in the city of Watsonville. It’s my opinion the Chair was influenced by factors outside of the provision of the Charter.

I take exception to the Chair’s opinion that the last best offer of the fire fighters is excessive: The fire fighters have not received a wage increase in 10 years; this award extends it to 12 years. The Chair claims the Union’s lump sum payment in lieu of back pay since the expiration of the contract is equivalent to a one-time 8.5% increase in wages. The lump sum is a one-time cash payment and not equivalent to an increase in wages. The lump sum would not incurred roll up cost on any of the employee’s economic benefits. The Chair inferred the union Lum Sum payment would lower the city reserve in the general Fund when he stated the city’s lump sum payment wouldn’t lower the city’s 20% reserve in the general Fund. In my opinion the Union’s Lump sum would not lower the city’s 20% reserve in the general fund and no evidence was present that said otherwise.
The Board’s Opinion and Award on Longevity
I did not vote for the Chairs decision.

I agree with the Chair that “The purpose of Longevity pay is to recognize loyal, productive and experienced firefighters”. The Chair feels the Unions last best offer was a mechanism to awarding a retroactive pay increase I strongly disagree with that opinion. The Chair also looked at retention in the Department to support his decision. The Chair decision doesn’t reflex his statement of loyal, productive and experienced fire fighters. The Watsonville Fire Fighters are loyal, productive and very experience. These men and woman serve the Watsonville community on a daily basis and are willing to make the ultimate sacrifice to save lives. Unfortunately, no weight was given to these attributes.

The Board’s Opinion and Award on Overtime
I did not did not vote for the Chair’s decision.

The Chair in my opinion looked at two points to justify his decision, cost of overtime and training.
First point, the Chair’s cites the unions cooperation during the time overtime was extremely high pointing to the 2015-2017 MOU 7.64 which gave the Chief the flexibility to assign a lower ranked employee to an out of class position. The assignment would be made if no overtime was caused. The employee who completed minimum course, and task book requirements, or has successfully passed a promotional exam could be assigned. The key point in the agreement was the assignment wouldn’t overtime. The union’s last best offer retains the same language. The Chair fail acknowledge the major factor to reducing overtime was the passing of Measure M, and not the Chief moving of lower rank employees to higher ranking positions. Thanks to the citizens of Watsonville passing Measure the city was able to hire more firefighters which significantly reduced overtime. The Chair points to section 7.6.4 MOU for justification claiming it states moving an employee into a higher classification would not cause staffing to fall below 12. There is no such language in that section or any section in the MOU. The Chair also points to the city’s estimate that the cost of the Union’s proposal is $400,000 per year. The Chief of the Department estimated $400.00 cost; however, he did not provide documents to support his estimation. In fact, the city’s own expert witness, Russ Branson’s, testify the cost Union’s overtime proposal “unknown” (CX D.2 (Binder #2, tab 1), The Chair relied on the unsupported statement made by the Chiefs over the City’s expert witness.

The second point, the Chair’s opinion that “there isn’t an operational need for employees in a lower class to pass a promotional exam to receive a mandatory out of class assignment, is in my opinion shows a lack of understanding of the fire service. The primary function of the fire fighters is to provide life safety service to its community.
Each higher rank of the fire department requires additional training, because each higher rank holds more responsibility. All most all occupations, especially those in public safety, require passing a test to move up to the next rank. The union last best offer is requesting an employee of the fire department be trained and pass an examination to ensure the employee is qualified before being put in a position of higher rank and assuming more responsibility.

Submitted:

Tony Spitale

Dated: July 22, 2019
CITY BOARD MEMBER’S CONCURRENCE TO 2019 OPINION AND AWARD OF ARBITRATION BOARD

Introduction:

I concur with, and voted in favor of, a majority of the Parts of this Decision (see page 92). I do not, however, necessarily join in all of the Decision’s rationales. Four points are especially noteworthy:

Discussion:

1. Missed Opportunities for Settlement

The main Decision correctly points out that there were ample opportunities throughout these proceedings for the parties to “make their own deal.” I completely agree with this observation. However, as to any suggestion that the parties are equally to blame for this failure, I need to clearly state that the City did everything it could to resolve this matter through mediation during the interest arbitration process, and those efforts were rebuffed by IAFF. The end result is an award that, although it is advantageous to the City, carries all of the dangers the Chairperson repeatedly warned us about.

As to the City’s movement on financial positions, the record should reflect that the City began these proceedings offering salary increases totaling approximately five percent, increased that offer substantially over the course of the proceedings, and ultimately submitted a LBFO on salary and bonus that totaled approximately 14 percent. The Union, in contrast, entered arbitration seeking salary increases of approximately 30 percent, and ultimately submitted an even higher LBFO on salary and bonuses totaling approximately 33 percent.

As the Decision notes, the process of interest arbitration does not lay a solid groundwork for amicable negotiations in the next round of bargaining. I also believe that interest arbitration is not a good fit for a small City with limited resources like Watsonville. This expensive process very likely delayed closure for over a year. All of these points support the wisdom of a mediated solution - one that was not possible to achieve here. Hopefully, if the parties are unable to resolve their differences in the next round of negotiations and reach an impasse, both parties will pursue mediation with equal vigor.

2. The Decision’s Inclusion Of Santa Clara County (Central) Fire District As A Comparable Jurisdiction For The Purpose Of This Decision

While I concur with the salary decision, I do not agree that Santa Clara County (Central) Fire District should be included as a comparable agency for the purpose of this Decision (or any other future bargaining). Like the other Silicon Valley jurisdictions that the Decision rejected as
comparables, Santa Clara County is in a different economic zone than Watsonville. It has a robust tax base that can easily fund high salaries, and the fact that it competes with other Silicon Valley fire agencies for fire fighters also contributes to higher wages.

The Decision’s inclusion of Santa Clara County was entirely based on the fact that the City’s consultant included it when comparing other non-fire classifications such as Librarians. She only did so, however, in cases where a different otherwise comparable agency (e.g., Gilroy and Morgan Hill) received services directly from Santa Clara County. In those instances, Santa Clara County was effectively a proxy for those jurisdictions in the same way that CalFire is a proxy for Morgan Hill because CalFire provides direct services to that City.

Santa Clara County (Central) Fire District does not provide services to any of the City’s comparable fire agencies, so the same logic does not apply. In my view, the rationale that was applied to eliminate Palo Alto, Mountain View, and Milpitas should therefore also eliminate Santa Clara County (Central) Fire District.

3. The Decision’s Suggestion That Firefighters Should Come Within 80% - 85% Of The Median Comparable Jurisdictions

In its recent negotiations, the City developed a reasonable and affordable goal for all bargaining units – getting wages to 70 percent of comparable jurisdictions. The record shows that earlier this year, the City and SEIU agreed to a package that achieved that goal, and the City’s LBFO in this case was specifically designed to attain the same result. This recognized that all city employees suffered equally through the Great Recession, and that considerations of equity warrant relatively equal treatment of all City employees, except where recruitment and/or retention problems for specific classifications justify an exception.

In this case, the Decision suggests that firefighters should “come within 80% - 85% of the comparable jurisdictions.” Given the absence of any significant recruitment and retention issues, I see no reason why any bargaining unit or specific classification should be afforded this special treatment.

4. The Decision’s Opinion that Battalion Chiefs Share a Community of Interest With Rank and File Fire Employees

The record in this case shows that the (as-yet unfilled) classification of Battalion Chief is supervisory, and that it even has the potential to perform management responsibilities given the former Chief’s intent to no longer fill Division Chief positions.

The record also shows that Fire Captains are currently the only existing “supervisory” presence in fire stations – but they function as “lead persons” rather than full supervisors. Their close
alignment with the staff in the stations where they all live makes true supervision difficult. Placing Battalion Chiefs in the rank and file unit would be inconsistent with the Department's stated, reasonable need for true supervision of line personnel.

The Decision endorses the City's argument that the issue of whether Battalion Chiefs should be included in the unit is outside the scope of the interest arbitration process. The Decision also endorses the City's argument that existing internal processes provide the appropriate vehicle for addressing the issue. Despite that, the Decision also includes an opinion that Battalion Chiefs should be in the rank and file unit. Besides being — in my view — incorrect, this opinion is unnecessary and premature in that it does not take into account the fact that any decision regarding how Battalion Chiefs will be utilized (if and/or when the positions are actually filled) will necessarily remain in flux until the new Fire Chief makes that determination.

Submitted:

[Signature]
7/22/19

Michael J. McDougall
APPENDIX A

MEMORANDUM OF UNDERSTANDING BETWEEN
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 1272
AND
THE CITY OF WATSONVILLE
2015 - 2017
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MEMORANDUM OF UNDERSTANDING
BETWEEN
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 1272
AND
THE CITY OF WATSONVILLE
2015 - 2017

This Memorandum of Understanding sets forth the agreement between the representatives of the City of Watsonville ("City") and International Association of Firefighters Local 1272 ("IAFF L-1272") for the period of July 1, 2015 through June 30, 2017 as to all matters within the scope of representation for the employees of the City represented by IAFF L-1272. The parties hereto agree to jointly recommend to the City Council of the City of Watsonville that one or more resolutions be adopted effectuating the following changes in the salaries, benefits and other terms and conditions of employment for said employees in the Fire Unit.

All benefits currently in effect and not modified by this Agreement shall remain in effect for the term of this Agreement, except as provided herein.

1.0 GENERAL PROVISIONS

1.1 Effective July 1, 2015, and continuing through and including June 30, 2017, this Memorandum of Understanding (MOU) contains all items agreed upon by and between the City and the IAFF L-1272.

1.2 The Personnel Rules and Regulations of the City of Watsonville are not altered, changed or modified by this MOU unless a specific reference is made herein.

2.0 RECOGNITION

2.1 City hereby recognizes the Watsonville Professional Firefighters, affiliated with the International Association of Firefighters, Local 1272, as the only bargaining representative of all employees in the classification of Fire Captain, Fire Engineer, and Firefighter.

2.2 Pursuant to agency shop provisions in MOU Section 12.0, when a person is hired in any classification covered by this Memorandum of Understanding, the City shall notify the employee that the IAFF L-1272 is the recognized employee bargaining unit.

3.0 AUTHORIZED DEDUCTIONS

3.1 Dues

The City agrees to deduct from the wages of employees dues in the amount and for the term prescribed by members of the IAFF L-1272. Any employee desiring to have such deduction made must sign an appropriate Payroll Authorization Form. The City shall remit such deduction each
month to the IAFF L-1272 Treasurer in accordance with normal payroll procedure. Payroll Authorization Form is attached in Appendix D.

3.2 Hold Harmless

The IAFF L-1272 shall indemnify and hold City harmless from any and all claims, demands, suits, or any other action arising from the deduction of said sums, including all costs and attorney's fees incurred by the City in defending same.

4.0 BULLETIN BOARDS

Reasonable space shall be allowed on bulletin boards as specified by the Fire Chief for use by IAFF L-1272 to communicate with all employees. Posted material shall not be obscene, derogatory or of a partisan political nature, nor shall it pertain to public issues. All posted material shall bear the identity of the sponsor, shall be neatly displayed and shall be removed when no longer timely. The department shall remove any posted material that is contrary to this provision and strive to notify IAFF L-1272 within 24 hours after removal.

5.0 MOU DISTRIBUTION

For new employees only, the City will distribute to IAFF L-1272 members a copy of the signed Memorandum of Understanding.

-6.0 REASONABLE TIME OFF

Employee members of IAFF L-1272 shall be allowed reasonable time off without loss of pay-consistent with the MMBA for the purpose of participating in contract negotiations. Employee members of IAFF L-1272 shall be extended the same privilege to participate in any meetings mutually called by the parties during the term of this Agreement for processing of grievances and contract compliance questions. There shall be no more than three (3) employees excused from their duties at any one time to participate in these functions.

7.0 COMPENSATION

7.1 Salary Adjustments

There will be no salary adjustments conferred during the term of this contract.

Job classifications and salaries for the term of this Agreement are attached in Appendix A.

7.2 Holiday Pay

Effective the first full pay period after July 1, 2015 employees in the unit will receive a base pay increase equivalent to 8% of base pay. This base pay increase will be implemented by increasing the Fire Captain, Fire Engineer, and Firefighter salary ranges and each corresponding step by 8%. This increase is in consideration for the elimination of holiday pay. After
receipt of this ongoing increase, employees will no longer receive holiday pay of any kind.

7.3 Call Back

Employees who are recalled to duty shall be entitled to a minimum of two (2) hours overtime compensation. Employees held over from a duty shift shall not be entitled to the two (2) hour recall minimum, but shall be entitled to regular overtime compensation.

7.4 Educational Incentive Pay

7.4.1 Upon completion of one (1) year of service, fire safety employees shall be eligible for the following educational bonuses up to a maximum of eight percent (8%) of base salary.

7.4.2 An employee who earns an associate degree or a bachelor’s degree in the fire protection field from an accredited college shall receive bonus pay equal to three percent (3%) of that employee’s base salary.

7.4.3 An employee who maintains current certification as an EMT-1(A) or EMT-1(P) shall receive bonus pay equal to two percent (2%) of that employee’s base salary.

7.4.4 Effective July 1, 2011, an employee who successfully completes all of the educational requirements for the Fire Officer’s series identified in the California Fire Service Training and Education System (CFSTES) through the Office of the California State Fire Marshal shall receive bonus pay equal to three percent (3%) of that employee’s base salary.

7.4.5 In no case shall any employee receive combined education incentive bonus pay which exceeds eight percent (8%) of that employee’s base salary. The City shall assist the firefighters as much as practical in gaining admission to the courses and/or programs listed above. The City shall not incur any liability for overtime for any firefighter attending these courses unless that firefighter is directed to attend by the Fire Chief. The firefighter shall provide for the necessary time to attend these courses through normal shift-trade and leave policies of the Department, if required.

7.4.6 In order to maintain the incentive pay for an Associate or Bachelor’s Degree and/or Fire Academy Training specified in the MOU, continuing education shall be required. The annual continuing educational requirements shall include the satisfactory completion of a minimum of forty (40) hours or two (2) college quarter units (or equivalent semester units) of course work approved by the Fire Chief or designated representative. A
Firefighter who fails to meet the continuing education requirements for any fiscal year shall lose the fiscal year's incentive pay. If the Firefighter should successfully complete the continuing education requirement in a future year, the appropriate incentive pay shall be reinstated.

7.5 Deferred Compensation

Employees shall be allowed to participate in a deferred compensation plan.

7.6 Overtime

7.6.1 Employees not assigned to platoon duty shall be allowed to accrue up to forty (40) hours of C.T.O. in lieu of overtime pay. C.T.O. shall accrue at the established overtime rate of one and one-half (1-1/2)-hours of C.T.O. for each one (1) hour of overtime worked.

Employees assigned to platoon duty shall not accrue C.T.O.

7.6.2 Overtime is defined as those hours worked in excess of forty (40) hours in a given scheduled work week for employees not assigned to platoon duty or those hours worked in excess of or in addition to the scheduled fifty-six (56) hours of work for employees assigned to platoon duty.

7.6.3 In addition to amounts payable pursuant to 7.6.2 above, unit employees shall earn Fair Labor Standards Act overtime in accordance with federal law.

7.6.4 Overtime will be rank for rank, except:

The Chief may first assign an employee in a lower rank to fill in for the position if there is an eligible employee available from the Temporary Upgrade ("TU") list if currently on shift and does not create overtime and will be evaluated at the end of the contract. If there is no employee available on shift from the TU list or available based on rank for rank, the Chief may assign any qualified employee on the overtime list. If there are no employees available after offering based on these options, the Chief may utilize the force hire list.

7.7 Uniform Allowance

The City will purchase and maintain (except cleaning) all required uniform and equipment for employees. The attached "Appendix B" lists the items to be supplied and maintained by the City. The City will replace uniforms two times per fiscal year. Absent unusual circumstances as determined by the Fire Chief, employees must pay the cost of any additional replacement uniforms beyond two per fiscal year. The City will reimburse, upon receipt, employees up to $250 every other year for the purchase of station
boots that comply with department safety standards. Reimbursement for station boot purchase more frequent than every two years is at the discretion of the Chief. All rank specific uniform equipment (Rank Insignia, Rank Badge, Class A Hat, Years of Service Pins) will be provided upon promotion.

7.8 Forty Hour Workweek

7.8.1 Employees assigned a forty (40) hour workweek shall receive a five percent (5%) pay differential.

7.8.2 Fire Captains assigned a forty (40) hour workweek in the Training and Prevention Divisions shall receive a ten percent (10%) pay differential.

7.8.3 During the term this Agreement, if a Fire Captain position becomes vacant through attrition the City shall eliminate the forty hour (40) Fire Training Captain position.

7.9 Acting Out Of Class

Acting out of class pay shall be paid when an eligible employee acts in the higher position for two (2) or more hours during one shift or during consecutive shifts. Employees are responsible for recording acting out-of-class time on their timesheet.

7.10 Hazardous Materials Technician Pay

All persons certified as Hazardous Materials Technicians Shall be compensated with an additional two percent (2%) wage stipend effective with the pay period starting January 19, 2002.

Effective the first full pay period on or after July 1, 2007, the City will increase the compensation to five percent (5%) and reduce the number of employees assigned to Hazardous Materials Technicians to nine (9) to twelve (12) employees. The actual number of Technicians shall be determined by the Fire Chief. To be eligible for this stipend, each person must successfully bid by department seniority for the Hazardous Materials Technician positions at the regular shift bid and shall be required to be certified by successfully completing the following:

- 160 hours of classroom training;
- Initial field drills
- Passing an annual physical exam; and
- Continuous classroom training and field drills.

To obtain certification it is necessary that a standardized examination be successfully completed as administered by City staff.

Hazardous Materials Technician bids are completely separate from shift/station/apparatus bids.
The City shall pay for and supply the personnel with the required training and physical exams to maintain certification as a Hazardous Material Technician.

The City will make every effort to ensure continuing education and required certifications will be provided on duty for the Hazardous Material Technicians. In the event that required training is on an off duty day, the Technician shall be compensated by regular time and one half. Required certifications shall not be counted towards an employee's education incentive.

In either case, on duty or off duty, the City shall pay the cost of tuition, as well as any associated costs, i.e. required text books, mileage, meals and lodging when appropriate.

Technicians shall utilize local training opportunities when possible to keep additional costs associated with the class at a minimum.

8.0 INSURANCE

8.1 Health Insurance

8.1.1 The City shall retain in effect current-health-insurance coverage for all Unit employees. The City shall contribute the following amounts towards health insurance coverage for full time employees:

Per employee:
July 1, 2015        $1,068.02

8.1.3 Any increased medical costs occurring during the balance of this agreement shall be shared equally by the employees and the City.

8.2 Review of Insurance Coverage

The Unit agrees to participate jointly with the City and other employee groups in review of insurance coverage during the term of this agreement. Upon health insurance committee recommendations to change or modify insurance coverage, the parties agree to reopen negotiations on this issue only. Should changes occur due to insurance changes resulting in City costs below those set forth above, the intent of the parties is that the savings shall accrue to the employees.

8.3 Life Insurance

The City shall provide a $50,000 life insurance policy for unit employees and Two Thousand ($2,000) for dependents.
9.0 LEAVES

9.1 Vacation

9.1.1 Each member shall accrue vacation as specified below:

<table>
<thead>
<tr>
<th>Years of Service</th>
<th>Shifts per Year</th>
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</thead>
<tbody>
<tr>
<td>0-4</td>
<td>4</td>
</tr>
<tr>
<td>5-9</td>
<td>6</td>
</tr>
<tr>
<td>10-14</td>
<td>8</td>
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<td>15-19</td>
<td>10</td>
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<tr>
<td>20 or more</td>
<td>12</td>
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9.1.2 Employees may cash out annually in the last pay period in March accrued but unused vacation, provided that they retain on the books at least half their annual vacation accrual.

9.1.3 All employees may select as many shifts as granted in the employee annual accrual or up to eight (8), whichever is greater. Up to ten (10) of these shifts will be guaranteed, if selected as an original pick. Any vacations selected above the ten (10) shifts are tentative and could be cancelled if operationally unfeasible, as determined by the Chief. This leave limitation herein shall be for the term of the contract and until a successor MOU is executed.

9.2 Holidays

9.2.1 Employees assigned to a 40-hour work week due to a special assignment, modified duty, or other reasons as determined by the Fire Chief, will have the choice to work on the holiday and receive regular straight-time pay or utilize accrued leave in order to have the day off. On a case-by-case basis, the Fire Chief may consider a flexible schedule as an alternative.

9.2.2 All employees shall be subject to emergency recall and overtime assignments regardless of whether the need for the recall or overtime falls on a holiday.

9.2.3 The following holidays are observed by the City for the term of this agreement:

- January 1 (New Year's Day)
- Third Monday in January (Martin Luther King's Birthday)
- February 12 (Lincoln's Birthday)
- Third Monday in February (Washington's Birthday)
- Last Monday in May (Memorial Day)
- July 4
- First Monday in September (Labor Day)
- November 11 (Veteran's Day)
Thanksgiving Day
Friday following Thanksgiving (in lieu of Election Day)
December 24 (in lieu of Admission Day)
December 25 (Christmas)
December 31 (in lieu of Columbus Day)

Recognized holidays which fall on Saturday shall be observed on the preceding scheduled work day. Recognized holidays which fall on a Sunday shall be observed on the following scheduled work day.

Per section 7.2, in lieu of all holidays in this agreement and all future holidays, unit employees acknowledge that no holiday pay will be received and that an increase in base pay has been implemented to compensate employees for this change in order to comply with state law.

9.3 Sick Leave

9.3.1 Each employee shall accrue sick leave in the amount of fifteen (15) hours per month of service. Sick leave is payable only in the case of illness or injury, or as is otherwise provided by the Personnel Rules. Employees shall have sick leave charged against their sick leave accumulation on an hour-for-hour basis.

9.3.2 The maximum accumulation of unused sick leave is 1,500 hours (125 days or 62.5 twenty-four hour shifts). Sick leave accumulated in any calendar year in excess of 1,500 hours shall be paid at the rate of 50% of such excess. The balance of such unused sick leave is lost and the sick leave accrual is reduced to 125 days (or 62.5 twenty-four hour shifts) (1,500 hours) at January 1 of each year.

9.3.3 Fire Department personnel assigned to 24-hour duty that leave work due to non-work related illness or injury must remain off work for the remainder of their shift.

9.3.4 Fire Department personnel on 24-hour duty may not schedule non-work related medical or dental appointments on work time unless it is demonstrated to the satisfaction of the Chief that the appointment is to treat an emergency or that it could not be scheduled off duty.

10.0 RETIREMENT

10.1 Tier 1: Retirement Plan for Employees hired on or before June 30, 2011

The City shall provide the following California Public Employees’ Retirement System (“CalPERS”) retirement plan for employees hired on or before June 30, 2011:
10.2 Tier 2: Retirement Plan Employees hired on or after July 1, 2011

The City shall provide the following CalPERS retirement plan for employees hired between July 1, 2011 and December 31, 2012 and for Classic members as defined in the California Public Employees' Pension Reform Act of 2013 (PEPRA) and CalPERS guidance, hired after July 1, 2011 the retirement formula shall be:

(a) 3% at 55 formula
(b) Final compensation based the average of the highest wages earned in any consecutive 3-year period
(c) 1959 Survivor Benefits with 25% increase
(d) Employee paid additional Military service credit
(e) Credit for Unused Sick Leave Option

TIER 3: For new employees hired on or after January 1, 2013, the defined benefit retirement formula for all “new employees” in the Public Safety member classification, as defined in the California Public Employees' Pension Reform Act of 2013 (PEPRA) and CalPERS guidance, is:

(a) 2.7% at 57 formula
(b) final compensation based on the average of the highest wages earned in any consecutive 3-year period.
(c) 1959 Survivor Benefits with 25% increase
(d) Employee paid additional Military service credit
(e) Credit for Unused Sick Leave Option

10.3 Retirement Tax Deferral

The City shall maintain the IRS Section 414h(2) provision allowing employees to make the employee retirement contributions with pretax (tax deferred) dollars.

10.4 CalPERS Employee’s Share
Effective the pay period including July 1, 2007, employees shall pay the 9% employee contribution towards CalPERS pursuant to the terms and conditions of IRS Code section 414(h)(2).

11.0 MANAGEMENT RIGHTS

All City rights, under state law and charter, and all City rights which existed prior to the recognition of the Firefighters Local 1272 shall remain vested with the City, unless expressly abridged by this M.O.U. These rights include but are not limited to:

- the exclusive right to determine the mission of its constituent departments, commissions, boards;

- set standards and levels of service;

- determine the procedures and standards of selection for employment and promotions; subject to meet and confer requirements on changing promotional standards;

- direct its employees;

- establish and enforce dress and grooming standards;

- determine the methods and means to relieve its employees from duty because of lack of work or other lawful reasons;

- maintain the efficiency of governmental operations;

- determine the methods, means and numbers and kinds of personnel by which government operations are to be conducted;

- determine the content and intent of job classifications;

- determine methods of financing;

- determine style and/or types of City-issued wearing apparel, equipment or technology to be used;

- determine and/or change the facilities, methods, technology, means, organizational structure and size and composition of the work force and allocate and assign work by which the City operations are to be conducted;

- determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operations of the City;
to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules and assignments upon reasonable notice;

• establish and modify productivity and performance programs and standards;

• discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees in accordance with applicable law;

• establish employee performance standards including, but not limited to, quality and quantity standards, and to require compliance therewith;

• take all necessary actions to carry out its mission in emergencies; and

• exercise complete control and discretion over its organization and the technology of performing its work.

12.0 AGENCY SHOP

An election will be held for an agency shop agreement; if a majority of the members voting in the election vote for agency shop, an agency shop agreement shall be implemented. If implemented, Employees will be required to either join the Union or pay a service fee reflecting the cost of representation.

The City and Union agree:

(1) Prior to the election Employees will be informed as to the provisions and practical effect of Agency Shop agreements.

(2) The Union will indemnify and hold the City harmless from any and all liability arising out of the implementation and administration of the Agency Shop provision, should it be implemented.

(3) The Union shall be responsible for enforcing the provisions of this section using appropriate civil procedures. The City is not responsible for disciplining employees for violation of this section.

The Union agrees to adhere to all statutory and judicial requirements, and to maintain an appropriate complaint procedure. The Union shall also establish alternative procedures for employees who are members of bona fide religion, body, or sect which has historically held conscientious objections to joining or financially support any public employee organization, to make alternative charitable contributions in accordance with Government Code Section 3502.5.

13.0 EMPLOYEE RIGHTS
Employees shall retain their rights as specified by State and Federal law, including but not limited to Section 3500 et. seq. of the State of California Government Code. Should the City wish to make any changes on matters within the scope of representation, including job descriptions, personnel rules, grievance procedures, basic shift scheduling patterns, etc. during the term of this Agreement, it shall first provide reasonable notice and the opportunity to meet and confer to Local 1272.

14.0 PEACEFUL PERFORMANCE

During the life of this Agreement, Unit employees shall not engage in any work stoppages, strikes, slow-downs, or boycott picketing. No lock-outs shall be made by the City.

In the event that any employee covered by this Agreement, individually or collectively, violates the provisions of this section, Local 1272 shall make a good faith effort to stop such violations of this section.

15.0 MISCELLANEOUS

15.1 Professionalism Statement

It is understood that the term "related duties" as contained in the Department rules and in individual job classifications means that employees shall perform duties related to fire service as determined by the Fire Chief.

15.2 No Smoking for New Employees

All employees hired prior to June 30, 2003 shall be required not to smoke or use any tobacco products while on duty and all employees hired after June 30, 2003 shall be required not to smoke or use any tobacco products while on or off duty by reason of the Surgeon General's warning that smoking is hazardous to a person's health, and that heart and lung disease is considered "presumptive" job related injuries for fire service personnel. All new employees hired after June 30, 2003 shall be so informed and sign an agreement as follows:

"While on-duty or off-duty I will not smoke any tobacco substance. I understand that failure to comply with this requirement will lead to progressive disciplinary action and possible termination.

I fully understand the agreement and will abide by the requirements established herein.

______________________________
Employee Signature

______________________________
Dated

15.3 Residency Requirement
As a condition of employment, all Safety Employees hired by the Watsonville Fire Department after July 1, 1987, shall, within six (6) months of date of hire, establish a bona-fide residence and reside within a reasonable distance from the Watsonville Fire Department. Reasonable distance shall mean four (4) hours driving time from the nearest Fire Station, with the employee driving at posted speed limits.

The re-call policy shall also require four (4) hour response time.

15.4 Layoff

Prior to any subcontracting of Unit work which would result in the layoff of Unit personnel, the City shall provide reasonable notice to Local 1272 and, upon request, meet and confer prior to the effective date of any layoff.

City Rule 14, Layoff Policy and Procedure, Section 6, shall be modified for the employees in this bargaining unit to read as follows:

The order of layoff shall be as follows:

1. Temporary Employees assigned to platoon duties
2. Newly hired Probationary Employees
3. Permanent employees in inverse order of seniority based on hire date within the Fire Department, regardless of rank.

Notice to Local 1272 and employees regarding layoff:
When the City determines that it must implement a reduction in the work force, the City shall provide thirty-five (35) days advance written notice to Local 1272 and thirty (30) days advance written notice to the employee prior to the effective date of the layoff. The notice of lay-off shall contain the following:

1. Reason for the lay-off
2. Effective date of the lay-off
3. Conditions governing re-employment
4. Information regarding applying for unemployment insurance.

15.5 Bilingual Pay

Employees who can demonstrate proficiency in reading and speaking the Spanish language shall receive a bonus pay of five percent (5%) of base pay per month. This bonus shall apply to employees in regular active service to the City. The City shall establish a method of testing for competency in the Spanish language. An employee must pass the City's competency test on an annual basis to maintain the bonus pay. The City Manager may waive the annual testing requirement for individuals upon recommendation of the Fire Chief.

15.6 Light Duty-Illness/Injury Report
A. Reporting of initial injury or illness: The following is the Worker's Compensation policy applicable for job related illnesses or injury:

1. An employee receiving a job related injury or illness must immediately report the incident/injury to his/her Supervisor.

2. The Supervisor must complete the City of Watsonville Incident Report and initiate Examination and/or Treatment Authorization form.

3. If medical treatment is necessary, the employee must submit the Examination and/or Treatment Authorization form to the attending physician for completion. Each return visit requires that the form be filled out.

4. The City Physician, shall be used for all non-emergency related injuries, unless the employee has designated (and filed with the Human Resources Department in writing) his/her personal physician prior to an accident.

5. Life threatening or serious injuries shall be treated by the most appropriate emergency medical facility without delay. Call 911 for fire and ambulance response. As soon as practical, the Supervisor will make sure the proper forms are completed as described above.

6. The physician will determine after examining the employee and applicable job description if the employee is:

   (1) Able to return to full duty.

   (2) Able to return to modified or light duty.

   (3) Unable to return to regular or modified work and a possible date of return.

7. The employee must return the Examination form (identified in Section A.2 above) to his/her Supervisor. If the employee is disabled, the Supervisor will attain the treatment form and personally notify the Department Head and the Human Resources Department of the employee's status as soon as possible after examination by the physician.

8. The Supervisor will be responsible for keeping close attention to the employee's injury status and ability to return to work. Communication between the Department Head and the Human Resources Department will serve to insure the employee receives all appropriate medical treatment, receives all benefits under Workers' Compensation Law and the City's rules and is able to return to full duty as soon as is medically possible and appropriate.
B. Light Duty: If the physician’s report indicates that the employee can return to work in a modified or light duty fashion, the following guidelines will apply.

1. The assigned work will emphasize duties that allow for quick and effective recuperation, prevent deterioration of work skills, result in productive and necessary job-related light duty tasks to be performed, and the least amount of time lost to industrial accidents.

2. The Department Head will make a good faith effort to find an appropriate light duty work plan that meets the objective identified in the above-section. If no light duty work is available, the Human Resources Department will be contacted. The Department Head and the Human Resources Department will coordinate light duty assignments that other departments may have that will meet the objectives identified in Section B.1 above. In the event that the City determines that no light duty assignment is available, the employee will be placed on temporary disability or 4850 pay, if available.

3. If the employee is injured off duty and wants to return-to light duty, the Department Head will determine if appropriate work is available. All other aspects of this procedure (i.e. doctor release) will be applicable when handling a non-work related injury. Priority shall be given to job-related injuries in assigning light duty, however. In the event that the City determines that no light duty assignment is available once the employee has exhausted all paid leave the employee shall apply for a medical leave of absence.

4. The City will determine the work schedule of light duty personnel. Light duty status will commence as soon as practical after the City has evaluated and accepted the physician’s release and has identified an available light duty assignment. Employees on light duty shall not be eligible for premium pay under section 7.8 if working a forty-hour work week.

C. Fire Department Shift Personnel temporarily working forty (40) hour light duty schedules shall have time off charged/earned as follows:

1. Fire Department shift personnel on light duty and the Department will review any scheduled vacation that may occur during a proposed light duty assignment at the time that the assignment is considered. Vacation hours accumulated on shift duty may be taken hour per hour when on light duty status. No Firefighter will be forced to take a
light duty assignment that will result in the loss of a pre-scheduled vacation.

2. Fire Department shift personnel on light duty will continue to earn vacation hours as if they were still on platoon duty until such time as it is determined that the employee will no longer be able to return to shift work.

3. Sick leave shall be charged at the rate of hour for hour.

4. Employees assigned to a 40-hour work for modified duty will have the choice to work on the holiday and receive regular straight-time pay or utilize accrued leave in order to have the day off. On a case-by-case basis, the Fire Chief may consider a flexible schedule as an alternative.

5. Paid time off shall be earned at fifty-six (56) hour rates.

D. Return to regular work: The employee must furnish the Supervisor with a release form from the attending physician stating that the employee can return to regular work duty. The Supervisor must submit copies to Payroll and the Human Resources Department. The “injury status report” portion of the Examination and/or Treatment Authorization form will suffice as a release form when properly completed by the attending physician.

16.0 PARAMEDIC PROGRAM

1. Each employee who is licensed by the State of California and accredited by the County of Santa Cruz as a paramedic shall be eligible to receive a paramedic differential of 10% of their hourly rate for their assigned step, if assigned to paramedic duties by the Fire Chief.

2. If the performance or behavior of a paramedic is under investigation by the Fire Department or County Medical Director, the employee shall be removed from paramedic duties during the investigation, however, the paramedic differential pay will not be suspended until the investigation is complete. If the investigation results in a finding of misconduct, the employee will be removed from the paramedic program and paramedic incentive pay will immediately cease.

3. Paramedics, except for those who promoted from the position of Fire Fighter prior to June 20, 2003, may not decertify from paramedic status for at least five years from the date of hire, except in the case of promotion. Thereafter, paramedics may request decertification provided that the action will not reduce the number of paramedics then in active work status to less than nine. If a paramedic wishes to decertify, an open filing period will be posted announcing the decertification in which other paramedics may also request decertification. In the event there is more than one paramedic requesting decertification, the decision to decertify will be made on seniority in the rank of Paramedic/Fire Fighter.
4. Paramedics may apply for promotional opportunities within the Department for which they meet the minimum qualifications.

5. The City will make every effort to ensure continuing education and required certifications will be provided on duty. In the event that required training is on an off duty day, the paramedic shall be compensated by regular time and one half. Required certifications shall not be counted towards an employee’s education incentive.
   
a. In either case, on duty or off duty, the employer shall pay the cost of tuition, as well as any associated costs, i.e. required text books, mileage, meals and lodging when appropriate.

   b. Paramedics shall utilize local training opportunities when possible to keep additional costs associated with the class at a minimum.

6. Paramedic Preceptor Program

   The City will pay paramedic preceptors a flat fee based on EMS School reimbursement to the City (usually about $900 - $1000 per student). Paramedics serving as preceptors shall be selected by the Fire Chief.

7. For employees in the Engineer and Captain ranks, the City will pay for the costs associated with maintaining the paramedic certification, including class fees and payment of overtime to take classes if necessary. Members in the Engineer and Captain ranks who possess a valid paramedic license shall be eligible for a premium rate of up to one-hundred and fifty dollars ($150) per month at the discretion of the Chief.

17.0 **COMPULSORY ARBITRATION FOR CITY OF WATSONVILLE FIRE DEPARTMENT EMPLOYEE DISPUTES**

The City Charter section 1007 details a process for resolving disputes or controversies pertaining to wages, hours or terms and conditions of employment which remain unresolved after good faith negotiations between the City and the Watsonville Fire Department employee organization. A copy of City Charter section 1007 is attached to this MOU for reference.

18.0 **SHIFT AND VACATION BIDS**

Members shall bid shift and station/apparatus assignments every two years by seniority in rank. Picks shall be conducted in the month of November and changes shall be completed by January 30 of the following year. Once the shift bid is complete it shall be submitted to the Fire Chief for approval. The Fire Chief can change shift/station assignments for operational effectiveness of the Department.

Vacation picks for each shift shall be by department seniority and shall be completed by February 15th.
Ties in rank seniority shall be resolved by seniority within the Watsonville Fire Department.

19.0 SHIFT TRADES

The shift trade shall occur in accordance with the Department policy 2103.

20.0 SCHEDULE

1. Except in declared emergencies, the Fire Department platoon duty shall remain on a 48/96 shift schedule. This is a three-platoon system in which employees work two consecutive twenty-four (24) hour shifts for a total of forty-eight (48) hours, and have ninety-six (96) consecutive hours off. A typical work period is as follows:

X = Work Day and O = Day Off: XXOOOXXOOOXXOOOOO and so on.

2. A shift is defined as consisting of 24 hours.

3. In the event a shift is scheduled to work both December 24th and December 25th of the same year, the shift assigned to work on December 23rd will be reassigned to work on December 24th. The shift originally scheduled to work December 24th will be reassigned to work on December 23rd. This change of assignment will be made administratively in January upon recognizing the scheduled holiday for the end of the year. This reassignment is not negotiable, but will remain subject to shift trades in order to allow employees to trade work schedules if desired in accordance with current policies.

4. The FLSA work schedule is 1.82 hours based on a 24-day cycle. Both parties accept the City’s declaration of a 7-k exemption and agree to incorporate FLSA mandated overtime compensation for employees covered by the MOU.

21.0 REOPENERS

In the event that the City determines that layoffs or non disciplinary involuntary reduction in rank will be implemented during the term of this Agreement, both parties agree to re-open the MOU immediately upon notice by other party on the subject of economic concessions. Nothing in this section shall change or alter any provision of the City’s Management Right as stated in section 11.0 of this Memorandum of Understanding.

22.0 401 (A)(H) DEFERRED COMPENSATION PLAN

1. The City offers a 401 (a)(h) deferred compensation plan to all bargaining unit employees. Employees on the payroll as of May 1, 1997, had a one-time opportunity to elect participation. Participation in the plan is mandatory for all bargaining unit employees hired after May 1, 1997.
2. The City and Union have selected the third party administrator and will retain the right to meet and confer on any changes in the third party administrator during the life of the 401(a)(h) plan.

3. Contributions shall be made to the plan for all employees electing participation per section 2 above. Contributions shall also be made to the plan for all employees hired after May 1, 1997; commencing with their third year of employment.

Annual contributions shall be equal to 72 hours of sick leave for employees with a balance in their sick leave account of at least 360 hours at the end of the first full pay period in December, which the City shall transmit to the third-party administrator prior to January 1 for the preceding year.

If the employee’s sick leave balance falls below 360 hours by the first full pay period after December 1st, then the 72-hour credit shall not be applied for that year.

4. All disputes arising from the application of the 401(a)(h) plan shall be subject to final and binding arbitration.

23.0 ENACTMENT

This agreement shall become effective upon ratification by the City Council of the City of Watsonville, and shall remain in full force and effect until June 30, 2017, or until a new agreement has been executed. The City and Association will begin bargaining for a successor MOU no later than March, 2017.

INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 1272

Date: 6/22/15

Corey Schaefer, IAFF Local 1272 President

Chris Kramer, IAFF Local 1272 Vice President

Almita Schaefer, IAFF Local 1272 Secretary

CITY OF WATSONVILLE

Date: 6/24/15

Marcela Tavantzis, Interim City Manager
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 1272 MOU
APPENDIX A – SALARIES

FISCAL YEAR 2015 – 2016

### 56 Hour Work Week

<table>
<thead>
<tr>
<th>POSITION</th>
<th>RANGE</th>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
</tr>
</thead>
<tbody>
<tr>
<td>Firefighter</td>
<td>18-53</td>
<td>5,383.44</td>
<td>5,652.60</td>
<td>5,935.24</td>
<td>6,232.00</td>
<td>6,543.60</td>
<td>6,870.79</td>
<td>7,214.33</td>
</tr>
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<td>Fire Engineer</td>
<td>19-52</td>
<td>5,925.58</td>
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<td>6,532.95</td>
<td>6,859.60</td>
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<tr>
<td>Fire Captain</td>
<td>20-52</td>
<td>6,568.14</td>
<td>6,896.54</td>
<td>7,241.37</td>
<td>7,603.45</td>
<td>7,983.61</td>
<td>8,382.80</td>
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</tr>
</tbody>
</table>

### 40 Hour Work Week

<table>
<thead>
<tr>
<th>POSITION</th>
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<th>A</th>
<th>B</th>
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<tr>
<td>Fire Inspector</td>
<td>22-03</td>
<td>5,455.82</td>
<td>5,728.61</td>
<td>6,015.05</td>
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<td>6,963.16</td>
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<tr>
<td>Fire Captain/Training</td>
<td>23-89</td>
<td>6,570.53</td>
<td>6,899.07</td>
<td>7,244.02</td>
<td>7,606.21</td>
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<td>8,805.14</td>
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Holiday Pay incorporated into base salaries beginning in Fiscal Year 2015-2016
1. The City shall provide and maintain all personal protective clothing for Structural Fire Fighting, Wildland Fire Fighting, and Medical Emergency. The equipment provided by the City is listed below:

**Structural Fire Fighting**
- Fire Helmet
- Turnout Pants
- Turncoat
- Bunker Boots (Leather)
- Gloves
- Nomex Hood
- Suspenders
- Hose/Ladder strap
- Pass Device
- Flashlight
- Goggles

**Medical Emergency**
- EMS Jackets
- Safety Glasses

**Wildland Fire Fighting**
- Wildland Helmet
- Wildland Coat
- Wildland Pants
- Wildland Boots
- Wildland Gloves
- Goggles
- Fire Respiratory Masks and Hood
- Equipment Bag
- Flashlight

2. The City will provide and maintain (except cleaning) the following Station Work Uniforms and Equipment-items for new employees for the first year as listed below:

**Station Work Uniform**
- Nomex Shirts (2)
- Nomex Pants (2 pairs)
- T-Shirts (2)
- Black Belt
- Name Tag (2)
- Department Badge (2)
- Fire Department Cap (1)
- Work Coveralls
- Rank Insignia

*Upon completion of probation a Class A Uniform is issued to each member.*

**Effective the first full pay period after July 1, 2015, each member shall receive:**
- Nomex Shirts (2)
- Nomex Pants (2 pairs)
- T-Shirts (2)
- Fire Department Cap (1)

**Effective the first full pay period after July 1, 2016, each member shall receive:**
- Nomex Shirts (2)
- Nomex Pants (2 pairs)
- T-Shirts (2)
- Fire Department Cap (1)
SECTION 1007. COMPULSORY ARBITRATION FOR FIRE DEPARTMENT EMPLOYEE DISPUTES.

It is hereby declared to be the policy of the City of Watsonville that strikes by firefighters are not in the public interest and should be prohibited, and that a method should be adopted for peacefully and equitably resolving disputes that might otherwise lead to such strikes.

If any firefighter employed by the City of Watsonville willfully engages in a strike against the City, said employee shall be dismissed from his or her employment and may not be reinstated or returned to City employment except as a new employee. No officer, board, council or commission shall have the power to grant amnesty to any employee charged with engaging in a strike against the City.

The City, through its duly authorized representatives, shall negotiate in good faith with the recognized fire department employee organization on all matters relating to the wages, hours, and other terms and conditions of City employment, including the establishment of procedures for the resolution of grievances submitted by either employee organization over the interpretation or application of any negotiated agreement including a provision for binding arbitration of those grievances. Unless and until agreement is reached through negotiations between the City and the recognized employee organization for the fire department or a determination is made through the arbitration procedure hereinafter provided no existing benefit or condition of employment for the members of the fire department bargaining unit shall be eliminated or changed, except as to individual employee discipline.

All disputes or controversies pertaining to wages, hours, or terms and conditions of employment, which remain unresolved after good faith negotiations between the City and the fire department employee organization shall be submitted to a three-member Board of Arbitrators upon the declaration of an impasse by the City or by the recognized employee organization involved in the dispute.

Representatives designated by the City and representatives of the recognized employee organization involved in the dispute, controversy or grievance, shall each select one arbitrator to the Board of Arbitrators within three (3) days after either party has notified the other, in writing, that it desires to proceed to arbitration. The third member of the Arbitration Board shall be selected by agreement between the two arbitrators selected by the City and the employee organization, and shall serve as the neutral arbitrator and Chairman of the Board. In the event that the arbitrators selected by the City and the employee organization cannot agree upon the selection of the third arbitrator within ten (10) days from the date that either party has notified the other that it has declared an impasse, then either party may request the State of California Conciliation Service to provide a list of seven (7) persons who are qualified and experienced as labor arbitrators. If the arbitrators selected by the City and the employee organization cannot agree within
three (3) days after receipt of such list on one (1) of seven (7) to act as the third arbitrator, they shall alternatively strike names from the list of nominees until only one name remains and that person shall then become the third arbitrator and chairman of the Arbitration Board.

Any arbitration convened pursuant to this section shall be conducted in conformance with, subject, and governed by Title 9 of Part 3 of the California Code of Civil Procedure.

At the conclusion of the arbitration hearings, the Arbitration Board shall direct each of the parties to submit, within such time limit as the Board may establish, a last offer of settlement on each of the issues in dispute. The Arbitration Board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds most nearly conforms with those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the City and its ability to meet the cost of the award.

After reaching a decision, the Arbitration Board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the Arbitration Board shall not be publicly disclosed and shall not be binding until ten (10) days after it is delivered to the parties. During that ten-day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the Arbitration Board. At the conclusion of the ten-day period, which may be extended by mutual agreement between the parties, the decision of the Arbitration Board together with any amendments or modifications agreed to by the parties shall be publicly disclosed and shall be binding upon the parties. The City and the recognized employee organization shall take whatever action is necessary to carry out and effectuate the award.

The expenses of any arbitration convened pursuant to this section, including the fee for the services of the Chairman of the Arbitration Board, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expense.
INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 1272 MOU
APPENDIX D – PAYROLL AUTHORIZATION FORM

PLEASE READ NOTICE CAREFULLY

You have been appointed to a class for which International Association of Firefighters Local 1272 ("IAFF Local 1272"), P.O. Box 1413 Watsonville, CA 95077 is the exclusive bargaining representative. IAFF Local 1272 and the City of Watsonville have entered into a Memorandum of Understanding that contains Agency Shop provisions. Under these Agency Shop provisions, you have the following rights:

1. To join the Union which represents your classification and to participate as a member; or

2. To have an automatic payroll deduction of Service fees (no voting privileges or other member benefits) for representation provided by the Union; or

3. To claim a religious exemption.*

* To file a claim for a religious exemption, you must obtain and complete a Religious Exemption Claim Form from the Human Resources Department and file it with this form before beginning work. To claim a religious exemption, you must be able to prove membership in a bona fide religion, body or sect which has historically held conscientious objection to joining or financially supporting an employee organization.

Your claim form will be forwarded to the Union for review pursuant to Section 12.0 of the Memorandum of Understanding. Until such time as your claim is approved, you must select Union Dues or Agency Fees. If you claim a religious exemption and the exemption is approved, you must authorize a payroll deduction in an amount equal to Agency Fees to a religious, non-labor, charitable organization. If your claim is approved, any Agency Fees or Union Dues you have paid prior to the approval of the claim will be paid over to the charitable organization.

YOU MUST CHECK ONE OF THE BOXES BELOW:

☐ I SELECT UNION DUES

☐ I SELECT AGENCY FEES

AMOUNT OF AUTHORIZATION

I hereby authorize the City of Watsonville Payroll Division to withhold from my salary the amount of __ $150.00 ___ monthly for IAFF Local 1272 Union Dues or Agency Fees. I consent to the adjustment of such deduction to conform to any future pay period change or to reflect any change in fees of which the Payroll Division may be advised by IAFF Local 1272. This authorization shall be in full force and effect until revoked by the undersigned or IAFF Local 1272. Agency Fees are equal to Union Dues.

<table>
<thead>
<tr>
<th>Employee Name:</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Department/Job Title:</td>
<td></td>
</tr>
<tr>
<td>Employee ID:</td>
<td>Date</td>
</tr>
<tr>
<td>Number:</td>
<td>of Employment:</td>
</tr>
</tbody>
</table>

6/22/2015 4:36 PM
The following table includes all Tentative Agreements ("TAs") reached during bargaining.

<table>
<thead>
<tr>
<th>MOU Section</th>
<th>Language</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.3 (NEW)</td>
<td><strong>In the event there is a conflict between Personnel Rules and Regulations Fire Department Orders, or another City’s Policy’s, and the MOU: the MOU will supersede.</strong></td>
</tr>
<tr>
<td>7.2</td>
<td>Effective the first full pay period after July 1, 2015 employees in the unit will receive a base pay increase equivalent to 8% of base pay. This base pay increase will be implemented by increasing the Fire Captain, Fire Engineer, and Firefighter, and others as amended into the representation unit salary ranges and each corresponding step by 8%. This increase is in consideration for the elimination of holiday pay. After receipt of this ongoing increase, employees will no longer receive holiday pay of any kind.</td>
</tr>
<tr>
<td>7.4.4</td>
<td><strong>Effective July 1, 2011, an employee who successfully completes all of the educational requirements for the Fire Officer’s series identified in the California Fire Service Training and Education System (CFSTES) through the Office of the California State Fire Marshal shall receive bonus pay equal to three percent (3%) of that employee’s base salary.</strong></td>
</tr>
<tr>
<td>7.8.3</td>
<td><strong>During the term this Agreement, if a Fire Captain position becomes vacant through attrition the City shall eliminate the forty hour (40) Fire Training Captain position.</strong></td>
</tr>
<tr>
<td>7.10</td>
<td>Parties have agreed to delete the first paragraph and third paragraph only:</td>
</tr>
<tr>
<td>7.11 (NEW)</td>
<td>The parties agree to delete Section 15.5 and move the current text of that section, in its entirety and without change, to become a new Section 7.11. <strong>NOTE: This change will also necessitate renumbering the current subsection 15.6 to 15.5.</strong></td>
</tr>
<tr>
<td>(Previously 15.5)</td>
<td></td>
</tr>
<tr>
<td>MOU Section</td>
<td>Language</td>
</tr>
<tr>
<td>-------------</td>
<td>----------</td>
</tr>
</tbody>
</table>
| 7.13 (NEW) (Previously 16) | The parties agree to delete Section 16 and move the current text of the section from 16 to 7.13; no other changes in text are subject to TA. 

*NONE: This will also necessitate renumbering current Sections 17-23 to 16-22 (and correcting any internal cross-references).*

<table>
<thead>
<tr>
<th>7.14 (NEW) (7.16 based on new numbering)</th>
<th>Duty Captain</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Person</strong> with the rank of Fire Captain are eligible to be assigned to the special assignment of Duty Captain through the current bid process as described in this M.O.U. A Duty Captain will receive five percent (5.0%) of that employee’s salary. In the event a vacancy occurs in the Duty Captain position the department shall fill the vacancy per current bidding procedures until the next bid cycle occurs.</td>
<td></td>
</tr>
</tbody>
</table>

| 9.3.1 | Each employee shall accrue sick leave in the amount of fifteen (15) hours per month of service. Sick leave is payable only in the case of illness or injury **in accordance with California Kin Care law as listed in 9.3.5, or as is otherwise provided by the Personnel Rules**. Employees shall have sick leave charged against their sick leave accumulation on an hour for hour basis. |

| 9.3.3 | Fire Department personnel assigned to 24-hour duty that leave work due to non-work related illness or injury must remain off work for the remainder of their shift **with the exception of a documented medical appointment for the employee upon approval of the Chief**. |

<p>| 9.3.5 (NEW) | <strong>In accordance with California “Kin Care” law, in the event of an illness in the immediate family, an employee shall be granted accrued sick leave not to exceed one-half of the annual sick leave accrual by the employee. For the purpose of this section, immediate family shall include parents, spouses, domestic partners, and children. For the purposes of this section, “parent” and “child” include biological, foster, adopted, step, or legal guardian relationships and a “child” also includes the child of a domestic partner. Where unusually close ties exist, the department may determine other relationship to be included in the definition on a case by case basis.</strong> |</p>
<table>
<thead>
<tr>
<th>MOU Section</th>
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<tr>
<td>15.1</td>
<td><strong>It is understood that the term &quot;related duties&quot; as contained in the Department rules and in individual job classifications means that employees shall perform duties related to fire service as determined by the Fire Chief. All Firefighters shall be expected to perform work as assigned by the Fire Chief or his/her designated representative in connection with or related to firefighting, its equipment, apparatus and attendant facilities: fire prevention duties: station housekeeping, maintenance and repair; and, such other duties which are reasonably related to the above.</strong></td>
</tr>
<tr>
<td>15.7 (NEW)</td>
<td><strong>Promotional Process</strong></td>
</tr>
<tr>
<td></td>
<td><strong>For promotions to positions within the representation unit, the Department will make reasonable efforts to make promotion process information available to unit members at the time of posting but no later than within forty-five (45) days prior to the test date. Any promoted employee who fails probation shall be demoted to his/her former position in the department unless he or she has been terminated for cause from the promotional position.</strong></td>
</tr>
<tr>
<td>Current 15.5</td>
<td>Delete Section 15.5 and insert its current text (without change) as a new Section 7.11. This will also necessitate renumbering the current subsection 15.6 to 15.5.</td>
</tr>
<tr>
<td>15.9 (NEW)</td>
<td><strong>Mandatory Training</strong></td>
</tr>
<tr>
<td></td>
<td><strong>All mandatory off-duty training and mandatory meetings shall be paid at overtime.</strong></td>
</tr>
<tr>
<td>Current 16</td>
<td>The parties have agreed to delete Section 16 and insert its current text (without change) as a new Section 7.13. This will necessitate renumbering the current subsections 17-23 to 16-22.</td>
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<td>Appendix A</td>
<td>To be modified as necessary.</td>
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The City will provide and maintain (except cleaning) the following Station Work Uniforms and Equipment items for new employees for the first year as listed below:

**Station Work Uniform**
- Nomex Shirts (2)
- Nomex Pants (2 pairs)
- T-Shirts (2)
- Black Belt
- Name Tag (2)
- Department Badge (2)
- Fire Department Cap (1)
- Work Coveralls
- Rank Insignia
- **Black Steel Toed Station Boots (1)**

Upon completion of probation the City will issue a Class A Uniform issued to each member within six months' time.
APPENDIX C

THE CHARTER OF THE CITY OF WATSONVILLE

We, the people of the City of Watsonville, State of California, do ordain and establish this Charter as the organic law of said City under the Constitution of said State.

* * * * *

SECTION 1007. COMPULSORY ARBITRATION FOR FIRE DEPARTMENT EMPLOYEE DISPUTES.

It is hereby declared to be the policy of the City of Watsonville that strikes by firefighters are not in the public interest and should be prohibited, and that a method should be adopted for peacefully and equitably resolving disputes that might otherwise lead to such strikes.

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Representatives designated by the City and representatives of the recognized employee organization involved in the dispute, controversy or grievance, shall each select one arbitrator to the Board of Arbitrators within three (3) days after either party has notified the other, in writing, that it desires to proceed to arbitration. The third member of the Arbitration Board shall be selected by agreement between the two arbitrators selected by the City and the employee organization, and shall serve as the neutral arbitrator and Chairman of the Board. In the event that the arbitrators selected by the City and the employee organization cannot agree upon the selection of the third arbitrator within ten (10) days from the date that either party has notified the other that it has declared an impasse, then either party may request the State of California Conciliation Service to provide a list of seven (7) persons who are qualified and experienced as labor arbitrators. If the arbitrators selected by the City and the employee organization cannot agree within three (3) days after receipt of such list on one (1) of seven (7) to act as the third arbitrator, they shall alternatively strike names from the list of nominees until only
one name remains and that person shall then become the third arbitrator and chairman of the Arbitration Board.

Any arbitration convened pursuant to this section shall be conducted in conformance with, subject, and governed by Title 9 of Part 3 of the California Code of Civil Procedure.

At the conclusion of the arbitration hearings, the Arbitration Board shall direct each of the parties to submit, within such time limit as the Board may establish, a last offer of settlement on each of the issues in dispute. The Arbitration Board shall decide each issue by majority vote by selecting whichever last offer of settlement on that issue it finds most nearly conforms with those factors traditionally taken into consideration in the determination of wages, hours, and other terms and conditions of public and private employment, including, but not limited to, changes in the average consumer price index for goods and services, the wages, hours, and other terms and conditions of employment of other employees performing similar services, and the financial condition of the City and its ability to meet the cost of the award.

After reaching a decision, the Arbitration Board shall mail or otherwise deliver a true copy of its decision to the parties. The decision of the Arbitration Board shall not be publicly disclosed and shall not be binding until ten (10) days after it is delivered to the parties. During that ten-day period the parties may meet privately, attempt to resolve their differences, and by mutual agreement amend or modify any of the decisions of the Arbitration Board. At the conclusion of the ten-day period, which may be extended by mutual agreement between the parties, the decision of the Arbitration Board together with any amendments or modifications agreed to by the parties shall be publicly disclosed and shall be binding upon the parties. The City and the recognized employee organization shall take whatever action is necessary to carry out and effectuate the award.

The expenses of any arbitration convened pursuant to this section, including the fee for the services of the Chairman of the Arbitration Board, shall be borne equally by the parties. All other expenses which the parties may incur individually are to be borne by the party incurring such expense.