

Legislative #
180328B



CITY OF GAINESVILLE

Office of the City Manager

DATE: June 4, 2018
TO: Mayor and Members of the City Commission
FROM: Anthony Lyons, City Manager *AL*
SUBJECT: Recommendations of the Special Magistrate and the City Manager for Resolving the Collective Bargaining Impasse between the City of Gainesville and the Fraternal Order of Police, Gator Lodge 67

As you're aware, following a reasonable period of negotiation between City management and the Fraternal Order of Police, Gator Lodge 67 ("FOP" or "Union") concerning the terms and conditions of employment of FOP bargaining unit members, impasse was declared by the FOP on May 16, 2017. Following the declaration of impasse, bargaining continued between the parties and the list of disputed issues was reduced to five: Article 8 – Discharge and Discipline, Article 11 – Hours of Work, Article 14 – Premium Pay, Article 19 – Miscellaneous Employee Benefits and Article 29 – Wages.

On October 24, 2017, a special magistrate held a hearing on these remaining disputed issues. On May 7, 2018, the special magistrate transmitted his recommended decision to resolve these issues. The parties then had 20 days to reject the special magistrate's recommended decision. On May 25, 2018, management and the FOP rejected parts of the recommendation of the special magistrate. Specifically, management rejected the special magistrate's recommended resolution of Articles 11, 14, 19 and 29. The FOP rejected part of the recommended resolution of Article 29.

Per Florida Statute Section 447.403, I "shall, within 10 days after rejection of a recommendation of the special magistrate, submit to the legislative body . . . a copy of the findings of fact and recommended decision of the special magistrate, together with [my] recommendations for settling the disputed impasse issues." In addition, I am required to transmit my recommendations to the FOP.



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Accordingly, the special magistrate's recommended decision is attached hereto. My recommended contract language for settling the remaining issues at Impasse is also attached as Exhibits I, II, III, and IV. In sum, I recommend the following:

Article 11 – Hours of Work (attached as Exhibit I)

- Change the basic workweek for patrol from 11.25 hour shifts to 8, 10, or 12 hour shifts as designated by the Chief of Police to meet the Department's operational needs; however, once a shift is selected by the Chief, the shift will stay in place for 6 months and bargaining unit members will receive at least 4 weeks' advance notice of a shift change; and
- Provides that no bargaining unit member will be required to work all weekends; and
- Change the 28-day work period to a 14-day work period; and
- Eliminate shift pick by time in rank and seniority.

Article 14 – Premium Pay (attached as Exhibit II)

- Calculate overtime pay based on work performed in excess of 80 hours in a 14-day work period instead of 160 hours in a 28-day work period; and
- Eliminate paid leave (except for Holidays) as hours of work in the computation of overtime.

Article 19 – Miscellaneous Employee Benefits (attached as Exhibit III)

- Reinstitute dry cleaning, clothing, and leather allowances effective upon ratification or resolution of Impasse; and
- Change the leave bank to conform with state law and allow for usage on an Intermittent basis.

Article 29 – Wages (attached as Exhibit IV)

- Provide a one-time, non-pensionable, lump sum payment of \$800 to all bargaining unit members, effective upon ratification or resolution of impasse; and
- Provide merit increases to eligible bargaining unit members as follows:



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- o Effective upon ratification or resolution of Impasse, eligible members shall receive a base rate increase of \$2,020 (Officers), \$2,310 (Corporals) or \$2,825 (Sergeants) depending on rank (approximately equal to 4% of total base pay for their assigned rank).
- o Effective the beginning of the first full pay period in January 2019, eligible members shall receive a base rate increase of \$1,040 (Officers), \$1,190 (Corporals) or \$1,455 (Sergeants) depending on rank (approximately equal to 2% of total base pay for their assigned rank).

cc: Eugenia Allen-Mercado, Human Resources Director
Nicolle Shalley, City Attorney
Stephanie Marchman, Attorney for the City of Gainesville
Jim Brantley, FOP Counsel
Michael Maresca, FOP President

Attachments

**STATE OF FLORIDA
PUBLIC EMPLOYEES RELATIONS COMMISSION**

**GATOR LODGE No. 67, FRATERNAL
ORDER OF POLICE (FOP),**

Labor Union,

v.

CITY OF GAINESVILLE, FLORIDA,

Public Employer.

Case No. SM-2017-015

Special Magistrate: James D. Stokes

Hearing Date: October 24, 2017

**IMPASSE PROCEEDING
REPORT AND RECOMMENDATION OF SPECIAL MAGISTRATE**

THIS MATTER came before the undersigned on the declaration of impasse filed by the Fraternal Order of Police, Gator Lodge 67 (FOP) upon the breakdown of bargaining a full successor Agreement for the police officers, police corporals and police sergeants of the Gainesville Police Department. Each party was represented by Counsel at the hearing and was afforded a full and complete opportunity to present its case, including physical, documentary and testimonial evidence. There was a court reporter who transcribed the entire proceeding, and post-hearing briefs were submitted by the parties on December 15, 2017.

INTRODUCTION

The bargaining history between this FOP unit and the City appears to be a difficult one. The parties are coming off of a three-year collective bargaining agreement which, itself, went through the impasse proceeding before ultimately being resolved. Once again, the parties find themselves unable to reach closure on several key portions of a

successor agreement and, despite continued good faith efforts by both parties, resolution has just not been forthcoming. The FOP declared impasse and this hearing followed.

**PROVISION OF THE CURRENT
COLLECTIVE BARGAINING AGREEMENT**

**ARTICLE 8
DISCHARGE AND DISCIPLINE**

* * *

- 8.11 I.A. investigations for violations of offenses determined by the Department to be minor, should be completed within forty-five (45) days from the issuance of notice of allegation of misconduct to the member determined to be the subject of an I.A. investigation. Notice will be provided by I.A. to the employee in writing or via electronic means which will serve as the notification that an investigation is being conducted on him/her. At the end of forty-five (45) days, if the investigation is not completed for reasonable grounds, the individual under investigation is to be notified with the reason for extension in writing or via electronic means. Extensions of minor investigations may be extended an additional forty-five (45) days after such notification.
- 8.12 I.A. investigations for violation of offenses determined by the Department to be major should be completed within ninety (90) days from the issuance of notice of allegation of misconduct to the member determined to be the subject of an I.A. investigation. Notice will be provided by I.A. to the employee in writing or via electronic means which will serve as the notification that an investigation is being conducted on him/her. At the end of the ninety (90) days, if the investigation is not completed for reasonable grounds, the individual under investigation is to be notified with the reason for extension in writing or via electronic means. Extension of major investigations may be extended an additional sixty (60) days after such notification.
- 8.13 The running of the limitations period in this article is tolled:
- A. For a period of time specified in a written waiver of the limitation by the law enforcement officer, and FOP Representative.

- B. During the time that any criminal investigation or prosecution is pending in connection with the act, omission, or other allegation of misconduct.
 - C. If the investigation involves an officer who is incapacitated or otherwise unavailable, during the period of incapacitation or unavailability.
 - D. In a multijurisdictional investigation, for a period of time reasonably necessary to facilitate the coordination of the agencies involved.
 - E. For emergencies or natural disasters during the time period wherein the Governor has declared a state of emergency within the jurisdictional boundaries of the concerned agency.
 - F. During the time that the officer's compliance hearing proceeding is continuing beginning with the filing of the notice of violation and a request of a hearing and ending with the written determination of the compliance review panel or upon the violation being remedied by the agency.
- 8.14 The Chief of Police may determine that an Internal Investigation would be compromised by notification of either an allegation of misconduct or reasons for extending an investigation. In either case, time limits identified in 8.11/8.12 shall not be applicable.

* * *

ARTICLE 11 HOURS OF WORK

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11.2 BASIC WORK PERIOD

- A. The work period for all employees covered by this Agreement, except as otherwise designated by the Chief of Police or as provided for in 11.2B or in 32.1, shall consist of a period of fourteen (14) consecutive days, and the basic work week shall consist of four ten-hour shifts (4x10).
- B. The work period for Operations personnel who are assigned to Patrol functions within the Operations Bureau, shall consist of a

period of twenty-eight (28) consecutive days. Additionally, the basic work schedule shall consist of an 11 hour, 25 minute day.

- C. For purposes of this Agreement, a shift means the time during which an employee is on assigned duty. A shift for employees covered by this Agreement will be those prescribed by the Chief of Police or his/her authorized designee. Shift pick will be done by time in rank, and then by overall seniority.
- D. If there is any change in the normal weekly work schedule of an employee, he/she will receive, when possible, one (1) week prior notification. If there is a change in the normal weekly work schedule of an employee due to a group shift change, the group shall receive at least two (2) weeks prior notification. Members who receive specialty pay may receive shorter notice due to circumstances, in which as much notice as reasonably practicable will be given.

ARTICLE 14 PREMIUM PAY

* * *

- 14.3 A. Only authorized and approved work performed in excess of one hundred sixty (160) hours in a twenty-eight- (28-) day work period for all employees assigned to said work period shall be paid at the premium rate of one and one-half (1½) times the employee's straight time hourly rate of pay as set forth in Exhibit I. Further, nothing herein shall require the payment of time and one-half (1½) when an insubstantial amount of time is worked in excess of the normal workday. For the purpose of this Article, an insubstantial amount of time shall be considered any period of time less 1 than seven (7) minutes.

* * *

- D. When an off-duty employee covered by this Agreement is directed by a supervisor to place a telephone call in furtherance of City business, and the employee engages in the directed telephone activity for more than an insubstantial amount of time in any particular instance, then, after supervisory verification of the necessity and duration of the call (such may include obtaining statements from the participants to the phone call), the time involved in such telephone call shall be considered authorized and approved work within the meaning of this section.

- E. In lieu of being paid overtime as described in this article an employee, with approval of the shift supervisor, may adjust his/her schedule within the same work period on an hour-for-hour basis.
- 14.4 Vacations, holidays and all other paid leaves, except sick leave or hours compensated for as call-out, shall count as hours worked for the purpose of computing overtime. However, all above paid leave shall not count as hours worked for the purpose of computing overtime when the entire regularly scheduled workweek is charged as either vacation, holiday or any one type of paid leave or any combination of paid leave. All vacation leave shall count as hours worked when an employee is required to work overtime.
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ARTICLE 19 MISCELLANEOUS EMPLOYEE BENEFITS

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- 19.1 The City, during the term of this Agreement (October 1, 2013 – September 30, 2016), will provide a dry cleaning allowance each year of the agreement in the amount of \$550.00. One-half (½) shall be paid on a pro-rata basis on or about October 1st, and April 1st.

The City, during the term of the Agreement (October 1, 2013 – September 30, 2016), shall provide an annual clothing allowance to all personnel assigned to plain clothes each year of the agreement in the amount of: \$575.00. One-half (½) shall be paid on a pro-rata basis on or about September 30, and April 1st.

Each fiscal year of this Agreement (October 1, 2013 – September 30, 2016), all employees covered by this Agreement shall receive one hundred (\$100.00) dollars annual leather allowance, to be paid within the first quarter of the fiscal year.

In the event ratification occurs after one or more payments would have been made, the City agrees to provide full payment for any part of the allowances described above that are otherwise due. Such payment shall be made within sixty (60) days of ratification of this Agreement.

There shall be no allowances under this article after September 30, 2016, unless and until there is a new Agreement in effect providing for such allowance.

19.6 General: Leave Bank

- D. In addition to the procedures described in items A through C above, an employee may, with the following additional restrictions, receive voluntarily donated vacation leave in advance of having used up all of his or her sick leave. In those situations where an employee is absent due to serious illness, accident or disability, which condition is expected, based upon reasonable medical probability, to result in death within one (1) year from the creation of the Leave Bank, the Leave Bank may be created and donated vacation leave credited to the employee's sick leave account prior to the employee having exhausted his or her own earned sick leave. Utilization of donated vacation leave in this manner is limited to those situations in which the employee, at the time the authorization to create a Leave Bank is given, had at least eighty percent (80%) of the credited service needed for normal retirement and was otherwise eligible for normal retirement.

**ARTICLE 29
WAGES**

29.1 Base Rate Increase and One-Time Payment

- A. **Fiscal Year 2016 (October 1, 2015 - September 30, 2016)**
Effective the beginning of the first pay period in July 2016 (July 4th), bargaining unit members listed in Exhibit II of this Agreement shall be eligible for a base rate increase as provided in Exhibit II. To receive the base rate increase provided in Exhibit II, an employee must be a bargaining unit member on July 4, 2016, and must be employed by the City of Gainesville at the time of final ratification of this Agreement.
- B. **One-Time Payments**
Effective upon final ratification of this Agreement, bargaining unit members listed in Exhibit II of this Agreement shall be eligible for one-time, lump sum, non-pensionable payments as provided in Exhibit II. To receive the one-time payments

provided in Exhibit II, an employee must be employed by the City of Gainesville at the time of final ratification of this Agreement. The FOP agrees to indemnify, defend and hold the City harmless against any and all claims, suits, orders or judgments brought or issued against the City as a result of any action taken or not taken by the City under the provisions of this Article.

- C. The processing of increases and one-time payments under 29.1 shall occur within 60 days of final ratification of this Agreement, unless otherwise agreed to as a result of negotiations in accordance with Ch. 447 FS. There shall be no General Increases, Base Rate Increases or one-time payments, except for those provided for herein, unless and until there is a new agreement in effect providing for such increases or one-time payments.

29.2 Merit or Performance Increases

- A. Effective October 1, 2013 through September 30, 2016, there shall be no Merit Increases.
- B. For regular (non-probationary) employees, the review period is a one-year period from October 1 through the next September 30. Employees will continue to be reviewed, but there will be no Merit Increases associated with these reviews.
- C. There shall be no Merit or performance Increases after the expiration date of this Agreement unless and until there is a new agreement in effect providing for such increases.

* * *

FOP's POSITION

The FOP points out that the City is in an extremely strong financial position. The City has over 17 million dollars as an unassigned fund balance, over 6 million dollars of which exceeds the Reserve which is retained as part of the City's best financial practices policy. This 6 million dollars can be appropriated and expended at the discretion of the

City. The FOP asserts that the City has another 3.5 million dollars in an assigned fund balance which it has discretion to allocate, as well as several million dollars in surplus revenues each year resulting from not expending all the funds which are budgeted. In other words, the FOP asserts that the City has the money to spend on its employees should it desire to do so. Regarding the non-economic proposals, the FOP believes that their proposals are not seeking excessive consideration and are intended to serve the employees in an equitable manner. Additionally, the FOP points out that without some of these economic matters being resolved in the union's favor, any pay raise its officers receive will be negated by the take-aways in these other items.

CITY'S POSITION

The City of Gainesville points out it is a City of 130,000 residents which is served by a workforce of over 2000 individuals, reporting to any one of 6 Charter Officers. Eighty percent of Gainesville workforce is covered by one of seven Collective Bargaining Agreements. While the City negotiated with each union at arm's length, there is the overarching consideration that, at least in some areas, the City desires continuity among its workforce. The City acknowledges that its position in opposition to the FOP's proposal is not based upon a lack of finances but, rather, the fact that the City must remain fiscally responsible and while the benefits may be affordable now, there is a concern for the City getting into a position that it because financially distressed by excessive employee salaries or benefits. The City believes its proposals are not only fiscally

responsible and fair, but the non-economic items give the City the flexibility to provide solid and professional law enforcement services to the people of Gainesville.

RECOMMENDATION

Based upon the record presented, both by the FOP and the City, the undersigned makes the following findings and issues this Recommendation for the parties to consider. As the parties are familiar with Section 447.403, Florida Statutes, it is not necessary to go into detail on the parties' duties and responsibility hereafter, or the process going forward.

The collective bargaining agreement, like any contract, is best defined as "a bundle of rights". We are taught this in law school, and I have found to this day that it remains the best definitive explanation of "a contract". Because of the reality of this definition, it is clear to see how a concession by a party in one area can impact that same party in another area of a contract. Through the presentations made at the hearing in this matter, as well as the arguments advanced through the post-hearing Briefs, it is clear that both the FOP and the City appreciate and acknowledge that these disputed Articles remain as pieces to the puzzle, and that the ultimate desire of both sides is to provide the best quality law enforcement to the people of Gainesville, while compensating the officers fairly, and not jeopardizing the financial health of the City. The problem that remains, is that the parties differ on where those benchmarks lay.

Article 8: Discharge and Discipline

The first issue under the Discharge and Discipline Article is the time limits for completion of internal affairs investigations. The current Collective Bargaining

Agreement presents a myriad structure wherein there are different time limits for different levels of investigation – those “levels” not being defined in the document. While there was not evidence as to a history of disagreement over what constituted a “minor” investigation versus what constituted a “major” investigation, it is clear that such a dispute could arise – and probably while the parties are facing a serious or high-profile situation. As with any contract, bright lines are much easier to follow, and vague or undefined terms just create more questions than answers.

The Fraternal Order of Police, along with other law enforcement unions, lobbied hard for the Law Enforcement Officers’ Bill of Rights all the way back to 1974. They continued to enhance those rights and, in 2005, got the Florida Legislature to put in a 180 day limitation on internal investigations [2005 SB 656]. While it is true that a local police union and a specific law enforcement agency can negotiate for shorter limitations (but not longer), there is no reason to do so. Most law enforcement agencies do not allow investigations to linger for no reason; there is no benefit to delay an investigation. Accordingly, the 180 day limitation, with its tolling provisions, was hard fought by the FOP in Tallahassee, and there is no reason its not good enough for Gator Lodge 67.

Regarding the taking of testimony under oath to support an internal affairs investigation, the City states that it and the FOP are in agreement that the initial complaint does not have to be under oath, but that any testimony being considered in the investigation to support a finding of misconduct shall be under oath. The City is concerned that this will be interpreted broadly to including documentary evidence, recordings, photographs, and other “non-testimony” evidence. During the hearing, the

FOP witness made it clear that the FOP only intended testimony to be sworn; however, I would add that any physical or documentary evidence (non-testimony) should be authenticated in some form of fashion to ensure that it is reliable evidence.

First, any evidence taken into consideration during an investigation will likely be presented in an arbitration or, possibly albeit rarely, in litigation. Accordingly, the City should want to ensure that the evidence is reliable. Second, any complaint – regardless of out outlandish, no matter how blatantly false – will have a negative impact upon an employee. With the breadth of the Florida Public Records Act, even unfounded complaints are accessible in time; and with the internet what it is, that information exists in perpetuity. Taking the precaution to ensure that only truthful, honest, and reliable evidence is used in an investigation, is the best practice the City should desire. Therefore, while the parties may have agreed to the initial report not requiring an oath, it is Recommended that all other testimony, written or oral, be taken under oath and all other evidence is properly authenticated.

Article 11: Hours of Work

The parties are at impasse over the hours of work and workweek of the employees covered by this Collective Bargaining Agreement. Currently, patrol works 11 hours 25 minutes, four days on, four days off; which gives them 160 hours in a 28 day work period (utilizing the so-called 7(k) exemption). The City wants to eliminate this work schedule and have the flexibility to schedule patrol to a “8, 10, or 12-hour day as designated by the Chief of Police to meet the operational needs of the Department.” Additionally, the City

wishes to change the 28 day work period to a 14 day work period. The FOP is opposed to the City's position on this Article.

The FOP states that this is an unlawful provision because it would constitute a unilateral change without bargaining. I disagree. Bargaining is what is being done now. The Public Employees Relations Act sets forth a system for exchanging proposals, reaching agreements, and resolving impasses when they occur. If the agreed upon language¹ in a CBA states that work hours will be scheduled at the discretion of the Chief – then the language is the language, so there is no reason the City cannot propose such a structure.

It is understood that the nearly 12 hour shifts can be taxing on personnel and that a fatigue factor does occur toward the end of a busy shift; however, the longer breaks (four days off) help to overcome the fatigue factor. Whether the City should remain with 11.5 hour days is difficult to decide; however what is not difficult to decide is whether the City's proposed replacement is a good proposal.

Had the City placed a definitive alternate schedule on the table for the FOP to consider, the members could have compared the two and weighed their options. However, members not wanting to give-up their 4 consecutive days off in exchange for what might be an 8 hour day... or maybe a 12 hour day... or maybe a 10 hour day... depending strictly on what the Chief unilaterally desires, is not surprising. Accordingly,

¹ Whether such language can be imposed by the legislative body is a determination beyond my authority as a Magistrate and will have to be addressed by a Hearing Officer and the Commission, should it be pursued.

without a definitive alternative for the FOP to consider, I would Recommend leaving the work schedule as it currently exists.²

Article 14: Premium Pay

The parties are at impasse regarding overtime compensation, including the types of meetings and assignments that are compensable. Under the Fair Labor Standards Act, an employer only has to pay overtime for hours worked over maximum number of work hours allowed. However, the FLSA does not defined what a work hour is, which has left that determination to be made by employers or, in the case of unionized workers, a subject of bargaining. Currently, "hours worked" includes all leave time, excluding sick time and a full-week of vacation. The logic behind this structure is not wanting an employee to take a sick day off and then work the next day for time-and-a-half.

The FOP acknowledges the sick-leave exception; however, it feels that including other types of leave, such as short-term vacation time, comp time, etc., is punitive. Leave time is a benefit earned and possesses a value. When an officer uses a day of leave time, he or she is surrendering hours which possess a cash value. Therefore, penalizing that officer by not paying overtime if worked later than pay period would, in effect, devalue the earned leave time.

Operationally, there is no reason to change the status quo in this matter. The City admits that, given the current shortage of officers and the usual shortage of personnel, overtime is a reality. However, every officer who used a vacation day or used a comp

² The City discussed the fatigue factor of an 11 hour 25 minute work day; however, part of its proposal includes the option to have patrol work a 12 hour day at the Chief's discretion.

day will avoid volunteering for overtime if they are only going to be paid straight-time rather than time-and-a-half. Therefore, because the City's financial position is in good shape, there is no reason to deviate from an overtime methodology that has existed and worked well for some time.

Additionally, the FOP raised an issue about Sergeants (and other members) being called into administrative meetings, tactical briefings and command staff matters, and whether they should be entitled to overtime when these events occur during their off-duty hours. This is not a difficult issue, as an officer being called-in during off-duty hours for a meeting or briefing is clearly compensable.

The FOP has two additional proposals for Article 14, the first of which states that if an officer is scheduled for overtime less than one week before the scheduled date, the officer will be entitled to double-time rather than time-and-a-half. There is no logical reason for this benefit. Law Enforcement is a profession with an inherently unreliable and ever-changing schedule, and every officer knew this going in. The uncertainties in scheduling is one of the primary reasons the FLSA keeps law enforcement and fire rescue as two of the few "professions" which retain their non-exempt (eligible for overtime) status. Accordingly, I Recommend that double-time not be a benefit for overtime worked pursuant to a short-term notice.

Lastly, the FOP wants corporals to be paid "out-of-class" pay when working as a sergeant for an entire shift, and sergeants to be paid "out-of-class" pay when working as a lieutenant for 4 hours or more. There is no reason for this change either. A police department is structured in a para-military style, including varying ranks with

corresponding levels of responsibilities. Each rank builds upon the next, as officers advance in their career. It is a professional advancement to be tasked with filling-in for your supervisor. Corporals should covet the opportunity to serve as the acting sergeant, as it will help them when they seek promotion. In the same way, a sergeant should desire to serve as the acting lieutenant, for the benefit to his or her professional development and advancement opportunities. Accordingly, I do not Recommend this change to the Collective Bargaining Agreement.

Article 19: Miscellaneous Employee Benefits

The parties have agreed to the dry cleaning and leather allowances contained in the Collective Bargaining Agreement, however disagree as to retroactivity. Given the bargaining history of the parties and the good faith efforts shown by both sides, it is not unreasonable for the FOP to receive the benefit retroactively. The officers never stopped working, even though the CBA had expired – and their uniforms were still expected to be clean. Thus, it is Recommended that this benefit be granted retroactivity.

Article 29: Wages

The parties have almost diametrically opposite concepts on wages moving forward. The largest component of this disagreement is whether the officers, corporals and sergeants will be put into a “step plan” or whether they will simply obtain a flat rate wage increase across the board.

The FOP desires to have the bargaining unit members placed into a definitive step plan, with the steps corresponding to years of service, and with a salary increase of approximately 2% per step. The result would be that the member would advance from

step-to-step, generally on his or her anniversary date, and would automatically obtain that 2% salary increase.

The City's position is that a step plan creates too much uncertainty in the future, as the steps remain in perpetuity, even after the expiration of a CBA, and the financial exposure to the City is too great. Instead, the City proposes a flat rate wage increase, across the board, to each employee in each class (officer, corporal, sergeant), for each year of the CBA (not including the first year). The reason for this formula is to prevent any wage increase from occurring subsequent to the expiration of the CBA, until a successor agreement is negotiated (or imposed).

Step plans have their benefits, as well as their drawbacks. The FOP has proposed that an officer, corporal or sergeant automatically advances to the next step if their performance appraisal indicated a "meets expectations". The inherent program with this procedure is that supervisors are less likely to be honest on a marginal employee's evaluation if he or she knows that an honest low rating will result in the loss of a pay raise. Thus, the supervisor "overrates" the employee. When the time comes to discipline or discharge the employee for poor performance, the evaluations contradict the allegations. Accordingly, it is never my recommendation to tie salary increases to an evaluation rating.

However, the City's concern that a step plan renders salary increases impossible to control in the future is incorrect. Salary and wages are a mandatory subject of bargaining and, with or without a step plan, the City will have the right to negotiate the salaries upon the expiration of each Collective Bargaining Agreement. While under the

PERA benefits continue to accrue during the status quo period before a successor CBA is approved, this is only for benefits which leave themselves open for continuation. The City could fashion language which would effectuate advancement through the steps only until the termination of the CBA, at which time negotiation would have to resurrect the increases. This is quite common in many jurisdictions. Additionally, even the step plan will be subject to bargaining with each CBA, as the FOP will be seeking a COLA adjustment to the steps overall.

On the other hand, accepting the City's proposal of the flat rate increase to all employees across the board continues to exacerbate the wage compression problem which has plagued the FOP for some time. Acknowledging the salary differences between a first year officer and a 15th year officer is an important element of recruitment and retention; however, given both of these officers the same flat-rate salary increase inures a larger benefit to the junior officer than it does to the senior officer, and it brings their salaries closer together.

Accordingly, it would be my Recommendation that the City adopt the step plan at the salaries proposed by the FOP - even though other bargaining units of the City do not have the step plan. Each bargaining unit negotiates for themselves and, in this case, a step plan would adequately compensate the officers, corporals and sergeants for their years of service. The continuation of the step plan after expiration of the CBA can be addressed in the language in the Article. I express recommend against tying any step advancement to a particular rating on an evaluation, and such methodology isn't the panacea it appears.

The next part of the compensation Article which the FOP addresses is the payment to the sworn officers for possession of a college degree. The FOP proposes that the City provide a monetary payment over-and-above what the State of Florida already provides. Much like my analysis on the Bill of Rights, I would recommend against this provision as the various police unions have lobbied their benefits in Tallahassee and, having done that, they should be satisfied with the results.

CONCLUSION

THE FOREGOING constitutes the Recommendation to resolve the current bargaining impasse between the parties. The undersigned shall retain jurisdiction of this matter to provide clarification as needed.

Respectfully Submitted,

Dated: February 23, 2018



JAMES D. STOKES
Special Magistrate

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Florida Bar No. 157163
Board Certified | Labor & Employment Law
Board Certified | City, County & Local Government Law

ARTICLE 11
HOURS OF WORK

11.1 The provisions of this Article are intended to provide a basis for determining the basic work period and shall not be construed as a guarantee to such employee of any specified number of hours of work either per day or per week or as limiting the right of the City to fix the number of hours of work (including overtime) either per day or per week for such employee. The City has the authority to establish shifts and to use any method in establishing a shift as well as change, increase, decrease, initiate, restrict and cancel a shift in order to meet the needs of the department and to provide superior service to the community.

11.2 BASIC WORKWEEK

A. The work period for all employees covered by this Agreement, except as otherwise designated by the Chief of Police or as provided for in 32.1, shall consist of a period of fourteen (14) consecutive days. The normal workday for all employees covered by this Agreement will be an eight (8), ten (10) or twelve (12) hour shift in a twenty-four (24) hour period, as designated by the Chief of Police to meet the Department's operational needs.

D. For purposes of this Agreement, a shift means the time during which an employee is on assigned duty. A shift for employees covered by this Agreement will be those prescribed by the Chief of Police or his/her authorized designee. The department will endeavor to provide at least four weeks' notice prior to the onset of a new, long-term schedule. For purpose of interpretation, 'long-term schedule' shall be defined as a shift rotation lasting at least six months. In addition, except as otherwise determined by the Chief of Police, it is agreed that management will ensure that an employee assigned to a long-term schedule will not be required to work all weekends. In the event there is an individual hardship, deviation from the original assigned schedule will be considered by management on a case by case basis

E. If there is any change in the normal weekly work schedule of an employee, he/she will receive, when possible, one (1) week prior notification. If there

1 is a change in the normal weekly work schedule of an employee due to a
2 group shift change, the group shall receive at least two (2) weeks prior
3 notification. Members who receive specialty pay may receive shorter notice
4 due to circumstances, in which as much notice as reasonably practicable
5 will be given.

6 **11.3 EXCHANGE OF HOURS OF WORK**

7 Upon prior approval by the appropriate managerial employee, an employee may
8 agree with another employee, who is of equal classification, i.e., police
9 officer/corporal for police officer/corporal, sergeant for sergeant, to work in place
10 of said other employee during that employee's scheduled work assignment subject
11 to the following restrictions:

- 12 A. No employee shall be permitted to have another employee substitute for
13 him/her except for periods of short duration and, in no case, in excess of
14 two (2) consecutive work shifts. Further, the exchange of time shall not
15 result in any employee working back-to-back shifts.
- 16 B. The City shall compensate the employee who was scheduled to work in the
17 amount he/she would have earned had he/she worked and shall in no
18 manner be liable for any wages for the hours worked by the substitute
19 employee.
- 20 C. The hours worked by the substitute employee shall not be considered hours
21 worked by or paid for to the substitute employee.
- 22 D. The exchange of time shall not cause the City overtime or premium pay or
23 other inconvenience.
- 24 E. The exchange of time shall be because of the employee's desire or need to
25 attend to personal matters and shall not be used for other outside
26 employment activities.
- 27 F. The request for the exchange of time form will be signed by the appropriate
28 parties in advance of the changed schedule.
- 29 G. An employee who has agreed to substitute for another employee and fails
30 to report for the agreed duty assignment, will be subject to disciplinary
31 action.

Exhibit I

1 11.4 LUNCH

2 Lunch hours shall be paid as part of the scheduled work day for all sworn
3 employees and shall not be substantially modified unless the union is provided the
4 opportunity to negotiate in accordance with Chapter 447, Florida Statutes,
5 concerning the change.

6

ARTICLE 14
PREMIUM PAY

14.1 The provisions of this Article are intended to provide a basis for determining the number of hours of work for which an employee shall be entitled to be paid at premium rates.

There shall be no duplication or pyramiding in the computation of overtime, call-out pay or court pay and nothing in this Agreement shall be construed to require the payment of overtime more than once for the same hours worked.

14.2 All overtime shall be authorized by the Chief of Police or other designated managerial employee(s), if such authority has been specifically delegated to him/her/them. Opportunities to work scheduled overtime will be distributed equally as is practicable among employees, provided the employee is qualified to perform the specific overtime work required.

14.3 A. Only authorized and approved work performed in excess of eighty (80) hours in any fourteen- (14-) day work period for all employees assigned to said work period shall be paid at the premium rate of one and one-half (1½) times the employee's straight time hourly rate of pay as set forth in Exhibit I. Further, nothing herein shall require the payment of time and one-half (1½) when an insubstantial amount of time is worked in excess of the normal workday. For the purpose of this Article, an insubstantial amount of time shall be considered any period of time less than seven (7) minutes.

C. All employees in positions eligible for overtime shall receive pay for attending "Community Policing Events" as defined by the Chief of Police or Designee (e.g., crime watch meeting, neighborhood cleanup, National Night Out, etc.) in accordance with the following:

1. When attendance at a "Community Policing Event" begins while on duty and continues past the end of the normal duty shift, or begins prior to the start of the normal duty shift and continues into the normal duty shift, the time shall be considered a continuation of the normal workday.

Exhibit II

2. When attendance at a "Community Policing Event" begins and ends while off duty, the employee shall receive premium pay at a rate of one and one-half (1½) times his/her straight time rate of pay for all hours worked while attending such Community Policing Events or the employee shall receive a minimum guarantee of two (2) hours at one and one-half (1½) times his/her straight time rate of pay, whichever is greater.

D. When an off-duty employee covered by this Agreement is directed by a supervisor to place a telephone call in furtherance of City business, and the employee engages in the directed telephone activity for more than an insubstantial amount of time in any particular instance, then, after supervisory verification of the necessity and duration of the call (such may include obtaining statements from the participants to the phone call), the time involved in such telephone call shall be considered authorized and approved work within the meaning of this section.

E. In lieu of being paid overtime as described in this article an employee may be permitted or required to adjust his/her schedule within the same work period on an hour-for-hour basis.

14.4 Except for Holidays, paid leave shall not count as hours worked for the purpose of computing overtime.

14.5 CALL-OUT

A. All employees in a position eligible for overtime are entitled to "call-out" pay if he/she is ordered to and does report with less than sixteen (16) hours notice. Such employee shall receive the premium rate for all such unscheduled hours that he/she actually works, with a minimum guarantee of three (3) hours at such rate.

B. All employees in a position eligible for overtime are entitled to a minimum of two (2) hours of work adjustment time if he/she is ordered to and does report with more than sixteen (16) hours notice. Such time shall be taken within the work period. It is understood that only hours compensated for shall be counted toward hours worked for the purpose of computing

overtime. A grievance involving this subsection may only be grieved to the second step of the grievance procedure.

14.6 STAND-BY

Employees assigned to mandatory standby status for one calendar week at a time will be paid \$100.00 for each such week of standby. If the mandatory standby is for less than one week, then the \$100 shall be prorated. Mandatory standby will normally be on a weekly basis.

14.7 OUT OF CLASS

Employees assigned by their Department Head or his/her designee to work out-of-class as a Lieutenant for a full shift shall be paid ten percent (10%) above their base rate of pay, but not to exceed the maximum rate of pay assigned to the higher classification. Employees assigned by their Department Head or his/her designee to work out-of-class as a Sergeant for at least forty (40) consecutive hours, and for any consecutive hours in excess of forty (40), including holidays, shall be paid five percent (5%) above their base rate of pay for each full shift of such assignment.

14.8 COURT TIME

A. Employees shall receive court pay in the following manner:

1. When their court appearance begins while on duty and continues past the end of the normal duty shift, or begins prior to the start of the normal duty shift and continues into the normal duty shift, they will be permitted to retain witness fees, including travel time, and shall be considered a continuation of normal duty shift.
2. When the court appearance begins and ends while off duty, they shall retain the witness fee and receive premium pay for court time with a minimum payment of three (3) hours in addition to the witness fee.
3. A telephone deposition of the employee while off duty shall be compensated with a minimum of one hour's pay.
4. An employee placed on on-call status for court duty, while off duty, shall receive a minimum of three (3) hours premium pay for each date that they are required to serve such on-call. For purposes of

Exhibit II

1 this paragraph, "on-call" means to be prepared to respond within one
2 (1) hour in court-appropriate attire to a court appearance while off
3 duty.

- 4 **B.** An employee who is excused from jury duty or from appearance as a
5 witness during his/her normal working hours must report to his/her
6 supervisor to determine if he/she will be required to work the remainder of
7 his/her normal work schedule.
8

ARTICLE 19

MISCELLANEOUS EMPLOYEE BENEFITS

19.1 Effective upon ratification or resolution of impasse (whichever occurs first), the City, during the term of this Agreement (October 1, 2016 – September 30, 2019), will provide a dry cleaning allowance each year of the agreement in the amount of \$550.00. One-half (½) shall be paid on a pro-rata basis on or about October 1st, and on or about April 1st. There shall be no retroactive payments for any period prior to ratification or resolution of impasse (whichever occurs first).

Effective upon ratification or resolution of impasse (whichever occurs first), the City, during the term of the Agreement (October 1, 2016 – September 30, 2019), shall provide an annual clothing allowance to all personnel assigned to plain clothes each year of the agreement in the amount of: \$575.00. One-half (½) shall be paid on a pro-rata basis on or about October 1st, and on or about April 1st. There shall be no retroactive payments for any period prior to ratification or resolution of impasse (whichever occurs first).

Effective upon ratification or resolution of impasse (whichever occurs first), each fiscal year of this Agreement (October 1, 2016 – September 30, 2019), all employees covered by this Agreement shall receive one hundred (\$100.00) dollars annual leather allowance, to be paid on or about October 1st. There shall be no retroactive payments for any period prior to ratification or resolution of impasse (whichever occurs first).

There shall be no allowances under this article after September 30, 2019, unless and until there is a new Agreement in effect providing for such allowance.

19.2 Annual health assessments will be given employees covered by this Agreement. Periodic physical examinations will be given to employees covered by this Agreement as follows: Type A at employment and at age 40, 50 and 60. Type B

Exhibit III

at age 30, 35, 45 and 55. The City's Employee Health Services and/or City doctor may prescribe more extensive tests (e.g., stress, EKG) should the physical history or preliminary lab work indicate a need for a more extensive physical examination.

19.3 In the event of death, all compensation due to the employee as of the effective date of death shall be paid to the beneficiary, surviving spouse, or to the estate of the employee as determined by law or by executed forms in his/her personnel folder.

19.4 When an employee is required to use his/her personal automobile in the performance of City business, said employee will be reimbursed for operating expenses at the rate outlined in the City's Travel Policy, exclusive of mileage traveled to and from his/her work location.

19.5 If the State of Florida discontinues the funding of the Salary Incentive Program for local and state law enforcement officers and correctional officers (F.S.943), then the City shall, upon request, meet and confer with the FOP concerning the City's adoption and funding of an analogous program.

19.6 General: Leave Bank

A. An employee having used all his/her sick and vacation leave due to absence resulting from a serious illness, accident or disability of the employee, or of the employee's immediate household family (defined as spouse, or certified/registered domestic partner or dependent children, or mother, or father, living in the same domicile), where the employee's presence is needed, may receive vacation leave donated on a strictly voluntary basis by fellow employees. Fellow employees may contract to donate a minimum of two (2) hours of their vacation leave time to the affected employee. The maximum number of hours an employee may donate is forty (40) hours for employees working a 40-hour workweek. The total donated time from fellow employees shall not exceed 480 hours, except as provided below.

There shall be no restrictions, other than the limits described herein, on the amount of hours that may be donated in instances where the serious illness, accident or disability is expected, based upon a reasonable medical probability, to result in death within one (1) year from the creation of the

Exhibit III

1 leave bank. Only leave that may be applied to pension service credit or
2 included as 'earnings,' as defined in the Consolidated Police Officer and
3 Firefighters Retirement plan, may be donated.

4 B. ELIGIBILITY

5 Only regular full-time employees having completed initial probationary
6 period may receive donated vacation leave from fellow employees, or
7 volunteer to donate vacation leave to a fellow employee.

8 C. TIME LIMIT

9 The sick or disabled employee will remain on the payroll until he/she is able
10 to return to work, donated leave expires, or until the doctor determines the
11 employee's illness or accident has become a total and permanent disability,
12 whichever comes first. If the illness or accident is total and permanent,
13 employee should file for disability retirement with the Social Security
14 Administration and the City of Gainesville. During the time in which the sick
15 or disabled employee is receiving donated vacation leave from fellow
16 employees, he/she will not be eligible to earn (accrue) sick leave or vacation
17 leave. In the case of the employee whose immediate household member
18 is sick or disabled, such employee shall remain on the payroll until his/her
19 presence is no longer needed or the donated leave expires. While the
20 employee remains on payroll in this situation, he/she will not be eligible to
21 earn (accrue) sick leave or vacation leave.

22 Should an employee return to work prior to exhausting all donated hours,
23 unused hours shall be returned to the donors, except when the employee
24 is returned to duty on a reduced leave schedule basis, i.e., X number of
25 hours per day or X number of days per week, or on an intermittent leave
26 basis, so long as the leave is taken in connection with the original
27 qualifying circumstance.

28
29 D. In addition to the procedures described in items A through C above, an
30 employee may, with the following additional restrictions, receive voluntarily
31 donated vacation leave in advance of having used up all of his or her sick

Exhibit III

1 leave. In those situations where an employee is absent due to serious
2 illness, accident or disability, which condition is expected, based upon
3 reasonable medical probability, to result in death within one (1) year from
4 the creation of the Leave Bank, the Leave Bank may be created and
5 donated vacation leave credited to the employee's sick leave account prior
6 to the employee having exhausted his or her own earned sick leave.
7 Utilization of donated vacation leave in this manner is limited to those
8 situations in which the employee, at the time the authorization to create a
9 Leave Bank is given, had all but two years or less of the credited service
10 needed for normal retirement and was otherwise eligible for normal
11 retirement.

12 19.7 The take-home car program:

- 13 A. All employees who have a Police Department take-home vehicle, shall be
14 permitted to use the take-home vehicle within Alachua County for the
15 purposes of driving to and from work, attending accredited schools
16 (educational classes), picking up uniforms from the dry cleaners, or
17 engaging in physical fitness activity, or unless justified for operational
18 purposes designated by the Chief, i.e. on call.
- 19 B. In addition, employees may transport passengers who are not City
20 employees and are not on City business during the employee's off-duty
21 hours under the following conditions:
- 22 1. Passengers are restricted to the employee's family members as defined
23 in Article 12.2D of this Agreement;
 - 24 2. Transportation is limited to driving family members to and from daycare
25 or school;
 - 26 3. The employee must submit a list of those family members to be
27 transported, along with the address(es) of the daycare or school, to the
28 Chief of Police or designee and receive written approval prior to
29 transporting any person not a City employee or a person on City
30 business;

Exhibit III

- 1 4. Any change in the number or identity of family members to be
- 2 transported must be made in writing to the Chief of Police or designee
- 3 for approval at least fifteen (15) days prior to beginning the change;
- 4 5. The officer shall purchase at his/her sole expense, liability coverage on
- 5 the vehicle assigned to him/her and the City of Gainesville shall be
- 6 named an additional insured. The employee must also provide Personal
- 7 Injury Protection (PIP) coverage as required by statute. The limits of the
- 8 liability coverage shall be at least \$100,000 per individual and \$300,000
- 9 per occurrence. Proof of insurance shall be submitted to the Chief of
- 10 Police or designee upon beginning this program and shall be verified on
- 11 an annual basis;
- 12 6. The officer shall maintain the required automobile liability and PIP
- 13 coverage for as long as the member participates in the take-home
- 14 vehicle program and when passengers under this subsection may be
- 15 transported. The required automobile liability and PIP coverage shall be
- 16 in place prior to the officer transporting a family member in the City
- 17 vehicle. Thirty (30) days notice shall be provided to the City of
- 18 Gainesville before the insurance coverage on the vehicle can be
- 19 cancelled or reduced below required limits;
- 20 7. The officer shall execute an affidavit, prior to transporting any family
- 21 member, that he/she has read the conditions and that he/she has
- 22 complied with said conditions;
- 23 8. Failure to adhere to all of the conditions provided herein shall subject
- 24 the member to disciplinary action up to and including termination.
- 25 C. Employees who are required to take police-related action during off-duty
- 26 hours and as a result of driving a take-home vehicle (in accordance with
- 27 Department Manual), shall do so at the appropriate rate of pay and only for
- 28 the actual hours worked. Call out pay shall not be applicable. Guidelines
- 29 shall be established by the Police Department and included in the
- 30 Department Manual.

Exhibit III

1 **D Employees shall not be eligible for a take-home vehicle unless they live**
2 **within Alachua County.**

3 **E. Employees shall not be eligible for a take-home vehicle while on restricted**
4 **duty or while suspended from duty.**

5

ARTICLE 29**WAGES****29.1 One-Time Payment****A.**

Effective the beginning of the first pay period following ratification or resolution of impasse, bargaining unit members shall receive a one-time, lump sum, non-pensionable payment of \$800.

B.

The processing of one-time payments under 29.1 shall occur within 60 days of final ratification or resolution of impasse. There shall be no one-time payments, except for those provided for herein, unless and until there is a new agreement in effect providing for such one-time payments.

29.2 Merit or Performance Increases

A. Effective the beginning of the first pay period following ratification or resolution of impasse, Merit Increases shall be provided in accordance with this paragraph (29.2).

B. For regular (non-probationary) employees, the review period is a one-year period from October 1 through the next September 30.

C. To receive the merit increase, an employee must be a bargaining unit member on the effective date of the increase.

Calendar Year	Rating Period	Eligibility	Job Classification	Increase to Annual Base Rate*	Effective Date of Increase
2017	Oct. 1, 2015 – Sept. 30, 2016	Overall performance score of 3.0 or higher	Officer	\$0	N/A
			Corporal	\$0	
			Sergeant	\$0	
2018	Oct. 1, 2016 –		Officer	\$2,020	Upon

Exhibit IV

	Sept. 30, 2017		Corporal	\$2,310	ratification or resolution of impasse
			Sergeant	\$2,825	
2019	Oct. 1, 2017 – Sept. 30, 2018		Officer	\$1,040	January 14, 2019
			Corporal	\$1,190	
			Sergeant	\$1,455	

*Any increase shall be limited by the pay range maximum and shall not conflict with an employee's DROP agreement.

Should there be no performance evaluation for an employee for the rating period specified, the most recent available performance evaluation shall be utilized to determine eligibility. In the event an employee, who is otherwise eligible, did not complete his/her *initial* probationary period during the prior rating period, the employee shall become eligible upon satisfactory completion (score of 3.0 or higher) of his/her *initial* probationary period. Payment in those instances shall be made prospectively from the beginning of the first full pay period following completion of the *initial* probationary period.

D. There shall be no Merit or performance increases after the expiration date of this Agreement unless and until there is a new agreement in effect providing for such increases.

29.3 A. Promotion

When an employee is promoted, his/her salary shall only be advanced to a rate in the new pay range which would provide at least a five percent (5%) increase in the range from which he/she was promoted. The effective date of the promotion becomes the employee's new evaluation date. An employee's evaluation date shall be the anniversary date of the last salary adjustment.

B. Transfer

Exhibit IV

There shall be no immediate change in the salary rate of an employee who is transferred. If an employee is transferred to a position in a class having a higher salary range, such change is a promotion.

C. Temporary Assignments.

When an employee is assigned to perform work for a position in a job classification with a lower pay grade on a temporary basis, the employee shall not suffer a decrease in pay.

D. Demotion

When an employee is demoted to a position in a job classification with a lower pay grade, the employee shall be paid within the approved range for the lower paid job classification. The rate of pay shall be set by the Human Resources Director.

29.4 In the event an employee is subject to an income deduction order, the City shall charge the employee an administrative fee, or fees, in accordance with limits established by law.

Exhibit I

City of Gainesville
2016 - 2019 Pay Plan
Police – FOP

Effective 10/1/2016

		Minimum	Midpoint	Maximum
Grade P1	Annual Salary	\$36,067.49	\$45,084.36	\$54,101.23
	Hourly	\$17.3401	\$21.6752	\$26.0102
7323		Police Officer (non-certified)		

		Minimum	Midpoint	Maximum
Annual Salary		\$41,938.94	\$52,423.68	\$62,908.41

Exhibit IV

Grade P2	Hourly	\$20.1630	\$25.2037	\$30.2444
	7321	Police Officer		

Grade P3	Annual Salary	Minimum	Midpoint	Maximum
		\$46,132.83	\$57,666.04	\$69,199.25
	Hourly	\$22.1792	\$27.7241	\$33.2689
	7313	Police Corporal		

Grade P4	Annual Salary	Minimum	Midpoint	Maximum
		\$51,042.29	\$63,802.87	\$76,563.45
	Hourly	\$24.5396	\$30.6745	\$36.8094
	7331	Police Sergeant		