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**In the Matter of the Special Magistrate Proceeding  
SM-2015-032  
CITY OF SARASOTA, FLORIDA  
and  
SOUTHWEST FLORIDA POLICE BENEVOLENT  
ASSOCIATION, INC.**

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Appearances

City of Sarasota	:	Karen Morinelli, Esq.
	:	Sarah Warren, Esq.
SW Florida Police Benevolent Assn	:	James Brantley, Esq.
Special Magistrate	:	Mark Lurie

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City of Sarasota

: Karen Morinelli, Esq.

Sarah Warren, Esq. Assistant City

SW Florida Police Benevolent Assn., Inc.

: James Brantley, Esq.

The undersigned, serving as a Special Magistrate under the procedures of the Public Employees Relations Commission of the State of Florida, conducted a hearing on June 7, 2016, at which the City of Sarasota, Florida (the "City" or the "Department") and the Southwest Florida Police Benevolent Association, Inc. (the "Union" or the "PBA") presented testimony and documentary evidence in support of their respective positions regarding those terms for which they had reached impasse in their negotiation of a collective bargaining agreement to succeed their agreement that ended on September 30, 2014. Both parties have proposed a three-year contract, to run from October 1, 2014 through September 30, 2017.

The findings and recommendations of the Special Magistrate are as set forth below. The Special Magistrate's statutory mandate is to achieve a prompt, peaceful and just settlement of the dispute, taking into account prescribed statutory criteria.

August 10, 2016

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Mark Lurie, Special Magistrate

State of Florida  
County of Palm Beach

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of August, 2016 by Mark Lurie, who is personally known to me.

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Notary Public

### Preface

This proceeding is conducted under the authority of Florida Statute §447.403 and §447.405. Its purpose is for the Special Magistrate to issue a recommended decision that will achieve a prompt, peaceful, and just settlement of the impasse issue(s) pertaining to the parties' collective bargaining agreements.

F.S. §447.403 Resolution of impasses states, in relevant part, the following:

- (1) If, after a reasonable period of negotiation concerning the terms and conditions of employment to be incorporated in a collective bargaining agreement, a dispute exists between a public employer and a bargaining agent, an impasse shall be deemed to have occurred when one of the parties so declares in writing to the other party and to the commission...
- (2) (a) If no mediator is appointed, or upon the request of either party, the commission shall appoint, and submit all unresolved issues to, a special magistrate acceptable to both parties... If the parties are unable to agree on the appointment of a special magistrate, the commission shall appoint, in its discretion, a qualified special magistrate.
- (3) The special magistrate shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on any and all unresolved contract issues. The hearings shall be held at times, dates, and places to be established by the special magistrate in accordance with rules promulgated by the commission.

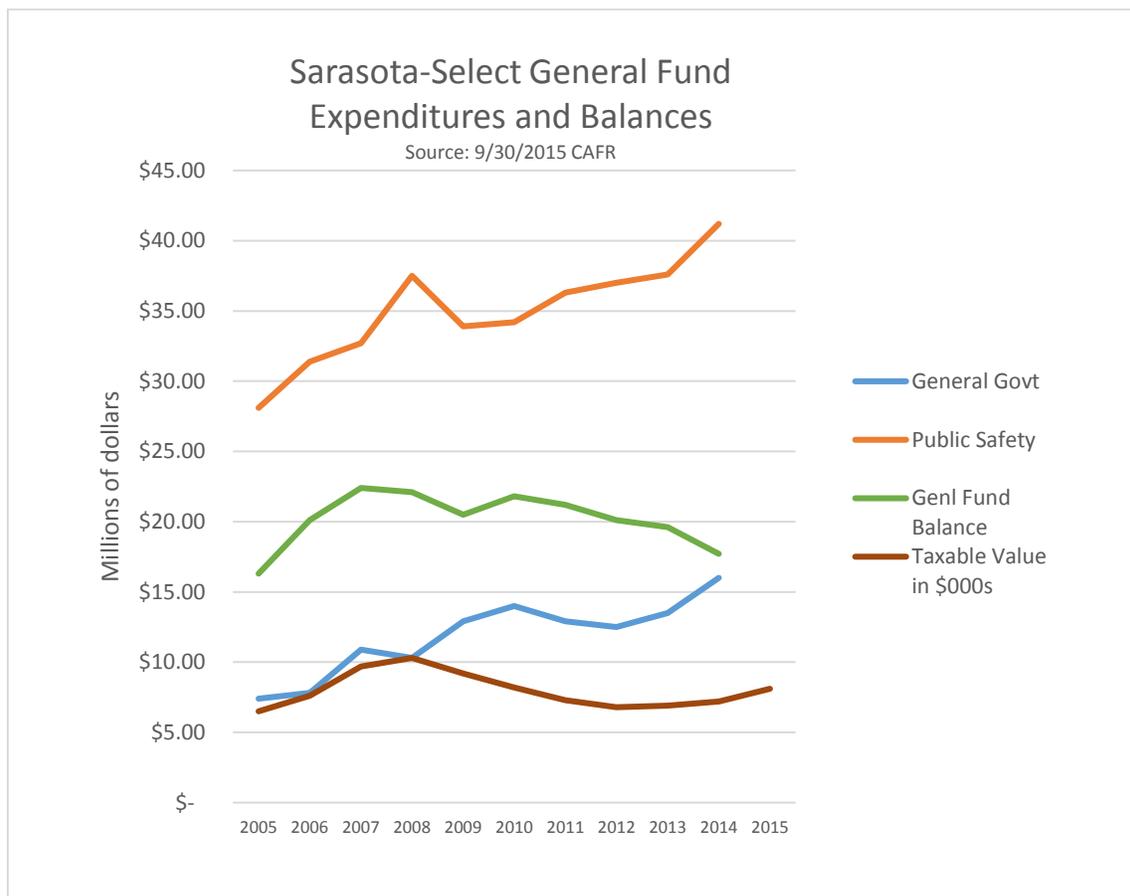
Under F.S. §447.405, the factors, among others, to be given weight by the special magistrate in arriving at his recommended decision are to include:

- (1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.
- (2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.
- (3) The interest and welfare of the public.
- (4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to (skills, qualifications, hazards) and retirement plans, sick leave and job security.
- (5) Availability of funds.

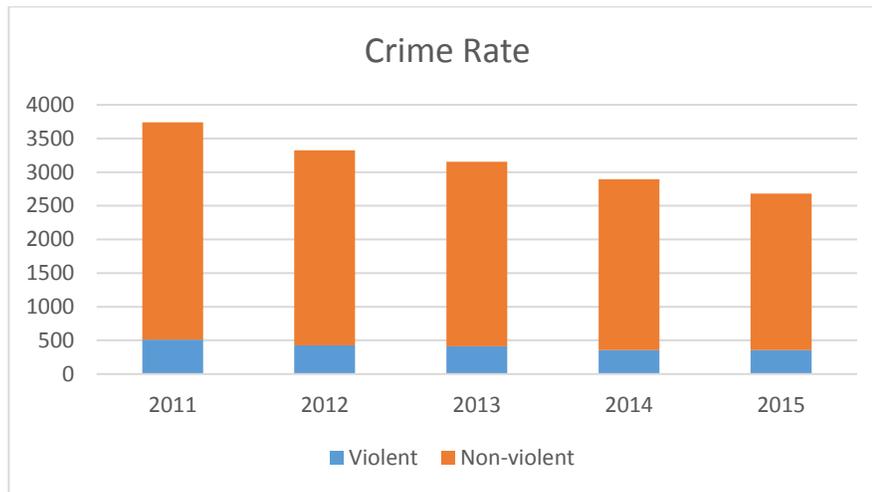
### Background – Sarasota and its Police Force

The City of Sarasota, Florida operates under the Commission – City Manager form of government. The City Commission consists of five elected citizens and they appoint the City Manager. The City Manager is the chief administrative officer for the City's business and the administration of its various departments. The Commission determines policy, adopts legislation, approves the City's budget, sets taxes and fees, appoints the City Auditor, Clerk, Attorney, and members of all boards and committees.

The 2008 recession took a financial toll on the City. Property values and tax receipts declined sharply from 2008 to 2012. Since then, taxable values and General Fund revenues (the source of police compensation) have been increasing. However, expenditures for both General Government and Public Safety have been increasing at a greater rate than has the increase in real estate values, and the General Fund Balance has been declining. Nonetheless, as will be seen, the Availability of Funds statutory criterion will not be a controlling factor in the Special Magistrate's prescription of wages.<sup>1</sup>



The City's Police Department consists of three divisions: Criminal Investigation, Support Services and Patrol Division, with a Captain for each. It is staffed by 163 sworn officers and 60 non-sworn personnel. Although the City's population has remained fairly constant over the base five years, its crime rate has decreased. No data were submitted as to the reasons for the decline.



Source: Sarasota Police Department 2015 Annual Report

The Department has divided the City into the same 10 geographic patrol zones since 2006. The zones are contained within three districts (North, Central and South). Currently, there are four 12-hour Patrol Shifts, each supervised by a Lieutenant and three Sergeants.

The Union represents two bargaining units with separate but largely similar collective bargaining agreements:

- Full-time and part-time permanent 1st and 2nd Class Police Officers and Sergeants; permanent full-time Community Service Aide Supervisor and Community Service Aides, and full-time permanent Criminalist I, Criminalist II, and Criminalist III; and
- Permanent full time Lieutenants.

Their collective bargaining agreements will be referred to, respectively, as

the "Police Officer's 2014 CBA" or simply the "Officers' CBA," and  
the "Lieutenants' 2014 CBA" or simply the Lieutenants' CBA

and, jointly, as the "2014 CBAs." Members, in the aggregate, of both bargaining units are sometimes referred to as "Officers."

Unless otherwise stated, recommendations made in this report with regard to either CBA are intended to pertain to substantively comparable provisions of the other.

As of August of this year, the parties will have been in negotiation of a new contract for three years. The City declared impasse in August 2015. Of the statutory factors to be considered under F.S. §447.405, the following are the most relevant to this case. They are

*The interest and welfare of the public and*

*comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.*

Regarding the latter, during the hearing, the advocates proffered a list of twelve locales as comparators. The Special Magistrate rejects all but three because they are not “governmental bodies of comparable size.” The twelve locales are listed here; those deemed to be comparably-sized are highlighted:<sup>2</sup>

Florida Governmental Entities - 2015 Populations in Thousands

Naples	City	21
Venice	City	22
Bradenton	City	54
Sarasota City	City	55
North Port	City	62
Ft Myers	City	74
Clearwater	City	113
Charlotte County	County	163
St Petersburg	City	257
Collier County	County	333
Manatee County	County	334
Tampa	City	369
Sarasota County	County	386
Lee County	County	645
Pinellas County	County	922
Hillsborough County	County	1,280

The 2014 CBA for officers and sergeants is 114 pages long; that for lieutenants is 112 pages. The length of the agreements for the comparator cities are

North Port	57 pages
Fort Myers	65 pages
Bradenton Rank & File	54 pages
Bradenton Lieutenants	46 pages

The length of the Sarasota CBAs is indicative of the number and complexity of their provisions and of the operational burden and constriction of managerial options that, for a department this

small, have necessarily been sclerotic in effect. Several provisions of the CBAs reflect distrust: they are designed to anticipate and preclude acts of both bad faith and poor managerial judgment. The Special Magistrate finds no basis for either presumption and, where consistent with the statutory criteria, recommends the removal of those provisions.

### **Recommendations Overview**

**This decision recognizes substantial disparities between the terms and conditions of the Sarasota-PBA collective bargaining agreement and the terms and conditions of similar municipalities: its municipal “comparators”:**

**Members of the PBA have appreciably higher base wages than the average of its three comparators.**

**No other comparator has minimum staffing requirements, none mandates the granting of a minimum number of leave requests, and none calculates vacation leave, sick leave incentive leave [“bonus vacation days” paid for the non-use of sick leave] or compensatory time off as “time worked” when computing overtime.**

**And none mandates the right of officers to take their vehicles home.**

**In this decision, the Special Magistrate recommends wage increases that will exacerbate the amount by which the Department’s wage schedule exceeds the average of the comparator municipalities’, and also recommends that officers’ overtime start at 40 hours and 80 hours rather than at the 43 and 86 hours permitted by the FLSA. The Special Magistrate makes these recommendations because he is also recommending the termination of the aforesaid constrictions on managerial discretion, constrictions that the PBA has viewed as being benefits important to its members.**

**The recommendations set forth in this decision should be considered as a package; that is, as a reasonable trade-off, in the aggregate, of gains and losses within the context of the substantial revisions that are being recommended. The recommendations should not be cherry-picked by each party.**

The recommendations presume that all contractual provisions for which tentative approval has been given will be adopted. Except where otherwise stated, the Special Magistrate recommends all of the City's proposals for relocating provisions in the Appendices to numbered CBA Articles.

## ENDNOTES

### 1 Source of graph: 2015 CAFR

FYE	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015	
Genl Govt (\$Millions)	\$ 7.40	\$ 7.80	\$ 10.90	\$ 10.30	\$ 12.90	\$ 14.00	\$ 12.90	\$ 12.50	\$ 13.50	\$ 16.00		
Public Safety (\$Millions)	\$ 28.10	\$ 31.40	\$ 32.70	\$ 37.50	\$ 33.90	\$ 34.20	\$ 36.30	\$ 37.00	\$ 37.60	\$ 41.20		
Genl Revenues (\$Millions)	\$ 56.10	\$ 64.10	\$ 70.90	\$ 71.80	\$ 59.30	\$ 57.10	\$ 71.50	\$ 56.50	\$ 54.60	\$ 59.00		2014 CAFR p 168
Genl Fund Balance	\$ 16.30	\$ 20.10	\$ 22.40	\$ 22.10	\$ 20.50	\$ 21.80	\$ 21.20	\$ 20.10	\$ 19.60	\$ 17.70		
Taxable Value in \$000s	\$ 6.50	\$ 7.60	\$ 9.70	\$ 10.30	\$ 9.20	\$ 8.20	\$ 7.30	\$ 6.80	\$ 6.90	\$ 7.20	\$ 8.10	2014 CAFR p 173 and PBA #Ex 2
Genl Govt as % of Revs	13%	12%	15%	14%	22%	25%	18%	22%	25%	27%		
Public Safety as % of Revs	50%	49%	46%	52%	57%	60%	51%	65%	69%	70%		

### 2 City and County Populations at 2015: cities source: <http://www.citypopulation.de/USA-Florida.html>; counties source: <http://www.us-places.com/Florida/population-by-County.htm>

**BASE PAY  
FOR SWORN AND NONSWORN PERSONNEL  
OTHER THAN CRIMINALISTS**

Impasse of the parties' 2011-2014 agreement was resolved by continuing the status quo and issuing PBA members lump sum payments of \$2,000 or \$3,000.<sup>1</sup> This Special Magistrate proceeding pertains to the 3 contract years beginning October 1, 2014. The CBAs contain wage schedules with step increases keyed to years of service. During the Special Magistrate proceeding, the parties sometimes referred to across-the-board percentage increases in these wage schedules as cost-of-living-adjustment or "COLA" increases. The Special Magistrate will use that term as well but, in doing so, does not attribute any correlation between such percentage increases and changes in the consumer price index.

**The City proposes** the following,

For sworn personnel:

FY 10/01/14 to 09/30/2015	No COLA increase. A \$2,000 lump sum payment before applicable withholding, to be paid after ratification of the agreement.
FY 10/02/15 to 09/30/2016	a 3% COLA effective as of Union ratification of the CBA, non-retroactive
FY 10/1/2016 to 09/30/2017	a wage reopener, conditioned on cba ratification by a deadline that has passed.

For non-sworn personnel other than criminalists:

FY 10/01/14 to 09/30/2015	No COLA increase. A \$2,000 lump sum payment before applicable withholding, to be paid after ratification of the agreement.
FY 10/02/15 to 09/30/2016	a 3% COLA effective as of Union ratification of the CBA, non-retroactive

**The Union proposes** three successive 3% COLA increases effective October 1 of 2014, 2015 and 2016 for the members of both bargaining units.

The Union noted that its members had not received a COLA since 2008, whereas other City employees, including members of the Department's senior management, had received COLA increases.<sup>2</sup>

The Union asserted that the City can afford the PBA COLA increases because its fiscal health is improving. The City responded that the PBA's increases would unreasonably burden

the General Fund, and that non-retroactivity of its proposed 3% increase is essential because it will be paid for, in part, by other City proposals taking effect upon ratification that will decrease the payroll costs.

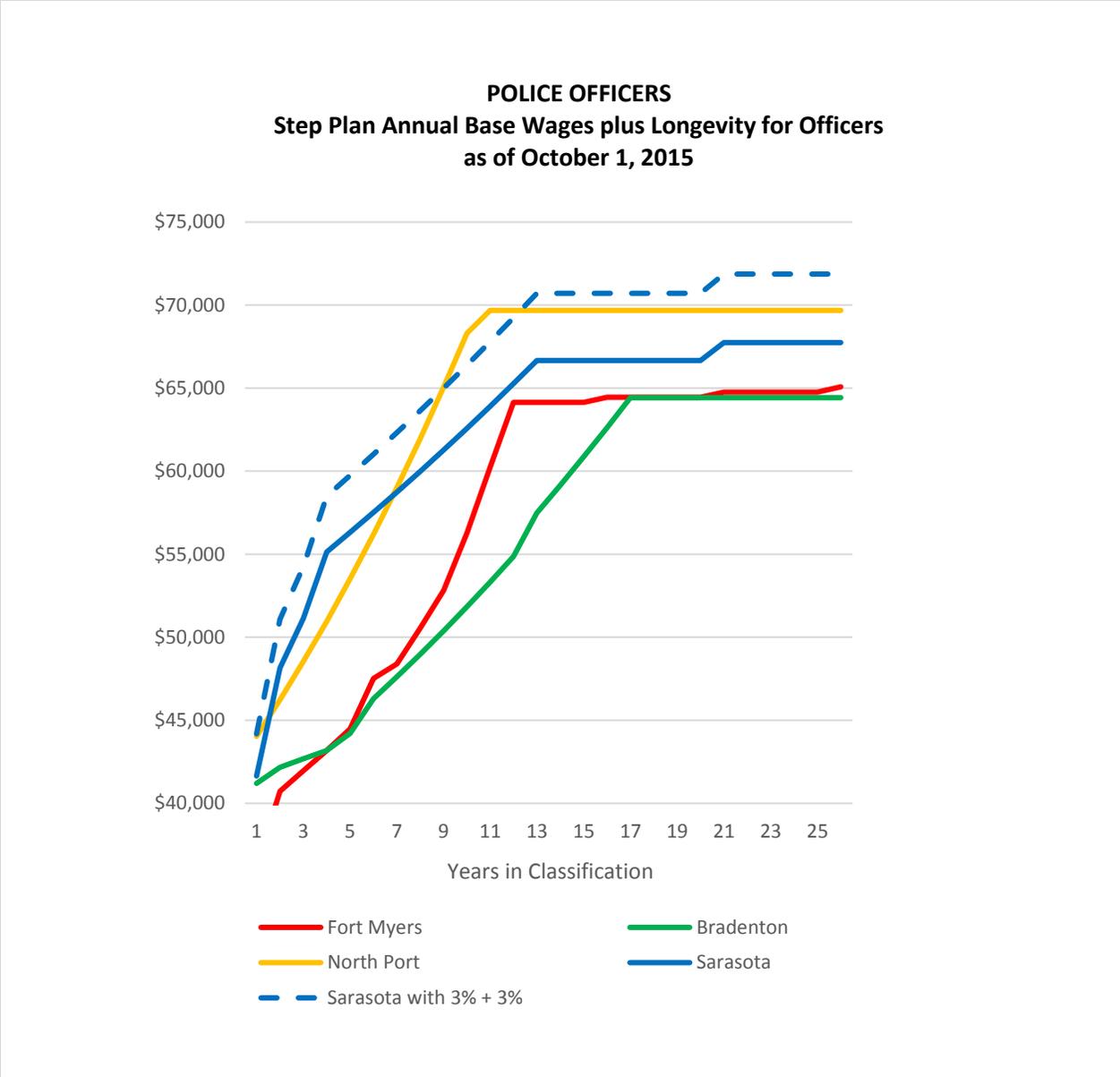
#### DISCUSSION

Since 2008, City employees other than the PBA bargaining units' members received retroactive COLA increases of 12½%; the PBA has received no COLA. The PBA asserts that the granting of COLAS to non-PBA members while denying them to its members has been unfair. The Special Magistrate finds that that contention may or may not be valid. Fairness or unfairness-in-fact between PBA and non-PBA employees turns upon whether, in 2008, their respective rates of pay had been the same percentage of the market rates for comparable work. If they had been the same percentage, then the 12½% aggregate increase to the non-PBA while denying the PBA any COLA was unfair. The Special Magistrate finds, however, that the question is moot because the evidence presented in this proceeding was insufficient for him to determine what their respective 2008 wage rates to market rates were.

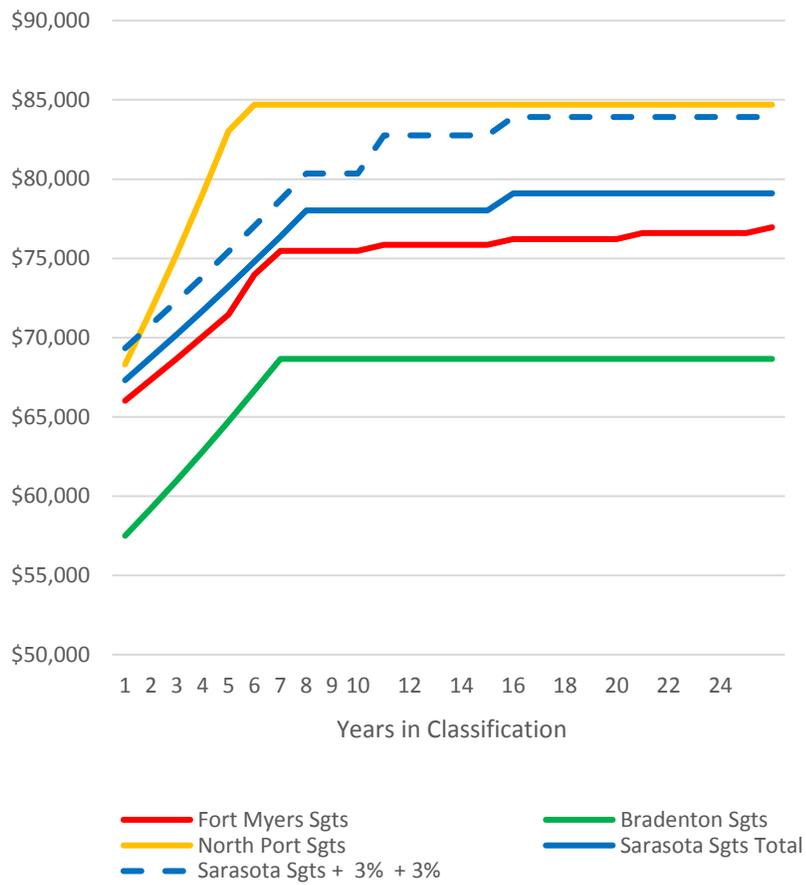
Turning to the statutory standards of wage comparability, the primary relevant criterion in this case is the

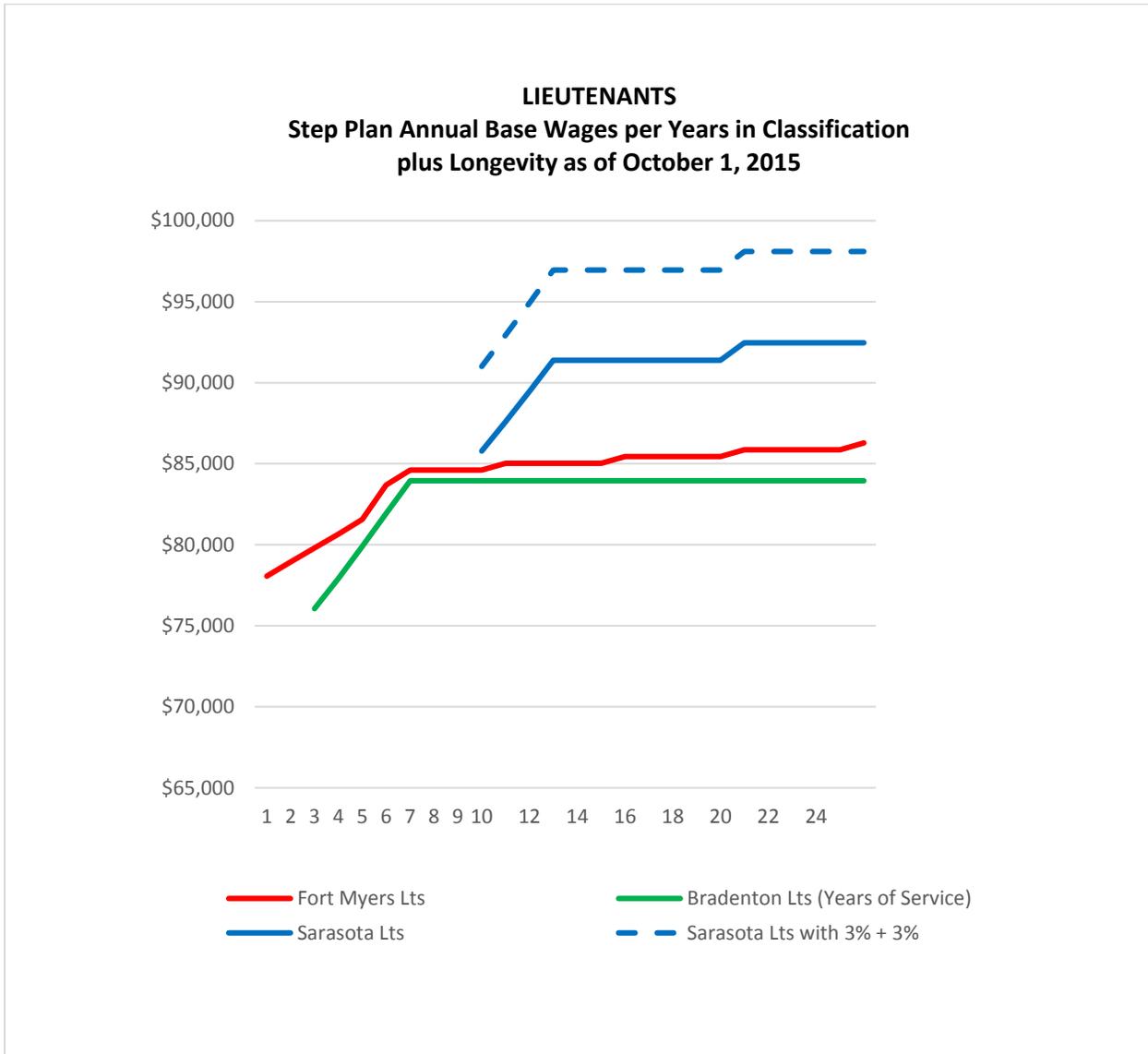
*Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.*

During the hearing, the advocates proffered a list of twelve locales as comparators. The Special Magistrate rejected all but three because they were not "governmental bodies of comparable size." The three deemed to be of comparable size were Bradenton, Fort Myers and North Port. The following graphs show the sums, at October 1, 2015, of the base annual pay plus longevity pay of Officers, Sergeants and Lieutenants of the three comparators,<sup>3</sup> and that of Sarasota as of September 30, 2014, and those same Sarasota rates inclusive of an across-the-board 3% increase.<sup>4</sup>



**SERGEANTS**  
**Step Plan Annual Base Wages plus Longevity**  
**per Years in Classification as of October 1, 2015**





For sources of the data relied upon, see Appendix A of this BASE PAY section.

The data shows that Sarasota's Officers, Sergeants and Lieutenants were above comparability as of September 30, 2014 and that additional 3% COLAs will place them still higher. Nothing in the current 2016 CBAs of Bradenton, Fort Myers or North Port will materially change those proportions.

#### **RECOMMENDATION**

For sworn and nonsworn personnel other than Criminalists, the Special Magistrate recommends 3% COLA increases to the wage schedule effective October 1, 2014 and October 1, 2015, with a wage reopener for October 1, 2016. The solid blue and blue dash lines in the graphs above show the effect of these increases on the Wage Schedule. The following is the recommended text:

##### *SWORN and NONSWORN PERSONNEL (Other Than Criminalists)*

*The Wage Schedule set forth in Appendix D shall be increased by 3% across the board effective October 1, 2014, and sworn and nonsworn personnel other than criminalists shall be increased in step within the Wage Schedule and paid retroactive to October 1, 2014.*

*The Wage Schedule shall thereafter be increased by another 3% across the board effective October 1, 2015, and sworn and nonsworn personnel other than criminalists shall be increased in step within the Wage Schedule and paid retroactive to October 1, 2015.*

*And the parties shall reopen negotiations over wages and one other item for the FY 2015-2016 Agreement.*

## APPENDIX A

## WAGE DATA FOR WAGE RATE GRAPHS

**Bradenton, Ft. Myers, North Port and Sarasota: Pay Plan and Longevity CBA provisions****BRADENTON****Officers, Detectives and Sergeants** 2013-2016 CBA:ARTICLE 22, **PAY PLAN**, Section 1.

...

The City and the Union agree to a wage opener for the third year of the contract [October 1, 2015]; however, in the event the City and the Union have not yet agreed to an increase, any across the board pay increase given to all other City employees shall also be given in the same manner to the bargaining unit employees covered under this contract who are not yet maxed out in their pay grade. In the event that other City employees are not given an across the board increase, the collective bargaining members covered by this contract shall still receive a 1% across the board increase the first full pay period of October 2015 unless otherwise negotiated.

AGREEMENT ratified on October 7, 2015.

**An increase of \$2,200 approved for all rank and file effective as of October 1, 2015.**

**Police Officer Pay Plan**

	<u>Original</u>	<u>\$2,200 Increase</u>	<u>Years of Completed Service</u> (as of October 1)
\$	39,000	\$ 41,200	0 New Hire
\$	39,975	\$ 42,175	1
\$	40,475	\$ 42,675	2
\$	40,975	\$ 43,175	3
\$	42,000	\$ 44,200	4
\$	44,100	\$ 46,300	5
\$	45,423	\$ 47,623	6
\$	46,785	\$ 48,985	7
\$	48,189	\$ 50,389	8
\$	49,635	\$ 51,835	9
\$	51,123	\$ 53,323	10
\$	52,657	\$ 54,857	11
\$	55,289	\$ 57,489	12
\$	56,947	\$ 59,147	13
\$	58,656	\$ 60,856	14
\$	60,415	\$ 62,615	15
\$	62,228	\$ 64,428	16

Lieutenants 2013-2016 CBA:

ARTICLE 22, **PAY PLAN**, Section 1.

The Pay Plan attached hereto as Appendix A shall remain effective from October 1, 2013, through September 30, 2016. Bargaining unit members shall be placed in steps as specifically denoted on Appendix A effective the first full pay period after ratification and approval by City Council. Beginning the first full pay period of fiscal year 2014-2015, all bargaining unit employees who are not maxed out (in the last step) shall advance one step in the pay grade. For the fiscal year that begins **October 1, 2015**, the City and the Union agree to a **wage opener** in order to determine pay increases for the third year of the contract.

AGREEMENT reached October 7, 2015. Lieutenant Pay Plan Effective 10/1/2015: "Increases current starting rate \$1,200 (from \$73,000 to \$74,200)"

10/1/2015			
Years of Service	Step	Hourly Rate	Annual Salary
18.9	2	\$ 36.5649	\$ 76,055.00
21.2	2	\$ 36.5649	\$ 76,055.00
13.6	2	\$ 36.5649	\$ 76,055.00
13.6	2	\$ 36.5649	\$ 76,055.00
18.1	3	\$ 37.4639	\$ 77,925.00
15.0	3	\$ 37.4639	\$ 77,925.00
19.9	3	\$ 37.4639	\$ 77,925.00
20.9	4	\$ 38.4159	\$ 79,905.00
21.4	6	\$ 40.3606	\$ 83,950.00

FORT MYERS

Officers, Sergeants and Lieutenants 2015-2018 CBA, **PAY PLAN:**

**Appendix A-1 Step Plan Effective October 2015**

**Police Officer Step Plan Effective October 2015**

Effective October 2015	Pay Period	Years of continuous service completed in classification on or before 09/30/2015											
		Non-Certified	Starting Pay	1	2	3	4	5	6	7	8	9	10
	Hourly	\$17.42	\$19.58	\$20.17	\$20.76	\$21.39	\$22.03	\$22.92	\$23.95	\$25.02	\$26.66	\$28.39	\$30.23
	Bi-Weekly	\$1,393.60	\$1,566.40	\$1,613.60	\$1,660.80	\$1,711.20	\$1,762.40	\$1,833.60	\$1,916.00	\$2,001.60	\$2,132.80	\$2,271.20	\$2,418.40
	Annual	\$36,233.60	\$40,726.40	\$41,953.60	\$43,180.80	\$44,491.20	\$45,822.40	\$47,673.60	\$49,816.00	\$52,041.60	\$55,452.80	\$59,051.20	\$62,878.40

**Police Sergeant Step Plan Effective October 2015**

Effective October 2015	Pay Period	Years of continuous service completed in classification on or before 9/30/2015						
		Starting Pay	1	2	3	4	5	6
	Hourly	\$31.74	\$32.38	\$33.02	\$33.69	\$34.36	\$35.04	\$35.75
	Bi-Weekly	\$2,539.20	\$2,590.40	\$2,641.60	\$2,695.20	\$2,748.80	\$2,803.20	\$2,860.00
	Annual	\$66,019.20	\$67,350.40	\$68,681.60	\$70,075.20	\$71,468.80	\$72,883.20	\$74,360.00

**Police Lieutenant Step Plan Effective October 2015**

Effective October 2015	Pay Period	Years of continuous service completed in classification on or before 9/30/2015						
		Starting Pay	1	2	3	4	5	6
	Hourly	\$37.53	\$37.95	\$38.37	\$38.78	\$39.21	\$39.64	\$40.08
	Bi-Weekly	\$3,002.40	\$3,036.00	\$3,069.60	\$3,102.40	\$3,136.80	\$3,171.20	\$3,206.40
	Annual	\$78,062.40	\$78,936.00	\$79,809.60	\$80,662.40	\$81,556.80	\$82,451.20	\$83,366.40

Officers, Sergeants and Lieutenants 2015-2018 CBA, **SENIORITY PAY:**

**APPENDIX B**

**SENIORITY BENEFIT**

B.1 Employees completing years of service outlined in section B2 by December 31 will receive the seniority benefit on the date of the first normal payroll distribution date in December.

B.2	<u>YEARS OF SERVICE COMPLETED</u>	<u>ANNUAL BENEFIT</u>
	5 THROUGH 9	1.5%
	10 THROUGH 14	2.0%
	15 THROUGH 19	2.5%
	20 THROUGH 24	3.0%
	25 AND UP	3.5%

Fort Myers																
	Start	1	2	3	4	5	6	7	8	9	10	12	14			
Officers - Pay Schedule	\$ 36,233	\$ 40,726	\$ 41,954	\$ 43,181	\$ 44,491	\$ 46,822	\$ 47,674	\$ 49,816	\$ 52,042	\$ 55,453	\$ 59,051	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878
Appendix B Benefit Percent	0.00%	0.00%	0.00%	0.00%	0.00%	1.50%	1.50%	1.50%	1.50%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.50%
Appendix B Benefit Amount	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 702	\$ 715	\$ 747	\$ 781	\$ 832	\$ 1,181	\$ 1,258	\$ 1,258	\$ 1,258	\$ 1,258	\$ 1,572
<b>Officers' Total Pay</b>	\$ 36,233	\$ 40,726	\$ 41,954	\$ 43,181	\$ 44,491	\$ 47,524	\$ 48,389	\$ 50,563	\$ 52,823	\$ 56,285	\$ 60,232	\$ 64,136	\$ 64,136	\$ 64,136	\$ 64,136	\$ 64,450
Sergeants - Pay Schedule	\$ 66,019	\$ 67,350	\$ 68,682	\$ 70,075	\$ 71,469	\$ 72,883	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360
Appendix B Benefit Percent	0.00%	0.00%	0.00%	0.00%	0.00%	1.50%	1.50%	1.50%	1.50%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.50%
Appendix B Benefit Amount	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,093	\$ 1,115	\$ 1,115	\$ 1,115	\$ 1,115	\$ 1,487	\$ 1,487	\$ 1,487	\$ 1,487	\$ 1,487	\$ 1,859
<b>Sergeants' Total Pay</b>	\$ 66,019	\$ 67,350	\$ 68,682	\$ 70,075	\$ 71,469	\$ 73,976	\$ 75,475	\$ 75,475	\$ 75,475	\$ 75,475	\$ 75,847	\$ 75,847	\$ 75,847	\$ 75,847	\$ 75,847	\$ 76,219
Lieutenants - Pay Schedule	\$ 78,062	\$ 78,936	\$ 79,810	\$ 80,662	\$ 81,557	\$ 82,451	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366
Appendix B Benefit Percent	0.00%	0.00%	0.00%	0.00%	0.00%	1.50%	1.50%	1.50%	1.50%	1.50%	2.00%	2.00%	2.00%	2.00%	2.00%	2.50%
Appendix B Benefit Amount	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1,237	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,250	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 2,084
<b>Lieutenants' Total Pay</b>	\$ 78,062	\$ 78,936	\$ 79,810	\$ 80,662	\$ 81,557	\$ 83,688	\$ 84,616	\$ 84,616	\$ 84,616	\$ 84,616	\$ 85,033	\$ 85,033	\$ 85,033	\$ 85,033	\$ 85,033	\$ 85,450

Fort Myers																
	9	10	12	14	16	18	20	22	24							
Officers - Pay Schedule	\$ 55,453	\$ 59,051	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878	\$ 62,878
Appendix B Benefit Percent	1.50%	2.00%	2.00%	2.00%	2.00%	2.50%	2.50%	2.50%	2.50%	2.50%	3.00%	3.00%	3.00%	3.00%	3.00%	3.50%
Appendix B Benefit Amount	\$ 832	\$ 1,181	\$ 1,258	\$ 1,258	\$ 1,258	\$ 1,572	\$ 1,572	\$ 1,572	\$ 1,572	\$ 1,572	\$ 1,886	\$ 1,886	\$ 1,886	\$ 1,886	\$ 1,886	\$ 2,201
<b>Officers' Total Pay</b>	\$ 56,285	\$ 60,232	\$ 64,136	\$ 64,136	\$ 64,136	\$ 64,450	\$ 64,450	\$ 64,450	\$ 64,450	\$ 64,450	\$ 64,764	\$ 64,764	\$ 64,764	\$ 64,764	\$ 64,764	\$ 65,079
Sergeants - Pay Schedule	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360	\$ 74,360
Appendix B Benefit Percent	1.50%	2.00%	2.00%	2.00%	2.00%	2.50%	2.50%	2.50%	2.50%	2.50%	3.00%	3.00%	3.00%	3.00%	3.00%	3.50%
Appendix B Benefit Amount	\$ 1,115	\$ 1,487	\$ 1,487	\$ 1,487	\$ 1,487	\$ 1,859	\$ 1,859	\$ 1,859	\$ 1,859	\$ 1,859	\$ 2,231	\$ 2,231	\$ 2,231	\$ 2,231	\$ 2,231	\$ 2,603
<b>Sergeants' Total Pay</b>	\$ 75,475	\$ 75,847	\$ 75,847	\$ 75,847	\$ 75,847	\$ 76,219	\$ 76,219	\$ 76,219	\$ 76,219	\$ 76,219	\$ 76,591	\$ 76,591	\$ 76,591	\$ 76,591	\$ 76,591	\$ 76,963
Lieutenants - Pay Schedule	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366	\$ 83,366
Appendix B Benefit Percent	1.50%	2.00%	2.00%	2.00%	2.00%	2.50%	2.50%	2.50%	2.50%	2.50%	3.00%	3.00%	3.00%	3.00%	3.00%	3.50%
Appendix B Benefit Amount	\$ 1,250	\$ 1,667	\$ 1,667	\$ 1,667	\$ 1,667	\$ 2,084	\$ 2,084	\$ 2,084	\$ 2,084	\$ 2,084	\$ 2,501	\$ 2,501	\$ 2,501	\$ 2,501	\$ 2,501	\$ 2,918
<b>Lieutenants' Total Pay</b>	\$ 84,616	\$ 85,033	\$ 85,033	\$ 85,033	\$ 85,033	\$ 85,450	\$ 85,450	\$ 85,450	\$ 85,450	\$ 85,450	\$ 85,867	\$ 85,867	\$ 85,867	\$ 85,867	\$ 85,867	\$ 86,284

**NORTH PORT**Officers and Sergeants 2013-2016 CBA:**ARTICLE 5, COMPENSATION****Section 1, PAY PLAN.**

- A. Effective upon ratification of this agreement and majority approval of the first referendum for joining the Florida Retirement System, the pay plan as depicted in Attachment A will take effect.
- B. Bargaining unit members having completed one (1) year in their respective classification during FY 14-15 shall receive a 3% increase on their base rate of pay, effective from their respective FY 14-15 anniversary date, in accordance with the terms and conditions of the agreement, unless the member is at the maximum of the pay range. Bargaining unit members at the maximum of their respective pay range shall receive a 2.0% pensionable lump sum payment based on their annual salary at their respective FY 14-15 anniversary date.
- C. Effective October 1, 2015 bargaining unit members having completed one (1) year in their respective classification during FY 15-16 shall receive a 3% increase on their base rate of pay, effective from their respective FY 15-16 anniversary date, in accordance with the terms and conditions of the agreement, unless the member is at the maximum of the pay range. Bargaining unit members at the maximum of their respective pay range shall receive a 2.0% pensionable lump sum payment based on their annual salary at their respective FY 15-16 anniversary date....

Section 2. To qualify for a wage adjustment provided in Section 1 above, bargaining unit members, on their anniversary date must have received 75% "meets most requirements" ratings (satisfactory) or above on their most recent evaluation...

Section 5. The parties acknowledge that the bargaining unit employees have previously been paid pursuant to a step plan, as depicted below. However, for the term of this agreement bargaining unit employees shall receive pay adjustments on a percentage basis in accordance with the terms in Section 1 of this Article.

The parties further acknowledge that the union reserves its right to readdress and bargain over the resumption of a step pay plan in the negotiations for a successor Collective Bargaining Agreement..

**NORTH PORT**

**PREVIOUS STEP PLAN**

<b>OFFICER</b>	
Step 1	41,509.00
Step 2	43,584.45
Step 3	45,763.67
Step 4	48,024.05
Step 5	50,454.45
Step 6	52,977.17
Step 7	55,626.03
Step 8	58,407.33
Step 9	61,327.69
Step 10	64,394.08
<b>SERGEANT</b>	
Step 1	64,394.09
Step 2	67,613.78
Step 3	70,994.48
Step 4	74,544.20
Step 5	78,271.41

North Port Wages												
OFFICERS	Step	1	2	3	4	5	6	7	8	9	10	11
DOH Anniversary Date												
Upon Ratification		\$ 41,509	\$ 43,584	\$ 45,764	\$ 48,024	\$ 50,454	\$ 52,977	\$ 55,626	\$ 58,407	\$ 61,328	\$ 64,394	
FY 2014-2015	3% incr	\$ 42,754	\$ 44,892	\$ 47,137	\$ 49,465	\$ 51,968	\$ 54,566	\$ 57,295	\$ 60,159	\$ 63,168	\$ 66,326	\$ 67,652
FY 2015-2016	3% incr	\$ 44,037	\$ 46,238	\$ 48,551	\$ 50,949	\$ 53,527	\$ 56,203	\$ 59,014	\$ 61,964	\$ 65,063	\$ 68,316	\$ 69,682
												2% lump sum
Officers at the top of their pay range were paid a 2% lump sum bonus. This spreadsheet presumes a top rate for years 12 through 25 that reflects that bonus.												
SERGEANTS	Step	1	2	3	4	5	6					
DOH Anniversary Date												
Upon Ratification		\$ 64,394	\$ 67,613	\$ 70,994	\$ 74,544	\$ 78,271						
FY 2014-2015	3% incr	\$ 66,326	\$ 69,641	\$ 73,124	\$ 76,780	\$ 80,619	\$ 82,232					
FY 2015-2016	3% incr	\$ 68,316	\$ 71,731	\$ 75,318	\$ 79,084	\$ 83,038	\$ 84,698					
												2% lump sum

Officers and Sergeants 2015-2018 CBA, **LONGEVITY PAY:** None

## SARASOTA

Officers and Sergeants 2011-2014 CBA:ARTICLE #7, **BASE HOURLY RATE OF PAY**

## Section 1.

## A. SWORN PERSONNEL

It is the intent of the City and PBA to establish a more standardized and competitive pay plan for the City's sworn law enforcement personnel. For the fiscal year 10/1/10 to 9/30/11, there will be no annual general wage increase given to any bargaining unit employee. Step increases will be paid according to Appendix D, Schedules 1 and 2.

## B. NONSWORN PERSONNEL

It is the intent of the City and PBA to establish a more competitive pay plan for the City's non-sworn bargaining unit personnel. For the fiscal year 10/1/10 to 9/30/11, there will be no annual general wage increase given to any bargaining unit employee...

## Section 2.

Existing provisions of the pay plan will continue for eligible non-sworn members of the Bargaining Unit including the following:

LONGEVITY PAY	
Minimum Number of Years Continuous Service	Percentage of Base Hourly Rate of Pay
5	+2% each 5 yrs to 25 yrs
10	4%
15	6%
20	8%
25	10%

**Appendix D, Schedule 1  
Officer Wage Schedule  
10/1/2011-9/30/2014**

End of Year	Annual Rate
Start	41,644
1	48,156
2	51,596
3	55,140
4	56,314
5	57,514
6	58,739
7	59,990
8	61,268
9	62,573
10	63,906
11	65,267
12	66,657
13	66,657
14	66,657
15	66,657
16	66,657
17	66,657
18	66,657
19	66,657
20	67,744
21	67,744
22	67,744
23	67,744
24	67,744
25+	67,744

Service date is date of hire as police officer.  
Officers will move through steps based on service date.

**Appendix D, Schedule 2  
Sergeant Wage Schedule  
10/1/2011-9/30/2014**

End of Year	Annual Rate
Start	
1	
2	
3	
4	
5	67,313
6	68,749
7	70,212
8	71,708
9	73,235
10	74,794
11	76,388
12	78,015
13	78,015
14	78,015
15	78,015
16	78,015
17	78,015
18	78,015
19	78,015
20	79,102
21	79,102
22	79,102
23	79,102
24	79,102
25+	79,102

Service date is date of hire as police officer.  
Sergeants will move through steps based on service date.

Lieutenants 2011-2014 CBA:

**Appendix D, Schedule 3  
Lieutenant Wage Schedule  
10/1/2011 – 09/30/2014**

End of Year	Annual Rate
Start	
1	
2	
3	
4	
5	
6	
7	
8	
9	85,781
10	87,607
11	89,473
12	91,380
13	91,380
14	91,380
15	91,380
16	91,380
17	91,380
18	91,380
19	91,380
20	92,466
21	92,466
22	92,466
23	92,466
24	92,466
25+	92,466

Service date is date of hire as police officer.

Lieutenants will move through steps based on service date.

Lieutenants 2011-2014 CBA, **LONGEVITY PAY:** None

**ENDNOTES**

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- 1 The payments were issued in December 2015.
- 2 PBA members received lump sum payments in December 2015 for services rendered through the 2014 contract year.
- 3 North Port does not employ persons in the rank of Lieutenant.
- 4 Sources are the respective collective bargaining agreements for those locales.

**BASE PAY  
FOR CRIMINALISTS**

The 2014 CBA recognizes three Criminalist positions: Criminalist I, II and III. The City and the PBA have proposed (1) that the positions of Criminalist 1 and Criminalist II be consolidated into a single position – “Criminalist” – and (2) that the Criminalist III position be renamed “Senior Criminalist.” Both parties have proposed an 8-Step wage schedule; their schedules vary in that the PBA’s wages rates assume a 3% across-the-board increase over the City’s rates, effective October 1, 2014.<sup>1</sup>

**Criminalist (consolidation of former Criminalists I and II)**

Step	1	2	3	4	5	6	7	8
City	\$ 32,561	\$ 33,724	\$ 34,887	\$ 36,050	\$ 37,213	\$ 38,376	\$ 39,538	\$ 40,701
PBA	\$ 33,538	\$ 34,736	\$ 35,934	\$ 37,131	\$ 38,329	\$ 39,527	\$ 40,725	\$ 41,922

**Senior Criminalist**

City	\$ 45,900	\$ 47,703	\$ 49,507	\$ 51,310	\$ 53,113	\$ 54,916	\$ 56,719	\$ 58,923
PBA	\$ 47,277	\$ 49,134	\$ 50,992	\$ 52,849	\$ 54,706	\$ 56,563	\$ 58,421	\$ 60,691

The parties differ as to how the wage schedules should be implemented. **The City proposes** that, after ratification of the CBA, Criminalists be paid a \$2,000 lump sum and then slotted into the City’s pay plan. It also proposes that one person – Criminalist McVaugh – be promoted to the position of Senior Criminalist. **The PBA proposes** that the Criminalists be slotted into the pay plan effective October 1, 2014 and that there then be a 3% across-the-board increases to the wage schedule, effective October 1 of 2014.

The Special Magistrate finds there to be insufficient data about the wage rates for comparable positions in comparably sized locales to serve as reliable bases for comparison.<sup>2</sup>

**RECOMMENDATION**

The Special Magistrate recommends adoption of the following:

*The following wage schedule shall be deemed to have taken effect as of October 1, 2014:*

***Criminalist*** (consolidation of former Criminalist I and II)

<i>Step</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>
	\$32,561	\$33,724	\$34,887	\$36,050	\$37,213	\$38,376	\$39,538	\$40,701

***Senior Criminalist*** (consolidation of former Criminalist I and II)

<i>Step</i>	<i>1</i>	<i>2</i>	<i>3</i>	<i>4</i>	<i>5</i>	<i>6</i>	<i>7</i>	<i>8</i>
	\$45,900	\$47,703	\$49,507	\$51,310	\$53,113	\$49,916	\$56,719	\$59,923

*Immediately upon these wage schedules taking effect, Criminalists will be slotted into the lowest step in the wage scale that will result in a wage increase for the affected employee of at least 3%, except that Criminalist McVaugh will be slotted as a Step 1 Senior Criminalist. The resulting slotted wage rates shall be given retroactive effect to October 1, 2014.*

*The Criminalists' and Senior Criminalists' Wage Schedules shall thereafter be increased by another 3% across the board effective October 1, 2015, and Criminalists and Senior Criminalists shall be increased in step within the Wage Schedule and paid retroactively to October 1, 2015.*

*The parties shall reopen negotiations over wages and one other item for the FY 2015-2016 Agreement.*

<sup>1</sup> The following is the City's proposed Step Plan for Criminalists:

<b>Criminalist</b>								
HS + 1 to 3 years or more of experience in Field								
Consolidate Criminalist I and II into this new title								
Step	1	2	3	4	5	6	7	8
	\$ 32,561.11	\$ 33,724.01	\$ 34,886.90	\$ 36,049.80	\$ 37,212.70	\$ 38,375.59	\$ 39,538.49	\$ 40,701.39
<b>Senior Criminalist</b>								
HS + 5 years or more of experience in Field								
Step	1	2	3	4	5	6	7	8
	\$ 45,900.13	\$ 47,703.34	\$ 49,506.56	\$ 51,309.78	\$ 53,113.00	\$ 54,916.22	\$ 56,719.44	\$ 58,522.66
<u>Additional information</u>								
<b>Promotions from Criminalist to Senior Criminalist</b>								
Criminalists would move to Step 1 of Sr Criminalist regardless of where they fall in the step schedule for a Criminalist								
<b>Longevity</b>								
Criminalists maintain longevity percentage off of base. Longevity will be 2% every 5 years maximum out at year 25 or 10%								
<b>Effective upon ratification of contract</b>								
	Current Base	Current Step	Proposed Base	Proposed Step				
CASTANO	\$30,708.47	Start Step	\$ 32,561.11	Step 1				
WAUGH	\$33,251.30	Start Step	\$ 34,886.90	Step 3				
MCVAUGH	\$40,933.61	Step 6	\$ 45,900.13	Step 1				
No less than a 4% increase to slot into step plan								

And the following is the PBA's Step Plan for Criminalists:

Effective October 1, 2014, the Criminalist and Senior Criminalist 8-step Pay Scales illustrated in Appendix D shall be adopted and bargaining unit members in the Criminalist I, II and III job classification shall be slotted into the pay scale as follows:

Senior Criminalist James Tutsock - 31 years = Step 5 (\$53,1134.00)

Criminalist Kari McVaugh - 8 years = Step 8 (\$40,701,39)

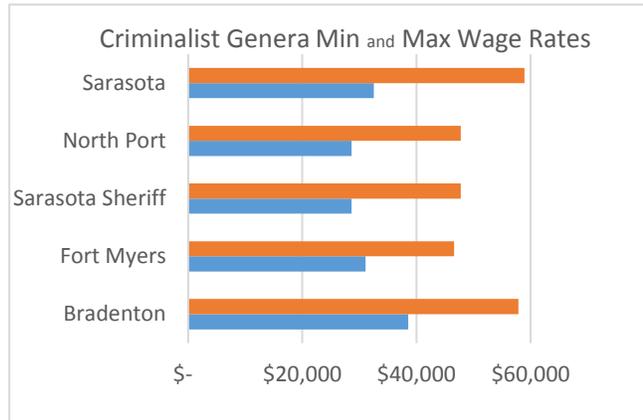
Criminalist Casey Waugh - 2 year = Step 2 (\$33,724.01)

Thereafter, step increases will be paid according to Appendix D, Schedules 5. [See next page of this endnote.]



2 Available comparators

<b>Bradenton</b>		
Forensic Scientist	Min	Max
	\$ 38,584	\$ 57,886
<b>Fort Myers</b>		
Crime Scene Technician	Min	Max
	\$ 31,075	\$ 46,592
<b>Sarasota County Sheriff's Office</b>		
Forensic Specialist	Min	Max
	\$ 28,653	\$ 47,787
<b>North Port</b>		
Criminalistics Specialists, Evidence/Crime Scene Technicians	Min	Max
	\$ 39,759	\$ 58,535



**DISTRICT POLICING POLICY  
MINIMUM STAFFING  
PBA NEW SAFETY PROPOSAL  
PBA NEW WORKLOAD INCENTIVE PROPOSAL  
SHIFT ASSIGNMENTS & SHIFT START TIMES**

**MINIMUM STAFFING**

Article 19 of the 2014 Officers and Sergeants CBAs and Article 18 of the Lieutenants CBA contain a single sentence, incorporating by reference Appendix A of each agreement.<sup>1</sup> Among other things, those Appendices mandate a minimum number of officers that must be on duty at all times (14 on weekday day shifts and 15 at all other times), including a minimum of 1 officer in each of 8 zones and 2 officers each in Zones 2 and 3. Officers are to be called-back on overtime to meet those minimums.

The PBA proposes that the minimum staffing for both the day and night shifts become 12 officers, excluding the desk officer and those on walking beats. The PBA also proposes to prioritize the actions that management can take when the minimum can't be satisfied with call-backs:

*...the City shall have the right to take the following actions, in the following order, to bring patrol staffing to the minimum staffing levels outlined in this Article:*

- 1. Walking beat officers will be assigned to a patrol zone;*
- 2. Specialty unit personnel may be temporarily assigned to a patrol zone;*
- 3. D.O.M. leaves will be cancelled;*
- 4. Approved training and school absences shall be canceled for the shift;*
- 5. H-Time leave will be cancelled;*
- 6. Individual vacation Days will be cancelled;*
- 7. Grouped vacation days will be cancelled*

The stated purposes of these staffing minimums is "to insure officer safety and maintain appropriate service delivery levels..."

The City proposes doing away with the numerical staffing minimums and replacing them with a "goal" as set forth in these proposal statements:

*In order to successfully implement Community Policing initiatives, the Chief of Police reserves the right to staff all zones in any of the following shift assignments: [8, 10 and 11½ hour shift Officers]*

*In order to insure officer safety and maintain appropriate service delivery levels, each zone shall be fully staffed to meet the Department needs.*

*It is the express intent of the parties that an officer shall be assigned to each zone and there shall be two officers assigned to Zones 2 and 3. <sup>2</sup>*

*Management maintains the right to determine the staffing level for all shifts based upon the operational needs of the Department.*

*It is the goal of Management to maintain the following staffing levels:*

*Day Shift 12 Officers*

*Night Shift 12 Officers*

#### **SAFETY**

In response to the possibility that the City's proposal, if adopted, will result, from time to time, in staffing levels below the minimum, the PBA proposes employment benefits that will accrue when, but only when, staffing drops below the mandatory minimum. Those new benefits, under a new Article titled SAFETY, are the following: <sup>3</sup>

Hazard pay of \$5.00 an hour

\$1 Million life Insurance

College tuition, textbooks and fees for surviving children under 18.

Continuation of full salary, including incentives and overtime, for the later of a year or the awarding of disability benefits.

Payment of all co-pays, deductibles and other medical expenses not otherwise covered.

The PBA proposal states that it is premised on there being a

*correlation between patrol law enforcement staffing levels and the safety of officers assigned law enforcement patrol duties within the City... as patrol staffing decreases, officers are at increased risk for injury and death.*

#### **WORKLOAD INCENTIVE PAY**

In a separate new Article, the PBA proposes that officers below the rank of Sergeant be paid an additional \$2.00 an hour when there are fewer than 12 officers on patrol duty.<sup>4</sup>

#### **DISCUSSION**

Notwithstanding that the City has the right to modify its patrol zones,<sup>5</sup> those zones have not changed – they apparently have not been reevaluated – since 2000, even though the City's geographic calls-for-service demands must have changed over that time.<sup>6</sup> The allocation of 1 Patrol Officer per zone (and 2 each in Zones 2 and 3) has thus evolved into an allocation of officers that, if it was ever associated with the optimum coverage of crime areas, is now less so.

Minimum on-duty staffing provisions have been present in the CBA since at least 2000. In 2006, the Department had 204 sworn officers. Since that year, it has contracted to 163 sworn officers. Yet the minimum staffing numbers remained unchanged.<sup>7</sup> This has necessarily increased the dependence on call-ins to meet minimum staffing which, in turn, has constricted the choices as to when and in what quantity leave could be granted. And that, in turn, led to complex leave procedures and leave request minimums.

The Special Magistrate agrees with the PBA that there is a correlation between staffing levels and officer safety but further observes there are also correlations between overtime, officer exhaustion and officer performance. And officers are at increased risk for injury and death if they are not assigned when, where, and in what number they are needed. Those factors are not static. Given the current contingent of 163 sworn officers, the CBA's mandate for minimum staffing at all times necessarily impinges on the Department's ability to make those determinations.

The PBA has presented no evidence to show that the Department's senior staff is incapable of performing the basic managerial function of assigning staff to maximize their utility while still exercising due regard for their safety. The determination of staffing levels and the definition of patrol zones are fundamental managerial responsibilities that, since at least 2006,<sup>8</sup> the Department has effectively forfeited to CBA contractual mandates. Worse, complying with the complex rules governing minimum staffing and leave request priorities has placed an administrative burden on the Department's management that has reduced the capacity of its finite staff to most effectively conduct its operations.

The Special Magistrate finds that the PBA has not demonstrated grounds for the continued withholding from the Department of those core managerial authorities and responsibilities.

## RECOMMENDATIONS

The Special Magistrate recommends that the Department management be presumed competent to perform, in its entirety, the administrative staffing duties customarily inherent in management<sup>9</sup> and that, to the extent possible, the provisions of the CBA be made less complex and less numerous.

Specifically, the Special Magistrate recommends that

the 2014 CBA Appendix A provisions under MINIMUM STAFFING be discontinued;

the PBA's proposal under the general title of SAFETY and including Hazard Pay, Hazard Death Benefits, and Hazard Disability Benefits not be adopted;

the PBA's proposal under the general title of WORKLOAD and including Workload Incentive Pay not be adopted;

that the City's proposals, set forth below as amended by the Special Magistrate, be adopted:

*In order to successfully implement Community Policing initiatives, the Chief of Police reserves the right to staff all zones with any combination of the following shift assignments: 8, 10 and 11½ hour shifts.*

*Management maintains the right to determine the staffing level for all shifts based upon the operational needs of the Department.*

*The Department shall, at its sole discretion, staff each zone and each shift to maintain appropriate service delivery levels while insuring officer safety.*

*The Department may, at its sole discretion, redefine patrol zones annually, relocating zone boundaries and expanding, contracting and consolidating zones as it deems efficacious.*

*Management shall, at its sole discretion, determine the staffing level for all shifts based upon its judgment of the operational needs of the Department.*

The Special Magistrate recommends that the following provision not be adopted, because the reference to Zones 2 and 3 implies that the zones may not be redefined.

*It is the express intent of the parties that an officer shall be assigned to each zone and there shall be two officers assigned to Zones 2 and 3.*

And the Special Magistrate recommends that the following provision not be adopted, because a "goal" is contractually meaningless and because the City's failure to achieve it will be a provocation:

*It is the goal of Management to maintain the following staffing levels:*

*Day Shift 12 Officers*

*Night Shift 12 Officers*

## ENDNOTES

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- 1 The parties agree to move the provisions governing minimum staffing and shift assignments from Appendix A to the body of Article 19.
- 2 Notwithstanding this provision, Deputy Chief of Police Patrick Robinson testified,
 

*I think one of the things that needs to be taken into consideration is the change in the demographics and calls for service in those zones to actually look at and evaluate whether or not two officers should be used in those, if they shouldn't be reallocated to other zones.*
- 3 The proposed minimums are the following:
 

*Less than 12 patrol officers (below the rank of Sergeant) are staffed to serve the patrol response zones of the City. The officers included in the 12 officer minimum shall not include those assigned to K-9, traffic units, detectives, supervisory personnel to include the rank of Sergeant and above, or members assigned to other specialty units.*
- 4 PBA Proposal, New Article, Workload, Section 1:
 

*The City agrees to provide Workload Incentive Pay to bargaining unit members in the amount of two dollars (\$2.00) per hour for each hour of work while on-duty in the City when the conditions listed below exist:*

  - *Less than 12 patrol officers (below the rank of Sergeant) are staffed to serve the patrol response zones of the City. The officers included in the 12 officer minimum shall not include those assigned to K-9, traffic units, detectives, supervisory personnel to include the rank of Sergeant and above, or members assigned to other specialty units.*

*Workload Incentive Pay shall not be paid during times when staffing levels drop below the 12 officer minimum temporarily as the result of an employee's late sick call or as a result of an employee being unable to continue work as the result of an on-duty illness or injury; provided a good faith attempt is being made to replace the officer and return staffing levels to the 12 officer minimum. These temporary periods shall not exceed 2 hours per occurrence.*
- 5 PBA President Michael "Mick" McHale addressed the City's right to redefine patrol zones:
 

Q. The zone concept here in the City of Sarasota, where is that? Is that in the collective bargaining agreement?

A. No.

Q. So at any time it would be a management right just change the zones?

A. I believe so.
- 6 In contrast, former Tampa Police Chief Jane Castor testified that that city's zones changed annually:
 

*Every year in October we would have strategic meetings for the plan going forward, and all of our zones are developed on calls for service. So in some instances there would be areas that would be added and other instances there would be areas that were consolidated.*

The parties did not say why Sarasota's zones have not been reevaluated since 2000, but it may have been (a) because the CBA did not explicitly grant the Department that authority and/or (b) because the CBA requirement that there be a minimum of 2 Patrol Officers in Zones 2 and 3 implied that those zones, and by extension all other zones, were immutable.
- 7 Per the testimony of Deputy Chief of Police Patrick Robinson.
- 8 Per the testimony of Deputy Chief of Police Patrick Robinson. Union President Michael McHale testified that the 10 zones had existed throughout the 26 years of his career; i.e., since 2000.
- 9 These managerial duties are now being performed by the Police management in the three comparable Florida locales previously cited:

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**Bradenton**CBA, Article 20, Work Week and Overtime, Section 9

*In determining the number of employees working various shifts, the PBA recognizes that the Chief of Police, or his designee, has a right to distribute and assign manpower. The Chief of Police, or his designee, has also established that seniority is important in determining this distribution.*

**Fort Myers**CBA, Article 5, Rights of Employer, Section 5.1

*... The City shall have the following unilateral management rights, unless such rights are specifically limited and in direct conflict with this Agreement [SM: of which there are none]:*

- a) To determine the size and composition of the work force, including the number and composition of employees assigned to any particular operation, shift, or unit.*
- g) To determine the assignment of work, and to schedule the hours and days to be worked on each job and each shift unless contrary to a specific provision of the Agreement.*
- j) To determine the location, method, means, and personnel by which operations are to be conducted, including the right to contract and sub-contract existing and future work.*

**North Port**CBA, Article 2, Rights of Employer, Section 2

*Nothing in this Agreement shall be construed so as to limit or impair the right of the City to exercise its sole and exclusive discretion on all of the following matters:*

- A. To manage the Police Department and exercise sole and exclusive control and absolute discretion over the organization and the operations thereof.*
- D. To determine and adopt such policies and programs, standards, rules and regulations as are deemed by the City to be necessary for the operation and/or improvement of the Police Department, and to select, manage and direct management, administrative, supervisory and other personnel.*
- E. To take such measures as the City may determine to be necessary to maintain order and efficiency relative to both the work force and the operations/services to be rendered thereby.*
- G. To determine and re-determine job classifications, job content, work schedules and work assignments.*

**SHIFT ASSIGNMENTS  
SHIFT START & END TIMES**

Appendix A of the 2014 CBAs prohibits the Department from assigning anyone other than bargaining unit Patrol Division officers to 11½ hour shifts. The prohibition extends to Lieutenants, CSAs assigned to the Front Desk, Canine Officers and Crime Prevention Officers.<sup>1</sup> The Department proposes eliminating the restriction; the PBA proposes retaining it.

Appendix A also prescribes when the 11½ hour tours are to begin.<sup>2</sup> The PBA proposes retaining this provision; the City proposes eliminating it.

**RECOMMENDATION**

The reasoning that pertains to minimum staffing pertains here as well. The Special Magistrate recommends that the restrictions on 11½-hour shift staffing and the prescribed start times be eliminated and that the discretion be vested in management.

## ENDNOTES

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### 1 2014 CBAs, Appendix A, 11.5 HR. SHIFT ASSIGNMENTS

*Only employees of SPD represented by the PBA and assigned to the Patrol Division will be authorized to work the 11.5-hour schedule. However, not all employees assigned to the Patrol Division will be permitted to work this schedule. The following is a summary of those employees that will be assigned this schedule:*

Assigned

*Night Duty Lieutenants (relief)*

*North District Officers*

*Central District Officers*

*South District Officers*

Not Assigned

*District Lieutenants*

*CSAs assigned to Front Desk*

*Canine Officers*

*Crime Prevention Officers*

### 2 Appendix A, Shifts

North District	0545 hrs – 1730 hrs 1745 hrs – 0530 hrs
Central District	0615 hrs – 1800 hrs 1815 hrs – 0600 hrs
South District	0645 hrs – 1830 hrs 1845 hrs – 0630 hrs

## DEFINITIONS

### MANAGE

The 2014 CBAs include, as a defined term, MANAGE:

*"MANAGE" is defined to mean the authority of the City to plan, implement, control, direct, coordinate, train and discipline such as but not limited to, the following: to hire, assign, transfer, retain, budget, layoff, recall, promote, discipline, suspend, demote, discharge, negotiate, and reward direct rank and file workers, adjust grievances, or to effectively recommend any of the above by use of the independent judgment of the City. <sup>1</sup>*

The PBA proposes eliminating this definition in its entirety, asserting it contravenes the City's duty to bargain over mandatory subjects.

### RECOMMENDATION

The Special Magistrate recommends the retention of this definition because it describes the inherent functions of management. But the Special Magistrate recommends the addition of the words shown in bold font:<sup>2</sup>

*"MANAGE" is defined to mean the authority of the City to plan, implement, control, direct, coordinate, train and discipline such as but not limited to, the following: to hire, assign, transfer, retain, budget, layoff, recall, promote, discipline, suspend, demote, discharge, negotiate, and reward direct rank and file workers, adjust grievances, or to effectively recommend any of the above by use of the independent judgment of the City. **However, this authority is subject to the terms and conditions of this agreement.***

## **PREMIUM PAY**

The 2014 CBAs include, as a defined term, PREMIUM PAY:

*"Premium pay" is defined as premium payments made by the City for work in excess of or outside of specified regularly assigned weekly duty schedules. This extra compensation provided by the premium rates shall be excluded from the employee's regular rate of pay for purposes of computing the employee's overtime compensation. Premium pay shall be creditable toward any potential overtime compensation to the extent permitted by the Fair Labor Standards Act. Premium pay for assigned work in addition to the regularly assigned weekly duty schedule [not otherwise specifically provided for in this agreement], shall be calculated at one and one-half (1-½) times the regular rate of pay.*

The meaning of this is that on any day that an officer works in excess of his regularly scheduled tour hours, he is paid at time-and-a-half for that day's excess, regardless of whether the hours worked exceeded the Fair Labor Standards Act ("FLSA") standard of 40 or 43 hours in a week, or 80 or 86 hours in a fortnight.<sup>3</sup>

The City proposes eliminating this definition in its entirety because it intends to eliminate Premium Pay from the several provisions of the CBA in which it appears. The elimination of Premium Pay would save the City money, by reducing work paid at the time-and-a-half rate, and would simplify integration of the Department into the City's timekeeping system. Of course, it would also reduce officers' compensation.

## **RECOMMENDATION**

The Special Magistrate recommends the deletion of the term and the concept of PREMIUM PAY from its appearances throughout the CBA.<sup>4</sup> Its removal will bring the Department into better conformity with the rest of the City's wage procedures. The Special Magistrate's recommendations below, under the definition of WORK PERIOD, mitigate the loss of time-and-a-half income to bargaining unit members.

## WORK PERIOD

The 2014 CBAs establish 43-hour and 86 hour workweeks (the FLSA allows this for police before time-and-a-half must be paid). But, under those 2014 CBAs,

- the 43 hour interval is reduced to 41.25 hours at the straight rate of pay through the payment of PREMIUM PAY at time-and-a-half for the 1.75 hour difference [43.00 – 41.25] and
- the 86 hour interval is reduced to 82.25 hours at the straight rate of pay by through the payment of PREMIUM PAY time-and-a-half for the 3.75 hour difference [86:00-82.25].<sup>5</sup>

Consistent with its proposal to eliminate PREMIUM PAY, the City proposes to delete, from its definition of WORK PERIOD, the references to the 41.25-hour and 82.25-hour intervals:

*WORK PERIOD FOR POLICE OFFICERS & SERGEANTS ASSIGNED TO PATROL DIVISION – "Work Period" is defined to mean seven (7) consecutive days and forty-three (43) maximum hours of non-overtime work for assigned Police Officers and Sergeants, in accordance with FLSA.*

*WORK PERIOD FOR POLICE OFFICERS & SERGEANTS PATROL DIVISION – "Work Period" is defined to mean fourteen (14) consecutive days with a maximum of 86 hours in a work period in accordance with the FLSA.*

## DISCUSSION

The Special Magistrate recommends the elimination of the concept of PREMIUM PAY, as an unproductive administrative accounting artifact. But the elimination of that piece of administrative complexity should not be at the expense of officers' income. The Special Magistrate recommends redefining the WORK PERIOD to 40 hours and 80 hours, meaning that the City should forego the FLSA exception for law enforcement personnel (which the City had already substantially foregone through the presence of PREMIUM PAY). The result will be that, while officers will lose the advantage of PREMIUM PAY, including for time worked in excess of their regularly assigned tour on any day, they will gain the advantage of the consistent 1.25 hours and 2.25 hours of overtime they will earn when working beyond 40 hours or 80 hours. (They had not previously been paid time-and-a-half for the intervals between 40 hours and 41.25 hours, and between 80 hours and 80.25 hours.)<sup>6</sup>

**RECOMMENDATION**

The Special Magistrate recommends that the terms WORK PERIOD be defined to mean the following:<sup>7</sup>

*WORK PERIOD FOR POLICE OFFICERS & SERGEANTS ASSIGNED TO PATROL DIVISION – "Work Period" is defined to mean seven (7) consecutive days and forty (40) maximum hours of non-overtime work for assigned Police Officers and Sergeants.*

*WORK PERIOD FOR POLICE OFFICERS & SERGEANTS PATROL DIVISION – "Work Period" is defined to mean fourteen (14) consecutive days with a maximum of 80 hours in a work period.*

## ENDNOTES

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- 1 Verbatim language appears in the North Port CBA.
- 2 The purpose of a definition is to clarify the meaning of a term when it is later used in the agreement. In this case, the term MANAGE appears in solely Article 3, MANAGEMENT RIGHTS, Section 2 and the Special Magistrate finds that the use of the term gives those paragraphs only their normal and customary meaning:
- Article 3, MANAGEMENT RIGHTS, Section 2  
*Nothing in this Agreement shall be construed so as to limit or impair the right of the City to exercise its sole and exclusive discretion on all of the following matters, providing such exercise is consistent with the express terms of this Agreement and this Agreement pertains to all members of the Bargaining Unit as described in Article #1 herein.*
- A. To **manage** the Police Department and exercise sole and exclusive control and absolute discretion over the organization and operations thereof.
- D. To determine and adopt such policies and programs, standards, rules and regulations as are deemed by the City to be necessary for the operation/ improvement of the Police Department, and to select, **manage**, direct and evaluate all management, supervisory, administrative and other personnel.
- I. To determine the qualifications of all employees of the Police Department. To select, examine, hire, classify, train, assign, schedule, direct, transfer, promote, discipline, discharge, layoff, retain and **manage** all employees of the Police Department. [Special Magistrate's emphases]
- 3 Under the Fair Labor Standards Act, (FLSA Section 7(k), 29 U.S.C. § 207(k)) police officers can be scheduled to work 43 hours in a 7-day work week (non-patrol officers) or 86 hours in a 14-day workweek (patrol officers) before having to be paid overtime.
- 4 The term "premium time" and "premium pay" should be deleted from Article 2, Definitions, and Article 9, Hours of Work and Overtime.
- 5 2014 Officers and Sergeants CBA, Article 9, Hours of Work and Overtime
- Section 2. *Overtime Rate of Pay for Police Officers and Sergeants Only.*  
*All time worked in excess of forty-three (43) hours in a given work period by Police Officers and Sergeants only in the Bargaining Unit, and assigned to the seven (7) consecutive day work period, shall be paid at one and a half (1-½) times the regular hourly rate of pay. (**Premium pay is authorized from forty-one and one-quarter (41.25) hours to forty-three (43) hours for eligible employees assigned to the forty-three (43) hour shift.**)...* [Emphasis added]
- Section 7. *Compensatory Time Off for Police Officers and Sergeants Only.*
- ...
- A. *Compensatory Time Off for Officers Assigned to District Police Plan.*  
*The City, in its sole discretion, may either **compensate employees who work in excess of an 82.25 hour period in a given work period at the prescribed premium pay rate**, or may grant equivalent compensatory time off.*
- 6 Under PREMIUM PAY, the officers would have been paid at time-and-a-half after 41.25 hours and 82.25 hours.
- 7 The work weeks for Bradenton and North Port are 40 hours; Ft. Myers' are 80 hours for patrol and 40 for non-patrol.

## HOURS OF WORK AND OVERTIME PREMIUM PAY AND THE FLSA

### OVERTIME

Article 9, Section 2 and Section 7 of the 2014 CBAs provide, respectively, for the payment of overtime for time worked in excess of 43 hours and 86 hours in a work period. And both provide for the payment of Premium Pay – time-and-a-half pay – from 41.25 hours to 43 hours, and from 82.25 hours to 86 hours, respectively.<sup>1</sup> The City proposes eliminating Premium Pay, so that time-and-a-half pay will begin not at 41.25 hours and 82.25 hours, but at 43 hours and 86 hours.<sup>2</sup>

### RECOMMENDATION

The Special Magistrate recommends the elimination of Premium Pay from Article 2, DEFINITIONS and from the Overtime provisions of Article 9, Sections 2.A. and 2.B. However, the Special Magistrate also recommends that overtime begin at 40 hours and 80 hours, and not 43 and 86. The Special Magistrate also recommends the restatement of the aforesaid articles and of the Compensation Time provisions as set forth below.

#### CBA Article 9, Hours of Work and Overtime

##### *Section 2.A. Overtime Rate of Pay for Police Officers and Sergeants Only.*

*All time worked in excess of forty (40) hours in a given work period by Police Officers and Sergeants assigned to the seven (7) consecutive day work period, shall be paid at one and a half (1-½) times the regular hourly rate of pay. In order for an employee to be compensated for time worked in excess of the forty (40) hours in a work period, the overtime must be ordered and approved at the sole discretion of the City. There shall be no pyramiding of pay for purposes of overtime computation.*

##### *Section 2.B. Overtime Rate of Pay for Police Officers Assigned to Patrol Division*

*An actual time worked in excess of 80 hours in a given work period, by Police Officers and Sergeants for the fourteen (14) consecutive day work period shall be paid overtime at one and a half (1-½) times the regular rate of pay. In order for an employee to be compensated for time worked in excess of the forty (40) hours in a work period, the overtime must be ordered and approved at the sole discretion of the City. There shall be no pyramiding of pay for purposes of overtime computation.*

#### CBA Article 9, Hours of Work and Overtime

##### *Section 7 - Compensatory Time Off for Police Officers and Sergeants.*

*The City, in its sole discretion, may either compensate employees who work in excess of forty hours (40) or eighty hours (80) in their respective given work period at the prescribed overtime rate, or may grant equivalent compensatory time off.*

## ENDNOTES

## 1 2014 Officers and Sergeants CBA, Article 9, Hours of Work and Overtime

*Section 2. Overtime Rate of Pay for Police Officers and Sergeants Only.*

*All time worked in excess of forty-three (43) hours in a given work period by Police Officers and Sergeants only in the Bargaining Unit, and assigned to the seven (7) consecutive day work period, shall be paid at one and a half (1-½) times the regular hourly rate of pay. (**Premium pay is authorized from forty-one and one-quarter (41.25) hours to forty-three (43) hours for eligible employees assigned to the forty-three (43) hour shift.**)... [Emphasis added]*

*Section 7. Compensatory Time Off for Police Officers and Sergeants Only.*

...

*A. Compensatory Time Off for Officers Assigned to District Police Plan.*

*The City, in its sole discretion, may either **compensate employees who work in excess of an 82.25 hour period in a given work period at the prescribed premium pay rate.***

## 2 City Proposed CBA Article 9, Hours of Work and Overtime

*Section 2.A. Overtime Rate of Pay for Police Officers and Sergeants Only.*

*All time worked in excess of forty-three (43) hours in a given work period by Police Officers and Sergeants assigned to the seven (7) consecutive day work period, shall be paid at one and a half (1-½) times the regular hourly rate of pay...*

*Section 2.B. Overtime Rate of Pay for Police Officers Assigned to Patrol Division*

*An actual time worked in excess of 86 hours in a given work period, by Police Officers and Sergeants for the fourteen (14) consecutive day work period shall be paid overtime at one and a half (1 1/2) times the regular rate of pay...*

## **OVERTIME WORK EXCLUSIONS “TIME WORKED”**

Under the 2014 CBAs, the computation of the hours worked during an interval for which overtime is being calculated (i.e., “Time Worked”) includes Vacation Leave, Holiday Leave, Sick Leave Incentive Leave [Bonus Vacation Days paid for the non-use of sick leave] and Compensatory Time off.<sup>1</sup> The City proposes eliminating all but Holiday Leave from the scope of “Time Worked.”<sup>2</sup> By way of comparison:

- Bradenton does not pay any overtime to Lieutenants, and includes only Holidays in the computation of overtime for Officers and Sergeants.<sup>3</sup>
- Ft. Myers does not include holidays, sick leave, funeral leave and other absences.<sup>4</sup>
- North Port includes compensatory time and vacation, but not when vacation lasts for a workweek.<sup>5</sup>

Given the predominant practice of disallowing all but Holiday Pay in the computation of overtime, and given the Special Magistrate’s recommendation that overtime pay begin at 40 hours, the Special Magistrate recommends adoption of the City’s proposal in endnote 2 of this section.

## ENDNOTES

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### 1 2014 CBAs, Article 9, Section 5. "Time Worked"

*For the purpose of overtime computation/compensation, payment for regular authorized overtime shall not be affected by Vacation Leave, Holiday Leave, Sick Leave Incentive Leave (SLV, or commonly referred to as Bonus Vacation Days) or Compensatory Time off. Other leave time not specifically covered in the first sentence of this section shall not be considered as "time worked" whether with or without pay (i.e., Sick Leave, Bereavement Leave, Military Leave, or Maternity Leave, etc.).*

### 2 City's Proposal, Article 9, Section 5. "Time Worked"

*Only hours actually worked and City designated official holiday hours will be utilized for calculating the regular rate of pay for purposes of overtime computation/calculation. Holiday hours will considered hours worked for the purpose of overtime computation/compensation. [Holidays do not include payment for pre-shift time.]*

### 3 Bradenton

Officer & Sergeants CBA Article 20, Work Week and Overtime, Section 3

*For the purpose of overtime compensation, holiday pay will not be considered as time worked when said holiday falls on the employee's regular scheduled day off, and the employee does not work that day.*

Lieutenants Article 20, Work Week and Overtime, Section 2

*Bargaining unit employees (Lieutenants) are FLSA exempt and will be paid on a salaried basis without entitlement to overtime.*

### 4 Fort Myers

Officers, Sergeants & Lieutenants CBA, Article 10 – Hours of Work, 10.4

*For purposes of overtime computation, holidays, sick leave, funeral leave and other absences from duty on active pay status shall not be considered as time worked.*

### 5 North Port

Article 7, Hours of Work/Overtime, Section 8, Time Worked

*(a) Vacation, Holidays, Compensatory Time and Sick Leave Incentive Time shall count as hours worked for purposes of computing overtime. However, all the 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, compensatory or any combination of paid leave. All hours of Vacation, Compensatory Time, Holiday and/or Sick Leave Incentive Time shall count as hours worked when an employee is required to work overtime.*

## HOURS OF WORK AND OVERTIME COURT TIME

The court time provisions for both 2014 CBAs<sup>1</sup> refer to “premium time,” “premium pay,” and to the “District Police Plan,” all of which the City seeks to eliminate and that the Special Magistrate recommends be eliminated. The City also proposes eliminating from CBA Article 9, Section 9, paragraph A pertaining to officers assigned to the “District Police Plan.” Consistent with its proposal to eliminate the “District Police Plan,” the City proposes eliminating Article.9.9.A. The Special Magistrate concurs.

The PBA has proposed making Criminalists eligible for Court Time, citing the contributions they have made in performing such services. The Special Magistrate concurs with the PBA reasoning and proposal.

### RECOMMENDATION

In view of the foregoing and of his recommendation of a 40-hour workweek for overtime eligibility, the Special Magistrate proposes the following language for Article 9, Section 9:

*With the exclusion of any employee(s) separated or retired from City employment prior to the date of final ratification of this Agreement, court appearances and other court duties performed by Criminalists or Officers, including appearances and duties involving civil cases, required by the City occurring on other than an employee's assigned shift, will be compensated at time and one-half, irrespective of any other provisions for overtime pay based upon their then current work period or other shift assigned as determined by the City. Except as outlined herein; court pay shall not be paid to employees whose court appearance, hearing, deposition or Pre-filing interview (PFI) falls within one and one half (1.5) hours prior to the start of their assigned work hours or within one and one half (1.5) hours after their assigned work hours. Employees assigned to court appearance(s) within one and one half (1.5) hours pre-shift or post-shift, shall be deemed to be in an on duty status instead of court time status.*

*Employees shall receive a minimum of two (2) hours pay at time and one-half for each such off-duty court-related appearance, irrespective of the number of cases involved in each appearance, except as outlined herein. Such court time, however, shall not be counted as "time worked" for overtime purposes except as outlined herein.*

*Employee has the option to request court time compensation at time and one-half or request equivalent compensatory time, provided the employee meets the criteria outlined herein, and provided that the employee's accumulated compensatory time, and court time, shall not exceed 480 hours.*

*The City, in its sole discretion, may either pay sword personnel as provided in this Section, or grant equivalent compensatory time off.<sup>2</sup>*

## ENDNOTES

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1 2014 CBA, ARTICLE 9, HOURS OF WORK AND OVERTIME, Section 9. Court Time/Pay

for Police Officers and Sergeants  
for Lieutenants

*With the exclusion of any employee(s) separated or retired from City employment prior to the date of final ratification of this Agreement, court appearances and other court duties, including appearances and duties involving civil cases, required by the City occurring on other than an employee's assigned shift, will be compensated at time and one-half, irrespective of any other provisions for overtime pay based upon a work week of forty-three (43) hours, or other shift assigned as determined by the City. Except as outlined herein; court pay shall not be paid to employees whose court appearance, hearing, deposition or Pre-filing interview (PFI) falls within one and one half (1.5) hours prior to the start of their assigned work hours or within one and one half (1.5) hours after their assigned work hours. Employees assigned to court appearance(s) within one and one half (1.5) hours pre-shift or post-shift, shall be deemed to be in an on duty status instead of court time status. Employees shall receive a minimum of two (2) hours pay at time and one-half for each such off-duty court-related appearance, irrespective of the number of cases involved in each appearance, except as outlined herein. Such court time, however, shall not be counted as "time worked" for overtime purposes except as outlined herein. Employee has the option to request court time compensation at time and one-half or request equivalent compensatory time, provided the employee meets the criteria outlined herein, and provided that the employee's accumulated compensatory time, **premium** time and court time, shall not exceed 480 hours. The City, in its sole discretion, may either pay said employees as provided in this Section, or grant equivalent compensatory time off.*

A. *Court Time/Pay for Police Officers [Lieutenants] Assigned to District Police Plan.*

*This provision does not apply to any employee(s) separated or retired from City employment prior to the date of final ratification of this Agreement. Court appearances and other court duties as required by the City, including appearances and duties involving civil cases, shall be included in an employee's compensable tour of duty. Except as provided below, an employee will be compensated for such appearances at time and one half ("court pay"), irrespective of any other provisions for overtime pay based upon a 14-day work period of eighty-six (86) hours. Employees shall receive a minimum of two (2) hours pay at time and one-half (1.5) for each off-duty court appearance, although such **premium** pay shall not be included in the computation of the employee's regular rate of pay. However, only hours actually worked during this period shall be included in the computation of time worked for overtime pay. Additionally, such **premium** pay shall be creditable toward any potential overtime compensation payable to the employee.*

*Court pay shall not be paid to employees whose court appearance, hearing, deposition or Pre-Filing Interview (PFI) falls within one and one-half (1.5) hours prior to the start of their assigned work hours or within one and one-half (1.5) hours after their assigned work hours. Employees assigned to court appearances within one and one half (1.5) hours pre-shift or post-shift shall be deemed to be in an on-duty status and are therefore ineligible to receive court pay. Employee has the option to request court time compensation at time and one-half or to request equivalent compensatory time, provided the employee meets the criteria outlined herein, and provided that the employee's accumulated compensatory time, **premium** time, and court shall not exceed 480 hours. The City, in its sole discretion, may either pay said employees as provided in this Section, or grant equivalent compensatory time off.*

[Special Magistrate's emphases]

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- 2 While the Special Magistrate agrees with the substance of the parties' proposals, he sometimes found the language of Article 9.9 difficult to follow, and has rewritten it with the hope of achieving greater clarity. The rewrite is offered here for the parties' consideration.

*When an Criminalist or Officer makes a court appearance or performs court-related duties (whether attending hearings, depositions or Pre-filing interviews, and whether for civil or criminal cases) during an interval that falls outside of his assigned shift, he will be paid "Court Time" at time-and-a-half. (The 1-½ hours before or after an assigned shift shall not be included as Court Time.)*

*The employee shall receive a minimum of two hours pay for each such Court Time appearance, irrespective of the number of cases involved. The two-hour minimum shall not be counted as "time worked" for overtime purposes.*

*Sworn Officers shall have the option of requesting either Court Time compensation or equivalent compensatory time, but total accumulated compensatory time shall not exceed 480 hours. The City, in its sole discretion, may either pay the Officer as provided in this Section or grant equivalent compensatory time off.*

*Employee(s) separated or retired from City employment prior to the date of final ratification of this Agreement are excluded from this Article 9, Section 9.*

## SHIFT DURATIONS, PRE-SHIFT TIME

### RECOMMENDATION

In view of the Special Magistrate's recommendations eliminating Premium Time and decreasing the start of Overtime to 40 or 80 hours, the Special Magistrate recommends the shift durations and compositions proposed by the District:

8-hour shift	:	8.25 hour shift inclusive of .25 hour pre-shift
10-hour shift	:	10.25 hour shift inclusive of .25 hour pre-shift
11½-hour shift	:	11.75 hour shift inclusive of .25 hour pre-shift <sup>1</sup>

The Special Magistrate also recommends adoption of the City's "caveat":

*Pre-Shift time is payable only for pre-shift actually attended on days actually worked ("sweat hours"). Thus, Pre-Shift shall not be attributed to Holidays unless worked.*

## CITY'S RIGHT TO CHANGE SHIFT DURATIONS

The City proposes, as a new provision, that it have the right to unilaterally change the duration of shifts from 8, 10 or 12 hours to shifts of other durations.

*A change in the hours of the Community Policing Plan work schedule from 8, 10 or 11.5 hours will be noticed by the City no less than six months in advance of the implementation after the ratification of this agreement and no less than one year in advance of the implementation date thereafter.*

### DISCUSSION

The comparator municipalities invest this authority in their departments, albeit with the right to impact bargain or with the requirement, if disputed, of mayoral approval.

### RECOMMENDATION

The Special Magistrate recommends the adoption of the City's proposal, with the right to bargain over impact added:

*A change in the hours of the Community Policing Plan work schedule from 8, 10 or 11.5 hours will be noticed by the City no less than six months in advance of the implementation after the ratification of this agreement and no less than one year in advance of the implementation date thereafter. The City will negotiate the impact of any such changes with the PBA.*

## ENDNOTES

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1 Corresponding provisions of comparator cities :

Bradenton, Article 20, Work Week and Overtime

*The Department agrees to negotiate with the Union if the department desires to change the shift length in Patrol from four ten-hour days to five eight-hour days, or to some other schedule variation. In the event the Union opposes the desired change, The Department and the Union shall present the issues to the Mayor before implementation, whose decision shall be final and binding. The consultation process including the Mayor's decision will be completed within 30 calendar days unless otherwise agreed. This consultation requirement shall not be required in the case of individual schedule adjustments as appropriate to meet the needs of the Department.*

Ft. Myers, Article 5, Rights of Employer

*The City shall have the following unilateral management rights, unless such rights are specifically limited and in direct conflict with this Agreement:*

- g) To determine... the hours and days to be worked on each job and each shift unless contrary to a specific provision of the Agreement.*

*The City recognizes that if the exercise of rights enumerated in this section impacts wages, hours, and terms & conditions of employment, the City is obligated to negotiate the impact of such changes with the association.*

North Port, Article 7, Hours of Work/Overtime

*City has the authority to establish shifts and use any method in establishing a shift as well as change, increase, decreases, initiate, restrict and cancel a shift in order to meet the needs of the department and to provide superior service to the community.*

## MANAGEMENT RIGHTS

The PBA proposes changes to Article 3; the City does not.

### PBA PROPOSALS:

#### Article 3, Section 16

In Article 3, Section 16, the City acknowledges its obligations (a) to negotiate the substance of mandatory subjects of bargaining and (b) to negotiate the effects of permissive subjects of bargaining, with effect retroactive to the date of implementation of the permissible change. The PBA proposes adding the text that appears in bold font.

#### *Section 16.*

*In the exercise of the above-enumerated rights, the City recognizes its obligation to bargain, if the law requires and prior to implementation, over such rights or decisions that alter **or modify mandatory subjects of bargaining. For permissive subjects of bargaining the City recognizes its obligation to bargain, upon demand, over the exercise of management rights or decisions that alter, modify or impact on hours, wages and terms and conditions of employment of employees. As it relates to changes to permissive subjects of bargaining, nothing contained in this section shall prevent the City from implementing the proposed right or decision prior to negotiations, but any settlement, agreement or legislative imposition finally reached as a result of negotiations shall be retroactive to the date of implementation.***

The Special Magistrate recommends adoption of the addition, as it accurately states management's inherent authority and responsibility.

#### Article 3, Section 2.E.

The PBA proposes deleting from Article 3, Paragraph E the City's right "to alter or vary past practices."

Since Paragraph E is subject to the above Section 16, the Special Magistrate sees no need for the deletion, and recommends that the PBA's proposal not be adopted.

Article 3, Section 2.I.

The PBA proposes deleting from Paragraph I the text shown in bold font:

*To determine the qualifications of all employees of the Police Department. To select, examine, hire, classify, train, assign, **schedule**, direct, transfer, **promote**, **discipline**, **discharge**, layoff, retain and manage all employees of the Police Department.*

Management inherently possesses the authority that the PBA proposes to delete from Section 2.I. The first paragraph of Section 2 circumscribes that authority by requiring it be exercised “consistent with the express terms of this Agreement.” The Special Magistrate deems that to sufficiently preserve the duty to bargain, and recommends that the PBA’s proposal not be adopted.

Article 3, Section 9

The 2014 CBA grants the City the right to suspend the CBA. The PBA proposes deleting that right. It is shown here in bold font:

*The City shall have the right, during the term of this Agreement, to terminate selected services/operations permanently. In such event, all obligations hereunder to its affected employees and to the PBA shall forthwith terminate. The City shall also have the right, from time to time during this Agreement, to suspend selected services/operations. **This Agreement shall also be suspended without liability in respect to either the PBA or the employees involved.***

It is possible that the City intended that the last sentence would pertain to the sentence immediately preceding it – the right to *suspend selected services/operations*. If that was the intent, then the right of suspension should not have been framed as pertaining to the entire agreement. Or, possibly, the City sought the right to suspend the CBA in the event of an emergency. That kind of provision is found in the cbas of comparator cities.<sup>1</sup> But Article 3, Section 9 does neither of those things. An unconditional right to unilaterally “suspend” a contract means that there is no contract. The Special Magistrate agrees with the PBA that the sentence appearing in bold should be removed from Article 3, Section 9 of the CBA.

**ENDNOTES**

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**1 Bradenton**

CBA, Article 2, Management Rights, Section 2.

*If it is determined in the sole discretion of the City that civil emergency conditions exist, including, but not limited to riots, civil disorders, hurricane conditions, similar catastrophes or disorders, the provisions of this Agreement may be suspended by the City during the time of the declared emergency, providing that wage rates, overtime and other monetary benefits shall not be suspended and provided further, that any disciplinary action taken during such declared emergency shall be grievable at the end of the declared emergency in accordance with the provisions of this agreement.*

**Fort Myers**

CBA, Management Rights, Article 5, Section 5.3

*In the sole discretion of a City Official authorized to declare a state of emergency, it is determined that emergency conditions exist, including but not limited to riots, civil disorders, hurricane conditions, or similar catastrophes, the provisions of this agreement may be suspended by the authorized City Official during the time of the declared emergency, provided that wage rates and monetary fringe benefits shall not be suspended...*

**North Port**

CBA, Article 2, Management Rights, Section 4

*If, in the sole discretion of the City Manager, it is determined that civil emergency conditions exist, including but not limited to riots, civil disorders, hurricanes/tornado conditions, epidemics, public employee strikes or other similar catastrophes, any and all provisions of this Agreement may be suspended by the City during the time of the declared emergency, excluding wage rates, overtime and other monetary benefits...*

### **ACTING IN A HIGHER RANK**

Under the 2014 CBA, when an employee has been “officially designated” to act in a higher classification and serves in that position for 22 workdays within six consecutive months, he/she is eligible for pay at the higher classification for those days. The employee must furnish documentation to support the claim.<sup>1</sup>

The City proposes imposes a stricter requirement: i.e., that the officer must work in the classification for at least two consecutive weeks, and the documentation must be signed by the appropriate supervisor.<sup>2</sup>

The Union proposes keeping the same language but with a reduction in the number of higher (non-consecutive) classification workdays from 22 to 14.<sup>3</sup>

None of the comparator city cbas impose documentation requirements, and the minimum durations they set for an officer to receive the higher pay’s rank vary greatly:

Bradenton has a 4 hour minimum for working as a Lieutenant, and a 2 consecutive week minimum for an officer working as a sergeant.<sup>4</sup>

Fort Myers has a 20 consecutive day interval for work in any higher rank, after which the employee is paid at the rate associated with the higher rank or at 10% over his existing salary, whichever is greater, but only for those days worked in excess of the 20.<sup>5</sup>

North Port sets a 1-shift minimum duration for an Officer assigned to a supervisory position or a Sergeant assigned to a District Commander [i.e., approximately that of a Lieutenant’s] position.<sup>6</sup>

### **DISCUSSION**

An officer who is working in a higher classification for a material duration should be compensated at the higher rate, as the officer is undertaking a greater burden of responsibility, and the Department is benefiting from his doing so. Fourteen days during a six month interval is material. The requirement that the out-of-classification work must be *consecutive* can result in the unintended and arbitrary consequence of an officer working out of classification for well more than 14 or 22 days, but being denied the higher compensation because of transient breaks in continuity.

**RECOMMENDATION**

The Special Magistrate recommends that out-of-classification wages be paid whenever an officer works in a higher rank for more than 14 days in a 6 month interval, and that the officer and his supervisor sign a memorandum, reasonably soon after the close of each shift in which such work is performed, acknowledging the fact. The memoranda will be presumptive proof that the work was performed, and will be better evidence of each party's claim than will unwritten recollections or ambiguous memoranda.

**TEXT OF RECOMMENDED PROPOSAL FOR BOTH CBAS**

Article 7 – BASE HOURLY RATE OF PAY, (Section 3 for Officers and Sergeants, Section 2 for Lieutenants). Acting in a Higher Rank.

**A. Eligibility**

Each time an employee is officially designated, by the appropriate supervisor, to act in a higher classification than the employee's permanent classification and performs said duties for a period of more than fourteen (14) full workdays within any six consecutive months, the employee shall be eligible for a promotional pay increase to the higher classification for all time spent in the classification.

**B. Proof of Claim**

The employee and his supervisor will maintain documentation contemporaneous with the performance of such work, acknowledging that the work was (1) officially designated and was (2) work performed in a higher classification. (The employee will prepare and sign the document; the supervisor will co-sign.)

## ENDNOTES

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1 2014 CBAs, Article 7 – BASE HOURLY RATE OF PAY, Section 3. Acting in a Higher Rank.

A. Eligibility

Each time an employee is officially designated, by the appropriate supervisor, to act in a higher classification than the employee's permanent classification and actually performs said duties for a period of more than twenty-two (22) full workdays within any six consecutive months, the employee shall be eligible for a promotional pay increase to the higher classification for all time spent in the classification.

B. Proof of Claim

If an officer/employee claims eligibility for such pay increase, he must provide verified documentation to substantiate such claim.

2 City proposal, Article 7 – BASE HOURLY RATE OF PAY, Section 3. Acting in a Higher Rank.

A. Eligibility

Each time an employee is officially designated, by the appropriate supervisor, to act in a higher classification than the employee's permanent classification and actually performs said duties for a period of two consecutive weeks or more, the employee shall be eligible for a promotional pay increase to the higher classification for all time spent in the classification. Verified documentation must be executed by the appropriate supervisor for payment to be made.

3 Union proposal, Article 7 – BASE HOURLY RATE OF PAY, Section 3. Acting in a Higher Rank.

A. Eligibility

Each time an employee is officially designated, by the appropriate supervisor, to act in a higher classification than the employee's permanent classification and actually performs said duties for a period of more than fourteen (14) full workdays within any six consecutive months, the employee shall be eligible for a promotional pay increase to the higher classification for all time spent in the classification.

B. Proof of Claim

If an officer/employee claims eligibility for such pay increase, he must provide verified documentation to substantiate such claim.

4 **Bradenton**

CBA, Article 16, Acting Officer

Section 1.

Whenever a bargaining unit member is required to serve in the rank of Lieutenant, he shall be paid at the starting rate of pay for an officer serving in the higher rank, provided he or she works at least four (4) hours in the Lieutenant rank.

Section 2.

Whenever a Police Officer is assigned to serve as an Acting Sergeant for more than two consecutive workweeks, he or she will be paid at the same rate of pay he or she would have received had he or she been promoted to the position retroactive to the start of assignment.

Section 3.

There shall be no distinction between an "acting" officer and an officer who has the same permanent rank with respect to his or her job description, and any "acting" officer shall have all the rights, duties and privileges of rank as though he or she were a permanent officer in that rank.

*[endnote continues]*

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**5 Fort Myers**

CBA, Article 6, Job Classification and Salary Schedule

Section 6.4.

Employees may be temporarily assigned to perform duties in a higher classification because of a vacancy in that classification, or because of the incumbent's absence due to illness or authorized leave of absence. If such assignment exceeds twenty (20) consecutive working days, the assigned employee will receive additional pay for time worked in that higher classification in excess of those twenty (20) days. The employee will be compensated at the minimum rate for the higher ranked position, or ten (10%) percent above his or her existing salary, whichever is greater...

**6 North Port**

CBA, Article 5, Compensation

Section 4

Any non-supervisory member assigned to a supervisory position for a minimum of one (1) shift shall be compensated at the entry level rate of the higher classification or a 5% increase of the member's current hourly rate, whichever is greater.

Any Sergeant who is officially assigned by the Police Chief or his designee as a "District Commander" for a minimum of one full (1) shift shall be compensated with a 5% increase of the member's current hourly rate for the hours assigned as a District Commander.

## **PROMOTIONAL PROCESS ELIGIBILITY**

The City proposed changing the promotional prerequisites for prospective Sergeants and Lieutenants by lowering their time-in-grade requirements.

for Patrol Officers seeking promotion to Sergeant from 5 years to 3 years and

for Sergeants seeking promotion to Lieutenant from 3 years to 2 years.

The City also proposed reducing the passing grade for promotion for both classifications from 80% to 70%. During negotiations, the City and the Union tentatively signed off on the proposal, with the single modification that the time-in-grade for promotion to Sergeant was decreased to 4 years rather than to only 3. The tentative agreement was withdrawn, and the City's original proposal is back on the table.

In a post-hearing query, the Special Magistrate asked why the standards were being "lowered." The PBA responded that, during negotiations, no reason had been given. The City responded that it was not proposing that the standards be lowered; rather, the "changes" were meant to provide more employees with promotional opportunities.

### **RECOMMENDATION**

The Special Magistrate deems it important that management have greater control over the Department. The evidentiary record being devoid of data on which the Special Magistrate can judge the necessity or prudence of the proposed changes, he will defer to the Department's judgment. The Special Magistrate recommends adoption of the City's proposal.

## LEAVE REQUESTS

### Minimum Leave Requests Granted

Appendix A of the 2014 CBAs provides, *inter alia*, as follows:

*The City and Association recognizes that a patrol shift may, during the year, not be fully manned. It is agreed that in order to fulfill annual and other leave requests, including training and schools, the City will accommodate a minimum of five (5) requests per day shift and a minimum of six (6) requests per night shift even if such accommodation requires the call-in of officer(s) in order to maintain minimum staffing levels.*

Both parties offered proposals; both proposals contained the same priorities for granting leave and recalling officers from leave:

*In highest to lowest order of priority: 1) annual vacation selection(s), 2) grouped individual vacation days, 3) individual vacation days, 4) H-Time, 5) approved training or schools, and 6) days off missed (D.O.M.).*

The City proposes “limiting the number” on leave per shift to two officers,<sup>1</sup> and the Union proposes “a minimum” per shift of four.<sup>2,3</sup>

### DISCUSSION

The mandating of any minimum number of leave requests that must be granted restricts City’s managerial discretion and adds complexity to the leave process. There may be circumstances under which it would be prudent to grant many more than two leave requests; there may be times when it would be wise to grant none. Setting a minimum number does not distinguish between the times of year or circumstances when the demands on the Department’s staff are high and when they are low. None of the comparable local cities require that a minimum number of officers’ requests for leave be granted.<sup>4</sup> Yet, because the City has offered to set the number at a minimum of two, the Special Magistrate recommends that minimum. See below for the terms of the recommendation.

## Travel Expense Reimbursement

The PBA proposes that the City reimburse an employee's travel losses resulting from leave cancellation.<sup>5</sup>

### DISCUSSION

The Special Magistrate also notes that officers' families plan their lives around vacation leave, and that it should not be cancelled except under emergency circumstances. And the Special Magistrate agrees that the costs associated with the cancellation of travel plans made after leave has been granted and before it has been rescinded should be borne by the City.

### RECOMMENDATION

The Special Magistrate recommends that following provisions become part of Article 14; and that the corresponding reference in Appendix A be deleted. These recommendations depart from the language proposed by the parties:

*A minimum of two requests for vacation leave shall be granted for the same dates per each shift.*

*Employees shall request vacation in writing at least two weeks prior to the requested time off, and the Chief or his designee shall approve or deny the request. Leave will be granted in the following order: 1) annual vacation selection(s), 2) grouped individual vacation days, 3) individual vacation days, 4) H-Time, 5) approved training or schools, and 6) days off missed (D.O.M.).*

*Once a request has been approved it cannot be rescinded except when the Department reasonably deems an emergency to exist. In that event, the Chief of Police shall recall employees back to work in reverse order of the above grant of leave time.*

*Should the City's rescission of a granted vacation day cause the employee financial harm through the loss of non-refundable travel expenses such as airfare, hotel etc., the City will reimburse the employee for those lost, nonrefundable travel expenses for themselves and their family. The travel obligations must have been undertaken after leave was granted and before it has been rescinded. The employee will furnish reasonable documentation of the losses.*

## ENDNOTES

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### 1 The City's Proposal

*For purposes of granting officers time-off, the amount of requests for vacation per shift shall be limited to two (2) in order to maintain appropriate levels of staffing as set forth above as needed to successfully implement Community Policing.*

*In light of minimum staffing levels, the following leave time (excluding unscheduled leaves) will be granted in highest to lowest order of priority: 1) annual vacation selection(s), 2) grouped individual vacation days, 3) individual vacation days, 4) H-Time, 5) approved training or schools, and 6) days off missed (D.O.M.).*

*In the event that the number of officers on duty falls below the number needed to fully staff the zones, the Chief of Police shall recall employees back to work in reverse order of the above grant of leave time. Such recall is mandatory.*

### 2 The PBA's Proposal

*For purposes of granting officers time-off in light of minimum manning levels, the following leave time (excluding unscheduled leaves) will be granted in descending order of priority: annual vacation selection(s), grouped individual vacation days, individual vacation days, H-Time, approved training or schools, and days off missed (D.O.M.).*

*Other than annual vacation selection, leave requested in a timely manner will be granted in the aforementioned priority order until minimum staffing is reached.*

*Annual vacation selections shall be carried forward by an officer if he or she is reassigned.*

*The City and Association recognizes that a patrol shift may, during the year, not be fully manned. It is agreed that in order to fulfill annual and other leave requests, including training and schools, the City will accommodate a minimum of four (4) requests per day shift and a minimum four (4) requests per or night shift even if such accommodation requires the call-in of officer(s) in order to maintain minimum staffing levels.*

### 3 The PBA also proposed, within the context of annual leave requests, the following provision:

*When a D.O.M. leave request impacts minimum patrol staffing, supervisors shall assign a different D.O.M. leave day to the affected officer to ensure minimum staffings. If a D.O.M. cannot be scheduled within the work period, it shall be paid for at the appropriate overtime rate or paid in the form of compensatory leave.*

In view of the Special Magistrate's recommendation that contractually mandated minimum patrol staffing be eliminated, he further recommends that this proposal not be adopted.

### 4 Bradenton

Officers and Sergeants CBA, Article 13 – Vacation Leave, Section 10,

*Approval or denial of Vacation Leave and Compensatory Time Off will be based on the staffing levels for the date that is requested off, as determined in advance, by the Police Chief or designee.*

Lieutenants CBA, Article 13 – Vacation Leave, Section 9,

*Employees shall request vacation in writing at least two weeks prior to the requested time off, and the Chief or his designee shall approve or deny the request.*

[endnote continues]

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**North Port**

Officers and Sergeants, Article 10, Leave, Section 8 - Vacation Leave Requests

*Any member requesting up to five (5) consecutive days off can be approved by his/her immediate supervisor. Any request for six (6) or more consecutive days off will need at least two (2) weeks advance notice. Any Vacation Leave request denied for reasons other than minimum staffing will be explained in writing by the supervisor.*

*Once a request has been approved it cannot be denied except where an emergency exists.*

*All leave requests must be approved or disapproved within five (5) business days of receipt.*

**Fort Myers**

Officer, Sergeant and Lieutenants, Article 11, Vacations

*Section 11.3 Employees shall have preference in selecting their vacation period(s) on a first-come, first-serve basis. If more than one employee requests the same time off and the requests are made on the same day, seniority shall determine who receives the time off. Vacation requests exceeding forty (40) or more consecutive hours shall be requested at least thirty (30) days prior to the selected vacation leave. Vacation requests may only be submitted a maximum of ninety (90) days prior to the requested time off. Earned vacation leave shall be available during any part of the year except it may be limited by the Chief of Police during the week of the Edison Festival of Light.*

*Section 11.4 Employees may take single day's vacation, subject to the request and selection provisions of Section 11.3. All requests for vacation leave shall be approved by the Chief of Police and are subject to the staffing requirements of the Public Employer.*

5 The PBA proposed the following:

*Should the cancellation of a vacation day cause the employee financial harm through the loss of non-refundable travel expenses such as airfare, hotel etc., the City will reimburse the employee for those lost, nonrefundable travel expenses for themselves and their family. The employee will furnish reasonable documentation of the losses.*

## ARTICLE 14 - ANNUAL VACATION LEAVE

The City has been using an electronic timekeeping system for recording the attendance and accruing the vacation leave of all City employees except for the Police Department. The Department has been keeping its records (including the officers' vacation leave accruals) manually, posting the cumulative figures once annually – on April 1 of each year – into the electronic timekeeping system. The arrangement has made it impractical to audit the Department's numbers and has made the accounting for its employees' vacation time an opaque, multi-step process. The City intends to integrate the Department into the electronic timekeeping system. That system accrues annual leave in units or hours rather than in units of days.

Under the 2014 CBAs, Officers earn a set number of annual vacation days correlated to their years of service. The City and the Union have agreed that the accrual rate will remain unchanged from the 2014 CBAs, and they agree on the introductory text for Article 14, the Vacation Leave Article:

*Qualified employees of the City of Sarasota, upon application to and with the approval of the Chief of Police or designee, shall be accorded Annual Leave in compliance with and subject to the following provisions and conditions.*

Years of Service	2014 CBAs			The Parties' Proposals in Hours			The Parties' Proposals in Days		
	Earned Annual Vacation Days			Earned Annual Vacation Hours			Equiv Annual Vacation Days		
	8-hour shift	10-hour shift	11.5 hour shift	8-hour shift	10-hour shift	11.5 hour shift	8-hour shift	10-hour shift	11.5 hour shift
1 - 5	10	8	8	80	80	92.00	10	8	8
6	11	9	9	88	90	103.50	11	9	9
7	12	10	10	96	100	115.00	12	10	10
8	13	11	11	104	110	126.50	13	11	11
9	14	12	11	112	120	126.50	14	12	11
10	15	12	12	120	120	138.00	15	12	12
11	16	13	13	128	130	149.50	16	13	13
12	16	13	13	128	130	149.50	16	13	13
13	17	14	14	136	140	161.00	17	14	14
14	17	14	14	136	140	161.00	17	14	14
15	18	15	15	144	150	172.50	18	15	15
16	18	15	15	144	150	172.50	18	15	15
17	19	16	15	152	160	172.50	19	16	15
18	19	16	15	152	160	172.50	19	16	15
19	19	16	15	152	160	172.50	19	16	15
20	20	16	16	160	160	184.00	20	16	16

The City proposes adding language that would shift the date that leave is deemed to have been earned from April 1 of each year to each employee's anniversary date of hire. That is the practice now used for all other City employees:

*Annual Leave is accumulated weekly and earned at the end of the employee's anniversary year based on their scheduled shift (8, 10, 11.5 Hours).*

The change will not result in the forfeiture of leave by any bargaining unit member.

As noted, the City's accounting system and controls accrue annual leave in units of hours rather than in units of days for all other employees. The City proposes deleting all of Article 14's references to leave being accrued in units of "earned days."

The change proposed by the City would result in bargaining unit members receiving more or fewer days of vacation – but the same number of vacation hours – when they move to a shift with a different duration from the one they left.

The Department also proposes the addition of the following sentence:

*Vacation carryover shall be handled in accordance with the City rules as in effect on the date of ratification of this Agreement.*

#### **RECOMMENDATION**

The changes proposed by the City are important to achieving normality, consistency, control, transparency and efficiency in the City's accounting for the Department's overtime. In a Department this small, those attributes are essential, and exceptions and complexities are to be avoided. The Special Magistrate recommends the adoption of the City's proposals, but with the addition of the following Appendix A provision from the 2014 CBAs:

*Annual vacation selections shall be carried forward by an officer if he or she is reassigned.*

## SHIFT DIFFERENTIAL

The 2014 CBAs. Article 9, Section 10 states that a \$15.00 weekly payment will be made to those working the day shift, and a \$20.00 weekly payment to those working the night shift. <sup>1</sup>

The PBA proposes increasing the night shift differential payment from \$20.00 to 5% of base pay while retaining the \$15.00 day shift differential payment

The City proposes increasing the shift differential payment to 3% of base pay, and eliminating the day shift differential payment.

### DISCUSSION

The key word in pay differential is “differential.” If, as the City avers, officers have to be induced to work nights, then the larger the difference in pay between day and night the better. It makes no sense to increase the attractiveness of working days by offering an incentive to do so.<sup>2</sup> And as for whether 3% or 5% is the right number, no data were provided. Since it is the City that seeks to staff the nightshift, the Special Magistrate will defer to its judgment.

### RECOMMENDATION

The Special Magistrate recommends adoption of the City’s proposal, as amended here:

*CBA Article 9, Section 10. Shift Differential Pay.*

*Those employees whose shifts start between 5:00 PM and Midnight shall receive a shift differential of 3% of Base Rate of Pay. The first Shift Differential payment shall be made upon the ratification of this Agreement by both parties, at which time all other forms of Shift Differential pay shall cease.*

## ENDNOTES

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### 1 2014 CBA Article 9, Section 10. Shift Differential Pay.

Eligible members of the Bargaining Unit assigned to the 11.75 hour shift of the District Policing Plan (see Article 19, Appendix A, District Policing Plan) shall be eligible for pay in addition to: Base Rate of Pay, as outlined in Article #7; and in addition to the Special Duty Pay, as outlined in Article 8, Section 2. Shift Differential Pay will be paid in increments as outlined herein:

\$15.00 per week for day shift

\$20.00 per week for night shift.

### 2 Each of the comparator cities offers night shift differential. None offers a payment for working days.

#### **Bradenton CBA**

##### *Section 4.*

*Employees who are regularly assigned to the Midnight shift (working a regularly scheduled shift between the hours of 9 P.M. and 7 A.M.) shall receive \$.50 per hour shift differential for the hours worked that fall between the hours of 9 P.M. and 7 A.M. This article shall be applicable to all bargaining unit employees, including detectives, investigators and those assigned to specialty units but shall exclude employees who work on the day or afternoon shift.*

#### **North Port CBA**

##### *Section 34 Shift Differential*

*A shift differential of \$.72 per hour will be paid on all hours worked between 6:00 p.m. and 6:00 a.m. Shift differential pay will not be calculated on Vacation, Holiday, On-Call Time, Compensatory Time, Court Time, Sick Leave and/or Sick Leave Incentive pay.*

#### **Ft. Myers Shift Differential**

##### *Article 6, Job Classification and Salary Schedule*

*Shift differential pay shall be paid to those employees assigned to the following patrol shifts:*

- A) 3:00PM to 3:00AM Shift shall receive a 3% shift differential. This premium shall be paid for hours worked, including overtime, but will not be included in any other wage computation such as vacation pay, sick pay, holiday pay, etc.*
- B) 6:00PM to 6:00AM shift shall receive a 5% shift differential. This premium shall be paid for hours worked, including overtime, but will not be included in any other wage computation such as vacation pay, sick pay, holiday pay, etc.*

## DISTRICT POLICING POLICY, RESTRICTED DUTY

The 2014 CBAs state as follows:

*Officers on restricted duty, because of an illness or injury, may be assigned to the front desk on the 8-hour schedule.*

*All other officers normally assigned to a district under the 11.5-hour schedule may also be assigned to the front desk. However, those officers will work their normal schedule of 11.5 hours if so assigned.*

The PBA proposes retaining this provision.

The City proposes the following provision:

*Officers on restricted duty, because of an illness or injury, may be assigned to administrative functions on the 8-hour schedule.*

### DISCUSSION

Officers on restricted duty are a financial burden on the City. To the extent that they can perform productive administrative work within their physical or mental restrictions, they should be performing it. If that work is of only 8 hours duration, then requiring that they work an 11.5 hour schedule lacks a business purpose.

### RECOMMENDATION

The Special Magistrate recommends the City's proposal.

## CID PROGRAM

2014 CBA Appendix F defines a program in which employees in the Criminal Investigations Division can volunteer to work 10-hour tours, 4 days a week. The program sets out detailed rules under which it will function.<sup>1</sup> The last sentence of the program states that

*This program will be in effect until October 27, 2007 and may be extended and/or amended upon agreement by management and program volunteers.*

Although the program has previously been extended, as evidenced by the fact that, during the Special Magistrate hearing, the parties have treated it as an enforceable part of the 2014 CBA, no document was introduced to establish when and for what duration it had been extended after October 27, 2007. On its face, any extension of Appendix F would have required the agreement of both (1) management and (2) program volunteers. Based on the evidence furnished, the Special Magistrate does not know whether the most recent extension of the program has expired and, therefore, whether Appendix F is part of the *status quo*.<sup>2</sup>

The City proposes eliminating Appendix F; the PBA proposes retaining it.

### DISCUSSION

The City intends to revise its approach to policing, from a District-based approach to a Community-based approach. To that end, it seeks to be freed from legacy programs that could be inconsistent with the new approach. The CID Program prescribes scheduling in detail – e.g., 10-hour shifts for four consecutive days each week, tour start and end times, staffing by rank, vacation scheduling, etc. These are factors over which the City is seeking to regain managerial discretion and, as stated earlier in the Decision, over which the Special Magistrate recommends it be given that discretion.

### RECOMMENDATION

The Special Magistrate recommends the deletion of Appendix F.

## ENDNOTES

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### 1 Appendix F, C.I.D. Program, Voluntary Ten Hour Tours

The CID programs shall continue in effect for the Criminal Investigations Division. The program will permit C.I.D. sworn members to volunteer for a schedule often (10) hour tours working four consecutive days weekly.

- Sworn members on ten (10) hour tours will select three (3) consecutive days off, in seniority order, to include Saturday and Sunday and any other day as long as no more than 50% of the unit workforce is off on any one day; however, an employee may at his or her preference, request alternative days off.
- Seniority determined by current continuous service in C.I.D.
- A sergeant will be scheduled for duty on Mondays and Fridays, except when on authorized leave
- Sergeants shall not take leaves simultaneously
- Sworn staffing scheduling will be equally balanced by ranks Mondays and Fridays
- Sworn members will commence tours no earlier than 0700 hours
- Narcotics Unit sworn members will start tours no earlier than 0900 hours
- During the term of this program, two (2) C.I.D. detectives shall be scheduled for duty until 2400 hours, Monday through Friday, with a minimum manning standard of one (1) C.I.D. detective
- Detectives scheduled will respond to all C.I.D. investigative call outs
- An agreeable scheduling process shall be established to determine staffing for tours scheduled to end at 2400 hours
- Contingencies with no financial impact will be established within C.I.D. for planned (e.g. training) and unplanned (e.g. sick, injured, personal emergency) absences for tours ending at 2400 hours
- Annual vacations or other leaves shall not be selected during work days or work periods with tours ending at 2400 hours
- When a City recognized holiday coincides with a regular work day, sworn members may request the option of performing duty on the City recognized holiday if justification is presented to, and approved by, their supervisor
- If authorized to perform duty on a City recognized holiday, sworn C.I.D. employees shall be compensated in accordance with the Collective Bargaining Agreement, Article #17, Section 2E.

This program will be in effect until October 27, 2007 and may be extended and/or amended upon agreement by management and program volunteers.

### 2 PBA President Michael McHale was asked whether the CID Program was still in effect and testified that he had “not been made aware of a change.”

## GENERAL ORDER 601.00

Appendix G of the 2014 CBA consists of a copy of the Department's General Order 601.00, dealing with Specialized Units. The General Order thus resides in two locations: in the CBA as Appendix G, and in the book of General Orders maintained by the City. The City proposes deleting General Order 601.00 from the CBA while retaining it in the book of General Orders; this for the stated purpose of simplifying the CBA. The City's counsel described the purpose of the deletion of Appendix G as solely one of "housekeeping." The PBA opposes its deletion from the CBA, arguing that, as long as it remains in the CBA, the General Order is not subject to unilateral amendment by the Department, which the General Order 601.00, like all General Orders, would be subject to if it were not a part of the Agreement. PBA President McHale testified that the Union had hammered out the terms of General Order 601.00 over "a long period of time" and that its purpose and effect has been to provide a "fair playing field" for those seeking specialized assignments.

City counsel represented that the City did not intend to change General Order 601.00 and that it was not seeking the unilateral right to change that General Order. Counsel stated that a single CBA statement saying that the General Order would not be changed unless negotiated with the PBA "might take care of it."

### RECOMMENDATION

The Special Magistrate recommends the deletion of Appendix G consisting, in its entirety, of General Order 601.00, and the addition to the Management Rights Article of this statement:

*The City may amend or delete General Order 601.00 only if such amendments or deletion are first negotiated with and agreed to, in writing, by the PBA.*

## DURATION OF AGREEMENT

Both parties agree that the effective dates of the successor CBA will be October 1, 2014 through September 30, 2017.

The PBA proposes deleting Article 27, Section 6 of the 2014 CBA. The City proposes retaining it.

Section 6. Exception to Retroactivity.

*Any provisions for retroactive compensation shall not apply to any employee of the Bargaining Unit not employed by the City as a Police Officer, Sergeant Community Service Aide Supervisor or Community Service Aide, Criminalist I, Criminalist II or Criminalist III, at the time of final ratification of this Agreement.*

### DISCUSSION

Section 6 will deny further payment to bargaining unit members who performed services for the City but who are no longer members of the bargaining unit as of ratification. While they were employed, those persons had the benefit of the extensive overtime, annual leave request deference, premium pay and mandated patrol vehicle use that the Special Magistrate is now recommending be curtailed. The decision recommends that those benefits now cease and that, correspondingly, wages increase and overtime be expanded. The Special Magistrate deems the non-retroactivity of Article 27, Section 6 to be reasonable.

The Special Magistrate also recommends the relocation of this Article 27, Section 6 to the CBA Articles dealing with Base Pay for Criminalists and Non-Criminalists.

### RECOMMENDATION

As part of its wage offer, the City agreed to a wage re-opener for the 2016-2017 agreement. The Special Magistrate endorses Article 27, Section 7 (a new provision), as modified below:

Section 7. Re-opener

*The Parties agree to a re-opener of the contract for FY 16-17 to discuss wages and one other item.*<sup>1</sup>

**ENDNOTES**

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- 1 The Special Magistrate has edited the proposal by deleting the requirement that the City's "Package" proposal of 2/29/2016 be adopted, and by correcting errors of expression. Here is the original:

*Section 7. Re-opener*

*The Parties agree to a re-opener of the contract for FY 16-17 to discuss wages and one other item if the Package as presented by the City on 2/29/16 if this Agreement is ratified by the Union and approved by the City Commission. [sic]*