

**CITY OF EL PASO, TEXAS  
AGENDA ITEM  
DEPARTMENT HEAD'S SUMMARY FORM**

**DEPARTMENT:** City Manager's Office

**AGENDA DATE:** 16 October 2012

**CONTACT PERSON NAME AND PHONE NUMBER:** David Almonte, 541-4855

**DISTRICT(S) AFFECTED:** All

**SUBJECT:**

**APPROVE a resolution / ordinance / lease to do what? OR AUTHORIZE the City Manager to do what? Be descriptive of what we want Council to approve. Include \$ amount if applicable.** Requesting Council approve a Settlement Agreement with the El Paso Municipal Police Association as per federal mediation on 13 and 19 September 2012. Back pay for officers of 1.8% for FY 2012 and wage calculation of 1.5% for FY 2013. That the City Manager be authorized to sign the Agreement and process all documentation to effectuate the Agreement.

**BACKGROUND / DISCUSSION:**

**Discussion of the what, why, where, when, and how to enable Council to have reasonably complete description of the contemplated action. This should include attachment of bid tabulation, or ordinance or resolution if appropriate. What are the benefits to the City of this action? What are the citizen concerns?**

Council action will allow the City to resolve a wage issue with the Police Association for FY 2012 and implement wage scale for FY 2013.

**PRIOR COUNCIL ACTION:**

**Has the Council previously considered this item or a closely related one?**

Yes, Council previously entered into an MOU with the Police Association on 25 August 2009.

**AMOUNT AND SOURCE OF FUNDING:**

**How will this item be funded? Has the item been budgeted? If so, identify funding source by account numbers and description of account. Does it require a budget transfer?**

The FY 2012 portion will be reimbursed based on funding of available appropriations at the end of the fiscal year and recorded as a liability on the general ledger. FY 2013 funding will be accomplished through a combination of budget adjustments of various appropriations within the department and additional revenue sources, specifically Scofflaw revenue initiated in FY 2013.

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**BOARD / COMMISSION ACTION: None.**

**Enter appropriate comments or N/A**

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\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**DEPARTMENT HEAD:**

\_\_\_\_\_  
(If Department Head Summary Form is initiated by Purchasing, client department should sign also)

*Information copy to appropriate Deputy City Manager*

**AGREEMENT FOR RESOLUTION OF:**

**El Paso Municipal Police Officers' Association v. City of El Paso  
Wage Formula Calculation Grievance  
CLEAT File No. EP-11-131**

This Agreement is entered into by and between the City of El Paso, hereinafter referred to as "City" and the El Paso Municipal Police Officers' Association, hereinafter referred to as "Association," on this \_\_\_\_ day of \_\_\_\_\_, 2012.

**WITNESSETH:**

**WHEREAS**, on September 1, 2008, the Articles of Agreement Between the City and the Association ("Agreement") were approved and subsequently amended; and

**WHEREAS**, on July 14, 2011, the Association filed a grievance (CLEAT file No. EP-11-131), hereinafter referred to as "2012 Grievance," alleging generally that the City violated the Agreement by miscalculating the wage scales for the bargaining unit for fiscal year 2012; and

**WHEREAS**, as a response to the 2012 Grievance, the City alleges that certain members of the bargaining unit; namely, sergeants, lieutenants, commanders and assistant chiefs, were overpaid; and

**WHEREAS**, for the same reasons asserted in the 2012 Grievance, the Association could potentially file a grievance alleging generally that the City violated the Agreement by miscalculating the wage scales for the bargaining unit for fiscal year 2013 (hereinafter referred to as "2013 Grievance"); and

**WHEREAS**, on September 1, 2012, the first day of fiscal year 2013, the City froze any and all wage increases and step implementations and wholly failed to implement any wage scale for fiscal year 2013; and

**WHEREAS**, the Grievance was set for arbitration before AAA hearing officer Edward Valverde, said arbitration to occur on September 19, 2012; and

**WHEREAS**, the parties mediated all of the foregoing disputes before Pete Cinquemani of the Federal Mediation and Conciliation Service on September 13, 2012, and reached a preliminary resolution, the terms of which were finalized at a subsequent, informal meeting on September 19, 2012; and.

**WHEREAS**, at the aforementioned mediation, the Parties agreed to resolve all grievances and potential grievances that could have been filed regarding the calculation of wage scales for fiscal years 2012 and 2013.

**NOW THEREFORE**, the City and the Association hereby mutually agree as follows:

1. The Parties hereby agree that, for the sole purpose of resolving the 2012 Grievance and the 2013 Grievance, the wage calculation is modified as follows:

- A. City of Phoenix. For purposes of the comparative analysis, Police Officer Step 3 will be utilized.
- B. City of Dallas. For purposes of the comparative analysis, the Meet and Confer table will be utilized.
- C. City of Albuquerque. For purposes of the comparative analysis, this city will be removed from the calculation and the remaining six (6) cities will be used in calculating the average wage.

2. Based upon the foregoing, the calculation results in a base pay increase for fiscal year 2012 for patrol officers and detectives of 1.8%; and a base pay increase for fiscal year 2013 for patrol officers and detectives of 1.5%. These calculations are reflected in Exhibits A and B hereto, respectively.

3. The City agrees to pay back pay in the form of wages, overtime, shift differential pay and benefits that will accrue to all members of the bargaining unit as a result of this Agreement for fiscal year 2012 (September 1, 2011 to August 31, 2012). Upon execution of this Agreement by all parties, the City will lift the pay freeze that went into effect on September 1, 2012, and all parties affected thereby will receive back pay from September 1, 2012 to the date the freeze is lifted, in accordance with the provisions set forth herein. Members of the bargaining unit will be paid in alphabetical order as soon as practicable. The City will provide the Association with a final pay scale for fiscal year 2013, within time to allow the Association a reasonable opportunity to review and comment upon same on or before October 9, 2012.

4. The City and the Association further agree that officers in ranks of Sergeant and above will not be required to pay back wages that have been overpaid as a result of a miscalculation during fiscal year 2012. The City agrees to identify the officers that have been overpaid in writing and provide an estimate of the overpayment to the officer. The Parties agree that the officers who have been overpaid in error will assign their future wage increases, including pay increases associated with step increases and pay raises, to correct the overpayment. The City will issue a notice to the affected officer when the error in pay has been corrected and pay raises, step and pay increases will resume. Nothing herein shall be construed so as to alter the anniversary date for any employee's step increase.

5. It is further agreed that officers who have been underpaid as a result of this settlement will be identified in writing and provided with an estimate of their underpayment. If officers have an underpayment for fiscal years 2012 and 2013 that amounts to less than \$20.00, the Parties agree the City of El Paso will not be required to process a back pay check for the underpayment but will adjust the individual's future pay to correct the underpayment.

6. All other provisions of the Articles of Agreement, as amended, remain in full force and effect. The parties acknowledge and agree that this Agreement is entered into for the limited purpose of resolving any and all grievances and potential grievances that were brought or that could have been brought by either party pursuant to the 2012 Grievance and the 2013 Grievance, as more particularly set forth above. This Agreement is in no way intended to be

construed as establishing a past practice or precedent, and the Parties agree that they will not use this agreement as past practice or precedent in any future grievances, claims or controversies that are not made subject of this Agreement.

7. This Agreement supersedes any and all prior agreements regarding the disputes and controversies addressed herein. To the extent that this Agreement conflicts with any prior agreements between the parties, this Agreement shall prevail.

8. This Agreement is final and binding upon all parties. The Parties agree that the disputes, claims and controversies addressed herein cannot be grieved, arbitrated or litigated in any forum, except for purposes of enforcing this agreement.

**SIGNED AND AGREED:**

\_\_\_\_\_  
Joyce Wilson  
City Manager

\_\_\_\_\_  
David Hernandez,  
2<sup>nd</sup> Vice President and Grievance Chair,  
El Paso Municipal Police Officers' Association

**APPROVAL AS TO FORM:**

\_\_\_\_\_  
Nathan Brown,  
Assistant City Attorney, City of El Paso

\_\_\_\_\_  
Jim K. Jopling,  
Staff Attorney, CLEAT

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**TO: Mayor and Council**

**FROM: Joyce Wilson, City Manager**

**CC: David Almonte, Gregory Allen, Linda Thomas, Chris Borunda**

**DATE: October 3, 2012**

**SUBJ: PD Wage Dispute and Resolution**

Shortly before I left for vacation I notified you of an outstanding grievance from the PD Association regarding the FY 2012 wage scale that took effect in September 2011. I also indicated that the CMO was not aware of this grievance until it surfaced in June 2012 in conjunction with the proposed wage scale for FY 2013. As we appeared to be heading toward arbitration, we offered to participate in a 3<sup>rd</sup> party mediation to attempt to more amicably resolve the issue. Going into that process we felt confident that our analysis was correct and could be defended in arbitration. We also believed that the Association had not met the timeliness requirement for filing said grievance.

During the mediation process, we were provided with documentation that a formal grievance had been filed in September 2011 regarding the wage scale that took effect September 1. That grievance (attached) was filed with the Chief of Police per contract requirements and a copy to the City Attorney. For whatever reason that grievance was not processed appropriately, nor could we find a readily available record of it until after considerable research. I believe in part it was due to the transition of several key attorneys in the CAO, including Charlie McNabb and John Batoon who handled these matters historically. In addition, there were other major changes including OMB leadership and a long-term staff person who traditionally handled the wage calculations for collective bargaining, along with the transfer of a part of the OMB function to HR. Also, the Police Chief apparently relied on City Hall to dispose of the matter and was

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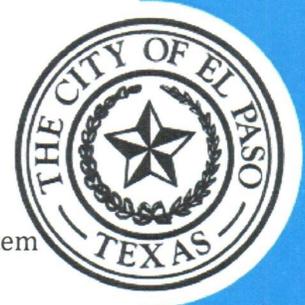
**City Manager**  
Joyce A. Wilson



Two Civic Center Plaza  
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not active in ensuring proper closure. Collectively there were system breakdowns that now need to be re-established.

Prior to September 2011, there were email communications from the PD Association leadership disputing the methodology to apply the balance of the salary adjustment due for FY 2011 (which was effective June 30, 2011) and apparently a grievance filed with the Police Chief in July 2011, even though it is arguable that this issue was a valid grievance. This issue relates to one of the emails to DCM Almonte that is being referenced in various conversations.

Based on these circumstances, I directed our team to attempt to resolve this to the City's best interest through mediation, meaning we needed to look at the degree of exposure if we are not to prevail on most or all of the key areas of dispute during arbitration.

The methodology used to calculate the annual wage scale is complex. It involves seven comparable cities and then a formula factoring in cost of living of El Paso relative to the other cities. Of the seven cities, three were in dispute as it related to the calculation for FY 2012.

Phoenix – dispute involved which step was appropriate to use in calculation (1<sup>st</sup> or 3<sup>rd</sup> steps). The City in past used either 3<sup>rd</sup> or 2<sup>nd</sup> step but in 2011 used the 1<sup>st</sup> step because Phoenix had frozen staffing so there were not active academies hired during that year.

Albuquerque – dispute involved contract pay scale versus adopted which was significantly different and in litigation. Our position was that the adopted was the 'actual scale' and per contract was the one we should use.

Dallas – dispute involved CSC wage scale versus 'meet and confer wage agreement'. Our position was that the meet and confer scale was the officially 'adopted wage scale' for the City.

The degree of risk focused on how we could potentially prevail in arbitration. If we won on all counts in terms of the analysis, our exposure was 0 and there would have been some overpayment due the City. Worst case scenario was that we would lose on all counts and the financial exposure to the City would

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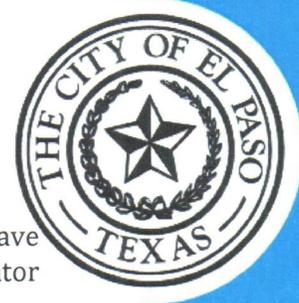
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have been as high as 4% for FY 2012 and 4% for FY 2013 which could have been as much as \$3,745,406 for P-1 through P-3 and \$8,907,703 if an arbitrator determined all officers were to receive 4% increases for both years.

In return for our agreeing to a settlement, we elicited several concessions from the Association that were deemed beneficial to the City. They included clarifying the methodology for balance of the contract so there would not be a future dispute on the calculation for FY 2014 and 2015. This included agreeing to the following:

- (1) The City would utilize Step 3 from the Phoenix pay scales for entry level police officers. This agreement by the City was based on past practice within the City. It is true that in recent years the City has utilized Step 1 due to economic conditions, however, Steps 2 and 3 have been utilized in the past for recruitment purposes in Phoenix.
- (2) The City would utilize the City of Dallas “meet and confer” pay scales rather than the civil service pay scales in its calculations;
- (3) The City of Albuquerque pay scale would be removed from the Seven City pay scale analysis because Albuquerque has been involved in litigation over its decision not to implement a contractually agreed upon pay increase that was cost prohibitive to the City;
- (4) As a result of the Agreement, the calculations resulted in a 1.8% pay increase for fiscal year 2012; and
- (5) Officers that had been erroneously overpaid would not be required to pay the overpayment to the City. The officers will be “frozen” in their current pay step until they catch up to the proper pay amount.

This is significant because the Albuquerque conflict had the maximum exposure to the City as the disparity between adopted and contract wage rate was as much as 30%, and the ‘meet and confer scales’ are also more beneficial as they typically result in lower wage scales because of the current economic environment. The Phoenix step 3 solution is not beneficial to the City but it

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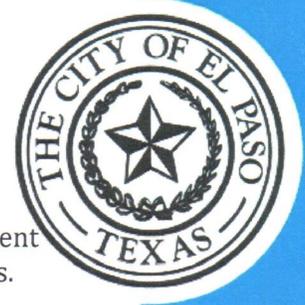
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also was the one where we probably were most vulnerable in our argument since we had used different steps for purposes of calculation in previous years.

As a result of this Agreement, the City benefitted in the following ways;

1. Minimum financial exposure in comparison to the risk of a potential loss at arbitration. If this matter had been arbitrated and the City lost, the City would have been exposed to a 4% pay increase. The maximum amount was approximately \$8-10 million dollars based on the Albuquerque pay scales which has now been eliminated from our Seven City Pay Analysis. As a result of our negotiated settlement, the City of Albuquerque Pay Scales have been removed;
2. The agreement to utilize "Meet and Confer" rather than the Civil Service method from the City of Dallas was an important concession to gain. This was one of the more risky issues to take to arbitration because it was in a gray area. If we had lost this issue, the Association may have been able to use this precedent to gain access to Civil Service benefits that were not previously available to them under the Collective Bargaining Agreement ("CBA"). This is particularly timely because the Association has recently filed grievances seeking benefits under the City's Civil Service system that have not been bargained under the CBA.
3. Limiting language has been placed in the Letter Agreement which insures the Agreement has no precedential value and will not be utilized for bargaining purposes in the future. The Agreement is only for the purposes of settling this grievance and will not be utilized for establishing a past practice or precedent. This is a not a matter that will come back to haunt us in future contract negotiations with the Association.
4. The negotiated agreement established pay calculations for the duration of the contract. Additionally, the City avoided a grievance for the pay scales for 2013.
5. The City and the Association have tentatively agreed to re-open the CBA to negotiate clarifying language in the provisions addressing the

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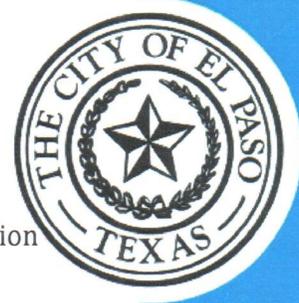
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grievance procedure and Appendix "A" which addresses pay calculation issues which were the basis of the grievance;

6. Since the resolution of the Wage Calculation Grievance, seven other grievances have been discussed with the Association and the majority have been resolved, or are close to being resolved. As a result of the discussion surrounding the Wage Calculation Mediation, there has been a marked improvement in the quality and tone in the communication between City Staff and the Association.
7. Internal procedures have been put in place to monitor and process grievances that have been filed by the Association. One of the improvements includes utilizing mediation as a means of resolving grievances prior to arbitration. This assists with communication between the Parties and provides an opportunity to identify issues that require improvement within the working relationship between the Association and City Staff.

All of these are significant and positive outcomes for the City along with a viable opportunity to resolve a dispute in an amicable and productive manner that helps to build some good will between management and the Association, which had been missing for the last few years. Also, I want to emphasize that mediation is a mutual outcome where both sides realize some benefit. Arbitration is a binding outcome that potentially is a 'win/lose outcome for one party'.

The exposure to the City from this negotiated settlement is approximately \$2.2 M, of which \$1.15M is wages due from FY 2012 and the remainder is the additional wage adjustment for the new fiscal year 2013. We will be attempting to absorb the FY 2012 obligation as part of our closeout balance from the recently concluded fiscal year, which will reduce the amount of potential surplus but have minimal adverse impact to fund balance or to FY 2013. The obligation for FY 2013 will be addressed thru a combination of funds from salary reserve, adjustments by PD to reduce or delay certain expenses, and anticipated proceeds from the newly approved scofflaw MOU that we anticipate will increase revenues from enhanced collections on outstanding fines, citations and warrants.



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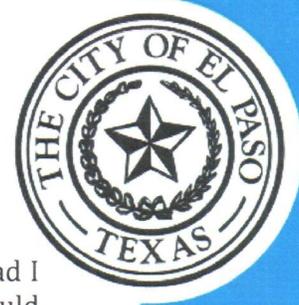
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I cannot account for nor justify why this was not addressed more timely. Had I known this was an unresolved issue during the budget deliberations I would have flagged it as such. Typically as part of the budget process, we go back and forth with the Association before finalizing the actual wage scale to be used. It was not fully articulated that this had impact on FY 2012 until we went into mediation. This is a serious breach of oversight and I do not take it lightly. I debriefed directly with our counsel, Chris Borunda, and she provided me with good insight as to where she thought the breakdowns occurred and how we could address those going forward. I am addressing the internal protocols, oversight and procedures to assure this does not occur again. Also as we prepare for contractual negotiations for the new contract that will take effect in September 2014, I am putting together a review team to carefully go through the present contract and identify those areas where we need to push for changes to make this a simpler process for the future.

We will be prepared and available to respond to questions when the agreement is brought forward. I am attempting to schedule individual briefings with myself or DCM Almonte and our legal counsel prior this item coming forward on October 16 for Council action. I am also available at your convenience to discuss before the 16<sup>th</sup>. Just let me know.

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## FUNDING FOR POLICE SETTLEMENT

FY 2012 Back Pay of \$1,147,930

Accrued Payroll in FY 2012 \$1,147,930

FY 2013 Budget Adjustment for Salaries of \$1,143,723

PD Adjustment to Overtime \$300,000

*\*Move Academy back 2 months-  
Will only push back academy  
timeline if other sources do not  
materialize .*

\$275,422

Additional Revenue from Scofflaw,  
if available as from contingency &  
Salary Resources

\$568,301

Police Officers (P1 - P3 ONLY) FY 2012 Costs

Percent Increase	Cost	Estimated Step Increase	Total Cost	With Benefits - 23.67%
2.50%	\$ 1,244,763.09	\$ 31,119.08	\$ 1,275,882.17	\$ 1,577,883.48
2.75%	\$ 1,369,239.40	\$ 34,230.99	\$ 1,403,470.39	\$ 1,735,671.83
3.00%	\$ 1,493,715.71	\$ 37,342.89	\$ 1,531,058.60	\$ 1,893,460.17

	Percent Increase - per Scenario	Cost	Overtime and Shift Differential Cost	Total Cost (Cost + OT and SD cost)	Total Cost with Benefits - 23.67%	Total Cost with Benefits and 2.5% Estimated Step Increase
1	Phx Step 1/Dallas M&C/ABQ Official 0%	\$ -	\$ -	\$ -	\$ -	\$ -
2	Phx Step 1/Dallas CS/ABQ Official 0%	\$ -	\$ -	\$ -	\$ -	\$ -
3	Phx Step 2/Dallas M&C/With ABQ 0.3%	\$ 149,371.57	\$ 17,434.37	\$ 166,805.94	\$ 206,288.91	\$ 211,446.135
4	Phx Step 2/Dallas CS/ABQ Official 0.6%	\$ 298,743.14	\$ 34,868.75	\$ 333,611.89	\$ 412,577.82	\$ 422,892.270
5	Phx Step 3/Dallas M&C/With ABQ 1.2%	\$ 597,486.28	\$ 69,737.50	\$ 667,223.78	\$ 825,155.65	\$ 845,784.540
6	Phx Step 3/Dallas CS/ABQ Official 1.5%	\$ 746,857.85	\$ 87,171.87	\$ 834,029.72	\$ 1,031,444.56	\$ 1,057,230.674
7	Phx Step 3/Dallas M&C/No ABQ 1.8%	\$ 896,229.43	\$ 104,606.24	\$ 1,000,835.67	\$ 1,237,833.56	\$ 1,268,779.395
8	Phx Step 1/Dallas M&C/ABQ \$28 4.0%	\$ 1,244,763.09	\$ 232,458.32	\$ 1,477,221.41	\$ 1,827,027.44	\$ 1,872,703.127
9	Phx Step 1/Dallas CS/ABQ \$28 4.0%					\$ 1,872,703.127
10	Phx Step 2/Dallas M&C/ABQ \$28 4.0%					\$ 1,872,703.127
11	Phx Step 2/Dallas CS/ABQ \$28 4.0%					\$ 1,872,703.127
12	Phx Step 3/Dallas M&C/ABQ \$28 4.0%					\$ 1,872,703.127
13	Phx Step 3/Dallas CS/ABQ \$28 4.0%					\$ 1,872,703.127
		*Total Base Salary	4.0% Increase	.015% Step	23.67% Benefits	Total Cost with Benefits and 1.5% Estimated Step Increase
14	FY12 4.0% Increase All Officers	\$ 63,021,394.002	\$ 2,520,855.760	\$ 983,133.746	\$ 829,394.316	\$ 4,333,383.823
15	FY13 4.0% Increase All Officers	\$ 66,525,383.509	\$ 2,661,015.340	\$ 1,037,795.983	\$ 875,508.640	\$ 4,574,319.963

\*Total all Police Uniform



# COMBINED LAW ENFORCEMENT ASSOCIATIONS OF TEXAS

PLEASE RESPOND TO  
THE OFFICE CHECKED

July 14, 2011

Administration Office

400 W. 34th St., Suite 200  
Austin, TX 78701  
512/495-9111  
512/495-9301 FAX  
800/252-6188 WATS

North Texas Office

904 Collin  
Fort Worth, TX 76102  
817/882-9548  
817/882-9586 FAX  
800/825-3281 WATS

South Texas Office

1939 N.E. Loop 410, Suite 210  
San Antonio, TX 78217  
210/826-1899  
210/826-2299 FAX  
800/752-5328 WATS

East Texas Office

14405 Walters Rd., Suite 300  
Houston, TX 77014  
281/880-5252  
281/880-9998 FAX  
800/422-5328 WATS

West Texas Office

747 E. San Antonio, Suite 103  
El Paso, TX 79901  
915/533-4924  
915/533-5117 FAX  
800/328-9940 WATS

Coastal Bend Office

3122 Leopard St.  
Corpus Christi, TX 78408  
361/883-3224  
361/884-8357 FAX

Northeast Texas Office

2427 Baker Dr., Suite D  
Mesquite, TX 75150  
972/686-5220  
972/686-3350 FAX

Golden Triangle Office

595 Orleans St., Suite 412  
Beaumont, TX 77701  
409/212-9000  
409/212-9007 FAX  
866/992-5328 WATS

Arlington Office

1801 West Park Row  
Arlington, TX 76013  
817/792-3534

Gregory Allen  
Chief of Police  
El Paso Police Department  
911 North Raynor Street  
El Paso, Texas 79903

via facsimile, (915) 564-7320

RE: EPMPOA Grievance of Wage Formula Provisions; our file No.  
EP-11-131

Dear Chief Allen,

This letter constitutes a grievance pursuant to Article 21 of the Articles of Agreement between the City of El Paso, Texas and the El Paso Municipal Police Officers' Association (the "EPMPOA").

On or about July 2011, the City violated Appendix A of the CBA by failing to calculate the wage formula and apply it to the step increases provided for therein in accordance with the provisions of the contract contained at Appendix A and established past practice.

The EPMPOA seeks a full and fair hearing on this issue, and demands that the City alter its pay scales to comport with established past practice and the proper procedures of Appendix A.

Respectfully Submitted,

Jim R. Jorgensen

cc: Chris Hendricks, *via e-mail*  
Grievance Committee Chair  
Ron Martin, EPMPOA President *via hand delivery*  
Charlie McNabb, City Attorney *via facsimile (915) 541-4710*



# COMBINED LAW ENFORCEMENT ASSOCIATIONS OF TEXAS

September 14, 2011

PLEASE RESPOND TO  
THE OFFICE CHECKED

- Administration Office**  
400 W. 14th St., Suite 200  
Austin, TX 78701  
512/495-9111  
512/495-9301 FAX  
800/252-8153 WATS
- North Texas Office**  
904 Collier  
Fort Worth, TX 76102  
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817/882-9586 FAX  
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210/826-1899  
210/826-2299 FAX  
800/752-5328 WATS
- East Texas Office**  
14405 Walters Rd., Suite 300  
Houston, TX 77014  
281/880-5252  
281/880-9998 FAX  
800/422-5328 WATS
- West Texas Office**  
747 E. San Antonio, Suite 103  
El Paso, TX 79901  
915/538-4924  
915/833-5117 FAX  
800/328-9940 WATS
- Coastal Bend Office**  
3122 Lanperd St.  
Corpus Christi, TX 78408  
361/883-3224  
361/884-8357 FAX
- Northeast Texas Office**  
2427 Baker Dr., Suite D  
Mesquite, TX 75150  
972/686-5220  
972/686-3350 FAX
- Golden Triangle Office**  
595 Orleans St., Suite 412  
Beaumont, TX 77701  
409/212-9000  
409/212-9007 FAX  
866/992-5328 WATS
- Arlington Office**  
1801 West Park Row  
Arlington, TX 76013  
817/792-3534

Gregory Allen  
Chief of Police  
El Paso Police Department  
911 North Raynor Street  
El Paso, Texas 79903

via facsimile, (915) 564-7320

RE: EPMPPOA Grievance of Wage Formula Provisions; our file No.  
EP-11-131

Dear Chief Allen,

This letter constitutes a grievance pursuant to Article 21 of the Articles of Agreement between the City of El Paso, Texas and the El Paso Municipal Police Officers' Association (the "EPMPPOA").

On or about September 1, 2011, the City violated Appendix A of the CBA by failing to calculate the wage formula and apply it to the step increases provided for therein in accordance with the provisions of the contract contained at Appendix A and established past practice.

Moreover, the EPMPPOA disagrees with the data relied upon for the wage formula calculations and the methodologies used to calculate the percentage increases.

The EPMPPOA seeks a full and fair hearing on this issue, and demands that the City alter its pay scales to comport with established past practice and the proper procedures of Appendix A.

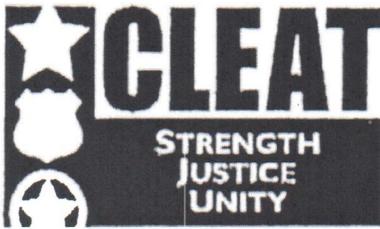
The subject matter of this grievance is substantially similar to the grievance filed on July 14, 2011, our file number EP-11-131. Request is hereby made that this grievance be consolidated with the grievance of July 14, 2011.

Respectfully Submitted,



Jim R. Johnson

cc: Chris Hendricks, *via e-mail*  
Grievance Committee Chair  
Ron Martin, EPMPOA President *via hand delivery*  
Charlie McNabb, City Attorney *via facsimile (915) 541-4710*



# COMBINED LAW ENFORCEMENT ASSOCIATIONS OF TEXAS

PLEASE RESPOND TO THE OFFICE CHECKED

- Administration Office  
400 W. 14th St., Suite 200  
Austin, TX 78701  
512/495-9111  
512/495-9301 FAX  
800/252-8153 WATS
- North Texas Office  
904 Collier  
Fort Worth, TX 76102  
817/882-9548  
817/882-9586 FAX  
800/825-3281 WATS
- South Texas Office  
1939 N.E. Loop 410, Suite 210  
San Antonio, TX 78217  
210/826-1899  
210/826-2299 FAX  
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409/212-9007 FAX  
866/992-5328 WATS
- Arlington Office  
1801 West Park Row  
Arlington, TX 76013  
817/792-3534

June 14, 2012

Gregory Allen  
Chief of Police  
El Paso Police Department  
911 North Raynor Street  
El Paso, Texas 79903

*via facsimile, (915) 564-7320*

RE: EPMPOA Grievance of Wage Formula Provisions; our file No. EP-11-131

Dear Chief Allen,

This letter constitutes an amendment to the grievance, previously filed on September 14, 2011, pursuant to Article 21 of the Articles of Agreement between the City of El Paso, Texas and the El Paso Municipal Police Officers' Association (the "EPMPOA").

The EPMPOA hereby amends the previous grievance to include the incorrect implementation of the pay scales on June 1, 2012, and asserts that same constitutes a continuing violation of Appendix A of the CBA.

Respectfully Submitted,

Jim K. Jopling

cc: Chris Hendricks,  
Grievance Committee Chair  
Ron Martin, EPMPOA President  
Nathan Brown  
Linda Thomas

*via e-mail*  
*via hand delivery*  
*via facsimile (915) 541-4710*  
*via facsimile (915) 541-4220*



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Arlington, TX 76013  
817/792-3334

## DOCUMENT TRANSMITTAL

**From: Jim Jopling**  
**Facsimile: (915) 533-5117**  
**jim.jopling@cleat.org**

June 14, 2012

EPMP OA Grievance of Wage Formula Provisions; our file No.  
EP-11-131

Total pages including this cover page: 2

TO:	VIA:
Gregory Allen Chief of Police El Paso Police Department 911 North Raynor Street El Paso, Texas 79903	via facsimile, (915) 564-7320
Linda Thomas	via facsimile, (915) 541-4220
Ron Martin	via hand delivery
Chris Hendricks, Grievance Committee Chair	via e-mail
Nathan Brown	via facsimile, (915) 5414710

ANNUAL POLICE WAGE SCALE PROCESS  
Effective Date 10-12-12

This procedure is being established to clearly delineate lines of responsibility to ensure the City follows the articles of agreement between the City of El Paso and the Municipal Police Officer's Association, specifically Appendix A.

Step 1 Annually the Human Resources Director will collect necessary data from other cities identified in the Collective Bargaining Agreement, MOU or Settlement Agreement.

- A) Data from Other Cities will be certified by the Human Resources Director no later than forty five days prior to 15 May deadline in the collective bargaining agreement.
- B) Data will be reviewed with the Chief Budget Officer prior to commencing the ERI and Wage Scale preparation.
- C) Human Resources will prepare the ERI and Wage Scales and review them with the Chief Budget Officer for accuracy and concurrence prior to 1 May of each year.
- D) Chief Budget Officer will advise the Chief Financial Officer or his/her designee of the final documents and review them as necessary.

Step 2 Upon concurrence by Human Resources Director and Chief Financial Officer the Chief Budget Officer will schedule a meeting with the Police Association President and Representative to review the ERI and pay scales to be implemented on 1 September of each year.

- A) Chief Budget Officer will document establishment of the meeting with the Association to take place on or before 15 May of each year.
- B) Chief Budget Officer will have the Association President or representative sign for receipt of all documentation.
- C) Chief Budget Officer will fully explain the ERI and wage scales to association representatives. Documents will be provided to the association in hard copy and electronically.
- D) Chief Budget Officer will notify Association representatives that they have fourteen (14) calendar days to review and respond in writing as to agreement or disagreement. If the association does not respond within the fourteen calendar days the City will consider the ERI and pay scales accepted by the Association and so notify the Association on the fifteenth day.
- E) Should the Association not accept the ERI and pay scales, the Chief Budget Officer will initiate a meeting with the Association within seven calendar days to review and discuss the items in question. Chief Budget Officer will advise the Chief Financial Officer, Human Resources Director, Deputy City Manager and City Manager of non-acceptance by the Association and date of scheduled meeting. Chief Financial Officer and/or Deputy City Manager will sit in on the scheduled meeting to resolve the issue.

- F) City Manager will be advised of the issue creating non-acceptance and options to remedy non-acceptance. City Manager will provide direction on resolution of the issue.
- G) Should the Association not accept the pay scales after the second meeting, Mayor and Council, City Manager and City Attorney will be advised of non-acceptance of the pay scales by the Association and enter into mediation with the Association within thirty (30) days.
- H) If mediation does not resolve the issue and the Association initiates arbitration notification the Deputy City Manager and CFO will advise the City Manager of such arbitration, City Manager will notify Mayor and Council. Chief Budget Officer will ensure that budget consideration will be necessary and identified during the budget process to fund any potential settlement from arbitration.

## POLICE GRIEVANCE PROCESS

Effective October 12, 2012

The collective bargaining agreement, Article 21, Grievance Procedure covers two areas concerning grievances, internal items such as demotion, suspensions and terminations and the second area involves the application, interpretation or enforcement of the Agreement. This procedure is intended for all grievances filed.

Step 1 – Collective Bargaining Agreement, Article 21, Grievance Procedure requires grievances to be filed with the Police Chief. Police Chief shall maintain a log of all grievances received from the association as required under the collective bargaining agreement.

- A) Police Chief will validate in writing that the grievance was received within fourteen (14) calendar days after the occurrence of the grievance.
  - a. If the grievance was filed beyond the fourteen calendar day Agreement Requirement, Police Chief will consult with City Attorney's Office and notify the Association in writing within ten (10) days that the grievance is being dismissed based on the Associations failure to comply with Article 21, Step 2. A copy of the written notification that is provided to the Association will be forwarded to the City Attorney's Office. Police Chief will close the grievance and note such in the log.
- B) If the grievance meets the requirements of the Agreement, Police Chief will annotate receipt of the grievance in the log and forward to City Attorney immediately upon receipt.
- C) Police Chief is to confirm receipt by City Attorney's Office.
- D) Police Chief will meet with City Attorney's Office and acquire an update on the status of any outstanding grievances on a regular basis; however, meetings will not exceed 30 days between meetings.
- E) Police Chief will meet with Police Association President on a monthly basis to review the status of outstanding grievances. Deputy City Manager will be advised of any issues that may arise as a result of these meetings.

Step 2 – City Attorney is to maintain a log of grievances received.

- A) City Attorney will assign the grievance to appropriate attorney and/or department upon receipt.
- B) Attorney and/or department will be followed up with confirmation of receipt and notification to Chief of Police with anticipated time to resolution of the grievance.
- C) Should the grievance be handled by a department other than the City Attorney's Office, the Service Department will notify the attorney handling the grievance of an

anticipated resolution time frame in responding to the grievance and the action necessary to resolve the grievance and include the City Attorney's office in the exchange of all documentation, email communication and data shared with the Association. This information will be relayed to the Police Chief through the City Attorney's Office.

Step 3 – City Attorney will notify Police Chief and President of Police Association of grievance receipt and action being taken.

Step 4 – City Attorney will through the Police Chief contact Police Association President of resolution/disposition of grievance for closure. This will be documented and acceptance by the Association will be obtained in writing prior to closing any grievance. Upon which:

- a) Notification to Chief of Police to log out the grievance.
- b) City Attorney's log is closed out.

Chief of Police and/or City Attorney will advise Deputy City Manager of any grievances where disputes may arise resulting in prolonged or difficulty in resolving in a timely basis.



# City of El Paso

## **Police Department Wage Dispute and Resolution**





# Events Leading Up to Mediation

E-Mail dated 8-24-11

Received from Ron Martin Association  
President

- No Response from DCM Almonte
- No Documentation from DCM reflecting any Action on part of the City



- 5-16-2012 DCM Almonte Receives e-mail from Association concerning delay in receiving wage scale information for FY 2013
  - 8-24-2011 part of e-mail string
- 5-17-2012 DCM contacts budget office on wage scales
  - Budget Office and Human Resources provide wage scale information to Association as per agreement
- Team pulled together to investigate wage calculation dispute from Association



- Team pulled together to meet with association to determine wage concerns by Association
- Meetings held with Association Representatives
  - 30 May 2012
  - 7 June 2012
  - 21 June 2012
  - 1 August 2012
  - 6 August 2012
  - Budget Issue not brought to Council as our position was neutral to the budget on the over and under payment
  - Rather than moving to Arbitration Association agreed to Mediation



- Correcting Communications Failure
- City Implemented Formal Procedures
  - Grievance Procedure
  - Wage Calculation Procedure
- New procedures
  - Clarify responsibilities
  - Provides checks and balances for accuracy and timeliness
  - Accountability



# ANNUAL POLICE WAGE SCALE PROCESS

## Effective Date 10-12-12

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## ANNUAL POLICE WAGE SCALE PROCESS

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Effective Date 10-12-12

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## POLICE GRIEVANCE PROCESS

Effective Date 10-12-12

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- b. City Attorney's log is closed out.

Chief of Police and/or City Attorney will advise Deputy City Manager of any grievances where disputes may arise resulting in prolonged or difficulty in resolving in a timely basis.



- Ms. Wilson directed our team to attempt to resolve this to the City's best interest through mediation
- Mediation conducted on 9-13-12
  - Additional meetings
    - 9-19-12
    - 9-26-12



- The methodology used to calculate the annual wage scale is complex. It involves seven comparable cities and then a formula factoring in cost of living of El Paso relative to the other cities. Of the seven cities, three were in dispute as it related to the calculation for FY 2012;
- Phoenix;
- Dallas; and
- Albuquerque.



# Phoenix

- The dispute with Phoenix involved:
  - which step was appropriate to use in calculation (1st or 3rd steps)
  - Phoenix had frozen staffing so there were not active academies hired since 2009
  - Phoenix does not plan on academy until 2015



# Albuquerque

- The dispute involves a contract pay scale versus an adopted pay scale
  - Subject of ongoing litigation.
- Adopted pay scale was the 'actual scale' and per contract was the one we should use.
- Significant because the disparity between the adopted and contract wage was as much as 30%.



# Dallas

- Involved the use of Civil Service wage scale versus 'meet and confer wage agreement'. Our position was that the meet and confer scale was the officially 'adopted wage scale' for the City.



- Worst case scenario was that we would lose on all counts and the financial exposure to the City
  - As high as 4% for FY 2012 and 4% for FY 2013
  - \$3,745,406 for P-1 through P-3 and \$8,907,703 if an arbitrator determined all officers were to receive 4% increases for both years.



- The mediated settlement included clarifying the methodology for balance of the contract;
- Utilize Step 3 of Phoenix Pay scales
- Utilize the City of Dallas "meet and confer" pay scales
- Eliminate use of Albuquerque pay scale as they are in litigation



# As a result of the Agreement

- 1.8% pay increase for fiscal year 2012
- 1.5% for FY 2013
- Officers erroneously overpaid would not be required to pay the overpayment to the City
- Officers will be "frozen" in their current pay step until they catch up to the proper pay amount



## Significant to the City:

- Albuquerque conflict had the maximum exposure to the City as disparity between adopted and contract wage rate was as much as 30%
- 'Meet and confer scales' are also more beneficial as they typically result in lower wage scales because of the current economic environment
- Resolution regarding Phoenix step 3. solution.



## Additional benefits to the City

- **Minimum financial exposure in comparison to the risk of a potential loss at arbitration**
  - Exposed to a 4% pay increase
  - Maximum amount was approximately \$8-10 million dollars



- Negotiated agreement establishes pay calculation method for the duration of the contract
- City avoids a grievance for the pay scales for 2013.
- City and the Association are discussing the possibility of re-opening the CBA to negotiate clarifying language in the provisions addressing the grievance procedure and Appendix "A" which addresses pay calculation issues which were the basis of the grievance



- Marked improvement in the quality in the communication between City Staff and the Association
- Opportunity to meet, identify and resolve issues
- Use of mediation to resolve issues



All of these are significant and positive outcomes for the City along with a viable opportunity to resolve a dispute in an amicable and productive manner that helps to build good will between management and the Association.



Exposure to the City from this negotiated settlement is approximately \$2.2 M

- \$1.15M is wages due from FY 2012 and
- the remainder is the additional wage adjustment for the new fiscal year 2013.



## Funding Opportunities:

- **FY 2012** obligation as part of our closeout
  - Will reduce the amount of potential surplus but have minimal adverse impact to fund balance
  - FY 2013 reduction in various appropriations, salary reserve and additional revenue generated in implementation of Scofflaw



# Questions Comments

