



MEMORANDUM
FROM THE OFFICE OF THE GENERAL COUNSEL

TO: COMMON COUNCIL

FROM: KORI TERMINE WISNESKI, DEPUTY GENERAL COUNSEL

CC: MAYOR DANIEL T. DREW
JOSEPH SAMOLIS, CHIEF OF STAFF
FIRE CHIEF ROBERT KRONENBERGER
DEPUTY FIRE CHIEF AL LEARY
CARL ERLACHER, DIRECTOR OF FINANCE
OGC PERSONNEL

DATE: OCTOBER 17, 2016

RE: EXECUTIVE SUMMARY OF FIRE TENTATIVE AGREEMENT

Kori Wisneski

BACKGROUND

On October 17, 2016, the City and the Fire Union reached a tentative agreement (TA) on a new collective bargaining agreement (CBA) that would run from July 1, 2016 through June 30, 2019. Under the Municipal Employee Relations Act (MERA), a TA must be sent to the Common Council within 14 days of being signed. Under MERA, the Council has 30 days from the end of the 14-day period for submission to approve or reject a request for funds to implement the TA as a new CBA. This memo provides an executive summary of the changes to the existing CBA being proposed in the TA.

EXECUTIVE SUMMARY

The Fire Contract has not been the subject of a full negotiation for almost ten years. Going into this negotiation, both parties put a large focus on simplifying provisions of the contract so that they more clearly reflect current practices, bringing certain provisions in compliance with state and federal law, and attempting to entice more experienced employees to remain on the force to balance out the latest influx of new firefighters. The City and the Union accomplished these lofty goals and did so in a financially responsible way. Some of the highlights include the following:

- **Reopener Language to Address Cadillac Tax (Art. XVII):** In anticipation of the Affordable Care Act Excise Tax, the City negotiated a reopener that will reopen negotiations with respect to health benefits on January 1, 2018, with the ability of either party to open negotiations as early as July 1, 2017. The TA also provides that

both parties will share equally any arbitration costs if a resolution is not reached amicably.

- **Compensatory Time (Art. VI):** In 2007, under a prior administration, the City and the Union added technical rescue and specialty teams to the contract. At the time, the Parties agreed to compensate members of these teams, both for training and deployment, in the form of compensatory time. At the time that the 2007 contract was negotiated and signed, the administration did not anticipate the amount of compensatory time that members would accrue under this language. The contract did not provide limits on such accruals, nor did it require that members use said time so as to stay below federal limits. This led to large accruals of compensatory time. Under the Fair Labor Standards Act, emergency response employees, such as firefighters, cannot accrue more than 480 hours of compensatory time. Under the language of the 2007 contract, members accrued above 480 hours, which is a violation of FLSA. Upon discovering this issue, the City immediately stopped accruals for those individuals over the federal limit and instead paid out the time in overtime. The Parties also agreed to rectify the problem during these negotiations. With the solutions set forth in this TA, the City is avoiding expensive and time-consuming federal litigation.

In an effort to spread out the financial impact over several fiscal years, the TA proposes to pay down compensatory accruals over a four year period. The goal is to cap compensatory time accruals at 20 days or 240 hours by July 1, 2020. Additionally, as will be explained herein, the parties also agreed to change the terms of the technical rescue and specialty teams to further save the City money and to for a more efficient roll-out of these services.

While the financial impact to get our members into FLSA compliance is estimated to be about \$270,000, this financial impact would have happened regardless of these contract negotiations and would potentially have happened per court order if not rectified amicably. While not preferred, these provisions were legally necessary given the situation that the 2007 contract created.

- **Elimination of the Hazmat Team (Art. XXI):** In the nine (9) years since this team was instituted, it has only responded to two calls. In both situations, the State has been called in and took over the calls. Both the Union and the City agreed to eliminate this team and to tap into DEEP personnel, expertise, and resources for any such calls in the future. The Chief estimates that this will save the City close to \$185,000 annually. The entire force is already trained to an operational standpoint and will continue to be able to aid DEEP from this perspective, but under this TA, employees will now defer to DEEP for the technician level expertise.
- **Technical Rescue Teams (Art. XXI):** In an effort to solve the compensatory time problem highlighted above, the City and the Union have revamped the composition of our technical rescue teams and how members are compensated. Under the old system, there were four main disciplines and individuals would accrue compensatory time for training and deployment. The new language converts these four disciplines

into two and makes the work shift-based. The Chief estimates that these changes will save the Department close to \$68,000 annually on overtime and will eliminate compensatory time accruals for these activities.

- **Elimination of Stipends for Specialty Teams (Art. XXI):** Under the 2007 contract, members of specialty teams would receive stipends for their membership and participation. This TA proposes to eliminate these stipends entirely. The only stipend that will remain for these types of services will be for the training officer for EMS training. The Chief estimates that the Department will save \$54,000 per year with the elimination of these stipends.
- **Pension Changes (Art. XVI):** In the last year, the City has hired at least seven new recruits due to retirements. This number represents a 10% turnover rate within the Department. While turnover and new recruits is a good thing, the City is also mindful of the importance of an experienced membership. In an effort to keep some of our more tenured firefighters, the TA proposes to increase the cap on pensions from 70% to 80% if an employee were to stay with the Department for 32 years. It should be noted that newer members already enjoy this benefit. The financial impact of this change is offset by the fact that the City will not need to incur health care costs for new members as tenured employees will remain on the books and the recruitment of new members will be delayed. Further, with this incentive to stay, the City will save on training, gear, and equipment for new recruits.
- **College Incentive Program (Art. XXIX):** This program now requires a diploma before a member can receive certain annual college incentive payments. In addition, for those pursuing degrees while employed, reimbursement payments for tuition and books have increased by two hundred dollars per class in an effort to keep up with the increasing costs of education.
- **Duration (Art. XXVI):** The TA provides for a three (3) year contract, from July 1, 2016 to June 30, 2019. As early as July 1, 2017, the City has the right to reopen the contract to negotiate health benefits as already explained above.
- **Wages (Art. XXV):** The TA provides wage increases of 3.35% for each year of the contract. While these wage increases may be higher than other negotiated settlements across the State, it is important to remember that the Fire Union’s raises have been tied to CPI since 2012, and those wage increases have been lower than the average negotiated wage statewide:

	FY12	FY13	FY14	FY15	FY16	FY17	FY18
Fire Union	1.86%	1.70%	1.20%	1.30%	3.35%	3.35%	3.35%
Av. Neg.	2.08%	2.05%	2.28%	2.34%	2.32%	2.34%	2.26%

- **Housekeeping.** Finally, throughout the TA, there are a number of “clean-up” provisions including, but not limited to, the change of certain job titles to reflect updated titles, revising our non-discrimination language to comply with state and

federal law, making sure that our FMLA provisions are in compliance with federal law, and clarifying as we do with other contracts that an individual's pension and retirement payments will not be adversely affected by a worker's compensation injury. The goal of these provisions is to keep the CBA current and to reduce the potential for confusion or disagreement, which is in the interests of both the City and the Union.

FINANCIAL IMPACT

Finance Director Carl Erlacher offers the following on the financial impact of this contract:

Based on the proposed changes to the CBA, the cost-of-living-allowances (COLA's) amount to a financial impact of \$236,712.96 for FY 2016, \$236,928.77 for FY 2017, \$230,250.82 for FY 2018. With the proposed changes to the technical rescue and specialty teams, the City is expected to save approximately \$305,500 per year or \$916,500 over the life of this contract. While the changes to the pension provisions are likely to result in a \$148,000 annual impact or \$444,000 over the life of this contract, these provisions are intended to encourage more employees to stay on the books longer before retirement, which the City anticipates will result in fewer new hires and savings on both health insurance and training, gear, and equipment for new recruits. Such savings are estimated to be about \$77,000 annually or \$231,000 over the life of the contract. Additionally, the City estimates that the changes to the college incentive program create a yearly fiscal impact of about \$4,000.

Finally, as highlighted above, the costs of the compensatory time pay outs will result in a \$270,000 fiscal impact to the City during this fiscal year. The payouts in future years will depend on several factors, but as set forth above, more controls are in place for future accruals and oversight of those accruals. While this fiscal impact must be considered as part of this negotiation, please note that if this issue was not resolved as part of this contract, it may have happened as a federal court order and could have resulted in penalties and costs against the City.

CONCLUSION

In sum, the TA was intended to resolve long-standing issues with the compensatory time accruals, encourage an experienced work force, and solidify our current practices in easy to understand language. We believe that this TA builds on the already sound structure of the existing CBA and treats our valuable employees fairly while also protecting our taxpayers' interests. Our office remains at your disposal for any questions.