

Stephen B. Coleman (State Bar #021715)
Jon Paladini (State Bar #015230)
PIERCE COLEMAN PLLC
7730 E. Greenway Road, Ste. 105
Scottsdale, Arizona 85260
Tel. (602) 772-5506
Fax (877) 772-1025
Steve@PierceColeman.com
Jon@PierceColeman.com
Attorneys for Defendants

IN THE SUPERIOR COURT OF ARIZONA
FOR THE COUNTY OF MARICOPA

BARRY GOLDWATER INSTITUTE
FOR PUBLIC POLICY RESEARCH,

Plaintiffs,

v.

CITY OF PHOENIX, a municipal
corporation; JEFF BARTON, in his
official capacity as City Manager for
the City of Phoenix; DENISE
ARCHIBALD, in her official capacity
as City Clerk for the City of Phoenix;
and SHEREE RUCKER, in her official
capacity as Human Resources Officer,
Custodian of Records for the City of
Phoenix,

Defendants.

Case No. CV2023-003250

**DEFENDANTS' RESPONSE IN
OPPOSITION TO PLAINTIFF'S
REQUEST FOR SPECIAL ACTION AND
INJUNCTIVE RELIEF (REVISED)**

(Assigned to the Hon. Danielle J. Viola)

ORAL ARGUMENT REQUESTED

1 Plaintiff's request for special action and injunctive relief against the named
2 Defendants¹ should be denied because the presumption favoring the disclosure of public
3 records is overcome by the "best interests of the state" in maintaining the confidentiality
4 of labor negotiations leading to proposed contracts that are made available for public
5 inspection and Council approval.

6 **FACTUAL BACKGROUND**

7 The City has adopted a meet and confer ordinance to facilitate a harmonious and
8 cooperative relationship between the City government and its employees. As explained in
9 the ordinance's preamble:

10 It is the purpose of this ordinance to obligate the City, public employees, and
11 their representatives, acting within the framework of the law, to enter into
12 discussions with affirmative willingness to resolve grievances and disputes
13 relating to wages, hours and working conditions. It is also the purpose of this
14 ordinance to promote the improvement of employer-employee relations by
15 providing a uniform basis for recognizing the right of public employees to
16 join, or refrain from joining, organizations of their own choice and be
17 represented by such organizations in their employer-employee relations and
dealing with the City in accordance with the provisions of this ordinance. It
is also the purpose of this ordinance that the results of agreements between
the employer and the employees will be drafted into written memoranda of
understanding.

18 Phoenix City Code ("P.C.C.") ch. 2, art. XVII, § 2-209(4).

19 The meet and confer ordinance provides for the creation of separate bargaining units
20 comprised of employees with a shared community of interest:

21 Public employees within the following categories shall constitute an
22 appropriate unit:

- 23 1. Employees in positions classed as "office" including clerical and pre-
24 professional.

25 ¹ Plaintiff names several City employees as defendants in their official capacities. "A suit against
26 an officer in his official capacity is another way of pleading an action against the entity of which
27 the officer is an agent." *Mulleneaux v. State*, 190 Ariz. 535, 538 (Ariz. Ct. App. 1997) *citing*
28 *Kentucky v. Graham*, 473 U.S. 159, 165 (1985). For clarity, this Motion will refer to the defendant
in this action as the "City." However, the arguments asserted herein apply with equal force to all
named defendants.

2. Employees in positions classed as "field" including labor, custodial, trades and equipment operation. There are hereby established the following appropriate field units:

a. Field Unit I—Sanitation Division of the Public Works Department; District Operations, Golf Course, and Special Operations Divisions of the Parks and Recreation Department (excluding library guards); Administrative Services Division of the City Clerk Department; Human Services and Aging Services Divisions of the Human Resources Department; Street Maintenance Division and Sign Manufacturing, Maintenance, Street Marking and Parking Meter Sections of the Street Transportation Department.

b. Field Unit II—Phoenix Convention Center Department; Aviation Department; Water Services Department; Engineering Department; Housing Conservation, Elderly Housing and Occupancy, Conventional Housing and Disbursed Housing Divisions of the Urban Neighborhood Improvement and Housing Department; Equipment Management and Facilities Maintenance Divisions of the Public Works Department; Library Department (library guards only); Management Information Systems Department; Real Estate and Materials Management Divisions of the Finance Department; Traffic Signal Construction and Maintenance Section of the Street Transportation Department.

3. Police officers—Below the rank of Sergeant.

4. Firefighters—Up to and including the rank of Captain.

P.C.C. ch. 2, art. XVII § 2-212. The purpose of dividing employees into the aforementioned units is to “insure an effective representation of employee interests and [] promote the effectiveness of City operations for purposes of meeting and conferring[.]” *Id.* For instance, police officers undoubtedly have interests that diverge significantly from those of clerical workers, given the unique role of law enforcement. Recognizing this, the ordinance ensures that these groups have separate representatives to advocate on their behalf, and that each group participates in an individualized bargaining process with the City.

The meet and confer ordinance establishes the following bargaining process between the City and the authorized representatives for recognized units, which culminates in the parties entering into a memorandum of understanding (“MOU”).

(1) On or before December 1 of any year in which meeting and conferring is authorized by this ordinance and the terms of memorandums of understanding in effect pursuant thereto, authorized employee organizations

1 shall submit their proposed memorandum of understanding in writing to the
2 City Manager or his designee, and shall file a copy thereof with the City
Clerk as a public record.

3 (2) [O]n or before December 8, each authorized employee organization shall be
4 afforded the opportunity to make a presentation regarding its proposed
5 memorandum of understanding and information in support thereof to a
meeting of the City Council.

6 (3) At its next meeting, the City Council shall provide on its agenda an
7 opportunity for public comment on the proposals of the authorized employee
organization.

8 (4) On or before January 5, the City's designated representatives shall submit to
9 the authorized employee organization the City's written response to its
10 proposals and shall concurrently file copies thereof with the City Clerk as a
public record.^[2]

11 (5) Upon agreement being reached on a memorandum of understanding between
12 the representatives of the parties, it shall be immediately submitted to the
City Council and the employee organization.

13 (6) After the proposed memorandum of understanding has been approved by the
14 authorized employee organization, it shall be filed with the City Clerk of the
15 City of Phoenix. At the earliest practicable date thereafter the City Council
16 of the City of Phoenix shall provide on its agenda an opportunity for public
comment on the terms of the memorandum of understanding prior to the
Council acting thereon.

17 P.C.C. ch. 2, art. XVII, § 2-218.

18 The cornerstone of this process is the duty to meet and confer in good faith, which
19 is described as follows:

20 Meet and confer is the performance of the mutual obligation of the public
21 employer through its chief administrative officer or his designee and the
22 designees of the authorized representative to meet at reasonable times,
23 including meetings in advance of the budget-making process; and to confer
24 in good faith with respect to wages, hours and other terms and conditions of
employment or any question arising thereunder, and the execution of a
written memorandum of understanding embodying all agreements reached...

25 P.C.C. § 2-210(11).

26 ² Plaintiff criticizes the City in its opening brief at page 2, lines 23-24 for not making the City's
27 "own draft MOU public." However, no such document existed because, unlike the employee
28 organizations, the City has no requirement to generate a draft MOU at or before this stage in the
process.

1 The meet and confer process does not culminate in a wholly new MOU between the
2 parties. Rather, the parties negotiate revisions and amendments to the existing MOU. The
3 process of negotiating these changes begins when the employee organization's authorized
4 representative makes a written proposal to the City on a specific item or subject. The parties
5 then negotiate the proposal terms. If agreement is reached on the proposal, it is reduced to
6 writing in a "Tentative Agreement" or "TA". This process of written proposal, negotiation
7 and, if agreement is reached, written TA, continues until all issues for that period's
8 negotiation are resolved. The nature of a TA is truly "tentative". At any time, the parties
9 can re-open any TA when attempting to resolve a different proposal. In other words, no
10 agreement is final until all agreements are final. Once all the TAs are agreed to, they are
11 inserted into the then-current MOU, which is placed before the respective principals (i.e.,
12 rank and file employee group members and City Council) for final approval.

13 During this negotiation process of proposals and TAs, in between the fourth and
14 fifth steps set forth above, the City and the authorized employee representatives must
15 observe a confidential "blackout" period in the bargaining process with the aim of agreeing
16 upon the revised MOUs that establish various terms and conditions of employment,
17 preserve harmonious relations between the City and its workforce, and promote quality
18 public services for City residents. During this "blackout" period, the City Council, and by
19 extension the public at large, is not apprised of the details concerning the negotiations. *See*
20 P.C.C. § 2-220(A)(6) and (B)(8).

21 **I. The Negotiations Between PLEA And The City.**

22 The City currently recognizes five bargaining units under the meet and confer
23 ordinance.³ This lawsuit arises from the City's negotiations with Unit 4, which is
24

25 ³ The Units are: (1) Laborers' International Union of North America (LIUNA), Local 777; (2) the
26 American Federation of State, County, and Municipal Employees (AFSCME), Local 2384; (3) the
27 American Federation of State, County, and Municipal Employees, Local 2960; (4) the Phoenix
28 Law Enforcement Association; and (5) the International Association of Fire Fighters (IAFF), Local
493.

1 comprised of sworn peace officers below the rank of Sergeant who are represented by the
2 Phoenix Law Enforcement Association (“PLEA”).

3 In late 2022, the City began the meet and confer process with PLEA and the other
4 four units. Before negotiations began, the parties entered into a set of written “Ground
5 Rules.” The Ground Rules include the following confidentiality requirement designed to
6 promote candor and good faith discussions and to avoid potential disruptions that may
7 ensue if the parties negotiate under a public spotlight:

8 Neither party shall make any unilateral public statements with respect to their
9 positions on issues addressed at the bargaining table, or other matters that
10 may affect the Meet and Confer process, until such time as [the Phoenix
11 Employment Relations Board] has declared that an impasse exists and the
12 matter has been submitted to the City Council.

13 [See City of Phoenix 2023 Ground Rules, attached as Exhibit 1]

14 On or about December 1, 2022, PLEA submitted a letter of intent, stating:

15 In accordance with Section 2-218B of the Meet and Confer ordinance, the
16 Phoenix Law Enforcement Association provides this notice of our intent to
17 engage in wage and benefit negotiations beginning January 2023. During
18 the course of negotiations, proposals will be submitted for your
19 consideration. All mutual agreements shall be subject to ratification.

20 [See PLEA Letter of Intent, attached as Exhibit 2]

21 Thereafter, the City complied with its obligations under the ordinance by (1)
22 affording PLEA the opportunity to make a presentation to the City Council; and (2)
23 scheduling a City Council meeting to allow public comment on changes to the MOU. [See
24 City Council Formal Meeting Agenda for December 7, 2022 at No. 20 (Union Comments
25 on Proposed Changes to Memoranda of Understanding), attached as Exhibit 3; *see also*
26 City Council Formal Meeting Agenda for December 14, 2022 at No. 45 (Public Comment
27 on Proposed Changes to Memoranda of Understanding Submitted by Authorized
28 Employee Organizations), attached as Exhibit 4] ⁴

⁴ On page 2, line 25 of Plaintiff’s Memorandum of law, it claims that the City did not enforce its Code regarding PLEA’s failure to submit a draft MOU by the deadline. PLEA’s failure to provide a draft MOU is deemed an unfair labor practice. *See* Phoenix City Code Section 2-218(A) (“Any

1 In December 2022, Plaintiff made a public records request for all proposals
2 exchanged between the City and PLEA. On January 3, 2023, the City responded by
3 accurately stating that it had no records relating to this request for draft MOUs and
4 proposals because, as discussed below, negotiations did not begin until mid-January. In
5 other words, the negotiations had not yet commenced, so there were no documents to
6 produce.

7 Thereafter, during the week beginning January 16, 2023, the City began
8 negotiations with the five bargaining units subject to the confidential “blackout” phase of
9 the bargaining process. Shortly before the start of these negotiations, Plaintiff submitted a
10 public records request for:

11 [a]ll draft Memoranda of Understanding (‘MOUs’)” between the City and
12 PLEA contemplated for the fiscal year(s) beginning July 1, 2023; (2) “[a]ll
13 proposals for MOUs currently being negotiated—or set to be negotiated per
14 City Code Section 2-218” between those parties for the same time period,
15 and (3) “[a]ny communications to or from City officials regarding PLEA’s
16 failure to submit a draft MOU for the fiscal year(s) beginning July 1, 2023.

17 After some initial dialogue between the parties, the City Attorney, Julie Kriegh, sent
18 a February 23, 2023 response referencing the “best interests of the state” exception to
19 disclosure and noting that:

20 Releasing these types of materials would create a chilling effect on the
21 parties’ willingness to candidly engage with each other and would hinder the
22 negotiations process. While negotiations are proceeding, the City does all it
23 can to ensure the confidentiality of what happens at the bargaining meetings,
24 including entering into confidentiality agreements with each bargaining unit.
25 While the negotiations are proceeding, the City believes that the best interests
26 of the City protect it from disclosing any draft proposals discussed at the
27 bargaining table.

28 A public body may designate a record as confidential when releasing the
record “would have an important and harmful effect on the duties of the
officials or agency in question” detrimental to the best interests of the state.

deviation from this procedure shall constitute an unfair employment relations practice.”). All
allegations of unfair labor practices are under the exclusive jurisdiction of the Phoenix
Employment Relations Board (“PERB”). See Phoenix City Code Section 2-211(H)(3). The City
in its discretion determined that using the PERB process would be more time-consuming and more
expensive than entering into negotiations with PLEA.

1 *Ariz. Bd. of Regents v. Phoenix Newspapers Inc.*, 167 Ariz. 254, 257-58, 806
2 P.2d 348, 351-52 (1991). A balancing act of countervailing interests is
3 appropriate in weighing the possible adverse impact of disclosure against the
4 public’s right to inspection. *Id.* [See February 23, 2023 Letter from City
5 Attorney Julie Kreigh, attached as Exhibit 16 to Plaintiff’s Verified
6 Complaint]⁵

7 This lawsuit followed. Plaintiff seeks to compel production of the requested
8 documents, which were generated during the confidential, “blackout” period. However, as
9 discussed in detail below, the City properly withheld the bargaining proposals based on the
10 “best interests of the state” exception to Arizona’s public records law.

11 MEMORANDUM OF POINTS AND AUTHORITIES

12 The City properly withheld the requested documents because disclosure would
13 contravene the best interests of the state. Arizona’s public records statute reads: “Public
14 records and other matters in the office of any officer at all times during office hours shall
15 be open to inspection by any person.” A.R.S. § 39–121. Although this statute has been
16 interpreted to favor disclosure, this presumption is not absolute. As the Arizona Supreme
17 Court has opined:

18 While access and disclosure is the strong policy of the law, the law also
19 recognizes that an unlimited right of inspection might lead to substantial and
20 irreparable private or public harm; thus, where the countervailing interests of
21 confidentiality, privacy or the best interests of the state should be
22 appropriately invoked to prevent inspection, we hold that the officer or
23 custodian may refuse inspection. Such discretionary refusal is subject to
24 judicial scrutiny.

25 *Carlson v. Pima County*, 141 Ariz. 487, 491, 687 P.2d 1242, 1246 (1984).

26 At issue in this case is whether “the best interests of the state” outweigh the public’s
27 interest in the disclosure of confidential negotiation records generated during a “blackout”
28

25 ⁵ Contrary to Plaintiff’s contention that the City Attorney’s February letter falsely stated that the
26 City at that time had no negotiation documents, the City did not have any documents responsive
27 to Plaintiff’s request for all *draft MOUs* with PLEA. The City Attorney correctly stated that the
28 City had no draft MOUs as of February 23rd. The City does not consider the proposals exchanged
at the negotiating table to be “draft MOUs.” They are just proposals for different terms in the
MOU. Ms. Kreigh’s letter did state that the City had documents responsive to Plaintiff’s request
for all *proposals* currently being negotiated, etc., but the City was withholding them.

1 period in the City's meet and confer process.

2 **I. The City's Interests, And Those Of Its Residents And Employees, Weigh**
3 **Heavily In Favor Of Withholding The Requested Records.**

4 The "best interests of the state" standard is not confined to the narrow interest of
5 either the official who holds the records or the agency he or she serves. It includes the
6 overall interests of the government and the residents of the City. *See Phx. Newspapers,*
7 *Inc. v. Keegan*, 201 Ariz. 344, ¶ 18, 35 P.3d 105, 109-10 (App.2001).

8 In this case, the City, and the residents and employees of the City, have strong
9 interests in maintaining the confidentiality of the records at issue. The City's interests
10 include consideration of how disclosure would adversely affect the City's mission to
11 maintain the legitimacy of the meet and confer process, avoid collusive activities among
12 the bargaining units, de-politicize the negotiation process, prevent public posturing by
13 negotiators, avoid impasse, encourage candor and the free exchange of ideas without undue
14 pressure from constituents, sustain morale of City employees, and reach agreements that
15 result in the best bargain for the City, its employees, and its residents. The City's residents
16 and employees, in turn, have interests in avoiding increased costs to taxpayers, reduction
17 in service levels, higher attrition of critical public safety positions and low morale among
18 City employees. As more fully set forth herein and in the Declarations attached as Exhibits
19 5 through 8 these interests weigh heavily in favor of withholding the records at issue in this
20 case.

21 Although the City Code does favor transparency of the meet and confer process at
22 certain times and for certain purposes, the Code also protects and sustains the City's and
23 public's interests as referenced above. By adopting a "blackout" period prohibiting
24 employee organization members from discussing MOU matters with members of the City
25 Council, the City has declared a public policy to reduce the distracting effect that external
26 pressures may have on the negotiation process. The "blackout" period is designed to
27 insulate the council from negotiations and de-politicize the process. Public disclosure of
28

documents exchanged at the negotiating table would contravene those interests. Councilmembers would inevitably be exposed to information about the negotiations, and residents and employees would almost certainly seek to lobby council members to interfere with negotiations. The interests protected by the codified “blackout” period are further memorialized via the confidentiality provision in the Ground Rules signed by the negotiating parties. *See* Exhibit 1, City of Phoenix 2023 Ground Rules.

Cases from numerous jurisdictions are instructive and persuasive as to the above-referenced interests. The City’s concerns regarding potential collusion between employee bargaining units are analogous to concerns that arise in the procurement context where bidders gain an advantage if they learn the substance of competing bids during the bidding and negotiation process. In *Michaelis, Montanari & Johnson v. Superior Ct.*, 38 Cal. 4th 1065, 136 P.3d 194 (2006), the City of Los Angeles received a public records request for bids responsive to an active procurement request. The attorney for the City of Los Angeles objected to the records request, arguing that releasing the requested records “would seriously impact the government’s ability to negotiate a fair and cost-effective proposed contract” and that the requested disclosure “would irretrievably corrupt the process and harm not only [the City of Los Angeles], but also city taxpayers who may not receive the best value in return for the expenditure of their tax dollar.” *Id.* at 1069. The California Supreme Court agreed, finding that “the public interest in nondisclosure clearly outweigh[ed] the public interest in disclosure” and that “[n]ondisclosure during the negotiation process . . . tends to reduce the possibility of collusion, price-fixing, or bid-rigging tactics.” *Id.* at 1070.⁶

A similar analysis applies to the City’s interests in this case, where disclosure of bargaining proposals during key negotiation periods would put the City at a disadvantage at the negotiating table, potentially turning one-on-one negotiations into five against one

⁶ California public records law is similar to Arizona law in that it favors disclosure and the government agency arguing for nondisclosure has the burden to prove why withholding records is in the agency’s best interest.

1 negotiations (with all five bargaining units presenting a united front against the City). *See*
2 Exhibit 5, ¶ 9, Declaration of Jason Perkiser.

3 The decision in New Hampshire Supreme Court in *Talbot v. Concord Union Sch.*
4 *Dist.*, 114 N.H. 532, 323 A.2d 912 (1974) is informative. There, the court found that
5 “substantial authority” supported the proposition that “the delicate mechanisms of
6 collective bargaining would be thrown awry if viewed prematurely by the public.” *Id.* at
7 535. The Court further noted that several state labor boards “have gone so far as to hold
8 that a party's insistence on bargaining in public constituted a refusal to negotiate in good
9 faith, reasoning that bargaining in the public arena ‘would tend to prolong negotiations and
10 damage the procedure of compromise inherent in collective bargaining.’” *Id.*

11 Similar concerns exist for the City of Phoenix and the five bargaining units if records
12 generated during the “blackout” period were made public. *See* Declarations, Exhibits 5
13 through 8. In such a scenario, rather than negotiate in good faith, the negotiators would be
14 incentivized to stakeout hardline positions (perhaps in an effort to please their constituents)
15 from which retreat would be difficult without losing face. Indeed, the negotiation process
16 itself would become more performative and less substantive in nature. All these effects
17 would add time and expense to the process to the certain detriment of the best interests of
18 the City and its citizens.

19 **II. The Interests In Withholding The Records At Issue Are Sufficiently Specific**
20 **To Justify Non-Disclosure.**

21 Plaintiff attempts to minimize the City’s interests by describing them as “purely
22 speculative.” However, in applying the *Carlson* balancing test, the City need not show that
23 the concerns or problems created by disclosure have already occurred or will for certain
24 occur. Rather, when applying the balancing test, courts must look for a reasonable
25 prediction that the release of the requested documents is likely to result in negative
26 consequences.

27 For instance, the Arizona Supreme Court held that the best interests of the state
28

1 overcame the presumption of disclosure when the Arizona Board of Regents received a
2 public records request for records on prospective candidates for the Arizona State
3 University (“ASU”) president position. *Arizona Bd. of Regents v. Phoenix Newspapers,*
4 *Inc.*, 167 Ariz. 254 at 256, 806 P.2d 348 at 350, (1991). In so concluding, the Court found
5 it reasonable to predict or forecast that negative consequences “may” or “could” occur by
6 the release of the resumes of all 256 prospective candidates:

7 The prospect *may* not know that he or she has been nominated, *may* not wish
8 to be, and *may* find it embarrassing and harmful to his or her career. A
9 candidate, on the other hand, *may* actively seek the office . . . Revealing the
10 names of all prospects, those nominated without their permission, and even
11 those nominated with the prospects' tacit permission, *could* chill the
12 attraction of the best possible candidates for the position.

13 *Id.* at 259, 353 (Emphasis added).

14 The *Board of Regents* Court concluded that the Board “may balance the interest of
15 ASU and the people of Arizona in selecting the best possible president with the public's
16 right to knowledge of the selection process and the names of persons seriously considered
17 for the position.” *Id.* Similarly, the City may balance its interests in maintaining the
18 integrity of the meet and confer process and securing the best possible bargain for the City
19 and its taxpayers with the public’s right to comment and provide input on each proposal
20 exchanged between the City and the employee groups.

21 In another case deciding that the best interests of the state outweighed the public’s
22 right to inspect documents, the Arizona Supreme Court looked at what *may* or *could*
23 happen if a school district released teacher names and birthdates. *Scottsdale Unified School*
24 *Dist. No. 48 of Maricopa County v. KPNX Broadcasting Co.*, 191 Ariz. 297, 955 P.2d 534,
25 (1998). In that case, the Court found:

26 With both a name and birth date, one *can* obtain information about an
27 individual's criminal record, arrest record (which may not include disposition
28 of the charges), driving record, state of origin, political party affiliation,
social security number, current and past addresses, civil litigation record,
liens, property owned, credit history, financial accounts, and, quite possibly,

1 information concerning an individual's complete medical and military
2 histories, and insurance and investment portfolio.

3 *Id.* at 302, 539 (Emphasis added). Here, as discussed in more detail below, the reasonably
4 foreseeable consequence of disclosing bargaining proposals during the blackout period
5 include: collusion among bargaining units leading to sub-optimal outcomes for the City,
6 hardline posturing, lack of candor, increases in impasses, and external interference in the
7 bargaining process.

8 **III. The City's Interests Are Supported By Declarations From Individuals With
9 Knowledge Of The City's Meet And Confer Negotiation Process.**

10 Although reasonable, common-sense predictions are sufficient to demonstrate that
11 the best interests of the state favor non-disclosure, the City has supplied additional support
12 for its position in the form of declarations from those persons most intimately involved in
13 the meet and confer process.

14 To substantiate the government's interest in not disclosing or releasing certain
15 records, the government may provide testimony in the way of affidavits or declarations.
16 *Hodai v. City of Tucson*, 239 Ariz. 34, 365 P.3d 959 (App. 2016). In *Hodai*, to support its
17 argument that nondisclosure of training materials served the best interests of the state, the
18 City of Tucson relied on an affidavit of an FBI special agent. The agent stated that
19 disclosure of information about cell site simulators would "provide adversaries with critical
20 information about the capabilities, limitations, and circumstances of their use ... [and]
21 provide them the information necessary to develop defensive technology, modify their
22 behaviors, and otherwise take countermeasures designed to thwart the use of this
23 technology." *Id.* at 39.

24 The appellate court rejected the plaintiff's argument that the injury detailed by the
25 FBI agent was speculative and non-specific and did not outweigh the presumption of
26 disclosure. The court held that the agent's affidavit was not merely showing a "possible
27 harm based on a hypothetical situation, but one rooted in experience." *Id.* at 40. Moreover,
28 because the plaintiff provided no evidence to dispute the validity of the FBI affidavit, the

1 court was authorized to accept the factual statements as uncontested. *GM Dev. Corp. v.*
2 *Cnty. Am. Mortg. Corp.*, 165 Ariz. 1, 5, 795 P.2d 827, 831 (App.1990) (“[I]n summary
3 judgment context, opposing party's failure to provide competent evidence controverting
4 moving party's affidavits, facts alleged may be considered true”). *Id.* at 39-40.

5 Here, the City has provided declarations from the City’s lead negotiator and from
6 some of the bargaining unit lead negotiators. All indicate that the release of draft documents
7 will lead to significant negative outcomes, not only during the particular negotiation
8 process, but even up until a new, successor MOU is entered. The declarations supporting
9 the City’s “best interests” ground the City’s position in the aggregate experiences of
10 negotiators charged with obtaining the best bargains for their respective principals. *See*
11 Exhibits 5-8.

12 As articulated in the declarations, the deleterious consequences of public disclosure
13 include:

- 14 • Undesirable pressures, both political and otherwise, would be injected into the
15 negotiation process. These pressures include the desire to please and save face
16 with constituents, which can incentivize negotiators to engage in posturing and
17 staking out (and maintaining) hardline positions. Such tactics make negotiation
18 impassable more likely.
- 19 • The various bargaining groups could unite and effectively collude against the
20 City, turning the negotiations from one-on-one negotiations to “five against one”
21 negotiations.
- 22 • Collusion among units would undermine the meet and confer structure, which
23 divides employees based on a shared community of interest. This could produce
24 absurd results, such as clerical employees requesting terms and conditions
25 unique to sworn police officers.
- 26 • The employee groups might pressure each other not to accept deals with the City
27 until collective concessions are made.
- 28 • If the process turns into a “five against one” negotiation, much of the nuances
and distinctions between the various bargaining groups may be lost. For
example, while there may be a rationale to provide law enforcement officers
with uniform stipends and take-home vehicles, it may make less sense to provide
these same benefits to administrative assistants. Keeping the negotiations
separate and confidential recognizes the unique interests of each bargaining
group.
- Employees could attempt to influence the negotiation process. This would be
disruptive because each group’s professional negotiators are knowledgeable and

1 work for the best interest of the group as a whole, whereas members may have
2 their individual agendas. Thus, public disclosure has the potential to increase
3 labor unrest and to result in more impasses, which are costly and disruptive to
4 the bargaining process.

5 Each of these reasonably foreseeable consequences is likely to impair labor
6 relations, create conflict between the City and its workforce, negatively impact public
7 services, and result in inefficient expenditures of public funds. These significant interests
8 significantly outweigh the public's interest in viewing draft proposals, which are merely
9 steps along the road to an agreement and do not involve any tangible expenditures or
10 concessions.

11 **IV. The Public Interest That The Goldwater Institute Is Seeking To Vindicate In
12 Requesting Confidential Negotiation Records Does Not Outweigh The Bests
13 Interests Of The State.**

14 In weighing the strength of the presumption in favor of disclosure, courts consider
15 the public interest that a requestor "seeks to vindicate in requesting . . . [the] documents."
16 *Phoenix Newspapers, Inc. v. Keegan*, 201 Ariz. 344, 351, 35 P.3d 105, 112 (Ct. App. 2001)
17 (*quoting S. New Jersey Newspapers, Inc. v. Township of Mt. Laurel*, 141 N.J. 56, 660 A.2d
18 1173, 1184 (1995)).

19 Plaintiff's reliance on *Keegan* to tip the balance in their favor is misplaced. There,
20 the Arizona Court of Appeals found a concrete and prevailing interest in the release of
21 certain test questions from the Arizona Instrument to Measure Standards ("AIMS") test.
22 However, unlike the facts in this case, AIMS had been the subject of a significant and
23 sustained state-wide public debate. Because the administration of that test could result in
24 denial of a diploma to *nearly all Arizona high school students*, it was determined to be a
25 matter of clear public interest. Additionally, the court concluded that the high failure of
26 AIMS test subjects implied either that the test instrument was inapt or there were systemic
27 problems with Arizona schools.

28 The same cannot be said for the Plaintiff's request here. The draft negotiation
documents that Plaintiff seeks do not result in any expenditures of taxpayer monies. The
draft documents are merely positions of a party at the time provided to another party. In

1 contrast, after the “blackout” period, the public has a valid interest in reviewing and
2 commenting on the proposed MOUs that are subject to City Council approval because they
3 result in actual expenditures of public funds. The City does disclose these proposed MOUs,
4 and the public has ample time and opportunity to comment on them prior to consideration
5 by the City Council.

6 The Plaintiff also argues that the draft documents must be produced because they
7 were created by City negotiators and PLEA representatives who are paid government
8 salaries funded by taxpayers. If this argument were correct, no public record would be
9 immune from disclosure. Pending criminal investigation documents are created by law
10 enforcement personnel who are paid government salaries funded by taxpayers. Sensitive
11 and classified documents are generated by Homeland Security staff who are paid
12 government salaries funded by taxpayers. Internal transaction memoranda are drafted by
13 government negotiators who are paid government salaries funded by taxpayers. Plaintiff’s
14 argument that all documents created by government employees on the government payroll
15 must be disclosed would gut the “best interests of the government” exception to disclosure.

16 Moreover, the public’s interest in determining how much time and money have been
17 spent on the negotiation process can be satisfied by requesting payroll and other
18 documents. The draft proposals sought by the Plaintiff provide no information to satisfy
19 that interest.

20 Finally, the Plaintiff argues that the public has a right to know how its tax burden is
21 impacted by City expenditures, particularly in the law enforcement arena because law
22 enforcement functions “consume significant portions of public resources”.⁷ Yet again, the
23
24

25 ⁷ The public has ample opportunity to know how its taxes are spent by the City. The City
26 conducts budget hearings that runs simultaneously to the meet and confer process. The budget
27 documents indicate that 85% or \$113,641,000 of the general fund surplus is allocated to
28 employee compensation. A portion of that compensation will be allocated to PLEA
members. The public therefore has the ability to be heard on that issue. The Court should take
notice that during these budget hearings the City has not received any negative response from
the public.

1 draft negotiation documents provide none of that information. The documents merely lay
2 out each party's respective positions on the negotiated items that go into the final MOU.

3 Plaintiff attempts to show that the negotiation documents have already garnered
4 public attention and interest by citing to an AZCENTRAL article published on December
5 15, 2022. The article was in fact a story about PLEA's failure to submit its draft MOU by
6 the December 1st deadline and in no way indicates or discusses a vast public interest in the
7 negotiation documents Plaintiff seeks in its public records request. Furthermore, an attempt
8 to extrapolate one reporter's article into significant public interest is purely speculative.
9 The final MOU that is subject to City Council approval is the only document that details
10 "the compensation, benefits, terms and conditions of employment, [and] disciplinary
11 procedures" applicable to the PLEA members.

12 **V. The City's Interests In Withholding The Records At Issue Continue Through**
13 **Approval Of The Next Succeeding MOU To Be Adopted In April 2024.**

14 The City's interest in withholding negotiation proposals is a continuing interest, at
15 least until the next succeeding MOU is approved one year from now. The same analysis
16 applied to the negotiation documents during the pendency of negotiations applies as well
17 to the period after approval until the parties enter into a subsequent agreement. The
18 negotiations for the next agreement begin in December, 2023, less than eight months away.

19 Labor negotiations differ from many other contract negotiations processes in that
20 they involve a long-term relationship between the employer and employee group. *See*
21 Exhibit 5, ¶ 12, Declaration of Jason Perkiser.

22 Rather than starting each negotiation cycle anew, the next negotiation will build
23 upon the current MOU, which may result in minor revisions or more substantial changes
24 to the agreement. Some of these agreements are very mature documents. As such, some
25 proposals that are not realized in the current agreement may be brought again by either or
26 both parties such that it is often advantageous to push an item into the next round, to "kick
27 the can" down the road. *Id.*

1 Furthermore, there are times (including in the most recent cycle) where the
2 employee representative settles for a less generous item than the City originally proposed
3 in order to extract concessions that will benefit the membership as a whole. In other words,
4 the negotiators concede a term that may benefit a minority of employees in exchange for
5 something meaningful in another area. If such a situation is made public, it will be
6 problematic for both parties. For instance, it could cause discord within the employee
7 group. A minority of employees may have preferred the more generous original offer that
8 was traded away for benefit the membership in the aggregate. This, in turn, may result in
9 resentment and intra-unit conflict, thereby reducing the likelihood of an agreement being
10 ratified and increasing the probability of an impasse. *See Exhibit 6, ¶¶ 7-8, Declaration of*
11 *Frank Piccioli and Exhibit 7, ¶¶ 6-7, Declaration of Jason Henley.*

12 From the City's perspective, this sort of discontent can be detrimental and can erode
13 the relationship with the workforce. Additionally, other bargaining units, knowing that the
14 City was once willing to provide a benefit to another group, may pick up on such offers
15 and demand that the City provide the more generous term to them. Of course, they would
16 not consider changed conditions or the concessions the City gained by making such an
17 offer. That would lead to more contentious and drawn-out bargaining, likely resulting in
18 the impasse process.

19 While historical bargaining proposals will to be of little use to the public at large,
20 since there will have already been an opportunity to comment on the then-approved MOUs,
21 the City's interest in maintaining the confidentiality of negotiations is ongoing through the
22 subsequent negotiation period for the reasons outlined above.

23 **CONCLUSION**

24 For the reasons set forth herein, the City respectfully requests that this Court deny
25 Plaintiff's request for special action and injunctive relief.
26
27
28

1 RESPECTFULLY SUBMITTED this 17th day of April 2023.

2 **PIERCE COLEMAN PLLC**

3 By: /s/ Stephen B. Coleman
4 Stephen B. Coleman
5 Jon Paladini
6 7730 E. Greenway Road, Ste. 105
7 Scottsdale, AZ 85260
8 *Attorneys for Defendants*

9 **CERTIFICATE OF SERVICE**

10 I hereby certify that on April 17, 2023, I electronically transmitted this document
11 to the Clerk's Office using the AZTurbo System for filing, and on this same day, served a
12 copy via electronic mail upon the following:

13 Jonathan Riches
14 Scott Day Freeman
15 Parker Jackson
16 Scharf-Norton Center for Constitutional Litigation at the
17 GOLDWATER INSTITUTE
18 500 E. Coronado Rd.
19 Phoenix, Arizona 85004
20 litigation@goldwaterinstitute.org
21 Attorneys for Plaintiffs

22 By: /s/ Mary Walker
23
24
25
26
27
28

EXHIBIT 1

City of Phoenix and LIUNA Local 777 (Unit 1)
2023 Meet and Confer
Ground Rules


The Parties agree to the following meet and discuss ground rules:

1. **Discussion Location:** Meetings will be held at the Union office, the Human Resources Department, WebEx, or at other mutually agreed to locations or virtual platform (a Virtual/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes:** Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson:** The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s):** As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording:** Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals:** All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements:** All tentative agreements will be documented in writing, signed, and dated at the meeting agreed upon or before the next meeting, and shall be recommended to become part of the Memorandum of Agreement when agreement on the entire M.O.U. has been reached.
8. **Intent:** Except for agreements reached while bargaining the successor M.O.U., the language and intent of the M.O.U. shall remain the same.
9. **Confidentiality:** Neither party shall make any unilateral public statements with respect to their positions on issues addressed at the bargaining table, or other matters that may affect the Meet and Confer process, until such time as PERB has declared that an impasse exists and the matter has been submitted to the City Council. Any response to information made public by any representative of the city would not violate this ground rule.
10. **Team size:** Team size is limited to 8 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
11. **General Civility:** No name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue.

City of Phoenix and LIUNA Local 777 (Unit 1)
2023 Meet and Confer
Ground Rules

12. **Caucuses:** Each side shall have the right to caucus at any time for a reasonable duration and shall inform the other party of the anticipated length of caucus.
13. **Sidebar:** The lead spokesperson from either party can ask for a sidebar with the other lead spokesperson during meetings.
14. **FMCS:** At any point the parties can mutually agree to utilize the FMCS.

AGREED TO AND ACCEPTED BY:

Union 

11/3/22
Date

City 

11/3/2022
Date

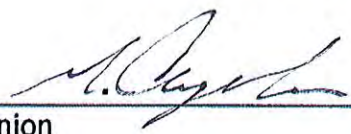
City of Phoenix and AFSCME Local 2384 (Unit 2)
2023 Meet and Confer
Ground Rules

The Parties agree to the following negotiation ground rules:

1. **Negotiation Location:** Meetings will be held at the Union office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes:** Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson:** The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s):** As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 48 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording:** Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals:** All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements:** All tentative agreements will be documented in writing, signed, and dated at the meeting agreed upon or before the next meeting, and shall be recommended to become part of the Memorandum of Understanding when agreement on the entire M.O.U. has been reached.
8. **Intent:** Except for agreements reached while bargaining the successor M.O.U., the language and intent of the M.O.U. shall remain the same.
9. **Team size:** Team size is limited to 10 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
10. **Code of Conduct:** The parties will conduct themselves professionally. If there are any issues with this or any of the other ground rules established herein, the parties' lead spokespersons will confer to try to resolve them. The parties will do so without interference with any party's rights under the Meet and Confer Ordinance. (e.g., no name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue). If the conduct of a person in the meeting room or participating via virtual format disrupts or interrupts either party, thereby preventing progress at the table, the affected party will immediately notify the lead spokesperson of the other party. The lead spokespersons will then confer and attempt to resolve the interruption.

City of Phoenix and AFSCME Local 2384 (Unit 2)
2023 Meet and Confer
Ground Rules

11. **Caucuses:** Each side shall have the right to caucus at any time for a reasonable duration and shall inform the other party of the anticipated length of caucus.
12. **Sidebar:** The lead spokesperson from either party can ask for a sidebar with the other lead spokesperson during meetings.
13. **FMCS:** At any point the parties can mutually agree to utilize the FMCS.
14. **Bold font:** Bold font currently showing in the 2021 – 2023 MOU will be removed in the new contract. All new language in the new contract will be reflected in bold font to show the changes.



Union

10-21-2022
Date



City

10-21-2022
Date

City of Phoenix and AFSCME Local 2960 (Unit 3)
2023 Meet and Confer
Ground Rules

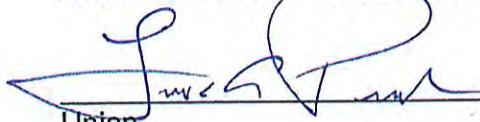
The Parties agree to the following meet and discuss ground rules:

1. **Discussion Location:** Meetings will be held at the Union office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes:** Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson:** The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s):** As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording:** Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed. Exchange of notes will take place upon request.
6. **Submission of Proposals:** All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements:** All tentative agreements will be documented in writing, signed, and dated at the meeting agreed upon or before the next meeting, and shall be recommended to become part of the Memorandum of Agreement when agreement on the entire M.O.U. has been reached.
8. **Intent:** Except for agreements reached while bargaining the successor M.O.U., the language and intent of the M.O.U. shall remain the same.
9. **Confidentiality:** The parties agree to keep the negotiations process as confidential as possible, and not make public statements regarding the negotiations unless it is to respond to inaccurate or defamatory articles publicly posted or stated by a third party or to respond to the press after the point of impasse. This provision is not intended to prohibit or otherwise prevent the Union or the City from updating its members or City Council on the status and progress of negotiations. Either party can terminate the provisions of this section with 24 hours notice to the other party.
10. **Team size:** Team size is limited to 10 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.

**City of Phoenix and AFSCME Local 2960 (Unit 3)
2023 Meet and Confer
Ground Rules**

11. **Code of Conduct:** The parties will conduct themselves professionally. If there are any issues with this or any of the other ground rules established herein, the parties' lead spokespersons will confer to try to resolve them. The parties will do so without interference with any party's rights under the Meet and Confer Ordinance.
12. **Caucuses:** Each side shall have the right to caucus at any time for a reasonable duration and shall inform the other party of the anticipated length of caucus.
13. **Sidebar:** The lead spokesperson from either party can ask for a sidebar with the other lead spokesperson during meetings.
14. **FMCS:** At any point the parties can mutually agree to utilize the FMCS.
15. **Information Requests:** The City agrees to promptly furnish to the Union any requested information and/or documents relevant to the parties' proposals and bargaining positions. Any documents or information related to and/or supporting any proposal shall be promptly provided upon request without the Union having to file an official public records request.

AGREED TO AND ACCEPTED BY:


Union

10/18/2022
Date


City

10/18/2022
Date

City of Phoenix and PLEA (Unit 4)
2023 Meet and Confer
Ground Rules

The Parties agree to the following meet and discuss ground rules:

1. **Negotiation Location:** Meetings will be held at the Union office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes:** Any necessary changes to dates, times, and/or locations for future negotiation sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson:** The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s):** As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording:** Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals:** All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements:** All tentative agreements will be documented in writing, signed and dated, and shall only become part of the Memorandum of Understanding when agreement on the entire M.O.U. has been reached.
8. **Intent:** Except for agreements reached, the language and intent of the M.O.U. shall remain the same.
9. **Confidentiality:** Neither party shall make any unilateral public statements with respect to their positions on issues addressed at the bargaining table, or other matters that may affect the Meet and Confer process, until such time as PERB has declared that an impasse exists and the matter has been submitted to the City Council. Any response to information made public by any representative of the city would not violate this ground rule.
10. **Caucuses:** Either party can caucus at any time.
11. **Courtesy:** As a matter of common courtesy, parties shall keep each other informed as to how long they anticipate a caucus might take and provide periodic timely updates every 30 minutes when in caucus.
12. **Sidebar:** The chief spokesperson from either side can ask for a sidebar with the other chief spokesperson during negotiations.

City of Phoenix and PLEA (Unit 4)
2023 Meet and Confer
Ground Rules

13. **Team Size:** Team size is limited to 8 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
14. **General Civility:** No name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue.
15. **FMCS:** At any point the parties can mutually agree to utilize the FMCS.

AGREED TO AND ACCEPTED BY:



For the Union

October 3, 2022

Date



For the City

10/3/2022


Date


City of Phoenix and IAFF Local 493 (Unit 5)
2023 Meet and Confer
Ground Rules

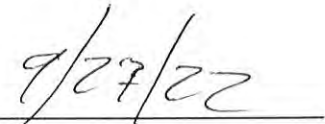
1. **Negotiation Location:** Meetings will be held at the Union office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes:** Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson:** The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s):** As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording:** Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals:** All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements:** All tentative agreements will be documented in writing, signed and dated, and shall only become part of the Memorandum of Understanding when agreement on the entire M.O.U. has been reached.
8. **Intent:** Except for agreements reached while bargaining the successor M.O.U., the language and intent of the M.O.U. shall remain the same.
9. **Confidentiality:** Neither party shall make any unilateral public statements with respect to their positions on issues addressed at the bargaining table, or other matters that may affect the Meet and Confer process, until such time as PERB has declared that an impasse exists and the matter has been submitted to the City Council. Any response to information made public by any representative of the city would not violate this ground rule.
10. **Caucuses:** Either party can caucus at any time.
11. **Courtesy:** As a matter of common courtesy, parties shall keep each other informed as to how long they anticipate a caucus might take and provide periodic timely updates every 30 minutes when in caucus.

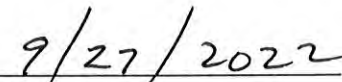
City of Phoenix and IAFF Local 493 (Unit 5)
2023 Meet and Confer
Ground Rules

12. **Sidebar:** The chief spokesperson from either side can ask for a sidebar with the other chief spokesperson during negotiations.
13. **Team Size:** Team size is limited to 9 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
14. **Code of Conduct:** No name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue.
15. **FMCS:** At any point the parties can mutually agree to utilize the FMCS.


Union


City


Date


Date

City of Phoenix and PPSLA (Unit 6)
2023 Meet and Discuss
Ground Rules

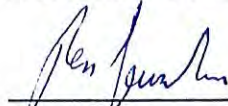
The Parties agree to the following meet and discuss ground rules:

1. **Discussion Location:** Meetings will be held at the PPSLA office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes:** Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson:** The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s):** As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording:** Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals:** All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements:** All tentative agreements will be documented in writing, signed, and dated at the meeting agreed upon or before the next meeting, and shall be recommended to become part of the Memorandum of Agreement when agreement on the entire M.O.A. has been reached.
8. **Confidentiality:** The parties agree that neither the representatives of the City or PPSLA will make any public statements with respect to their positions on issues being discussed at the table, or other matters that may affect the Meet and Discuss process.
9. **Team size:** Team size is limited to 8 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
10. **Code of Conduct:** The parties will conduct themselves professionally (e.g., no name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue). If the conduct of a person present in the meeting room or participating via virtual format disrupts or interrupts either party, thereby preventing progress at the table, the affected party will immediately notify the lead spokesperson of the other party. The lead spokespersons will then confer and attempt to resolve the interruption.

City of Phoenix and PPSLA (Unit 6)
2023 Meet and Discuss
Ground Rules

11. **Caucuses:** Each side shall have the right to caucus at any time for a reasonable duration and shall inform the other party of the anticipated length of caucus.
12. **Sidebar:** The lead spokesperson from either party can ask for a sidebar with the other lead spokesperson during meetings.
13. **FMCS:** At any point the parties can mutually agree to utilize the FMCS.

AGREED TO AND ACCEPTED BY:



Association

9/13/22

Date



City

9/13/2022

Date

City of Phoenix and ASPTEA (Unit 7)
2023 Meet and Discuss
Ground Rules

The Parties agree to the following meet and discuss ground rules:

1. **Discussion Location:** Meetings will be held at the ASPTEA office, the Human Resources Department, WebEx, or at other mutually agreed to locations (a WebEx/hybrid option shall be available for all sessions regardless of agreed to location). Meetings will be closed to the public.
2. **Session Changes:** Any necessary changes to dates, times, and/or locations for future discussion sessions shall be mutually agreed to at the close of each session.
3. **Lead Spokesperson:** The parties agree that each side will have a primary spokesperson at the bargaining table.
4. **Notice of Subject Matter Expert(s):** As a matter of common courtesy, the parties agree to notify each other with as much advanced notice as possible (but no less than 72 hours except with mutual agreement) should they decide to bring a "subject matter expert" or other party, to the table.
5. **No Recording:** Other than written notes/minutes taken by members of each team, there shall be no recordings of any kind. The use of laptops is allowed.
6. **Submission of Proposals:** All proposals or counter proposals from either party shall always be submitted in writing using the mutually agreed format and include the article and section, a clear intent of the language, and at least one example of how the language is to be administered and/or applied.
7. **Tentative Agreements:** All tentative agreements will be documented in writing, signed, and dated at the meeting agreed upon or before the next meeting, and shall be recommended to become part of the Memorandum of Agreement when agreement on the entire M.O.A. has been reached.
8. **Confidentiality:** The parties agree that the representatives of the City and ASPTEA shall not make any unilateral public statements regarding the negotiations process unless it is to respond to inaccurate or defamatory articles publicly posted or stated by a third party.
9. **Team size:** Team size is limited to 10 individuals for each side, not counting guest speakers, presenters or mutually agreed upon observers.
10. **Code of Conduct:** The parties will conduct themselves professionally (e.g., no name calling or insults, listen without interruption, treat everyone with respect, recognize opposing viewpoints without denigrating them, and discuss issues rather than argue). If the conduct of a person present in the meeting room or participating via virtual format disrupts or interrupts either party, thereby preventing progress at the table, the affected party will immediately notify the lead spokesperson of the other party. The lead spokespersons will then confer and attempt to resolve the interruption.

**City of Phoenix and ASPTEA (Unit 7)
2023 Meet and Discuss
Ground Rules**

11. **Caucuses:** Each side shall have the right to caucus at any time for a reasonable duration and shall inform the other party of the anticipated length of caucus.
12. **Sidebar:** The lead spokesperson from either party can ask for a sidebar with the other lead spokesperson during meetings.
13. **FMCS:** At any point the parties can mutually agree to utilize the FMCS.

AGREED TO AND ACCEPTED BY:

Jason Stokes
For the Association

09/12/2022
Date

Jason Perkins
For the City

Sep 12, 2022
Date

Unit 7 Ground Rules 2023

Final Audit Report

2022-09-12

Created:	2022-09-12
By:	Jason Stokes (jstokes@asptea.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAGQ6Hf0W-0PI0RHKe-JvY0-oEE_OmyQOi

"Unit 7 Ground Rules 2023" History



Document created by Jason Stokes (jstokes@asptea.com)

2022-09-12 - 5:50:22 PM GMT- IP address: 70.188.208.226



Document emailed to Jason Perkiser (jason.perkiser@phoenix.gov) for signature

2022-09-12 - 5:50:57 PM GMT



Email viewed by Jason Perkiser (jason.perkiser@phoenix.gov)

2022-09-12 - 6:15:10 PM GMT- IP address: 163.116.139.113



Document e-signed by Jason Perkiser (jason.perkiser@phoenix.gov)

Signature Date: 2022-09-12 - 6:15:55 PM GMT - Time Source: server- IP address: 163.116.139.113



Agreement completed.

2022-09-12 - 6:15:55 PM GMT



Adobe Acrobat Sign

EXHIBIT 2



PHOENIX LAW ENFORCEMENT ASSOCIATION

The Professional Association of Phoenix Police Officers Since 1975

Jeff Barton, City Manager
City of Phoenix
200 W Washington St
Phoenix, AZ 85003

December 1, 2022

RE: Meet and Confer 2023

Dear Jeff,

In accordance with Section 2-218B of the Meet and Confer ordinance, the Phoenix Law Enforcement Association provides this notice of our intent to engage in wage and benefit negotiations beginning January of 2023.

During the course of negotiations, proposals will be submitted for your consideration. All mutual agreements shall be subject to ratification.

Sincerely,

Darrell Kriplean
President
Phoenix Law Enforcement Association

EXHIBIT 3



Agenda Date: 12/7/2022, Item No. *20

*****ADDITIONAL INFORMATION (SEE ATTACHED MEMOS)*** Union Comments on Proposed Changes to Memoranda of Understanding**

Under the terms of the Meet and Confer Ordinance, employee organizations are afforded an opportunity to comment after having submitted proposed changes to existing Memoranda of Understanding (MOUs) by Dec. 1, 2022.

This item on the agenda allows the unions to inform the City Council as to their priorities, concerns, and general goals for the Meet and Confer process.

The Meet and Confer Ordinance also requires that the public be given an opportunity to make comments on the union proposals at the Dec. 14, 2022, City Council meeting.

Responsible Department

This item is submitted by Assistant City Manager Lori Bays and the Human Resources Department.



City of Phoenix

To: Jeff Barton
City Manager

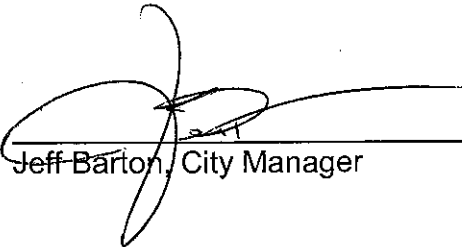
Date: December 5, 2022

From: David Mathews
Human Resources Director

Subject: ADDITIONAL INFORMATION FOR ITEM #20 ON THE DECEMBER 7, 2022
FORMAL AGENDA

The purpose of this memo is to provide additional information for Item #20 on the December 7, 2022 Formal Agenda. Attached is the following documentation the City received regarding the December 1 deadline established for authorized employee organizations (Unions) to submit their proposed memorandum of understanding. As outlined in Article XVII, Chapter 2-218 of the City Code, the Unions may present their proposals at the December 7, 2022 Council Formal Meeting. An item will also be placed on the December 14, 2022 Council Formal Meeting agenda for the public to comment on the proposals.

- Unit 1-LIUNA Local 777 Intent to Negotiate
- Unit 2-AFSCME Local 2384 Intent to Negotiate
- Unit 3-AFSCME Local 2960 Intent to Negotiate
- Unit 4-PLA Intent to Negotiate
- Unit 5-IAFF Local 493 Intent to Negotiate



Jeff Barton, City Manager



PHOENIX LAW ENFORCEMENT ASSOCIATION

The Professional Association of Phoenix Police Officers Since 1975

Jeff Barton, City Manager
City of Phoenix
200 W Washington St
Phoenix, AZ 85003

December 1, 2022

RE: Meet and Confer 2023

Dear Jeff,

In accordance with Section 2-218B of the Meet and Confer ordinance, the Phoenix Law Enforcement Association provides this notice of our intent to engage in wage and benefit negotiations beginning January of 2023.

During the course of negotiations, proposals will be submitted for your consideration. All mutual agreements shall be subject to ratification.

Sincerely,

Darrell Kriplean
President
Phoenix Law Enforcement Association

EXHIBIT 4



Agenda Date: 12/14/2022, Item No. 45

Public Comment on Proposed Changes to Memoranda of Understanding Submitted by Authorized Employee Organizations

This item is to provide public comment on proposals submitted by employee organizations.

Summary

Under the terms of the Meet and Confer Ordinance, employee organizations are offered the opportunity to make a presentation to the City Council regarding proposed changes to the existing Memoranda of Understanding (MOUs), which occurred this year on Dec. 7, 2022.

The Meet and Confer Ordinance provides that at the next City Council meeting following presentations by employee organizations, the public shall be afforded an opportunity to comment on the proposals. This item on the agenda provides that opportunity.

Responsible Department

This item is submitted by Assistant City Manager Lori Bays and the Human Resources Department.

EXHIBIT 5

DECLARATION OF JASON PERKISER

1. This declaration is based upon my own personal knowledge. I would so testify if called to do so.

2. I am the Assistant Human Resources Director over Labor Relations for the City of Phoenix (the “City”). Among other duties, I serve as the City’s lead negotiator for the bargaining processes with the City’s employee organizations under the meet and confer ordinance, Chapter 2, Art. XVII, Div. 1, *et seq.* of the Phoenix City Code (“PCC”). I have served the City in this capacity since July 2022, and I participated in the City’s most recent bargaining cycle. I have previous experience as the labor relations director for Oregon State University and in labor relations for Milwaukee Public Schools. Additionally, I am a member of the Wisconsin Bar and have represented public sector labor groups.

3. During every bargaining cycle, the City engages in separate but contemporaneous negotiations with the elected authorized exclusive representatives from the following five authorized employee bargaining groups: the Laborers’ International Union of North America (LIUNA), Local 777; the American Federation of State, County, and Municipal Employees (AFSCME), Local 2384; the American Federation of State, County, and Municipal Employees, Local 2960; the Phoenix Law Enforcement Association (PLEA); and the International Association of Fire Fighters (IAFF), Local 493. These groups vary in size. The largest group, PLEA, consists of approximately 2,200

employees, and the smallest group, LIUNA Local 777, consists of approximately 775 employees.

4. Just as these employee groups vary in size, they also vary in job function. Indeed, to qualify as an authorized bargaining group, the employee group must represent a distinct community of interest.

5. During each bargaining cycle, the City negotiates compensation packages with each of the five employee bargaining groups. Compensation packages include base pay but may also include other items such as deferred compensation contributions, shift differentials, stand-by pay, premium pay, uniform allowances, parking passes, and training stipends. In addition to compensation packages, hours of work and work rules are negotiated during each bargaining cycle. Examples of work rules include such items as retention of disciplinary records, shift and job assignment selection processes, and modified work schedules.

6. Under the meet and confer ordinance, each bargaining cycle runs from December through May. In the 2022-2023 bargaining cycle, the City began negotiations with the five employee bargaining groups during the week of January 16, 2023.

7. From the start of negotiations to the date when either a voluntary agreement or impasse is reached, the City Code creates a “blackout” period during which negotiations are to remain confidential. This “blackout” period is codified in Sec. 2-220 A.6 for the City and Sec. 2-220 B.8 for the employee organizations. These ordinances reflect a legislative decision to depoliticize the negotiation process as much as possible.

8. Producing the proposals exchanged between the parties during this “blackout” period in response to public records requests would thwart the purpose of the City’s meet and confer ordinance, which insulates the City Council and promotes the free exchange of views between the parties in a confidential setting. Additionally, the process also protects the concept of exclusivity regarding the employee representative, which is baked into the meet and confer ordinance and similar collective bargaining laws. In fact, collective representation is a defining characteristic of labor law. A majority of employees select their representative who then presents the positions of the collective to the employer. In turn, the City has a positive duty to bargain with that chosen representative and the negative duty to bargain with no other. This system promotes the employees’ interests through a democratic process and is more efficient for the City because it is not torn between competing interest groups.

9. Producing documents exchanged during the “blackout” negotiation period in response to a public records request would effectively make the negotiations public and would inject undesirable pressures, both political and otherwise, into the negotiation process. These pressures include the desire to please and save face with constituents, which can incentivize negotiators to engage in posturing and staking out (and maintaining) hardline positions. Such tactics make negotiation impasses more likely. When there is an impasse, the process becomes more time consuming and expensive for City taxpayers. Mediators must then assist the parties in reaching an agreement and, if no agreement is reached, the parties may engage in the expensive process of fact-finding with arbitrators.

10. Allowing a public record requester to obtain confidential bargaining proposals also puts the City at a disadvantage at the negotiation table. This is because the various bargaining groups could unite and effectively collude against the City, turning the negotiations from one-on-one negotiations to “five against one” negotiations. This is not a speculative concern. In my experience, the various bargaining groups are very interested in what is happening with the other groups and seeing if they can leverage what is being done elsewhere in their negotiations with the City. Moreover, if all the proposals were publicly available, the various employee groups might pressure each other not to accept deals with the City until collective concessions are made.

11. If the process turns into a “five against one” negotiation, many of the nuances and distinctions between the various bargaining groups may be lost. For example, while there may be a rationale to provide law enforcement officers with uniform stipends and take-home vehicles, it may make less sense to provide these same benefits to administrative assistants. Keeping the negotiations separate and confidential recognizes the unique interests of each bargaining group.

12. The negotiation documents should also be kept confidential from the time when the MOUs are approved in April until the next successor MOUs are approved one year from now in April 2024. The current MOUs have one-year terms. That means that negotiations begin again December 2023. It is important to understand that labor negotiations differ from many other contract negotiations processes in that they involve a long-term relationship between the employer and employee group. Bargaining of successor agreements does not begin anew each cycle but instead builds upon the current contract, which may result in minor revisions or more substantial changes to the agreement. Regardless, some of these agreements are very mature documents. As such,

some proposals that are not realized in the current agreement may be brought again (true for both parties) and it might be advantageous to push an item into the next round (“kick the can”).

13. There are also times (including in the most recent cycle) where the union settled for a less generous item than the City originally proposed. That settlement may be so that they can ask for something meaningful in another area. If such a situation is made public, it will be problematic for both parties. For example, it may cause discord within the employee group. One group may have been more advantaged by the more generous original offer, but the union might have needed to consider its group or the contract in the aggregate. From the City’s perspective that sort of discontent can be detrimental and can erode the relationship with the union. Additionally, other bargaining units may pick up on such offers and demand that the City provide the more generous item to them (knowing that the City was once willing to provide it to another group). Of course, they would not consider changed conditions or the leverage the City needed to gain by making such an offer. That would lead to more contentious and drawn-out bargaining likely resulting in the impasse process.

14. Finally, allowing public disclosure of confidential negotiation proposals would allow employees to attempt to influence the negotiation process. This would be disruptive because each group’s professional negotiators are knowledgeable and work for the best interest of the group as a whole, whereas members may have their individual agendas. Again, this has the potential to increase labor unrest and to result in more impasses, which are costly and disruptive to the bargaining process.

April 17, 2023

Date



Jason Perkiser

EXHIBIT 6

DECLARATION OF FRANK PICCIOLI

1. I state the following based on my personal knowledge and my position as President of AFSCME Local 2960. If called to testify, I could competently testify to the following.

2. I am the President of the American Federation of State, County and Municipal Employees, AFL-CIO, Local 2960 ("AFSCME Local 2960"). AFSCME Local 2960 is a not-for-profit labor association that is the certified representative for all Unit III employees under the City of Phoenix's Meet and Confer Ordinance, Phoenix City Code § 2-209 *et seq.* (the "Ordinance"). Our organization represents more than 2,800 authorized Unit III position employees in more than 20 City of Phoenix ("City") departments. Unit III employees include the City's 911 operators and dispatchers for both the Police and Fire Departments. Unit III employees also help run the City's libraries, senior centers, recreation centers and provide other vital City services. Unit III employees also help maintain the City's revenues by collecting fees and fines, processing permits and a variety of other tasks.

3. Among other responsibilities, under the Ordinance, AFSCME Local 2960 is responsible for negotiating to reach agreement on a Memorandum of Understanding (MOU) that sets forth wages, hours and working conditions for all Unit III employees. In various roles with AFSCME Local 2960, I have personally participated in negotiations with the City since approximately 2004. AFSCME Local 2960's responsibility as a certified labor representative is to fairly represent all employees in Unit III. MOUs between the City and Union can have terms from one to three years in duration. The last MOU was a two year agreement that expires on June 30, 2023. The City and AFSCME Local 2960 recently reached agreement with the City for a one year successor MOU that is effective July 1, 2023 and will expire at the end of June 2024.

4. Typically, in negotiating successor MOUs, AFSCME Local 2960 and the City begin face to face meetings with the City early in the year in which the current MOU

1 expires in order to begin discussing proposals for the successor MOU. The negotiations for
2 a new MOU is a process that takes several months and usually involves face-to-face
3 meetings at least once a week for a full day and sometimes more often.

4 5. Before we begin the negotiations for a successor MOU, we typically meet
5 with the City in the fall and discuss “ground rules” for negotiation of a successor MOU.
6 One of the ground rules the parties almost always agree on is that they will keep the
7 negotiations as confidential as possible and not make public statements about the
8 negotiations process except under certain limited circumstances. As discussed below,
9 AFSCME Local 2960 considers this confidentiality a vital part of the process.

10 6. During negotiations for a successor MOU, the parties exchange proposals
11 and reach tentative agreements, which then become incorporated into the new MOU only
12 when the parties have agreed on the entire MOU. Although AFSCME Local 2960
13 negotiators keep our members informed about the progress of negotiations, we generally
14 keep the proposals that have been exchanged and not incorporated into a new MOU
15 confidential and do not provide the written proposals to our members. At the time a new
16 MOU is reached, the agreements reached on proposals during negotiations are incorporated
17 into an MOU and the MOU is presented to City Council for approval and to AFSCME
18 Local 2960 members for ratification.

19 7. When we negotiate for a successor MOU, the City and AFSCME Local 2960
20 engage in certain bargaining strategies that have successfully resulted in agreements in the
21 past and that rely on the confidentiality of the process to be successful. For example, both
22 sides may make offers that they do not believe would be accepted in order to position
23 themselves to get something different. The sides may also make proposals that would
24 benefit only a certain group of employees or a single City department that may not be
25 accepted but would lead to broader agreements. I believe that the parties would have to
26 spend a significant amount of time dealing with unhappy constituents and minority
27 interests if they are forced to publicly address or defend all of the proposals exchanged
28 between the parties. Based on my experience and position with the union, I believe that

1 public disclosure of the parties' negotiations and tactics could lead to entrenchment of the
2 parties' positions and potential division among constituents making it much harder for the
3 City and AFSCME Local 2960 to reach a negotiated agreement that all parties would find
4 satisfactory and that is in the public interest.

5 8. If the parties are unable to reach agreement, there is an impasse procedure in
6 the Ordinance that provides for optional mediation and also provides for a neutral factfinder
7 to hold a hearing and to issue a report and recommendation to City Council. If that happens,
8 City Council holds a public hearing and is then empowered to take action as it deems in
9 the public interest. The impasse procedure likewise relies on confidentiality. In fact, the
10 Ordinance specifically states that once the neutral factfinder issues his or her report, that
11 report will not be made public until five business days following receipt by the parties of
12 the report and recommendation. In the past where the parties utilized that impasse
13 procedure, AFSCME Local 2960 and the City have engaged in extensive negotiations
14 during those five days in order to try to resolve their differences and reach a new agreement
15 prior to the factfinder's report becoming public. This confidentiality has helped the parties
16 resolve most of their issues.

17 9. Even though the parties have finished negotiations for the one year MOU
18 whose term begins in July 2023, AFSCME Local 2960 and the City have an ongoing
19 collective bargaining relationship. The negotiations for a successor MOU will begin soon
20 and negotiations materials reflecting bargaining proposals and strategy for earlier
21 negotiations continue to be relevant in part because not every provision in an MOU changes
22 with a successor MOU. The City and AFSCME Local 2960 revisit and negotiate the same
23 or similar issues over and over so that provisions that were negotiated in earlier MOUs are
24 often revisited in future negotiations. Based on my position and experience, I believe that
25 the public disclosure of past proposals and other materials related to bargaining over prior
26 MOUs would likely be detrimental in the parties' upcoming negotiations sessions and
27 make it harder to reach agreements in the future.
28

1 I declare under penalty of perjury that the foregoing is true and correct.

2
3 Executed this 17th day of April 2023

4 

5
6 Frank Piccioli

EXHIBIT 7

DECLARATION OF JASON HENLEY

1
2
3 1. I state the following based on my personal knowledge and my position as
4 President of AFSCME Local 2384. If called to testify, I could competently testify to the
5 following.

6 2. I am the President of the American Federation of State, County and
7 Municipal Employees, AFL-CIO, Local 2384 ("AFSCME Local 2384"). AFSCME Local
8 2384 is a not-for-profit labor association that is the certified representative for all Unit II
9 employees under the City of Phoenix's Meet and Confer Ordinance, Phoenix City Code §
10 2-209 *et seq.* (the "Ordinance"). Our organization represents more than 1,700 authorized
11 Unit II employees in approximately 10 City of Phoenix ("City") departments. Unit II
12 employees include skilled trades, mechanics and equipment operators who, among other
13 things, provide vital water, sewer, streets and other municipal services to the public.

14 3. Among other responsibilities, under the Ordinance, AFSCME Local 2384 is
15 responsible for negotiating to reach agreement on a Memorandum of Understanding
16 (MOU) that sets forth wages, hours and working conditions for all Unit II employees. Our
17 responsibility as a certified labor representative is to fairly represent all employees in Unit
18 II. MOUs between the City and Union can have terms from one to three years in duration.
19 The last MOU was a two year agreement that expires on June 30, 2023. The City and
20 AFSCME Local 2384 recently reached agreement with the City for a one year successor
21 MOU that is effective July 1, 2023 and will expire at the end of June 2024.

22 4. Typically, in negotiating successor MOUs, AFSCME Local 2384 and the
23 City begin face to face meetings with the City early in the year in which the current MOU
24 expires in order to begin discussing proposals for the successor MOU. The negotiations for
25 a new MOU is a process that takes several months and usually involves face-to-face
26 meetings at least once a week for a full day and sometimes more often.

27 5. Before we begin the negotiations for a successor MOU, we typically meet
28 with the City in the fall and discuss "ground rules" for negotiation of a successor MOU.

1 One of the ground rules the parties almost always agree on is that they will keep the
2 negotiations as confidential as possible and not make public statements about the
3 negotiations process except under certain limited circumstances. As discussed below,
4 AFSCME Local 2384 considers this confidentiality a vital part of the process.

5 6. During negotiations for a successor MOU, the parties exchange proposals
6 and reach tentative agreements, which then become incorporated into the new MOU only
7 when the parties have agreed on the entire MOU. Although AFSCME Local 2384
8 negotiators keep our members informed about the progress of negotiations, we generally
9 keep the proposals that have been exchanged and not incorporated into a new MOU
10 confidential and do not provide the written proposals to our members. At the time a new
11 MOU is reached, the agreements reached on proposals during negotiations are incorporated
12 into an MOU and the MOU is presented to City Council for approval and to AFSCME
13 Local 2384 members for ratification.

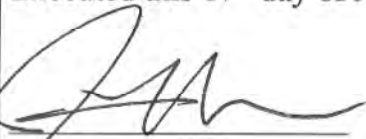
14 7. When we negotiate for a successor MOU, the City and AFSCME Local 2384
15 engage in certain bargaining strategies that have successfully resulted in agreements in the
16 past and that rely on the confidentiality of the process to be successful. For example, both
17 sides may make offers that they do not believe would be accepted in order to position
18 themselves to get something different. The sides may also make proposals that would
19 benefit only a certain group of employees or a single City department that may not be
20 accepted but would lead to broader agreements. I believe that the parties would have to
21 spend a significant amount of time dealing with unhappy constituents and minority
22 interests if they are forced to publicly address or defend all of the proposals exchanged
23 between the parties. Based on my experience and position with the union, I believe that
24 public disclosure of the parties' negotiations and tactics could lead to entrenchment of the
25 parties' positions and potential division among constituents making it much harder for the
26 City and AFSCME Local 2384 to reach a negotiated agreement that all parties would find
27 satisfactory and that is in the public interest.

28 8. Even though the parties have finished negotiations for the one year MOU

1 whose term begins in July 2023, AFSCME Local 2384 and the City have an ongoing
2 collective bargaining relationship. The negotiations for a successor MOU will begin soon
3 and negotiations materials reflecting bargaining proposals and strategy for earlier
4 negotiations continue to be relevant in part because not every provision in an MOU changes
5 with a successor MOU. The City and AFSCME Local 2384 revisit and negotiate the same
6 or similar issues over and over so that provisions that were negotiated in earlier MOUs are
7 often revisited in future negotiations. Based on my position and experience, I believe that
8 the public disclosure of past proposals and other materials related to bargaining over prior
9 MOUs would likely be detrimental in the parties' upcoming negotiations sessions and
10 make it harder to reach agreements in the future.

11
12 I declare under penalty of perjury that the foregoing is true and correct.

13
14 Executed this 17th day of April 2023

15
16 

17 Jason Henley
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT 8

DECLARATION OF DARRELL KRIPLEAN

1. This declaration is based upon my own personal knowledge. I would so testify if called to do so.

2. I, Darrell Kriplean am the President of the Phoenix Law Enforcement Association (PLEA). Among other duties, my position entails serving as the Phoenix Law Enforcement Association (PLEA) lead negotiator with the City of Phoenix the City's meet and confer ordinance under Chapter 2 Art. XVII Div. 1 *et seq.* of the Phoenix City Code ("PCC"). I have served PLEA in this capacity since 2016, and I participated in the City's most recent bargaining cycle. I have previous served as the Treasurer prior to becoming President.

3. During the meet and confer process, the City and PLEA do not pre-negotiate terms before reducing them to writing. Rather, the parties exchange draft language by way of proposals for initial consideration by the other side. Once tentative agreement is reached on a proposal, it is reduced to writing as a "Tentative Agreement". No Tentative Agreements are final until all Tentative Agreements are reached.

4. Based on my experience, public disclosure of bargaining proposals and Tentative Agreements during the "black out" period will result in disruptive consequences that will be injurious to labor relations and increase the likelihood of impasse, as set forth in detail below.

5. During the meet and confer process, the PLEA negotiators will sometimes reject proposed terms that may be highly beneficial to a minority of PLEA members in order to extract benefits for the membership as a whole. If this were made public, it would almost certainly result in a fracture amongst PLEA's membership, with some members being resentful or disapproving of choices made for the good of the bargaining unit. This, in turn, would decrease the likelihood of an agreement being ratified by PLEA's membership and consequently enhance the probability of costly and time-consuming impasse.

6. If proposals were released during the meet and confer process, this would discourage the use of certain bargaining tactics that have proven to be highly effective in labor negotiations, but that may result in backlash if publicly disclosed. For example, this includes the tactic of placing a strong emphasis on one term, but with the intent of later trading it for something more desirable. This tactic and others are often necessary to overcome gridlock and reach optimal outcomes in the timeframe allocated by the meet and confer ordinance. Based on my experience, public disclosure may result in pressure from advocates of the "straw man" term to refuse to make concessions, thus undermining the negotiators' bargaining strategy. If the parties are discouraged from using strategic bargaining tactics, such as the one described above, the likelihood of impasse is greater.

7. The City engages in a "meet and discuss" process with the Phoenix Police Sergeants and Lieutenants Association (PPSLA), the employee representative of Sergeants and Lieutenants. This "meet and discuss" process

generally begins after the "meet and confer" process between PLEA and the City. Based on my experience, if PLEA's bargaining proposals are made public, negotiators for the PPSLA will likely use that information to obtain a strategic advantage during negotiations with the City. For example, PPSLA may insist on receiving all benefits that have been granted to PLEA, regardless of whether such benefits make sense in the context of the City's relationship with Sergeants and Lieutenants.

8. Based on my experience, public disclosure will inject a variety of external pressures into the negotiations that will make it more difficult for the parties to reach an agreement. I anticipate that negotiators will spend more time fending off external pressure than working on compromise. As an example, parties may be pressured into refusing to retreat from hardline positions that were used only as a bargaining tactic. Again, this increases the likelihood of impasse.

9. The MOU negotiated between PLEA and the City in early 2023 is for a one-year term. This means that the parties will re-commence the bargaining process in just a few months, in early December 2023. Given this compressed timetable, the bargaining proposals from the prior meet and confer process still retain relevancy. Even though negotiations between PLEA and the City have concluded, the disclosure of the past proposals would be harmful and disruptive to the forthcoming bargaining cycle for the same reasons outline above.

4/17/2023
Date


Darrell Kriplean

State of Arizona
County of Maricopa

ARIZONA NOTARY ACKNOWLEDGEMENT
(JURAT)

Subscribed and sworn (or affirmed) before me this 17th day of April, 20 23,
by Darrell Kriplean (name of signer).

(Seal)


Notary Public Signature

Title or Rank

Serial Number, if any

My Commission Expires: May 20, 2026

