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City of Las Cruces[®]
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Council Action and Executive Summary

Item # 4 Ordinance/Resolution# 11-209 Council District: N/A

For Meeting of April 18, 2011
 (Adoption Date)

TITLE: A RESOLUTION APPROVING AMENDMENTS TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 2362 AND THE CITY OF LAS CRUCES.

PURPOSE(S) OF ACTION: To implement changes in the fire union contract pursuant to the arbitrator's ruling.

Drafter and Staff Contact: Jo Richards <i>JR</i>		Department: Human Resources		Phone: 528-3090	
Department	Signature	Phone	Department	Signature	Phone
Department	<i>JR</i>	528-3100	Budget	<i>[Signature]</i>	541-2107
Director	<i>for Andre Moguin</i>		Assistant City Manager	<i>[Signature]</i>	541-2271
Other			City Manager	<i>[Signature]</i>	541-2076
Legal	<i>[Signature]</i>	541-2128			

BACKGROUND / KEY ISSUES / CONTRIBUTING FACTORS: In February 2010 Council approved the collective bargaining agreement (CBA) between the International Association of Firefighters Local 2362 (Union) and the City of Las Cruces (City). Article five (5) of the CBA specifies that during its term, the parties may reopen negotiations during April of each year limited to Articles 16, 18, and 34 of the CBA.

The parties began negotiations in mid April, 2010. In August, 2010 the Union declared an impasse. In accordance with LCMC 15-15 (c) (1), the parties requested assistance from the Federal Mediation and Conciliation Services (FMCS). The parties were unable to reach agreement through mediation and an arbitration panel was requested from FMCS in November, 2010.

Mr. Frederick P. Ahrens (Arbitrator) was selected as arbitrator and a hearing was held on December 14, 2010.

The Arbitrator ruled and selected the City's last best and final offer. The provisions of the changes to article 34, Grievance Procedures, allow members to request mediation prior to initiating the final grievance step with the City Manager. The provisions of the changes to article 16, Compensation, include an additional paragraph which provides the City with the right to decrease wages and stipulates timelines and procedures to follow.

SUPPORT INFORMATION:

1. Resolution.

(Continue on additional sheets as required)

2. Exhibit "A", Collective Bargaining Agreement Article 16.
3. Exhibit "B", Collective Bargaining Agreement Article 34.
4. Attachment "A", Article 5, Duration.
5. Attachment "B", Arbitrator Decision.
6. Attachment "C", Article 16, Strikethrough and New Article.
7. Attachment "D", Article 34, Strikethrough and New Article.

SOURCE OF FUNDING:

Is this action already budgeted? N/A	Yes	<input type="checkbox"/>	See fund summary below
	No	<input type="checkbox"/>	If No, then check one below:
	<i>Budget Adjustment Attached</i>	<input type="checkbox"/>	Expense reallocated from:
	<input type="checkbox"/>	Proposed funding is from a new revenue source (i.e. grant; see details below)	
	<input type="checkbox"/>	Proposed funding is from fund balance in the _____ Fund.	
Does this action create any revenue? N/A	Yes	<input type="checkbox"/>	Funds will be deposited into this fund: _____ in the amount of \$ _____ for FY _____.
	No	<input type="checkbox"/>	There is no new revenue generated by this action.

FUND EXPENDITURE SUMMARY:

Fund Name(s)	Account Number(s)	Expenditure Proposed	Available Budgeted Funds in Current FY	Remaining Funds	Purpose for Remaining Funds
N/A	N/A	N/A	N/A	N/A	N/A

OPTIONS / ALTERNATIVES:

1. Vote "Yes"; this will approve the amended article for the collective bargaining agreement.
2. Vote "No"; this will not approve the amended article for the collective bargaining agreement.

REFERENCE INFORMATION

The resolution(s) and/or ordinances(s) listed below are only for reference and are not included as attachments or exhibits.

N/A

RESOLUTION NO. 11-209**A RESOLUTION APPROVING AMENDMENTS TO THE COLLECTIVE BARGAINING AGREEMENT BETWEEN THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS LOCAL 2362 AND THE CITY OF LAS CRUCES.**

The City Council is informed that:

WHEREAS, in February 2010, the Council approved a collective bargaining agreement (CBA) between the International Association of Firefighters local 2362 (Union) and the City of Las Cruces (City); and

WHEREAS, article five (5) of the CBA specified that during its term the parties may reopen negotiations during April of each year; and

WHEREAS, the City and the Union were unable to resolve all issues; and

WHEREAS, Mr. Fredrick Ahrens (Arbitrator) was selected to arbitrate the dispute; and

WHEREAS, the arbitrator chose the City's last best and final offer; and

WHEREAS, the provisions of the Arbitrator's award result in changes to article 34, Grievance Procedures, to allow members to request mediation prior to initiating the final grievance step with the City Manager and also changes to article 16, Compensation, which includes an additional paragraph providing the City with the right to decrease wages and stipulates the timelines and procedures to follow.

NOW, THEREFORE, Be it resolved by the governing body of the City of Las Cruces:

(I)

THAT the changes to the CBA Articles 16, and 34, attached herein as exhibits A and B, as set forth in the Arbitrator's award are hereby approved.

(II)

THAT City staff is hereby authorized to do all deeds necessary in the accomplishment of the herein above.

DONE AND APPROVED this _____ day of _____, 20_____.

(SEAL)

APPROVED:

Mayor

ATTEST:

City Clerk

Moved by: _____

Seconded by: _____

VOTE:

Mayor Miyagishima: _____

Councillor Silva: _____

Councillor Connor: _____

Councillor Pedroza: _____

Councillor Small: _____

Councillor Sorg: _____

Councillor Thomas: _____

APPROVED AS TO FORM:


City Attorney

16. COMPENSATION

Base compensation for Firefighters, Driver/Operators, and Lieutenants, shall be in accordance with Exhibit "A" attached hereto and incorporated herein.

The city recognizes that the Firefighter, Driver-Operator, and Lieutenant annual salary shall be computed on a 56 hour work week. Both the CITY and UNION shall be bound by P.E.R.A. interpretations for the purpose of calculating retirement benefits.

For the purposes of this Agreement, the Fire Inspector, and Fire Inspector/Investigator positions are equivalent in rank to a Driver/Operator in suppression.

Additionally, the Prevention Bureau Lieutenant and Training Officer positions are equivalent in rank to a Lieutenant in suppression.

For the purposes of this Agreement, it is understood that forty hour positions shall have an adjusted rate of pay such that these positions shall have an equivalent annual base salary reflective of that for corresponding fifty-six hour positions.

In addition to the established wage rates, the following forty hour per week positions shall receive a five percent (5%) pay differential added to their base rate of pay. These positions include the following: Fire Inspector; Fire Inspector/Investigator; Training Officer; Prevention Bureau Lieutenant; Academy Coordinator(s); Paramedic student; Intermediate student; Driver Operator Academy student and other forty hour positions approved by Management.

All bargaining unit members shall receive a one step increase at three, six, nine, twelve, fifteen, eighteen, and twenty-one years of service with the City.

The separation between step increases shall not be less than five percent (5%).

The separation between the following ranks and grades shall not be less than ten (10) percent. The ranks and grades are Firefighter, F07; Driver/Operator, F09; and Lieutenant, F11.

All qualified bargaining unit members shall be eligible for an additional two point five percent (2.5%) increase to base pay for obtaining and maintaining EMT Intermediate licensure through the State of New Mexico and being approved by the department's Medical Director to perform in the capacity of an intermediate for the Las Cruces Fire Department. The following ranks and grades denote the EMT-I positions: Firefighter EMT-I, F07-A; Driver/Operator EMT-I, F09-A; and Lieutenant EMT-I, F11-A.

All qualified bargaining unit members shall be eligible for an additional two point five percent (2.5%) increase to base pay for obtaining and maintaining EMT Paramedic licensure through the State of New Mexico and being approved by the department's Medical Director to perform in the capacity of a paramedic for the Las Cruces Fire Department. This increase shall be in addition to the two point five percent (2.5%) increase for EMT-I licensure. The following ranks and grades denote the EMT-P positions: Firefighter EMT-P, F07-B; Driver/Operator EMT-P, F09-B; and Lieutenant EMT-P, F11-B.

There shall be an additional five percent (5%) increase for commissioned personnel with a current State of New Mexico Police Certification.

For promotional purposes, a bargaining unit member being promoted shall advance to

the appropriate grade and step denoting his/her rank, certification, licensure, classification, and years of service with the City.

In the event the City of Las Cruces determines it is necessary to decrease wages it will notify the Union promptly. Within a ten (10) day period from such notification the parties shall meet no more than three (3) times to discuss ideas for possible alternatives to pay decreases or how best to implement such a decrease. At the completion of the ten (10) day period, the City of Las Cruces may implement the decrease at its discretion.

34. GRIEVANCE PROCEDURE

The CITY and the UNION agree it is desirable to resolve problems and issues informally. In the event a problem relating to provisions of this Agreement cannot be resolved informally, grievances shall be processed through the following formal grievance procedure.

A. PURPOSE

1. The purpose of this grievance procedure shall be to secure, at the lowest possible administrative level, equitable resolutions to problems, which may arise and are subject to review under this procedure.
2. There shall be no other grievance or appeal procedure for employees in the bargaining unit other than that contained in this Article.

B. DEFINITIONS

1. A "grievance" shall be defined as a dispute which alleges:
 - a. A violation of this Agreement or;
 - b. A written reprimand or;
 - c. A disciplinary suspension without pay or;
 - d. An involuntary termination of employment or;
 - e. An involuntary demotion involving an actual loss of pay.
2. A "grievant" shall be any employee, group of employees, or the UNION.

C. PROCEDURE

1. The number of days indicated at each level of this procedure shall be considered a maximum, and every reasonable effort shall be made to expedite the process.
2. If the CITY or department fails to comply with the time limit requirements as set forth under any of the procedure levels, the grievance shall be considered automatically appealed to the next level of the procedure.
3. If the grievant fails to comply with the time limit requirements as set forth under any of the procedure levels, the grievance shall be considered null and void.
4. The time limits set forth herein may be extended provided the parties have mutually agreed in writing upon the extension.
5. A grievance shall not be considered unless the grievant initiates the grievance no later than ten (10) business days after the grievant knew, or reasonably should have known of the action which precipitated the grievance. In the case of disciplinary action, the date of the action precipitating the grievance shall be the date of the delivery of the official written notice of discipline.

D. STEPS

1. The grievant shall first discuss the grievance with the immediate supervisor (Battalion Chief or Deputy Chief) directly with the objective of resolving the grievance. If the grievance is not resolved within ten (10) days, a written grievance may be filed with the Deputy Chief. To be considered, the grievance must be timely submitted and contain at a minimum, what contractual provision(s) of this collective bargaining agreement is alleged to have been violated, the facts constituting the alleged violation and the relief sought. Such grievance must be filed within ten (10) days from the supervisor's response or the date such response was due.
2. If, after ten (10) days from the date the grievance is filed with the Deputy Chief the grievance is not resolved, a grievance may then be filed with the Fire Chief. No later than ten (10) days following receipt of the written grievance, the Chief or his designee, shall schedule a meeting in an attempt to resolve the grievance. Each party shall be entitled to bring documents and/or witnesses (at the expense of the party bringing the witness) to the meeting in order to present evidence on their behalf. Each party shall have the right to cross-examine witnesses brought by the other party.
3. The Fire Chief, or designee, will have ten (10) days to render a decision.
4. If the grievance is not resolved with the Fire Chief's decision the Union will have ten (10) days to :
 - a. Request the services of the FMCS to provide grievance mediation services; or
 - b. File the grievance directly with the City Manager.
5. If at the conclusion of Mediation the grievance has not been resolved, the Union will have ten (10) days to file the grievance with the City Manager.
6. The City Manager will have ten (10) days to render a decision, may take whatever action he/she chooses to resolve the grievance, which shall be final and binding on the parties. If the grievance pertains to a disciplinary action involving a suspension without pay, an involuntary demotion, or a termination, the grievant and/or the Union may request arbitration if they are dissatisfied with the City Manager's decision by filing a Request For Arbitration with Federal Mediation and Conciliation Service (FMCS). This request shall be made within ten (10) days of the City Manager's decision. The UNION shall immediately serve a copy of the Union's request for arbitration to the City Manager.

E. ARBITRATION

1. The arbitrator will be selected from a list of seven arbitrators requested from the Federal Mediation and Conciliation Service. The moving party to the arbitration shall strike the first name from the list. The parties shall alternately strike names until there is one name remaining who shall be the arbitrator.
2. The arbitrator shall conduct the hearing as soon as possible.

3. The arbitrator's decision shall be in writing and shall include the decision, the rationale and, if appropriate, relief. The arbitrator shall not have the authority to expand, or add to, the rights employees or the UNION have under the terms of this Collective Bargaining Agreement.
4. The arbitrator's decision shall be final and binding on the parties and shall constitute an award within the meaning of the Uniform Arbitration Act. Reasons for appeals to court are set forth in the Uniform Arbitration Act.
5. The arbitrator's fees and costs shall be shared equally by the parties. All other expenses shall be assumed by the party incurring the costs, including the cost of witnesses. The parties may mutually agree to share the cost of providing a verbatim record of the proceedings.

F. MISCELLANEOUS

1. No reprisal or retaliation by any party shall be taken against any person who participates or is a witness in the proceeding of a grievance.
2. A grievant and the party charged may be accompanied and represented at any hearing or meeting conducted under this procedure.
3. An employee, acting individually, may present a grievance without the intervention of the UNION provided the grievance has been processed in accordance with this procedure. Any adjustment made shall not specifically violate the provisions of this Collective Bargaining Agreement.
4. If a grievance affects a group of two (2) or more employees or involves an action or a decision by the CITY or the Department which has a department wide impact, the UNION may submit the grievance on behalf of the affected employees.
5. All documents related to a grievance shall be maintained as a separate file from an employee's personnel file. This provision shall not apply to documents related to a grievance over a disciplinary action unless such documents are removed from an employee's personnel file as relief given in the disposition of a grievance.
6. All grievances and grievance responses shall be filed and processed in accordance with this Collective Bargaining Agreement.
7. The grievant and the UNION'S processing of grievances shall be conducted on non-City paid time unless otherwise agreed to by the parties or during duty-free residential hours.

5. DURATION

This Agreement shall take effect the first full pay period following the approval and signature of this agreement and shall remain in full force and effect and shall not expire until a successor Agreement is signed on or after the ___ day of _____, 20__ or unless amended by written mutual agreement by both parties. Should City Council choose to eliminate collective bargaining in conformance to state law, this Agreement will expire on its termination date, on or about January 5th, 2013.

During the term of this agreement the parties may reopen negotiations during April of each year. The scope of the reopened negotiations shall be limited to Articles 16, 18 and 34.

The hearing was held on December 14, 2010 Las Cruces Fire Station, 201 E. Picacho, Las Cruces, New Mexico in the 1st Floor Conference Room.

The parties agreed to not file briefs. There was no court reporter or recording made of the hearing. The Parties waived the thirty (30) calendar requirement for an Award by the Arbitrator. The record of this case was closed at the conclusion of the Hearing. By agreement The Arbitrator's Award is due no later than February 13, 2010.

BACKGROUND

The Parties reached agreement on a new CBA effective February 10, 2010 through February 10, 2013. This CBA provided for a reopening of negotiations during April of each year. (see Joint Exhibit 2, Article 5)

The Parties were unable to reach agreement and submitted the impasse resolution to the properly selected Arbitrator under the provisions of the City of Las Cruces Labor Management Relations Ordinance (LMRO).

STIPULATIONS

The Parties submitted the Las Cruces LMRO (Joint Exhibit 1), the CBA (Joint Exhibit 2), the Union's LBO (Joint exhibit 3), and the City's LBO (Joint Exhibit 4).

The Parties stipulated the Arbitrator was properly selected, had accepted the appointment by Federal Mediation and Conciliation Service, and had jurisdiction to hear this case.

ISSUE

The Parties did not present an issue. Therefore the Arbitrator frames the issue as,

Which LBO should the Arbitrator select in accordance with the Las Cruces LMRO and the CBA?

CITY'S POSITION

It is the position of the City that the City's LBO should be selected by the Arbitrator as the prevailing Last Best Offer.

UNION'S POSITION

The Union maintains its LBO should be selected by the Arbitrator as the prevailing Last Best Offer.

CBA AND LMRO PROVISIONS

CBA, Article 5, Duration. This Agreement shall take effect the first full pay period following the approval and signature of this Agreement and shall remain in full force and effect and shall not expire until a successor Agreement is signed on or after the 2nd day of February, 2010 or unless amended by written mutual agreement of both parties. Should City Council choose to eliminate collective bargaining in conformance to state law, this Agreement will expire on its termination date, on or about January 5th, 2013.

During the term of this Agreement the parties may reopen negotiations during April of each year. The scope of the reopened negotiations shall be limited to Articles 16, 18 and 34.

CBA, Article 16, Compensation. Base compensation for Firefighters, Driver/Operators, and Lieutenants, shall be in accordance with Exhibit "A" attached hereto and incorporated herein.

No bargaining unit member shall receive a reduction in pay as a consequence of this Agreement.

The City recognizes that the Firefighter, Driver-Operator, and Lieutenant annual salary shall be computed on a 56 hour work week. Both the CITY and UNION shall be bound by P.E.R.A. interpretations for the purpose of calculating retirement benefits.

For the purposes of this Agreement, the Fire Inspector, and the Fire Inspector/Investigator positions are equivalent in rank to a Lieutenant in suppression.

For the purposes of this Agreement, it is understood that forty hour positions shall have an adjusted rate of pay such that these positions shall have an equivalent annual base salary reflective of that for corresponding fifty-six hour positions.

In addition to the established wage rates, the following forty hour per week positions shall receive a five percent (5%) pay differential added to their base rate of pay. These positions include the following: Fire Inspector; Fire Inspector/Investigator; Training Officer; Prevention Bureau Lieutenant; Academy Coordinator(s); Paramedic Student; Intermediate Student; Driver Operator Academy Student and other forty hour positions approved by management.

All bargaining unit members shall receive a one step increase at three, six, nine, twelve, fifteen, eighteen, and twenty-one years of service with the City.

The separation step increases shall not be less than five percent (5%).

The separation between the following ranks and grades shall not be less than ten (10) percent. The ranks and grades are Firefighter, FO7; Driver/Operator, FO9; and Lieutenant, F11.

All qualified bargaining unit members shall be eligible for an additional two point five percent (2.5%) increase to base pay for obtaining and maintaining EMT Intermediate licensure through the State of New Mexico and being approved by the department's Medical Director to perform in the capacity of an intermediate for the Las Cruces Fire Department. The following ranks and grades denote the EMT-1 positions: Firefighter EMT-1, FO7-A; Driver/Operator EMT-1, FO9-A; and Lieutenant EMT-1, F11-A.

All qualified bargaining unit members shall be eligible for an additional two point five percent (2.5%) increase to base pay for obtaining and maintaining EMT Paramedic licensure through the State of New Mexico and being approved by the department's Medical Director to perform in the capacity of a paramedic for the Las Cruces Fire Department. This increase shall be in addition the two point five percent (2.5%) for EMT-1 licensure. The following ranks and grades denote the EMT-P positions: Firefighter EMT-P, FO7-B; Driver/Operator EMT-P, FO9-B; and Lieutenant EMT-P, F11-B.

There shall be an additional five percent (5%) increase for commissioned personnel with a current State of New Mexico Police Certification.

For promotional purposes, a bargaining unit member being promoted shall advance to the appropriate grade and step denoting his/her rank, certification, licensure, classification, and years of service with the City.

CBA, Article 18, Cost of living Adjustment (COLA). There shall be no COLA during the term of this Agreement unless negotiated pursuant to reopener in Article 5.

CBA, Article 34, Grievance Procedure. The City and the Union agree it is desirable to resolve problems and issues informally. In the event a problem relating to provisions of this Agreement cannot be resolved informally, grievances shall be presented through the following formal grievance procedure.

- A. The purpose of the grievance procedure shall be to secure, at the lowest possible administrative level, equitable resolutions to problems which may arise and are subject to review under this procedure. There shall be no other grievance or appeal procedure for employees in the bargaining unit other than that contained in this article.

B. Purpose

1. A grievance shall be defined as a dispute which alleges:
 - e. A violation of this Agreement or;
 - f. A written reprimand or ;
 - g. A disciplinary suspension without pay or;
 - h. An involuntary termination of employment or;
 - i. An involuntary demotion involving an actual loss of pay.
2. A "grievant" shall be any employee, group of employees, or the Union.

C. Procedure

1. The number of days indicated at each level of this procedure shall be considered a maximum, and every reasonable effort shall be made expedite the process. A VIII, Discharge, Section 3B.
2. If the City or department fails to comply with the time limit requirements as set forth under any of the procedural levels, the grievance shall be considered automatically appealed to the next level.
3. If the grievant fails to comply with the time limit requirements as set forth under any of the procedure levels, the grievance shall be considered null and void.
4. The time limits set forth herein may be extended provided the parties have mutually agreed in writing upon the extension.
5. A grievance shall not be considered unless the grievant initiates the grievance no later than ten (10) business days after the grievant knew, or reasonably should have known of the action which precipitated the grievance. In the case of disciplinary action, the date of the action precipitating the grievance shall be the delivery of the official written notice of discipline.

D. Steps

1. The grievant shall first discuss the grievance with the immediate supervisor (Battalion Chief or Deputy Chief) directly with the objective of resolving the grievance. If the grievance is not resolved within ten (10) days written grievance may be filed with the Deputy Chief. To be considered, the grievance must be timely submitted and contain at a minimum, what contractual provision(s) of this bargaining agreement is alleged to have been violated, the facts constituting the alleged violation and the relief sought. Such grievance must be filed within ten (10) days from the supervisor's response or the date such response was due.
2. If, after ten (10) days from the date the grievance is filed with the Deputy Chief the grievance is not resolved, a grievance may then be filed with the Fire Chief. No later than ten (10) days following receipt of the written grievance, the Chief or his designee, shall schedule a meeting in an attempt to resolve the grievance. Each party shall be entitled to bring documents and/or witnesses (at the expense of the party bringing the witness) to the meeting in order to present evidence on their behalf. Each party shall have the right to cross-examine witnesses brought by the other party.
3. The Fire Chief, or designee, will have ten (10) days to render a decision.

4. In the case of grievance related to contract interpretation the Union may request the services of the FMCS to provide grievance mediation services. If the grievance is not resolved through mediation it may be appealed to the City Manager.
5. If the grievance is not resolved with Fire Chief's decision or mediation, the grievance may be filed with City Manager, or designee outside the Las Cruces Fire Department, who may take whatever action he/she chooses to resolve the grievance. The City Manager will have ten (10) days to render a decision which shall be final and binding on the parties. If the grievance pertains to a disciplinary action involving a suspension without pay, an involuntary demotion, or a termination, the grievant and/or the Union may request arbitration if they are dissatisfied with the City Manager's decision by filing a Request For Arbitration with Federal Mediation and Conciliation Service (FMCS). This request shall be made within ten (10) days of the City Manager's decision. The Union shall immediately serve a copy of the Union's request for arbitration to the City Manager.

E. Arbitration

1. The arbitrator will be selected from a list of seven arbitrators requested from the Federal Mediation and Conciliation Service. The moving party to the arbitration shall strike the first name from the list. The parties shall alternately strike names until there is one name remaining who shall be the arbitrator.
2. The arbitrator shall conduct the hearing as soon as possible.
3. The arbitrator's decision shall be in writing and shall include the decision, the rationale and, if appropriate relief. The arbitrator shall not have the authority to expand, or add to, the rights employees or the UNION have under the terms of this Collective Bargaining Agreement.
4. The arbitrator's decision shall be final and binding on the parties and shall constitute an award within the meaning of the Uniform Arbitration Act. Reasons for appeals to court are set forth in the Uniform Arbitration Act.
5. The arbitrator's fees and costs shall be shared equally by the parties. All other expenses shall be assumed by the party incurring the costs, including the costs of witnesses. The parties may agree to share the cost providing a verbatim record of the proceedings.

F. Miscellaneous

1. No reprisal or retaliation by any party shall be taken against any person who participates or is a witness in the proceeding of a grievance.
2. A grievant and the Party charged may be accompanied and represented at any hearing or meeting conducted under this procedure.
3. An employee, acting individually, may present a grievance without the intervention of the UNION provided the grievance has been processed with this procedure. Any adjustment made shall not specifically violate the provisions of this Collective Bargaining Agreement.
4. If a grievance affects a group of two (2) or more employees or involves an

action or decision by the City or the Department which has a department wide impact, the UNION may submit the grievance on behalf of the affected employees.

5. All documents related to a grievance shall be maintained as a separate file from an employee's personnel file. This provision shall not apply to documents related to a grievance over a disciplinary action unless such documents are removed from an employee's personnel file as relief given in the disposition of a grievance.
6. All grievances and grievance responses shall be filed and processed in accordance with this Collective Bargaining Agreement.
7. The grievant and the UNION'S processing of a grievance(s) shall be conducted on non-City paid time unless otherwise agreed to by the parties or during duty-free residential hours.

CBA, Article 46, P.E.R.A. Retirement Program. The City has adopted Municipal Fire Plan 5 of the Public Employee Retirement Association (PERA). The City and Employees will continue to pay the current contribution rates during the term of this Agreement.

Should PERA mandate an increase or change, the parties shall reopen negotiations on their respective share of the increase or change.

LMRO, Section 15-14-f, Scope of Bargaining. Any agreement or impasse resolution by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds to fund the agreed upon provision. An arbitrator's decision shall not require the appropriation of funds.

LMRO, Section 15-15-b5, Negotiations and Impasse Resolution. Agreement on contract negotiations is accomplished when the Union President and the City Administrator sign the Agreement. Provisions in multi-year agreements providing for subsequent years shall be contingent upon the governing body appropriating the funds necessary to fund the increase for the subsequent year(s). Should the governing body not appropriate sufficient funds to fund the agreed upon increase, either party may reopen negotiations.

LMRO, Section 15-15-c2, Negotiations and Impasse Resolution. If the impasse continues after thirty (30) calendar days, either party may request an unrestricted list of seven (7) arbitrators from the Federal Mediation and Conciliation Service. The parties shall choose one arbitrator by alternately striking names from such list. Which party strikes the first name shall be determined by a coin toss. The arbitrator shall render a final, binding written decision resolving unresolved issues no later than thirty (30) calendar days after the arbitrator has been notified of his or her selection by

the parties. The arbitrator's decision shall be limited to a selection of one of the two parties' complete, last, best offer. However, an impasse resolution decision of an arbitrator or an agreement provision by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds. An arbitrator's decision shall not require the employer to re-appropriate funds. The parties shall share all of the arbitrator's cost incurred pursuant to this subsection equally. Each party shall be responsible for paying any costs related to its witnesses and representation. The decision shall be subject to judicial review pursuant to the standards set forth in the Uniform Arbitration Act.

LMRO, Section 15-16(8), Employers, Prohibited Practices. Refuse or fail to comply with any collective bargaining agreement. This issue is subject to the required grievance procedure negotiated by the parties.

LMRO, Section 15-17(5), Employees – Labor Organizations, Prohibited Practices. Refuse or fail to comply with any collective bargaining agreement. This issue is subject to the required grievance procedure negotiated by the parties.

DISCUSSION

This arbitration was commenced following the Las Cruces LMRO provisions for Impasse Resolution.

The City and the Union have negotiated and reached impasse on new or revised provisions in the CBA following the reopening of the CBA under Article 5 in April 2010. Article 5 provides that either party may reopen negotiations during April of each year. Article 5 also provides the scope of the reopened negotiations shall be limited to Articles 16-Compensation, Article 18-Cost of Living Adjustment (COLA), and Article 34- Grievance Procedure.

The Union's LBO contained four (4) items of impasse. They were (1) eight hours of additional personal leave, (2) rewording of the grievance procedure, (3) a 1.2% reduction in the PERA contribution paid by the members and a corresponding increase in

the PERA contribution paid by the City for these members effective July 1, 2011, and (4) a 4.4% wage increase effective July 1, 2012 with the Union forgoing the reopener for the 2011-2012 fiscal year and the new wage increase is to keep a 10% separation between probationary and non-probationary fire fighters.

The Union's LBO covered a correction of the grievance procedure headings in Article 34, B, 1e through i. These provisions would be corrected to read Article 34, B, 1 a through e. The City's LBO contains the same correction.

The Union's and the City's LBOs has the same new language for Article 34 F, 4 & 5. However, the Union's LBO would add "a violation of this Agreement" to the second sentence of Article 34, D 6. The City's LBO did not add this language. The effect of this change, if the City's LBO were selected, would be there is no remedy, no mediation and no arbitration beyond the City Manager's decision for a grievance involving "a violation of this Agreement" unless the grievance involved disciplinary action involving a suspension without pay, an involuntary demotion, or a termination. In Article 16, Compensation, the Union's LBO calls for a 4.4% wage increase effective July 1, 2012 with the Union forgoing the reopener for the 2011-2012 fiscal year. This wage increase will keep a 10% separation between probationary and non-probationary fire fighters.

The City LBO would eliminate the second paragraph of Article 16, Compensation and add a new paragraph giving the City the right to decrease wages and provide a procedure to do so. The Union's LBO would keep the second paragraph of Article 16 which states "No bargaining unit member shall receive a reduction in pay as a consequence of this Agreement".

The City put forth the argument that the Las Cruces LMROs prevented the Union from putting forth any Agreement reopening proposals for which the City had not made a specific appropriation of funds. The LMRO Scope of Bargaining, LMRO Section 15-14f states:

Any agreement or impasse resolution by the employer and an exclusive representative that requires the expenditure of funds shall be contingent upon the specific appropriation of funds by the governing body and the availability of funds to fund the agreed upon provision. An arbitrator's decision shall not require the appropriation of funds.

I read this section to mean where the Arbitrator's LBO impasse selection contains a requirement for additional funding for an economic increase, then the Arbitrator's selection is contingent and not final unless and until the governing body has made a specific appropriation and has the available funds to fund such appropriation. The LMROs do not require the specific appropriation and availability of funds to be present prior to the Arbitrator's LBO selection. But an appropriation and funding by the governing body are required to be made before the Arbitrator's selected LBO containing an economic increase becomes final and binding.

Should the governing body not appropriate sufficient funds to fund the Arbitrator's selected LBO then that selection is not final and binding and either party may reopen negotiations. (see LMRO 15-15b5) If neither party wanted to reopen the Agreement then the Agreement in force prior to the reopening of negotiations would remain in force. If the selected LBO does not contain a requirement for an economic increase then the Arbitrator's LBO selection is final and binding upon selection and award.

The Union's proposal regarding the 8 hours of personal leave is not allowed under

the CBA Article 5 which limits the reopening of negotiations to Articles 16- Compensation, Article 18-Cost of Living Adjustment (COLA), and Article 34- Grievance Procedure. Personal Leave is covered in Article 47-Personal Leave. The Union is prohibited from refusing or failing to comply with any provision of the CBA under LMRO Section 15-17(5).

The Union's proposal regarding the reduction of the PERA contribution of members and having this reduction paid for by the City is also not allowed under the CBA Article 5 which limits the reopening of negotiations to Articles 16- Compensation, Article 18-Cost of Living Adjustment (COLA), and Article 34- Grievance Procedure. P.E.R.A. contributions are covered in Article 46-Retirement Programs. Under this Article "the City and the Employees will continue to pay the current contribution rates during the term of this Agreement. The Union is prohibited from refusing or failing to comply with any provision of the CBA under LMRO Section 15-17(5).

Under LMRO the Arbitrator's selection is limited to one of the two parties' complete, last best offer. The New Mexico Court of Appeals in *National Union of Hospital and Health Care Employees, District 1199 v. Board of Regents of the University of New Mexico* (Docket Number 28.960, filing date August 10, 2010), states "The choice in final offer selection should be between the total packages rather than issue by issue". It also stated "Each party must run the risk of its whole package being thrown out because of the unreasonableness or unacceptability of even one element therein".

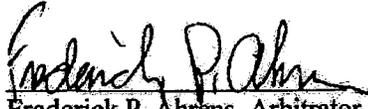
The Union's proposal in this reopener includes items not allowed by the Agreement in a reopener under Article 5. The City's LBO does not contain items that are

not allowed under a reopener under Article 5. The Arbitrator is not allowed to remove items from a LBO and therefore he selects the City's LBO. The arbitrator is aware the City's LBO contains provisions that are sensitive to the Union but these items may be discussed by the parties in the next reopener which is allowed under the Agreement in April 2011.

AWARD

The Arbitrator, after considering the testimony and evidence presented,
Selects the City's LBO.

Signed and issued this 3rd day of January, 2011.


Frederick P. Ahrens, Arbitrator

16. COMPENSATION

Base compensation for Firefighters, Driver/Operators, and Lieutenants, shall be in accordance with Exhibit "A" attached hereto and incorporated herein.

~~No bargaining unit member shall receive a reduction in pay as a consequence of this Agreement.~~

The city recognizes that the Firefighter, Driver-Operator, and Lieutenant annual salary shall be computed on a 56 hour work week. Both the CITY and UNION shall be bound by P.E.R.A. interpretations for the purpose of calculating retirement benefits.

For the purposes of this Agreement, the Fire Inspector, and Fire Inspector/Investigator positions are equivalent in rank to a Driver/Operator in suppression.

Additionally, the Prevention Bureau Lieutenant and Training Officer positions are equivalent in rank to a Lieutenant in suppression.

For the purposes of this Agreement, it is understood that forty hour positions shall have an adjusted rate of pay such that these positions shall have an equivalent annual base salary reflective of that for corresponding fifty-six hour positions.

In addition to the established wage rates, the following forty hour per week positions shall receive a five percent (5%) pay differential added to their base rate of pay. These positions include the following: Fire Inspector; Fire Inspector/Investigator; Training Officer; Prevention Bureau Lieutenant; Academy Coordinator(s); Paramedic student; Intermediate student; Driver Operator Academy student and other forty hour positions approved by Management.

All bargaining unit members shall receive a one step increase at three, six, nine, twelve, fifteen, eighteen, and twenty-one years of service with the City.

The separation between step increases shall not be less than five percent (5%).

The separation between the following ranks and grades shall not be less than ten (10) percent. The ranks and grades are Firefighter, F07; Driver/Operator, F09; and Lieutenant, F11.

All qualified bargaining unit members shall be eligible for an additional two point five percent (2.5%) increase to base pay for obtaining and maintaining EMT Intermediate licensure through the State of New Mexico and being approved by the department's Medical Director to perform in the capacity of an intermediate for the Las Cruces Fire Department. The following ranks and grades denote the EMT-I positions: Firefighter EMT-I, F07-A; Driver/Operator EMT-I, F09-A; and Lieutenant EMT-I, F11-A.

All qualified bargaining unit members shall be eligible for an additional two point five percent (2.5%) increase to base pay for obtaining and maintaining EMT Paramedic licensure through the State of New Mexico and being approved by the department's Medical Director to perform in the capacity of a paramedic for the Las Cruces Fire Department. This increase shall be in addition to the two point five percent (2.5%) increase for EMT-I licensure. The following ranks and grades denote the EMT-P positions: Firefighter EMT-P, F07-B; Driver/Operator EMT-P, F09-B; and Lieutenant EMT-P, F11-B.

There shall be an additional five percent (5%) increase for commissioned personnel with

a current State of New Mexico Police Certification.

For promotional purposes, a bargaining unit member being promoted shall advance to the appropriate grade and step denoting his/her rank, certification, licensure, classification, and years of service with the City.

In the event the City of Las Cruces determines it is necessary to decrease wages it will notify the Union promptly. Within a ten (10) day period from such notification the parties shall meet no more than three (3) times to discuss ideas for possible alternatives to pay decreases or how best to implement such a decrease. At the completion of the ten (10) day period, the City of Las Cruces may implement the decrease at its discretion.

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34. GRIEVANCE PROCEDURE

The CITY and the UNION agree it is desirable to resolve problems and issues informally. In the event a problem relating to provisions of this Agreement cannot be resolved informally, grievances shall be processed through the following formal grievance procedure.

A. PURPOSE

1. The purpose of this grievance procedure shall be to secure, at the lowest possible administrative level, equitable resolutions to problems, which may arise and are subject to review under this procedure.
2. There shall be no other grievance or appeal procedure for employees in the bargaining unit other than that contained in this Article.

B. DEFINITIONS

1. A "grievance" shall be defined as a dispute which alleges:
 - a. A violation of this Agreement or;
 - b. A written reprimand or;
 - c. A disciplinary suspension without pay or;
 - d. An involuntary termination of employment or;
 - e. An involuntary demotion involving an actual loss of pay.
2. A "grievant" shall be any employee, group of employees, or the UNION.

C. PROCEDURE

1. The number of days indicated at each level of this procedure shall be considered a maximum, and every reasonable effort shall be made to expedite the process.
2. If the CITY or department fails to comply with the time limit requirements as set forth under any of the procedure levels, the grievance shall be considered automatically appealed to the next level of the procedure.
3. If the grievant fails to comply with the time limit requirements as set forth under any of the procedure levels, the grievance shall be considered null and void.
4. The time limits set forth herein may be extended provided the parties have mutually agreed in writing upon the extension.
5. A grievance shall not be considered unless the grievant initiates the grievance no later than ten (10) business days after the grievant knew, or reasonably should have known of the action which precipitated the grievance. In the case of disciplinary action, the date of the action precipitating the grievance shall be the date of the delivery of the official written notice of discipline.

D. STEPS

1. The grievant shall first discuss the grievance with the immediate supervisor (Battalion Chief or Deputy Chief) directly with the objective of resolving the grievance. If the grievance is not resolved within ten (10) days, a written grievance may be filed with the Deputy Chief. To be considered, the grievance must be timely submitted and contain at a minimum, what contractual provision(s) of this collective bargaining agreement is alleged to have been violated, the facts constituting the alleged violation and the relief sought. Such grievance must be filed within ten (10) days from the supervisor's response or the date such response was due.
2. If, after ten (10) days from the date the grievance is filed with the Deputy Chief the grievance is not resolved, a grievance may then be filed with the Fire Chief. No later than ten (10) days following receipt of the written grievance, the Chief or his designee, shall schedule a meeting in an attempt to resolve the grievance. Each party shall be entitled to bring documents and/or witnesses (at the expense of the party bringing the witness) to the meeting in order to present evidence on their behalf. Each party shall have the right to cross-examine witnesses brought by the other party.
3. The Fire Chief, or designee, will have ten (10) days to render a decision.
4. If the grievance is not resolved with the Fire Chief's decision the Union will have ten (10) days to :
 - a. Request the services of the FMCS to provide grievance mediation services; or
 - b. File the grievance directly with the City Manager.
- ~~4. In the case of grievances related to contract interpretation the Union may request the services of the FMCS to provide grievance mediation services. If the grievance is not resolved through mediation it may be appealed to the City Manager.~~
5. If at the conclusion of Mediation the grievance has not been resolved, the Union will have ten (10) days to file the grievance with the City Manager.
- ~~5. If the grievance is not resolved with the Fire Chief's decision or mediation, the grievance may be filed with the City Manager, or designee outside the Las Cruces Fire Department, who may take whatever action he/she chooses to resolve the grievance. The City Manager will have ten (10) days to render a decision, which shall be final and binding on the parties. If the grievance pertains to a disciplinary action involving a suspension without pay, an involuntary demotion, or a termination, the grievant and/or the Union may request arbitration if they are dissatisfied with the City Manager's decision by filing a Request For Arbitration with Federal Mediation and Conciliation Service (FMCS). This request shall be made within ten (10) days of the City Manager's decision. The UNION shall immediately serve a copy of the Union's request for arbitration to the City Manager.~~
6. The City Manager will have ten (10) days to render a decision, may take whatever action he/she chooses to resolve the grievance, which shall be final and binding on the parties. If the grievance pertains to a disciplinary action involving a suspension without pay, an involuntary demotion, or a termination, the grievant and/or the Union may request arbitration if they are dissatisfied with the City Manager's decision by filing a Request For Arbitration with Federal Mediation and Conciliation Service (FMCS). This

request shall be made within ten (10) days of the City Manager's decision. The UNION shall immediately serve a copy of the Union's request for arbitration to the City Manager.

E. ARBITRATION

1. The arbitrator will be selected from a list of seven arbitrators requested from the Federal Mediation and Conciliation Service. The moving party to the arbitration shall strike the first name from the list. The parties shall alternately strike names until there is one name remaining who shall be the arbitrator.
2. The arbitrator shall conduct the hearing as soon as possible.
3. The arbitrator's decision shall be in writing and shall include the decision, the rationale and, if appropriate, relief. The arbitrator shall not have the authority to expand, or add to, the rights employees or the UNION have under the terms of this Collective Bargaining Agreement.
4. The arbitrator's decision shall be final and binding on the parties and shall constitute an award within the meaning of the Uniform Arbitration Act. Reasons for appeals to court are set forth in the Uniform Arbitration Act.
5. The arbitrator's fees and costs shall be shared equally by the parties. All other expenses shall be assumed by the party incurring the costs, including the cost of witnesses. The parties may mutually agree to share the cost of providing a verbatim record of the proceedings.

F. MISCELLANEOUS

1. No reprisal or retaliation by any party shall be taken against any person who participates or is a witness in the proceeding of a grievance.
2. A grievant and the party charged may be accompanied and represented at any hearing or meeting conducted under this procedure.
3. An employee, acting individually, may present a grievance without the intervention of the UNION provided the grievance has been processed in accordance with this procedure. Any adjustment made shall not specifically violate the provisions of this Collective Bargaining Agreement.
4. If a grievance affects a group of two (2) or more employees or involves an action or a decision by the CITY or the Department which has a department wide impact, the UNION may submit the grievance on behalf of the affected employees.
5. All documents related to a grievance shall be maintained as a separate file from an employee's personnel file. This provision shall not apply to documents related to a grievance over a disciplinary action unless such documents are removed from an employee's personnel file as relief given in the disposition of a grievance.
6. All grievances and grievance responses shall be filed and processed in accordance with this Collective Bargaining Agreement.

7. The grievant and the UNION'S processing of grievances shall be conducted on non-City paid time unless otherwise agreed to by the parties or during duty-free residential hours.

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6. The City Manager will have ten (10) days to render a decision, may take whatever action he/she chooses to resolve the grievance, which shall be final and binding on the parties. If the grievance pertains to a disciplinary action involving a suspension without pay, an involuntary demotion, or a termination, the grievant and/or the Union may request arbitration if they are dissatisfied with the City Manager's decision by filing a Request For Arbitration with Federal Mediation and Conciliation Service (FMCS). This request shall be made within ten (10) days of the City Manager's decision. The UNION shall immediately serve a copy of the Union's request for arbitration to the City Manager.

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2. The arbitrator shall conduct the hearing as soon as possible.

3. The arbitrator's decision shall be in writing and shall include the decision, the rationale and, if appropriate, relief. The arbitrator shall not have the authority to expand, or add to, the rights employees or the UNION have under the terms of this Collective Bargaining Agreement.
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