

STATE OF FLORIDA PUBLIC EMPLOYEES RELATIONS
COMMISSION

**PALM BEACH COUNTY POLICE BENEVOLENT
ASSOCIATION (OFFICERS & SERGEANTS),
AND
PALM BEACH COUNTY POLICE BENEVOLENT
ASSOCIATION (LIEUTENANTS)
VS
CITY OF DELRAY BEACH**

PERC Case Numbers SM-2025-008, SM-2025-009

**Thomas W. Young, III
Special Magistrate**

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PRELIMINARY MATTERS

On March 19, 2025, Florida Public Employees Relations Commission Chair Kerey Carpenter appointed the undersigned as Special Magistrate in the above captioned case.

An evidentiary hearing was conducted on May 14, 2025, in the City of Delray Beach, Florida. Both the PBA, and the City of Delray Beach, Florida were represented by counsel and made presentations regarding their positions for the Magistrate's consideration. Both parties submitted exhibits and exhibit notebooks. References to the exhibits will be as they were referenced in the parties' respective briefs. References to the briefs of the parties will be indicated as (*PBA Br. at p. ____*), (*City Br. at p. ____*), as appropriate. References the collective bargaining agreement will be indicated as CBA. There was a verbatim transcription of the hearing. Citations to the transcript will be referenced as (*T. ____*)

At the conclusion of the hearing, it was agreed that the briefs would be filed on June 27, 2025. The City subsequently asked for and received approval for an extension of time to file its brief on June 30, at which time it was agreed that the record in these proceedings would be closed. It was agreed further that the Recommendation in this proceeding would issue by 5:00 PM, July 4.

BACKGROUND

Demographics and Form of Government

The City is a municipality under Chapter 166, Florida Statutes. Established in 1949, the City currently has a population of approximately 70,000 full time residents. The City takes up approximately 15.8 square miles in South Palm Beach County extending from the Atlantic Ocean to the east and unincorporated Palm Beach County to the west, and from the City of Boca Raton to its south and the City of Boynton Beach to its north.

The City operates under the City Commission-City Manager form of government. All legislative powers of the City are vested in the City Commission. The City Commission appoints a City Manager, who essentially acts as the Chief Administrative Officer and oversees the City's day-to-day operations.

City Budget

In accordance with Article IV, Section 4.05 of the City Charter, the City Manager is required to submit a recommended budget for the ensuing fiscal year (i.e., October 1 through September 30) on or before the first regular City Commission meeting in August of the prior fiscal year. The recommended budget must contain a complete financial plan for the ensuing fiscal year, including but not limited to: detailed estimates of all proposed expenses for each department and office of the City; detailed estimates of all anticipated income of the City; a statement of the estimated balance or deficit, as the case may be, for the end of the current fiscal year; and an estimate of the amount of money to be raised from property taxes.

At the second regular Commission meeting in September of each year, the Commission must adopt by resolution the budget for the next fiscal year and must make an appropriation for the money needed for municipal purposes during the ensuing fiscal year. The resolution must also provide for a levy of the amount necessary to be raised by property taxes in the ensuing fiscal year. The City is prohibited from drawing money from its treasury or committing to an obligation for an expenditure of money unless it is specifically appropriated in its annual budget.

The City held an election in March 2024. At that time, three of the five commission seats (including the Mayor) were on the ballot. All three newly elected officials openly ran on platforms of fiscal responsibility.

In September 2024, the City Commission adopted the budget for fiscal year 2025 (i.e., October 1, 2024 through September 30, 2025). The budget reflects a 10.86% increase in property values (from \$16,332,926.02 to \$18,106,281,304). As a result of the increase in property values and to fulfil its commitment to reduce expenditures, the City Commission adopted a roll back rate for property taxes from 6.4982 mills to 5.9063 mills. The rollback rate generally results in total property tax revenue to stay flat for the ensuing fiscal year. The General Fund budget was set at \$186.9 million, a decrease of \$4.3 million or approximately 2.3% over the prior year's budget. The largest expenditure from the City's General Fund budget is for personnel services, which are budgeted in the current fiscal year at \$114.2 million or approximately 62% of the General Fund budget.

Despite the overall decrease to the general fund budget, the police department budget increased by 1.5% from \$49,039,867 to \$49,770,135. The budget for the police department constitutes 26.6% of the total General Fund budget for FY 25 and is the most expensive City department. In FY 25, the budget for police personnel expenses was increased by 2.2% from \$40,002,167 to \$40,888,969. In FY 25, personnel services make up 82.2 percent of the total police department budget.

Employee Bargaining Units and Collective Bargaining

The City currently employs approximately 893 full-time employees across six bargaining units (three police units, two fire units and one civilian unit) as well as approximately 350 non-union employees. The City is a party to two CBAs with the Professional Fire Fighters of Delray Beach, IAFF Local 1842, one for a Rank-and-File unit covering the period October 1, 2023, through September 30, 2026 ("Fire Rank and File CBA"). and one for a Supervisory unit covering the period October 1, 2023, through September 30, 2026 ("Fire Supervisory CBA"). The City is also a party to a CBA with the Service Employees International Union, Florida Public Services Union, CTW CLC ("SEIU"), for a bargaining unit of civilian employees covering the period October 1, 2024, through September 30, 2027 ("SEIU CBA").

The City's police department is comprised of approximately 119 officers (131 budgeted positions), 26 sergeants and 9 lieutenants. The PBA represents a bargaining unit of police officers and sergeants and a bargaining unit of police lieutenants. The City and the PBA are parties to a CBA for officers and sergeants that expired on September 30, 2024,

and to a CBA for lieutenants that expired on the same date.¹ The City and PBA commenced collective bargaining for both bargaining units for successor agreements in June 2024. The parties held approximately seven bargaining sessions. On February 28, 2025, the Union declared impasse as to both CBAs.

AUTHORITY OF THE SPECIAL MAGISTRATE

Regarding the authority of the Special Magistrate, Florida Statutes provide in pertinent part as follows:

447.403(3) The special magistrate shall hold hearings in order to define the area or areas of dispute, to determine facts relating to the dispute, and to render a decision on any and all unresolved contract issues.

447.405 Factors to be considered by the special magistrate.—The special magistrate shall conduct the hearings and render recommended decisions with the objective of achieving a prompt, peaceful, and just settlement of disputes between the public employee organizations and the public employers. The factors, among others, to be given weight by the special magistrate in arriving at a recommended decision shall include:

- (1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.
- (2) Comparison of the annual income of employment of the public employees in question with the annual income of employment of public employees in similar public employee governmental bodies of comparable size within the state.
- (3) The interest and welfare of the public.
- (4) Comparison of peculiarities of employment in regard to other trades or professions, specifically with respect to:
 - (a) Hazards of employment.
 - (b) Physical qualifications.
 - (c) Educational qualifications.
 - (d) Intellectual qualifications.
 - (e) Job training and skills.
 - (f) Retirement plans.
 - (g) Sick leave.
 - (h) Job security.
- (5) Availability of funds.

¹ The City's police captains were certified by PERC as their own bargaining unit represented by the PBA earlier this year. However, the City and PBA have not yet negotiated an initial CBA for the captains' unit.

ARTICLES AT IMPASSE

Article 8 - Management Rights (both CBAs)

Article 10 - Wages (both CBAs)

Article 12 - Pension (both CBAs).

Article 27 (lieutenants) and Article 29 (officers and sergeants) - Comprehensive Alcohol and Drug Abuse Policy

Article 8 – Management Rights (Both CBAs)

PBA Position

The City is proposing to compel employees to undergo psychological fitness for duty exams when warranted. The PBA has never disputed the City’s right to compel a fitness for duty examination. The status quo language already authorizes the City to send an employee for a fitness for duty evaluation. At bargaining the PBA presented the City with the applicable federal law, which states the following:

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

42 U.S.C.A. § 12112. The PBA made it clear that the City’s proposal needs to be consistent with the law, meaning the examination or inquiry must be “job-related and consistent with business necessity.”

The City admitted at the hearing that this proposal was because of two (2) employees, who ended up going for their fitness for duty evaluations as requested by the City. (T.331-333). The City’s proposal is nothing more than a “solution looking for a problem.” (*PBA Br. at pp 29-30*).

City Position

The Special Magistrate should recommend that the parties adopt the City’s proposed revisions to the parties’ Management Rights Articles (Article 8 in both CBAs). The parties’ proposals are substantively identical except for one significant distinction. Section 2 of the current CBAs provide that City has the management right in its sole discretion “[t]o require employees to submit to a medical examination by a physician designated by the City.” Although the Union verbally concedes that the City has the right to conduct psychological fitness for duty testing for its members (Tr. 33), the Union seeks to keep the language in that provision as is. On the other hand, the City proposes to change the language in that provision to state that the City has the right “[t]o require employees to submit to a medical and/or psychological examination by a physician or licensed psychologist designated by the City to determine fitness for duty.”

At hearing, Paul Weber – the City’s labor and employee relations administrator for human resources – testified as to the City’s rationale for its proposed change. Mr. Weber testified that the City sought to make the change for “clarification” that the City has the right to order psychological fitness for duty testing when warranted. (*T. 302*). Mr. Weber went on to state that, despite the City’s belief that it already has the right to compel psychological fitness for duty testing and its past practice of doing so, the Union has at times contested that issue. *Id.* In particular, Mr. Weber stated, “[t]he City always had the impression that . . . it could include a psychological examination. And I don’t think that has ever been a problem up until earlier this year. The City tried to have somebody tested psychologically for fitness for duty. . . . We got a lot of pushback from it. So as a result of that, we felt we needed to clarify it in the contract.” *Id.*

Here, the two factors in Section 447.405, FS most relevant to this issue clearly weigh in favor of the City’s position on this issue. In particular, the City’s position on this issue is clearly in line with the interest and welfare of the public and the peculiarities of employment of police officers with respect to the hazards of employment, physical qualifications and intellectual qualifications. More specifically, police officers carry firearms and other devices that can cause harm to others, and they have incredibly stressful and dangerous jobs. They may also be exposed to significant trauma in the line of duty that can cause Post Traumatic Stress Disorder. As a result, the psychological fitness for duty of a police officer is just as important as the physical fitness for duty of a police officer.

Additionally, it should be noted that the management rights article of the SEIU CBA – which covers a bargaining unit without any public safety employees – contains a clause that specifically permits the City to compel employees to submit to psychological examination to determine fitness for duty. Joint Ex. 5, pp. 15-16. In addition, while the Fire Rank and File CBA does not contain that specific provision, it does contain a similar provision stating that the City has the right to “require employees to be in good physical and *mental* condition so that they are able to perform all duties, tasks, and assignments of personnel in their rank.” Joint Ex. 3, p. 53 (emphasis added). Finally, and as noted above, the Union does not dispute that the City has the right to conduct psychological fitness for duty testing for its members. As such, the City requests that the Special Magistrate recommend that the management rights articles of both CBAs include the City’s proposed language, which makes clear that the City may compel such testing.

(*City Br. at pp.8-10*)

Discussion and Analysis

As noted above, the City’s rationale for its proposed change is for “clarification” that the City has the right to order psychological fitness for duty testing when warranted. Mr. Weber testified that, despite the City’s belief that it already has the right to compel psychological fitness for duty testing and its past practice of doing so, the Union has at times contested that issue. As a result, the City felt it needed to clarify it in the contract. Significantly, it is noted that PBA “has never disputed the City’s right to compel a fitness for duty examination. The status quo language already authorizes the City to send an employee for a fitness for duty evaluation.” (PBA Br. at p.29).

The City proposes to change the language in that provision to state that the City has the right “to require employees to submit to a medical and/or psychological examination by a physician or licensed psychologist designated by the City to determine fitness for duty.” The City reasonably argues that psychological fitness for duty of a police officer is just as important as the physical fitness for duty of a police officer. The City’s rationale in this regard is compelling.

PBA points out that, during bargaining, it presented the City with the applicable federal law, which states the following:

(4) Examination and inquiry

(A) Prohibited examinations and inquiries

A covered entity shall not require a medical examination and shall not make inquiries of an employee as to whether such employee is an individual with a disability or as to the nature or severity of the disability, unless such examination or inquiry is shown to be job-related and consistent with business necessity.

42 U.S.C.A. § 12112. The PBA made it clear that the City’s proposal needs to be consistent with the law, meaning the examination or inquiry must be “job-related and consistent with business necessity.” PBA’s argument in this regard is persuasive and does not seem to be contrary to City’s position .

In addition, it is noted that there is similar language to that which the City is here proposing in both the SEIU and IAFF CBAs.

Recommendation Article 8

Consistent with the reasoning expressed above, it is recommended that Article 8 Section 13 of the CBA be revised as follows:

13. To require employees to submit to a medical and/or psychological examination by a physician or licensed psychologist designated by the City when such examination or inquiry is shown to be job-related and consistent with business necessity.

Before addressing Article 10 - Wages and Article 12 – Pensions, it is appropriate to consider factors (1), (2) and (5) of Section 447.405, Florida Statutes.

Comparability

As noted above, Section 447.405 provides in pertinent part as follows:

The factors, among others, to be given weight by the special magistrate in arriving at a recommended decision shall include:

(1) Comparison of the annual income of employment of the public employees in question with the annual income of employment maintained for the same or similar work of employees exhibiting like or similar skills under the same or similar working conditions in the local operating area involved.

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

The parties' lists of comparables differ markedly. Regarding Factor (1), the PBA lists eight comparables in the local operating area: Boca Raton, Boynton Beach, Palm Beach, West Palm Beach, Palm Beach Gardens, Riviera Beach, Jupiter, Palm Beach County Sheriff. In addition to those listed by PBA, the City lists the following comparables: Plantation, Sunrise, North Palm Beach, Lauderhill, Hallendale, Lantana, Margate, Hollywood, Pembroke Pines for a total of 17 .

It is interesting to note that both the City and PBA consider Boca Raton PD an "outlier" because of its extremely high property tax base, and as such could be eliminated from the list. (Cianciaruli T.239-240, 262). That being said, it leaves PBA with seven Factor (1) comparables, and City with 16.

However, it is noted that, while the Palm Beach County Sheriff's Office (PBSO) is listed as a comparable department in the local operating area on both lists, the PBSO has over 1500 officers whereas Delray Beach has 154. In addition, PBSO is further distinguished from the other departments in Palm Beach County because it receives its funding from the State while the local police departments are funded primarily by local property taxes. Furthermore, PBSO officers are in the Florida Retirement System and contribute 3% of their salary toward their pensions while local county police departments are funded by local tax dollars and contribute between 7 and 11 % of their salaries toward their pensions. As such, PBSO can hardly be called "comparable." Significantly however, the record is clear that the vast majority of Delray Beach officers who leave the department are reemployed by PBSO.

Regarding Factor 2, it appears that neither party listed any governmental bodies of comparable size within the state.

Availability of Funds

With regard to factor (5) – Availability of funds, PBA asserts that City has no argument it does not have available funds. According to PBA, any assertions that it lacks the funding for the PBA's proposals would be disingenuous at best. PBA argues that the City's budget was set by the City Commission, and any shortfalls were artificially created by the 3 Commissioners who voted to approve the budget with the rolled back millage rate. (U.16, p.51). PBA points out that the City has steady growth, but City leaders rolled back taxes. The tax revenue collected for this budget year represents the smallest year over year increase in tax revenue collected by a City Commission going back a decade despite assessed values being at an all-time high. Decreasing the millage rate resulted in a \$6,199,265.00 decrease to the General Fund revenues. (U.16,; PBA Br. at p.26).

Not only has the City's property tax rate steadily decreased since 2013, but Palm Beach County's property tax rates have as well. Additionally, the City's debt service has steadily decreased. In fact, the City's total property tax rate for 2025 is less than the General Fund's property tax rate alone for 2024. (U.16, p.70).

Interestingly, with regard to Article 10, it is noted that, while the PBA's wage proposal exceeds the City Proposal over 3 years by approximately \$1.35 million, the City's proposal allocates approximately \$1.2 million more than does the Union's wage increases in the first year of the Contract. (City Br. at p.10).

With regard to Article 12 – Pensions, City points out that, “the Union’s pension proposal ultimately results in an approximate \$3 million negative impact on the City’s pension obligations City over 30 years (present value of which is approximately \$3.7 million).” (City Br. at p. 14; emphasis added).

As the PBA significantly points out, City Commission has in place a fund balance policy whereby 21-25% of the General Fund must remain as an unreserved, unappropriated balance. (T.154, L.9-13). City Manager Moore testified there is currently an approximate \$40 million dollars in unreserved, unappropriated fund balance set aside in the General Fund.

The fact that the fund balance is established by Commission policy suggests that, in the event there is some question raised in the future regarding the percentage and size of the unreserved, unappropriated fund balance, the Commission could change its policy and reduce the amount. Obviously, if the Commission policy required a fund balance of 5% rather than 25%, this discussion would go in a different direction.

The fact remains that, while the City does raise legitimate issues in its arguments regarding the appropriateness of the PBA’s wage and pension proposals and their impact on the budget, nowhere in its arguments regarding Article 10 – Wages or Article 12 – Pensions has the City raised the issue regarding 447.405(5) - Availability of Funds. PBA’s argument that the City has the funds available to fund the PBA’s proposals is compelling.

Thus, it is concluded that Availability of Funds is not at issue in these proceeding

Article 10 – Wages (Both CBAs)

PBA Position

A common theme throughout the hearing and espoused by the Mayor is that the PBA’s proposal is being pushed by a select few on the PBA’s negotiation team and that the membership is not being given a chance to consider the City’s proposal. (T.43, L.3-10; T.159-160, L.23-3).

The City’s false narrative is relevant because it is the basis for the City’s final wage proposals. Throughout bargaining, the City was never concerned about starting pay or officer attrition. In fact, the City’s wages proposal on January 15, 2025, kept officers in the bottom 3 for starting pay based on their own list of 18 comparator agencies. (U.3, B.12; C.4). This is consistent with the City’s repeated disclaimer throughout bargaining that it did not have any room for movement in the budget the CBA’s first year. (T.245, L.2-4; T.251-252, L.18-5)

Based upon the City’s limited budget funding proviso in year 1, the PBA’s final wages proposal mirrored the City’s January 15, 2025, wages proposal for the first year of the CBA. (See PBA Br. at pp 9-10; U.1, B.6; U.3, B.12, 13; U. 2. B.11)

The PBA’s final proposal on April 7, 2025, adopted the City’s January 15, 2025 proposal for year 1 of the CBA. Much to the PBA’s surprise, the City made a new wages proposal on April 7, 2025. Miraculously, the City did have room in its budget in year 1 of the CBA, despite its prior assertions to the contrary. Upon further review of the City’s

proposal; however, it was quickly apparent to the PBA that it was nothing more than a reverse “Ponzi Scheme.” The City’s new proposal was simply a “divide and conquer” strategy to pit the bargaining unit members against each other (i.e., new officers vs. senior officers), but under the guise of the City’s new interest in raising starting pay. Short-term, the City’s new wages proposal raised starting pay for officers, but the long-term impact over the CBA’s 3-years creates a very large disparity in officer pay. (*PBA Br. at p.11*).

Testimony by Officer Cianciaruli described it best, “We kind of like to say it’s kind of like squeezing a balloon. If you squeeze a ballon from one side, it makes all the air go to the other side.” (T.203, L.6-9). As shown above, the air is being “squeezed” from the senior officers to the new officers.

Throughout bargaining, the PBA and the City utilized Palm Beach County agencies as comparators. The PBA specifically focused on large agencies with more than 100 officers. (*T.81, 242*). The City used Palm Beach County agencies and a handful of Broward County agencies. (*T.340,*). The PBA focused specifically on those agencies directly surrounding the City. The City is bordered to the south by the City of Boca Raton, to the north by the City of Boynton Beach, and to the west by unincorporated Palm Beach County. (*T.71*). As a result, the City has mutual aid agreements with the Cities of Boca Raton and Boynton Beach, and the Palm Beach County Sheriff’s Office (“PBSO”). (T.71-72). City officers operate on the same burglary and robbery task forces as its neighboring cities’ police departments, as well as with PBSO. *Id.* The City’s SWAT team backs up the City of Boynton Beach’s SWAT team and vice-versa. Ultimately, City officers operate and work directly with officers from these agencies that are right next door.

While they do the same job, their wages and benefits are not the same. In fact, the City is well behind these agencies. To the extent that, at the time of the hearing, at least thirteen (13) City officers recently left for PBSO. (*T.65; 251*). This is why these “local” agencies right on the City’s doorstep are the best comparators to use when evaluating the impasse articles.

In comparing the City’s wages proposal in year 1 to the applicable year of these comparator agencies, the City is still below all of the above listed agencies for both starting and top out pay. Under the City’s proposal, it only gets worse as the years progress; however, under the PBA’s proposal, the City becomes more competitive with these other agencies. Notably, these other agencies have consistent increases between steps and fiscal years (*U.8a-I; T.204*), unlike the City’s proposal where they removed 1.5% from the increases in fiscal years 2 and 3 and added it to year 1; and, reduced the increases between the steps to 4% and 3.5% and added it to year 1. The City’s proposal perpetuates the issue it is purportedly trying to solve, i.e., attracting and retaining officers. Under the City’s proposal, officers’ wages stagnate while under the PBA’s proposal, officers’ wages increase to remain competitive (*Cianciaruli – T.207-208; PBA Br. at pp 12-14*).

By year 3, the City’s proposal compounds the problem of the City being a “training ground agency” as it only makes sense for an officer to stay with the City temporarily due to the diminished wages by year 3. When compared to the PBA’s proposal an officer’s wages are \$10,600 less under the City’s proposal. When it comes to officers’ wages, the City’s proposals are short-sighted and will only exacerbate the staffing issues they only seemed to care about at the

final bargaining session. Over the course of the CBA's 3 years, the PBA's proposal makes officers' wages competitive while maintaining fair, consistent increases each fiscal year and between steps.

Sergeants run into the same issue as the officers, i.e., they fall behind over the CBA's 3 years. By the end of the CBA's 3 years, the PBA's proposal for sergeants' wages is competitive with the aforementioned neighboring agencies, while the City's proposal is significantly lower. (*U.13, B. 1157; U.I, B.6; PBA Br. at pp.15 -16*).

Lieutenants' wages are equal in year 1 under both the City's and PBA's wage proposals. (*U.13, B.1162*). In year 2 of the City's proposal, lieutenants fall further behind the aforementioned neighboring agencies, while under the PBA's proposal they are only slightly behind. (*U.13, B.1163*).

This same scenario plays out using the City's comparators, which shows lieutenants fall behind the aforementioned comparator agencies. (*U.13, B.1151*). Sergeants run into the same issue as the officers, i.e., they fall behind over the CBA's 3 years. (*U.13, B.1159*). By the end of the CBA's 3 years, the PBA's proposal for sergeants' wages is competitive with the aforementioned neighboring agencies, while the City's proposal is significantly lower. (*U.13, B.1160*). The difference in cost between the City's and PBA's wage proposals is roughly \$1.2 million dollars. (*U.13, B.1165*).

This difference in cost is attributed to the PBA's proposal to apply increases fairly and consistently across the steps and throughout the term of the CBA. This approach properly addresses the issue of attracting and retaining officers. The City's proposal provides increases at the expense of senior, loyal officers. However, upon review of the City's proposal long-term, it is more than apparent to new officers that their wages stagnate. These new officers will quickly realize they can either join their veteran officers on the end of the balloon that is being squeezed, or move on to Boca Raton, Boynton Beach, or PBSO to obtain better wages and benefits, just as twelve (12) recently did and many more are in the process of doing.

The City's wage proposal is all the more frustrating when taking into account the CBAs of the other public safety employees at the City. Fire Department employees in both the Rank-and-File unit and the Supervisory Unit receive 5% between each step in their respective step plans. (*J.3, p.130; J.4, p.23*). There is no reverse "Ponzi Scheme" with taking money from higher steps and future fiscal years, but rather just fair and consistent application of the wage increases. The officers, sergeants, and lieutenants are not asking for anything different from what other public safety employees are already receiving from the City, which is fair and equitable treatment in the application of its increases. (*PBA Br.18-19*).

In consideration of the factors outlined in Section 447.405, Florida Statutes, it is recommended that the PBA's wage proposal be adopted by the City.

City Position

The Special Magistrate should recommend that the parties adopt the City's proposed Wage articles as to both CBAs. The parties' proposals differ in the following ways:

1. FY25 for officers and sergeants: City front loads wage increases in first year of contract with higher percentage increases to lower steps in Pay Plan; Union allocates 5% across the board to all.
2. FY26 COLA amount for both units – City proposing 3%; Union proposing 10%.
3. FY27 COLA amount for both units – City proposing 3%; Union proposing 5%.

As demonstrated at hearing, the cost of the City's wage proposal over the three-year term of the proposed agreement is \$15,298,987.65 (*City Ex. 2*), and the cost of the Union's wage proposal over the same term is \$16,656,327.41 (*City Ex. 3*). While the difference over three years is approximately \$1.35 million, as indicated above, the City's proposal allocates approximately \$1.2 million more than the Union's does to wage increases in the first year of the Contract.

It should be noted that, prior to February 2025, the City's wage proposal for both units consisted of across-the-board COLAs for members of both units of five percent in the first year; four and a half percent in the second year and four and a half percent in the third year. However, in February 2025, the PBA – both at the bargaining table and at a City Commission meeting – complained that the City was losing too many new officers to other agencies. In particular, the PBA made it abundantly clear that the reason why it believed that the City was losing so many junior officers was because of the City's low starting salary.

As a result, the City amended its pay proposal. Specifically, the City took the same total dollars that its prior COLA proposal would cost over three years and reallocated the dollars such that there were significant increases ranging from 7.75% to 18.00% for officers and from 5.9% to 6.9% in the first year of the PO CBA. (*City Ex. 2; Tr. 308.*) That change was made specially to address the PBA's stated concerns. *Id.* As Paul Weber testified at hearing, the City's proposed pay plan was intended to catch up with other comparable agencies immediately. On the other hand, the Union's wage proposal does not immediately address any comparative disadvantages that the City may have vis-à-vis other comparable agencies, nor does it address the Union's own stated concerns about recruitment and retention.

Additionally, the City's wage comparables show that the City's proposal puts the City higher on the list of minimum starting pays for each rank in year one of the CBA than does the Union's. (*City Ex. 4*). In fact, the City's proposal for police officers – which make up the largest group of bargaining unit members – keeps the minimum pay for officers higher than the Union's wage proposal for all three contract years.

In addition, the City's wage proposals to both bargaining units are in excess of the pay increases provided to fire bargaining unit employees and the City's non-union employees. In particular, the Fire Rank and File CBA and Fire Supervisory CBA provide for across the board increases to certified fire fighters of 3% in the first and second years of the CBAs. (*Joint Ex. 3, p. 29; Joint Ex. 4, p. 7*). In lieu of a COLA in the third year of the Fire CBAs, the parties agreed that the shift schedule for firefighters would change from 24 hours on and 48 hours off with

a Kelly day off on a scheduled shift every 7 shifts to a schedule of 24 hours on and 72 hours off with no Kelly day off.

Here, the two factors in Section 447.405, FS most relevant to this issue clearly weigh in favor of the City's position on this issue. In particular, the City's position on wages is clearly more in line with the interest and welfare of the public and the peculiarities of employment of police officers with respect to the hazards of employment, physical qualifications and intellectual qualifications than is the Union's proposal. More specifically, the City's wage proposal front loads pay increases in year one and increases the starting and earlier steps of the pay plan far more than the Union's proposal. As such, the City's wage proposal is far superior to the Union's with respect to remaining competitive with other agencies and recruiting new officers. For those reasons, the Special Magistrate should recommend that the parties adopt the City's wage proposals.

(City Br. at pp.10-12).

Discussion and Analysis

On April 7, 2025. the PBA's final proposal adopted the City's January 15, 2025 proposal for year 1 of the CBA. Much to the PBA's surprise, the City made a new wage proposal on that date. Specifically, the City took the same total dollars that its prior COLA proposal would cost over three years and reallocated the dollars such that there were significant increases for officers in the lower pay grades

The City asserts that this change was made specially to address the PBA's concerns which were raised by the PBA at a Commission meeting in February. According to the testimony of Paul Weber,

President John Kazanjian of the PBA came to the podium and made a pitch or plea to the Commission basically stating that the City was losing a lot of employees to other agencies. And he made it abundantly clear to the Commission that the reason why is because we're one of the lowest starting salaries and our pay plan was out of date relevant to our surrounding agencies, and the only way we can ever fix it is if we pay our police officers.

So that was followed up by an executive session where the commissioners took what he said to heart and decided to make a market adjustment on the pay plan that we had offered and dramatically restructure the pay plan that we proposed to the PBA.

(T.306-307).

The Commission's instruction was to use the same amount of budgeted money that we had allocated toward that five, four-and-a-half, four-and-a-half proposal. (T.308).

Specifically, the City took the same total dollars that its prior COLA proposal would cost over three years and reallocated the dollars such that there were significant increases ranging from 7.75% to 18.00% for officers and from 5.9% to 6.9% in the first year of the PO CBA. (City Ex. 2; Tr. 308) According to City, that change was made

specifically to address the PBA's stated concerns regarding recruitment and retention. As Paul Weber testified at hearing, the City's newly proposed pay plan was intended to catch up with other comparable agencies "immediately".

On the other hand, City points out that the Union's wage proposal does not immediately address any comparative disadvantages that the City may have vis-à-vis other comparable agencies, nor does it address the Union's own stated concerns about recruitment and retention in the first years of employment with the City.

The cost of the City's wage proposal over the three-year term of the proposed agreement is \$15,298,987.65 (City Ex. 2), while the cost of the Union's wage proposal over the same term is \$16,656,327.41 (City Ex. 3).

PBA argues that the true intent of the City's changed proposal on April 7 was simply a "divide and conquer" strategy to pit the bargaining unit members against each other (i.e., new officers vs. senior officers), but under the guise of the City's new interest in raising starting pay. Short-term, the City's new wages proposal raised starting pay for officers, but, according to PBA, the long-term impact over the CBA's 3-years creates a very large disparity in officer pay.

In comparing the lists of comparators, PBA asserts that City is well behind the agencies on the PBA list. PBA asserts that, comparing the City's wages proposal in year 1 to the applicable year of these comparator agencies, the City is still below all of the above listed agencies for both starting and top out pay. PBA argues further that, under the City's proposal, it only gets worse as the years progress.

This does not appear to be the case. A look at the chart of the wages of City's comparables (City 4) and the PBA and City wage proposals for FY 24-25 shows the following:

Officers

City Proposal Min. \$74,971 Rank 3 Max. \$113,758 Rank 9

PBA Proposal Min. \$66,707 Rank 16 Max. \$114,092 Rank 8

PBSO Min. \$72,564 Rank 7 Max. \$107,964 Rank 13²

Sergeants

City Proposal Min. \$116,586 Rank 5 Max. \$141,711 Rank 5

PBA Proposal Min. \$115,583 Rank 7 Max. \$140,492 Rank 7

PBSO Min. \$112,824 Rank 10 Max. \$146,976 Rank 2

Lieutenants

City Proposal Min. \$139,153 Rank 5 Max. \$154,278 Rank 3

PBA Proposal Min. \$139,153 Rank 8 Max. \$154,278 Rank 3

PBSO Min. \$146,976 Rank 2 Max. \$167,736 Rank 2

² PBSO is included because the parties agree that it is the City's most competitive agency of all the comparables.

For City proposal FY 25-26, Delray Beach holds its rank 3 for Officers beginning salary, 8th at maximum; for Sergeants, Delray Beach holds its rank 5 for beginning salary, 6th at maximum; and for Lieutenants, Delray Beach holds its rank 5 for beginning salary, 4th at maximum.

For PBA proposal FY 25-26, Delray Beach ranks 12th for Officers beginning salary, 3rd at maximum; for Sergeants, Delray Beach ranks 3rd for beginning salary, 3rd at maximum; and for Lieutenants, Delray Beach ranks 3rd for beginning salary, 3rd at maximum.

For City proposal FY 26-27, Delray Beach ranks 4th for Officers beginning salary, 7th at maximum; for Sergeants, Delray Beach ranks 6th for beginning salary, 4th at maximum; and for Lieutenants, Delray Beach ranks 4th for beginning salary, 3rd at maximum.

For PBA proposal FY 26-27, Delray Beach ranks 6 for Officers beginning salary, 2nd at maximum; for Sergeants, Delray Beach ranks 2nd for beginning salary, 3rd at maximum; and for Lieutenants, Delray Beach ranks 2nd for beginning salary, 2nd at maximum.

Using the City's Exhibit 4, which includes the 7 comparators used by the PBA, the City's proposals for FY 24-25, 25-26 and 26-27 compare favorably in all classifications. For example, regarding Officers starting pay over the three contract years, only PBSO is ranked higher (and only in year 3 when it was ranked 3rd compared to the City's proposal ranking 4th out of 16). All of the other PBA comparators rank below the City's proposal in all three years.

Regarding the maximum pay for Officers, 3 of the PBA comparators rank above the City's proposal (ranked 9) and 3 rank below. It is noted that starting pay for Officers is where the City intended to have an immediate impact with its wage proposal, and the evidence indicates that the City was successful in this regard.

However, PBA asserts that, under its proposal, the City becomes more competitive with these other agencies. According to PBA, under the City's proposal, officers' wages stagnate while under the PBA's proposal, officers' wages increase to remain competitive. To the contrary, City Exhibit 4 clearly establishes that PBA's assertions are not completely accurate. Under the PBA proposal, in **FY24-25**, Officers beginning pay ranks 16th out of 18 and maximum 8th, while the City's proposal ranks Officers beginning pay 3rd behind only the "outlier," Boca Raton .and Plantation, and the maximum ranks 9th out of 18. Under the PBA proposal, Sergeants beginning and maximum pay both rank 7th whereas under the City's proposal, Sergeants minimum and maximum pay both rank 5th. Under both the PBA proposal and the City proposal, Lieutenants minimum and maximum rank the same – 3rd out of 9.

In **FY25-26**, the picture changes slightly. PBA's proposed minimum wage for officers ranks 12th out of 13 and the maximum ranks 3rd, whereas, under the City's proposal, Officers beginning wage ranks 3rd and the maximum 8th. For Sergeants, PBA's beginning and maximum rank 3rd whereas, under the City's proposal, Sergeants minimum and maximum rank 5 and 6 respectively out of 13. For lieutenants, PBA's beginning and maximum wage rank 3rd, whereas under the City's proposal, they rank 5th and 4th out of 6.

In FY26-27, the picture is much the same. PBA's proposed minimum wage for officers ranks 6th out of 8 and the maximum 2nd, whereas, under the City's proposal, Officers beginning wage ranks 4th and the maximum 7th. For Sergeants, PBA's beginning and maximum rank 2nd and 3rd out of 13, whereas, under the City's proposal, Sergeants minimum and maximum rank 6th and 4th respectively. For lieutenants, PBA's beginning and maximum wage ranks 2nd, whereas under the City's proposal, they rank 4th and 3rd respectively.

These rankings notwithstanding, PBA maintains that the City's proposal perpetuates the issue it is purportedly trying to solve, i.e., attracting and retaining Officers. (PBA Br. at pp 12-14). As demonstrated above, the figures show otherwise.

The facts indicate that neither party's proposal is the perfect solution. The truth is somewhere in between. The City's proposed increases in the minimum wage for Officers goes a long way towards addressing the problem of attracting new recruits, ranking 3rd, 3rd and 4th in the 3 contract years. Conversely, PBA's proposal ranks 16th, 12th and 6th.

Regarding the admitted problem of retaining Officers in the early years of employment, the maximum for officers under the City's proposal ranks 9th, 8th and 7th for the 3 contract years, whereas under the PBA's proposal, the ranks are 8th, 3rd and 2nd. So, the PBA proposal does a somewhat better job encouraging retention in the second and third years of the CBAs.

While it is true that the City's proposal would result in a compression of the PBA bargaining units salary schedules, other than its own conjecture, there is little evidence to support the PBA's allegation of a "divide and conquer" strategy by the City. It is respectfully submitted that a compression of the salary schedules is the lesser of two evils when compared to the city's admitted problem attracting and retaining officers at the entry level. And, an examination of the City's comparators above indicates that the resulting salaries for Delray Beach officers, sergeants and lieutenants under the City's proposal remain well placed among the comparables throughout the 3-year period.

The fact remains that both parties agreed that the officers' starting pay was a problem and that consequently they were losing new employees to the Palm Beach County Sheriff's Department. Specifically, the PBA proposed 2024-2025 starting wage for officers was \$66,707, whereas the City's proposed starting salary was \$74,971. The PBSO 2024-25 starting salary was \$72,564. (City U.4). Additionally, the City's wage comparables show that the City's proposal puts the City higher on the list of minimum starting pays for each rank in year one of the CBA than does the Union's. (City Ex. 4). In fact, the City's proposal for police officers – which make up the largest group of bargaining unit members – keeps the minimum pay for officers higher than the Union's wage proposal for all three contract years. As can be seen, PBA's wage proposal did little to address the issue of low starting pay.

It is also significant to note that the City's wage proposals to both PBA bargaining units are in excess of the pay increases provided to fire bargaining unit employees and the City's non-union employees. In particular, the Fire Rank and File CBA and Fire Supervisory CBA provide for across the board increases to certified firefighters of three percent in the first and second years of the CBAs. In lieu of a COLA in the third year of the Fire CBAs, the parties agreed that the shift schedule for firefighters would change from 24 hours on and 48 hours off with a Kelly day off on a

scheduled shift every 7 shifts to a schedule of 24 hours on and 72 hours off with no Kelly day off. (Joint Ex. 3, p. 29); Joint Ex. 4, p. 7.)

The facts as indicated above support that the City's wage proposal better addresses the significant problem of attracting and retaining officers than does the PBA proposal, and the resolution of this problem is certainly in the best interests of the public.

Recommendation Article 10

Consistent with the reasoning expressed above, it is recommended that the City's wage proposal be adopted..

Article 12 – Pension (both CBAs)

PBA Position

PBA is seeking to bring the City's police pension on par with neighboring agencies, as well to get it on par with the City's fire pension, which already has the benefits the PBA is proposing to receive. The PBA also proposed to change the current allocation of the Chapter 185 Premium Tax Revenues received by the City, where half of the amount in excess to the base amount be allocated to an officer share plan (currently \$281,774). The PBA is proposing to what is known as the "Default Rules" under Florida Statute.

The Fire Department already has an 8-year DROP, and the City uses Ch.175 funds in excess of \$1,206,994 to fund the fire pension's COLA. (T.60-61; J.3, p.84). The fire pension's cap is currently \$119,590 and increases by 2% annually. The police pension is capped at \$108,000, meaning it does not increase at all. The PBA withdrew its proposal to raise the pension cap, instead focusing on the DROP extension and the Ch. 185 money. (T.60-63). Exactly like the application of increases in its wage proposals, the PBA is seeking parity with the City's Fire Department when it comes to the DROP and utilizing excess state excise taxes to benefit the membership.

Testimony regarding the different actuarial scenarios under the PBA's pension proposal was provided by an impartial witness, Actuary Jeff Amrose. Mr. Amrose has been an actuary for 33 years. He is currently employed by the actuarial firm of Gabriel, Roeder, Smith and Company, where he has worked for the last 18 years. He was promoted to Senior Consultant in 2011 and has been a team leader since then. As team leader he is responsible for 35 employees in the Ft. Lauderdale office and is responsible for 130 pension plans across the State of Florida, half of which are public safety plans. Mr. Amrose is an enrolled actuary and a member of the American Academy of Actuaries. (T.97-98).

In regards to the PBA's proposal whereby the allocation of the Chapter 185 Premium Tax Revenues would be under the default rules, Mr. Amrose testified the financial impact on the City is "...the first thing that I would be drawn to." Mr. Amrose testified that the City would realize a present-day savings of \$6,122,579.00 in present value, which equates to \$26,788,687.00 in savings over the 30-year projection of his study. (T.101-103; PBA Br. at pp. 17-19).

These savings are realized under the PBA's proposal (i.e, the statutory "default rules") because half of the Ch. 185 funds received in excess of \$281,774.00 would be used to offset the City's pension contributions for its officers. Under the City's the status quo proposal, all Ch. 185 funds received in excess of the above amount would continue to write down the City's unfunded liability. Mr. Amrose further testified that the City's status quo proposal is only used in 5 or less of the 65 public safety pension plans he represents. (T.107). (*U.7; PBA Br. at pp.21-22*).

The City will argue that the PBA's proposal results in roughly \$9.8 million dollars of added cost to the City because it is being diverted to officers' share accounts. (*J.8, p.8*). However, Mr. Amrose reiterated that this is not \$9.8 million dollars of cost, but rather \$6.1 million dollars of savings. (T.110, L.3-10). The only impact is on the funded ratio, which no matter the scenario (City's status quo or PBA's default rules) the pension is still over 100% funded.

The PBA also ran a scenario where just the DROP is extended to 8 years with an employee contribution of 3% and no COLA while in the DROP (*U.18, p.7*). This scenario results in a savings of \$2,132,369.00 in present value, which equates to \$6,400,118.00 in savings over the 30-year projection of this study. The City's required contribution decreases every single year under this scenario except for year 2034. (*PBA Br. at pp. 22-23*).

Perhaps this is why the City's Finance Director refused to answer the PBA's question as to whether the City could afford the pension proposals. The plain and obvious answer is not only can the City afford it, but it saves the city millions of dollars. This would appear to be contrary to the elected officials that claimed to have run, as the City Manager stated, on a platform of "[f]iscal conservatism, doing what they can to restore savings and municipal operations to every extent possible." (*T.142, L.6-9*). Not extending the DROP is also contrary to the stated purpose of the City's wage proposal, which is to attract and retain officers. Extending the DROP to 8 years allows the City to keep veteran officers on the job for 3 more years. Shouldn't the City be doing everything it can to retain its officers, especially when so many are leaving for neighboring agencies? These veteran officers are not only invaluable when it comes to their experience and ability to train new hires, but the City is at the point where it needs to retain as many officers in order to be properly staffed and fulfill its stated goal of "ensuring] a safe city through effective public safety enforcement...." (*U.16, p16; PBA Br. at pp 23-24*).

It is also clear that when looking at comparator agencies in Palm Beach County, most have a DROP in excess of 5 years and almost half of those that do receive Ch. 185 money allocate the excess amount into officers' share accounts: (*U.9a-j; 10-11, 15*).

It is also worth mentioning, the City's police pension is inferior to every other comparator pension plan, as overtime and details are not pensionable at the City. (*T.275, L.8-25*) (*U.9a-j; U.10-11*). The only pensionable earnings for police officers at the City are base pay. Id.

Lastly, the City cannot impose the status quo. The mutual consent that is currently in place is maintained as part of the status quo but must be renegotiated in every agreement. The City cannot impose mutual consent. Accordingly, the default scheme outlined in the statute is automatically implemented, with or without the agreement of the City. (*U.12*). This was reiterated by Mr. Amrose in his testimony. (*T.127-129;l PBA Br. at p.25*).

In consideration of the factors outlined in Section 447.405, Florida Statutes, it is recommended that the PBA's pension proposals be adopted by the City.

City Position

The Special Magistrate should recommend that the parties adopt the City's impasse position on pension (*Article 12 of both CBAs*) – i.e., maintain the status quo as to the City's Police Pension Plan. The City maintains a defined benefit pension plan for sworn members of its Police Department, including members of the bargaining units represented by the Union, which is known as the City of Delray Beach Police Officers' Retirement System (the "System"). Joint Stip. 9; Joint Ex. 6. The Actuary for the System recently completed the latest Actuarial Valuation for the System, dated May 9, 2025.³ (*Joint Stip. 10; Joint Ex. 7*).

The two pension issues at impasse relate to the DROP and the use of Chapter 185 State Premium Tax Revenues. The status quo as to the DROP is that employees may enter DROP for a maximum of five years and, while in DROP, participants do not make any contribution to the Plan. The status quo as to the use of Chapter 185 State Premium Tax Revenues is for \$606,595.00 to be used by the City toward its annual required contribution to the Plan each year, and for the excess revenue above that amount (\$507,827.00 in 2024) to be used by the City to pay down the Plan's Unfunded Actuarial Accrued Liability. (*Joint Ex. 7, p. 8*).

On the other hand, the Union proposes significant changes to both the DROP and the use of Chapter 185 State Premium Tax. With respect to the DROP, the Union proposes that the DROP participation period be extended to eight years, with employees making a three percent pension contribution for any time in the DROP beyond five years, and with the pension COLA not available to an employee while in the DROP.⁴ With respect to the use of Chapter 185 State Premium Tax Revenues, the Union proposes \$606,595.00 per year continues to be used to by the City toward its annual required contribution to the Plan, but that half of any amount per year in excess of \$606,595.00 (\$507,827.00 in year 2024; half of which is \$253,913.00) would be distributed to retirees each year and the other half being used by the City to offset its annual required pension contribution.

In connection with its pension proposal, the Union obtained an actuarial study concerning its proposed pension changes. (*Joint Stip. 11; Joint Ex. 8*). The study prepared by the Plan's actuary projects that the Union's DROP proposal will save the City \$26,788,687 over 30 years (present value of which is \$6,122,579). The projected savings are attributable to two things: (1) employees who participate in DROP from years 5 through 8 will contribute three

³ At the time of the hearing, the Actuarial Valuation had not yet been approved by the System's Board of Trustees.

⁴ The annual pension COLA is currently available to all members the first of the month after such members have reached their 25th anniversary of City employment as a sworn law enforcement officer. *Joint Ex. 6, p. 4*.

percent of their salary to the Plan during that time; and (2) the pension COLA will not be available to members until after the complete DROP, meaning that members who DROP for eight years will have their pension COLAs delayed by three years. On the other hand, the actuary projects that, over that same period of time, \$29,772,533 of Chapter 185 State Premium Tax Revenues (present value of which is \$9,832,609), which would otherwise be used by the City to either pay its required contribution or pay down the Plan's unfunded liability, would now be distributed to member Share Plan accounts. As such, the Union's pension proposal ultimately results in an approximate \$3 million negative impact on the City's pension obligations City over 30 years (present value of which is approximately \$3.7 million). *Id.*

With respect to pension comparables, the City produced data at the hearing concerning DROP length and use of Chapter 185 premium tax revenues by 17 other comparable agencies in Palm Beach and Broward Counties. City Ex.

4. With respect to DROP, the City's comparables data shows the following:

- Six comparator agencies have a 5-year DROP;⁵
- One comparator agency has a 6-year DROP;
- Two comparator agencies have a 7-year DROP;
- Six comparator agencies with local pension plans have an 8-year DROP; and
- Two comparator agencies are members of the Florida Retirement System, which now has an 8-year DROP.

With respect to Use of Chapter 185 Premium Tax Revenues, the City's comparables data shows the following:

- Ten comparator agencies use all Chapter 185 Premium Tax Revenues to offset their annual required pension contributions;
- Four comparator agencies use Chapter 185 Premium Tax Revenues in the manner in which the PBA has proposed;
- One Comparator agency allows all Chapter 185 Premium Tax Revenues to be distributed to employee Share Plans; and
- Two comparator agencies participate in the Florida Retirement System and are ineligible for Chapter 185 Premium Tax Revenues.

Here, the two factors in Section 447.405, FS most relevant to this issue clearly weigh in favor of the City's position on this issue. In particular, the City's position on this issue is clearly in line with the interest and welfare of the public and the peculiarities of employment of police officers with respect to the hazards of employment, physical qualifications and intellectual qualifications. In particular and as stated above, the City's proposal is projected to save

⁵ Although City Exhibit 4 shows that the City of Riviera Beach is in FRS, the majority of Riviera Beach's current sworn officers are in the now-closed City pension plan, which has a 5-year DROP. Riviera Beach City Code Sec. 14-77(f)(2)a.

the City approximate three million dollars over 30 years and the City's status quo is more in line with the City's comparables. In addition, an extension of the DROP will have hidden costs for the City in that it will require the City to pay more senior employees at far higher rates of pay rather than replace those retirees with entry level officers. Finally, DROP extension is likely to negatively impact advancement opportunities within the Police Department due to senior Plan members now staying employed for longer periods. As a result, the Special Magistrate should adopt the City's position on drug and alcohol testing and recommend to the parties that they adopt the City's proposal on that issue.

(City Br. at pp. 12-14).

Discussion and Analysis

The two pension issues at impasse relate to the DROP and the use of Chapter 185 State Premium Tax Revenues. The status quo as to the DROP is that employees may enter DROP for a maximum of five years and, while in DROP, participants do not make any contribution to the Plan. The status quo as to the use of Chapter 185 State Premium Tax Revenues is for \$606,595.00 to be used by the City toward its annual required contribution to the Plan each year, and for the excess revenue above that amount (\$507,827.00 in 2024) to be used by the City to pay down the Plan's Unfunded Actuarial Accrued Liability. (Joint Ex. 7, p. 8). The City proposes to maintain the status quo.

PBA is seeking to bring the City's police pension on par with neighboring agencies, as well to get it on par with the City's Fire pension, which already has the benefits the PBA is proposing to receive. The PBA also proposed to change the current allocation of the Chapter 185 Premium Tax Revenues received by the City, where half of the amount in excess to the base amount (currently \$281,774) be allocated to an officer share plan. The PBA is proposing to what is known as the "Default Rules" under Florida Statute.

Addressing first the PBA's intent to achieve parity with the City's Fire Department when it comes to the DROP and utilizing excess state excise taxes to benefit the membership, the Fire Department already has an 8-year DROP, and the City uses Ch.175 funds in excess of \$1,206,994 to fund the fire pension's COLA. The fire pension's cap is currently \$119,590 and increases by 2% annually. The police pension is capped at \$108,000, meaning it does not increase at all. The PBA withdrew its proposal to raise the pension cap, instead focusing on the DROP extension and the Ch. 185 money.

The PBA's proposal to achieve parity with the Fire Department regarding pensions as relates to an 8-year DROP and utilizing excess state excise taxes to benefit the membership is compelling. Why should the police pension be different from that of the fire pension? The PBA's willingness to drop its proposal to raise the cap thus diminishing the fiscal impact on the City seemingly removes one objection the City might have to the proposed parity. The PBA's argument in this regard is compelling.

The City did not address the question of parity with the Fire Department.

In regards to the PBA's proposal whereby the allocation of the Chapter 185 Premium Tax Revenues would be under the default rules, actuary Jeff Amrose (whose considerable qualifications and experience are described above) testified that the City would realize a present-day savings of \$6,122,579.00 in present value, which equates to \$26,788,687.00 in savings over the 30-year projection of his study. (T.101-103; PBA Br. at pp. 17-19). These savings are realized because half of the Ch. 185 funds received in excess of \$281,774.00 would be used to offset the City's pension contributions for its officers. Under the City's status quo proposal, all Ch. 185 funds received in excess of the above amount would continue to write down the City's unfunded liability. Mr. Amrose further testified that the City's status quo proposal is only used in 5 or less of the 65 public safety pension plans he represents. (T.107). (U.7; PBA Br. at pp.21-22).

It is noted that the Fire Department uses CH 175 funds in the same way that PBA proposes using CH 185 Premium Tax Revenues under the default rules. The City obviously did not indicate it had a problem with the Fire Pension doing so. Also noteworthy is Mr. Amrose's testimony that only 5 of the 65 public safety pension plans he represents use the City's current plan which it is advocating in maintaining the status quo.

There is a disagreement concerning the fiscal impact of the PBA's proposal. PBA proposes that DROP be extended to 8 years with an employee contribution of 3% and no COLA while in the DROP (U.18, p.7). According to the PBA, this scenario results in a savings of \$2,132,369.00 in present value, which equates to \$6,400,118.00 in savings over the 30-year projection of this study. The City's required contribution decreases every single year under this scenario except for year 2034. (PBA Br. at pp. 22-23). The projected savings are attributable to two things: (1) employees who participate in DROP from years 5 through 8 will contribute three percent of their salary to the Plan during that time; and (2) the pension COLA will not be available to members until after they complete DROP, meaning that members who participate in DROP for eight years will have their pension COLAs delayed by three years.

On the other hand, City projects that, over that same period of time, \$29,772,533 of Chapter 185 State Premium Tax Revenues (present value of which is \$9,832,609), which would otherwise be used by the City to either pay its required contribution or pay down the Plan's unfunded liability, would now be distributed to member Share Plan accounts. As such, according to the City, the Union's pension proposal ultimately results in an approximate \$3 million negative impact on the City's pension obligations City over 30 years (present value of which is approximately \$3.7 million). (Joint Stip. 11; Joint Ex. 8.)

The undersigned is not equipped to resolve this disparity. However, it is noted that the fiscal impact projected by the City results in an "approximate \$3 million negative impact on the City's pension obligations City over 30 years (present value of which is approximately \$3.7 million). (Joint Stip. 11; Joint Ex. 8)". In that the PBA's proposal mirrors the Fire Pension, it is respectfully submitted that, assuming City is correct, this is a minimal impact at best that by itself does not seem to justify rejecting the PBA proposal.

With regard to comparables and pensions, PBA asserts that most have a DROP of more than 5 years, and almost half of those that do receive Ch. 185 money allocate the excess amount into officers' share accounts. (PBA Br. at pp 24-25).

The City produced data at the hearing concerning DROP length and use of Chapter 185 premium tax revenues by 17 other comparable agencies in Palm Beach and Broward Counties. (City Ex. 4.) With respect to DROP, the City's comparables data shows the following:

- *Six comparator agencies have a 5-year DROP;*
- *One comparator agency has a 6-year DROP;*
- *Two comparator agencies have a 7-year DROP;*
- *Six comparator agencies with local pension plans have an 8-year DROP; and*
- *Two comparator agencies are members of the Florida Retirement System, which now has an 8-year DROP.*

With respect to Use of Chapter 185 Premium Tax Revenues, the City's comparables data shows the following:

- *Ten comparator agencies use all Chapter 185 Premium Tax Revenues to offset their annual required pension contributions;*
- *Four comparator agencies use Chapter 185 Premium Tax Revenues in the manner in which the PBA has proposed;*
- *One Comparator agency allows all Chapter 185 Premium Tax Revenues to be distributed to employee Share Plans; and*
- *Two comparator agencies participate in the Florida Retirement System and are ineligible for Chapter 185 Premium Tax Revenues.*

The City's data confirm PBA's observation that most comparators have a DROP of more than 5 years, and almost half of those that do receive Ch. 185 money allocate the excess amount into officers' share accounts. Again, this data supports the idea that PBA's proposal is reasonable.

In addition, PBA points out that the City's police pension is inferior to every other comparator pension plan, as overtime and details are not pensionable at the City. (T.275, L.8-25) (U.9a-j.; U.10-11). . The only pensionable earnings for police officers at the City are base pay. Id. The City did not disagree. Assuming for the sake of this discussion that the PBA's representation is accurate, it provides one more reason why the City should accept the PBA proposal thus placing the City in a more competitive position to recruit and retain police officers.

Similarly, PBA also argues that not extending the DROP is also contrary to the stated purpose of the City's wage proposal, which is to attract and retain officers. Extending the DROP to 8 years allows the City to keep veteran officers on the job for 3 more years. PBA persuasively argues that these veteran officers are not only invaluable when it comes to their experience and ability to train new hires, but the City is at the point where it needs to retain as many

officers in order to be properly staffed and fulfill its stated goal of “ensuring a safe city through effective public safety enforcement....” (U.16, p16; PBA Br. at pp 23-24).).

The City argues that its position on this issue is clearly in line with the interest and welfare of the public. The City maintains that an extension of the DROP will have hidden costs for the City in that it will require the City to pay more senior employees at far higher rates of pay rather than replace those retirees with entry level officers. It is respectfully submitted that the increased costs referenced here do not outweigh the positive aspects of the PBA proposal described above.

In addition, the City argues that a DROP extension is likely to negatively impact advancement opportunities within the Police Department due to senior Plan members now staying employed for longer periods. (City Br. at p.15). It could also be argued that officers would be willing to postpone advancement opportunities in order to take advantage of the added benefits of the pension plan.

Lastly, PBA asserts that the City cannot impose mutual consent. Accordingly, the default scheme outlined in the statute is automatically implemented, with or without the agreement of the City. (U.12). This was reiterated by Mr. Amrose in his testimony. (T.127-129;l PBA Br. at p.25).

The City did not respond regarding whether it could “impose mutual consent.”.

PBA’s argument seems logical – if mutual consent is required, how can it be imposed.

Recommendation – Article 12

For the reasons stated above, it is recommended that the PBA pension proposal be adopted.

Article 27 - Comprehensive Alcohol and Drug Abuse Policy Lieutenants CBA)

Article29 - (Officers and Sergeants CBA)

PBA Position

The City proposed compulsory post-accident drug and alcohol testing. The PBA’s position on this proposal is the same as with the City’s proposal for compelling psychological fitness for duty examinations, which is that the City can already compel testing if they have the requisite legal standard, i.e. reasonable suspicion. If the City has reasonable suspicion that an officer involved in a crash is under the influence of a controlled substance, the City already has the ability to compel testing. Again, the status quo language already accomplishes what the City’s proposal is purportedly trying to fix. (PBA Br. at p.30)

City Position

The Special Magistrate should recommend that the parties adopt the City’s proposed revisions to the parties’ Management Rights Articles (Article 29 in officers and sergeants CBA and Article 27 in the lieutenants’ CBAs). The parties’ proposals are substantively the same except for one significant distinction. The current CBA language

provides the City with the right to conduct drug and alcohol testing in the following circumstances: pre-employment; annual physical examination; reasonable suspicion; and random. The Union seeks to maintain the status quo as to the circumstances under which the City may require an employee to submit to drug and alcohol testing.

The City proposes an additional ground for drug and alcohol testing following accidents. In particular, the City proposes the following new language:

H. Post-Accident Testing – If an employee is involved in an accident in which the employee was driving, the employee will be tested for drugs/alcohol if any one of the following occurs: an individual dies, an individual suffers a bodily injury and immediately receives medical treatment for which a medical report is generated, or one or more vehicles incurs disabling damage as a result of the occurrence. Disabling damage does not include damage that could be remedied temporarily at the scene of an occurrence without special tools or parts; tire disablement without further damage even if no spare tire is available; or damage to headlights, taillights, turn signals, horns, or windshield wipers that make them inoperative.

In support of the City's position on this issue, Mr. Weber testified at hearing that the City already has the right to conduct post-accident testing for all City employees not covered by the PBA contracts, including all City employees represented by the IAFF, all City employees represented by the SEIU, and all unrepresented City employees. Tr. 304-05. Mr. Weber went on to say that the City feels it is critical to add post-accident drug and alcohol testing to its police CBAs to ensure that drugs and alcohol are not the cause of any officer-involved accidents. Tr. 305. Additionally, Mr. Weber testified that he is aware of many other comparator agencies who conduct post-accident drug and alcohol testing. *Id.*

Here, the two factors in Section 447.405, FS most relevant to this issue clearly weigh in favor of the City's position on this issue. In particular, the City's position on this issue is clearly in line with the interest and welfare of the public and the peculiarities of employment of police officers with respect to the hazards of employment, physical qualifications and intellectual qualifications. More specifically, police officers are regularly involved in pursuits, sometimes at high speeds. Their ability to handle those pursuits may be significantly impaired by drugs or alcohol and the potential for major damage or serious bodily harm resulting from such an accident is huge. As a result, the Special Magistrate should adopt the City's position on drug and alcohol testing and recommend to the parties that they adopt the City's proposal on that issue.

Discussion and Analysis

PBA does not disagree that the City currently has the right to conduct post-accident drug and alcohol testing. Apparently, the PBA's only argument against the proposal is that the City currently has the right to require post-accident testing, making the addition of this language unnecessary.

The City's proposal regarding Post-Accident Testing is persuasive, especially in light of the fact that, according to the City, "the City already has the right to conduct post-accident testing for all City employees not covered by the PBA

contracts, including all City employees represented by the IAFF, all City employees represented by the SEIU, and all unrepresented City employees.” (City Br. at p.15). This provision is especially appropriate for police who, because of their regular involvement in pursuits, sometimes at high speeds, are more likely to be involved in accidents than other City employees.

(The City proposal is somewhat confusing from a format point of view. The proposal’s language is prefaced by the letter “H”. There is already a letter H in the current CBA. It is assumed that the City’s intent is to insert this language as new letter H, and then reletter H, I and J as I, J and K.)

Recommendation Article 27 (Lieutenants), Article 29 (Officers and Sergeants)

For the reasons stated above, it is recommended that the City proposal regarding Post Accident Testing be adopted.

Respectfully submitted this 4th day of July, 2025,

s/Thomas W. Young III
Special Magistrate