

UNIFIED GOVERNMENT OF)
WYANDOTTE COUNTY/KANSAS CITY,)
KANSAS – WYANDOTTE COUNTY)
SHERIFF’S DEPARTMENT,)
)
Employer,)
)
And)
)
INTERNATION ASSOCIATION OF)
FIREFIGHTERS, LOCAL NO. 64.)
)
Union.)

Issue: Fact-Finding
PERB Case No.

FACT-FINDING SUBMISSION OF
THE UNIFIED GOVERNMENT OF WYANDOTTE COUNTY/KANSAS
CITY, KANSAS – KANSAS CITY, KANSAS FIRE DEPARTMENT

Ryan B. Denk - #18868
McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Cir. Dr., Ste. 300
Kansas City, Kansas 66103
E-mail: rdenk@mvplaw.com
(913) 371-3838
(913) 371-4722 – Fax

Attorney for Unified Government of
Wyandotte County/Kansas City, Kansas –
Kansas City, Kansas Fire Department

EMPLOYER'S FACT-FINDING SUBMISSION

I. INTRODUCTION.

This fact-finding proceeding involves an impasse in labor negotiations between the Employer, the Unified Government of Wyandotte County / Kansas City, Kansas and the International Association of Firefighters, Local No. 64. The parties have been in negotiations to establish a new contract since 2013. The last contract between the parties expired on December 31, 2013. Specifically, 13 separate negotiation sessions were held on September 10, October 28, November 12, and 22, 2013, November 4, 13 and December 23, 2014, July 14, August 3, December 21 and 22, 2015, January 13 and 27, 2016. At that time the parties jointly agreed that they were at an impasse in negotiations at the negotiation session on January 27, 2016 although no formal petition for declaration of impasse was filed at that time by either party. The parties nonetheless employed the statutory impasse resolution mediation provided for within K.S.A. 75-4332. Specifically, the parties mediated the impasse through FMCS and Pat Dunn holding mediation sessions on March 21st, April 15th, May 3rd, 2016. Additionally, the parties outside of formal mediation sessions communicated their positions through Mr. Dunn until it became clear, at least to the Employer, that the parties were not going to be able to resolve the impasse through mediation. Accordingly, on July 14, 2016 the Employer filed a formal petition for declaration of impasse with the Kansas Public Employer-Employee Relations Board. The Union did not file any answer opposing the Employer's petition and the Kansas Public Employer-Employee Relations Board took measures to appoint a fact-finder. Since that time, the parties conducted

one last mediation session on September 20, 2016 in a last unsuccessful attempt to resolve the impasse prior to fact-finding.

The issues upon which the Employer declared that an impasse existed as identified within its Petition include the following:

1. Term of the Agreement (Article 36 – Duration)
2. Section 8.6 – Sick Leave
3. Article 12 – Medical Plan
4. Article 15 – Discipline
5. Article 16 – Grievance Procedure
6. Article 18 – Vacations
7. Article 21 - Overtime
8. Article 26 – Shift Exchange, Trading Time
9. Article 27 – Promotions
10. Article 28 – Compensation
11. Article 34 – Contract Reopener and Fire Study Implementation
12. Article 35/36 – Minimum Manning
13. Dispatcher Addendum

The following submission provides the Employer’s position as to the above identified issues which are the subject of the parties’ impasse in negotiations.

II. LEGAL STANDARD IN FACT-FINDING PROCEEDING.

Fact-finding is a procedure under the Kansas Public Employer-Employee Relations Act ("PEERA") designed to break an impasse in collective bargaining negotiations. Specifically, upon the declaration of impasse in negotiations by one party, the Kansas Public Employer-Employee Relations Board ("PERB") appoints a mediator to attempt to resolve such impasse. Following mediation, if the impasse persists for seven days, a fact-finder is appointed by PERB.

The only statutory guidance provided to the fact-finder states that the fact-finder shall "conduct a hearing, may administer oaths, and may request the Board to issue subpoenas." K.S.A. § 75-4332(e). The fact-finder is then compelled to make written findings of fact and recommendations for resolution of the dispute, not later than 21 days from the day of appointment. *Id.* No other statutory guidance is provided regarding the conduct of fact-finding proceedings.

Some guidance regarding the conduct of a fact-finding can be discerned from various treatises addressing the issue. As noted by one commentator, fact-finding requires the parties to identify issues in dispute and to present evidence and arguments justifying their positions. *Labor and Employment Arbitration*, 2nd Ed., Bornstein, Sec. 48.03 (2005). During fact-finding the parties are permitted to express their views to the fact-finder relating to the equities of the various proposals in dispute. *Id.* Fact-finding is a very flexible procedure. *Public Sector Labor Relations, Practicing Law Institute*, pg. 222 (1980). Depending on the nature of the dispute and the parties' needs, the fact-finder can serve in a quasi-judicial role or more as a mediator. *Id.* Due to the voluntary nature of fact-finding - i.e. the lack of binding award, the process allows the parties to fashion their own agreement. *Id.*

III. FACT-FINDING CANNOT ADDRESS NON-MANDATORY SUBJECTS OF BARGAINING.

Before commencing discussion of the substantive proposals of the parties during negotiations, the proper scope of this fact-finding proceeding must be determined. A party is prohibited from insisting to the point of impasse upon a non-mandatory or permissive subject of bargaining. *NLRB vs. Wooster Division of Borg-Warner Corp.*, 356 U.S. 342 (1958); *State Department of Administration vs. Public Employee Relations Board*, 257 Kan. 275, 279 (1995).

Therefore, the initial question in the present fact-finding is whether the proposals of the Union

are proposals which relate to mandatory or permissive subjects of bargaining, and accordingly whether this fact-finder has jurisdiction to make a determination as to such subjects.

The Kansas Public Employer-Employee Relations Act makes negotiating over “conditions of employment” mandatory. *State Department of Administration*, 257 Kan. at 287.

The phrase “conditions of employment” is defined at K.S.A. 75-4322(t) as,

“Salaries, wages, hours of work, vacation allowances, sick and injury leave, number of holidays, retirement benefits, insurance benefits, prepaid legal service benefits, wearing apparel, premium pay for overtime, shift differential pay, jury duty and grievance procedures, but nothing in this Act shall authorize the adjustment or change of such matters which have been fixed by statute or by the Constitution of this State.”

To constitute a mandatory subject of bargaining, such subject must be “significantly related” to an express “condition of employment” as defined at K.S.A. 75-4322(t). *Kansas Board of Regents vs. Pittsburg State University Chapter of Kansas-NEA*, 233 Kan. 801, 816 (1983).

However, “a subject does not become mandatorily negotiable by flimsily tying it to an enumerated subject, term and condition.” *Pittsburg State*, 233 Kan. at 816-17.

The "significantly related" test is further clarified in the *Pittsburg State* case in the light of the employer's management rights. Specifically, the court held that a subject of bargaining which unduly interferes with a management right of the public employer as defined by law cannot constitute a mandatory subject of bargaining even if such subject may be deemed to be “significantly related” to an express “condition of employment.” *Id.* The statutory management rights of an employer under the Kansas Public Employer-Employee Relations Act are defined at K.S.A. 75-4326 which provides that,

“Nothing in this Act is intended to circumscribe or modify the existing right of a public employer to:

(a) Direct the work of its employees;

- (b) Hire, promote, demote, transfer, assign and retain employees in positions within the public agency;
- (c) Suspend or discharge employees for proper cause;
- (d) Maintain the efficiency of governmental operations;
- (e) Relieve employees from duties because of lack of work or for other legitimate reasons;
- (f) Take actions as may be necessary to care at the mission of the agency in emergencies; and
- (g) Determine the methods, means and personnel by which operations are to be carried on.”

The Kansas Supreme Court in *USD No. 352 vs. NEA-Goodland*, 246 Kan. 137, 143 (1990) emphasized the critical differences in subjects of bargaining and management rights in the public bargaining context,

“Perhaps the single greatest, and almost universally recognized, limitation on the scope of bargaining or negotiation by State public employees is the concept of managerial prerogative as it has developed in the public sector. In essence, the concept creates a dichotomy between “bargainable” issues, that is, those issues which effect conditions of employment, and issues of “policy” which are exclusively reserved to government discretion and cannot be made mandatory subjects of bargaining.”

Therefore, any subject of bargaining which addresses a statutory management right is not an issue which the union can take to impasse and fact-finding.

Finally, in construing what subjects constitute mandatory and permissive subjects of bargaining, it should be noted that the inclusion of a provision which is a permissive subject of bargaining within a prior collective bargaining agreement does not convert the subject into a mandatory subject of bargaining. See *Allied Chem. & Alkali Workers Local 1 v. Pittsburgh Plate Glass Co.*, 404 U.S. 157 (1971). Nor does past negotiation about a provision as if it were a mandatory subject of bargaining make the subject a mandatory subject of bargaining. See *Kit Mfg. Co.*, 150 N.L.R.B. 662 (1964). Therefore, the parties' past treatment of a subject of

bargaining in negotiations is immaterial in determining whether such subject constitutes a mandatory subject of bargaining.

During negotiations between the parties, the Union presented numerous proposals relating to permissive subjects of bargaining. The Employer in its impasse petition identified all issues which the parties had reached impasse on, both mandatory and permissive subjects. As discussed in more detail below the bargaining subjects of when to conduct promotional testing and minimum manning, including the minimum number of fire companies within the City, are permissive subjects of bargaining which the Union cannot pursue through impasse.

IV. OPEN ISSUES AT THE CONCLUSION OF NEGOTIATIONS.

The issues identified within the impasse Petition are those issues upon which the parties could not reach agreement. The parties' respective positions with respect to these issues are identified below.

ISSUE #1: TERM OF THE AGREEMENT (ARTICLE 36 DURATION).

A. Current Contractual Language.

The most recent contract between the parties expired on December 31, 2013. No subsequent agreements have been entered into since that date. The most recent contractual language relating to term of the agreement provides as follows:

“ARTICLE 36 DURATION

This agreement, and any written amendments made and annexed hereto, shall continue in full force and effect until midnight December 31, 2013. The parties hereto agree that they will begin discussion as quickly as humanly possible in an attempt to arrive at a new Memorandum of Agreement.”

B. Legal Issues Affecting Issue #1: Term of Agreement.

The Kansas Public Employer-Employee Relations Act, Kan. Stat. Ann. 75-4321 *et seq.* (hereinafter “PEERA”), at K.S.A. 75-4330(a) provides that memoranda of understanding may be entered into by the parties for a maximum duration of three (3) years. The purpose of this limitation as stated in the statute is to allow for an exception to the Kansas cash-basis and budget laws which generally only allow municipalities to enter one year agreements based upon any given current year’s budgeted funds. *See* K.S.A. 75-4330(a). The parties have agreed that two memoranda of understanding should be entered into through this impasse process as the contract years they are negotiating exceed three (3) years in duration.

C. The Parties’ Positions.

Both parties’ positions relating to the term of the contract is largely tied to compensation as discussed in more detail below. The Employer is proposing two different memoranda of understanding be entered into covering in the aggregate the four (4) contract years 2014-2017. The Union is also proposing two different memoranda of understanding covering in the

aggregate five (5) contract years, 2014-2018. For the contract year 2018 the Union is proposing a reopener as to compensation only. The Employer has rejected the 2018 contract year proposal from the Union.

D. Employer's Position.

The Employer is unwilling to accept the Union's proposal to enter into a contract for 2018 with a re-opener on compensation only. The Employer has expressed to the Union during negotiations that the budget picture for 2018 in terms of ability to pay for any proposals which have an economic impact is uncertain. Accordingly, the Union's proposal was not for a hard wage increase for 2018, but only to allow for a re-opener on compensation. What the Union's proposal does not recognize is that there are many provisions within the contract which have an economic impact other than just wage increases. Therefore, if there were a re-opener, it would have to go beyond a re-opener on wages. The Employer believes that the best approach is to simply negotiate a contract through the end of 2017 and then to enter into new contract negotiations for contract years 2018 and beyond.

ISSUE #2: SICK AND VACATION LEAVE ACCRUALS – ARTICLES 8.6 AND 18

A. Employer Proposal.

The Employer made several proposals relating to sick and vacation leave accruals. All of the proposals divided employees into two different tiers for accrual of the respective leaves. The first tier of employees included everyone who was hired prior to the date of execution of the contract (which at the time had been proposed to be January 1, 2016). The second tier included all employees hired after the execution of the contract. The vacation and sick leave accruals for the first tier of employees, meaning current employees, remain unchanged. As to the second tier of employees who would be hired after the execution of the contract, the Employer proposed to have reduced sick and vacation leave accruals as well as reduced cash out of such accruals upon separation from employment. Specifically, with respect to sick leave for these second tier employees, their sick leave accrual was reduced from 1¼ calendar days for each full month of service to 1 calendar for each full month of service.

With respect to vacation leave accruals for this second tier of employees, the reduced accrual is differentiated among 24-hour shift employees (fire suppression) and 40 hour per week employees. For 24-hour shift employees, their vacation entitlement was reduced by one working day (24-hour work day). For 40 hour employees, the following schedule is proposed.

<u>Completed Years of Continuous Service</u>	<u>Vacation Entitlement</u>
0-6 months	pro-rated
2 through 4 years	10 eight-hour work days (80 hours)
5 through 8 years	16 eight-hour work days (128 hours)
9 through 13 years	19 eight-hour work days (152 hours)
14 through 19 years	24 eight-hour work days (192 hours)

Fraternal Order of Police, Lodge No. 40
Painters District Council No. 3
PSEU
SEIU
IBEW, Local 53

Specifically, the wage increases for those bargaining units who accepted reduced sick and vacation leave accruals were as follows:

May 1, 2015 – 1.5%

July 1, 2016 – 1.5%

January 1, 2017 – 2%

In contrast, those bargaining units who did not accept the reduced leave accruals received wage increases according to the following schedule:

January 1, 2016 – 1%

July 1, 2016 – 2%

January 1, 2017 – 2%

B. Union Proposal.

The Union has rejected both options under the Employer's proposal. Specifically, the Union has rejected reduced leave accruals for new employees and the Union has not accepted the Employer's proposed compensation.

C. Employer Position.

The Employer's proposal with respect to new hire employees and differing leave accruals originated out of research which was conducted by the Human Resources Department of the Unified Government and under a contract with an independent consultant, Arthur J. Gallagher & Co. ("Gallagher"), which revealed that the Unified Government's leave benefits were well in excess of equivalent leave benefits granted by other municipalities. The proposal to effect

changes in leave benefits for new hires only was proposed so that benefits would not be taken away from current employees. Below is a comparison of how the Unified Government's leave benefits exceed those benefits granted by other municipalities according to the study results generated by the Gallagher study which was submitted to the Employer in July of 2014.

Vacation				
Fire	Seniority (< 2 yrs.)	Seniority (2-4 yrs.)	Seniority (5-12 yrs.)	Seniority (12+ yrs.)
Average (8 hr. days)	10.8 86.4 hours	10.8 86.4 hours	14.9 119.2 hours	19.7 157.6 hours
U.G. (24-hr. shifts)	8 192 hours	8 192 hours	10 240 hours	12 288 hours
U.G. (8 hr. shifts)	9 72 hours	15 120 hours	20 160 hours	27 216 hours

Fire	Sick Leave (All Seniorities)
Average (8 hr. days)	15.3 122.4 hours
U.G. (24-hr. shifts)	15 360 hours
U.G. (8 hr. shifts)	15 120 hours

The Employer's alternative proposal to forego the differing sick and vacation leave benefits for new hires in exchange for reduced compensation was a recognition by the Unified Government that the refusal to accept the reduced leave accruals has a direct economic impact upon the Unified Government. Accordingly, for those unions that were not agreeable to accepting reduced leave accruals, their compensation structure would be as outlined above. In this case, although the Union has accepted the lower compensation in terms of cost of living

adjustments, the Union has also demanded additional compensation in terms of special duty pay, longevity pay and other compensation items which the Employer has rejected for other bargaining units. Therefore, the Employer does not consider that the Union has accepted lesser compensation sufficient to warrant waiver of its proposal on sick and vacation leave.

ISSUE #3: MEDICAL PLAN – ARTICLE 12

A. Employer Proposal.

The Employer has two proposals under the medical plan. The first proposal is to implement a \$30.00 per month, per employee individual premium. This individual premium would be effective February 1, 2016. Prior to February 1, 2016, the Employer would pay 100% of the individual premium as has been done under prior contracts. The second proposal is clarification language that the medical plans which have already been adopted for other U.G. employees organization wide (including the 12 other bargaining units representing employees of the U.G.), for all contract years – i.e. 2014 – 2017 – are the same medical plans available to bargaining unit employees represented by the Union. The U.G. will not agree to a separate medical plan with separate and differing medical benefits for sworn Fire Department employees as compared with those medical benefits provided to all other U.G. employees as the Union is requesting.

B. Union Proposal.

The Union's last proposal relating to health insurance was that they would agree to pay \$30.00 per month per employee which would be dedicated towards a health insurance reserve fund but that the Employer would still have to pay 100% of the individual premium. The Union has continued to insist on a differing health plan from the plan granted to other U.G. employees. Specifically, the Union has continued to insist that the health plan in place in 2014 should be applied to future contract years including 2015, 2016 and presumably 2017.

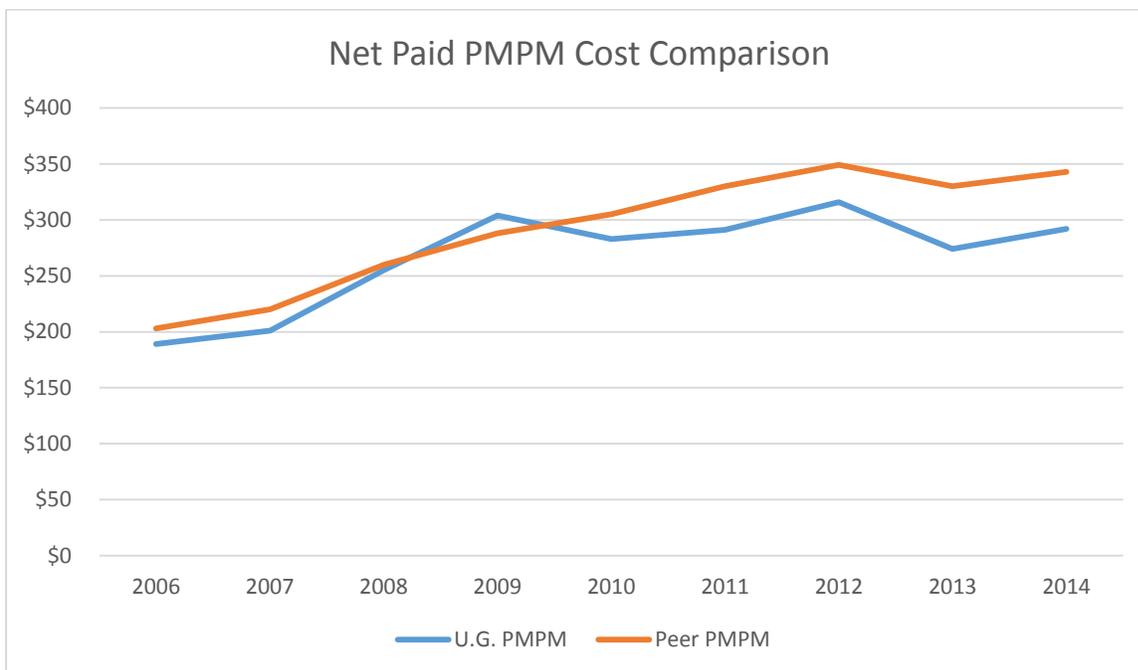
C. Employer Position.

The need for an individual contribution and for medical plan design changes in years 2015 and beyond is and was driven primarily by economic necessity but also by a recognition

that almost all comparable employers to the Unified Government have similar requirements within their medical plans.

1. Increase in health insurance costs.

The below chart shows the Per Member Per Month cost comparison between the Unified Government and its peer employer costs from 2006 – 2014 as supplied by the U.G.’s third party health care administrator, United Healthcare.



As you can see from this chart, health care costs have risen significantly over the past several years both over the industry as a whole and as experienced by the U.G.’s health plan.

2. Health insurance fund.

a. History of reserves within health fund.

Prior to the beginning of the “great recession” in 2008 and 2009, the U.G. had built up healthy reserves within the health insurance fund. Since the advent of the “great recession,”

reduced revenues in combination with increased health insurance costs have had a negative impact on the U.G.'s health insurance reserves.

With the advent of the great recession the U.G. experienced significant declines in revenues. Major factors driving declines in U.G. revenues included a decline in real property tax revenues and a decline in sales tax revenues. When the "housing bubble" burst in 2008 and 2009, real property valuations declined significantly. 2008 real property valuations within the U.G. tax base totaled \$1,270,000,000. These property valuations dropped dramatically in 2009 and to date have only recovered to \$1,182,000,000 which is still \$88,000,000 or 7% less than valuations were at in 2008. As real property valuations declined, assessed valuations of real property for purposes of assessment of property taxes also declined significantly. As a result, property tax revenues declined significantly.

Similarly, sales tax revenues were negatively affected by the downturn in the economy. As consumers slowed their spending, there were fewer sales against which sales taxes could be levied. Other revenues losses at this time included: (1) elimination of previously received revenues from the State; (2) loss of mortgage tax revenues due to reduced housing starts; (3) loss of building permit revenues due to reduced construction activity; (4) loss of gaming revenues; and, (5) loss of investment revenues due to declining interest rates. In total, at the height of the recession in 2009 the U.G. lost \$15.4M in revenues as compared to the prior year.

The net result of the U.G.'s decreased revenue is that it had to undertake several cost-cutting measures including furloughs of non-public safety personnel, a hiring freeze, deferred capital maintenance and replacement and across the board budget cuts. The downturn in the economy and the attendant decrease in U.G. revenues also negatively affected the U.G.'s ability to maintain health insurance reserves at the pre-recession levels. As a result of these revenue

declines, the U.G. was unable to fully fund its expense obligations on an annualized basis in years 2009, 2010 and 2011 and was instead compelled to spend down its reserves which had been built up in the health fund. The U.G. contributions that it was unable to pay in these years were as follows:

Year	Deferred Employer Contribution
2009	\$2,067,162
2010	\$1,007,118
2011	\$1,774,170
Total:	\$4,848,451

Over the past several years, the U.G. has made contributions in excess of the premium requirements for the respective plan year in order to “catch-up” on the deferred contributions from 2009-2011. These additional contributions have been as follows:

Year	Additional Contribution
2012	\$200,000
2014	\$650,000
2015	\$2,000,000
2016	\$1,850,000
Total:	\$4,700,000

By the end of FY2016, the \$4.8M in deferred contributions will have been nearly wholly paid up through the additional \$4.7M in additional employer contributions.

Revenue declines and deferred contributions only tell part of the story of the health fund reserve balance. The other declines in the reserve fund are due to the historic health insurance cost increases as discussed above.

The below table shows the history of the health insurance fund reserves:

Year	Health Fund Balance	Balance as a % of Claims
2008	\$13,190,496	52.2%
2009	\$11,240,623	38.2%
2010	\$8,907,784	33.4%
2011	\$6,973,400	25.7%
2012	\$3,858,632	13.0%
2013	\$2,488,935	9.0%
2014	(\$1,302,620)	-4.2%
2015	(\$2,165,962)	-7.3%
2016	(\$7,619,492)	-23.5%

b. Industry recommendation for reserves.

The above table demonstrates that the health fund is in a net negative position and has been so since 2014. The industry recommendation as provided by the Unified Government’s third party administrator, United Healthcare, is that a plan maintain reserves equivalent to 60 days of plan expenses. The above table expresses the health insurance fund balance percentage in terms of *annual* claims incurred. Therefore, the target reserve percentage is 16% which is

equivalent to 60 days of plan expenses. In terms of actual dollars based upon projected 2016 plan expenses, 16% of plan expenses is equivalent to \$5.2M.

c. Effect of failure to maintain proper reserves.

The effect of the failure to maintain proper reserves within the health fund is that the U.G. has to come out of pocket and pay these claims from other funds. As you can see from the above table, at the end of 2014 the health fund was in a net negative position in the amount \$1.3M and in 2015 the fund was in a negative position in the amount of \$2.1M. This meant that in both of these years, the health fund was not a self-sustaining fund and needed contributions from other U.G. funds. The U.G. accordingly had to pay the excess \$1.3M in 2014 claims and the excess \$2.1M in 2015 claims from available general fund revenues. In 2016 year-to-date, the U.G. has transferred \$4M of general fund revenues into the health fund in order to pay claims. The negative \$7.6M balance in the health fund reflects the obligation of the health fund to repay these fund transfers from the general fund. In years 2014, 2015 and 2016 the U.G. has or will have to make the following payments to the health fund: (1) employer's share of the health insurance premium; (2) additional or "catch-up" contribution to pay for deferred contributions from 2009-2011; and, (3) claim costs in excess of premium contributions and reserves from the general fund.

3. Plan Changes in 2015 and 2016.

In addition to the \$30 per month, per employee health insurance premium contribution, the Employer has proposed contractual language making clear that bargaining unit members shall receive the same health insurance plans and benefits as those received by other employees of the U.G. for all years of the contract including 2015-2017. The issue in controversy surrounds changes to the health insurance plans for plan years 2015 and 2016. Some of these

plan changes included adjustments to co-pays and deductibles. The union has opposed acceptance of the 2015 and 2016 plan year changes and has proposed that its members should receive health plan benefits at the same level as they were offered under the 2014 health plan.

For well over a decade, the parties have had contractual language which provides for a committee referred to as the Employee Benefit Committee (“EBC”). This committee is composed of a representative of each of the 13 labor unions who represent employees within the U.G. as well as representatives of management and non-union employees. The U.G.’s health plans are self-insured and self-funded plans meaning that the U.G. does not buy an insurance policy for its employees but rather self-funds its health benefits. The U.G. does however contract with United Healthcare to act as a third party administrator of its self-insured plans. United Healthcare along with Brian Johnston, an attorney who specializes in employee benefits law, act as consultants who advise the EBC. The EBC acts as a recommending body to the U.G. administrator relating to decisions associated with the U.G.’s employee health care plans.

a. 2015 Plan Year Changes.

At an EBC committee meeting on August 19, 2014, the U.G.’s consultants presented the following information about shortfalls within the health insurance fund projected for the 2015 plan based upon their actuarial projections if no health plan design changes were made. These were based upon actual revenues and expenses through June 30, 2014 and projected revenues and expenses for the remainder of 2014 and 2015.

	2014	2015
<i>Employee Contributions</i>	\$3,291,384	\$3,324,298
<i>Employer Contributions</i>	\$21,312,184	\$21,525,306
<i>Retiree Contributions</i>	\$2,209,278	\$2,231,371
<i>Other Income/Reimb.</i>	\$570,122	\$426,562
Total Income:	\$27,382,968	\$27,507,537
<i>Total Expense</i>	\$28,942,998	\$29,926,681
<i>Income/Loss Per Year</i>	(\$1,560,030)	(\$2,419,144)

The following notes explain how some of the above estimates were calculated.

Employee Contributions: Employee contributions for 2015 were based on the 2014 health plans in place. These plans established a 25% premium contribution for family coverage. The employee contribution calculations above are the actual and projected revenues to the plan from the 25% family premium contribution from employees. The U.G. paid 100% of the employee premium contribution for employee coverage whether or not the employee elected for family coverage or not. Therefore, employees electing to have family coverage, which covered both the individual employee and their dependents, paid approximately 15% of the total premium for family coverage.

Employer Contributions: Employer contributions were similarly calculated from the 2014 health plans in place and the proscribed employer contribution level. These contributions

included contributions for 100% of the premium payment for covered employees and 75% of the premium payment for covered dependents of covered employees. The projections for 2015 similarly assumed no plan design changes from 2014.

The above projections presented at the August 19, 2014 EBC meeting demonstrated that, without plan design changes for 2015, the plan would experience a shortfall or a “gap” of \$2.4M for 2015. At the August 19, 2014 and then subsequent EBC meetings in 2014, the discussion centered around how to fill that gap through plan design changes. The discussed plan design changes not only addressed generation of additional revenue, but also addressed measures to encourage U.G. employees to make smarter and more cost-efficient health care decisions. Ultimately, the EBC failed to make any recommendation to the U.G. Administrator’s office as to how to fill this shortfall. Accordingly, as the U.G. was required to establish its plans so that employees could make their necessary elections for the 2015 calendar year, the U.G. Administrator’s office adopted plans as recommended by its consultants for the 2015 calendar year.

The 2015 health plans adopted by the U.G. Administrator have been uniformly offered to all U.G. employees and have been accepted by all of the bargaining units who represent employees at the Unified Government with the sole exception of the IAFF. The IAFF has insisted that it wants the same benefits granted under the 2014 plan for calendar years 2015, 2016 and presumably beyond. The U.G. has rejected the IAFF’s position as it has refused to have a separate and more benefit rich plan for the Fire union employees than the health plans offered to its other employees organization wide.

b. 2016 Plan Year Changes.

At the EBC committee meeting on August 5, 2015, the U.G.’s consultants presented the following information about shortfalls within the health insurance fund projected for the 2016 plan based upon their actuarial projections without plan design changes.

	2015	2016
<i>Employee Contributions</i>	\$3,190,516	\$3,222,421
<i>Employer Contributions</i>	\$20,110,030	\$20,311,130
<i>Retiree Contributions</i>	\$2,347,120	\$2,370,591
<i>Other Income / Reimb.</i>	\$3,021,535	\$1,099,248
Total Income:	\$28,669,201	\$27,003,391
<i>Total Expenses</i>	\$29,532,543	\$32,456,921
<i>Income/Loss Per Year</i>	(\$863,342)	(\$5,453,530)

The above projections presented at the August 5, 2015 EBC meeting demonstrated that without plan design changes for 2016, the plan would experience a shortfall or a “gap” of \$5.4M. At the August 5, 2015 and then subsequent EBC meetings in 2015 the discussion again centered around how to fill that gap through plan design changes. As in 2014, the EBC in 2015 failed to make any recommendation to the U.G. Administrator’s office as to how to fill this shortfall. Accordingly, as the U.G. was required to establish its plans so that employees could make their necessary elections for the 2016 calendar year, the U.G. Administrator’s office adopted plans as

recommended by its consultants for the 2016 calendar year. The 2016 health plans adopted by the U.G. Administrator have been uniformly offered to all U.G. employees and have been accepted by all of the bargaining units who represent employees at the Unified Government with the sole exception of the IAFF.

4. Employer/Employee Share of Health Care Costs.

The U.G.’s position throughout negotiations relative to the proposed changes to health care has been that the changes are needed to bring the U.G. in line with the market average of comparable employers in terms of employer-employee cost sharing of health care costs. As health care costs have dramatically increased over the past decade, data demonstrates that peer group employers and employees have shared in those increased costs. The U.G. quite simply had not kept up with this market trend and had continued to bear the lion’s share of the brunt of these cost increases. The below data shows the respective U.G. Employer share in relation to the U.G. Employee share of the entire health care cost as allocated between the U.G. and its employees over the years 2010-2015. These percentages include all payments including co-pays, deductible and premium contributions and include the plan design changes for 2015 and 2016.

Year	U.G. (Employer) Share of Total Health Care Spend	U.G. Employee Share of Total Health Care Spend
2010	95%	5%
2011	94%	6%
2012	94.3%	5.7%
2013	92.2%	7.8%
2014	90.1%	9.9%
2015	85.1%	14.9%

In comparison to the foregoing data, the following represents the average cost share percentage for peer group employers as supplied by the U.G. third party health care administrator United Healthcare.

Year	Peer Employer Share of Total Health Care Spend	Peer Employee Share of Total Health Care Spend
2010	93%	7%
2011	92.3%	7.7%
2012	87.8%	12.2%
2013	86.9%	13.1%
2014	86.6%	13.4%
2015	83.5%	16.5%

As you can see from this data, the U.G.’s share of the total health care costs, even after the 2015 and 2016 plan year design changes still outpaces the market average for its peer employers.

4. Summary of Employer’s Position.

In summary, the U.G. contends that its proposal to have employees contribute \$30 per member, per month to their individual health insurance premium and to have the same health care coverage for the IAFF represented membership as is offered to other U.G. employees, including those plan design changes for years 2015-2017, is absolutely necessary. The above data regarding the increase in health insurance costs and the negative balance in the health insurance fund necessitate such changes. Additionally, the above data also demonstrates that, even with the employer’s proposed changes, the employer’s share of the total health care costs in

relation to the employee's share of the costs still outpaces the average of the U.G.'s peer employers.

ISSUE #4: DISCIPLINE – ARTICLE 15

A. Employer Proposal.

Current contract language establishes a limit on the number of suspension days that the Employer can require an employee to serve without allowing the employee to first exhaust his or her grievance rights relative to the underlying discipline. This limit is set at 2 shifts for 24-hour shift employees and 4 shifts for 8-hour shift employees. The Employer has proposed to increase the limits from 2 shifts to 4 shifts for 24-hour shift employees and from 4 shifts to 8 shifts for 8-hour shift employees.

B. Union Proposal.

The union has proposed to leave the current language in place.

C. Employer Position.

The Employer's proposal is intended to afford management with greater latitude in meting out discipline and is also in line with management's authority with respect to suspension days in its other union contracts with other bargaining units. 4 24-hour shifts and 8 8-hour shifts appropriately reflects that amount of suspension time which may be meted out for discipline which is not of the most severe nature which typically would include suspensions of 30 days or more or termination.

ISSUE #5: GRIEVANCE PROCEDURE – ARTICLE 16

A. Employer Proposal.

The Employer has proposed clarification language relating to the time frame within which the Union is required to file a grievance. Current language states that the Union must file a grievance “within seven (7) calendar days from the time that the grievance occurred or became known, or reasonably should have been known.” The Employer has proposed clarifying language providing that the Union must file a grievance “within seven (7) calendar days from *the time that the events giving rise to* the grievance occurred or became known, or reasonably should have been known.”

B. Union Proposal.

The Union has indicated that it was going to check with its legal counsel and determine their position relative to the proposed language change. To date, the Union has yet to provide a response.

C. Employer Position.

From the Employer’s perspective, this is simply clarification language. The language as written is how the parties have applied the referenced time limit.

ISSUE #6: OVERTIME – ARTICLE 21

A. Employer Proposal.

The Employer has proposed two substantive changes to the overtime language within the contract. The first proposed change relates to the procedure by which overtime is assigned. The current policy is established in a Departmental General Order which was last revised in 1996. The Employer is now proposing to include language relating to the assignment of overtime in the contract. The substantive difference from the current practice of overtime assignment relates to what the Department is required to do when it is unable to reach the next employee on the overtime list by telephone in order to offer that employee the overtime shift. The current policy provides for two instances when the Department is required to have a two minute waiting period before moving to the next employee on the overtime list. These two instances are when the Department gets a busy signal when attempting to contact an employee, and when the Department gets an answering machine. The Employer's proposal is to eliminate the two minute waiting period before the Department can move to the next employee on the overtime list.

The second substantive proposal under overtime is to reduce the amount of compensatory time that new employees – i.e. those employees hired after January 1, 2016 – can accumulate from 480 hours to 240 hours.

B. Union Proposal.

The union has indicated that it agrees in principal that the current method for the calling of overtime is untenable. The union has not indicated whether it agrees to the Employer's specific proposal or not. The Union has rejected the Employer's proposal to have a reduced compensatory leave accumulation for new employees.

C. Employer Position.

1. Calling procedure for overtime assignment.

The current system for the calling of overtime with the two minute waiting periods is untenable. This system has resulted in management officials spending several hours a day, every day, in calling employees in an attempt to fill overtime shifts. Although the Employer's proposal eliminates the two minute waiting period, it does however allow an employee who has missed an overtime phone call to call the Department back within two minutes and accept the overtime shift if the shift is still yet to be assigned to another employee.

2. Reduction of compensatory time accruals for new employees.

The reduction in compensatory time that new employees may accumulate is similarly related to the reduction in vacation and sick leave accruals for new employees discussed above. Compensatory time is the accrual of paid leave off in lieu of receipt of overtime compensation for overtime hours worked. Federal law caps the amount of compensatory time that may be accrued at 480 hours per employee. Current contractual language allows bargaining unit employees to accrue up to the Federally proscribed maximum of 480. Any overtime hours worked in excess of whatever cap is established are simply paid at the overtime rate of time and a half in cash.

The Employer's proposal is premised upon the disparate benefit that Fire Department employees get as compared to other U.G. employees. The highest amount of compensatory time that is permitted within any of the U.G.'s 12 other bargaining units is 220 hours. The disparity in the amount of compensatory time hours which may be accumulated becomes most relevant at retirement. At retirement, the U.G. is required to "cash out" an employee's compensatory time

hours within their time bank through a lump sum payment. For employees now retiring, this cash out is counted towards their final average salary computation for purposes of calculation of their retirement pension under the State Kansas Police and Fire (“KP&F”), which is the retirement system for police and fire employees. Simply stated, the more that is paid out through this lump sum payment, the higher the employee’s pension benefit. A comparison of the average compensatory time payouts for retiring police and fire employees over the past three years shows the disparity in favor of fire department employees who are permitted to accumulate 480 compensatory hours vs. police department employees who are permitted to accumulate 220 hours.

	Police Avg. Comp Time Payout	Fire Avg. Comp Time Payout
2014	(5 retirees) \$3,766	(12 retirees) \$12,468
2015	(21 retirees) \$6,440	(19 retirees) \$9,590
2016	(4 retirees) \$4,598	(10 retirees) \$11,487
Total:	(30 retirees) \$5,749	(41 retirees) \$10,895

The Employer is proposing to change the amount of compensatory hours that may be accumulated for new employees only so that current employees are not negatively affected by this change.

ISSUE #7: SHIFT EXCHANGE, TRADING TIME – ARTICLE 26

A. Employer Proposal.

The Employer has two proposals relative to shift exchange / trading of time. First, the Employer is proposing that an employee cannot have a trade imbalance of either plus or minus six (6) shifts. For example, if an employee has traded away six (6) shifts to other employees, he or she cannot trade away a seventh shift until that employee agrees to work a traded shift from another employee. Similarly, an employee who has worked six (6) traded shifts cannot pick up a seventh traded shift until that employee trades back another shift. The second proposal of the Employer is that an employee cannot pay another employee to work his or her traded shift.

B. Union Proposal.

The Union proposes current contractual language relating to trading of time.

C. Employer's Position.

Shift exchange or the trading of time has come under some public scrutiny recently resulting in a study and report by the Legislative Auditor's Office in March of 2016. The practice of trading time, which is the practice where one employee agrees to work for another employee, is permitted under the Fair Labor Standards Act and is a common practice in Fire Departments. Current contractual language indicates that time traded is to be paid back. The audit revealed that time traded was not traded back in many instances and that there were several employees with significant trade imbalances. Table 4 within the audit reflected trade imbalances during 2015 greater than 40 trades. The table did not list the individual employee's names, but rather identified the 12 employees by title. This table is restated below:

Title	Total Time Traded Off	Total Traded Time Worked	Imbalance
Master Firefighter	5	156	151
Senior Firefighter	5	148	143
Master Fire Captain	94	0	94
Firefighter/MICT II	9	91	82
Firefighter/MICT IIA	8	68	60
Firefighter I	30	84	54
Senior Fire Captain	9	59	50
Senior Firefighter MICT	5	51	46
Firefighter	19	61	42

Maintaining a fairly balanced amount of shifts traded, as proposed by the Employer, also serves to ensure safety. As recognized by the audit, “Another contributor to safety issues could arise when a firefighter is working his shift and other shifts sequentially. We found instances of employees working multiple shifts in a row due to time trading.”

With respect to employees paying other employees to work their shift, if this is occurring, it occurs directly between employees. Relative to these payments the auditor queries: “If cash payments are being made, questions arise such as (1) at what rate are these employees being paid, (2) are the payments documented and, (3) are the individuals compliant with IRS regulations?” The prohibition against cash payments avoids these problematic queries. Additionally, prohibition against cash payments is consistent with what the Employer had previously understood the contractual requirement of paying back of a trade through a trade back of an equivalent shift.

ISSUE #8: PROMOTIONS – ARTICLE 27

A. Employer Proposal.

The Employer has proposed several changes to the promotional process proscribed by the prior promotions language. These changes include: (1) reducing the percentage required to pass the promotional examination from 75% to 70%; (2) elimination of seniority credits for promotion to the ranks of driver and captain; (3) establish eligibility pre-requisites to test for Captain; and, (4) clarify that there shall be an active promotional list at all times and that the Department is permitted to conduct promotional testing whenever necessary in order to establish an active promotional list.

B. Union Proposal.

The Union has agreed that some changes to the promotional process are appropriate and some of the referenced changes were made based upon the recommendation of a negotiation sub-committee with representatives of the union and management.

C. Employer's Position.

The only part of the Employer's proposal which the Employer believes may be in dispute is its proposal that includes clarifying language that there shall be an active promotional list at all times and that the Department is permitted to conduct promotional testing whenever necessary in order to establish an active promotional list. Currently, there is disagreement between the Employer and the Union as to whether the current contractual language would allow the Employer to conduct promotional testing for the purposes of establishing new promotional lists after the expiration of the last lists some of which expired at the end of 2013. The Department's proposal would allow it to conduct promotional testing as necessary so that it has the ability to

maintain an active promotional list at all times. It is the Department's position that the decision as to when to conduct promotional testing is in fact a management right.

Pursuant to K.S.A. §75-4326, the right of the public employer to promote employees constitutes a management right. See K.S.A. §75-4326(b). The Kansas Supreme Court interpreted and applied this statutory provision in *Kansas Bd. Of Regents v. Pittsburgh State KNEA*, 233 Kan. 801 (1983) where it states,

“As stated at K.S.A. 75-4326, the right to determine that a promotion is in order is undeniably a management right. If and when management decides to promote, the action will have a significant relation to the terms and conditions of employment of the affected unit member(s), generally in regard to their salary and/or hours of work.... The portions of a promotion policy which would be subject to mandatory negotiations would include the criteria, procedures, or methods by which candidates for promotion are identified and the action is completed.”

The Employer's proposal to include language within the contract to allow it to conduct such promotional testing as necessary to maintain an active promotional list at all times is consistent with its management right to determine when to promote.

The inability of the Department to maintain active promotional lists at all times has caused an extreme hardship on the Department. The three promotional lists within the Department expired as follows:

<i>List</i>	<i>Expiration / Exhaustion Date</i>
Driver	December 31, 2013
Captain	January 7, 2016
Battalion Chief	April 3, 2014

Currently of the 15 authorized Battalion Chief positions, only 7 positions are filled with 8 vacancies. Of the 66 authorized Fire Driver positions, only 41 are filled within 25 vacancies. Additionally, the inability to make promotions to the rank of Battalion Chief has also effected the Department's ability to promote from the ranks of the Battalion Chiefs to the command staff rank of Assistant Chief. Of the 8 authorized Assistant Chief positions, only 4 positions are currently filled.

The Department's inability to promote has caused it to assign employees of a lower rank to fill positions on a daily basis. This situation is unworkable for several reasons including the following: (1) employees filling positions on a temporary, out-of-grade basis have not received the proper training and mentorship necessary to perform their temporary job functions on a *de facto* full time basis; (2) employees temporarily assigned to a higher rank lack the necessary supervisory authority necessary to effectively manage employees under their supervision; (3) employee career advancement and professional development are unnecessarily delayed by years; (4) focus of understaffed management is covering the bare necessities of operating the Department due to insufficient management manpower; (5) morale of career advancement motivated employees suffers due to unnecessary delay in promotional opportunities; (6) those in acting positions are hesitant to take necessary appropriate remedial action relating to disciplinary issues; and, (7) command level morale suffers greatly due to overwork associated with short staffing.

The below table demonstrates the marketed increase in out of class pay through the progression of the expiration of the respective promotional lists.

Year	Fire Dept. out of class pay expenditure
2016 (through 34 weeks)	\$242,138
2015	\$434,716
2014	\$239,988
2013	\$200,346
2012	\$198,065

This table shows the marked increase in out of class pay as promotional lists expire and as retirements and accordingly vacancies in superior ranks increased.

ISSUE #9: COMPENSATION – ARTICLE 28

A. Cost of Living (“COLA”) Wage Adjustments.

1. Employer Proposal.

As referenced above, the Employer has offered two alternative wage proposals dependent upon whether or not the Union accepts the lower accruals for vacation and sick leave and compensatory time. The wage increases offered if the Union accepted reduced sick and vacation leave and compensatory time accruals were as follows:

May 1, 2015 – 1.5%

July 1, 2016 – 1.5%

January 1, 2017 – 2%

If the Union did not accept the reduced leave accruals the following schedule of wage increases has been offered:

January 1, 2016 – 1%

July 1, 2016 – 2%

January 1, 2017 – 2%

2. Union Proposal.

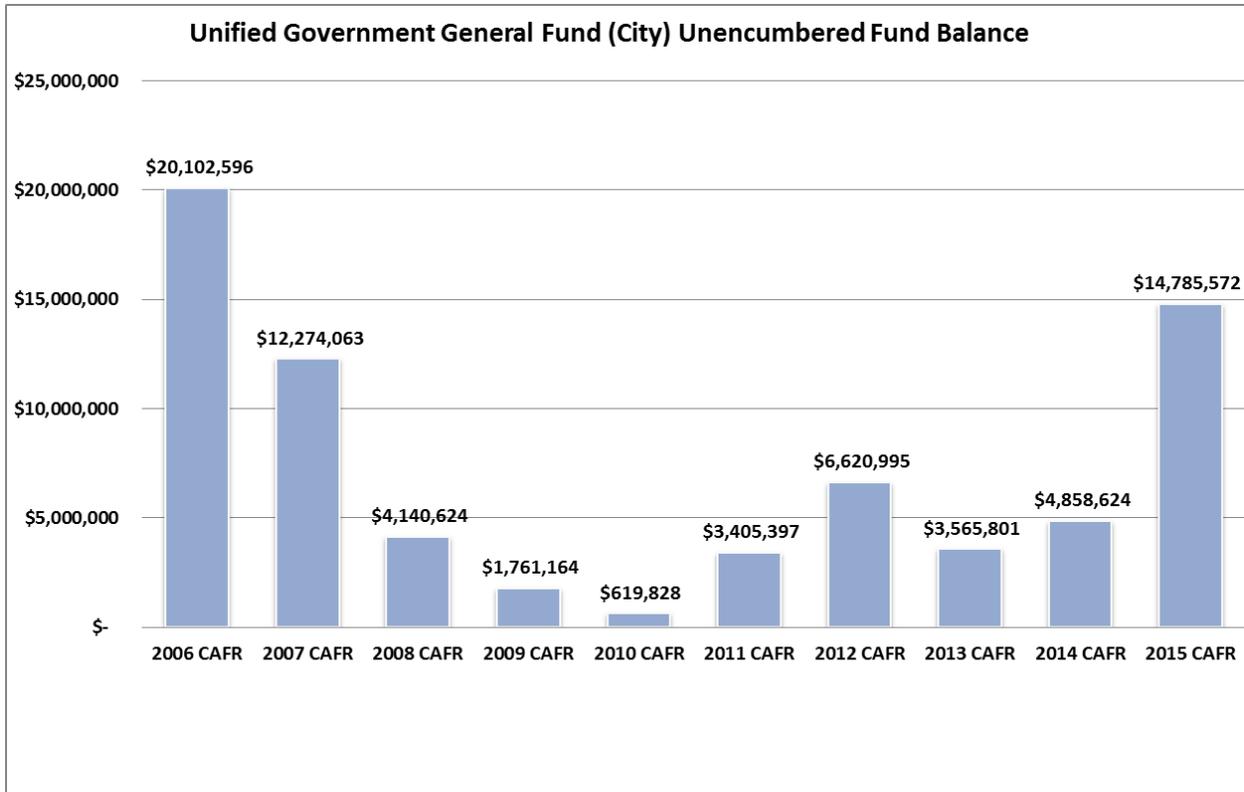
The union has indicated that it would accept the lower wages in lieu of acceptance of the reduced leave accruals, however, the union has requested additional compensation including longevity pay, and education pay which the Employer has rejected.

3. Employer Position.

The proposed wage increases offered by the U.G. reflects the U.G.'s financial capability to pay for such wage increases. The wage increases offered to the Fire Department are the same wage increases offered and accepted by all other U.G. employees including the 12 other bargaining units which now have contracts through the end of 2017.

a. City General Fund Balance.

The primary funding source for Fire Department compensation is the City General Fund. Typical revenue sources contributing to the City General Fund include: property taxes, sales taxes, permit and license fees, charges for service, and fines. Expenditures from the City General Fund include: personnel costs, services, supplies and capital expenditures. Below is a summary of the fund balance for the City General Fund over the past 10 years based upon the Unified Government's year end audits.



A greater detail of City General Fund revenues, expenses and fund balance over the past 10 years is attached hereto as Exhibit 1. The established budget for 2016, which was amended mid-year, reflects anticipated City General Fund revenues in the amount of \$146.8M with expenses in the amount of \$152.9M with an end of year fund balance in the amount of \$8.7M.

The above table reflects that the fund balance for the City General Fund took a significant hit during the great recession and has been slow to recover. In 2015, the fund balance experienced a one time spike from 2014 due to a \$9.5M dollar land sale of real property in the Village West area of Kansas City, Kansas to the Cerner Corporation. The funds from this land sale were committed to paying operating costs, restoring the general fund balance, and repaying funds that had been underfunded during the recession, including a \$2M payment to the health fund. For FY2016 spending outpaced revenue and the fund balance is projected to be at \$8.7M at the end of the year. The budget passed by the U.G. Commission in August of this year has

projected general fund revenues in the amount of \$150M and expenses in the amount of \$152.8M with an end of year fund balance in the amount of \$6.2M.

b. Recommended general fund balance.

Maintenance of a healthy General Fund balance is important to the operations of the Unified Government. The Government Finance Officers Association (“GFOA”), the widely recognized organization of government finance officers who adopts standards commonly accepted within local government finance, has established as a best practice that,

“GFOA recommends, at a minimum, that general-purpose governments, regardless of size, maintain unrestricted budgetary fund balance in their general fund of no less than two months of regular general fund operating revenues or regular general fund operating expenditures.”

Exhibit 2, GFOA General Fund Best Practice.

Two months of unrestricted budgetary fund balance within the City general based upon \$146.8M in anticipated revenues and \$152.9M of anticipated expenses in 2016 would require an end of year fund balance between \$24M and \$25.4M. The U.G.’s projected reserves of \$8.7M this year and \$6.2M next year will fall well short of this mark. Failure to maintain proper fund balances can effect credit ratings and accordingly can affect the interest rates that the U.G. receives when it finances debt.

c. STAR Bond Retirement.

Revenue to pay for wage increases in late 2016 into 2017 is expected to be received due to the U.G.’s retirement of STAR bonds at the Village West and Kansas Speedway development. The retirement of STAR bonds is expected to contribute an additional \$12M annually to the U.G. by way of receipt of additional sales tax revenues. These revenues have been allocated by the

Unified Government Commissioners in their 2017 budget towards: wage increases, repayment of money borrowed or deferred from special funds including the health fund, capital projects previously deferred, deferred maintenance on infrastructure including streets, rebuilding of fund balances and property tax relief. In total \$1.75M of the \$12M, or 15% of the monies to be received in 2017 from the retirement of the STAR Bonds will be committed to Fire Department operations including wage increases and purchase of new fire apparatus, ambulances and equipment.

d. Special purpose sales taxes.

A second source of revenue for Fire Department personnel costs include special purpose sales taxes for Emergency Medical Service at the rate of 1/4th of a cent and a 3/8th cent sales tax for public safety and infrastructure. In 2016, \$5.3M is budgeted to be expended on personnel costs for EMS / Fire Department personnel costs from revenue generated from the EMS sales tax and \$2.7M from the public safety sales tax is budgeted to be expended on public safety personnel costs. The end of year fund balance for the EMS sales tax is projected to be 1.1% of annual expenses and the fund balance for the public safety sales tax is projected to be 3.8% of annual expenses.

e. Conclusion as to ability to pay for wage increases.

The foregoing data demonstrates that the U.G. is still in an impaired position relative to its ability to pay for wage increases for Fire Department personnel. Its fund balance within the City General Fund is still woefully deficient. Nonetheless, the U.G. is willing to commit resources at the levels that it has proposed above to afford its employees what it recognizes is a much needed general wage increase.

B. Longevity Pay.

1. Employer Proposal.

The Employer has proposed no changes to longevity pay.

2. Union Proposal.

The Union has proposed increases to longevity pay as follows

Years	Current Language	IAFF Proposal
5	\$44.26	\$46.03
8	\$70.88	\$73.71
12	\$97.43	\$101.32
16	\$135.05	\$140.45
20	\$150.61	\$156.63
25	\$177.16	\$194.88

3. Employer Position.

Many of the 13 bargaining units that the U.G. has negotiated with for the contract years in question have requested additions to longevity pay. Longevity pay unlike other compensation add-ons does not require an employee to achieve a certification or education level. Longevity pay simply compensates employees for tenure, something which the U.G.'s salary structure already does. The U.G. has rejected all requests for additions to longevity pay from other bargaining units.

The Union has contended that it should be given the requested longevity pay so that it is in parity with the police union contract longevity scale. The U.G. has rejected this position. All of the contracts of the U.G. have varying longevity pay scales, indeed many of them do not grant any longevity pay. There are additionally many varying benefits between the police and the fire department union contracts. Prime examples of where the Fire Department has a significantly more benefit rich contract relates to the number of compensatory hours, vacation hours and sick leave hours that they can accumulate. The U.G. is in a tight financial position and it is trying to be consistent with the wage increases granted to its employees and its various unions. Granting the Fire union a longevity increase would grant a compensation increase that it has granted to no other group of employees during the years in question.

C. Education Pay.

1. Employer Proposal.

The Employer is not proposing any changes to education pay language. Current language compensates employees who have earned 28 credit hours related to Fire Science or MICT toward an Associate's Degree fifty dollars (\$50.00) per month as additional compensation. Additionally, Firefighters or Medical Intensive Care Technicians who have obtained an Associate of Arts Degree in Fire Science or Emergency Medical Intensive Care Training receive one hundred dollars (\$100.00) per month as additional compensation.

2. Union Proposal.

The Union has proposed to keep the current education leave pay and add a Bachelor of Arts level at \$125.00 per month and a Masters level at \$155.00 per month. The Union has

argued that it should be granted this additional compensation to enable them to receive parity with education pay under the police department contract.

3. Employer Position.

The education pay offered within this contract is more generous than what the market offers as disclosed by the benefit study completed by Arthur J. Gallagher in July of 2014. This study showed that 7 of the 14 respondents provided education pay and of those respondents, none of them paid benefits at the levels identified in the Unified Government contract. Specifically, only one respondent provided any education pay for college credits short of a degree, and that respondent paid \$20 per month for receipt of 30 credit hours. The U.G. pays \$50 for 28 credit hours. Three respondents provided education pay for receipt of an Associate of Arts, however, 2 of the 3 paid \$50 per month and 1 respondent paid \$25 per month. The U.G. pays \$100 per month. The highest amount paid by any respondent for a Bachelor's degree was \$100, the same amount the U.G. pays for an associates agree. The U.G.'s education pay benefit exceeds the market. Additionally, as discussed above, the police and fire department union contracts are not in parity on all issues.

C. Tuition Reimbursement.

1. Employer Proposal.

The Employer is not proposing any contractual changes to tuition reimbursement.

2. Union Proposal.

The Union has proposed tuition reimbursement at the same rate as that stated in the police department contract. This benefit would allow for tuition reimbursement for completion of up to six (6) credit hours in a semester at the maximum credit hour rate of:

Associate of Arts or Sciences	\$ 60.00
Bachelor of Arts or Science	\$ 85.00
Master of Arts or Science	\$110.00

3. Employer Position.

Again, the police contract and the fire contract are not in parity on all benefits.

D. Dispatcher Compensation.

1. Employer Proposal.

In addition to fire suppression and ambulance personnel, the IAFF also represents the fire dispatchers. As part of the Fire study that was recently completed by FACETS, a recommendation was provided that a step and grade compensation structure should be provided for dispatchers to provide for career advancement. A step and grade compensation structure is being finalized by the Department and will be discussed with the Union upon completion.

2. Union Proposal.

The Union has agreed that a step and grade compensation structure separate and apart from the fire suppression compensation structure should be established for fire dispatchers.

ISSUE #10: CONTRACT RE-OPENER AND FIRE STUDY IMPLEMENTATION

A. Employer Proposal.

In prior contractual language the parties agreed to conduct a study of all Fire Department operations. The parties retained the services of a third party consultant, FACETS, to conduct such a study. The consultant has completed its work and submitted its findings to the Department and the Fire Union. The parties have formed a labor-management committee to consider recommendations made by the third party consultant and to recommend operational changes. The parties have jointly agreed that they don't want contractual language issues to impede any progress relating to agreed upon and needed changes. As a result, reopener language has been drafted to enable re-opening of any necessary contractual language necessitated by recommendations from the joint labor-management committee. The Employer supports this re-opener language.

B. Union Proposal.

The Union has indicated that it supports the concept of re-opener language, although it has not indicated that it agrees to the specific language proposed.

ISSUE #11: MINIMUM MANNING – ARTICLES 35 AND 36

A. Employer Proposal.

Current contractual language dictates that the Fire Department maintain 22 different fire companies. The Employer is proposing to remove this language. The Employer contends that the determination of the proper number of fire companies constitutes a management right.

B. Union Proposal.

The Union is proposing to maintain the contractual language providing for maintenance of 22 fire companies.

C. Employer's Position.

The determination of the manpower needed, including the number of fire companies that the employer is required to maintain constitutes a management right which is a non-mandatory subject of bargaining. Pursuant to K.S.A. §75-4326, the employer has the management right to hire, assign, and retain employees in positions within the public agency; maintain the efficiency of governmental operations; relieve employees from duties because of lack of work or for other legitimate reasons; and, to determine the methods, means and personnel by which operations are to be carried on.

Additionally, minimum manning does not constitute a “condition of employment” as that term is defined within K.S.A. §75-4322(t) and is therefore not a mandatory subject of bargaining. Case law from both Kansas and from other jurisdictions soundly supports the conclusion that minimum manning does not constitute a mandatory subject of bargaining. See Tri-County Educators Assoc. vs. Tri-County Special Education Cooperative, 225 Kan. 781, 784 (1979)

(finding transfer and reassignment of employees, both voluntary and involuntary, as well as minimal manning requirements not mandatorily negotiable); Susquehanna Valley Cent. School Dist. v. Susquehanna Valley Teachers' Assoc., 37 NYS 2d 614 (1975); Town of West New York, Public Bargaining Cases CCH ¶ 42,848, N.J. PERC Case No. 82-34, Oct. 5, 1981; Borough of Wanaque, Public Bargaining Cases CCH ¶ 42,885, N.J. PERC Case No. 82-42, Oct. 2, 1981 (Police union was ordered to cease insisting to the point of impasse upon a minimum manning provision as such was not a mandatory subject of bargaining); Manitowoc County and Manitowoc County Sheriff's Dept., Public Bargaining Cases CCH ¶ 42,533, Wis. Employ. Rel. Comm. Case No. 26681 DR(M)-154, Sept. 25, 1981; Polk County v. Polk County Deputy Sheriff's Assn., Public Bargaining Cases CCH ¶ 42,460, Oregon Employ. Rel. Bd., Case No. C-99-81, June 12, 1981 (Minimum staffing level proposal was not a mandatory subject of bargaining but was rather a permissive subject of bargaining); Crawford County and Crawford County Sheriff's Dept. L. 1972, Public Bargaining Cases CCH ¶ 43m427, Wis. Employ. Rel. Comm. Case No. 29503 DR(M)-222, Dec. 3, 1982 (Union proposal which would require a Sheriff to maintain minimum manning levels was a permissive rather than a mandatory subject of bargaining which infringed upon the county's management rights and policy decisions); Township of Weehawken, Public Bargaining Cases CCH ¶ 42,481, N.J. PERC Case No. 81-147, June 9, 1981 (Minimum manning clause was a permissive subject of bargaining and could only be submitted to fact finding upon mutual consent of the parties); Borough of Atlantic Highlands, Public Bargaining Cases CCH ¶ 43,195, N.J. PERC Case No. 83-75, Dec. 2, 1982 (Minimum manning proposal was not a mandatory subject of bargaining); County of Bergen, Public Bargaining Cases CCH ¶ 43,272, N.J. PERC Case No. 83-110, Feb. 16, 1983 (Minimum manning proposal requiring Sheriff's Department to assign a minimum number of deputies to

specific assignments was not a mandatory subject of bargaining); Matter of City of Dubuque, Public Bargaining Cases CCH ¶ 40,259, Iowa Pub. Employ. Rel. Bd. Case No. 964, March 9, 1977; Matter of City of Newton, Public Bargaining Cases CCH ¶ 40,621, Iowa Pub. Employ. Rel. Bd. Case No. 1322, Oct. 9, 1978 (Staffing is predominately a managerial determination which is a permissive rather than a mandatory subject of bargaining).

ISSUE #12: FIRE DISPATCHER ADDENDUM

A. Employer Proposal.

The Employer has gone through the addendum to the contract and cleaned up several outdated provisions.

B. Union Proposal.

The Union agrees that the addendum language needs to be cleaned up.

Respectfully submitted,

McAnany, Van Cleave & Phillips, P.A.
10 E. Cambridge Cir. Dr., Ste. 300
Kansas City, Kansas 66103
E-mail: rdenk@mvplaw.com
(913) 371-3838
(913) 371-4722 – Fax

RYAN B. DENK #18868

Attorney for Unified Government of
Wyandotte County/Kansas City, Kansas –
Kansas City, Kansas Fire Department