

TOWN OF PALM BEACH
V.
INTERNATIONAL ASSOCIATION
OF FIRE FIGHTERS, LOCAL 2928

IMPASSE HEARING
APRIL 21, 2011

COUNCIL'S HEARING
MATERIALS

CHRISTINE D. HANLEY & ASSOCIATES, P.A.
EMPLOYMENT LAW & LABOR RELATIONS

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April 15, 2011

BY FEDERAL EXPRESS

Mayor Gail L. Coniglio
Chairman David A. Rosow
Councilman Robert N. Wildrick
Councilman Richard M. Kleid
Councilman Michael J. Pucillo
Councilman William J. Diamond

Dear Mayor Coniglio, Chairman Rosow, Councilman Wildrick, Councilman Kleid,
Councilman Pucillo & Councilman Diamond:

Re: Town of Palm Beach v. International Association of Fire Fighters
("IAFF") Local 2928, Impasse Hearing, April 21, 2011
Council's Hearing Materials

A single 2" binder containing the Hearing Materials provided by *both* the Town of Palm Beach and the IAFF Local 2928 accompanies this transmittal; these materials frame the subject of Thursday's Impasse Hearing. The Hearing Materials binder is divided into four sections:

- A – Digest of Materials
- B – Town's Materials
- C – Union's Materials
- D – Digest of Motions

A description of the contents of each subsequent section appears in the Digest of Materials.

Mayor Gail L. Coniglio
Chairman David A. Rosow
Councilman Robert N. Wildrick
Councilman Richard M. Kleid
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Councilman William J. Diamond

BY FEDERAL EXPRESS
April 15, 2011
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This Hearing Materials binder also contains a Digest of Motions prepared to facilitate your work at the Hearing. In addition to an Omnibus Motion, you will find Motions for each Article at impasse. The Motions are keyed to the materials in the Binder and contain references to these same materials in brackets.

Sincerely,



Christine D. Hanley

CDH:jlh

Enclosure

cc: Skip Randolph, Esq. (by U.S. Mail)
Mark Floyd, Esq. (by U.S. Mail)
Jeff Mandel, Esq. (by Federal Express)
Peter Elwell (by Hand Delivery)
Danielle Olsen (by Hand Delivery)
Susan Owens (by Hand Delivery)✓

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Employer's Notice of Rejection of Special Magistrate's Rejection of Report and Recommendations – Exhibit B		Rejection of Special Magistrate's Report
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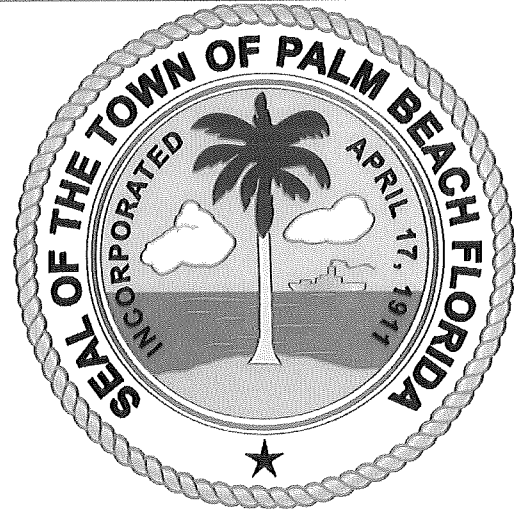
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As to Article 41/30 – Retirement Benefits (Included in
Union Materials as Article 30 – Insurance and
Miscellaneous Benefits, Included in Town’s Materials as
Article 41)

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INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS, LOCAL #2928**



Executive Summary

**Prepared by Town Manager Peter B. Elwell
for the Town Council Impasse Hearing on April 21, 2011**

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INTRODUCTION

SUMMARY

My recommendations for resolving the collective bargaining impasse between the Town and IAFF Local 2928 are essential for avoiding Town budget deficits in FY12 and beyond. The significant cost-cutting measures implemented by Town Council and Town staff in the past two years have improved the Long Term Financial Plan forecast, but those actions are not enough. We will be able to avoid the previously forecast deficits only if we stay on course with additional actions that have been proposed but not yet implemented. If you do not approve the actions I am recommending as the resolution of this collective bargaining process, the Town's operating budget deficits are projected to swell to a cumulative total of over \$73 million through FY20, and that does not even account for the money needed to fund coastal protection projects. Therefore, it will be management's overriding position at the April 21 hearing that adoption of my recommendations is crucial for ensuring the Town's long-term financial health.

In this document and at the April 21 hearing, we will support this broad overriding position with specific information related to each individual article at impasse.

In a few cases, my recommendations relate to operational matters that do not carry the same significant weight of financial impact. In those instances, we are attempting to address areas of weakness in the Town's current collective bargaining agreements with Local 2928 to ensure effective oversight of Fire-Rescue operations and maximum protection for the Town's residents.

ADDITIONAL DOCUMENTS

For ease of reference, the following documents are included with this Executive Summary in a binder being provided to the Mayor and Town Council in preparation for the April 21 hearing:

- Town Manager's memorandum dated March 15, 2011, to the Mayor and Town Council regarding "Recommendations for Resolving the Collective Bargaining Impasse with the Professional Firefighters/Paramedics of Palm Beach County, Local 2928."
- "Employer's Notice of Rejection of Special Magistrate's Report and Recommendations" filed by Jeffrey E. Mandel, labor attorney for the Town, on March 4, 2011.
- Special Magistrate Kenneth Starr's "Special Magistrate Report and Recommendations" dated February 14, 2011.
- The "Employer's Post Hearing Brief" submitted by Jeffrey Mandel on January 20, 2011.

Each of the above documents is presented in a formal format required by the rules of the collective bargaining process. Some of the information presented in those documents is repetitive. For these reasons, I am providing this Executive Summary document to assist the

Mayor and Town Council in their consideration, deliberation, and decisions on these important matters.

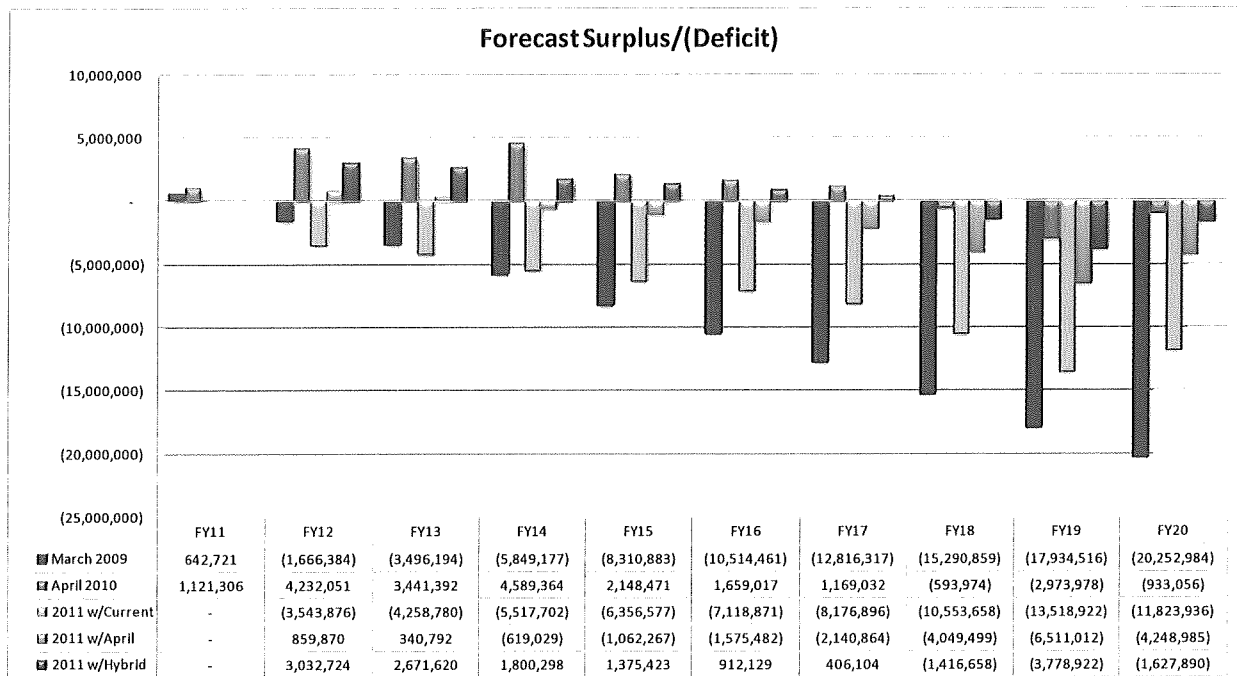
BACKGROUND

On October 8, 2001, the Professional Firefighters/Paramedics of Palm Beach County, Local 2928 (“Local 2928”) was certified as the exclusive bargaining representative for two bargaining units of Town Fire-Rescue personnel – a supervisory bargaining unit and a non-supervisory bargaining unit. The supervisory bargaining unit consists of 18 employees in the classification of Fire Lieutenant, Administrative Lieutenant, and Assistant Fire Marshal and the non-supervisory bargaining unit consists of 46 employees in the classifications of Firefighter and Driver/Operator. The Town and Local 2928 have been parties to a number of collective bargaining agreements (“CBAs”) since June 2005. The last of these CBAs expired on September 30, 2010. Negotiations for successors to those expiring CBAs commenced March 1, 2010, with presentation of the Town’s bargaining proposals.

The Town’s original proposals sought to implement elements of my broader Townwide plan to address the forecasted budget deficits identified in the March 2009 Long Term Financial Plan. These deficits were projected to begin in FY12, rise to \$20 million in FY20, and amount to a cumulative total of more than \$94 million through FY20. My recommendations for correcting that situation, as set forth in the April 2010 update of the Long Term Financial Plan, would have eliminated the projected deficits in the early years and reduced the deficits in FY18 and beyond. In the early summer of 2010, the Palm Beach County Property Appraiser imposed upon the Town an almost 12% decrease in property values, which resulted in a \$5 million decrease in property tax revenue. This left the Town facing a revised forecast that again projected deficits beginning in FY12 and amounting to a cumulative total of over \$73 million through FY20, despite cost-cutting measures that had already been approved and implemented. Additional action was required and it was initiated in all aspects of Town government. As one of these additional actions, I proposed deeper cost-cutting measures in the collective bargaining negotiations with Local 2928. These measures, which are embodied in the Town’s final bargaining proposals, still result in a forecasted deficit of over \$2.2 million in FY 21 and leave the Town in a slightly worsened fiscal position as compared to where the Town would have been had the April 2010 plan been adopted and the property tax revenues not decreased.

The graph and table at the top of the following page show the evolution of the forecast and magnitude of the resulting deficits. Here is the definition of each label in that table:

March 2009 The forecast in the 2009 Long Term Financial Plan
April 2010 The forecast in the 2010 Long Term Financial Plan
2011 w/ Current The current forecast, if no changes are made to employee pensions
2011 w/ April The current forecast, if my original pension reform proposal is adopted
2011 w/ Hybrid The current forecast, if my revised pension reform proposal is adopted



Unfortunately, while recognizing that cost-cutting measures were necessary, Local 2928 was not willing to go as far with those measures as even the original proposals offered by the Town. Thus, on June 22, 2010, after four bargaining sessions, the Town declared an impasse in negotiations for both CBAs. Thereafter, the Town of Palm Beach Public Employees Relations Commission ("Town PERC") appointed Kenneth Starr, who was mutually selected by the parties, to serve as the Special Magistrate to hear the parties' dispute. Two additional bargaining sessions were held after the declaration of impasse. On December 9, 2010, Special Magistrate Starr presided over a hearing in this matter. On February 14, 2011, Special Magistrate Starr issued his Report and Recommendation regarding the CBA articles remaining at impasse.

On March 4, 2011, the Town filed its Notice of Rejection of Special Magistrate's Report and Recommendation, as the Town believes that the Special Magistrate failed to adequately address all of the Town's concerns regarding the CBA articles remaining at impasse, especially those affecting the Town's forecasted budget deficits. More specifically, the Town rejected the Special Magistrate's recommendations on the following seven articles: (1) Article 30 – Insurance and Miscellaneous Benefits; (2) Article 14 – Drug and Alcohol Testing; (3) Article 16 – Promotions; (4) Article 17 – Wages; (5) Article 18 – Workweek; (6) Article 19 – Overtime; and (7) Article 38 – Sick Leave and Injury Time. These Articles apply to both the non-supervisory and supervisory CBAs, except for Article 16, which only applies to the non-supervisory CBA.

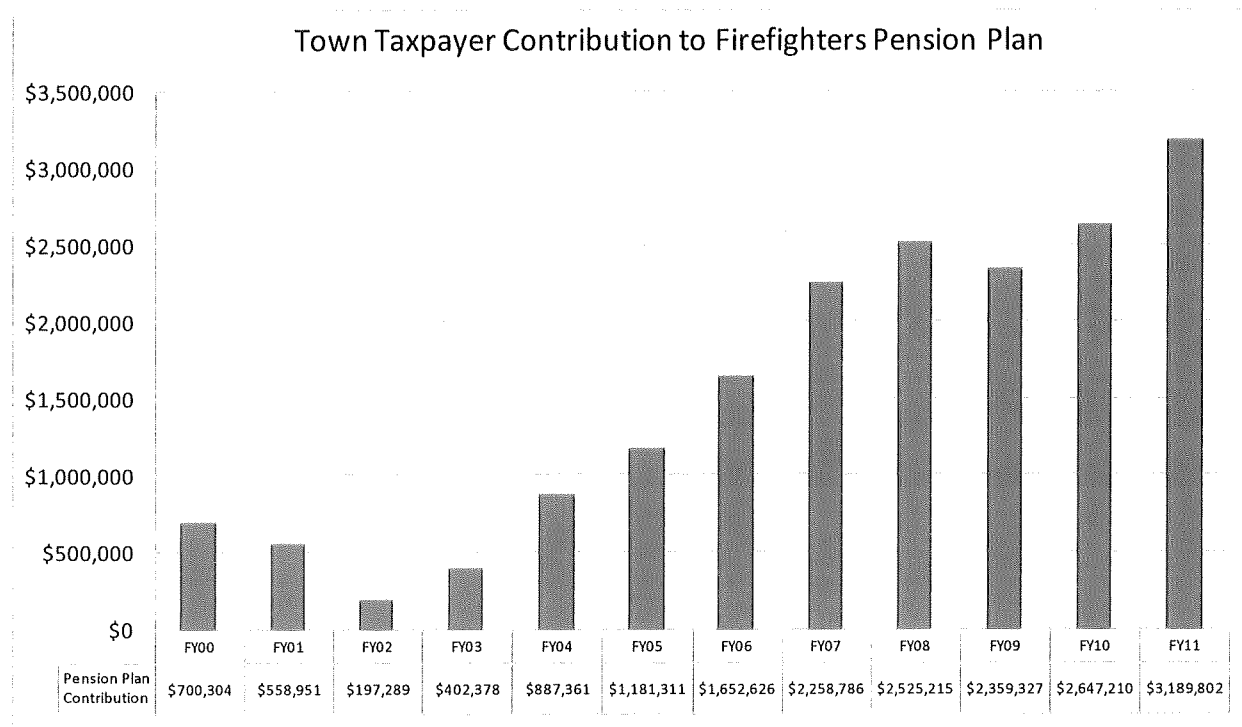
On April 21, 2010, the Mayor and Town Council will hold a public hearing to resolve the impasse on the above seven CBA articles. Both the Town and Local 2928 will have an opportunity to explain their positions to the Mayor and Town Council and the public will be offered an opportunity to comment. Thereafter, sitting as neutral decision-makers and after considering the Special Magistrate's recommendations, the parties' written submittals, the parties' presentations, and the comments of the public, the Town Council will take such action as it deems to be in the public interest, including the interest of the public employees involved, to resolve all disputed impasse issues.

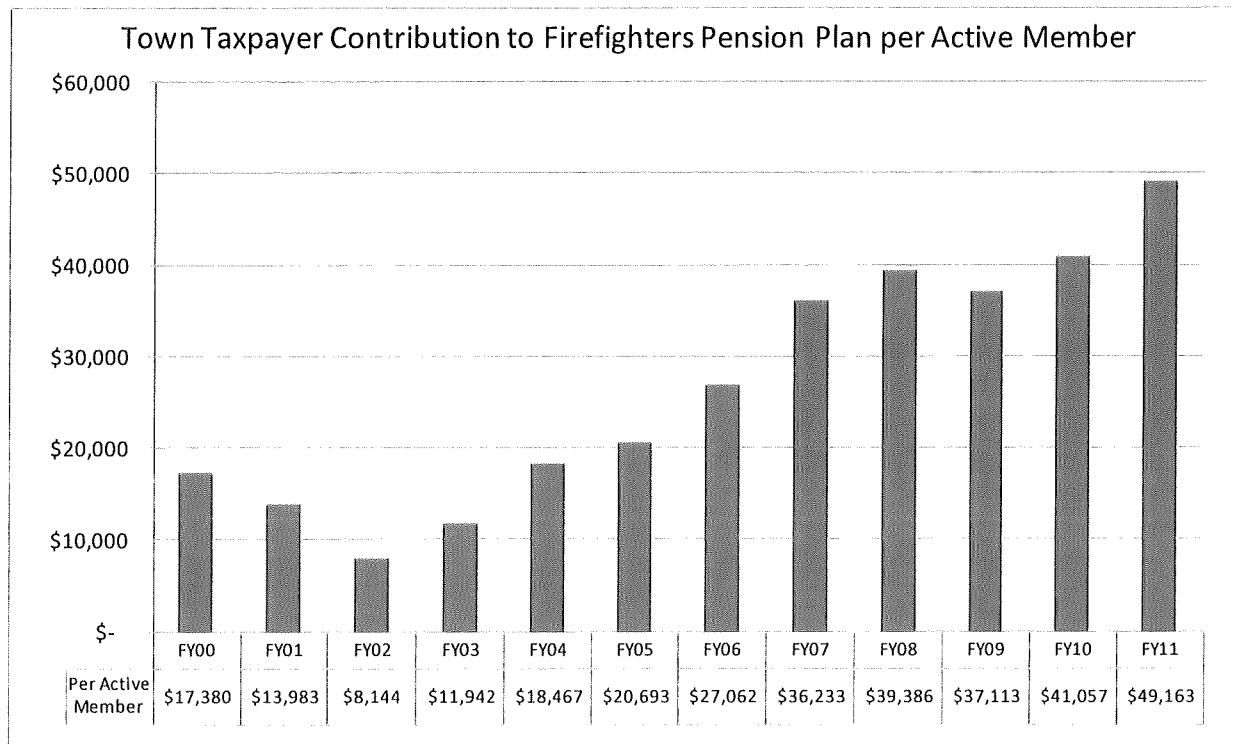
The remainder of this Executive Summary addresses each individual article at impasse. The articles are not presented in straight numerical order. Rather, the pension issue (Article 41) is presented first, due to its economic significance. That is followed by the other economic impact articles in numerical order. Finally, the non-economic impact items are presented, also in numerical order.

I firmly believe that my recommendations for resolving the impasse on each of the seven CBA articles are in the best interest of the general public and the affected public employees. Failure to adequately address the forecasted deficits would have serious negative consequences both for the public and for the employees.

ARTICLE 41: RETIREMENT BENEFITS (FORMERLY ARTICLE 30: INSURANCE AND MISCELLANEOUS BENEFITS)

The current Firefighter Pension Plan is financially unsustainable. In FY02, the Town's actuarially determined contribution to the Plan was \$197,289. In FY11, it was \$3,189,802. This is an increase of over 1500% in 10 years. During that same period, the Town's annual contribution per active plan member increased from \$3,523 to \$44,303. This is an increase of over 1100% in 10 years. The members' contributions remained at 6.89% of their gross pensionable wages while the actuarially required public contribution (measured as a percentage of active payroll) increased from below 29% to over 51%. Back in FY02, Town taxes paid for 43% of the required public contribution and 57% was paid with State Chapter 175 monies. Now, 90% is paid by Town taxpayers and only 10% is paid with State Chapter 175 monies.





As early as 2008, these dramatic increases were recognized as a potential threat to the long term financial health of the Town. In December of that year, the Town Council's Finance and Taxation Committee reviewed the pension trends and identified the need to explore possible pension plan changes. The Town then embarked on a slow, careful, thoughtful process of pension reform. After hearing the results of an initial review by a citizen advisor and Town staff, the Committee recommended and the full Town Council approved retaining a nationally respected pension consultant to assist the Town in developing and considering alternatives for action. The consultant's report was received in October of 2009. After input from citizens and employees was solicited and received at four public meetings, the Town Council directed me to distill the dozens of options presented in the consultant's report down to a specific recommendation with a few specific alternatives for further consideration by the Mayor and Town Council. I presented my pension report and recommendation in April of 2010 as part of a broader plan for reducing Town expenditures and improving the Long Term Financial Plan forecasts. My pension recommendation became the Town's proposal in the collective bargaining process with the Town's firefighters and police officers.

My April 2010 plan to address the forecasted deficits included relatively modest pension reforms. They would have reduced the projected FY20 cost of Town employee pensions (for all employees) by approximately \$6.5 million (as part of an overall \$12 million reduction in the FY20 cost of employee benefits). Although those proposed changes would have placed the Town on solid economic footing, Local 2928 rejected them. Then, in the early summer of 2010, the Palm Beach County Property Appraiser imposed upon the Town an almost 12% decrease in property values, which resulted in a \$5 million decrease in property tax revenue. This left the Town facing a forecasted cumulative deficit through FY20 of \$22.5 million even if my April 2010 proposed pension changes were adopted. (The cumulative deficit would have been over \$73 million if no pension changes were made.) Given this change in the Town's financial

circumstances, I withdrew my April 2010 proposal (in the collective bargaining process with the Town's firefighters and the parallel collective bargaining process with the Town's police officers) and replaced it with a proposed hybrid pension program, consisting of both a defined benefit plan and a defined contribution plan.

Hybrid Plan as Proposed to Public Safety Unions	
Defined Benefit Plan	Defined Contribution Plan: 401(a)
<u>Multiplier:</u> Public Safety 1.25%	<u>Contributions:</u> Employee: Minimum 2% Town: Match up to 4%
<u>Employee Contribution:</u> Current contribution reduced by 2% to the following: Fire: 4.82%	<u>Investment Options</u> Similar to the Town's current "457 Plan" for optional deferred compensation, a variety of investment options will be offered.
<u>Eligibility:</u> Age 65	<u>Current IRS Rules re: Withdrawal:</u> Withdrawals may occur beginning at age 50 for public safety employees who have separated from service to the Town.
<u>Post-Retirement</u> No COLA Survivors' benefit available to "purchase" through actuarial reduction of monthly pension amount.	Withdrawals may occur beginning at age 59 1/2 for employees who are still employed by the Town at that age. Earlier withdrawals may be allowed without penalty for certain special circumstances, as determined by the IRS. Other than in those special circumstances, withdrawals by employees younger than 59 1/2 who are still employed by the Town are subject to a 10% tax penalty.

The proposed hybrid plan would freeze benefits for accrued service credit. The Town further proposes to pay out the accrued benefits in accordance with the rules that are currently in effect, so the firefighters will not lose any of the benefits they have already earned in the Town's existing pension system. As with the April 2010 plan, the Town would withdraw from Chapter 175 as the Town's pension system would no longer meet the eligibility requirements. If those eligibility requirements are changed before implementation of the hybrid plan, such that the Town can proceed with implementation of the hybrid plan and remain a participant, then the Town would not withdraw from Chapter 175. (Please see the Town's attached revised Article 41,

Retirement Benefits, which replaces the Town's prior proposal at Article 30 and adds language that will provide the necessary flexibility for the Town to remain in Chapter 175 if changes in the State's rules make that possible.)

I believe my proposed changes to the Firefighter Pension Plan will restore fiscal responsibility to this program while still providing the employees with an appropriate level of benefits. The Town simply can no longer afford to provide the firefighter bargaining unit employees with the extremely generous pension benefits that they have been fortunate to enjoy in past years.

Despite admitting that he "does, in fact, bring a bias in favor of public safety employees to impasse proceedings" [Special Magistrate's Report at p.18] the Special Magistrate stated that he "is convinced that continuation of the existing pension plan(s) is not in the best interest of the public and sufficient funds to pay for those plans simply will not be available indefinitely under the existing taxation scheme." [Special Magistrate's Report at p.19] He went on to say that "[t]he Town Manager makes a compelling argument that the changes in the pension plan set out in the Town's proposal are fair to both senior and junior employees." [Special Magistrate's Report at p.19.] In fact, the Special Magistrate recommended approval of all elements of my proposed pension plan, with only three exceptions: (1) disability retirement, (2) defined benefit plan retirement age of 65, and (3) post-retirement COLA.

The Special Magistrate clearly misunderstood my proposal regarding disability retirement benefits. The Town's existing disability retirement benefits exceed those recommended by the Special Magistrate and the Town does not desire to reduce the firefighters' disability retirement benefits. We believe that question is moot.

The Special Magistrate's recommendations regarding retirement age and COLA would fail to fully address the Town's present financial concerns. Providing retirement eligibility at age 55 with an annual pension COLA of up to 2%, as recommended by the Special Magistrate, would increase the cost to Town taxpayers by more than 15% above my recommendation (retirement eligibility at age 65 and no annual pension COLA). This would accelerate the onset of budget deficits to FY15 or even earlier (instead of FY18) and would worsen the projected budget deficits in FY18 and beyond.

Contrary to Local 2928's contention, the Town's proposal does not force firefighters to work as firefighters to age 65. Currently, most firefighters who retire in their 40s go to work in other departments or pursue other avenues of employment. They would continue to have the same opportunities to do so under the Town's proposal. Moreover, the Town's proposed addition of a defined contribution plan would provide retirees with a revenue source from which they could draw prior to reaching age 65. Any firefighter who has departed Town service could begin withdrawing money from the defined contribution plan at age 50.

It has been suggested that the Town will receive a "windfall" of investment earnings on each employee's contributions during the years between an employee leaving Town service (perhaps in their late 40s or early 50s) and beginning to receive a defined benefit pension (at age 65). The actuarial forecast of Town costs for the hybrid plan does rely on investment earnings during the period after employment and before pension. However, that does not constitute a "windfall to the Town" as all such earnings will remain in the Town's pension trust funds to pay benefits

earned by employees. Also, any employee who feels that he or she will not receive enough value under the proposed defined benefit plan when it starts paying a pension to them at age 65 can choose to withdraw their contributions (with interest) and invest the money on their own.

To the extent that Local 2928 argues that the financial projections relied on by the Town could ultimately prove incorrect based on the uncertainties involved in forecasting, Local 2928's assertion is well taken. The Town could wind up in a better position than forecasted, or it could wind up in a financial position that is even worse than what is now being forecasted. If the Town winds up in a better position, nothing stops the parties from agreeing to increase pension benefits at a later date. However, if the Town was to err in the opposite direction, and its financial position winds up worse than forecasted, the Town could face a fiscal crisis. Implementation of the proposed hybrid pension plan is absolutely necessary to ensure that the Town's pension benefits are financially sustainable, both for the sake of Town taxpayers and for the sake of employee participants and their families.

ARTICLE 17: WAGES

WAGES (SALARIES)

Historically, Town firefighters have received annual pay increases through step increases, cost-of-living increases, market competitiveness increases, and longevity/bonus pay. This system has resulted in wage increases from FY01 to FY09 that were more than double the average annual rate of inflation for that period. In FY09 some firefighters received wage increases of 12 to 17%, in addition to bonuses of up to almost \$10,000. This significant increase in salaries has directly contributed to Town's benefit costs becoming unsustainable.

The current CBAs contain Step Pay Plans for the bargaining unit employees consisting of 1 probationary step and 10 regular steps for each bargaining unit job classification. Each step is 4% higher than the preceding step. Historically, employees moved to the next higher step on their anniversary dates each year, thereby realizing a 4% salary increase, provided that they received at least an overall score of 3.0 on their annual performance evaluation.

TOWN PROPOSAL	LOCAL 2928 PROPOSAL
• Modify the existing Step Pay Plans to reflect 40 steps of 1% each instead of 10 steps of 4% each. (The hourly rates for each of these steps may need to be modified based on the Council's resolution of Article 18 below.) • No step or other wage increases for FY11. • Wage increases for any fiscal	• Agreed to modification of the existing Step Pay Plans to reflect 40 steps of 1% each. • Did not agree to hourly rate adjustments that may result from Council's resolution of Article 18 below. • No step or other wage increases for FY11. • Proposed 4% increase for FY12

year after FY11 to be established through the collective bargaining process.	
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The Town seeks the modified step plan to provide more flexibility in future pay increases and promotions. No step or wage increases for firefighters in FY11 is consistent with the treatment of all other Town employees, none of whom are receiving any wage increases in FY11.

The Special Magistrate has recommended a two-step (2% total) increase for FY12. The Town, however, is not in a position at this time to commit to a wage increase for the upcoming fiscal year. Instead, any such wage increase should be established through the next collective bargaining process after the other terms of the CBAs, such as the pension benefits, have been finalized.

LONGEVITY/BONUS SYSTEM

The bargaining unit employees are fortunate to have long enjoyed a very lucrative longevity/bonus benefit. However, the Town can no longer afford to pay for it. In its place, the Town has proposed a performance bonus benefit that is more modest, but still very good and fair. In fact, for high performing firefighters in the early and middle years of their career, the Town's proposed bonus system will be *more* generous than the current longevity/bonus benefit.

TOWN PROPOSAL	LOCAL 2928 PROPOSAL
Performance Bonus provided to all bargaining unit employees regardless of when they were hired. Employees would be awarded bonuses of up to \$6,000 on December 1 of each year based solely on their performance evaluation scores. This system would commence with the December 2011 bonus payment.	Bargaining unit employees shall continue to receive annual longevity/bonus payments in the same manner and to the same extent as they currently do.

The Special Magistrate has recommended keeping the existing longevity/bonus system. While it is understandable that Local 2928 wants to maintain its bargaining unit members' lucrative benefits, this is simply not feasible given the Town's financial position. The new system would save the Town approximately \$140,281 in FY12, and a total of \$1,029,355 through FY20.

These savings are an essential part of my plan for restoring sustainability to the Town's budget.

ARTICLE 18: WORKWEEK

Under the existing CBA, bargaining unit employees are provided Kelly Days (unpaid days off arranged in the overtime work cycle to reduce overtime costs and afford fire-rescue employees more time off). More specifically, the bargaining unit employees are scheduled one Kelly Day every seventh shift, which equates to one every three weeks or approximately 17 per employee per year. While the Town saves overtime with this arrangement, those savings are far exceeded by the extra costs incurred by the Town to fill the vacancies created by the bargaining unit employees who are off duty on their Kelly Days. For the 64 bargaining unit employees, this amounts to approximately 1,088 shifts that the Town has to cover due to the Kelly Days. At one time, the Town could afford the staffing to cover these Kelly Days. However, due to the Town's current and projected financial condition, the Town no longer can provide sufficient staffing to cover all of the Kelly Days required under the existing CBAs. Instead, the Town is forced to pay employees overtime on many shifts to meet its minimum staffing requirements. To remedy this, the Town proposes to delete the Kelly Days in their entirety.

TOWN PROPOSAL	LOCAL 2928 PROPOSAL
• Elimination of Kelly Days • A 56-hour average workweek for 24-hour shift employees.	• Maintain Kelly Days • A 52-hour average workweek for 24-hour shift employees.

The Special Magistrate recommends against this change but the changes proposed by the Town are absolutely necessary to address the Town's staffing and financial concerns. Kelly Days are simply one of the very generous benefits in excess of those required by law that the firefighter bargaining unit employees have been fortunate to enjoy over the years, but which the Town can no longer afford.

The Town recognizes that the practical implication of the elimination of the Kelly Days is to require the bargaining unit employees to work more shifts each year for the same amount of pay. The Town agrees with Local 2928's assertion that the elimination of the Kelly Days will result in a reduction in the bargaining unit employees' hourly rates. However, it also will result in the bargaining unit employees receiving 3 hours of "built-in overtime" each week, and their annual salaries will remain unchanged. The only way for the Town to avoid this reduction in hourly rates would be to continue paying unnecessary overtime, to hire additional firefighter paramedics, or to increase the annual salaries of all bargaining unit members by over 14%. Any of these options would be fiscally irresponsible.

Attached are charts that replace the salary scales previously presented in Article 17, Wages. The annual salary figure for each step in each chart remains the same. The hourly rate for each step in each chart has been modified to reflect the impact of eliminating Kelly Days. I recommend Town Council (1) approve management's recommendation to eliminate Kelly Days and (2) approve the modified salary scale charts to make it explicitly clear that your decision is being made with full awareness of the hourly rate impact of this action.

ARTICLE 19: OVERTIME

The Fair Labor Standards Act allows an employer to apply non-traditional overtime pay cycles to firefighters, the most advantageous to the employer being the payment of overtime after a firefighter works more than 212 hours in a 28-day work cycle. Under the current CBAs, the Town has provided the firefighters a more generous overtime benefit that pays overtime after a firefighter works 144 hours in a 21-day work cycle.

TOWN PROPOSAL	LOCAL 2928 PROPOSAL
Change the firefighters' overtime pay cycle to the maximum allowed by law: overtime pay after 212 hours in a 28-day work cycle	Overtime cycle remain at 21 days, but with the overtime threshold changed to 159 hours (up from 144 hours).

The Town acknowledges that Local 2928's position increases the overtime threshold to the maximum allowed by law within a 21-day cycle. We appreciate the union's recognition that it is necessary to move away from the overly generous current policy. However, the 21-day cycle is not the maximum allowed by law and, therefore, a 21-day cycle overtime policy still is more generous than the Town is required to provide.

The Special Magistrate has recommended Local 2928's position. However, given the Town's current and projected financial condition, the Town can no longer justify paying firefighters overtime in excess of what is required by law.

ARTICLE 14: DRUG AND ALCOHOL TESTING

The Town seeks to add random drug and alcohol testing to the existing testing program, due to the nature of the public safety work performed by the bargaining unit employees. Local 2928 agrees to the addition of a new Section 14.4 allowing for random drug testing. The only area of disagreement between the parties regarding random drug and alcohol testing is the procedure to be utilized for such testing.

TOWN PROPOSAL	LOCAL 2928 PROPOSAL
The Town seeks the absolute right to randomly test any bargaining unit member for the existence of alcohol, illegal drugs, or other controlled substances in any manner that is valid, such as random number selection and administration by an established testing entity.	Local 2928 wants the selection performed using DOT drug testing procedures. Additionally, Local 2928 wants to limit random alcohol testing to no more than 10% of the bargaining unit employees selected for random drug testing.

The Special Magistrate has recommended (1) for Local 2928's position on using the DOT testing procedures and (2) for the Town's position that random alcohol testing should not be limited to no more than 10% of the bargaining unit employees selected for random drug testing.

Following the DOT procedures would be an unnecessary burden since the firefighters are not covered by the DOT regulations. Limiting random alcohol testing to no more than 10% of the bargaining unit employees selected for random drug testing would be far too restrictive. If the Town randomly drug tested 10 bargaining unit employees, only 1 of those employees could be tested for alcohol. As the total number of employees in the combined bargaining units is 64, and Local 2928's proposal would cap the total number of drug tests at 64, no more than 6 bargaining unit employees could be tested for alcohol. There is simply no rational basis for this restriction, especially as the breath analysis test given for alcohol is even less intrusive than the urinalysis test given for drugs. The potential negative consequences of impairment that the Town is attempting to avoid through random testing – accidents and injuries – are the same whether the impairment is based on alcohol or drugs. I recommend Town Council approval of the Town's proposal.

ARTICLE 16: PROMOTIONS

The only provision in dispute in this Article is Section 16.8 which addresses the selection for promotions to the position of Driver-Operator. Currently, candidates for these promotions are ranked on an eligibility list based on their scores in the promotional testing process. The Department is required to promote the top ranked candidate on the list.

TOWN PROPOSAL	LOCAL 2928 PROPOSAL
The Town seeks the flexibility to choose from among the top 3 candidates on the list, as management currently is allowed to do for promotions to Lieutenant.	The union wants to limit management to selecting from the top 2 ranked candidates on the list.

The Special Magistrate has recommended Local 2928's position. However, there is no legitimate reason why promotions to the rank of Driver-Operator should differ from promotions to the rank of Lieutenant with respect to management's flexibility in selecting candidates from the promotions eligibility list. Instead, the Town's position – choosing from among the top three candidates on the Driver-Operator list – should be adopted.

ARTICLE 38: SICK LEAVE AND INJURY TIME

Bargaining unit employees accrue 96 hours (4 shifts) of sick leave each year. Unfortunately, a significant number of bargaining unit employees are using excessive sick leave each year. This is causing unnecessary overtime costs as, in most cases, the Town has to pay someone overtime to cover the vacancies caused by the employees who call in sick. The Town does not have an

issue with legitimate uses of sick leave. However, disturbing trends have developed over the years which would lead any objective observer to recognize that bargaining unit employees are misusing and/or abusing sick leave as a means to get time off when they are not eligible for use of annual leave.

In FY08, 23 out of 55 bargaining unit employees (42%) used as much or more than one year of sick leave accrual (96 hours). While these numbers lessened in FY09 to 31%, they spiked back up to 40% in FY10. Moreover, the highest incidence of sick leave usage by bargaining unit members during the last 3 fiscal years has been on Fridays and Saturdays.

TOWN PROPOSAL	LOCAL 2928 PROPOSAL
Disincentives and discipline beginning upon the fourth occurrence of sick leave usage in a 12-month period, as follows: 4th: Ineligible for shift exchanges and overtime and provided oral reprimand. 5th: Ineligible for bonus and provided written reprimand 6th: Ineligible for wage increases and provided 12 hour suspension. 7th: Ineligible for promotional opportunities and either permanent demotion/loss of assignment (if applicable) or 24 hour suspension. 8th: Termination from employment	Incentive of personal leave time for those with one or fewer occurrences per year. Disincentives and discipline beginning upon the fifth occurrence of sick leave usage in a 12-month period, as follows: 5th: Move to bottom of overtime list; loss of step up, shift exchange and overtime privileges for 15 days 6th: Move to bottom of overtime list; loss of step up, shift exchange and overtime privileges for 45 days. No overtime for 30 days. 7th: Move to bottom of overtime list; loss of step up, shift exchange and overtime privileges for 60 days 8th: Move to bottom of overtime list; loss of step up, shift exchange and overtime privileges for 120 days. 24 hour suspension. 9th: Move to bottom of overtime list; loss of step up, shift exchange and overtime privileges for 180 days. Mandatory EAP referral; loss of seniority for Kelly Day selection, and 48 hour suspension. 10th: Special performance evaluation with possible recommendation of termination by Fire Chief.

The Town proposed imposing true penalties on employees who misuse/abuse sick leave. Local 2928 proposed an incentive program to reward those who do not abuse this benefit, and penalties that we believe are too modest to achieve the intended corrective effect. The Special Magistrate recommended some, but not all of the Town's proposals to address this problem. Since the Special Magistrate does not go far enough in addressing Town's concerns, we ask the Town Council to reject the Special Magistrate's recommendations and adopt the Town's position as to each of the issues at impasse in this article.

CONCLUSION

For the reasons stated herein, I strongly recommend the Town Council approve all of management's proposals. Each proposal is clearly stated in a more formal format in my memorandum dated March 15, 2011, entitled "Recommendations for Resolving the Collective Bargaining Impasse with the Professional Firefighters/Paramedics of Palm Beach County, Local 2928" (which is the next tab in this binder). The only modifications we recommend are, as noted herein, the additional language regarding Chapter 175 set forth in the attached revised Article 41, Retirement Benefits, and the revised salary scale charts (which would become part of Article 17, Wages) displaying the modified hourly rates for each affected position due to the proposed elimination of all Kelly Days.

We look forward to addressing all of these very important matters with the Mayor and Town Council at the hearing on April 21, 2011.

ARTICLE 41

RETIREMENT BENEFITS

1. Effective October 1, 2010, or the date of ratification/imposition of this Article, whichever is later, and notwithstanding the provisions of the current firefighters pension program, the employees covered hereunder shall be subject to modifications to the current plan as defined within the Town of Palm Beach Code of Ordinances, Article II. Employee Benefits, Division 2. Retirement System as follows:

A. Freezing of the current defined benefit plan (hereafter, the "frozen pension plan") for all covered members, who will receive the value of the benefit earned to date (calculated as if they were separating from Town employment immediately and then frozen until they are eligible to retire). Payment of this portion of each member's pension would occur in accordance with all eligibility and post retirement rules as they exist prior to October 1, 2010, or the date of ratification/imposition of this Article, whichever is later.

B. Creation of a new defined benefit plan covering all eligible Town employees for all service after October 1, 2010, or the date of ratification/imposition of this Article, whichever is later, which will include the following:

1. Employee contribution of 4.82%.
2. Bonus pay, longevity pay, special assignment overtime pay, and any other compensation that is not base salary will be excluded from the calculation of average final compensation.
3. Average final compensation calculated during the final 60 consecutive months of credited service.
4. Ten year vesting period.

5. Retirement age shall be a minimum of 65 years of age with no years of service requirement for vested employees. The "Rule of 65" shall be eliminated.
6. Average final compensation multiplied by 1.25% per year of credited service.
7. Standard form of payment as a straight life annuity. Option to purchase survivor benefit based on a calculation by the Town's actuary of the actuarially equivalent cost to the retirement system, resulting in a reduction of the member's monthly pension payments.
8. No cost of living (COLA) increase.
9. Elimination of supplemental distribution benefit.
10. Elimination of Chapter 175 (F.S. ch. 175), Firefighters' Pension Trust Fund; provided, however, that the Town may continue to participate in Chapter 175 if Chapter 175 is amended to allow the Town to make the changes herein and legally continue to participate in Chapter 175.

C. Effective upon ratification or imposition of this Article, and notwithstanding the provisions of the current firefighters pension program, the employees covered hereunder shall be subject to a new defined contribution (401(a)) plan in addition to the new defined benefit plan detailed above. The new defined contribution plan will include the following:

1. Mandatory participation by all bargaining unit employees. Bargaining unit employees shall contribute a minimum of 2% of their base pay, and may voluntarily contribute an additional amount up to the maximum contribution allowable under IRS Rules.

2. The Town will match the amount contributed by the bargaining unit employees up to 4%.

3. The Town will contract with a private vendor, through an RFP process, who will administer the defined contribution plan. The vendor will provide the bargaining unit employees with a range of investment options.

D. Irrespective of any other provision of this Agreement or any Town rule or regulation, employees who enter DROP under the new defined benefit plan shall become at-will employees. Employees who enter DROP under the frozen defined benefit plan shall have their benefits in the new defined benefit plan frozen as of the date that they enter DROP under the frozen defined benefit plan; however, such employees shall collect DROP benefits only under the frozen defined benefit plan. To collect benefits under the new defined benefit plan, employees have to enter DROP under the new defined benefit plan.

2. Effective October 1, 2010, or the date of ratification/imposition of this Article, whichever is later, the Town's existing retirement boards shall be dissolved and replaced with one retirement board for all of the Town's retirement plans consisting of the following voting members: one currently employed Town sworn law enforcement officer selected by a vote of the Town's sworn law enforcement officers, one currently employed Town certified firefighter selected by a vote of the Town's certified firefighters, one currently employed general employee elected by a vote of the general employees; five residents selected by the Town Council, and the Town Manager serving ex officio. The voting members of the new retirement board, other than the Town Manager, shall serve staggered three-year terms. To implement the staggered terms, the first elected currently employed Town sworn law enforcement officer shall serve a one-year term; the first elected currently employed Town certified firefighter shall serve a two-year term,

and the first elected currently employed general employee shall serve a three-year term.
Thereafter, each employee shall be elected for three-year terms. The staggered terms for the five
residents selected by the Town Council shall be implemented in the same manner – two initially
selected for a one-year term, two initially selected for a two-year term, and one initially selected
for a three-year term.

TOWN OF PALM BEACH
FIRE-RESCUE DEPARTMENT
HOURLY RATES AFTER ELIMINATION OF KELLY DAYS
Firefighter EMT

STEPS:	P	1	2	3	4	5	6	7	8	9	10
Annual:	\$49,307	\$49,800	\$50,293	\$50,786	\$51,279	\$51,792	\$52,305	\$52,818	\$53,330	\$53,864	\$54,397
Hourly:	\$16.932	\$17.102	\$17.271	\$17.440	\$17.610	\$17.786	\$17.962	\$18.138	\$18.314	\$18.497	\$18.680
STEPS:	11	12	13	14	15	16	17	18	19	20	
Annual:	\$54,930	\$55,464	\$56,018	\$56,573	\$57,128	\$57,682	\$58,259	\$58,836	\$59,413	\$59,990	
Hourly:	\$18.863	\$19.047	\$19.237	\$19.428	\$19,618	\$19.808	\$20.007	\$20.205	\$20.403	\$20.601	
STEPS:	21	22	23	24	25	26	27	28	29	30	
Annual:	\$60,589	\$61,189	\$61,789	\$62,389	\$63,013	\$63,637	\$64,261	\$64,885	\$65,533	\$66,182	
Hourly:	\$20.807	\$21.013	\$21.219	\$21.425	\$21.639	\$21.853	\$22.068	\$22.282	\$22.505	\$22.727	
STEPS:	31	32	33	34	35	36	37	38	39	40	
Annual:	\$66,831	\$67,480	\$68,155	\$68,830	\$69,504	\$70,179	\$70,881	\$71,583	\$72,285	\$72,986	
Hourly:	\$22.950	\$23.173	\$23.405	\$23.637	\$23.868	\$24.100	\$24.341	\$24.582	\$24.823	\$25.064	

*Probationary Step

TOWN OF PALM BEACH
FIRE-RESCUE DEPARTMENT
HOURLY RATES AFTER ELIMINATION OF KELLY DAYS
Firefighter Paramedic

STEPS:	P*	1	2	3	4	5	6	7	8	9	10
Annual:	\$55,425	\$55,979	\$56,534	\$57,088	\$57,642	\$58,218	\$58,795	\$59,371	\$59,948	\$60,547	\$61,147
Hourly:	\$19,033	\$19,224	\$19,414	\$19,604	\$19,795	\$19,993	\$20,191	\$20,388	\$20,586	\$20,792	\$20,998
STEPS:		11	12	13	14	15	16	17	18	19	20
Annual:		\$61,746	\$62,346	\$62,969	\$63,592	\$64,216	\$64,839	\$65,488	\$66,136	\$66,785	\$67,433
Hourly:		\$21,204	\$21,410	\$21,624	\$21,838	\$22,052	\$22,266	\$22,489	\$22,712	\$22,934	\$23,157
STEPS:		21	22	23	24	25	26	27	28	29	30
Annual:		\$68,107	\$68,782	\$69,456	\$70,130	\$70,832	\$71,533	\$72,234	\$72,936	\$73,665	\$74,394
Hourly:		\$23,389	\$23,620	\$23,852	\$24,083	\$24,324	\$24,565	\$24,806	\$25,047	\$25,297	\$25,547
STEPS:		31	32	33	34	35	36	37	38	39	40
Annual:		\$75,124	\$75,853	\$76,611	\$77,370	\$78,129	\$78,887	\$79,676	\$80,465	\$81,254	\$82,043
Hourly:		\$25,798	\$26,048	\$26,309	\$26,569	\$26,830	\$27,090	\$27,361	\$27,632	\$27,903	\$28,174

*Probationary Step

TOWN OF PALM BEACH
FIRE-RESCUE DEPARTMENT
HOURLY RATES AFTER ELIMINATION OF KELLY DAYS
Driver Engineer/EMT

STEPS:	P	1	2	3	4	5	6	7	8	9	10
Annual:	\$52,148	\$52,669	\$53,191	\$53,712	\$54,234	\$54,776	\$55,319	\$55,861	\$56,403	\$56,967	\$57,531
Hourly:	\$17.908	\$18.087	\$18.266	\$18.445	\$18.624	\$18.811	\$18.997	\$19.183	\$19.369	\$19.563	\$19.757
STEPS:		11	12	13	14	15	16	17	18	19	20
Annual:		\$58,095	\$58,659	\$59,246	\$59,833	\$60,419	\$61,006	\$61,616	\$62,226	\$62,836	\$63,446
Hourly:		\$19.950	\$20.144	\$20.345	\$20.547	\$20.748	\$20.950	\$21.159	\$21.369	\$21.578	\$21.788
STEPS:		21	22	23	24	25	26	27	28	29	30
Annual:		\$64,080	\$64,715	\$65,349	\$65,984	\$66,644	\$67,304	\$67,963	\$68,623	\$69,309	\$69,996
Hourly:		\$22.006	\$22.224	\$22.441	\$22.659	\$22.886	\$23.112	\$23.339	\$23.566	\$23.801	\$24.037
STEPS:		31	32	33	34	35	36	37	38	39	40
Annual:		\$70,682	\$71,368	\$72,082	\$72,796	\$73,509	\$74,223	\$74,965	\$75,707	\$76,450	\$77,192
Hourly:		\$24.273	\$24.508	\$24.753	\$24.998	\$25.244	\$25.489	\$25.744	\$25.998	\$26.253	\$26.508

*Probationary Step

TOWN OF PALM BEACH
FIRE-RESCUE DEPARTMENT
HOURLY RATES AFTER ELIMINATION OF KELLY DAYS
Driver Engineer/Paramedic

STEPS:	P	1	2	3	4	5	6	7	8	9	10
Annual:	\$59,548	\$60,143	\$60,739	\$61,334	\$61,930	\$62,549	\$63,169	\$63,788	\$64,407	\$65,051	\$65,695
Hourly:	\$20.449	\$20.654	\$20.858	\$21.063	\$21.267	\$21.480	\$21.692	\$21.905	\$22.118	\$22.339	\$22.560
STEPS:		11	12	13	14	15	16	17	18	19	20
Annual:		\$66,339	\$66,983	\$67,653	\$68,323	\$68,993	\$69,663	\$70,359	\$71,056	\$71,753	\$72,449
Hourly:		\$22.781	\$23.003	\$23.233	\$23.463	\$23.693	\$23.923	\$24.162	\$24.401	\$24.640	\$24.880
STEPS:		21	22	23	24	25	26	27	28	29	30
Annual:		\$73,174	\$73,898	\$74,623	\$75,347	\$76,101	\$76,854	\$77,608	\$78,361	\$79,145	\$79,928
Hourly:		\$25.128	\$25.377	\$25.626	\$25.875	\$26.133	\$26.392	\$26.651	\$26.910	\$27.179	\$27.448
STEPS:		31	32	33	34	35	36	37	38	39	40
Annual:		\$80,712	\$81,496	\$82,311	\$83,125	\$83,940	\$84,755	\$85,603	\$86,450	\$87,298	\$88,146
Hourly:		\$27.717	\$27.986	\$28.266	\$28.546	\$28.826	\$29.106	\$29.397	\$29.688	\$29.979	\$30.270

*Probationary Step

TOWN OF PALM BEACH
FIRE-RESCUE DEPARTMENT
HOURLY RATES AFTER ELIMINATION OF KELLY DAYS
Fire-Rescue Lieutenant/EMT

STEPS:	P	1	2	3	4	5	6	7	8	9	10
Annual:	\$61,151	\$61,763	\$62,374	\$62,986	\$63,597	\$64,233	\$64,869	\$65,505	\$66,141	\$66,802	\$67,464
Hourly:	\$21,000	\$21,210	\$21,420	\$21,630	\$21,840	\$22,058	\$22,276	\$22,495	\$22,713	\$22,940	\$23,167
STEPS:	11	12	13	14	15	16	17	18	19	20	
Annual:	\$68,125	\$68,787	\$69,474	\$70,162	\$70,850	\$71,538	\$72,253	\$72,969	\$73,684	\$74,400	
Hourly:	\$23,395	\$23,622	\$23,858	\$24,094	\$24,330	\$24,567	\$24,812	\$25,058	\$25,304	\$25,549	
STEPS:	21	22	23	24	25	26	27	28	29	30	
Annual:	\$75,144	\$75,888	\$76,632	\$77,376	\$78,149	\$78,923	\$79,697	\$80,471	\$81,275	\$82,080	
Hourly:	\$25,805	\$26,060	\$26,316	\$26,571	\$26,837	\$27,103	\$27,368	\$27,634	\$27,910	\$28,187	
STEPS:	31	32	33	34	35	36	37	38	39	40	
Annual:	\$82,885	\$83,689	\$84,526	\$85,363	\$86,200	\$87,037	\$87,907	\$88,778	\$89,648	\$90,518	
Hourly:	\$28,463	\$28,739	\$29,027	\$29,314	\$29,602	\$29,889	\$30,188	\$30,487	\$30,786	\$31,085	

*Probationary Step

TOWN OF PALM BEACH
FIRE-RESCUE DEPARTMENT
HOURLY RATES AFTER ELIMINATION OF KELLY DAYS
Fire-Rescue Lieutenant/Paramedic

STEPS:	P	1	2	3	4	5	6	7	8	9	10
Annual:	\$66,973	\$67,643	\$68,312	\$68,982	\$69,652	\$70,348	\$71,045	\$71,741	\$72,438	\$73,162	\$73,887
Hourly:	\$22.999	\$23.229	\$23.459	\$23.689	\$23.919	\$24.158	\$24.397	\$24.636	\$24.876	\$25.124	\$25.373
STEPS:	11	12	13	14	15	16	17	18	19	20	
Annual:	\$74,611	\$75,336	\$76,089	\$76,842	\$77,596	\$78,349	\$79,132	\$79,916	\$80,699	\$81,483	
Hourly:	\$25.622	\$25.871	\$26.129	\$26.388	\$26.647	\$26.906	\$27.175	\$27.444	\$27.713	\$27.982	
STEPS:	21	22	23	24	25	26	27	28	29	30	
Annual:	\$82,298	\$83,113	\$83,927	\$84,742	\$85,590	\$86,437	\$87,284	\$88,132	\$89,013	\$89,895	
Hourly:	\$28.262	\$28.541	\$28.821	\$29.101	\$29.392	\$29.683	\$29.974	\$30.265	\$30.568	\$30.870	
STEPS:	31	32	33	34	35	36	37	38	39	40	
Annual:	\$90,776	\$91,657	\$92,574	\$93,490	\$94,407	\$95,323	\$96,277	\$97,230	\$98,183	\$99,136	
Hourly:	\$31.173	\$31.476	\$31.790	\$32.105	\$32.420	\$32.735	\$33.062	\$33.389	\$33.717	\$34.044	

*Probationary Step

TOWN OF PALM BEACH
FIRE-RESCUE DEPARTMENT
HOURLY RATES AFTER ELIMINATION OF KELLY DAYS
Administrative Lieutenant and Assistant Fire Marshal

STEPS:	P	1	2	3	4	5	6	7	8	9	10
Annual:	\$69,554	\$70,250	\$70,945	\$71,641	\$72,336	\$73,060	\$73,783	\$74,506	\$75,230	\$75,982	\$76,734
Hourly:	\$23.885	\$24.124	\$24.363	\$24.602	\$24.841	\$25.089	\$25.338	\$25.586	\$25.834	\$26.093	\$26.351
STEPS:	11	12	13	14	15	16	17	18	19	20	
Annual:	\$77,486	\$78,239	\$79,021	\$79,804	\$80,586	\$81,368	\$82,182	\$82,996	\$83,809	\$84,623	
Hourly:	\$26.609	\$26.868	\$27.136	\$27.405	\$27.674	\$27.942	\$28.222	\$28.501	\$28.781	\$29,060	
STEPS:	21	22	23	24	25	26	27	28	29	30	
Annual:	\$85,469	\$86,316	\$87,162	\$88,008	\$88,888	\$89,768	\$90,648	\$91,528	\$92,444	\$93,359	
Hourly:	\$29.351	\$29.641	\$29.932	\$30.223	\$30.525	\$30.827	\$31.129	\$31.431	\$31.746	\$32,060	
STEPS:	31	32	33	34	35	36	37	38	39	40	
Annual:	\$94,274	\$95,189	\$96,141	\$97,093	\$98,045	\$98,997	\$99,987	\$100,977	\$101,967	\$102,957	
Hourly:	\$32.374	\$32.689	\$33.016	\$33.342	\$33.669	\$33.996	\$34.336	\$34.676	\$35.016	\$35,356	

*Probationary Step

MEMORANDUM

Office of the Town Manager

To: Mayor and Town Council
From: Peter B. Elwell, Town Manager
Date: March 14, 2011
Re: Recommendations for Resolving the Collective Bargaining Impasse with the Professional Firefighters/Paramedics of Palm Beach County, Local 2928

Rule 1.012(4)(a) of the Town's PERC Ordinance provides that:

The chief executive officer of the governmental entity involved shall, within 10 days after rejection of a recommendation of the special magistrate, submit to the legislative body of the governmental entity involved a copy of the findings of fact and recommended decision of the special magistrate, together with the chief executive officer's recommendations for settling the disputed impasse issues.

The following are my recommendations for settling the disputed impasse issues. A copy of this document and its attachments are also being provided to the Union, through labor counsel, as required by the Rule.

I. OVERVIEW

A. On October 8, 2001, Local 2928 was certified as the exclusive bargaining representative for two bargaining units of Town fire-rescue personnel – a supervisory bargaining unit and a non-supervisory bargaining unit. The supervisory bargaining unit consists of 18 employees in the classification of Fire Lieutenant. The non-supervisory bargaining unit consists of 46 employees in the classifications of Driver-Operator and Firefighter.

In June 2005, the parties entered into their first collective bargaining agreements ("CBAs"), one covering the supervisory bargaining unit and one covering the non-supervisory bargaining unit. These CBAs expired on September 30, 2008. Thereafter, the parties extended the CBAs for Fiscal Year ("FY") 2009. Upon the expiration of the FY2009 extension, the parties entered into successor CBAs for FY2010. These CBAs expired on September 30, 2010.

Negotiations for successors to the FY2010 CBAs commenced March 1, 2010 with a presentation of the Town's bargaining proposals. After four bargaining sessions, the Town declared an impasse in negotiations for both CBAs on June 22, 2010. The Town

of Palm Beach Public Employees Relations Commission ("Town PERC") appointed Kenneth Starr, who was mutually selected by the parties, to serve as the Special Magistrate to hear the parties' dispute. The parties conducted two additional bargaining sessions after the declaration of impasse.

B. On December 9, 2010, a Special Magistrate hearing was held in this matter before Commission-appointed Special Magistrate Starr.

C. On February 14, 2011, Special Magistrate Starr issued his recommendations regarding the remaining Articles at impasse. [Exhibit A hereto.] On March 4, 2011, the Town filed its Notice of Rejection of Special Magistrate's Report and Recommendation. [Exhibit B hereto.]

D. The Town has rejected the Special Magistrate's recommendations on the following Articles:

- (1) Article 30 – Insurance and Miscellaneous Benefits
- (2) Article 14 – Drug and Alcohol Testing
- (3) Article 16 – Promotions
- (4) Article 17 – Wages
- (5) Article 18 – Workweek
- (6) Article 19 – Overtime
- (7) Article 38 – Sick Leave and Injury Time

These Articles apply to both the non-supervisory and supervisory CBAs, except for Article 16, which only applies to the non-supervisory CBA.

II. RECOMMENDATIONS

1. ARTICLE 30 – INSURANCE AND MISCELLANEOUS BENEFITS

Issue:

The current CBAs are silent on the issue of retirement benefits for bargaining unit employees. Those benefits, instead, are provided through the Town's Code of Ordinances under a Firefighter Pension Plan that covers all of the Town's certified firefighters, including the bargaining unit members. The Town seeks to make significant, but necessary, changes to the existing Firefighter Pension Plan and to incorporate those changes either in Article 30 or as a new Article 41.

In FY2002, the Town's actuarially determined contribution to the Plan was \$197,289. In FY2011, it was \$3,189,802. This is an increase of over 1500% in 10 years. During that same period of time the Town's annual contribution per

active plan member increased from \$3,523 to \$44,303. This is an increase of over 1100% in 10 years.

During this period, the active Plan members' contributions remained at 6.89% of their gross pensionable wages while the actuarially required public contribution (measured as a percentage of active payroll) more than doubled. The actuarially required public contribution to the Firefighter Pension Plan was below 29% of active payroll for most years until the early 2000s. By FY2006, the actuarially required public contribution had grown to 39.34%. In FY2007 that amount jumped to 45.97% and in FY2011 it reached 51.06% of active payroll. 90% of this is paid by Town taxpayers and only 10% is paid with State Chapter 175 monies. Back in FY2002, Town taxes paid for 43% of the required public contribution and 57% was paid with State Chapter 175 monies.

By any measure, the current Firefighter Pension Plan is financially unsustainable for Town taxpayers.

In March 2009, the Town's Long Term Financial Plan forecasted budget deficits beginning in FY2012 and rising to \$20 million in FY2020. The total cumulative deficit forecast for FY2011 through FY2020 was almost \$100 million. And, this did not even take into account the money needed to fund coastal protection projects. A major cause of these deficits is the past and continuing growth in the cost of Town pensions and other employee benefits. By the spring 2010, the Town had developed a plan to control employee benefit costs and implement other cost-cutting measures. That plan included proposed changes to the pension plans that were more modest than what I am currently proposing for the firefighters. Unfortunately, in the early summer of 2010, the Palm Beach County Property Appraiser imposed upon the Town a 12.4% decrease in property values, which resulted in a \$5 million decrease in property tax revenue. The Town had to enact additional cost-cutting measures, including the more significant pension plan changes that I am now proposing.

I believe my proposed changes to the Firefighter Pension Plan will restore fiscal responsibility to this program while still providing the employees with an appropriate level of benefits. The Town simply can no longer afford to provide the firefighter bargaining unit employees with the extremely generous pension benefits that they have been fortunate to enjoy in past years. Local 2928 recognizes that changes are needed to the existing Firefighter Pension Plan, but is not willing to go as far with those changes as proposed by the Town.

Special Magistrate's Recommendation:

“The Special Magistrate recommends adoption of the Town’s proposal to freeze the existing defined benefit plan and the institution of a new defined benefit plan in conjunction with a defined contribution plan – with several modifications. Eligibility for retirement benefits under the new defined benefit plan would be at age 55. The Special Magistrate recommends a retirement benefit for life, which may be funded by insurance, for a firefighter who becomes disabled and is forced to retire due to a disability incurred in the ‘line of duty’ (regardless of how many years he/she has been employed), with a 10-year certain payout, of at least 31.25% of average salary. For a firefighter with at least 10 years of service, who becomes disabled and is forced to retire due to a disability incurred “other than in the line of duty,” the Special Magistrate recommends a retirement benefit for life (with a 10-year certain payout) of at least 15% of average salary. The Special Magistrate also recommends an annual COLA, not to exceed 2%, beginning at age 65, based upon CPI-W, the same measure utilized by the U.S. Social Security Administration. Finally, the Special Magistrate recommends the same definition of ‘disability’ as currently contained in Chapter 175 should apply to employees under the new defined benefit plan.”

Town Manager's Recommendation:

The Special Magistrate’s recommendation with respect to this Article should be rejected. Providing retirement eligibility at age 55 and up to a 2% annual pension COLA as recommended by the Special Magistrate, instead of age 65 and no annual pension COLA as recommended by Town management, would fail to fully address the Town’s financial concerns, and would result in unacceptable forecasted budget deficits. Moreover, the Special Magistrate clearly misunderstood the Town's proposal regarding disability retirement benefits. The Town's proposal does not change the current disability retirement benefits. These existing benefits exceed those recommended by the Special Magistrate and the Town does not desire to reduce the firefighters' disability retirement benefits. Accordingly, I recommend that the Council adopt the Town's proposal attached as Exhibit C hereto.

2. ARTICLE 14 –DRUG AND ALCOHOL TESTING

Issue:

The existing language of the CBAs provides for drug and alcohol testing in accordance with the Town’s Personnel Manual and Fire Department Procedures in the following situations applicable to the bargaining unit employees: initial hire, reasonable suspicion, post-accident, and post-discipline for violation of the

drug and alcohol policy. The Town seeks to add random drug testing. Local 2928 agrees to the addition of a new Section 14.4 addressing random drug testing. The only area of disagreement between the parties regarding random drug and alcohol testing is the procedure to be utilized for such testing.

Special Magistrate's Recommendation:

"The Special Magistrate recommends adoption of the Town's proposal with regard to the number of bargaining unit members who may be tested in any year, without any of the limitations proposed by Local 2928. The Special Magistrate recommends adoption of the Union's proposal to follow DOT procedures as to when random testing may be conducted."

Town Manager's Recommendation:

The Special Magistrate's recommendation with respect to this Article should be rejected, as the procedure recommended is too restrictive. Instead, I recommend that the Council adopt the Town's proposal attached as Exhibit D hereto.

3. ARTICLE 16 – PROMOTIONS

Issue:

The only provision in dispute in this Article is Section 16.8 which addresses the selection for promotions to the position of Driver-Operator. Currently, employees who are interested in promotion to Driver-Operator can submit an application for posted vacancies. Those employees who meet the minimum qualifications for the position are given a promotional examination, which consists of both a written and practical component. Points are awarded for the written and practical components, as well as for seniority. Once these points are tallied, the candidates are placed on a promotions eligibility list in ranked order based on their total points. Thereafter, candidates are selected for promotion from the eligibility list based solely on their ranking on the eligibility list (highest scoring candidate selected first). Fire Department management cannot deviate from the ranked order on the eligibility list in promoting candidates. This differs from the procedure in the supervisory CBA which allows Fire Department management to select from the top three ranked candidates on the Lieutenant's promotions eligibility list.

The Town proposes to conform the non-supervisory contract to the supervisory contract and provide Fire Department management with the same flexibility in selecting Driver-Operators as it has in selecting Lieutenants – any one of the top 3 ranked candidates on the promotions eligibility list. Local 2928 proposes to allow

the Fire Department management to select from the top 2 ranked candidates on the promotions eligibility list.

Special Magistrate's Recommendation:

"The Special Magistrate recommends adoption of the Union's proposal to utilize the 'Rule of Two' when making non-supervisory promotions."

Town Manager's Recommendation:

The Special Magistrate's recommendation with respect to this Article should be rejected. There is no legitimate reason why promotions to the rank of Driver-Operator should differ from promotions to the rank of Lieutenant with respect to the Department's flexibility in selecting candidates from the promotions eligibility list. Accordingly, I recommend that the Council adopt the Town's proposal attached as Exhibit E hereto.

4. **ARTICLE 17 – WAGES**

Issue:

The current CBAs contain Step Pay Plans for the bargaining unit employees consisting of 1 probationary step and 10 regular steps for each bargaining unit job classification. Each step in the Plans is set at a projected annual salary 4% higher than the preceding step. Bargaining unit employees move to the next higher step in the Plans on their anniversary dates provided that they received at least an overall score of 3.0 on their annual performance evaluation. Additionally, bargaining unit employees are subject to pay increases based on annual competitiveness studies conducted by the Town (a) for all employees and (b) for fire-rescue personnel. Lastly, the bargaining unit employees are eligible for either longevity pay or annual bonuses, depending on their date of hire. In this regard, employees hired prior to October 1, 2004 are eligible for longevity pay of up to 10% each December 1 based on their years of Town service. Employees hired on or after October 1, 2004 are eligible for bonuses each December 1 based upon a combination of their performance evaluation scores and their years of Town service.

The Town seeks to modify the existing Step Pay Plans to reflect 40 steps of 1% each instead of 10 steps of 4% each. (The hourly rates for each of these steps may need to be modified based on the Council's resolution of Article 18, below.) Both the existing minimums and maximums for the job classifications would remain status quo. The Town seeks this change to provide more flexibility in future pay increases and promotions. The Town has also proposed no step or

other wage increases for FY2011. This is consistent with the Town's treatment of all other Town employees, none of whom are receiving any wage increases for FY2011. The Town has further proposed that wage increases for any fiscal year after FY2011 be established through the collective bargaining process.

Additionally, the Town has proposed a revision to the existing longevity/bonus system. Under the new system, which would be applicable equally to all bargaining unit employees regardless of when they were hired, the employees would be awarded bonuses of up to \$6,000 on December 1 of each year based solely on their performance evaluation scores. This new system would commence with the December 2011 bonus payment.

Special Magistrate's Recommendation:

"The Special Magistrate recommends adoption of the 40-step plan agreed to by both sides and a two-step advancement to qualified employees effective with the 2012 fiscal year. All other step advancement in the future will be determined through the collective bargaining process. With regard to proposals concerning longevity/bonus pay, the Special Magistrate recommends maintaining the *status quo*."

Town Manager's Recommendation:

The Special Magistrate's recommendation with respect to this Article should be rejected. The Town is not in a position at this time to commit to a wage increase for the upcoming fiscal year. Moreover, the changes to the existing longevity/bonus pay systems are an essential part of the Town's Long Term Financial Plan to avoid the projected budget deficits. Therefore, they are absolutely necessary. Accordingly, I recommend that the Council adopt the Town's proposal attached as Exhibit F hereto; provided, however, that the hourly rates for the new Step Pay Plans will need to be adjusted depending on how the Council resolves Article 18.

5. ARTICLE 18 – WORKWEEK

Issue:

The fire-rescue bargaining unit employees work shifts of 24 hours on duty followed by 48 hours off duty. This averages out to 56 hours worked each week. Section 7(k) of the Fair Labor Standards Act ("FLSA") allows employers to pay fire-rescue employees overtime after 53 hours of work in a 7-day period, instead of the usual 40 hours in a 7-day period. This Section also allows an employer to designate overtime work cycles of up to 28 days for fire-rescue employees.

Under the current CBA, the parties have designated a 21-day overtime work cycle for the fire-rescue bargaining unit employees. Working their regular 24 hours on duty-48 hours off duty schedule, the bargaining unit employees would work 168 hours in their 21-day overtime work cycle. As the FLSA requires that an employer pay its fire-rescue employees overtime for all hours worked in excess of 159 hours in a 21-day overtime work cycle, the Town would have to pay the bargaining unit employees 9 hours of overtime each 21-day overtime work cycle. To mitigate this “built-in” overtime, the parties have agreed to Kelly Days, which are unpaid days off arranged in the overtime work cycle to reduce overtime costs and afford fire-rescue employees more time off.

Under the current CBAs, the bargaining unit employees are scheduled one Kelly Day every 7th shift, which equates to one every 3 weeks, or roughly 17 per employee each year. This brings the number of hours worked in the 21-day overtime cycle down to 144 hours, well below the FLSA overtime threshold. While the Town saves overtime with this arrangement, those savings are far exceeded by the extra costs incurred by the Town to fill in the vacancies created by the bargaining unit employees who are off on their Kelly Days. For the 64 bargaining unit employees, this amounts to 1,088 shifts that the Town has to find coverage for due to the Kelly Days.

At one time, the Town could afford the staffing to cover these Kelly Days. However, due to the Town’s financial condition the Town no longer can provide sufficient staffing to cover all of the Kelly Days required under the existing CBAs. The Town is forced due to pay employees overtime on many shifts to meet its minimum staffing requirements. To remedy this, the Town proposes to delete the Kelly Days in their entirety.

Special Magistrate’s Recommendation:

“The Special Magistrate recommends maintaining the *status quo*.”

Town Manager’s Recommendation:

The Special Magistrate’s recommendation with respect to this Article should be rejected. The changes proposed by the Town are absolutely necessary to address the Town’s staffing and financial concerns. Kelly Days are simply one of the very generous benefits in excess of those required by law that the firefighter bargaining unit employees have been fortunate to enjoy over the years, but which the Town can no longer afford. Accordingly, I recommend that the Council adopt the Town’s proposal attached as Exhibit G hereto.

6. ARTICLE 19 – OVERTIME

Issue:

The FLSA allows employers to pay fire-rescue employees overtime after 53 hours of work in a 7-day period, instead of the usual 40 hours in a 7-day period. The law also allows an employer to designate overtime work cycles of up to 28 days for fire-rescue employees. Under the current CBAs, the parties have designated a 21-day overtime work cycle for the fire-rescue bargaining unit employees. Pursuant to the FLSA, the overtime threshold in a 21-day overtime cycle is 159 hours. However, as an added benefit to the firefighters, the CBAs provide that the bargaining unit employees will receive overtime after 144 hours worked in their 21-day overtime cycle.

The Town proposes to change the overtime threshold for bargaining unit employees to the maximum allowable under the FLSA – 212 hours in a 28-day cycle. Local 2928 proposes that the overtime cycle remain at 21 days, but that the overtime threshold be changed to 159 hours from 144 hours. While the Town appreciates this concession, it does not go far enough. The change proposed by the Town is absolutely necessary for the Town to reduce its expenses and achieve financial sustainability as set forth in the Long Term Financial Plan.

Special Magistrate's Recommendation:

“The Special Magistrate recommends raising the number of hours a shift employee may work in a 21-day work cycle to 159, before overtime pay is required. With regard to hours considered in determining overtime eligibility, he recommends maintaining the *status quo*.”

Town Manager's Recommendation:

The Special Magistrate's recommendation with respect to this Article should be rejected. The firefighters have been fortunate to enjoy overtime benefits more generous than those required by law, but that is no longer fiscally viable. Accordingly, I recommend that the Council adopt the Town's proposal attached as Exhibit H hereto.

7. **ARTICLE 38 – SICK LEAVE AND INJURY TIME**

Issue:

Bargaining unit employees accrue 96 hours (4 shifts) of sick leave each year. Unfortunately, an excessive number of the bargaining unit employees are using everything they accrue in sick leave each year. This is causing a spike in overtime costs as, in most cases, the Town has to pay someone overtime to cover the vacancies caused by the employees who call in sick.

The Town understands that at times circumstances beyond the employees' control may cause the employees to have to use sick leave. And, the Town does not have an issue with these legitimate uses of sick leave. However, disturbing trends have developed over the years which would lead any objective observer to recognize that bargaining unit employees are misusing and/or abusing sick leave as a means to get time off when they could not otherwise do so based on the Department's limitation on the number of employees who can be scheduled off on each shift.

As reflected in the Department's recent Sick Leave Study, in FY2008, 23 out of 55 bargaining unit employees (42%) used as much or more than one year of sick leave accrual (96 hours). This is remarkable given that these numbers (as well as all of the numbers in the Study) exclude sick leave usage for workers compensation injury and FMLA. While these numbers lessened in FY2009 to 31%, they spiked back up to 40% in FY2010. This problem is further evidenced by the total number of hours of sick leave used by the bargaining unit employees as well as the total number of sick leave use occurrences (consecutive days of leave are considered one occurrence regardless of duration) during this time frame, which show similar spikes in the bargaining unit employees' sick leave usage. Most disturbingly, the Study shows that the highest incidents of sick leave usage over the last 3 fiscal years have been on Fridays and Saturdays, followed by Thursday. It is beyond coincidence that the bargaining unit employees are using more sick leave on the days that will result in them having Thursday, Friday, and Saturday off.

Recognizing this sick leave usage problem, both the Town and Local 2928 have proposed adding provisions into the CBAs to address this situation. The only dispute between the parties is how best to do so. The Town seeks to impose true penalties on employees who misuse/abuse sick leave. Local 2928 proposes lesser measures, including an award of additional leave for those who do not misuse/abuse sick leave.

Special Magistrate's Recommendation:

“The Special Magistrate recommends that sick leave may be taken in 12-hour blocks and that an occurrence would be defined as either leave of an entire 24-hour shift or two 12-hour blocks in any 12-month period. The Special Magistrate also recommends adoption of the Town's proposal, which imposes various types of discipline upon employees beginning with the fourth occurrence. However, he does not recommend adoption of any of the Town's proposals with regard to non-disciplinary penalties (ineligibility for overtime, shift exchanges, enhanced pay or promotions) for use of sick leave. Finally, the Special Magistrate does not recommend adoption of the Town's proposal to require medical documentation before an employee is entitled to receive pay for the first day of sick leave.”

Town Manager's Recommendation:

The Special Magistrate's recommendation with respect to this Article should be rejected. The Special Magistrate does not go far enough in addressing Town management's concerns. Accordingly, I recommend that the Council adopt the Town's proposal attached as Exhibit I hereto.

TOWN OF PALM BEACH
PUBLIC EMPLOYEES RELATIONS COMMISSION

TOWN OF PALM BEACH,

Employer,

v.

PROFESSIONAL FIREFIGHTERS/PARAMEDICS
OF PALM BEACH COUNTY, LOCAL 2928,

Union.

**EMPLOYER'S NOTICE OF REJECTION OF
SPECIAL MAGISTRATE'S REPORT AND RECOMMENDATIONS**

The Employer, TOWN OF PALM BEACH (hereafter the "Town"), by and through its counsel, FISHER & PHILLIPS LLP, hereby files its Notice of Rejection of Special Magistrate's Report and Recommendations. On February 14, 2011, the Town received the Special Magistrate's Decision. Pursuant to Rule 1.012 of the Town's PERC Ordinance, the Town hereby rejects the recommendations rendered by the Special Magistrate in his Decision, as follows.

1. **ARTICLE 30 – INSURANCE AND MISCELLANEOUS BENEFITS** – The Town rejects the Special Magistrate's recommendation with respect to this Article as the Special Magistrate failed to adequately address all of the Town's concerns regarding the firefighters' pension program.

2. **ARTICLE 14 –DRUG AND ALCOHOL TESTING** – The Town rejects the Special Magistrate's recommendation with respect to this Article as the Special Magistrate failed to adequately address all of the Town's concerns regarding random drug testing.

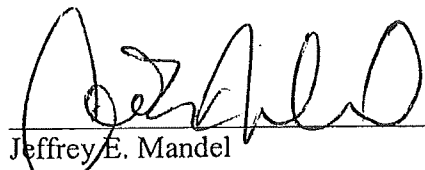
3. **ARTICLE 16 – PROMOTIONS** – The Town rejects the Special Magistrate's recommendation with respect to this Article as the Special Magistrate failed to adequately address all of the Town's concerns regarding the selection of employees off of the eligibility lists.

4. **ARTICLE 17 – WAGES** – The Town rejects the Special Magistrate's recommendation with respect to this Article as the Special Magistrate failed to adequately address all of the Town's concerns regarding wage increases and bonuses.

5. **ARTICLE 18 – WORKWEEK** – The Town rejects the Special Magistrate's recommendation with respect to this Article as the Special Magistrate failed to adequately address all of the Town's concerns regarding Kelly Days.

6. **ARTICLE 19 – OVERTIME** – The Town rejects the Special Magistrate's recommendation with respect to this Article as the Special Magistrate failed to adequately address all of the Town's concerns regarding the length of the FLSA work period.

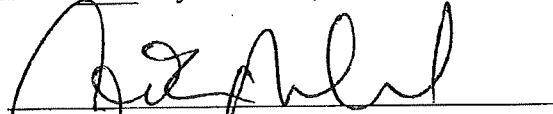
7. **ARTICLE 38 – SICK LEAVE AND INJURY TIME** – The Town rejects the Special Magistrate's recommendation with respect to this Article as the Special Magistrate failed to adequately address all of the Town's concerns regarding sick leave abuse and fitness for duty testing.



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Counsel for Employer

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document has been furnished to Counsel for Union, Mark W. Floyd, Esquire, Mierzwa & Associates, P.A., 3900 Woodlake Blvd., Ste. 212, Lake Worth, FL 33463, by U.S. mail this ^{4th} day of March, 2011.


Jeffrey E. Mandel

ARTICLE 41

RETIREMENT BENEFITS

1. Effective October 1, 2010, or the date of ratification/imposition of this Article, whichever is later, and notwithstanding the provisions of the current firefighters pension program, the employees covered hereunder shall be subject to modifications to the current plan as defined within the Town of Palm Beach Code of Ordinances, Article II. Employee Benefits, Division 2. Retirement System as follows:

A. Freezing of the current defined benefit plan (hereafter, the "frozen pension plan") for all covered members, who will receive the value of the benefit earned to date (calculated as if they were separating from Town employment immediately and then frozen until they are eligible to retire). Payment of this portion of each member's pension would occur in accordance with all eligibility and post retirement rules as they exist prior to October 1, 2010, or the date of ratification/imposition of this Article, whichever is later.

B. Creation of a new defined benefit plan covering all eligible Town employees for all service after October 1, 2010, or the date of ratification/imposition of this Article, whichever is later, which will include the following:

1. Employee contribution of 4.82%.
2. Bonus pay, longevity pay, special assignment overtime pay, and any other compensation that is not base salary will be excluded from the calculation of average final compensation.
3. Average final compensation calculated during the final 60 consecutive months of credited service.
4. Ten year vesting period.

5. Retirement age shall be a minimum of 65 years of age with no years of service requirement for vested employees. The "Rule of 65" shall be eliminated.

6. Average final compensation multiplied by 1.25% per year of credited service.

7. Standard form of payment as a straight life annuity. Option to purchase survivor benefit based on a calculation by the Town's actuary of the actuarially equivalent cost to the retirement system, resulting in a reduction of the member's monthly pension payments.

8. No cost of living (COLA) increase.

9. Elimination of supplemental distribution benefit.

10. Elimination of Chapter 175 (F.S. ch. 175), Firefighters' Pension Trust Fund.

C. Effective upon ratification or imposition of this Article, and notwithstanding the provisions of the current firefighters pension program, the employees covered hereunder shall be subject to a new defined contribution (401(a)) plan in addition to the new defined benefit plan detailed above. The new defined contribution plan will include the following:

1. Mandatory participation by all bargaining unit employees. Bargaining unit employees shall contribute a minimum of 2% of their base pay, and may voluntarily contribute an additional amount up to the maximum contribution allowable under IRS Rules.

2. The Town will match the amount contributed by the bargaining unit employees up to 4%.

3. The Town will contract with a private vendor, through an RFP process, who will administer the defined contribution plan. The vendor will provide the bargaining unit employees with a range of investment options.

D. Irrespective of any other provision of this Agreement or any Town rule or regulation, employees who enter DROP under the new defined benefit plan shall become at-will employees. Employees who enter DROP under the frozen defined benefit plan shall have their benefits in the new defined benefit plan frozen as of the date that they enter DROP under the frozen defined benefit plan; however, such employees shall collect DROP benefits only under the frozen defined benefit plan. To collect benefits under the new defined benefit plan, employees have to enter DROP under the new defined benefit plan.

2. Effective October 1, 2010, or the date of ratification/imposition of this Article, whichever is later, the Town's existing retirement boards shall be dissolved and replaced with one retirement board for all of the Town's retirement plans consisting of the following voting members: one currently employed Town sworn law enforcement officer selected by a vote of the Town's sworn law enforcement officers, one currently employed Town certified firefighter selected by a vote of the Town's certified firefighters, one currently employed general employee elected by a vote of the general employees; five residents selected by the Town Council, and the Town Manager serving ex officio. The voting members of the new retirement board, other than the Town Manager, shall serve staggered three-year terms. To implement the staggered terms, the first elected currently employed Town sworn law enforcement officer shall serve a one-year term; the first elected currently employed Town certified firefighter shall serve a two-year term, and the first elected currently employed general employee shall serve a three-year term. Thereafter, each employee shall be elected for three-year terms. The staggered terms for the five

residents selected by the Town Council shall be implemented in the same manner – two initially selected for a one-year term, two initially selected for a two-year term, and one initially selected for a three-year term.

ARTICLE 14

DRUG AND ALCOHOL TESTING

14.1 The Town, the Union, and the employees covered hereunder mutually agree that employee substance and alcohol abuse may constitute a danger to the employee, fellow employees, and the general public. It is further agreed that the safety of public property and equipment and the image of the Town and its employees are placed in jeopardy if an employee is involved in substance or alcohol abuse. Accordingly, the Union and the employees covered hereunder agree that the Town shall have the right and authority to require employees to submit to appropriate drug and alcohol testing to detect the presence of any controlled substance, narcotic, drug, or alcohol in accordance with the provisions of the Town's Personnel Manual, and the Department's Rules and Regulations, and Departmental Procedure #231, governing substance abuse, including drug and alcohol use.

14.2 Notwithstanding any other provision of this Article, the Town's Personnel Manual Regulations, and the Department's Rules and Regulations, and Departmental Procedure #231, a positive result on any drug or alcohol test may result in appropriate disciplinary action up to and including termination. An employee's refusal to submit to drug or alcohol testing in accordance with the provisions of this Article may result in disciplinary action up to and including termination. Should the Town deem appropriate, it may order an employee, who has tested positive, to undergo rehabilitation in lieu of, or in combination with, disciplinary action. The terms and conditions of such rehabilitation and any follow-up testing shall be prescribed by the Town in consultation with a physician, psychologist, or other substance abuse treatment professional.

14.3 Any testing administered under this Article shall be administered by an appropriate laboratory or testing facility in accordance with the testing procedures set forth in Departmental Procedure #231.

14.4 The Town has the absolute right to randomly test any bargaining unit member for the existence of alcohol, illegal drugs, or other controlled substances. The selection of an employee for random testing shall be made by a valid method, such as a random number table, a computer based random number generator that is matched with employees' payroll identification numbers or other comparable identification number, or other method which is required and administered by established testing entities.

ARTICLE 16

PROMOTIONS

16.1 Vacancies in the Driver-Operator classification shall be filled in accordance with the applicable selection processes set forth in Article II, Sections ~~2-3.2~~ 2-2.2 of the Department's Rules and Regulations. Such vacancies will, insofar as possible, be filled within thirty (30) calendar days after the vacancy occurs.

16.2 Notices of promotional examinations shall be posted on the Department bulletin board at each work location at least ninety (90) days in advance of a target promotional examination date. The written examination will be held no sooner than ninety (90) days after the notice, nor later than one hundred twenty (120) days after the notice. Source materials from which the examination is drawn will be identified in the examination announcement or concurrent with the issuance of such announcement. Such source materials shall be in print or otherwise obtainable.

16.3 No employee shall be permitted to apply for a promotional examination after the closing date set forth in the examination announcement. Such closing date will be between thirty (30) and thirty-five (35) days prior to the date of the examination.

16.4 In order to be eligible to take a promotional examination, an employee must meet the applicable minimum employment standards set forth in Article II, Sections ~~2-3.1~~ 2-2.1 of the Department's Rules and Regulations and the applicable educational requirements set forth in Department Procedure #228 as of the closing date for the written examination.

16.5 No employee shall be eligible to take a promotional examination if he/she has received a suspension or higher-level disciplinary action during the twelve (12) months preceding the closing date for the written examination or at any time until the date the examination process is completed.

16.6 A promotional eligibility list shall remain in effect for two (2) years from the date the eligibility list is established or until there are no names remaining on the eligibility list, whichever occurs first. In an effort to maintain a continuous eligibility list, the Town shall make a reasonable effort to produce a new eligibility list in advance of the two (2)-year expiration date of the current eligibility list.

16.7 Upon his/her written request, any applicant on a promotional eligibility list shall be permanently removed from such promotional eligibility list. Any applicant on a promotional eligibility list shall automatically be permanently removed from such list if he/she receives a suspension or higher-level disciplinary action. In the Fire Chief's discretion, an applicant on a promotional eligibility list may be temporarily removed from such promotional eligibility list if the applicant is on light duty, on disability leave or any other leave of absence, or if the applicant otherwise is not working or is unavailable for work, at any time after the promotional eligibility list is established. Prior to temporarily removing an applicant from a promotional list, the Fire Chief shall advise in writing the applicant of his intention and shall provide him/her with an opportunity to respond thereto.

16.8 Selections for promotions from the promotional eligibility list for Driver-Operator shall be made by the Fire Chief ~~selecting the highest ranking candidate (i.e., the Rule of One)~~ until the list is exhausted or expires utilizing the Rule of Three (3). Pursuant to the Rule of Three (3), the top three (3) candidates on the promotional eligibility list will be considered for the promotional vacancy. (The Fire Chief may choose any one of the top three candidates on the promotional eligibility list.) If there is a second promotional vacancy after the first selection is made, the number four (4) candidate on the list will be added to the remaining two (2) in order to make three (3) candidates eligible for the next selection. This method will continue until the list is exhausted or expires. Should the Fire Chief pass over a higher ranked candidate in applying

the Rule of Three (3), the Fire Chief shall informally counsel the passed over candidate prior to announcing the candidate(s) selected. Any employee who is selected for but refuses a promotion shall automatically be removed from the promotional eligibility list. The Fire Chief, in his sole and exclusive discretion, may reinstate such employee to the promotional eligibility list if he/she determines that the employee had good and sufficient reason for refusing the promotion and the employee's reinstatement to the promotional eligibility list would be in the best interest of the Department.

16.9 The promotional process set forth in paragraph 16.1 above and as specified in Departmental Rules and Regulations, Article II, Sections ~~2-3.2~~ 2-2.2 shall be conducted by an agency or organization specializing in and with experience conducting Fire-Rescue promotional assessments separate from the Town of Palm Beach, the Fire-Rescue Department or any other department or agency within the Town.

ARTICLE 17

WAGES

17.1 Effective October 1, 2010, or the date of ratification/imposition of this Article, whichever is later, the Salary Step Plan reflected in Exhibit A to this Agreement will go into effect and shall replace the Fiscal Year 2009-10 Salary Step Plan. Bargaining unit employees shall be placed into the step in the Salary Step Plan reflected in Exhibit A that corresponds to their annual pay in the Fiscal Year 2009-10 Salary Step Plan (e.g., a Firefighter/EMT receiving \$53,330 under the expired Salary Step Plan will be placed at step 8 of the Salary Step Plan for Firefighter/EMT reflected in Exhibit A). No step or other wage increases will be provided to bargaining unit employees for Fiscal Year 2010-2011 as part of the implementation of the Salary Step Plan reflected in Exhibit A.

17.2 Step or other wage increases, if any, after Fiscal Year 2010-2011, shall be established through the collective bargaining process.

17.3 Effective October 1, 2010, or the date of ratification/imposition of this Article, whichever is later, the existing longevity and bonus programs will cease to exist for any bargaining unit employees. In their place, on that same date, the following performance bonus program will be implemented; provided, however, that the first payment to bargaining unit employees under this new bonus program shall be made in December 2011, and shall cover Fiscal Year 2010-2011 only:

- a. Performance bonuses shall be payable on the first work day following December 1 based on the bargaining unit employees' performance evaluation scores for the prior fiscal year.
- b. Only bargaining unit employees who have completed at least five years of service as of December 1 of that year shall be eligible for a performance bonus.

Additionally, only bargaining unit employees who receive a performance evaluation score of 3.0 or greater will be eligible to receive a performance bonus. Moreover, bargaining unit employees must be on payroll on December 1 of that year to be eligible to receive the performance bonus (except for bargaining unit employees who are not on payroll due to unpaid family medical leave related absence).

- c. Performance bonuses shall be awarded using the seven tier system in Table A below to determine the amount of bonus a bargaining unit employee may receive. The seven tier system is based upon the performance evaluation scores of all performance bonus eligible bargaining unit employees within the Fire-Rescue Department (both the non-supervisory and supervisory bargaining units combined) for the prior fiscal year. The range of scores falling within each tier will be determined at the end of each fiscal year after all performance evaluations for that fiscal year have been submitted to the Human Resources Department.

- d. Table A. Performance Bonus:

Tier	Percentage Range	Performance Bonus Payment
1	Top 10%	\$6,000
2	Next 10%	\$3,000
3	Next 10%	\$2,000
4	Next 10%	\$1,500
5	Next 20%	\$1,000
6	Next 20%	\$750
7	Lowest 20% (Performance Rating of at least 3.0)	\$500

ARTICLE 18

WORKWEEK

18.1 The average workweek for twenty-four (24)-hour shift employees shall be ~~forty-eight (48) hours~~ fifty-six (56), with twenty-four (24) hours on duty and forty-eight (48) off duty, ~~with an additional shift off (Kelly Day) every seventh shift.~~ (The Administrative Lieutenant works a 40-hour workweek schedule.)

18.2 The starting time for twenty-four (24)-hour shift employees is 0800.

~~18.3 Kelly Days will be selected and assigned according to Article IX, Section 9-4 of the Department's Rules and Regulations. Applying the guidelines for the selection and assignment of Kelly Days in Section 9-4, the Assistant Chief of Operations or designee shall have the final authority to determine all Kelly Day assignments for the purpose of ensuring proper distribution of paramedic, Officer, Acting Officer, Driver Operator, and other specialized personnel throughout the shifts and the organization. The Assistant Chief of Operations or designee shall not change Kelly Day assignments for arbitrary and capricious reasons.~~

~~18.4 The Assistant Chief of Operations shall approve the exchange of Kelly Days on a permanent basis by two mutually agreeable and comparably qualified employees if the exchange does not create overtime compensation.~~

~~18.5 The Battalion Chief shall approve the exchange of Kelly Days on a temporary basis by two mutually agreeable and comparably qualified employees in accordance with Article 20 (Shift Exchange) if the exchange does not create overtime compensation. Written requests for Kelly Day shift exchange shall be made at least sixty (60) hours prior to the shift involved in the request. The Battalion Chief may, in his discretion, permit less advanced notice if he determines that there are extenuating circumstances.~~

~~18.6 — If, for any reason, an employee is transferred to another shift, the employee shall assume the open Kelly Day position on the new shift if the requirement of proper distribution of paramedics, Officers, Acting Officers, and Driver Operators is met. If such requirement is not met, the employee's Kelly Day assignment shall be made by the Assistant Chief of Operations.~~

ARTICLE 19

OVERTIME

19.1 All work performed by twenty-four (24)-hour shift bargaining unit employees, up to and including ~~one hundred forty-four (144)~~ two hundred twelve (212) hours in a ~~twenty-one (21)~~ twenty-eight (28) day work cycle, shall be paid at the employee's straight time rate of pay. (All work performed by the Administrative Lieutenant up to and including forty (40) hours in a seven (7) day work period shall be paid at the employee's straight time rate.) Work performed in excess of ~~one hundred forty-four (144)~~ two hundred twelve (212) hours in the ~~twenty-one (21)~~ twenty-eight (28) day work cycle shall be paid at time and one-half (1.5) the employee's straight time rate of pay. (Work performed by the Administrative Lieutenant in excess of forty (40) hours in a seven (7) day work period shall be paid at time and one-half (1.5) the employee's straight time rate of pay.) Only time actually worked, annual (vacation), and personal days shall be counted for the purpose of calculating overtime. When an employee utilizes sick, injury, compensatory, worker's compensation, LTD, bereavement, military, jury duty, or any other paid or unpaid leave during the ~~twenty-one (21)~~ twenty-eight (28) day work cycle (or the seven (7) day work period in the case of the Administrative Lieutenant), such leave time shall not be considered time worked and shall be excluded from the calculation of overtime.

19.2 Overtime shall be calculated and paid in one-half (1/2)-hour increments.

19.3 An overtime eligibility list shall be maintained by the Assistant Chief of Operations to ensure that overtime is offered in a manner that is most efficient to the Department and equitable to the employees. The overtime eligibility list is accessible from AS400 Staff Scheduling File Maintenance (F15 key) or, upon implementation, the Telestaff program. On-duty officers shall use this list in the event that an employee must be called for overtime.

Minimum staffing on shift must be maintained. Vacant positions should be filled with the most qualified person for the position available, whether it be the overtime person or a more qualified person on duty. When overtime is used to fill a vacant officer's position, officers and acting officers shall be given primary consideration.

The following guidelines shall be used when overtime is needed to meet minimum staffing requirements:

- ~~A.~~ ~~Personnel on Kelly Day off shall be contacted first. When Kelly Day employees are available, the employee with the lowest amount of overtime hours shall be contacted first.~~
- B. A. Personnel from the off-going shift shall be contacted ~~second~~ first. The employee with the lowest amount of overtime hours shall be contacted first.
- ~~C.~~ B. Personnel from the off-duty shift shall be contacted ~~third~~ second. The employee with the lowest amount of overtime hours shall be contacted first.
- ~~D.~~ C. When two or more employees in categories A or B, ~~or C~~ have the lowest amount of overtime hours, the employee with the highest seniority shall be called first.
- ~~E.~~ D. If staffing requirements are not met with volunteers pursuant to A through ~~D~~ C above, the same process using B A and C B above shall be followed to mandate overtime assignment(s), provided that the employee with the lowest seniority will be called (mandated) first.

19.4 In order to provide all employees with equal access to available overtime work, no employee shall be assigned overtime in excess of ~~144~~ 212 hours in a year. To avoid invoking mandatory overtime assignment, an employee who has exceeded the aforesaid ~~144~~ 212 hours shall be permitted to volunteer for overtime; provided, however, that no such employee shall work more than 24 hours of overtime over the ~~144~~ 212 limit. Time accrued due to special details (PIP, CPR classes, physicals, etc.), Public Assembly Inspections and Special Assignment Overtime will not be included for the purpose of this overtime limit. Absent unusual circumstances (e.g., natural disaster, major fire, etc.), employees shall not be permitted to work in excess of two (2) consecutive shifts.

19.5 Nothing in this Article shall be construed to require the payment of straight time or overtime for attendance at training seminars or classes unless such seminars or classes were specifically authorized by the Fire Chief prior to the attendance.

ARTICLE 38

SICK LEAVE AND INJURY TIME

38.1 In accordance with the Town of Palm Beach Personnel Manual, bargaining unit employees on duty an average of ~~forty-eight (48)~~ fifty-six (56) hours per week shall accumulate sick leave at the rate of four (4) shift days per year. Department employees shall have their accumulated sick leave reduced by one (1) shift day for each duty day of approved absence due to illness. Sick leave shall begin to accrue as of the date an employee enters the service of the Town but may not be taken until he/she has been in the service of the Town for at least six (6) months. Should an employee be absent because of illness during his/her first six (6) months of service, he/she must be placed on leave of absence without pay.

38.2 The applicable policies for accruing and utilizing sick leave and those pertaining to injury time are set forth in Article X IX, Sections ~~10-2, 10-2.1, 10-2.2, 10-2.3, 10-2.3.1, 10-2.4, 10-2.5, 10-2.6, 10-2.7, 10-2.8, and 10-3~~ 9.2, 9-2.1, 9-2.2, 9-2.2.1, 9-2.3, 9-2.4, 9-2.5, 9-2.6, 9-2.7, and 9-3 of the Department's Rules and Regulations and the provisions of the Town Personnel Manual; provided, however, that notwithstanding any provision of the aforesaid Departmental Rules and Regulations or the Town's Personnel Manual, the following shall apply to the employees (other than those on workers compensation leave and FMLA) covered hereunder:

A. The first day of any undocumented illness shall be unpaid.

B. There shall be no use of sick leave on a partial shift basis unless documented – i.e., sick leave for 24 hour shift employees shall be used in 24 hour increments and sick leave for 8 hour (40 hour week) employees shall be used in 8 hour increments.

C. If the employee claims sick leave while on vacation leave, vacation leave may not be converted to sick leave without a physician's certification of the exact nature and time of the illness which is the basis of the claim.

D. More than two three occurrences of sick leave for 24 hour shift employees or four occurrences of sick leave for 8 hour (40 hour week) employees will result in ineligibility for wage increases, promotional opportunities, and/or other benefits AND disciplinary action in accordance with the following schedule:

24 Hour Employees

Occurrences:	Fourth	Fifth	Sixth	Seventh	Eighth
Ineligible for:	Shift Exchanges and Overtime	Longevity, and Bonuses	Wage Increases,	Promotional Opportunities	
Discipline:	Oral Reprimand	Written Reprimand	Suspension 12 hours	Permanent Demotion/Loss of Assignment (if applicable) or 24 hour Suspension if above not applicable	Termination

8 Hour (40 Hours a Week) Employees

Occurrences:	Fifth	Sixth	Seventh	Eighth	Ninth
Ineligible for:	Loss of Flex Time and Overtime	Longevity, and Bonuses	Wage Increases,	Promotional Opportunities	
Discipline:	Oral Reprimand	Written Reprimand	Suspension 4 hours	Permanent Demotion/Loss of Assignment (if applicable) or 8 hour Suspension if above not applicable	Termination

The above schedules of occurrences are based on the members performance evaluation period, and penalties (disincentives) will be applied on a "rolling forward" one year from the date of issuance of discipline.

38.3 The parties agree and understand that the nature of the duties and responsibilities of the employees covered hereunder requires that such employees remain physically and mentally capable of performing such duties and responsibilities. Should the Fire Chief (or designee) have a reasonable belief that an employee covered hereunder may not be physically or mentally capable of performing his/her job duties and responsibilities, the Fire Chief (or designee) shall have the right to order such employee to undergo a fitness for duty examination/evaluation (at the Town's expense) by the Town physician or other appropriate medical, psychological, or vocational professional designated by the Town.

PALM BEACH PUBLIC EMPLOYEES RELATIONS COMMISSION

In the Matter of Special Magistrate Proceedings
Between:

Town of Palm Beach, (Employer)

and

**Professional Firefighters/Paramedics of Palm Beach
County, Local 2928, IAFF, Inc., (Union)**

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2010 – 2011 Fiscal Year

SPECIAL MAGISTRATE REPORT AND RECOMMENDATIONS

Before:

Kenneth Starr, Special Magistrate

Appearances:

For the Employer, Town of Palm Beach –
Jeffrey E. Mandel, Esquire

For the Union, Professional Firefighters/Paramedics, Local 2928 –
Mark Ford, Esquire

Date of Hearing: December 9, 2010

Place of Hearing: Palm Beach City Hall, Palm Beach, Florida

PROCEDURE

Pursuant to §1.003 of a local ordinance establishing the Palm Beach Public Employees Relations Commission and §1.012 of said ordinance, the undersigned Special Magistrate was selected by the parties to hear this impasse dispute on or about July 29, 2010 and to submit this Report and Recommendations subsequent to a declared bargaining impasse between the above parties. The parties Impasse Hearing was held on December 9, 2010 and the parties agreed the Special Magistrate's notes would constitute the official record of the proceedings. Both parties were afforded sufficient time to present their respective cases and at approximately 5:30 p.m. counsel for both sides announced they had no further evidence to offer. Counsel further agreed that post-hearing briefs would be submitted to the Special Magistrate both electronically and in hard copy on or before January 10, 2011. The parties subsequently agreed to extend the time for submission of post-Hearing briefs to January 20. Both parties' post-hearing briefs were received, via U.S. mail, on January 24, 2011 and the hearing was deemed closed on that date.

BACKGROUND

The Town of Palm Beach (hereinafter, the "Town") is a barrier island off the east coast of the State, located in Palm Beach County, to the east of the City of West Palm Beach. The Town is bordered by the Atlantic Ocean to the east and the intracoastal waterway to the west. It is inhabited by approximately 10,000 year-round residents. In "season" its population swells to around 30,000. While the evidence submitted at the hearing was not specific, it was acknowledged that real estate situated within the Town is among the most valuable in the State. The Town is governed by an elected Town Council and its day-to-day operation is overseen by an appointed Town Manager. It employs a work-force of approximately 350 full and part-time workers; 64 (or 65) of whom work in the Fire-Rescue Department (hereinafter, the "Department").¹ The Department provides fire protection and emergency

¹ There is some discrepancy between the parties as to whether the supervisory bargaining unit represents 18 or 19 company officers, but that discrepancy is not relevant to the Issues at Impasse. The rank-and-file bargaining unit represents 46 employees.

medical services (EMS), which includes both basic life support (BLS) and advanced life support (ALS), to Town residents, workers and visitors. It operates three stations on the island.

In 2001 Professional Firefighters/Paramedics, Local 2928, IAFF, Inc. (hereinafter, the “Union” or “Local 2928”) was certified to represent the two bargaining units in the Department: the rank-and-file, which includes firefighter/medics and driver/engineers, and company officers. In addition to representing the two bargaining units in the Town’s Fire-Rescue Department, the Union also represents employees in other nearby departments. In all, the Union represents approximately 1900 employees throughout Palm Beach County.

The initial CBAs were adopted for each bargaining unit in 2005 and expired in 2008. One-year extensions followed and thereafter successor one-year CBAs were agreed upon. Those agreements expired on September 30, 2010. The parties began negotiating in March 2010, well before the expiration of the last CBAs. However, negotiations were not successful and the Town declared impasse(s) in June 2010. After impasse was declared, the parties engaged in two additional negotiation sessions without being able to resolve all areas of dispute.

The issues at impasse as to the two bargaining units are nearly identical. The only difference is a proposed modification to “Article 16, Promotions,” which would affect only the rank and file bargaining unit. In an effort to save time and money, the parties have agreed to combine both impasses into one impasse resolution process. They have asked the Special Magistrate to render one set of recommendations with regard to both the rank and file and the supervisory bargaining units.

Notwithstanding the relatively high value of real estate located within the Town, it has not been immune to the sinking values that have plagued the entire State. Between 2009 and 2010, taxable real estate values declined approximately 12.5% from \$13.4 billion to less than \$12 billion. During that time, the Town’s real estate tax revenue decreased from approximately \$41 million to about \$36 million. According to testimony presented at the hearing, The Town presently taxes real estate at a

rate of between two and three mills.² In a June 2010 public meeting, the Town Manager advocated raising the millage rate in an effort to generate additional revenue and to balance the fiscal year (FY) 2011 budget, but that proposal was met with vociferous opposition from the residents in attendance and was not adopted by the Town Council.

In the Winter of 2009-'10, the Town's Finance Department prepared a "Long Term Financial Plan" that projected surpluses and/or deficits, beginning with FY 2011 and going through FY 2010. That plan was initially prepared *before* the reduction in 2010 real estate tax collections was recognized. After the real estate tax reduction was forecast by the Palm Beach County tax appraiser the Town Manager recommended modifying the plan by including, not only the ad valorem revenue reductions, but also proposed incorporating spending reductions. The proposed spending reductions notwithstanding, the long term projections still reflected deficits beginning in FY 2014 and increasing through 2020.³

By far the largest component of the projected deficits relates to personnel costs of Town employees. Of all personnel costs, pension benefits comprise the single largest expenditure. The Town adopted its initial defined benefit employee pension plan in 1947. It currently provides retirement benefits for its employees through three separate defined benefit pension plans: a General Employee Pension Plan, a Police Officer pension plan, and a Firefighter Pension Plan. Each of these plans is administered by its own pension board.

The Town has continued to fund the plans since their adoption more than 60 years ago. Since the performance of a defined benefit plan is dependent upon market forces that are outside the control of the plan trustee, funding can be a serious problem. While the bargaining unit members' plan performed quite well during the late 1990s (the plan was actually over-funded from 1999 – 2001)⁴, it

² The Town Manager did not have the specific millage rate available at the Impasse Hearing.

³ The final projections reflect the largest deficit (\$7.29 mil.) in FY 2019. The projected deficit decreases by approximately 29% in FY 2020 to approximately \$5.14 mil., which is still about \$400,000 greater than the FY 2018 projected deficit. See: Town Exhibit "N" behind Tab 30.

⁴ Over-funding refers to the situation where, from an actuarial perspective, the plan has accumulated more than 100% of the amount necessary to provide future benefits to all current members.

has not done well over the past several years. When, due to market fluctuations, a plan becomes under-funded, it is mandatory for the plan proponent to make up the deficit by putting additional funds into the plan. In the public sector, this can be done by either raising taxes and/or other fees paid by the citizens or channeling funds from other accounts, thereby reducing the amount of money available to provide public services.

As a result of poor market performance and increased salaries between 2006 and 2010, the Town has increased its contribution to all employees' pension plans by approximately 50% -- from slightly more than \$5.0 mil. in FY 2006 to more than \$7.5 mil. in FY 2010. The bargaining unit members' plan has been the most problematic over that time, increasing by nearly 100% from \$1.35 mil. in FY 2006 to \$2.647 mil. in 2010.⁵

The Town has concluded that the fiscally prudent course of action is to institute pension reforms for all Town employees now, in an effort to combat (but not completely eliminate) projected long term budget deficits. Its proposals to the Union are envisioned, along with similar proposals to the police and general employees' unions, to reduce the projected deficit in 2020 by more than \$6 mil.

In Florida, collective bargaining between public employers and labor organizations is governed by Chapter 447, Part II, Florida Statutes. Section 447.603, Florida Statutes, establishes a "local option" which allows a political subdivision of the State to "adopt, by ordinance . . . its own local option in lieu of the requirements of this part, provided such provisions and procedures thereby adopted effectively secure to public employees substantially equivalent rights and procedures as set forth in this part." The Town elected to exercise its "local option" and has adopted Ordinance No. 6-80 which effectively incorporates Chapter 447 into the Town's Code of Ordinances.

⁵ It should be noted that the largest increase in contribution took place in FY 2007. For the next two years, the Town's contribution remained rather constant, before increasing again in FY 2010 to its present level. See: Town Exhibit "C" behind Tab 30.

ARTICLES at IMPASSE and POSITIONS of the PARTIES⁶

Article 14 – Drug and Alcohol Testing. The present agreement does not contain specific testing rules, but simply refers to the Town’s general provisions for all employees. Those general provisions provide for drug and alcohol testing in the following situations applicable to bargaining unit employees: initial hire, reasonable suspicion, post-accident, and post-discipline for violation of the drug and alcohol policy. The Town wishes to change the current agreement to provide for unlimited random testing for both drug and alcohol usage.

The Union does not object to incorporating testing into the CBA, but wishes to limit the number of random drug tests per year to no more than “one hundred (100%) percent of the total number of employees” and the number of random alcohol tests to “[n]o more than ten (10%) percent of those selected for drug testing.”

Article 16 – Promotions. The present agreement, vis-a-vis the non-supervisory employees, requires promotions to be given to the “highest ranking candidate” (i.e., the “Rule of One”) pursuant to existing promotional testing results and other criteria.⁷ The Town wishes to change the agreement by applying the “Rule of Three,” making it consistent with the supervisory employees’ CBA.

The Union is offering a compromise to the “Rule of Two,” whereby the Town would have the right to choose between the top two candidates for any one opening.

Article 17 – Wages. The present agreement provides a “step plan” with 10 steps, where each step provides a salary increase of approximately 4%. All bargaining unit members who obtain at least a 3.0 performance evaluation move to the next step on their anniversary date. Additionally, bargaining unit members may be eligible for cost of living pay increases based on annual competitiveness studies.

⁶ As noted previously, there are two CBAs at impasse, but since the disputed language is similar and the issues are virtually identical, the parties agreed to designate the numbered articles contained in the non-supervisory CBA. The corresponding articles in the supervisory CBA are, in each case, one number higher (i.e. – Article 14 in the non-supervisory CBA is Article 15 in the supervisory CBA.)

⁷ Article 17 of the CBA, applicable to supervisory employees, presently specifies the “Rule of Three,” whereby the Town has the right to select any of the top three candidates for promotion. Neither party desires a change to this Article.

The agreement also provides for longevity or performance bonus payments (depending upon date of hire) consistent with other Town employees.

The Town wishes to change the agreement by instituting a pay “freeze” that provides no step increases for FY2011 or any year thereafter unless/until the parties agree to such increases “through the collective bargaining process.”⁸ Additionally, it wants to change the step plan by expanding it to 40 steps, with each step providing a 1% salary increase. The Town also proposes to eliminate existing longevity and performance bonuses effective immediately. A new performance bonus plan, effective December 1, 2011 and each year thereafter, would provide bonuses at seven different performance levels to eligible employees.

The Union is agreeable to the establishment of the 40-step plan. It also, apparently, is agreeable to the pay freeze for the current fiscal year, which expires on September 30, 2011. However, as pointed out by the Town, the Union’s last written proposal (Article 17.6, located behind Tab 1 of its Exhibits – Binder 1 of 2), reflects that the automatic 4% increase in effect during FY2010 shall remain in effect “[u]ntil such time as an annual competitive pay increase, if any, is established by the Town Council for all Town employees . . .” The Union is not opposed to the wage reopener proposed by the Town. However, it also proposes that, effective October 1, 2011, all bargaining unit members who obtain at least a 3.0 performance evaluation receive a 4% salary increase on their anniversary; effectively moving up four steps. The Union also wishes to maintain the *status quo* with regard to longevity and performance bonuses.

Article 18 – Workweek. Bargaining unit employees working a shift schedule currently work 24 hours on duty followed by 48 hours off duty with a scheduled day off work (a “Kelly Day”) every seventh shift (every three weeks). This schedule, embedded within the current 21 day work cycle, results in an average work week of 48 hours. At the time of the hearing, the Town proposed to change to a 28-day work cycle with a Kelly Day every sixth week, resulting in a 52-hour work-week. The

⁸ The Town also proposes a “reopener” as to salaries at the conclusion of FY 2011.

Town now concedes the Union was correct in its assertion that the Town's proposed changes would not accomplish the desired result. Consequently, the Town now proposes to simply eliminate Kelly Days completely for shift workers, resulting in a 56-hour work-week (including three hours of built-in overtime).

The Union wishes to maintain the *status quo*.

Article 19 – Overtime. The present agreement provides overtime pay (time and one-half) for all hours worked in excess of 144 hours in a 21-day cycle.⁹ The Town wishes to change to a 28-day cycle and not to pay overtime wages until an employee has worked more than 212 hours – the maximum hours at the regular rate allowed under federal law.

The Union is unwilling to accept the change to the 28-day cycle, but proposes to modify this Article so that employees would not receive overtime pay until they have worked more than 159 hours.

Article 30 – Insurance and Misc. Benefits (including pensions). The present agreement provides lifetime pension benefits for all bargaining unit members who are at least 50 years of age with 10 years of service; at any age, with 20 or more years of service; or where the sum of age plus years of service totals 65 or greater (the "Rule of 65"). (A plan member's interest in the pension plan vests after 10 years of service.) A percentage is determined by multiplying the employee's years of service times 3.5 – the "multiplier" (i.e. an employee with 20 years of service would obtain a 70% factor). The annual pension (paid monthly) is determined by taking the employee's percentage factor times the average of the two highest consecutive years of compensation within the member's last five years of credited service.¹⁰ The annual retirement benefits are automatically increased by 2% annually as a cost-of-living adjustment (COLA) after an initial 3-year deferral. When the employee dies, if survived by a spouse, the spouse is entitled to continue to receive 75% of the employee's pension for the remainder of his/her lifetime.

⁹ While federal law does not require overtime payment to fire/rescue employees on a 21-day work-week until they exceed 159 hours, the current CBA provides overtime payments at the lower threshold.

¹⁰ For pension purposes, compensation is defined as "cash compensation," which includes base wages, overtime, educational incentive pay, special duty detail pay, incentives, bonuses, and longevity pay.

Bargaining unit employees presently contribute 6.82% of their cash compensation to the pension fund. Since the Town participates in the Florida Chapter 175 plan, a surcharge is added to each policy of homeowner's insurance purchased by owners of real estate located within the geographical boundaries of the Town. The Town receives money from the state, some of which is used to fund the pension plan and the remainder is divided among plan participants for inclusion in each employee's "share plan" (essentially a defined contribution plan).

The Town wishes to "freeze" the current defined benefit pension plan and institute a "hybrid plan." All current participants would automatically "vest" on the date the existing plan is frozen, their entitlement to receive benefits from the plan and the amount of those benefits would not vary from the above description. On the day after the plan is frozen a new defined benefit plan would be instituted that would provide significantly lesser benefits than the existing plan. The new plan would utilize a multiplier of 1.25, which would be multiplied times the employee's years of service to determine the factor. That percentage would then be multiplied times the employee's average *base* salary over the last five years of employment. Members would not be eligible to receive retirement benefits from the new plan until they reach age 65. There would be no post retirement COLA and members who wished to purchase survivor benefits could do so at an additional cost. Each employee's contribution to the new plan would be reduced to 4.82% of their base compensation.

The Town also proposes the institution a new §401(a) defined contribution plan. Employees would be required to contribute a minimum of 2% of their base compensation and may contribute as much as IRS regulations permit. The Town would match up to 4% of each employee's contribution. Additionally, the Town proposes to "withdraw" from, its Chapter 175 participation, freeze existing pension benefits for employees who participate in the Deferred Retirement Option Program (DROP) as of the date they enter the program and to make all workers who choose to enter DROP "at will" employees.

The Union wishes to maintain the current defined benefit pension plan, but is agreeable to reducing the multiplier from 3.5 to 3.0. It is also agreeable to eliminating the 75% continuation of benefits to a surviving spouse as long as the employee receives benefits for his or her life, with a 10-year guaranteed payout. The Union wants the Town to continue to participate in the Chapter 175 program and to extend the time for participation in the DROP program from its current five years to eight years.

Article 38 – Sick Leave and Injury. The present agreement provides that accrued sick leave may be utilized pursuant to existing Department and Town rules. For shift employees who work an average of 48 hour per week, sick leave accrues at the rate of four 24-hour shift days per year (96 hours). The Town wishes to modify the existing agreement by eliminating the use of paid sick leave on the first day of any illness (unless supported by a doctor's note), prohibiting sick leave usage on a partial shift basis, requiring a physician's certificate in certain situations and instituting disincentives for taking (what the Town considers excessive) sick leave in the nature of various penalties and disciplinary action.¹¹ The Town also wishes to add specific language to the CBA that expressly gives the Fire Chief or his designee the right to require a bargaining unit member to undergo a "fitness for duty" examination at the Town's expense when a "reasonable belief" exists that said member "may not be physically or mentally capable of performing his/her job duties and responsibilities."

The Union is agreeable to modifying the CBA to provide various disincentives for employees who incur more than five sick leave "occurrences" in a 12-month period, but not to include disciplinary action until the eighth sick leave occurrence. The Union also wishes to provide an incentive of one 24-hour "personal day" to employees who incur one or fewer sick leave occurrences within a 12-month period. Finally, the Union opposes the Town's proposed language that gives the Fire Chief (or his designee) the "unfettered right" to require a fitness for duty examination.

¹¹ The Town also proposed a modification to workers' compensation benefits, but that proposal (Article 38.3) was withdrawn subsequent to the conclusion of the hearing and prior to the submission of post-hearing briefs.

Article 41 – Duration. The parties announced during the hearing they had agreed to a three-year CBA, commencing (retroactively) on October 1, 2010 and expiring on September 30, 2013.

DISCUSSION and FINDINGS OF FACT

The Special Magistrate is required by §1.003 of the local ordinance and Chapter 447, Florida Statutes that control these proceedings to take certain factors, among others, into consideration when making impasse recommendations:

- (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.

Article 30 – Insurance and Miscellaneous Benefits. The Special Magistrate will address this Article first, since, as pointed out by the Town in its post-hearing brief, the proposed revision to the existing pension plan is the most significant sticking point in the parties' negotiations.¹²

¹² It is important to note that the Town is describing its proposal on this Article a “freezing” of benefits (and contributions) with regard to the current plan and the establishment of a new, significantly more limited, defined benefit plan along with a new defined contribution plan. Local 2928 argues that the Town’s proposal results in a “termination” of the current plan, which requires the plan’s board of trustees to establish the date and method of distribution of the plan assets. In essence, the Union argues the Town’s proposal, which ignores the board of trustees, is so indefinite, vis-à-vis future action by the

Initially, the Union argues that the Town's proposal, which permanently discontinues contributions to the plan, results in a "termination" of the defined benefit plan pursuant to Chapter 175, Florida Statutes.¹³ The Town orally refuted that contention at the impasse hearing but failed to address it in its post-hearing brief.

The Union also cited *Board of Trustees v. Town of Lake Park*, 966 So.2d 448 (Fla. App. 2007) in support of its argument that the Town is proposing a "termination" of the current pension plan. In the *Lake Park* case, the parties agreed that the Town's decision to close its fire/rescue department and discontinue contributions to the retirement plan resulted in a "termination" of the plan as envisioned by FS §175.361. In the present case, the Town does not plan to close the Department, but clearly is proposing to discontinue contributions to the existing retirement plan. The statute in question expressly gives a municipality that has established a retirement plan under Chapter 175 authority to terminate said plan "for any reason" or to provide written notice to the board of trustees that contributions under the plan are being permanently discontinued . . ." FS §175.361. In either case, the statute provides that "the rights of all employees to benefits accrued to the date of such *termination* and the amounts credited to the employees' accounts are nonforfeitable." *Id.* (Emphasis supplied)

The Special Magistrate is of the opinion that the Town's proposal does, in fact, trigger the provisions of FS §175.361.¹⁴ However, while agreeing with Local 2928 on this initial issue, the Special Magistrate does not believe that fact, alone, is fatal to the Town's position. In fact, the Town's proposal addresses the problem created in the *Lake Park* case, where the board of trustees later decided to forfeit earned portions of employees' retirement accounts. Here the Town is guaranteeing that all amounts earned by employees currently in the existing

plan board, that it is not in the best interest of bargaining unit members or the public. This threshold controversy will be addressed by the Special Magistrate – to the extent he feels it permissible for him to do so pursuant to Chapter 447, Florida Statutes.

¹³ See: FS §175.361.

¹⁴ The Special Magistrate recognizes that he is not the proper arbiter of this issue. However, he feels it necessary to examine the Union's position in connection with the factors contained in Chapter 447, which he is required to consider.

defined benefit plan will be paid in full when said employees become eligible for retirement pursuant to the existing plan terms. The Union is correct in pointing out, until the board of trustees decides what method of termination and distribution will be effected, neither party will be able to conclusively predict whether there has been compliance with the statute. However, the Special Magistrate does not believe it is reasonable to assume the board will ignore the provisions contained in the Town's proposal and impose a distribution plan contrary to the legal requirement of FS §175.361. Further, if the board determines that additional asserts are required to fund employee benefits, the Town "shall continue to financially support the plan until all nonforfeitable benefits have been funded." FS §175.361(1).

Accordingly, the Special Magistrate finds it is appropriate for him to consider the merits of the parties' respective arguments with regard to the existing defined benefit plan.

The Town strenuously asserts that it cannot continue to fund the defined benefit pension plan for the bargaining unit . . . nor for the other two employee unions. As noted above, employee pension plans have been in place for more than 60 years. While market fluctuations and salary increases have affected the Town's funding of the plans over the years, the period from 2002 through the present has been the most volatile. In FY 2002, the Town's actuarially determined contribution to the bargaining unit plan was \$197,289. It more than doubled to over \$400,000 in FY2003 and more than doubled again to nearly \$900,000 in FY2004. For FY 2011, the Town's contribution exceeded \$3 mil. -- an increase of over 1500% in 10 years. During that same period, the Town's contribution per active plan member increased from \$3,523 to \$44,303 -- an increase of over 1100%.¹⁵

¹⁵ See: Town's post-hearing brief at p. 6.

According to the Town's post-hearing brief, the actuarially required public contribution to the bargaining unit pension plan as a percentage of active payroll has mushroomed over the last several years.¹⁶ The public contribution to the plan had been below 29% of active payroll for most years from FY 1978 through the early 2000s. In FY 2006, the actuarially required public contribution swelled to 39.34% and in FY 2007 it increased to 45.97%. Finally, in FY 2011, the public contribution went up to 51.06% of active payroll; 90% of which is paid by the Town, and only 10% of which is paid with State Chapter 175 money.

The Town asserts that this "explosion" in its pension costs was not caused (solely) by the meltdown in the stock market in 2008. According to its post-hearing brief, "this is not an issue of market cycles, and a future rebound in the investment market is not going to fix the problem. Instead, only a modification of the Town's existing pension plans is going to enable the Town to be able to afford to pay for them in the future."

Local 2928 strongly argues that the Town's proposal to freeze/terminate the existing pension plan is unnecessary, overly aggressive and not in the best interest of the public. The Union asserts, without providing detailed monetary projections, that maintaining the existing plan but reducing the benefit multiplier from 3.5 to 3.0 and replacing the 75% survivor benefits with a 10-year certain payout to the member would be sufficient to address the Town's financial concerns.¹⁷

The Union also argues that it would be dangerous for employees and the public to require members to attain the age of 65 before becoming eligible for benefits under the proposed new plan. Additionally, Local 2928 states that a reduction in the benefit multiplier from its current 3.5 down to the Town's proposed 1.25 would have a devastating effect on members. Also, with the Town removing all but base pay from the pension computation, utilizing the average pay over the final five years, eliminating COLA from members' pensions, eliminating the supplemental share plan and

¹⁶ "Public contribution" refers to money provided by both the State of Florida and the Town.

¹⁷ The Union did, in fact, submit a five-page actuarial report, prepared by Gabriel, Roeder, Smith & Company, that compared the financial effect of the Union's proposal with the existing plan. However, no testimony in connection with that report was presented at the hearing and it was of limited benefit to the Special Magistrate.

withdrawing from the Chapter 175 state contribution, Union retirees would receive a mere fraction of what they had been promised at the time of hire – assuming they live long enough to receive anything.

The Union is not at all receptive to the Town's proposed new defined contribution plan. It asserts (correctly) that it is subject to market fluctuations, it offers no guarantees and it is conceivable that, if they live long enough, retirees might outlive their private retirement assets. The Union also raises the question of disability benefits under the new proposed plan. It appears that an employee who is forced to retire due to a disability would be severely disadvantaged under the Town's proposed plan. It is unclear whether a disabled plan member will receive any amount prior to reaching the age of 65; whether a disabled plan member with less than 10 years of service will receive anything other than workers' compensation benefits and whether a disabled plan member with ten or more years of service will receive anything other than 1.25 multiplier (i.e. – disabled with ten years of service, times 1.25, equals 12.5% of average base salary earned over the last five years of service).

Local 2928 suggests the Special Magistrate cannot recommend the Town's proposal on this Article consistent with the factors required to be considered by Chapter 447. The first two factors require the Special Magistrate to consider the comparable benefits earned by similarly situated employees in the local operating area and in similarly sized municipalities throughout the State. By the Town's own admission, there is no other employer in the State that provides pension benefits to its firefighters comparable to those contained in its proposal.

The third factor, according to the Union, also weighs against the Town's proposal. As advanced in its post-hearing brief:

If the Town's proposals are implemented the morale of employee's in the Fire-Rescue Department will be decimated. The Town will likely turn into a training ground for other departments in the area and the level of service provided will suffer as a result. Employees will have no incentive to complete a career in the Town when the benefits will be so much richer elsewhere, and we are not talking far away. Every other department in Palm Beach County will be providing pension benefits that far surpass those provided by the Town if the Town's proposals are implemented.

The Town admits that it may lose qualified employees in the near term if its pension proposal is adopted. However, it asserts that other public employers in the State will soon follow suit and, in the long run, its new pension benefits will be comparable to those offered to other public employees.

Local 2928 argues that the fourth and fifth factors also require the Special Magistrate to reject the Town's proposal. Citing FS §175.021(1), the Union points to the peculiarities of employment, recognized by the state legislature, which firefighters endure that are vital to the public and consequently mandate their retirement plans to be administered and managed in a manner designed to maximize their (the plans') protection. With regard to availability of funds, the Union stresses that, if the Town's plan is implemented (along with the other proffered cost-savings articles in the CBA), the Town will realize "a surplus of more than \$4,000,000" in FY2012.¹⁸

Finally, the Union suggests that the present millage rate for real property located within the Town is unrealistically low. Neither party introduced any evidence of comparable millage rates in neighboring municipalities, though the Union did assert in its post-hearing brief that the state cap is 10 mills. The Special Magistrate is personally aware of the fact that several other municipalities in South Florida have millage rates of more than twice that assessed by the Town.¹⁹

There can be no dispute that the Town's proposal on this Article is, at the very least, radical. As noted above, Local 2928 argues that it is neither necessary from a financial perspective nor supported by the factors required to be considered by the Special Magistrate.

Financial Necessity. The Town submitted numerous charts and studies to support its argument that extensive financial changes to its budget are required now to combat future budget deficits. Other than the Gabriel, Roeder report mentioned above, the Union submitted no charts, studies or expert testimony in support of its position. It did utilize the Town's studies to argue that the purported financial situation is not as dire as the Town contends.

¹⁸ Based upon the Special Magistrate's review of the hearing exhibits, it appears the correct figure is slightly more than \$3.8 mil. for FY 2012 and slightly more than \$2.8 mil. for FY2013. See: Town Exhibit "N" behind Tab 30.

¹⁹ The Special Magistrate includes municipalities located within the coastal counties of Palm Beach, Broward and Miami-Dade in the "South Florida" geographic area.

As Local 2928 accurately points out, if all of the Town's proposals are accepted (or imposed), the Town's own projections reflect a cumulative budget surplus of more than \$9.25 mil. over the next five fiscal years beginning October 1, 2011.²⁰ The Town acknowledges the projected surpluses over the short term, but points to its projections for FY2017 – FY2020, where it predicts a cumulative budget deficit of nearly \$9.5 mil. However, as Town Manager Peter Elwell candidly acknowledged at the hearing, the accuracy and validity of future projections become more questionable the farther out into the future they go.

Neither party provided the Special Magistrate with the financial impact of recommending some, but not all of the Town's proposals. Even though the Town is facing near-term financial concerns, the Special Magistrate does not find that all of the extreme cost-cutting measures embodied in the Town's proposals are mandated by the current and future projected financial conditions. The Special Magistrate must question the Town's assertion that the radical changes it proposes to the existing retirement plan(s), coupled with other deep, cost-cutting measures, which would generate more than a \$9.25 mil. budget surplus over the next five years, is absolutely necessary in view of the (admittedly less than completely accurate) projections of deficits in future years.

Statutory Factors. Local 2928 argues, quite logically, that the statutorily mandated factors to be considered by the Special Magistrate militate against adopting all of the Town's proposals, lock, stock and barrel. Most pointedly, the Union accurately points out that not a single public employer in the State has been shown to currently provide pension benefits comparable to the Town's proposed plan(s). However, the Special Magistrate does not believe this fact conclusively precludes him from recommending the Town's proposal, vis-à-vis the pension plan for the bargaining unit. If this were the case, a departure from the *status quo* could never be recommended, regardless of the escalating costs to the public employer.

²⁰ The Special Magistrate believes (but is unsure) as to whether the projections in question (Town Exhibit "N" behind Tab 30) envisions the institution of "hybrid" retirement plans, as well as commensurate reductions in personnel expenses, for all Town employees.

The financial figures provided by the Town are imposing. As noted above, over the last ten years the Town's contribution to the plan has steadily increased (with one brief exception) from slightly under \$200,000 per year to over \$3 mil. – with no end in sight to the continued escalation in cost. Over the same period, the Town's annual contribution per active plan member increased more than ten-fold. While no evidence was presented at the impasse hearing as to the plight of other public employers in the state, the Special Magistrate is cognizant of similar concerns among other municipalities. It is difficult for the Union (or any other public employees' union) to honestly argue, based upon any objective criteria, that the ongoing escalation of the cost to fund existing pension plans is sustainable over the long term. The real question, in the mind of the Special Magistrate, is whether the current economic climate renders this the proper time to recommend pension reform, or whether the *status quo* can be maintained for another year or two or three, without causing irreparable harm to the Town.

It should be noted that the Special Magistrate does, in fact, bring a bias, in favor of public safety employees, to impasse proceedings. In general, he does not feel these employees are adequately paid for the services they provide. It is also troubling to him that the property owners, who rely upon these dedicated workers for protection of persons and property, are not more motivated to accept slightly higher property taxes in order to prevent a decline in the earnings of public safety employees in difficult economic times.

Conversely, the Special Magistrate can readily understand the reticence of property owners to agree to higher taxes in order to continue to fund pension plans that guarantee retired workers up to 87.5% of their highest annual income for life. And, in many cases the term of those payments exceeds the number of years an employee actually worked for the Town!

By way of illustration, the Town pointed out in its post-hearing brief that as of September 30, 2009 the average age at retirement for the plan members was 48.5 years. Based on assumptions by the plan's actuary, a male member of the plan who attains age 50 is expected to live an additional 29.18

years. Therefore, a member who retires at age 48 with 25 years of service would be expected to live to age 79 and would collect annual retirement benefits for 31 years – six years more than he worked for the Town. If that same employee had been receiving the top of the firefighter pay range of \$82,043 for at least two of the last five years before retiring, his annual retirement benefit would be a minimum of \$71,788 per year (87.5% of \$82,043), plus COLA. In all likelihood, his annual retirement benefit would be significantly greater – since overtime pay, educational incentive pay, etc. is factored into his final average earnings.

While no individual examples were presented by the Town, it appears to the Special Magistrate that an employee who retires with 25 years of service, works a significant amount of overtime during two of his last five years and is also receiving longevity and other upward pay adjustments during those same two years, might be entitled to collect benefits of 100% or more of his base pay, plus COLA, for many more than the 25 years he worked for the Town.

The Special Magistrate is convinced that continuation of the existing pension plan(s) is not in the best interest of the public and sufficient funds to pay for those plans simply will not be available indefinitely under the existing taxation scheme.²¹

The Town Manager makes a compelling argument that the changes in the pension plan set out in the Town's proposal is fair to both senior and junior employee. The new, "hybrid" plan (combination of a reduced defined benefit plan and a new defined contribution plan) will pay benefits to all employees at the time of their respective retirement.

Senior employees will receive the bulk of their retirement benefits from the existing defined benefit plan. Depending upon the number of years they participated in that plan, they may see little or no reduction in benefits. For example, an employee with 20 or more years of service may opt to retire immediately and will receive 100% of the benefits guaranteed under the existing plan. The same

²¹ The only pension plan before the Special Magistrate at this time is the fire/rescue plan. The recommendations contained herein are made in reliance on the Town's representation that similar changes will be made to both the police and general employees' pension plans.

employee may choose to work a few more years before retiring and will still receive 100% of the benefits guaranteed under the existing plan *as if he retired immediately*. For each additional year he works, he will also receive 1.25 times his average base salary over his last five years of employment.²² Finally, he will contribute a minimum of 2% of his base salary to the new defined contribution plan and the Town will match that contribution (up to 4%), so perhaps as much as 8% of his salary for each additional year he works will appreciate tax deferred until he decides to take funds out of that plan.

Junior employees, who have not relied for as many years on the existing plan for all of their retirement needs, will be impacted by the changes more significantly. For example, an employee with five years of service will, at the time he reaches retirement age pursuant to the definitions contained in the existing plan, receive 17.5% of his highest two years of compensation from the existing plan, plus COLA. He will also receive additional benefits from the new defined benefit plan, based upon the 1.25 multiplier times all additional years he works (assuming he works at least another five years), as a percentage of his average annual base salary over his last five years of employment.²³ The total amount he will receive from both defined benefit plans will undoubtedly be significantly less than the amount he would receive if the existing plan were to be continued. (Compared to the hypothetical employee on page 19, who receives 87.5% of his salary at retirement, the junior employee who has worked five years under the existing plan and opts to work another 20 years under the new plan, will receive a combined 42.5% of salary – 17.5% under the existing plan and 25% under the new plan. And, the 25% under the new plan will be calculated on base salary without future COLA.) However, he will also contribute a minimum of 2% of his salary and will have the opportunity to require the Town to match up to 4% for 20 years. That money will be invested and (hopefully) will appreciate tax deferred until he decides to take funds out of that plan. Depending upon the market performance of the

²² The new defined benefit plan would have a 10-year vesting period. The Special Magistrate presumes that an employee who works under the new plan would receive credit for all years worked for the Town under the existing plan. (For example, a current employee will receive vesting credit for all years employed by the Town, and would not have to work an additional 10 years before receiving any benefits under the new plan.)

²³ Eligibility for receipt of retirement benefits under the new defined benefit plan will be discussed *infra*.

funds in the defined contribution plan (the type of plan sponsored by virtually all private employers who opt to provide retirement benefits for employees), the junior employee may have more, or less, assets at retirement than would be available under the existing plan.

The Special Magistrate is especially troubled by the Town's proposed new defined benefit plan with regard to eligibility for benefits (age 65) and treatment of employees who are forced to retire due to disability. While the Town suggests that employees who presently retire in their 40s or 50s are free to pursue other avenues of employment, this strikes the Special Magistrate as somewhat disingenuous. While those employees who "retire" after 20 or more years as fire/rescue personnel may presently be able to find some type of work in their "middle years," they are presently able to rely on a very generous pension to help them through those years financially. The Special Magistrate suspects that those employees who would, in the future, like to retire before the rigors of the job threaten both their safety and that of the people they serve, would be hard-pressed to find employment that will pay well enough to comfortably make it through 10-20 years until they reach age 65.

Just as troubling is the amount of benefits to which a disabled employee would be entitled under the new plan. The first area of concern is the 10-year vesting period. Would a firefighter with only nine years of experience, who is forced to retire due to a disability, be relegated to living with only those benefits already accrued and vested under the existing plan, plus the accumulation of assets in the defined contribution plan? And, would a firefighter with a total of 10 years of experience only be entitled to an additional 1.25 times his average annual compensation for the years worked under the new plan?

Under the current Chapter 175 plan, a firefighter who becomes disabled and is forced to retire due to a disability incurred in the "line of duty" (regardless of how many years he/she has been employed), is guaranteed a retirement benefit for life (with a 10-year certain payout) of at least 42% of average salary (as well as, presumably, workers' compensation benefits). A firefighter with at least 10 years of service, who becomes disabled and is forced to retire due to a disability incurred "other than in

the line of duty,” is guaranteed a retirement benefit for life (with a 10-year certain payout) of at least 25% of his average salary.²⁴

The Special Magistrate finds the impact the Town proposal would have on employees, 55 years of age and older, and those who are forced to retire early, could be devastating. The Town must make some modifications to the proposed new plan to protect these employees. If eligibility for retirement under the new plan were age 55 (rather than the proposed 65), employees would not be permitted to draw benefits for six and one-half years longer than the current average retirement age of 48.5 years, but would be afforded some amount of pension before becoming eligible for Social Security. This would, hopefully, enable firefighters to safely retire from the unique demands of the job at an age when they may be able to find some other (lower paid) type of employment.

It is also reasonable to expect the Town to protect employees who are forced to retire due to a disability. The proposed new plan does not appear to adequately do so. If it is not financially feasible to provide the same disability retirement benefits mandated by Chapter 175, some lesser amount provided through a contract of disability insurance or a self-insured plan would be acceptable. For a firefighter who becomes disabled and is forced to retire due to a disability incurred in the “line of duty” (regardless of how many years he/she has been employed), the Special Magistrate recommends a retirement benefit for life (with a 10-year certain payout) of at least 31.25% of average salary (the same retirement benefit an employee with 25 years of service would receive). For a firefighter with at least 10 years of service, who becomes disabled and is forced to retire due to a disability incurred “other than in the line of duty,” the Special Magistrate recommends a retirement benefit for life (with a 10-year certain payout) of at least 15% of average salary. The Special Magistrate also recommends the same definition of “disability” as presently contained in Chapter 175 apply to employees under the new defined benefit plan.

²⁴ FS §175.191(5).

The Special Magistrate does not believe that complete elimination of COLA in the new defined benefit plan is either in the best interest of the public or the bargaining unit members. It is therefore recommended that an annual COLA, not to exceed 2%, beginning at age 65 and based upon CPI-W, the same measure utilized by the U.S. Social Security Administration, be provided in the new plan.

Finally, both parties wish to modify the rules that apply to those employees who enter DROP. The Town wishes to make them “at will” employees and the Union wishes to extend the time an employee may remain in DROP from five years to eight. Neither party provided any reason, rationale or comparable plan anywhere with the state to support their respective proposal.

While the Special Magistrate assumes that a contractual provision, which essentially bars an employee from entering DROP (unless he wishes to expose himself to possible immediate termination), would be enforceable, he does not believe it is appropriate to recommend. If the state legislature abolishes DROP (as some legislators have proposed, and which it has the power to do), the program will be closed in the future to all public employees. The Special Magistrate does not believe it is appropriate for a municipality to unilaterally do so.

As noted directly above, the Union has provided no basis for recommending an extension to the amount of time during which an employee may participate in DROP.

Article 14 –Drug and Alcohol Testing.

With regard to the Town’s proposed changes to this Article, it should be noted that no evidence was introduced at the hearing to suggest any prior problems as a result of drug or alcohol usage by bargaining unit members. In fact, William Amador testified that, during his tenure as Fire Chief (only one year), the Town had not become aware of any reasonable suspicions that would have justified testing under the existing CBA.

Nevertheless, the Town contends that, since safety and security could be impacted by drug or alcohol usage by employees that results in any possible impairment while on duty, it is reasonable to impose unlimited testing. As noted above, Local 2928 has no objection to including testing procedures

in the CBA, but it does want to place limits on the number of employees that can be tested in any one year. The Union's proposal suggests utilizing DOT standards (which admittedly do not apply to fire/rescue employees) that specifies *minimum* testing requirements. It seeks to limit random alcohol testing to no more than 10% of the bargaining unit employees selected for random drug testing. In other words, if the Town were to randomly drug test 10 bargaining unit employees, only one employee could be tested for alcohol during that year. Alternatively, if the Town were to drug test all employees in both bargaining units (at its expense), no more than six employees could be tested for alcohol. As pointed out by the Town, limiting the number of alcohol tests as proposed by the Union significantly diminishes the deterrent effect of random alcohol testing. If the Town were to randomly test six bargaining unit employees for alcohol at the beginning of a year, the remainder will know that none of them can be randomly tested for alcohol throughout the rest of that year. The Special Magistrate is convinced the Town has the better, and more rational, side of this argument.

The Union also requests that DOT regulations control when an employee may be randomly tested. It proposes that the employee must be tested the same day that he or she is selected or, if the employee is not on duty, then on the employee's next duty day. If the employee is not tested on one of these days, the employee shall not be tested pursuant to that random selection. The Town has given no indication it opposes this limitation and the Special Magistrate sees no reason why it should not be included in the new Article 14.

Article 16 – Promotions. The dispute here applies only to non-supervisory employees, where promotions are required to be given to the "highest ranking candidate." The Town wishes to change the Article so that it is consistent with the requirements for supervisory employees, which utilizes the "Rule of Three," and gives the Town greater discretion in making promotions. The Town asserts that it needs this flexibility since the current scoring process does not take into account all of the relevant factors involved in determining the best qualified candidate. Instead, the current system only measures the best test taker; job performance is not factored into the scoring process.

Local 2928 is willing to offer the Town more flexibility than it has in the existing CBA, by compromising to the “Rule of Two.” It asserts the Town does not need the broad discretion inherent in the supervisory employees’ contract, since a promotion from firefighter to driver/engineer does not involve supervisory responsibilities. While the Town failed to refute that assertion, the Special Magistrate is aware of the fact that, in other similar departments throughout the State, driver/engineers may be called upon to fulfill a supervisory role until a Lieutenant or other supervisor arrives on the scene. Notwithstanding that limited possibility, the Town has not advanced any compelling argument to support its argument that it needs to alter the existing CBA to include the “Rule of Three.” The Union’s proposed compromise is just and reasonable.

Article 17 – Wages. Both parties are in agreement as to the establishment of the 40-step plan. The Town’s proposal on the pay freeze for the current fiscal year, and the Union’s apparent agreement thereto, is discussed above at page 7 of this Report and Recommendations. The Special Magistrate will assume Local 2928, in fact, agrees to a pay freeze for the current fiscal year which ends on September 30, 2011, but absent an agreement on a new CBA, the prior, 4% annual increase contained in the 2009 – 2010 contract year would be the *status quo* going forward.

Step Advancement

Neither party provided the Special Magistrate with discreet projections reflecting the future financial impact to the Town of giving employees pay increases of 4% (or less) annually in any future fiscal year. The Town presents a situation where it cannot afford to provide any increases presently and implicitly suggests it will provide increases in the future (through the collective bargaining process) when and if its financial situation improves. Meanwhile, it is proposing that the Union accept no annual increase as the *status quo* going forward.

The Union appears willing to accept no increases this fiscal year but wishes to reinstate the annual 4% increases in the 2012 fiscal year. It argues that it is unfair and unnecessary to halt step

advancement indefinitely unless/until the Town agrees to reinstitute advancement at some level – possibly 4% annually; possibly less than that.

The Special Magistrate is hampered by being requested to make wage recommendations on step advancement without having reasonably accurate financial projections. The Town did provide a “surplus/deficit” projection through FY 2020 in connection with its pension proposal. However, that projection did not provide separate and distinct information on both pension changes and wages. It does not give any hint of the financial impact to the Town of adopting its pension proposal, freezing step advancement in the current fiscal year and then reinstituting advancement (of between one and four steps annually thereafter) beginning in FY2012.²⁵

Nevertheless, the Special Magistrate agrees with the Union. The Town’s financial projections for at least the next three fiscal years do not appear to be sufficiently dire to justify, not only the significant changes it is advocating to the existing pension plan, but also the withholding of any step advancement for the foreseeable future. At the risk of instituting limited future step advancements, the Special Magistrate believes it is preferable to recommend a two-step advancement to qualified employees effective with the 2012 fiscal year, than to have no advancement be the *status quo*.

Longevity/Bonus Pay

The Town argues it is no longer able to offer the same longevity or bonus pay that has been provided for many years.²⁶ In place of the existing plan, the Town is offering a performance bonus plan for all employees, regardless of date of hire. According to the Town, the proposed bonus plan would end up saving more than \$140,000 in FY2012 and more than \$1mi. through FY2020. It would accomplish these savings by reducing bonus pay to some employees by as much as several thousand dollars per year.

²⁵ The Town Manager did testify that approximately ½ of the projected savings reflected on page 20 of Town Exhibit E – behind Tab 30 – was attributable to pension cost reduction. However, the Special Magistrate can only speculate about the cost to the Town of recommending its pension proposal, while at the same time recommending a step advancement in FY2012 of something less than 4%.

²⁶ Employees hired prior to October 1, 2004 are eligible for longevity pay of up to 10% each December 1 based on their years of Town service. Employees hired on or after October 1, 2004 are eligible for bonuses each December 1 based upon a combination of their performance evaluation scores and their years of service.

As illustrated in the Union's post-hearing brief, the current longevity plan pays an employee 2.5% of his or her base salary after five years of service with an additional 0.5% for each additional year of service up to 20 years of service, for a maximum of 10%. This means that the topped out Driver Engineer earning \$88,146 per year who has more than 20 years of service would go from a longevity benefit of \$8,814.60 to a performance bonus of anywhere from \$500 to \$6,000.

The Union also points out that the employees who perform evaluations will be competing for performance bonuses with those employees they evaluate. Since performance bonuses will be divided among employees in both bargaining units, a supervisory bargaining unit member evaluating a non-supervisory member will be competing for the same bonus as the employee being evaluated.

Both sides provided the Special Magistrate with exhibits reflecting comparable pay offered by nearby fire/rescue departments that purportedly support their respective positions. Unfortunately the exhibits contain conflicting data.²⁷ The Town argues that its "modest, but still very good and fair" performance bonus plan "is better than a number of fire-rescue employers in the local market who do not offer any type of longevity/bonus benefit." (citing the aforementioned exhibit) The Union argues that the comparable data reflected in its exhibit support the maintenance of the *status quo*.

The Special Magistrate finds the Union's position on this issue more compelling. Based upon the comparable data and the manner in which the Town proposes the evaluations to be conducted, the Special Magistrate does not feel the evidence supports departure from the *status quo*.

Article 18 – Workweek. By eliminating a Kelly Day every seventh shift, the Town would require bargaining unit members to work an additional 24-hour shift every 21 days. This will increase the hours worked over than 21-day period from 144 to 168 – necessitating three hours of overtime pay each week. The Town recognizes that the practical implication of the elimination of Kelly Days is to require bargaining unit employees to work more shifts each year without any additional pay. While

²⁷ The most extreme example of conflicting data involves Riviera Beach. The Town's exhibit shows Riviera Beach without any longevity pay plan. The Union's exhibit shows Riviera Beach with a graduated longevity pay plan that starts at 2% after four years and increases to 10% after 20 years.

approximately 260 of those additional hours will be without additional pay, about 155 additional hours will be compensated at time and-one-half pursuant to the FLSA overtime provisions for fire/rescue employees. However, the effect of adding 260 regular hours annually will be to significantly reduce each member's effective hourly rate. Accordingly, the three hours of built-in overtime each week will be paid at a lower rate than employees presently receive.

The Union argues against this change and points to comparable data from neighboring fire/rescue departments which utilize Kelly Days. Of six other nearby fire/rescue departments, all employ a Kelley Day every seventh shift with the exception of Boca Raton and employees in Boca work 24 hours on followed by 72 hours off.

The Town simply asserts that it cannot afford to continue the *status quo*. However, in view of the evidence provided by the Union, with regard to comparable employers, and in the absence of hard financial data to support this change, the Special Magistrate is not compelled to recommend a change to the *status quo*.

Article 19 – Overtime. The Town proposes to change the overtime threshold for bargaining unit employees to the maximum allowable under the FLSA, 212 hours in a 28-day cycle. The Town asserts this change “is absolutely necessary for [it] to reduce its budget expenses and fill the hole left by the \$5 million reduction in property tax revenues. This, essentially, is the same argument asserted by the Town in support of most of its money-saving proposals. However, as noted above, the Town failed to provide specific and discreet data to the Special Magistrate that illustrates how the adoption or rejection of any one proposed article would affect the Town's future financial condition.

The Union is willing to accept an increase from the current 144 hours to the FLSA threshold of 159 hours in a 21-day work cycle before being entitled to receive overtime pay at time-and-one-half. It is willing to make this concession, notwithstanding the fact that other nearby departments offer more generous overtime benefits. According to the Union, Boca Raton, Palm Beach County and Palm Beach Gardens pay overtime for all work performed outside a firefighter's normally scheduled work

hours. Delray Beach and Riviera Beach pay overtime for all work performed in excess of 144 hours and only West Palm Beach employs the 159 hour FLSA threshold.

The Town has not provided sufficient evidence to the Special Magistrate to compel a recommendation to depart from the *status quo* on this Article, except as to raising the number of hours worked before overtime is mandated to the FLSA threshold of 159.

Local 2928 also seeks to count compensatory time as time worked for purposes of overtime. Under the FLSA, only actual time worked is required to count as time worked for purposes of overtime. The Town currently provides a more generous benefit than the law requires by counting annual leave and vacation as time worked. The Union has failed to provide any logical or compelling basis to justify its proposed change.

Article 38 – Sick Leave and Injury. Bargaining unit members currently accrue 96 hours (four shifts) of sick leave each year. The Town asserts that a number of bargaining unit employees are misusing or abusing sick leave to get time off when they could not otherwise do so, based on the Department's limitation on the number of employees who can be scheduled off on each shift. It is especially disturbing that the highest incidents of sick leave usage over the last three fiscal years have been on Fridays and Saturdays.

The Union apparently also recognizes that a problem exists, but contends that "only a handful of employees" appear to be utilizing a large amount of sick leave. Nevertheless, Local 2928 is agreeable to adding a disincentive policy into the CBA to curb extensive use of sick leave. The parties disagree over the particulars of the proposed revisions. The Town wishes to impose escalating penalties, including discipline up to and including termination, on any employee who utilizes four or more sick leave "occurrences" during a 12-month period. The Union wishes to impose lesser penalties, beginning with the fifth occurrence, and for there to be no possibility of discipline until the eighth occurrence.

The first issue in dispute is the definition of an occurrence. The Town proposes that sick leave must be used in 24-hour increments (one full shift), unless medical documentation is submitted, and each such use shall be considered an occurrence (consecutive days of leave are considered one occurrence regardless of duration). The Union proposes that sick leave should be available in 12-hour blocks and that an occurrence should not be charged against an employee unless he/she utilizes a full shift (24 continuous hours of leave).

The only comparable personal/sick leave provisions were provided by the Union: Palm Beach Gardens and Palm Beach County. Palm Beach Gardens actually has a “personal leave” policy that credits shift employees with between 184 and 300 hours annually, depending upon years of service (compared to the Town’s 96 hours). Unscheduled personal leave, for an illness or emergency, must be taken “in increments of one full shift.” Scheduled personal leave (typically not taken due to illness) can be taken in 12-hour increments and “Acute Illness Leave” can be taken in 8-hour increments after certain other conditions are met. Disincentives begin in the Palm Beach Gardens CBA with the second occurrence, but discipline does not begin until the eighth occurrence. Employees who have utilized either one or no unscheduled leave occurrences in a fiscal year are credited with 48 additional hours of personal leave as an incentive for “excellent attendance.”

Palm Beach County provides all fire/rescue shift employees with 120 hours of annual sick leave. Disincentives begin with the fifth occurrence and no discipline can be imposed until the 10th occurrence. An occurrence is defined as missing at least one-half of a normal shift or a combination of sick leave usage that, when combined, equals one-half of a normal shift. As an incentive not to use all allotted sick leave, employees are paid for all unused leave at the end of the year.

The Special Magistrate finds the above provisions minimally helpful in making a recommendation on this disputed Article. At present, employees may use sick leave on an hour for hour basis. Requiring employees to utilize a 24-hour minimum of sick leave would be a significant change. As the Union points out, a firefighter does not always need to utilize a full 24-hour block of

sick leave. If he/she must stay home to care for a sick a child while his or her spouse is at work, the firefighter can report for duty when the spouse returns home. This would also appear to reduce the Town's overtime expenses that could be incurred to cover an entire 24-hour shift. The Special Magistrate sees no reason why sick leave cannot be taken in 12-hour blocks.

The Town wishes for each 24-hour block of sick leave to be an occurrence and it is logical for two 12-hour blocks of sick leave to be added together to constitute an occurrence. The Town also wishes to impose penalties with the fourth occurrence in any 12-month rolling period (one year's worth of allotted leave). Local 2928 doesn't want penalties of any kind to be imposed until after the fifth occurrence. For the fifth through seventh occurrences, the penalties would be limited to an employee being moved to the bottom of the overtime list and incremental loss of step up and exchange privileges from 15 to 60 days.²⁸ Not until the eighth occurrence would any discipline (24-hour suspension) be imposed.

The Special Magistrate finds the Town's proposal reasonable, both in terms of when it would be imposed and the nature of the discipline; however, he questions the corresponding financial penalties. The Town also wants to impose the following financial disincentives: five occurrences—ineligible for longevity/bonus pay; six occurrences—ineligible for wage increases; and, seven occurrences—ineligible for promotions.²⁹ The Special Magistrate finds this portion of the proposal more heavy-handed than necessary to deter abuse of sick leave.

The Town also wishes to avoid paying for the first day of any sick leave unless medical documentation is provided. The Special Magistrate does not find it to reasonable to require an employee to see a doctor every time he/she is too sick to report for duty – or to forfeit a day's pay.

The Union wishes for the Town to provide an incentive – in the nature of an additional 24-hour “personal day” -- for employees with one or no occurrences in any one year. The Town is

²⁸ The Town asserts that having an employee prohibited from stepping up to a higher classification when necessary would be more harmful to the Town than to the affected employee.

²⁹ The Town notes that, over the past three fiscal years, no employee has incurred more than seven sick leave occurrences.

philosophically opposed to offering “bribes” to employees not to abuse sick leave benefits.

Notwithstanding the fact that other departments do offer incentives to encourage employees to forego utilizing sick leave, the Special Magistrate feels this is a decision that is better left to the discretion of the Department management.

Finally, the Town wishes to add language in the CBA that expressly gives the Fire Chief, or his designee, the right to require a “fitness for duty” examination, at the Town’s expense, of any employee he reasonably believes may not be able to perform the functions of the job. The Union believes the Fire Chief already has the ability, as an inherent management right, to order such an examination. Nevertheless, it opposes “expanding” this power by including it in the CBA. The Special Magistrate does not understand the true nature of this dispute. If this power already exists, and the Special Magistrate believes it does, why does the Town need the proposed language in the CBA? Conversely, why does the Union oppose the expression of the power in the CBA?

The Town argues that, since the examination would only be permissible based upon a “reasonable belief” and it would be conducted at Town expense, the Union has “no legitimate reason” to oppose the proposal. The Town’s proposal does not indicate when the examination would take place. Would it be conducted while the employee is off duty and on his/her personal time? If the Chief orders an examination but it cannot be conducted prior to the employee’s next shift, would the employee be required to miss a shift without pay?

The Town has offered no evidence of comparable departments having the proposed language in a CBA, nor has it provided any other compelling reason to change the *status quo*.

RECOMMENDATIONS

Article 14 –Drug and Alcohol Testing. The Special Magistrate recommends adoption of the Town’s proposal with regard to the number of bargaining unit members who may be tested in any year, without any of the limitations proposed by Local 2928. The Special Magistrate recommends adoption of the Union’s proposal to follow DOT procedures as to when random testing may be conducted.

Article 16 – Promotions. The Special Magistrate recommends adoption of the Union’s proposal to utilize the “Rule of Two” when making non-supervisory promotions.

Article 17 – Wages. The Special Magistrate recommends adoption of the 40-step plan agreed to by both sides and a two-step advancement to qualified employees effective with the 2012 fiscal year. All other step advancement in the future will be determined through the collective bargaining process. With regard to proposals concerning longevity/bonus pay, the Special Magistrate recommends maintaining the *status quo*.

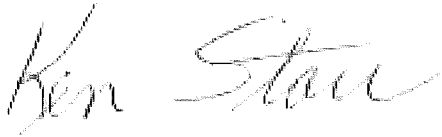
Article 18 – Workweek. The Special Magistrate recommends maintaining the *status quo*.

Article 19 – Overtime. The Special Magistrate recommends raising the number of hours a shift employee may work in a 21-day work cycle to 159, before overtime pay is required. With regard to hours considered in determining overtime eligibility, he recommends maintaining the *status quo*.

Article 30 – Insurance and Miscellaneous Benefits. The Special Magistrate recommends adoption of the Town’s proposal to freeze the existing defined benefit plan and the institution of a new defined benefit plan in conjunction with a defined contribution plan – with several modifications. Eligibility for retirement benefits under the new defined benefit plan would be at age 55. The Special Magistrate recommends a retirement benefit for life, which may be funded by insurance, for a firefighter who becomes disabled and is forced to retire due to a disability incurred in the “line of duty” (regardless of how many years he/she has been employed), with a 10-year certain payout, of at least 31.25% of average salary. For a firefighter with at least 10 years of service, who becomes disabled and is forced to retire due to a disability incurred “other than in the line of duty,” the Special Magistrate recommends a retirement benefit for life (with a 10-year certain payout) of at least 15% of average salary. The Special Magistrate also recommends an annual COLA, not to exceed 2%, beginning at age 65, based upon CPI-W, the same measure utilized by the U.S. Social Security Administration. Finally, the Special Magistrate recommends the same definition of “disability” as currently contained in Chapter 175 should apply to employees under the new defined benefit plan.

Article 38 – Sick Leave and Injury. The Special Magistrate recommends that sick leave may be taken in 12-hour blocks and that an occurrence would be defined as either leave of an entire 24-hour shift or two 12-hour blocks in any 12-month period. The Special Magistrate also recommends adoption of the Town's proposal, which imposes various types of discipline upon employees beginning with the fourth occurrence. However, he does not recommend adoption of any of the Town's proposals with regard to non-disciplinary penalties (ineligibility for overtime, shift exchanges, enhanced pay or promotions) for use of sick leave. Finally, the Special Magistrate does not recommend adoption of the Town's proposal to require medical documentation before an employee is entitled to receive pay for the first day of sick leave.

RESPECTFULLY SUBMITTED this 14th day of February, 2011.

By: 
Kenneth Starr, Special Magistrate

TOWN OF PALM BEACH
PUBLIC EMPLOYEES RELATIONS COMMISSION

TOWN OF PALM BEACH,

Employer,

v.

PROFESSIONAL FIREFIGHTERS/PARAMEDICS
OF PALM BEACH COUNTY, LOCAL 2928,

Union.

EMPLOYER'S POST-HEARING BRIEF

The Employer, TOWN OF PALM BEACH (hereafter the "Town"), hereby files its Post-Hearing Brief in the above-styled matter at impasse between the Town and the Union, PROFESSIONAL FIREFIGHTERS/PARAMEDICS OF PALM BEACH COUNTY, LOCAL 2928, (hereafter "Local 2928").

PRELIMINARY STATEMENT

The Town is a municipality located on a barrier island in Palm Beach County, Florida. Its year-round population is approximately 10,000 residents, and its seasonal population is approximately 30,000 residents. The Town employs approximately 350 full and part-time employees, who perform a full range of municipal services, including fire-rescue services. An elected Town Council serves as the Town's legislative body, and an appointed Town Manager serves as the Town's chief executive officer.

The Town's Fire-Rescue Department is responsible for providing fire-rescue services to the Town's residents. The Fire-Recue Department employs approximately 84 employees. Approximately 72 of these employees are State-certified firefighters.

On October 8, 2001, Local 2928 was certified as the exclusive bargaining representative

for 2 bargaining units of Town fire-rescue personnel – a supervisory bargaining unit and a non-supervisory bargaining unit. The supervisory bargaining unit consists of 18 employees in the classification of Fire Lieutenant. The non-supervisory bargaining unit consists of 46 employees in the classifications of Driver-Operator and Firefighter/Paramedic.

In June 2005, the parties entered into their first collective bargaining agreements (“CBAs”), one covering the supervisory bargaining unit and one covering the non-supervisory bargaining unit. These CBAs expired on September 30, 2008. Thereafter, the parties extended the CBAs for Fiscal Year (“FY”) 2008-2009. Upon the expiration of the FY 2008-2009 extension, the parties entered into successor CBAs for FY 2009-2010. These CBAs expired on September 30, 2010.

Negotiations for successors to the FY 2009-2010 CBAs commenced March 1, 2010 with a presentation of the Town’s bargaining proposals. Thereafter, the parties conducted 4 bargaining sessions. On June 22, the Town declared an impasse in negotiations for both CBAs. The parties have conducted 2 bargaining sessions since the declaration of impasse.

On December 9, 2010, a Special Magistrate hearing was held in this matter before Commission-appointed Special Magistrate Kenneth Starr. At the hearing, the parties reached agreement on Article 41, Duration, thereby removing it from issue. Additionally, since the hearing, the Town has withdrawn its proposed Section 38.3, which addressed changes to the Town’s workers compensation benefits. No action is required by the Special Magistrate as to these resolved Articles/Sections. Each of the Articles remaining at impasse will be addressed separately below.

ARTICLES AT IMPASSE

1. ARTICLE 30 – INSURANCE AND MISCELLANEOUS BENEFITS¹ – The current CBAs are silent on the issue of retirement benefits for bargaining unit employees. Those benefits, instead, are provided under a Firefighter Pension Plan that covers all of the Town’s certified firefighters, including the bargaining unit members. The Town seeks to make significant, but necessary, changes to the existing Firefighter Pension Plan. And, the Town seeks to incorporate those changes in either Article 30 or as a new Article 41. Local 2928 recognizes that changes are needed to the existing Firefighter Pension Plan, but is not willing to go as far with those changes as proposed by the Town.

By way of background regarding the issue of retirement benefits, the Town currently provides retirement benefits for its employees through three separate defined benefit pension plans: a General Employee Pension Plan, a Police Officer pension plan, and a Firefighter Pension Plan. Each of these pension plans is administered by its own pension board.

The Firefighter Pension Plan provides retirees with a guaranteed annual retirement benefit for life. Under the Plan, the annual retirement benefit is calculated by multiplying the plan member’s “average final compensation” by 3.5% per year of credited service up to a maximum of 25 years (i.e., a maximum 87.5% of “average final compensation”). The term “average final compensation” is defined as the member’s highest two consecutive years of earnings within the member’s last five years of credited service. Included in the average final compensation calculation is the member’s base wages, as well as overtime pay, educational incentive pay, special duty (off-duty) detail pay, incentives, bonuses, and longevity pay. Under the current Plan, members are eligible for normal retirement upon 20 or more years of service,

¹ As this Article lies at the heart of the parties’ dispute, the Town is addressing this Article out of numerical order. The remaining Articles at impasse will be addressed numerically.

regardless of age; or, age 50 with 10 or more years of service; or, when they have at least 10 years of service and their age plus credited years of service totals 65 years or more. The annual retirement benefits paid to the Plan members are automatically increased by 2% annually as a cost-of-living adjustment after an initial 3-year deferral. Additionally, upon a Plan member's death, the member's surviving spouse is paid 75% of the member's annual retirement amount each year for the remainder of the surviving spouse's life. This surviving spouse benefit, which is normally treated as a purchase option for members in most retirement plans, is provided to the members of the Firefighter Pension Plan free of cost. [U.Ex.11, September 30, 2009 Annual Actuarial Evaluation, pp.C-1 to C-3.]

As of the Firefighter Pension Plan's September 30, 2009 Actuarial Evaluation, the average age at retirement for the plan members was 48.5 years. [U.Ex.11, p.C-10.] And, according to the assumptions used by the Plan's actuary, a male member of the plan who attains age 50 is expected to live an additional 29.18 years. [U.Ex.11, p.D-6.] Thus, a Plan member who retires at age 48 would be expected to live to age 79, thereby collecting annual retirement benefits from the Plan for 31 years. As such, the current Plan assumes that in most cases a retired member will collect annual retirement benefits for a greater number of years than they worked for the Town.

The retirement benefits under the Firefighter Pension Plan now amount to millions of dollars for each of the active Plan members. Thus, for example, if a firefighter who has 25 years of service and has been receiving the top of the firefighter pay range amount of \$82,043 for at least the last two years retires today at age 48, his annual retirement benefit would be a minimum of \$71,788 per year (87.5% of \$82,043). (This annual amount would actually be even greater – in most cases it would be significantly greater – since overtime pay, educational incentive pay, etc. is factored into the firefighter's final average earnings.) Using this very conservative

“minimum benefits” example, the member’s guaranteed lifetime retirement benefit, using the Plan actuary’s life expectancy assumption, would be over \$2.9 million (inclusive of the pension COLA). This benefit would be even greater if the Plan member is survived by a spouse. Under any objective measure, a nearly \$3 million dollar guaranteed retirement benefit for 25 years of service to the Town is excessive. This is especially so when you consider that not only are many members receiving retirement benefits for longer than they were employed by the Town; they are being paid far more in cumulative retirement benefits than they received in cumulative pay during their Town employment.

The Town’s Firefighter Pension Plan is funded from multiple sources. Municipalities, such as the Town, who maintain firefighter retirement plans that comply with the requirements of Chapter 175, Florida Statutes, can levy a 1.85% excise tax on property insurance premiums paid by the Town’s property owners. See Section 175.101, Florida Statutes. These amounts are remitted to the State and then rebated, pursuant to a fixed State formula, back to the municipalities. The Town currently receives Chapter 175 funds from the State on an annual basis. Additionally, the Firefighter Pension Plan members contribute 6.82% of their salary to fund the Plan. The Plan is also funded by returns on investments made by the Plan. Lastly, the Town contributes whatever remaining amount the Firefighter Pension Plan actuary determines is necessary to make the plan actuarially sound. Unlike the State and member contributions, the Town’s contributions are not capped. In other words, the Town is the ultimate guarantor of the retiree’s guaranteed retirement benefits, regardless of how much the taxpayers must pay to make the Plan sound.

Over the last decade, the Town has seen an unprecedented explosion in its contributions to its employee retirement plans. In FY 2009, the Town’s contribution for all its pension plans was \$6.869 million. For FY 2010, the Town’s contributions for all its pension plans jumped to

\$7.525 million. For FY 2011, the Town's contributions for all its pension plans will exceed \$9 million. Moreover, the Town is required to contribute more to the Firefighter Plan than any of the Town's other plans, despite the Fire-Rescue Department having the least number of active pension plan members. In fact, the Town has to contribute nearly three times as much to the Firefighter Pension Plan as it contributes to the General Employee Pension Plan despite there being three times more active general employee pension plan members than active firefighter pension plan members. [T.Ex. C, Tab 30.]

With respect to the Town's funding for the Firefighter Pension Plan, in FY 2002, the Town's actuarially determined contribution was \$197,289. For FY 2011, the Town's contribution ballooned to \$3,189,802. This is an increase of over 1500% in 10 years. During that same period of time, the Town's contribution per active Plan member increased from \$3,523 to \$44,303. This is an increase of over 1100% in 10 years. During this entire period, the active Plan members' contributions remained at 6.89%. And, while the State's actuarially determined Chapter 175 contribution increased from \$258,772 in FY 2002 to \$349,954 in FY 2011, as a percentage of total public contributions, the State funding went from 57% of the total public contribution to the Plan to less than 10% of the total public contribution. [T.Ex. D, Tab 30.]

Moreover, measured as a percentage of active payroll, the actuarially required public contribution to the Firefighter Pension Plan has seen an explosive increase in the last several years. In this regard, the actuarially required public contribution to the Firefighter Pension Plan had been below 29% of active payroll for most years from FY 1978 through the early 2000s. In FY 2006, the actuarially required public contribution swelled to 39.34%. In FY 2007 that amount ballooned to 45.97%. And, in FY 2011, the actuarially required public contribution to the Firefighter Pension Plan exploded to 51.06% of active payroll; 90% of which is paid by the Town, and only 10% of which is paid with State Chapter 175 monies. [U.Ex.11, pp.A-2, B-4.]

It is important to note that this explosion in the Town's pension costs was not caused by the meltdown in the stock market in 2008. Instead, the Town's pension costs have been on a steady increase for the last decade. This is a product of the significant increases in the employees' pay and other monetary benefits, as well as significant enhancements to the employees' pension plans. Contrary to what Local 2928 has attempted to imply, this is not an issue of market cycles, and a future rebound in the investment market is not going to fix the problem. Instead, only a modification of the Town's existing pension plans is going to enable the Town to be able to afford to pay for them in the future.

During the 2008/2009 timeframe, the Town came to the realization that, as has been borne out by the data above, its pension plans were ticking time bombs, and the continuing cost of keeping the pension plans actuarially sound was not sustainable. Additionally, in March 2009, the Town prepared its 2009 Annual Long-Term Financial Plan and learned that it was facing forecasted budget deficits beginning in FY 2012 and rising to \$20 million in FY 2020. In total, the Town was forecasting a shocking cumulative deficit for FY 2011 through FY 2020 of over \$94 million. Adding to this was the fact that the Town needed to find significant amounts of money to fund sand restoration (as a barrier island, the Town has to spend significant sums to combat erosion). Not surprisingly, the Town's exploding employee benefits costs, much of which were pension costs, played a major role in the Town's forecasted deficits. More specifically, employee benefit expenditures were forecasted to balloon from \$15.9 million in FY 2011 to \$30.7 million in FY 2020. [T.Ex. E, p.20, Tab 30.] Given this, the Town Council directed the Town Manager to find ways to reduce the forecasted deficits and to reform the Town's pension plans.

Thereafter, the Town completed a national competitive selection process and hired Cavanaugh Macdonald Consulting, LLC to provide expert advice and assistance with pension

plan reform. In October 2009, Cavanaugh Macdonald issued its independent report identifying multiple options for modifying the Town's pension plans. The Town Manager used Cavanaugh Macdonald's report and calculations in preparing a Report and Recommendation on the pension plans for the Town Council's review.

On April 6, 2010, the Town Manager provided the Town Council with both his Report and Recommendation on the pension plans and the Town's 2010 Long-Term Financial Plan. [T.Exs. E and F, Tab 30.] With respect to the Town's 2010 Long-Term Financial Plan, the Town Manager was able to reduce the forecasted budget deficits to where they were not forecasted to begin until FY 2018 (instead of FY 2012) and were forecasted to be only \$933,056 (instead of \$20 million) in FY 2020. [T.Ex. E, p.25, Tab 30.] The Town Manager accomplished this through recommended pension plan changes, and savings in FICA and longevity due to lower total salaries. Much of the salary savings was a product of reducing positions; no pay cuts were proposed for active Town employees. [T.Ex. E, p.20, Tab 30.] Thus, for example, employee benefit expenses were reduced from a forecasted \$30 million to a forecasted \$18 million in FY 2020; \$6.5 million of this projected savings was as a result of the Town Manager's proposed pension plan changes.

Contrary to any claim by Local 2928, the Town Manager did not recommend reducing the forecasted budget deficit "on the backs of the employees." The money being saved under the Town Manager's plan was the taxpayers' money, not the employees' money. Thus, the recommendation was not taking anything away from the employees; it was just not giving as much to the employees in the future. Moreover, it was the forecasted increased costs of employee benefits, such as pension benefits, that was causing, in large part, the forecasted deficits. Lastly, unless the Town was going to tax the Town's taxpayers into oblivion, there was simply no viable way to reduce the forecasted deficits without a significant reduction in

employee benefit expenses. In this regard, the Town's Manager's plan for reducing the forecasted budget deficits already included projected ad valorem tax increases in each fiscal year from FY 2012 to FY 2020. This included the taxpayers shouldering a 3% increase in ad valorem taxes in each fiscal year from FY 2014 to FY 2020 to help reduce the forecasted deficits. [T.Ex. E, p.11, Tab 30.]

The Town Manager's recommended pension plan changes, which were addressed with the Town Council on April 6, 2010, included modest changes to pension benefits. With respect to any past years of service, the existing Firefighter Pension Plan would be frozen, and the members would be paid benefits for all those years of service in accordance with the terms of the Plan. Thus, the members would lose nothing they had already earned. For future years of service, the following changes would be made: reduce the pension multiplier to 3.0%; change final average compensation to the average of the top 5 years of earnings; eliminate bonus pay, special duty overtime, and regular overtime over 100 hours from final average earnings; modify the eligibility criteria for retirement; change the annual COLA to begin at age 65; make the survivor benefit a purchase option for the members; and withdraw from Chapter 175 (which was necessary given the Division of Retirement's requirement that certain State monies only be used for extra benefits).² [T.Ex. F, pp.13-14, Tab 30.] The Town Manager did consider, but rejected, a number of alternative pension plan reform measures which would have provided deeper cuts in pension benefits, such as a hybrid (part defined benefit, part defined contribution) pension plan. [T.Ex. F, pp.19-24, Tab 30.] While these alternatives would have saved more money, the Town

² Chapter 175 was substantially rewritten by the Florida Legislature in 1999. As rewritten, the law provides that premium tax revenues received by cities must be used to provide "extra benefits" for firefighters. In applying the 1999 revision, the Division of Retirement determined that "extra benefits" means benefits greater than those provided to general employees, and in addition to those benefits in existence for firefighters on March 12, 1999 (the date the 1999 legislation took effect).

Manager recommended only the minimum changes necessary to address the Town's forecasted deficits.

On April 29, 2010, the Town presented the Town Manager's April 6 pension plan reform recommendation to Local 2928 in the form of a written collective bargaining proposal. [T.Ex. H.] Local 2928 rejected the Town's proposal. Thereafter, Local 2928 counter-proposed that all existing employees continue to receive pension benefits for the remainder of their employment with the Town in accordance with the current Firefighter Pension Plan, and that the Town's proposed Plan changes apply only to newly hired employees. The Town rejected this "grandfather" proposal as it had already been considered by the Town Manager in his April 6 recommendations, and was determined not to save enough money to address the Town's forecasted deficits. More specifically, the grandfather proposal left the Town with a cumulative shortage through FY 2020 of \$6.8 million just for the Firefighter Pension Plan, and \$25 million for all plans over the same period. [T.Ex. G.]

Unfortunately, thereafter, the Town's financial situation worsened. On or about May 2010, the Palm Beach County Property Appraiser issued his preliminary projection for the 2010 taxable property values. This projection showed the Town with a 12.7% decrease in taxable property values. [T.Ex. L.] Ultimately, the Town realized a 12.4% decrease in property taxes, which resulted in a \$5 million decrease in property tax revenue (which is the Town's major source of revenue). This property tax revenue decrease, in turn, created a \$5 million shortfall in the Town budget for FY 2011 (October 1, 2010 to September 30, 2011).

On June 21, 2010, in an effort to remedy the budget shortfall created by the decline in property tax revenues, the Town Manager presented the Town Council with a proposed budget for FY 2011 which included the deletion of across-the-board pay increases, elimination of over 11 positions, and an increase in the property tax millage rate for the Town's taxpayers. The

Town's taxpayers responded negatively to the Town Manager's proposed tax hike, especially as homeowners with homestead exemptions would see a 15% property tax increase. As such, the Town Council directed the Town Manager to come back with a plan for balancing the FY 2011 budget that did not include raising taxes.

As the Town could not make up the \$5 million revenue shortfall for FY 2011 through increased property taxes, the Town Manager had to find ways to further reduce the Town's expenses to balance the budget. (Unlike the federal government, the Town has to balance its budget each year.) Ultimately, the Town Manager was able to create a balanced budget for FY 2011 which met the Town Council's approval. This budget was balanced, and the revenue shortfall was remedied, through the elimination of additional positions, including 3 certified positions in the Fire-Rescue Department. [T.Ex. M.] Additionally, merit and step increases were eliminated for FY 2011.

Unfortunately, the FY 2011 budget approved by the Town Council only resolved the budget deficit for that fiscal year. With respect to future fiscal years, the Town Manager's plan for reducing future forecasted deficits as reflected in the 2010 Long Term Financial Plan was no longer viable, as the Town would be operating from a reduced revenue base going forward. By way of illustration, if the Town Manager's April 6 recommended pension plan changes had been implemented as part of the budget effective October 2010, the Town would experience budget shortfalls beginning in FY 2014 (commencing October 1, 2013) amounting to over \$5 million in FY 2020, and resulting in a cumulative deficit of \$22.5 million through FY 2020. [T.Ex. N.]

In light of the Town's ominous financial outlook resulting from the revenue shortfalls, the Town Manager was forced to revisit employee benefits, including longevity and the recommended pension plan changes. Recognizing this, on August 12, 2010, the Town withdrew the collective bargaining proposals on pension benefits and wages that it had previously provided

to Local 2928. [T.Ex. K.] Regarding the pension plan changes, the Town Manager was forced to turn to the hybrid pension option that he had considered and rejected in April 2010, as this was the only option that would have an appreciable impact upon the Town's forecasted deficits. It is important to note that even under the hybrid pension plan, which would save the Town \$1.6 million in Firefighter Pension Plan contributions in the first year, the Town was still forecasted to run a deficit of over \$2.5 million in FY 2020 and a slight cumulative deficit for the entire period through FY 2020. In other words, the hybrid pension plan does not place the Town in as good a fiscal position as the Town would have been had the April 6 plan been adopted and the property tax revenues not decreased.

On September 29, 2010, the Town presented Local 2928 with a written collective bargaining proposal outlining the terms of the proposed hybrid pension plan. [T.Ex. O.] Like the proposed April 6 plan, the hybrid plan would freeze benefits for existing years of service at the levels contained in the existing Firefighter Pension Plan. As such, the firefighters would not lose any accrued benefits. For future years of service, employees would be provided pension benefits consisting of both a defined benefit plan and a defined contribution plan. [T.Ex. P.] The defined benefit plan would include a 1.25% multiplier, retirement eligibility at age 65, no post retirement COLA, an option to purchase the survivor benefit, and a 4.98% contribution by the active members (which is a 2% reduction from what they currently pay). As with the April 6 plan, the Town would withdraw from Chapter 175. The defined contribution, or 401(a), plan would provide for a minimum 2% contribution by the members and a match by the Town of up to 4%. Under this defined contribution plan, members who are no longer employed by the Town at the time could begin withdrawing benefits at age 50.

Local 2928 rejected the Town's hybrid plan proposal, and on November 15, 2010, proposed a plan to reduce the pension multiplier to 3% and enable a pension "stop/restart."

[T.Ex. R; U.Ex.1, p.15.] The pension “stop/restart” would allow the Town to use more of the State Chapter 175 monies to offset its costs. And, according to the Firefighter Pension Plan actuary, the reduction of the multiplier to 3% would reduce the Town’s contributions to the Plan by 5%. This, however, would amount to only \$159,490 (5% of \$3,189,802). Assuming that the pension stop/restart were to allow the Town to offset its costs by the entire \$256,731 of State Chapter 175 monies that it was not able to utilize in FY 2010 (see T.Ex. D, Tab 30), the total increased benefit to the Town of Local 2928’s proposal would be only \$509,444 (\$159,490 for the reduced multiplier plus \$256,731 for the additional Chapter 175 monies). This is over \$1 million less than the \$1.6 million in savings (which already factors in the loss of the \$349,954 in State Chapter 175 monies that the Town can currently use to offset the costs of the Plan) generated by the hybrid plan and which are necessary to address the Town’s forecasted deficits.³

Any argument by Local 2928 that the Town should continue to participate in a Chapter 175 plan because the Town’s property owners are going to pay the 1.85% insurance premium surcharge anyway is likewise unavailing. Assuming for argument’s sake that the property owners will be charged the surcharge even if the Town is no longer in a Chapter 175 compliant plan, the property owners fare much better under the Town’s hybrid plan than under Local 2928’s proposal. In this regard, under the Town’s hybrid plan, while the property taxpayers would arguably still pay the approximately \$600,000 in insurance proceeds, they would save \$1.6 million in Town Plan contributions which are paid out of their tax dollars. This is a net benefit of approximately \$1 million to the taxpayers.

³ At hearing, Local 2928 presented information regarding the potential cost savings of making the survivor benefit an option for purchase by the members. However, that change is not reflected in Local 2928’s written proposal. In fact, by its terms, Local 2928’s proposal would preserve the members’ survivor benefit. And, even if the change in the survivor benefit were included in Local 2928’s proposal, Local 2928’s proposal still would not save the Town enough money.

The Town recognizes that under its hybrid plan, the Town is forecasted to have surpluses during the initial years of the Plan. This, however, is necessary to offset the forecasted deficits through FY 2020. Additionally, those initial surpluses are needed to fund the Town's beach restoration projects. While Local 2928 has attempted to paint this as the Town choosing sand over employees, its attempt is disingenuous. As a barrier island, if the Town does not address sand erosion there will be no more Town to employ Local 2928's members. Moreover, Town government exists to, among other things, protect the physical integrity of the Town; Town government does not exist for the purpose of providing employees the pension benefits they desire. That is not to say that the employees are unimportant to the Town or that their work is not appreciated. What it does mean is there are certain core responsibilities of Town government that have priority in funding over providing employees with their desired employment benefits. Protecting the physical integrity of the Town is one of those priorities.

Local 2928 appears to claim that the Town's proposed modifications to the Firefighter Pension Plan are unreasonable as the bargaining unit employees would be forced to work until age 65, as that is the age upon which they would be able to begin collecting benefits under the proposed 1.25% defined benefit plan.⁴ According to Local 2928, firefighters cannot safely work to age 65, and the Town's proposal creates a safety risk for the firefighters. Local 2928 is wrong.

The Town's proposal does not force firefighters to work as firefighters to age 65. Currently, firefighters who retire in their 40s go to work in other departments or pursue other avenues of employment. They would continue to have the same opportunities to do so under the

⁴ Local 2928 did not provide any testimony at hearing regarding the reasons why it opposes the Town's pension proposal. As such, the Town can only speculate herein as to those reasons. Should Local 2928 raise any reasons for opposing the Town's pension proposal that are not anticipated in this Brief, the Town would request that it be given an opportunity to address those reasons before the Special Magistrate issues his Recommendations.

Town's proposal. Moreover, the Town's proposed additional defined contribution plan would provide them a revenue source from which they can draw prior to reaching age 65. In this regard, as previously discussed, a firefighter who has departed Town service can begin withdrawing money from the defined contribution plan at age 50. And, if a member feels that he or she is not getting enough value under the 1.25% defined benefit plan, the member can withdraw his/her contributions to the plan with interest and invest the money themselves.

Local 2928 is also likely to argue that the Town's pension proposal, if adopted, will place the Town at a competitive disadvantage by way of recruitment and retention. The Town recognizes that its proposal would temporarily place the Town at the bottom of the local market in the area of pension benefits. However, the Town believes that this competitive disadvantage will be short lived as the rest of the local market (along with state and local pension plans across the country) is going to be forced to come to terms with the same unsustainable costs and benefits that are motivating the Town's proposed pension plan reforms.

Lastly, the Town anticipates that Local 2928 will argue that the Town's position is unreasonably based on speculation as to what the Town's financial picture may be years down the road. To the extent that Local 2928 is arguing that there are uncertainties involved in forecasting, Local 2928's assertion is well taken – the Town could wind up in a better position than forecasted, or it could wind up in even a worse financial position than is now being forecasted. If the Town winds up in a better position, nothing stops the parties from agreeing to increase pension benefits at a later date. However, if the Town was to err in the opposite direction, and its financial position winds up worse than forecasted, the Town could face a fiscal crisis. While the federal government and all too many local governments are willing to wait until a crisis arises before acting, the Town is not willing to do so. Doing nothing, or doing something symbolic that does not correct the problem as advocated by Local 2928 in its

November 15, 2010 proposal, is not an option. While cutting deep, the hybrid pension plan changes advocated by the Town are absolutely necessary.

For these reasons, the Town requests that the Special Magistrate recommend the Town's September 29, 2010 proposal (T.Ex. O, Tab 30) on this Article as to both of the bargaining units.

2. **ARTICLE 14 –DRUG AND ALCOHOL TESTING** – The existing language of the CBAs provide for drug and alcohol testing in accordance with the Town's Personnel Manual and Fire Department Procedures. [T.Ex. A, Tab 14.] The Town's Personnel Manual and Fire Department Procedures, in turn, provide for drug and alcohol testing in the following situations applicable to the bargaining unit employees: initial hire, reasonable suspicion, post-accident, and post-discipline for violation of the drug and alcohol policy. [T.Ex. D, Tab 14.] The Town initially sought to update the drug and alcohol testing procedures and to add random drug testing. [T.Ex. E, Tab 14.] However, after the Town and Local 2928 could not come to agreement on updated drug and alcohol testing procedures, the Town proposed the status quo language of this Article, with the addition of a new Section 14.4 addressing random drug testing. [T.Ex. E, Tab 14.]

Local 2928 appears to now agree to the status quo language of this Article, with the addition of a new Section 14.4 addressing random drug testing. [U. Ex.1, pp.2-3.] The only area of disagreement between the parties regarding random drug and alcohol testing is the procedure to be utilized for such testing. More specifically, Local 2928 seeks to limit random alcohol testing to no more than 10% of the bargaining unit employees selected for random drug testing. In other words, if the Town randomly drug tests 10 bargaining unit employees, only 1 of those employees can be tested for alcohol. And, as the total number of employees in the combined bargaining units is 64, and Local 2928's proposal would cap the total number of drug tests at 64, no more than 6 bargaining unit employees could be tested for alcohol.

There is simply no rational basis for limiting alcohol testing to 10% of the population tested for drugs. This is especially so, as the breath analysis test given for alcohol is even less intrusive than the urinalysis test given for drugs. Moreover, the potential negative consequences of impairment that the Town is attempting to avoid through the random testing program – accidents and injuries – are the same whether the impairment is based on alcohol or drugs. And, by limiting the number of alcohol tests as proposed by Local 2928, the deterrent effect of random alcohol testing will be diminished: if the Town randomly tests 6 bargaining unit employees for alcohol at the beginning of a year, the bargaining unit employees will know that none of them can be randomly tested for alcohol for the remainder of that year.

The only support raised by Local 2928 at hearing for its 10% cap on alcohol testing is the DOT testing regulations codified at 40 CFR §382.305. [U.Ex. 3.] However, this regulation, which is not applicable to firefighters, sets a floor of 10% for random alcohol testing, not a ceiling. In other words, the regulation requires that at least 10% of the employees be randomly tested for alcohol. It is hard to understand how this regulation in any way supports Local 2928's call for a 10% cap on random alcohol testing.

For these reasons, the Town requests that the Special Magistrate recommend the Town's December 1, 2010 proposal (T.Ex. H, Tab 14) on this Article as to both of the bargaining units.

3. **ARTICLE 16 – PROMOTIONS** – The only provision in dispute in this Article is Section 16.8 which addresses the selection for promotions to the position of Driver-Operator. Currently, employees who are interested in promotion to Driver-Operator can submit an application for posted vacancies. Those employees who meet the minimum qualifications for the position are given a promotional examination, which consists of both a written and practical component. Points are awarded for the written and practical components, as well as for seniority. Once these points are tallied, the candidates are placed on a promotions eligibility list

in ranked order based on their total points. Thereafter, candidates are selected for promotion from the eligibility list based solely on their ranking on the eligibility list (highest scoring candidate selected first). Fire Department management cannot deviate from the ranked order on the eligibility list in promoting candidates. [T.Ex. A, Tab 16.] This differs from the procedure in the supervisory CBA which allows Fire Department management to select from the top three ranked candidates on the Lieutenant's promotions eligibility list. [T.Ex. B, Tab 16.]

The Town proposes to conform the non-supervisory contract to the supervisory contract and provide Fire Department management with the same flexibility in selecting Driver-Operators as it has in selecting Lieutenants – any one of the top 3 ranked candidates on the promotions eligibility list. [T.Ex. F, Tab 16.] As the Town's Fire Chief testified at hearing, this flexibility is needed as the current scoring process does not take into account all of the relevant factors involved in determining the best qualified candidate. Instead, the current system only measures the best test taker. In this regard, job performance is not factored into the scoring process, which leaves the Fire Department in a position where it could be required to promote an employee to Driver-Operator who has been disqualified for a merit pay increase based on his/her below standards evaluation score. Moreover, the Fire Department management cannot take into account relevant factors such as the employee's disciplinary history (other than suspension or higher-level discipline action during the 12 prior months); accidents, decision-making, attitude, and attendance. Thus, for example, the Fire Department has been forced in the past to promote excessive sick leave users to Driver-Operator.

In apparent recognition that the current Driver-Operator selection process is in need of fixing, Local 2928 has agreed to allow the Fire Department management to select from the top 2 ranked candidates on the promotions eligibility list. [T.Ex. E, Tab 16.] While the Town appreciates Local 2928's willingness to move on this issue, its insistence on the selection of the

top 2 candidates instead of the top 3 candidates makes little sense in light of the fact that this “rule of 3” applies to Lieutenant promotions. There is simply no justification for treating promotions to Driver-Operator differently than promotions to Lieutenant. And, Local 2928 offered no such justification at hearing. In fact, Local 2928 did not offer any justification for its position at hearing.

For these reasons, the Town requests that the Special Magistrate recommend the Town’s December 1, 2010 proposal (T.Ex. F, Tab 16) on this Article.

4. **ARTICLE 17 – WAGES** – The current CBAs contain Step Pay Plans for the bargaining unit employees consisting of 1 probationary step and 10 regular steps for each bargaining unit job classification. [T.Ex. A, Tab 17.] Each step in the Plans is set at a projected annual salary 4% higher than the preceding step. Bargaining unit employees move to the next higher step in the Plans on their anniversary dates provided that they received at least an overall score of 3.0 on their annual performance evaluation. Additionally, bargaining unit employees are subject to pay increases based on annual competitiveness studies conducted by the Town (a) for all employees and (b) for fire-rescue personnel. Lastly, the bargaining unit employees are eligible for either longevity pay or annual bonuses, depending on their date of hire. In this regard, employees hired prior to October 1, 2004 are eligible for longevity pay of up to 10% each December 1 based on their years of Town service. [T.Ex. B, Tab 17.] Employees hired on or after October 1, 2004 are eligible for bonuses each December 1 based upon a combination of their performance evaluation scores and their years of Town service. [T.Ex. B, Tab 17.]

Prior to FY 2010, the bargaining unit employees historically received annual wage increases in the amounts of 4% for step increases and 3% for cost-of-living increases (the Town-wide competitiveness amount). In FY 2009, the bargaining unit employees received an additional wage increase of 5% to 10% based on the fire-rescue competitiveness study; thereby

bringing their total wage increases, not including longevity/bonus, to 12% to 17% for that single year. [T.Ex. C, Tab 17.] For FY 2010, in accordance with Article 17.7 of the existing CBA, the Town did not provide the bargaining unit employees, or for that matter any Town employees, with step or competitiveness study wage increases. However, the bargaining unit employees did continue to receive longevity/bonus. [T.Ex. C, Tab 17.]

On March 1, 2010, the Town provided Local 2928 a written collective bargaining proposal modifying the existing Step Pay Plans to reflect 40 steps of 1% each instead of 10 steps of 4% each. Both the existing minimums and maximums for the job classifications remained status quo. [T.Ex. D, Tab 17.] The Town sought this change to provide more flexibility in future pay increases and promotions – under the existing Plans, wage or promotional increases of any amount other than 4% would place the bargaining unit employees in between steps, thereby requiring the Town to round up or round down to place the employees in an existing step. The Town also proposed that bargaining unit employees receive a 3% wage increase (an increase of 3 steps under the new Plans) on their anniversary dates provided that they received at least an overall score of 3.0 on their annual performance evaluation. Lastly, the Town proposed to maintain the existing longevity/bonus system.

Unfortunately, for the reasons discussed above in the section of this Brief addressing Article 30, on August 12, 2010, the Town was forced to withdraw its wage proposal. [T.Ex. G, Tab 17.] In its place, the Town has proposed the same changes to the Step Pay Plans previously proposed, along with implementation language, but with no step or other wage increases for FY 2011. This is consistent with the Town's treatment of the Town's other employees – none of them are receiving any wage increases for FY 2011. [T.Ex. C, Tab 17.] Moreover, it is consistent with the fact that most other comparable employers in the local market are not giving their employees wage increases for FY 2011. [T.Ex. J, Tab 17.] Wage increases for FY 2011

are not needed for the Town to remain competitive in the local market, as the Town's pay ranges for the bargaining unit job classifications are, in almost all cases, above the local market average. [T.Ex. I, Tab 17.] The Town has further proposed that wage increases for any fiscal year after FY 2011 be established through the collective bargaining process.

Additionally, the Town has proposed a revision to the existing longevity/bonus system. Under the new system, which would be applicable regardless of when the employees were hired, the employees would be awarded bonuses of up to \$6,000 on December 1 of each year based on their performance evaluation scores. This new system would commence with the December 2011 bonus payment. It would save the Town \$140,281 in FY 2012, and a total of \$1,029,355 through FY 2020. These savings are an essential part of the Town Manager's plan to fill the budget hole left by the \$5 million reduction in property tax revenues due to declining property values.

At hearing, Local 2928 presented a proposed wage article that can only be described as questionable. According to Local 2928, its proposal is in agreement with the Town's proposal on step increases – no step or other increases for FY 2011, and increases established through the collective bargaining process for each fiscal year thereafter. The only problem is that Local 2928's proposal says something totally different than what Local 2928 represents. More specifically, Section 17.2 of Local 2928's proposal states that bargaining unit employees shall receive step increases equaling a 4% increase on their anniversary dates. [U.Ex. 1, p.8.] The Town simply cannot absorb such an increase because, as discussed earlier in this Brief, the Town had to build its FY 2011 budget on no wage increases for any employees. It would be unfair for the bargaining unit employees to receive a FY 2011 wage increase when no other Town employees will be receiving any wage increases.

The Town does recognize that Local 2928's proposal contains language stating that "[n]o step or other wage increases will be provided ... for Fiscal Year 2010-2011 (FY 2011)." It is unclear whether this language negates Local 2928's 4% step increase language, or, instead, means that there will be no increases in addition to the 4% step increases. Even if it means the former, the practical impact of Local 2928's proposal would be to freeze the 4% step increases for FY 2011, and have them automatically continue on October 1, 2011 unless they are negotiated out of the CBA prior to that date. In essence, this will guarantee the bargaining unit employees step increases of 4% on October 1, 2011 as there is no way that the Town and Local 2928 will be able to negotiate over and resolve FY 2012 wages by October 1, 2011 as the parties have a long way to go to resolve the FY 2011 CBA. The parties cannot even begin to negotiate over FY 2012 wages until the FY 2011 CBA is completed. Given the Town's financial situation, it would be irresponsible for the Town to commit to 4% step wage increase for FY 2012, especially prior to the release of the 2011 property tax values. If those values decrease further, the Town will be in an even worse financial position.

Local 2928 also proposes to retain the current longevity/bonus system. The Town cannot agree to do so. The bargaining unit employees are fortunate to have long enjoyed a very lucrative longevity/bonus benefit. However, the Town can no longer afford to pay for it. In its place, the Town has proposed a more modest, but still very good and fair, benefit. In fact, it is better than a number of fire-rescue employers in the local market who do not offer any type of longevity/bonus benefit. [T.Ex. L, Tab 17.] While it is understandable that Local 2928 wants to maintain its bargaining unit members' lucrative benefits, this is simply not doable given the Town's financial position.

For these reasons, the Town requests that the Special Magistrate recommend the Town's September 29, 2010 proposal (T.Ex. H, Tab 17) on this Article as to both of the bargaining units.

5. **ARTICLE 18 – WORKWEEK** – The fire-rescue bargaining unit employees work shifts of 24 hours on duty followed by 48 hours off duty. This averages out to 56 hours worked each week. Section 7(k) of the Fair Labor Standards Act (“FLSA”) allows employers to pay fire-rescue employees overtime after 53 hours of work in a 7-day period, instead of the usual 40 hours in a 7-day period. [T.Ex. B, Tab 19.] This Section also allows an employer to designate overtime work cycles of up to 28 days for fire-rescue employees. Under the current CBA, the parties have designated a 21-day overtime work cycle for the fire-rescue bargaining unit employees. [T.Ex. A, Tab 19.] Working their regular 24 hours on duty-48 hours off duty schedule, the bargaining unit employees would work 168 hours in their 21-day overtime work cycle. As the FLSA requires that an employer pay its fire-rescue employees overtime for all hours worked in excess of 159 hours in a 21-day overtime work cycle, the Town would have to pay the bargaining unit employees 9 hours of overtime each 21-day overtime work cycle. To mitigate this “built-in” overtime, the parties have agreed to Kelly Days, which are unpaid days off arranged in the overtime work cycle to reduce overtime costs and afford fire-rescue employees more time off.

Under the CBAs, the bargaining unit employees are scheduled one Kelly Day every 7th shift, which equates to one every 3 weeks, or roughly 17 per employee each year. [T.Ex. A, Tab 18.] This brings the number of hours worked in the 21-day overtime cycle down to 144 hours, well below the FLSA overtime threshold. While the Town saves overtime with this arrangement, there is a cost associated with it. In this regard, to meet minimum staffing each shift, the Town has to fill in the vacancies created by the bargaining unit employees who are off on their Kelly Days. For the 64 bargaining unit employees, this amounts to 1,088 shifts that the Town has to find coverage for due to the Kelly Days.

At one time, the Town had the staffing to cover these Kelly Days. However, as discussed above in the section of this Brief addressing pensions, the Town has been forced due to its financial condition to cut 3 certified fire-rescue positions from the budget. As such, it no longer has the staffing to cover all of the Kelly Days required under the existing CBAs. And, the Town is forced due to the Department's staffing limitations to pay employees overtime on many shifts to meet its minimum staffing. To remedy this, on March 1, 2010, the Town proposed to delete the Kelly Days in their entirety. [T.Ex. B, Tab 18.] Thereafter on December 1, 2010, in an effort to reach a compromise, the Town offered to reduce the Kelly Days to one every 6 weeks, thereby creating an average of 52 hours worked each 7 days. [T.Ex. C, Tab 18.] This would have kept the Town under the FLSA threshold, freed up more bodies to meet minimum staffing, and still preserved part of the Kelly Day benefit for the bargaining unit employees. Moreover, it would have reduced the Town's costs by a projected \$116,450 per year; a savings that was factored into the Town's budget calculations. [T.Ex. D, Tab 18.]

As pointed out by Local 2928 at hearing, the Town's attempt to compromise has failed. Upon further reflection, Local 2928 is correct in its assertion at hearing that the Kelly Days cannot be averaged over overtime pay cycles, and therefore, providing bargaining unit employees one Kelly Day every 6 weeks will not result in the bargaining unit employees working an average of 52 hours each work week. Thus, the Town has no choice but to withdraw from its December 1, 2010 proposal and revert back to its March 1, 2010 proposal to eliminate Kelly Days in their entirety.

The Town recognizes that the practical implication of the elimination of the Kelly Days is to require the bargaining unit employees to work more shifts each year for the same amount of pay. And, the Town does not disagree with Local 2928's assertion that the elimination of the Kelly Days will result in a reduction in the bargaining unit employees' hourly rates. However, it

will result in the bargaining unit employees receiving 3 hours of “built-in overtime” each week, which will help to some extent to offset their reduction in hourly rate. Unfortunately, there is nothing that the Town can do to avoid this. As is the case with a number of the lucrative benefits that the bargaining unit employees have been privileged to enjoy over the years, the Town can no longer afford this benefit.

For these reasons, the Town requests that the Special Magistrate recommend the Town’s March 1, 2010 proposal (T.Ex. B, Tab 18) on this Article as to both of the bargaining units.⁵

6. **ARTICLE 19 – OVERTIME** – As discussed above, the FLSA allows employers to pay fire-rescue employees overtime after 53 hours of work in a 7-day period, instead of the usual 40 hours in a 7-day period. [T.Ex. B, Tab 19.] This Section also allows an employer to designate overtime work cycles of up to 28 days for fire-rescue employees. Under the current CBA, the parties have designated a 21-day overtime work cycle for the fire-rescue bargaining unit employees. [T.Ex. A, Tab 19.] However, in departure from Section 7(k), the CBAs provide that the bargaining unit employees will receive overtime after 144 hours worked in their 21-day overtime cycle. Pursuant to Section 7(k), the overtime threshold in a 21-day overtime cycle is 159 hours. [T.Ex. B, Tab 19.]

The Town proposes to change the overtime threshold from bargaining unit employees to the maximum allowable under Section 7(k) – 212 hours in a 28-day cycle. [T.Ex. B, Tab 19.] Local 2928 proposes that the overtime cycle remain at 21 days, but that the overtime threshold be changed to 159 hours from 144 hours. [T.Ex. E, Tab 19.] While the Town appreciates this concession, it does not go far enough. The change proposed by the Town is absolutely necessary for the Town to reduce its budget expenses and fill the hole left by the \$5 million reduction in

⁵ The parties have agreed that the other articles of the CBA that are impacted by the resolution of this Article will be amended in accordance with however this Article is resolved.

property tax revenues. This is especially so as the Town is unable to realize the savings it had projected in modifying the Kelly Day benefit in Article 18. Simply stated, this is another one of the lucrative benefits in excess of those required by law that the bargaining unit employees have been fortunate to enjoy over the years. However, the Town can no longer afford it.

Local 2928 also seeks to count compensatory time as time worked for purposes of overtime. Under the FLSA, only actual time worked is required to count as time worked for purposes of overtime. The Town currently provides a more generous benefit than the law requires by counting annual leave and vacation as time worked. For some reason that has never been explained, Local 2928 wants to add to this generous benefit. Putting aside the fact that there is no justification for counting compensatory time as time worked for overtime, doing so would make no sense. Compensatory time is time awarded to employees in lieu of overtime pay. As such, it is awarded to the employees at the rate of time and one-half. To treat compensatory time as part of the overtime calculation would essentially result in the Town paying time and one-half on hours that have already been calculated at time and one-half. Moreover, treating compensatory time as time worked for purposes of overtime would increase the Town's overtime costs. Clearly, the Town is not in a position to take on any more expenses.

For these reasons, the Town requests that the Special Magistrate recommend the Town's March 1, 2010 proposal (T.Ex. C, Tab 19) on this Article as to both of the bargaining units.

7. **ARTICLE 38 – SICK LEAVE AND INJURY TIME** – Bargaining unit employees accrue 96 hours (4 shifts) of sick leave each year. Unfortunately, a number of the bargaining unit employees are using everything they accrue in sick leave each year. This is causing a spike in overtime costs as, in most cases, the Town has to pay someone overtime to cover the vacancies caused by the employees who call in sick. In this regard, the Fire-Rescue Department has to meet its minimum staffing requirements each shift. To do so, the Department

limits the number of employees who are scheduled off each shift on vacation and personal leave. If an employee who is scheduled to work on a shift calls in sick, the Department has to replace that employee with someone to meet the shift's minimum staffing.

The Town understands that at times circumstances beyond the employees' control may cause the employees to have to use sick leave. And, the Town does not have an issue with these legitimate uses of sick leave. However, disturbing trends have developed over the years which would lead any objective viewer to recognize that a number of bargaining unit employees are misusing and/or abusing sick leave as a means to get time off when they could not otherwise do so based on the Department's limitation on the number of employees who can be scheduled off on each shift.

As reflected in the Department's 2007-2010 Sick Leave Study, in FY 2007-2008, 23 out of 55 bargaining unit employees (42%) used as much or more than one year of sick leave accrual (96 hours). [T.Ex. C, pp. 2-3, Tab 38.] This is remarkable given that these numbers (as well as all of the numbers in the Study) exclude sick leave usage for workers compensation injury and FMLA. While these numbers lessened in FY 2008-2009 to 31%, they spiked back up to 40% in FY 2009-2010. [T.Ex. C, pp. 4-7, Tab 38.] This problem is further evidenced by the total number of hours of sick leave used by the bargaining unit employees as well as the total number of sick leave use occurrences (consecutive days of leave are considered one occurrence regardless of duration) during this time frame, which show similar spikes in the bargaining unit employees' sick leave usage. [T.Ex. C, pp. 9-10, Tab 38.] Most disturbingly, the Study shows that the highest incidents of sick leave usage over the last 3 fiscal years have been on Fridays and Saturdays, followed by Thursday. [T.Ex. C, p. 12, Tab 38.] It is beyond coincidence that the bargaining unit employees are using more sick leave on the days that will result in them having Thursday, Friday, and Saturday off.

Recognizing this sick leave usage problem, and that the issue is not adequately addressed in existing policies, both the Town and Local 2928 have proposed adding provisions into the CBAs to address the problem. The only dispute between the parties is how best to do so. The Town seeks to impose true penalties on employees who misuse/abuse sick leave. [U.Ex. F, Tab 38.] Local 2928 proposes lesser measures, including an award of additional leave for those who do not misuse/abuse sick leave. [U.Ex. F, Tab 38.]

The parties' dispute begins with the definition of an occurrence of sick leave. Under Local 2928's proposal, only sick leave used in excess of one-half of an employee's shift would count as an occurrence of sick leave. Local 2928's proposal would allow 24-hour shift employees to take 12 hours of sick leave off for as many shifts as they wanted throughout the year without facing any consequences. In other words, employees who abuse sick leave in full-day increments will be subject to corrective action, while partial-day sick leave abusers will face no consequences. This makes absolutely no sense. Clearly, whatever disincentives are ultimately put in place, they should apply to partial-day absences as well as full-day absences.

The parties also disagree over how many occurrences an employee can have in a year before facing corrective action – the Town proposes to begin corrective action on the 4th occurrence; Local 2928 proposes to begin on the 5th occurrence. The Town proposes the 4th occurrence as that would normally be the point where the employee has utilized one year of sick leave accrual. The Town's intent in proposing a disciplinary matrix is to cause employees not to use all of the sick leave they accrue in one year. Local 2928's proposal would not create a disincentive for employees to use all of the sick leave they accrued in the year as corrective action would not ensue until well after the employees have used all of their annual allotment of sick leave.

Further, the parties disagree as to the nature of the discipline contained in the disciplinary matrix. The Town proposes to begin actual discipline, in the form of an oral reprimand, on the 4th occurrence and progress to termination on the 8th occurrence. Under Local 2928's proposal, the first step of actual discipline would be on the 8th occurrence, and termination would not occur until the 10th occurrence. Local 2928's proposal has no teeth as it is unlikely that anyone would ever have 8 or more occurrences of sick leave in a year. In fact, over the last 3 fiscal years, no bargaining unit employees have had more than 7 occurrences of sick leave. [T.Ex. C, Tab 38.] Thus, what Local 2928 has proposed is illusory. Likewise, Local 2928's proposed disincentives for occurrences 5 through 7 do not solve the problem, but, in fact, create more of an issue for the Town. In this regard, Local 2928 proposes a "loss of step up" for each of these occurrences. What Local 2928 is referring to is the ability of an employee on shift to fill in for a temporary vacancy in a higher classification on that shift. This provides the employee with valuable experience, while allowing the Town to avoid having to bring in an off-duty employee in the higher classification and pay him/her overtime to cover the vacancy. Thus, Local 2928's proposed disincentive would harm the Town more than the impacted employees.

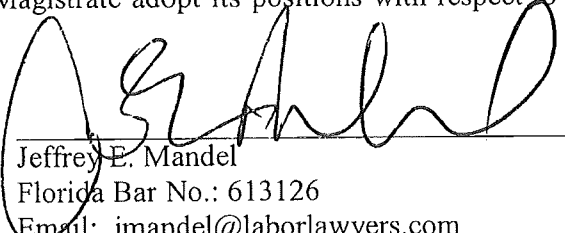
Local 2928 has also proposed, in addition to disincentives, rewarding employees who have one or less occurrences of sick leave in a year with an additional 24-hour personal day. The Town is philosophically opposed to this. It is offensive to have to bribe employees not to abuse the sick leave benefit that the Town provides them. Following the rules and not abusing Town benefits should be part of the baseline performance requirements of Town employment, not extraordinary performance to be rewarded. Applying Local 2928's logic with respect to this issue, one can only wonder how many shifts of additional personal leave the Town should give to employees who do not falsify records or do not engage in insubordination.

Lastly, the Town has proposed a new Section 38.4 that memorializes the Town's right to send bargaining unit employees for a fitness for duty examination if the Fire Chief or his designee has a reasonable belief that they are physically or mentally incapable of performing their assigned duties. It is unclear whether Local 2928 is opposed to this as Local 2928 did not present any testimony at hearing regarding it. Moreover, it is hard to imagine why Local 2928 would be opposed to this. Employees who are not fit for duty pose a risk to the public as well as their fellow employees. As such, both the Town and Local 2928 have an interest in making sure that employees are fit for duty. The Town's proposal balances the parties' mutual interests with those of the impacted employee by providing the Fire Chief with the authority to act only if there is a reasonable belief that the employee cannot perform his/her duties. Thus, the Fire Chief would not be able to act in an arbitrary or capricious manner. Moreover, the fitness for duty examination would be at the Town's expense, thereby having no monetary impact on the employee. There is simply no legitimate reason why this Section should not be adopted.

For these reasons, the Town requests that the Special Magistrate recommend the Town's May 25, 2010 proposal (T.Ex. D, Tab 38) on this Article as to both of the bargaining units.

CONCLUSION

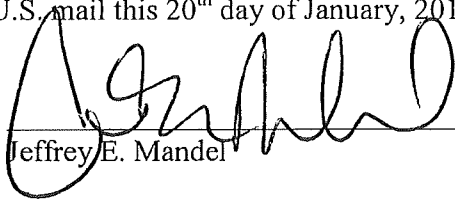
For the reasons proffered at the hearing, as well as the reasons set forth throughout this Brief, the Town requests that the Special Magistrate adopt its positions with respect to each of the Articles at impasse.



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document has been furnished to Counsel for Union, Mark W. Floyd, Esquire, Mierzwa & Associates, P.A., 3900 Woodlake Blvd., Ste. 212, Lake Worth, FL 33463, by U.S. mail this 20th day of January, 2011.



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Professional Firefighters/Paramedics of Palm Beach County, Local 2928, IAFF, Inc.

Exhibits for Public Hearing in the Town of Palm Beach

April 21, 2011

1. Cover Letter with Recommendations for Resolution
2. Proposed Language Resolving the Rank and File (Non-Supervisory) Agreement
3. Proposed Language Resolving the Supervisory Agreement
4. Best Practices for DOT Random Drug and Alcohol Testing (Relating to Article 14)
5. Article 16 - Promotions - Comparable Data on Rules of Selection
6. Article 17 - Wages - Comparable Data on Longevity/Bonus Payments
7. Article 18 - Workweek - Impact on Hours Worked and Wages Earned
8. Article 18 - Workweek & Article 19 - Overtime - Comparable Data on Work Schedules
9. Article 38 - Sick Leave and Injury Time - Comparable Disincentive Policies
10. Article 30 - Insurance and Miscellaneous Benefits - Actuarial Studies
11. Center on Budget and Policy Priorities (highlighting misconceptions re: pension costs)
12. NCPERS - The Top Ten Advantages of Maintaining Defined Benefit Pensions
13. IAFF - Contributing Factors to Firefighter Line-Of-Duty Injury
14. NFPA - Firefighter Fatalities

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April 21, 2011

Gail L. Coniglio, Mayor
David A. Rosow, President
Robert N. Wildrick, President Pro Tem
William J. Diamond, Council Member
Richard M. Kleid, Council Member
Michael J. Pucillo, Council Member

Re: Professional Firefighters/Paramedics of Palm
Beach County, Local 2928
Town of Palm Beach: Impasse Resolution
File No.: 121866.2100

Madame Mayor and Honorable Council Members:

This firm is proud to represent the Professional Firefighters/Paramedics of Palm Beach County, Local 2928, IAFF, Inc.

We are gathered so that you may resolve an impasse reached after months of negotiations between Local 2928 and the Town of Palm Beach. Pursuant to Section 447.403, Florida Statutes, the parties are to explain to you their position on each of the issues at impasse. Subsequently, you are charged with taking such action as you believe to be in the public interest, including the interest of the public employees involved (your firefighters), to resolve all disputed impasse issues.

After your resolution of all issues, the parties will reduce to writing an agreement which includes both your resolution of all disputed impasse issues and the items to which the parties have already agreed. That written agreement will be submitted for ratification by both the employees in the bargaining units represented by Local 2928 and the Town of Palm Beach. If the agreement is not ratified by all parties, the issues you resolve will be imposed on your firefighters as of the date of resolution, presumable April 21, 2011. Items which can have no effect without ratification, e.g., the duration clause of the agreement, cannot be imposed. In the event of imposition, those items to which the parties have already agreed, i.e., those items which were not resolved by you, shall have no effect.

Though the parties have been given one hour each to explain their positions to you, the issues to be resolved are numerous cannot be fully explained in one hour. The issues presented for resolution range in their impact on the workforce from minor to severe. With only one hour to present, the parties will have to allocate their time wisely. To assist, I have identified below each issue presented for resolution and provided you with a brief summary of Local 2928's recommended resolution for each issue.

ARTICLE 14 DRUG & ALCOHOL TESTING

The parties have agreed to allow the Town to implement random drug testing of all employees in the bargaining units represented by Local 2928. The only dispute relates to the timing of such tests. Here, Local 2928 has accepted the recommendation of the Special Magistrate and adopts his recommendation as its proposal.

Local 2928 proposes to, in accordance with the recommendation of the Special Magistrate, limit when an employee can be tested after being randomly selected for a drug test. Local 2928 proposes, and the Special Magistrate recommends, that the randomly selected employee be tested the same day that he or she is randomly selected for drug testing or, if the employee is not on duty that day, then on the employee's next duty day. If the employee is not tested on one of these days, the employee shall not be tested pursuant to that random selection. The basis of this proposal is found in the U.S. Department of Transportation's pamphlet entitled "Best Practices for DOT Random Drug and Alcohol Testing" which is included as an exhibit for your review. At page 4, in subsection C under section V. Testing, the DOT establishes that the best practice with regard to the timing of a drug test is as proposed Local 2928 and recommended by the Special Magistrate.

Local 2928 believes that restricting the implementation of a random drug selection to the first duty day of the employee randomly selected preserves the random and surprising nature of a random drug test. If an employee is selected for random drug testing but not actually tested for a lengthy period of time, there exists the potential that the random or surprising nature of the test can be compromised. Accordingly, in accordance with the recommendation of the Special Magistrate's recommendation, Local 2928 recommends that the Town Council adopt its proposed resolution of Article 14 - Drug & Alcohol Testing.

ARTICLE 16 - PROMOTIONS

The only disputed issue to be resolved here involves the method of selection of candidates for promotion to the rank of Driver-Engineer. As you may be aware, candidates for promotion complete a rigorous testing process which results in a ranking of the candidates for promotion. The candidates are ranked in order of the scores achieved in the testing process and the Town can select from among these candidates for promotion.

Presently, the Town must select the top ranked candidate for promotion to Driver-Engineer, this is commonly known as the "Rule of 1." The Town proposes to modify this selection process to the "Rule of 3" meaning that the Town could select from among the top three candidates on the ranked list for promotion. Local 2928 has proposed, and the Special Magistrate recommends, a compromise at the "Rule of 2" meaning that the Town could select from among the top two ranked candidates on the ranked list for promotion.

If the Town's promotional testing procedure is accurate, the top ranked candidate on the promotional roster should be the most qualified candidate for promotion. Allowing any discretion creates the possibility that an employee is skipped over for an illegitimate reason or a reason not related to the employee's ability to perform the job. Local 2928 recognizes these possibilities, but also recognizes that the Town desires some discretion in the selection of an employee for promotion. After surveying the promotional practices of other departments in the area (the results of that survey are provided as an exhibit hereto), Local 2928 decided to propose a compromise at the "Rule of 2" and the Special Magistrate agreed, this is a reasonable compromise.

ARTICLE 17 - WAGES

There are two disputed issues which must be resolved regarding the wages and benefits established in Article 17. The first involves whether employees should be granted a 2% step increase during the 2011-2012 fiscal year. The second involves the Town's longevity bonus payments.

First, with regard to the step increases, the parties have agreed to implement a new step plan which provides 1% increases between steps. The parties have further agreed that there shall be no advancement in that step plan during Fiscal Year 2010-2011. The issue to be resolved involves advancement in Fiscal Year 2011-2012. During that year, the Special Magistrate has recommended that employees scoring a 3.0 or higher on their performance evaluation advance two steps in the new 1% step pay plan. Even though this step advancement (2%) is half of what it was (4%), Local 2928 has accepted the recommendations of the Special Magistrate.

With regard to advancement in the step plan, Local 2928 urges the Town Council to recognize that step increases are not raises, but rather represent progression through the step plan to compensate employees for the value added by years of experience in the field. In fact, Special Magistrates have held that step plans are actually methods of saving an employer money by allowing an employer to pay a new employee less than the full market value for the service provided.

It should be understood that a pay progression plan or a step plan is a procedure created to save employers money. It allows employers to hire employees at rates of pay significantly lower than expected existing employees. In order to do this the employer commits to the newly hired employee that he/she will progress from step to step as designated in the plan if his/her performance is satisfactory. The City has previously committed to these employees that they will receive a step increase each year if they have received a "meets expectations" performance evaluation, and the City should live up to this obligation.

In the Matter of Impasse Between The City of Tallahassee, Florida and Big Bend Police Benevolent Association, Inc., PERC Case No. SM-97-002 (December 8, 1997).

As to the second issue, involving the Town's longevity bonus payments, Local 2928 proposes to maintain the Town's current longevity system while the Town proposes to implement a system whereby employees will compete with each other based on performance evaluations, a system which will result in the employee performing an evaluation competing with the employee being evaluated for the same performance bonus.

The concept of "longevity pay" or a "longevity allowance" has been documented by the United States Supreme Court.

The theory of longevity pay was well stated by Chief Justice Drake, speaking for the court of claims, in an opinion cited by both parties in this case, in which he said: 'There was, no doubt, an underlying principle and purpose in the introduction of longevity pay into the navy. We think it was intended-First, to induce men to enter the navy, and remain in it for life; second, to remove the depressing influence of long periods of service in one grade without an increase of pay; third, to compensate for increased professional knowledge and efficiency in officers by increasing their pay in advance of promotion. If these views are correct, the whole basis of longevity pay

is the officer's capacity for duty, and his performance of it; in other words, longevity pay is for longevity in actual service.'

U. S. v. Alger, 151 U.S. 362, 363-64 (1894), quoting Thornley v. U.S. 18 Ct.Cl. 111 (1883).

In evaluating the longevity plans, Local 2928 studied similar plans offered by departments in the surrounding area. The results of that survey are included as an exhibit. After evaluating the results of this survey, and considering the potential conflict of having supervisory employees competing for the same performance bonus dollars as their subordinates they evaluate, the Special Magistrate determined that the Town should maintain its current longevity bonus program. Local 2928 agrees.

ARTICLE 18 - WORKWEEK and ARTICLE 19 - OVERTIME

The disputed issues presented by these articles are similar in nature and were combined for the purposes of the Special Magistrate hearing. Local 2928 will again combine the issues here. The issues involve the hours to be worked by your firefighters and the threshold at which your firefighters will receive overtime pay.

Your firefighters presently work 24 hours on duty followed by 48 hours off duty with an unpaid, scheduled day off every seventh shift known as a Kelly Day. The purpose of the Kelly Day is to reduce the number of hours during a 21 day work cycle. In that work cycle, the Fair Labor Standards Act permits a firefighter to work up to 159 hours without receiving overtime pay. Without the Kelly Day, firefighters would work 168 hours (resulting in 9 hours of overtime pay at time and one-half their regular rate of pay). With the Kelly Day, firefighters work 144 hours and incur no overtime when working their regularly scheduled work hours.

The Town has proposed to eliminate the Kelly Day and extend the work cycle to 28 days. Extending the work cycle to 28 days will allow a firefighter to work up to 212 hours in a 28 day period without receiving pay at an overtime rate. However, during that 28 day cycle, two-thirds of the employee will work nine 24 hours shifts and one-third of the employees will work ten 24 hour shifts. This results in two-third of the employees working 216 hours in the 28 day cycle and one-third of the employees working 240 hours in the 28 day cycle. That means two-thirds of the employees must be paid 4 hours of pay at an overtime rate, and one-third of the employees must be paid 28 hours of pay at an overtime rate, every 28 days. That is a total of 756 hours of pay at an overtime rate for the entire department every 28 days.

Because the Town is proposing to keep the base annual salary the same while also eliminating the Kelly Day, your firefighters will work 416 additional hours per year with no additional pay. The impacts of this are reflected in an exhibit attached hereto entitled "Article 18 - Workweek - Impact on Hours Worked and Wages Earned." As you will see, forcing a firefighter to work 416 additional hours per year is the equivalent of forcing a 40 hour employee working a traditional 8 hour workday to work an additional 52 days, or more than 10 weeks, with no additional pay. If your firefighters worked this traditional work schedule, such a proposal would be preposterous. In fact, the Town has not proposed to alter in any way at all the work schedule for its 40 hour employees in the Fire-Rescue Department.

Further criticism of the Town's proposal can be found by surveying the work schedules of firefighters in the local operating area. As you will see in the attached exhibit, every department but one in the local operating area utilizes the same work schedule, including the Kelly Day, presently

utilized by the Town. The only exception can be found in the City of Boca Raton where firefighters work 24 hours on duty followed by 72 hours off duty and have no need for a Kelly Day due to the number of hours between shifts.

Local 2928 recognizes the Town's need to save money and reduce overtime costs. To that end, Local 2928 has proposed to maintain the current work schedule, along with the Kelly Day, but to increase the threshold at which firefighters earn overtime pay from 144 hours to 159 hours. This will result in an employee being able to work an additional 15 hours every 21 days at a straight time rate. Currently, any work above the 144 hour threshold is compensated at an overtime rate. The 159 hour threshold is the maximum allowed by law in a 21 day work cycle.

Because elimination of the Kelly Day will result in built in overtime of approximately 756 hours per work cycle and will result in employees working an additional 416 hours per year with no additional pay, Local 2928 and the Special Magistrate recommend against adoption of the Town's proposal. Rather, Local 2928 joins the Special Magistrate in recommending that the Town maintain the current work schedule but increase the threshold for overtime pay to 159 hours in a 21 day work cycle.

ARTICLE 30 - INSURANCE AND MISCELLANEOUS BENEFITS

The issues to be resolved here involve the pension benefits earned by your firefighters. No proposal advanced by the Town has engendered more concern, or resentment, than the proposed changes to the pension plan.

Local 2928 recognizes that the Town desires to reduce its pension costs. To that end, Local 2928 has proposed to reduce the benefit multiplier to 3.0%, eliminate the survivor benefit as the normal form of benefit, and to implement what is commonly known as a "stop/start" to allow the use of all monies received pursuant to Chapter 175, Florida Statutes, to offset the costs of the defined benefit plan. The actuary has determined, as can be seen in the attached letter from Gabriel Roeder Smith & Company dated August 17, 2010, that the reduction of the multiplier will save the Town 5.01% of payroll and that the elimination of the survivor benefit will save the Town 4.06% of payroll. It is further anticipated that the stop/start would save the Town approximately \$216,000. The combined savings of approximately 9% of payroll plus \$216,000, is approximately \$800,000.

These savings, however, have been deemed insufficient by the Town. Instead, the Town proposes to terminate its Chapter 175 plan, forfeit all future monies to be received pursuant to Chapter 175, Florida Statutes, and implement a hybrid plan consisting of a meager defined benefit which will be nearly impossible to earn and a defined contribution account.

The most onerous of the Town's proposals involve the pitiful multiplier for the defined benefit portion of the hybrid plan (1.25% per year of service), the requirements to achieve a normal retirement (age 65 regardless of years of service), and the termination of the Chapter 175 plan. Implementing the 1.25% multiplier will result in a firefighter earning a defined benefit pension of just 37.5% after 30 years of service to the Town. Implementing a requirement for normal retirement of age 65 regardless of years of service is inappropriate in a public safety setting and will result in increased injuries and deaths while working. Imagine a 64 year old firefighter running into a burning building, carrying a stretcher down stairs, or wearing a Haz-Mat suit while dealing with a chemical spill. Finally, implementing a defined contribution account in place of the current defined benefit will create the risk that a retired firefighter, after working until age 65, outlives his or her benefit or has his or her retirement depleted in a stock market crash like that of 2008-2009.

I have provided you with several materials relating to the proposed pension cuts. These materials include a publication by the Center on Budget and Policy Priorities highlighting common misconceptions about debt, pensions, and retiree health costs; a publication by the National Conference on Public Employee Retirement Systems found on the Town's website highlighting the top ten advantages of a defined benefit pension system; a publication by the International Association of Firefighters regarding contributing factors to in the line of duty injuries suffered by firefighters (noting the role age plays in the rate of injury); and a report by the National Fire Protection Association highlighting the role age plays in firefighter deaths.

Local 2928 is hopeful that the Town will not implement its draconian pension proposals which are so far below the norm that they fall below even the pension benefits received by general employees in the surrounding area. Local 2928 is also hopeful that the Town will realize that implementation of its pension proposal will result in high turnover rates among employees who will no longer have any incentive to complete a career with the Town, turning the Town's Fire-Rescue Department into a training ground for other department in the area. Finally, Local 2928 is hopeful that the Town will recognize that there are other changes which can be made, such as those proposed by Local 2928, which may not save as much money, but also do not have the deleterious impact of the Town's proposed changes.

ARTICLE 38 - SICK LEAVE AND INJURY

Local 2928 has adopted the recommendations of the Special Magistrate and proposes to implement a system of disincentives which establish a schedule whereby discipline for use of sick leave is established by the collective bargaining agreement. The system of disincentives starts at an employee fourth occurrence of sick leave use (resulting in a oral reprimand) and continues progressively to termination of employment after the eighth occurrence in any one 12 month evaluation period. This system defines an occurrence of sick leave use as either the use of one 24 hour shift of sick leave or two 12 hour blocks, allowing for sick leave in 12 or 24 hour increments.

The Town's proposed system of disincentives takes not just disciplinary action against an employee but also strips an employee of his or her ability to work overtime, receive wage increases, receive promotions, and receive bonus payments among other disincentives. The Special Magistrate recommended against these other actions because they are not disciplinary in their nature. In other words, they are punitive rather than rehabilitative.

As an aid in the evaluation of the proposed system of disincentives, I have included as an exhibit hereto two selections from the collective bargaining agreements in the City of Palm Beach Gardens and Palm Beach County which contain similar disincentive policies.

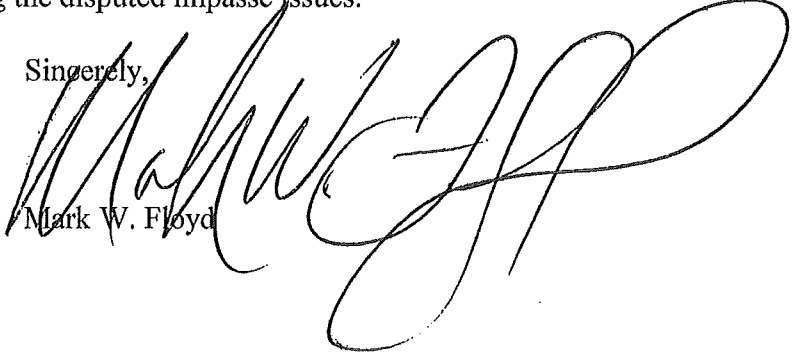
As to whether sick leave should be allowed to be utilized in either 12 or 24 hour increments or solely in 24 hour increments, Local 2928, as mentioned above and as recommended by the Special Magistrate, proposes that firefighters be allowed to utilize sick leave in either 12 or 24 hour increments rather than the Town's proposed 24 hour increments. The reason for the flexibility of the 12 hour increment is simple. If a firefighter's child is sick and needs care during the day, and if the firefighter's spouse works only during the day, the firefighter can take 12 hours of sick leave to care for the child while the spouse works and then return to duty for the last 12 hours of the shift after the spouse returns home from work. To the extent that the Town must cover the absence of the firefighter by hiring another to work overtime, under Local 2928's proposal the Town would only need to hire the other firefighter for 12 hours of overtime rather than the 24 hours that would be required under the Town's proposal.

Because the Town's proposed system of disincentives is punitive in nature, and because allowing the use of sick leave in 12 hour increments serves to save the Town money while also benefitting the firefighter, Local 2928 joins the Special Magistrate in recommended that the Town adopt Local 2928's proposed resolution of this article.

That completes the identification of the issues and Local 2928's recommendations for resolving the same. Local 2928 trusts that the Town Council will act in th interest of the public and in the interest of its firefighters in resolving the disputed impasse issues.

Sincerely,

Mark W. Floyd

A large, stylized handwritten signature in black ink, likely belonging to Mark W. Floyd, is written over the printed name.

COLLECTIVE BARGAINING AGREEMENT
RANK AND FILE (NON-SUPERVISORY) UNIT

TOWN OF PALM BEACH

&

PROFESSIONAL FIREFIGHTERS/PARAMEDICS OF
PALM BEACH COUNTY, LOCAL 2928, IAFF, INC.

ARTICLE 14

DRUG AND ALCOHOL TESTING

14.1 The Town, the Union, and the employees covered hereunder mutually agree that employee substance and alcohol abuse may constitute a danger to the employee, fellow employees, and the general public. It is further agreed that the safety of public property and equipment and the image of the Town and its employees are placed in jeopardy if an employee is involved in substance or alcohol abuse. Accordingly, the Union and the employees covered hereunder agree that the Town shall have the right and authority to require employees to submit to appropriate drug and alcohol testing to detect the presence of any controlled substance, narcotic, drug, or alcohol in accordance with the provisions of the Town's Personnel Manual, and the Department's Rules and Regulations, and Departmental Procedure #231, governing substance abuse, including drug and alcohol use.

14.2 Notwithstanding any other provision of this Article, the Town's Personnel Manual Regulations, and the Department's Rules and Regulations, and Departmental Procedure #231, a positive result on any drug or alcohol test may result in appropriate disciplinary action up to and including termination. An employee's refusal to submit to drug or alcohol testing in accordance with the provisions of this Article may result in disciplinary action up to and including termination. Should the Town deem appropriate, it may order an employee, who has tested positive, to undergo rehabilitation in lieu of, or in combination with, disciplinary action. The terms and conditions of such rehabilitation and any follow-up testing shall be prescribed by the Town in consultation with a physician, psychologist, or other substance abuse treatment professional.

14.3 Any testing administered under this Article shall be administered by an appropriate laboratory or testing facility in accordance with the testing procedures set forth in Departmental Procedure #231.

14.4 The Town may implement a random drug testing program to test for alcohol and/or controlled/illicit drugs. Random selection of an employee shall be made by valid method, such as a random number table (a computer based random number generator matched with an employee's payroll identification number or other comparable identification number) or other method required and administered by established testing entities. An employee selected for random testing shall be tested on the day his/her name is selected if on duty. If off-duty, the employee shall be tested on his/her next day of work. If the employee is not tested on the applicable work day, the employee shall not be tested as a result of that random selection.

ARTICLE 16
PROMOTIONS

16.1 Vacancies in the Driver-Operator classification shall be filled in accordance with the applicable selection processes set forth in Article II, Sections ~~2-3.2~~ 2-2.2 of the Department's Rules and Regulations. Such vacancies will, insofar as possible, be filled within thirty (30) calendar days after the vacancy occurs.

16.2 Notices of promotional examinations shall be posted on the Department bulletin board at each work location at least ninety (90) days in advance of a target promotional examination date. The written examination will be held no sooner than ninety (90) days after the notice, nor later than one hundred twenty (120) days after the notice. Source materials from which the examination is drawn will be identified in the examination announcement or concurrent with the issuance of such announcement. Such source materials shall be in print or otherwise obtainable.

16.3 No employee shall be permitted to apply for a promotional examination after the closing date set forth in the examination announcement. Such closing date will be between thirty (30) and thirty-five (35) days prior to the date of the examination.

16.4 In order to be eligible to take a promotional examination, an employee must meet the applicable minimum employment standards set forth in Article II, Sections ~~2-3.1~~ 2-2.1 of the Department's Rules and Regulations and the applicable educational requirements set forth in Department Procedure #228 as of the closing date for the written examination.

16.5 No employee shall be eligible to take a promotional examination if he/she has received a suspension or higher-level disciplinary action during the twelve (12) months

preceding the closing date for the written examination or at any time until the date the examination process is completed.

16.6 A promotional eligibility list shall remain in effect for two (2) years from the date the eligibility list is established or until there are no names remaining on the eligibility list, whichever occurs first. In an effort to maintain a continuous eligibility list, the Town shall make a reasonable effort to produce a new eligibility list in advance of the two (2)-year expiration date of the current eligibility list.

16.7 Upon his/her written request, any applicant on a promotional eligibility list shall be permanently removed from such promotional eligibility list. Any applicant on a promotional eligibility list shall automatically be permanently removed from such list if he/she receives a suspension or higher-level disciplinary action. In the Fire Chief's discretion, an applicant on a promotional eligibility list may be temporarily removed from such promotional eligibility list if the applicant is on light duty, on disability leave or any other leave of absence, or if the applicant otherwise is not working or is unavailable for work, at any time after the promotional eligibility list is established. Prior to temporarily removing an applicant from a promotional list, the Fire Chief shall advise in writing the applicant of his intention and shall provide him/her with an opportunity to respond thereto.

16.8 Selections for promotions from the promotional eligibility list for Driver-Operator shall be made by the Fire Chief selecting from the two highest ranking candidates (i.e., the Rule of One Two) until the list is exhausted or expires. Pursuant to the Rule of Two, the top two (2) candidates on the promotional eligibility list shall be considered for a promotion. The Fire Chief may choose either of the top two (2) candidates on the promotional eligibility list for promotion. If there is a second promotion after the first selection is made, the Fire Chief may select from the

two (2) highest ranking candidates remaining on the list. This method will continue until the list is exhausted or expires. Should the Fire Chief pass over a higher ranked candidate in applying the Rule of Two, the Fire Chief shall informally counsel the passed over candidate prior to announcing his selection of the number two (2) candidate. Any employee who is selected for but refuses a promotion shall automatically be removed from the promotional eligibility list. The Fire Chief, in his sole and exclusive discretion, may reinstate such employee to the promotional eligibility list if he/she determines that the employee had good and sufficient reason for refusing the promotion and the employee's reinstatement to the promotional eligibility list would be in the best interest of the Department.

16.9 The promotional process set forth in paragraph 16.1 above and as specified in Departmental Rules and Regulations, Article II, Sections ~~2-3.2~~ 2-2.2 shall be conducted by an agency or organization specializing in and with experience conducting Fire-Rescue promotional assessments separate from the Town of Palm Beach, the Fire-Rescue Department or any other department or agency within the Town.

ARTICLE 17

WAGES

~~17.1 — For Fiscal Year 2004-2005, bargaining unit employees have received the annual competitive pay increase established by the Town Council for all Town employees.~~

~~17.2 — For Fiscal Year 2004-2005, bargaining unit employees have received annual longevity bonuses in the same manner and to the same extent as applicable to other Town employees.~~

~~17.3 — For Fiscal Year 2004-2005, bargaining unit employees shall be provided salary adjustments in accordance with the Town's existing pay-for-performance program.~~

~~17.4 — Effective October 1, 2005, bargaining unit employees, based on years of service, shall be placed in the appropriate step of the Salary Step Plan attached hereto and incorporated by reference herein as Exhibit A. (The Salary Step Plan consists of ten steps, each step 4% greater than the preceding step.)~~

~~17.5 — Effective October 1, 2005, after being placed in the appropriate step of the Salary Step Plan (Exhibit A), each bargaining unit employee shall be provided the annual competitive pay increase established by the Town Council for all Town employees. Each step of the Salary Step Plan shall be increased by the percentage of such annual competitive pay increase, and Exhibit A shall be amended accordingly (Exhibit A-1).~~

~~17.6 — For Fiscal Year 2005-2006, each bargaining unit employee who has received an overall rating of 3.0 or higher on his/her performance evaluation shall be moved to the next step of the Salary Step Plan on his/her anniversary date.~~

~~17.7 — Effective October 1, 2006, each bargaining unit employee shall be provided the annual competitive pay increase established by the Town Council for all Town employees. Each~~

~~step of the Salary Step Plan shall be increased by the percentage of such annual competitive pay increase, and Exhibit A-1 shall be amended accordingly (Exhibit A-2).~~

~~17.8 For Fiscal Year 2006-2007, each bargaining unit employee who has received an overall rating of 3.0 or higher on his/her performance evaluation shall be moved to the next step of the Salary Step Plan on his/her anniversary date.~~

~~17.9~~ 17.1 ~~Effective October 1, 2007, e~~ Each bargaining unit employee shall be provided the annual competitive pay increase, if any, established by the Town Council for all Town employees. Each step of the Salary Step Plan (Exhibit A) shall be increased by the percentage of such annual competitive pay increase, and Exhibit ~~A-2~~ A shall be amended accordingly (~~Exhibit A-3~~ A-1).

~~17.10~~ 17.2 ~~For Fiscal Year 2007-2008, Effective October 1, 2010, each step in the Salary Step Plan (Exhibit A) will be set at one (1%) percent increments. No step or other wage increase will be provided to bargaining unit employees for Fiscal Year 2010-2011. For Fiscal Year 2011-2012, on his/her anniversary date, each bargaining unit employee who has received an overall rating of 3.0 or higher on his/her performance evaluation shall be moved to the next~~ advance two steps in ~~of the Salary Step Plan (Exhibit A) on his/her anniversary date. Advancement in the step plan after Fiscal Year 2011-2012 shall be established through the collective bargaining process and shall not occur as part of the status quo.~~

~~17.11~~ 17.3 Bargaining unit employees who are in the top step of the Salary Step Plan shall not be eligible for a step increase.

~~17.12~~ 17.4 ~~For Fiscal Years 2005-2006, 2006-2007, and 2007-2008 b~~ Bargaining unit employees shall receive annual longevity/bonus payments in the same manner and to the same extent as ~~applicable to all other Town employees paid in Fiscal Year 2009-2010.~~

~~17.13~~ 17.5 The Town, in conjunction with the Union, will annually review the competitiveness of the pay ranges within the Fire-Rescue Department compared with the other fire-rescue departments in Palm Beach County and make whatever adjustments the Town, in its sole discretion, may deem necessary to maintain a strong competitive position in this market.

~~17.14~~ 17.6 At the commencement of Fiscal Years ~~2005-2006, 2006-2007, and 2007-2008~~ 2009-2010~~2010-2011~~, the Town will provide the Union with the amended Exhibit A (i.e., A-1, A-2, and A-3) reflecting the increases to the steps of the Salary Step Plan resulting from the annual competitive pay increase, if any, established by the Town Council for all Town employees and any adjustment the Town may make pursuant to paragraph ~~17.13~~ 17.5 above. Until such time as an annual competitive pay increase, if any, is established by the Town Council for all Town employees, the Salary Step Plan established in Section 17.2 above shall remain in effect.

ARTICLE 18

WORKWEEK

18.1 The average workweek for twenty-four (24)-hour shift employees shall be forty-eight (48) hours, with twenty-four (24) hours on duty and forty-eight (48) off duty, with an additional shift off (Kelly Day) every seventh shift.

18.2 The starting time for twenty-four (24)-hour shift employees is 0800.

18.3 Kelly Days will be selected and assigned according to Article IX, Section 9-4 of the Department's Rules and Regulations. Applying the guidelines for the selection and assignment of Kelly Days in Section 9-4, the Assistant Chief of Operations or designee shall have the final authority to determine all Kelly Day assignments for the purpose of ensuring proper distribution of paramedic, Officer, Acting Officer, Driver-Operator and other specialized personnel throughout the shifts and the organization. The Assistant Chief of Operations or designee shall not change Kelly Day assignments for arbitrary and capricious reasons.

18.4 The Assistant Chief of Operations shall approve the exchange of Kelly Days on a permanent basis by two mutually agreeable and comparably qualified employees if the exchange does not create overtime compensation.

18.5 The Battalion Chief shall approve the exchange of Kelly Days on a temporary basis by two mutually agreeable and comparably qualified employees in accordance with Article 20 (Shift Exchange) if the exchange does not create overtime compensation. Written requests for Kelly Day shift exchange shall be made at least twelve (12) hours prior to the shift involved in the request. The Battalion Chief may, in his discretion, permit less advanced notice if he determines that there are extenuating circumstances.

18.6 If, for any reason, an employee is transferred to another shift, the employee shall assume the open Kelly Day position on the new shift if the requirement of proper distribution of paramedics, Officers, Acting Officers, and Driver-Operators is met. If such requirement is not met, the employee's Kelly Day assignment shall be made by the Assistant Chief of Operations.

ARTICLE 19

OVERTIME

19.1 All work performed by twenty-four (24)-hour shift bargaining unit employees, up to and including one hundred ~~forty-four~~ fifty nine (144 159) hours in a twenty-one (21)-day work cycle, shall be paid at the employee's straight time rate of pay. (All work performed by the Administrative Lieutenant up to and including forty (40) hours in a seven (7) day work period shall be paid at the employee's straight time rate.) Work performed in excess of one hundred ~~forty-four~~ fifty nine (144 159) hours in the twenty-one (21)-day work cycle shall be paid at time and one-half (1.5) the employee's straight time rate of pay. (Work performed by the Administrative Lieutenant in excess of forty (40) hours in a seven (7) day work period shall be paid at time and one-half (1.5) the employee's straight time rate of pay.) Only time actually worked, annual (vacation), and personal days shall be counted for the purpose of calculating overtime. When an employee utilizes sick, injury, compensatory, worker's compensation, LTD, bereavement, military, jury duty, or any other paid or unpaid leave during the twenty-one (21)-day work cycle (or the seven (7) day work period in the case of the Administrative Lieutenant), such leave time shall not be considered time worked and shall be excluded from the calculation of overtime.

19.2 Overtime shall be calculated and paid in one-half (1/2)-hour increments.

19.3 An overtime eligibility list shall be maintained by the Assistant Chief of Operations to ensure that overtime is offered in a manner that is most efficient to the Department and equitable to the employees. The overtime eligibility list is accessible from AS400 Staff Scheduling File Maintenance (F15 key) or, upon implementation, the Telestaff program. On-duty officers shall use this list in the event that an employee must be called for overtime.

Minimum staffing on shift must be maintained. Vacant positions should be filled with the most qualified person for the position available, whether it be the overtime person or a more qualified person on duty. When overtime is used to fill a vacant officer's position, officers and acting officers shall be given primary consideration.

The following guidelines shall be used when overtime is needed to meet minimum staffing requirements:

- A. Personnel on Kelly Day off shall be contacted first. When Kelly Day employees are available, the employee with the lowest amount of overtime hours shall be contacted first.
- B. Personnel from the off-going shift shall be contacted second. The employee with the lowest amount of overtime hours shall be contacted first.
- C. Personnel from the off-duty shift shall be contacted third. The employee with the lowest amount of overtime hours shall be contacted first.
- D. When two or more employees in categories A, B, or C have the lowest amount of overtime hours, the employee with the highest seniority shall be called first.
- E. If staffing requirements are not met with volunteers pursuant to A through D above, the same process using B and C above shall be followed to mandate overtime assignment(s), provided that the employee with the lowest seniority will be called (mandated) first.

19.4 In order to provide all employees with equal access to available overtime work, no employee shall be assigned overtime in excess of 144 hours in a year. To avoid invoking

mandatory overtime assignment, an employee who has exceeded the aforesaid 144 hours shall be permitted to volunteer for overtime; provided, however, that no such employee shall work more than 24 hours of overtime over the 144-hour limit. Time accrued due to special details (PIP, CPR classes, physicals, etc.), Public Assembly Inspections and Special Assignment Overtime will not be included for the purpose of this overtime limit. Absent unusual circumstances (e.g., natural disaster, major fire, etc.), employees shall not be permitted to work in excess of two (2) consecutive shifts.

19.5 Nothing in this Article shall be construed to require the payment of straight time or overtime for attendance at training seminars or classes unless such seminars or classes were specifically authorized by the Fire Chief prior to the attendance.

ARTICLE 30

INSURANCE AND MISCELLANEOUS BENEFITS

30.1 The employees covered hereunder shall be provided health, dental, flex plan, long-term disability (LTD), Life Insurance, EAP, ICMA-RC, and workers' compensation benefits and programs under the same terms and conditions as are applicable to the other Town employees. The employees covered hereunder shall be eligible for the Town's Health Savings Account Program and the Town's Retirement Health Savings Plan under the same terms and conditions as are applicable to the other Town employees. Should the Town change the terms and conditions of the aforesaid benefit programs, including, but not limited to, employee premiums and benefits, the employees covered hereunder shall be subject to such changes on the same basis as the other Town employees.

30.2 Retirement Benefits

Effective October 1, 2010, the plan of pension/retirement benefits provided within the Town of Palm Beach Code of Ordinances and applicable to those bargaining unit employees covered by this Collective Bargaining Agreement shall be modified as follows:

1. The Town of Palm Beach Code of Ordinances shall be amended so that the pension/retirement benefits earned or accrued by employees on or after the date of adoption of the amendment to the Code of Ordinances are consistent with the following:

a. The benefit multiplier shall be three (3.0%) percent per year of credited service.

b. The period of time in which an employee may participate in the Deferred Retirement Option Program shall be extended to eight (8) years.

c. The automatic death after retirement benefit shall be eliminated so that the normal form of benefit is a life with ten year certain benefit payment.

d. Except as provided herein, pension/retirement benefits earned by employees after adoption of the ordinance amending the Firefighters' Pension Trust Fund shall be the same as and equal to those benefits earned or accrued prior to adoption of the same.

2. The amendments to the Town of Palm Code of Ordinances provided above shall be implemented through adoption of a series of two consecutive ordinance amendments in order to allow for a "stop/start" of the Firefighters' Pension Trust Fund. The first amendment shall reduce the benefits earned or accrued by participants in the Firefighters' Pension Trust Fund to a level such that upon adoption of a second ordinance amendment implementing the amendments provided above, which shall take place immediately after adoption of the first amendment reducing benefits, the cost of implementing the second ordinance will equal or exceed the value of any proceeds received pursuant to Chapter 175, Florida Statutes, and allow the use of such proceeds to fund the defined benefits provided by the Firefighters' Pension Trust Fund.

3. The Firefighters' Pension Trust Fund shall continue to participate in and be operated as a plan established under Chapter 175, Florida Statutes.

ARTICLE 38

SICK LEAVE AND INJURY TIME

38.1 In accordance with the Town of Palm Beach Personnel Manual, bargaining unit employees on duty an average of forty-eight (48) hours per week shall accumulate sick leave at the rate of four (4) shift days per year. Department employees shall have their accumulated sick leave reduced by one (1) shift day for each duty day of approved absence due to illness. Sick leave shall begin to accrue as of the date an employee enters the service of the Town but may not be taken until he/she has been in the service of the Town for at least six (6) months. Should an employee be absent because of illness during his/her first six (6) months of service, he/she must be placed on leave of absence without pay.

38.2 The applicable policies for accruing and utilizing sick leave and those pertaining to injury time are set forth in Article ~~XIX~~, Sections ~~10-2, 10-2.1, 10-2.2, 10-2.3, 10-2.3.1, 10-2.4, 10-2.5, 10-2.6, 10-2.7, 10-2.8, and 10-3~~ 9-2, 9-2.1, 9-2.2, 9-2.2.1, 9-2.3, 9-2.4, 9-2.5, 9-2.6, 9-2.7, and 9-3 of the Department's Rules and Regulations and the provisions of the Town Personnel Manual.

38.3 Notwithstanding any provision of the aforementioned Departmental Rules and Regulations or the Town's Personnel Manual, the following shall apply to all employees except those on Workers' Compensation leave or utilizing leave pursuant to the Family Medical Leave Act (FMLA):

a. Effective October 1, 2010, there shall be implemented a schedule of disincentives to be utilized in connection with the use of sick leave.

b. Effective October 1, 2010, sick leave may only be used in blocks of twelve (12) or twenty four hour (24) increments. Sick leave for forty (40) hour employees shall be used in eight (8) or ten (10) hour increments as applicable.

c. If an employee wishes to utilize sick leave while also on vacation leave, vacation leave may not be converted to sick leave without a physician certification as to the nature and time of the illness which establishes the basis of the request to convert vacation leave to sick leave.

d. An occurrence shall be defined as the use of 24 hours of sick leave (either one 24 hour shift or two 12 hour blocks). Consecutive shifts or days off on sick leave shall be considered only one occurrence.

Employees who have four (4) or more sick leave occurrences in any twelve (12) month performance evaluation period shall be subject to disincentives as follows:

SHIFT EMPLOYEES

NUMBER OF OCCURRENCES

DISINCENTIVES

Fourth occurrence

Oral Reprimand

Fifth occurrence

Written Reprimand

Sixth occurrence

Suspension: 12 Hours

Seventh occurrence

Permanent Demotion/Loss of Assignment
or, if not applicable, Suspension of 24 hours

Eighth occurrence

Termination

NON-SHIFT EMPLOYEES

NUMBER OF OCCURRENCES

DISINCENTIVES

Fifth occurrence

Oral Reprimand

Sixth occurrence

Written Reprimand

Seventh occurrence

Suspension: 12 Hours

Eighth occurrence

Permanent Demotion/Loss of Assignment
or, if not applicable, Suspension of 24 hours

Ninth occurrence

Termination

COLLECTIVE BARGAINING AGREEMENT

SUPERVISORY UNIT

TOWN OF PALM BEACH

&

PROFESSIONAL FIREFIGHTERS/PARAMEDICS OF
PALM BEACH COUNTY, LOCAL 2928, IAFF, INC.

ARTICLE 15
DRUG AND ALCOHOL TESTING

15.1 The Town, the Union, and the employees covered hereunder mutually agree that employee substance and alcohol abuse may constitute a danger to the employee, fellow employees, and the general public. It is further agreed that the safety of public property and equipment and the image of the Town and its employees are placed in jeopardy if an employee is involved in substance or alcohol abuse. Accordingly, the Union and the employees covered hereunder agree that the Town shall have the right and authority to require employees to submit to appropriate drug and alcohol testing to detect the presence of any controlled substance, narcotic, drug, or alcohol in accordance with the provisions of the Town's Personnel Manual, and the Department's Rules and Regulations, and Departmental Procedure #231, governing substance abuse, including drug and alcohol use.

15.2 Notwithstanding any other provision of this Article, the Town's Personnel Manual Regulations, and the Department's Rules and Regulations, and Departmental Procedure #231, a positive result on any drug or alcohol test may result in appropriate disciplinary action up to and including termination. An employee's refusal to submit to drug or alcohol testing in accordance with the provisions of this Article may result in disciplinary action up to and including termination. Should the Town deem appropriate, it may order an employee, who has tested positive, to undergo rehabilitation in lieu of, or in combination with, disciplinary action. The terms and conditions of such rehabilitation and any follow-up testing shall be prescribed by the Town in consultation with a physician, psychologist, or other substance abuse treatment professional.

15.3 Any testing administered under this Article shall be administered by an appropriate laboratory or testing facility in accordance with the testing procedures set forth in Departmental Procedure #231.

15.4 The Town may implement a random drug testing program to test for alcohol and/or controlled/illicit drugs. Random selection of an employee shall be made by valid method, such as a random number table (a computer based random number generator matched with an employee's payroll identification number or other comparable identification number) or other method required and administered by established testing entities. An employee selected for random testing shall be tested on the day his/her name is selected if on duty. If off-duty, the employee shall be tested on his/her next day of work. If the employee is not tested on the applicable work day, the employee shall not be tested as a result of that random selection.

ARTICLE 18

WAGES

18.1 Each bargaining unit employee shall be provided the annual competitive pay increase, if any, established by the Town Council for all Town employees. Each step of the Salary Step Plan (Exhibit A) shall be increased by the percentage of such annual competitive pay increase, and Exhibit A shall be amended accordingly (Exhibit A-1).

18.2 Effective October 1, 2010, each step in the Salary Step Plan (Exhibit A) will be set at one (1%) percent increments. No step or other wage increase will be provided to bargaining unit employees for Fiscal Year 2010-2011. For Fiscal Year 2011-2012, on his/her anniversary date, each bargaining unit employee who has received an overall rating of 3.0 or higher on his/her performance evaluation shall advance two steps in of the Salary Step Plan (Exhibit A). Advancement in the step plan after Fiscal Year 2011-2012 shall be established through the collective bargaining process and shall not occur as part of the status quo.

18.3 Bargaining unit employees who are in the top step of the Salary Step Plan shall not be eligible for a step increase.

18.4 Bargaining unit employees shall receive annual longevity/bonus payments in the same manner and to the same extent as paid in Fiscal Year 2009-2010.

18.5 The Town, in conjunction with the Union, will annually review the competitiveness of the pay ranges within the Fire-Rescue Department compared with the other fire-rescue departments in Palm Beach County and make whatever adjustments the Town, in its sole discretion, may deem necessary to maintain a strong competitive position in this market.

18.6 At the commencement of Fiscal Year 2010-2011, the Town will provide the Union with the amended Exhibit A (i.e., A-1) resulting from the annual competitive pay increase,

if any, established by the Town Council for all Town employees and any adjustment the Town may make pursuant to paragraph 18.5 above. Until such time as an annual competitive pay increase, if any, is established by the Town Council for all Town employees, the Salary Step Plan established in Section 18.2 above shall remain in effect.

ARTICLE 19

WORKWEEK

19.1 The average workweek for twenty-four (24)-hour shift employees shall be forty-eight (48) hours, with twenty-four (24) hours on duty and forty-eight (48) off duty, with an additional shift off (Kelly Day) every seventh shift. (The Administrative Lieutenant works a 40-hour workweek schedule.)

19.2 The starting time for twenty-four (24)-hour shift employees is 0800.

19.3 Kelly Days will be selected and assigned according to Article IX, Section 9-4 of the Department's Rules and Regulations. Applying the guidelines for the selection and assignment of Kelly Days in Section 9-4, the Assistant Chief of Operations or designee shall have the final authority to determine all Kelly Day assignments for the purpose of ensuring proper distribution of paramedic, Officer, Acting Officer, Driver-Operator, and other specialized personnel throughout the shifts and the organization. The Assistant Chief of Operations or designee shall not change Kelly Day assignments for arbitrary and capricious reasons.

19.4 The Assistant Chief of Operations shall approve the exchange of Kelly Days on a permanent basis by two mutually agreeable and comparably qualified employees if the exchange does not create overtime compensation.

19.5 The Battalion Chief shall approve the exchange of Kelly Days on a temporary basis by two mutually agreeable and comparably qualified employees in accordance with Article 21 (Shift Exchange) if the exchange does not create overtime compensation. Written requests for Kelly Day shift exchange shall be made at least twelve (12) hours prior to the shift involved in the request. The Battalion Chief may, in his discretion, permit less advanced notice if he determines that there are extenuating circumstances.

19.6 If, for any reason, an employee is transferred to another shift, the employee shall assume the open Kelly Day position on the new shift if the requirement of proper distribution of paramedics, Officers, Acting Officers, and Driver-Operators is met. If such requirement is not met, the employee's Kelly Day assignment shall be made by the Assistant Chief of Operations.

ARTICLE 20

OVERTIME

20.1 All work performed by twenty-four (24)-hour shift bargaining unit employees, up to and including one hundred ~~forty-four~~ fifty nine (144 159) hours in a twenty-one (21)-day work cycle, shall be paid at the employee's straight time rate of pay. (All work performed by the Administrative Lieutenant up to and including forty (40) hours in a seven (7) day work period shall be paid at the employee's straight time rate.) Work performed in excess of one hundred ~~forty-four~~ fifty nine (144 159) hours in the twenty-one (21)-day work cycle shall be paid at time and one-half (1.5) the employee's straight time rate of pay. (Work performed by the Administrative Lieutenant in excess of forty (40) hours in a seven (7) day work period shall be paid at time and one-half (1.5) the employee's straight time rate of pay.) Only time actually worked, annual (vacation), and personal days shall be counted for the purpose of calculating overtime. When an employee utilizes sick, injury, compensatory, worker's compensation, LTD, bereavement, military, jury duty, or any other paid or unpaid leave during the twenty-one (21)-day work cycle (or the seven (7) day work period in the case of the Administrative Lieutenant), such leave time shall not be considered time worked and shall be excluded from the calculation of overtime.

20.2 Overtime shall be calculated and paid in one-half (1/2)-hour increments.

20.3 An overtime eligibility list shall be maintained by the Assistant Chief of Operations to ensure that overtime is offered in a manner that is most efficient to the Department and equitable to the employees. The overtime eligibility list is accessible from AS400 Staff Scheduling File Maintenance (F15 key) or, upon implementation, the Telestaff program. On-duty officers shall use this list in the event that an employee must be called for overtime.

Minimum staffing on shift must be maintained. Vacant positions should be filled with the most qualified person for the position available, whether it be the overtime person or a more qualified person on duty. When overtime is used to fill a vacant officer's position, officers and acting officers shall be given primary consideration.

The following guidelines shall be used when overtime is needed to meet minimum staffing requirements:

- A. Personnel on Kelly Day off shall be contacted first. When Kelly Day employees are available, the employee with the lowest amount of overtime hours shall be contacted first.
- B. Personnel from the off-going shift shall be contacted second. The employee with the lowest amount of overtime hours shall be contacted first.
- C. Personnel from the off-duty shift shall be contacted third. The employee with the lowest amount of overtime hours shall be contacted first.
- D. When two or more employees in categories A, B, or C have the lowest amount of overtime hours, the employee with the highest seniority shall be called first.
- E. If staffing requirements are not met with volunteers pursuant to A through D above, the same process using B and C above shall be followed to mandate overtime assignment(s), provided that the employee with the lowest seniority will be called (mandated) first.

20.4 In order to provide all employees with equal access to available overtime work, no employee shall be assigned overtime in excess of 144 hours in a year. To avoid invoking

mandatory overtime assignment, an employee who has exceeded the aforesaid 144 hours shall be permitted to volunteer for overtime; provided, however, that no such employee shall work more than 24 hours of overtime over the 144-hour limit. Time accrued due to special details (PIP, CPR classes, physicals, etc.), Public Assembly Inspections and Special Assignment Overtime will not be included for the purpose of this overtime limit. Absent unusual circumstances (e.g., natural disaster, major fire, etc.), employees shall not be permitted to work in excess of two (2) consecutive shifts.

20.5 Nothing in this Article shall be construed to require the payment of straight time or overtime for attendance at training seminars or classes unless such seminars or classes were specifically authorized by the Fire Chief prior to the attendance.

ARTICLE 31

INSURANCE AND MISCELLANEOUS BENEFITS

31.1 The employees covered hereunder shall be provided health, dental, flex plan, long-term disability (LTD), Life Insurance, EAP, ICMA-RC, and workers' compensation benefits and programs under the same terms and conditions as are applicable to the other Town employees. The employees covered hereunder shall be eligible for the Town's Health Savings Account Program and the Town's Retirement Health Savings Plan under the same terms and conditions as are applicable to the other Town employees. Should the Town change the terms and conditions of the aforesaid benefit programs, including, but not limited to, employee premiums and benefits, the employees covered hereunder shall be subject to such changes on the same basis as the other Town employees.

31.2 Retirement Benefits

Effective October 1, 2010, the plan of pension/retirement benefits provided within the Town of Palm Beach Code of Ordinances and applicable to those bargaining unit employees covered by this Collective Bargaining Agreement shall be modified as follows:

1. The Town of Palm Beach Code of Ordinances shall be amended so that the pension/retirement benefits earned or accrued by employees on or after the date of adoption of the amendment to the Code of Ordinances are consistent with the following:

a. The benefit multiplier shall be three (3.0%) percent per year of credited service.

b. The period of time in which an employee may participate in the Deferred Retirement Option Program shall be extended to eight (8) years.

c. The automatic death after retirement benefit shall be eliminated so that the normal form of benefit is a life with ten year certain benefit payment.

d. Except as provided herein, pension/retirement benefits earned by employees after adoption of the ordinance amending the Firefighters' Pension Trust Fund shall be the same as and equal to those benefits earned or accrued prior to adoption of the same.

2. The amendments to the Town of Palm Code of Ordinances provided above shall be implemented through adoption of a series of two consecutive ordinance amendments in order to allow for a "stop/start" of the Firefighters' Pension Trust Fund. The first amendment shall reduce the benefits earned or accrued by participants in the Firefighters' Pension Trust Fund to a level such that upon adoption of a second ordinance amendment implementing the amendments provided above, which shall take place immediately after adoption of the first amendment reducing benefits, the cost of implementing the second ordinance will equal or exceed the value of any proceeds received pursuant to Chapter 175, Florida Statutes, and allow the use of such proceeds to fund the defined benefits provided by the Firefighters' Pension Trust Fund.

3. The Firefighters' Pension Trust Fund shall continue to participate in and be operated as a plan established under Chapter 175, Florida Statutes.

ARTICLE 39

SICK LEAVE AND INJURY TIME

39.1 In accordance with the Town of Palm Beach Personnel Manual, bargaining unit employees on duty an average of forty-eight (48) hours per week shall accumulate sick leave at the rate of four (4) shift days per year. Department employees shall have their accumulated sick leave reduced by one (1) shift day for each duty day of approved absence due to illness. Sick leave shall begin to accrue as of the date an employee enters the service of the Town but may not be taken until he/she has been in the service of the Town for at least six (6) months. Should an employee be absent because of illness during his/her first six (6) months of service, he/she must be placed on leave of absence without pay.

39.2 The applicable policies for accruing and utilizing sick leave and those pertaining to injury time are set forth in Article ~~XIX~~, Sections ~~10-2, 10-2.1, 10-2.2, 10-2.3, 10-2.3.1, 10-2.4, 10-2.5, 10-2.6, 10-2.7, 10-2.8, and 10-3~~ 9-2, 9-2.1, 9-2.2, 9-2.2.1, 9-2.3, 9-2.4, 9-2.5, 9-2.6, 9-2.7, and 9-3 of the Department's Rules and Regulations and the provisions of the Town Personnel Manual.

39.3 Notwithstanding any provision of the aforementioned Departmental Rules and Regulations or the Town's Personnel Manual, the following shall apply to all employees except those on Workers' Compensation leave or utilizing leave pursuant to the Family Medical Leave Act (FMLA):

a. Effective October 1, 2010, there shall be implemented a schedule of disincentives to be utilized in connection with the use of sick leave.

b. Effective October 1, 2010, sick leave may only be used in blocks of twelve (12) or twenty four hour (24) increments. Sick leave for forty (40) hour employees shall be used in eight (8) or ten (10) hour increments as applicable.

c. If an employee wishes to utilize sick leave while also on vacation leave, vacation leave may not be converted to sick leave without a physician certification as to the nature and time of the illness which establishes the basis of the request to convert vacation leave to sick leave.

d. An occurrence shall be defined as the use of 24 hours of sick leave (either one 24 hour shift or two 12 hour blocks). Consecutive shifts or days off on sick leave shall be considered only one occurrence.

Employees who have four (4) or more sick leave occurrences in any twelve (12) month performance evaluation period shall be subject to disincentives as follows:

SHIFT EMPLOYEES

NUMBER OF OCCURRENCES

DISINCENTIVES

Fourth occurrence

Oral Reprimand

Fifth occurrence

Written Reprimand

Sixth occurrence

Suspension: 12 Hours

Seventh occurrence

Permanent Demotion/Loss of Assignment
or, if not applicable, Suspension of 24 hours

Eighth occurrence

Termination

NON-SHIFT EMPLOYEES

NUMBER OF OCCURRENCES

DISINCENTIVES

Fifth occurrence

Oral Reprimand

Sixth occurrence

Written Reprimand

Seventh occurrence

Suspension: 12 Hours

Eighth occurrence

Permanent Demotion/Loss of Assignment
or, if not applicable, Suspension of 24 hours

Ninth occurrence

Termination

U.S. Department of Transportation
Office of the Secretary
Office of Drug and Alcohol Policy and Compliance

Best Practices for DOT Random Drug and Alcohol Testing

I. Introduction

What's the best tool employers have for deterring drug and alcohol use in the workplace?

Random Testing. And, here are just a few of the reasons why:

- Saves lives and prevents injuries.
- Helps employers identify workers with substance abuse issues and facilitate their treatment.
- Allows employees to easily say no to illegal drug use. *"No, thanks. They drug test at work."*
- Reduces employer liability.
- It is a fair way of testing.

The purpose of this publication is to help DOT covered employers and service agents in implementing and evaluating their own random testing programs. While DOT regulations serve as a mandatory minimum and do not prevent additional practices that serve the effectiveness of a testing program, don't forget that some DOT covered employers may also have extra requirements from industry specific regulations.

What follows are best practices as identified by representatives from the Office of the Secretary's Office of Drug and Alcohol Policy and Compliance (ODAPC), Federal Aviation Administration (FAA), Federal Motor Carrier Safety Administration (FMCSA), Federal Railroad Administration (FRA), Federal Transit Administration (FTA), Pipeline and Hazardous Materials Safety Administration (PHMSA), and the United States Coast Guard (USCG).

While actually reading the regulations is very important, we hope this guide provides an additional tool for implementing an effective random testing program.

II. Random testing is required for safety-sensitive employees

Each DOT Agency and the USCG has regulations that require certain employers to implement a random testing program.

Industry	Regulation
FAA - Aviation	14 CFR Part 121, Appendix I, V, .iVB and 14 CFR Part 121, Appendix J, III, C
FMCSA – Motor Carrier	49 CFR Part 382.305
FRA - Railroad	49 CFR Part 219.601 and 219.607
FTA - Transit	49 CFR Part 655.45
PHMSA - Pipelines	49 CFR Part 199.105
USCG - Maritime	49 CFR Title 46 Part 16.230

Note: FRA requires employers to submit their random plans for approval.

III. Establishing Random Testing Rates

The DOT Agency that regulates a specific transportation industry sets the random testing rate. The Administrator of each DOT Agency is authorized to either increase or decrease the random drug and alcohol testing rates. To establish an appropriate rate, Administrators use information reported from the drug and alcohol Management Information System (MIS) form required by 49 CFR Part 40 and other indicators. The rates are always effective starting January 1 of the calendar year. To check for the current rate, visit ODAPC's website at: <http://www.dot.gov/ost/dapc/rates.html>.

The random rates are annual minimum requirements. So if a DOT Agency requires a drug testing rate of 50% and an alcohol testing rate of 10%, then an employer with 100 safety-sensitive employees would have to ensure that 50 or more random drug tests and 10 or more random alcohol tests were conducted during the calendar year.

IV. Setting-Up a Random Pool of Employees

A. Who gets tested?

Regardless of job titles like supervisor, volunteer, contractor, owner operators, etc., people are chosen for testing based on their job *function* (known as a safety-sensitive function) not their occupational title. Only DOT safety-sensitive employees may be part of the DOT random pool or pools. Remember your DOT testing program must always be separate and distinct from your private company or non-DOT testing program. That goes for your random testing pools, too. DOT and non-DOT random testing pools must be completely separate.

Best Practice: Just prior to performing a random selection, refresh the pool to include all safety-sensitive employees subject to DOT random testing, and exclude those not subject to DOT random testing.

B. Can an employer regulated by different DOT agencies put its employees in the same random pools?

Yes. Employers and Consortia/Third Party Administrators (C/TPAs) subject to more than one DOT Agency drug and alcohol testing rule may combine covered DOT safety-sensitive employees into a single random pool. However, companies doing so must test at or above the highest minimum annual random testing rates established by the DOT Agencies under whose jurisdiction the employees fall. So, if you have FMCSA regulated- and FRA regulated-employees in the same pool, and FMCSA has a 50% testing rate and FRA has a 25% rate, you must test the pool at the 50% minimum rate.

Note: PHMSA and USCG do not authorize random alcohol testing for employees in the pipeline and maritime industries. So if employees perform only pipeline duties or maritime duties, they cannot be in any DOT-regulated random alcohol testing pool.

Of course employers may decide to separate the pools by specific regulated transportation industry – such as a separate pool for truck drivers and a separate pool for transit workers. Each pool must be tested at the required DOT Agency rate for that industry.

C. Does an employee performing duties covered by more than one DOT Agency need to be in multiple pools?

An employee performing duties subject to more than one DOT Agency's regulations must be randomly tested at the percentage rate established for the calendar year by the DOT Agency regulating more than 50 percent of the employee's function. So if you have an employee who drives your trucks 75 percent of the time and operates your transit busses 25 percent of the time, that employee needs to be in the FMCSA-regulated pool.

Remember: All other testing (e.g., pre-employment, post-accident, reasonable suspicion) is regulated under the Agency that regulates the function the employee was performing at the time of the event. Wreck the transit bus; you are subject to post-accident testing under FTA regulations even if you are in the municipality's FMCSA random pool.

D. How are employees selected for testing?

Everyone in the pool must have an equal chance of being selected and tested in each selection period. Selections can be by employee name, identifying title, or with FRA regulated testing, a group that is clearly delineated in company policy or random plan.

Be sure to use a scientifically valid method to select employees for testing, which may include: use of a random-number table, a computer-based random number generator that's traceable to a specific employee (or with FRA, a group).

Note: In the railroad industry, it is a common practice to select employees by the train number rather than specific employee. This would mean that any covered employee working on that train on a specific day (whether it was their regularly assigned position or not) would be tested. Only the FRA permits this practice.

Warning: Unacceptable random selection practices include selecting numbers from a hat, rolling dice, throwing darts, picking cards, or selecting ping pong balls.

E. How often should selections and tests take place?

What makes random testing so effective is the element of surprise. While employees know they will be tested, they are never quite sure of *when*, so random selections and testing should be performed at least quarterly. Some employers are selecting and testing more frequently. We think that is a good idea.

Note: If you think you might not meet your annual testing rate requirement, increase your testing. But, in an effective random program, testing must be spread equally throughout the year.

Best practices: Here are smart things you can do to figure out *when* to test:

- Spread testing dates reasonably throughout the year in a non-predictable pattern.
- Conduct random drug tests anytime employees are on duty or while performing safety-sensitive duties. See your Agency regulations for your specific industry requirements of when to conduct testing. FRA has "hours of service" testing considerations.
- Conduct random alcohol tests just before, during, or just after the employee performs a safety-sensitive job, as described in your industry specific regulations.

- Each workday or weekend, you can enhance the non-predictability of your program by conducting tests at the start, middle, or end of each shift. The worse thing that could happen is for employees to say, “*Yup, the last Friday of every month the second shift gets tested.*”

V. Testing

A. Why are some people randomly tested more than once?

“Is the boss singling me out? I just did a random last month? Joe, never gets tested? I don’t think this thing is random at all!”

Those are not uncommon concerns among some safety-sensitive employees, and many employers have been challenged in court to demonstrate that their programs are truly random. The reality is that in a truly random selection process, a high probability exists that some employees will be selected several times while others may never be selected.

Why? Because after each selection, the employee’s name is returned to the same pool, and he or she becomes just as likely as anyone else to be selected next time.

B. How are employees notified to report for a test?

Every employee should be discreetly notified according to your company’s policy, but random testing must also be conducted in strict confidence with a limited number of people having knowledge of the selection list.

Why? Because it helps maintain the element of surprise.

Best Practices: Every employer should have procedures in place to ensure that each employee receives no advanced notice of selection. But, be sure to allow sufficient time for supervisors to schedule for the administration of the test and to ensure that collection sites are available for testing.

Remember: Employers must provide appropriate privacy for each employee the fact that he or she is being tested.

C. What happens if a selected employee is not available for testing?

Employers need to have policies in place about what to do when employees are unavailable for testing.

Best Practices:

- If an employee selected for testing is known to be unavailable during the selection cycle (legitimate extended absence, long-term illness, etc.), document the reason and make-up the rate shortfall by making another selection, or make an extra selection during the next selection cycle.
- An employee is selected for testing but has not received notice since it is his day off, test the employee during his or her next shift within the same selection cycle.
- No employee should be excused from testing because of operational difficulties. See your industry specific regulations and interpretations for legitimate exceptions.
- Once the employee is notified to report for testing and the test does not occur, the opportunity for the random testing is over. There is no second “bite of the apple.”

D. What must employees do when notified of a random test?

When an employee is notified, he or she must proceed immediately to the collection site. Contrary to the *urban legends* circulating among some employees, *immediately* does not mean two hours. *Immediately* means that after notification, all the employee's actions must lead to an immediate specimen collection

Why? For the integrity of the testing process.

Best Practice: Many employers develop random testing procedures or policies that clearly state what activities are acceptable after notification: for instance, which safety-sensitive duties Agency regulations permit them to complete. If an employee is notified of a random test while working "off site" or "on the road," the company's policies should spell-out exactly what the employee must do before resuming safety-sensitive functions. That way there is no misunderstanding among employees about what is expected.

Note to Service Agents and Consortia/Third Party Administrators: Owner-operators and other employers who themselves perform safety-sensitive duties present a special notification challenge. So, if you are a service agent or C/TPA providing random selections and notices to an owner-operator, you should have written procedures on how they are notified and instructed after notification on when to report to a specific collection site. You must also have a written policy about what constitutes a refusal to test if they fail to appear for a test when notified. You should also provide these written items to these owner-operators and self-employed safety-sensitive employees.

VI. Maintaining and Evaluating Your Random Program

It is the best practice for an employer to document everything on the entire random testing process. This includes the numbers, names drawn, dates and times of notification, dates and times of collections, why a selected employee was not tested during a selection cycle, etc. If you're not sure, document it!

Best Practices:

- Service agents and C/TPAs providing random selection and testing services to employers should monitor on an ongoing basis (daily or weekly) the random tests that have been completed and compare them to those that were selected. If a random test has not been completed in an acceptable timeframe (within a day or week) of the expected test date, the service agent or C/TPA should contact the employer to determine the status of the test and take the necessary steps to ensure the test is completed within the selection period.
- Employers, service agents, and C/TPA should not wait until the end of the selection period to reconcile the random testing numbers. This is a weak business practice that we want to discourage.

Remember: You must maintain all your testing records in accordance with industry specific regulations. For more information, see the document, "Employer Record Keeping Requirements for Drug and Alcohol Testing Information." You can find this document at: <http://www.dot.gov/ost/dapc/documents.html> .

**ARTICLE 16
PROMOTIONS**

COMPARABLE DATA

**CURRENT RULES OF SELECTION FOR PROMOTION TO
DRIVER-OPERATOR**

DEPARTMENT	RULE OF
Boca Raton	4
Delray Beach	3
Palm Beach	1
Palm Beach County	1
Palm Beach Gardens	1
Riviera Beach	5
West Palm Beach	5

ARTICLE 17 - WAGES

COMPARABLE DATA

LONGEVITY/BONUS PAYMENTS

DEPARTMENT	LONGEVITY PAYMENT
Boca Raton	5 y.o.s. = \$600/yr.; 10 y.o.s. = \$800/yr.; 15 y.o.s. = \$1,000/yr.
Delray Beach	N/A
Palm Beach (Hired Prior to 10-1-2004)	5 y.o.s. = 2.5%; Additional .5% each year up to 20 y.o.s. (10%)
Palm Beach (Hired After 10-1-2004)	5 y.o.s. = \$1,500 Top 1/3; \$1,000 Mid 1/3; \$500 Base 1/3 10 y.o.s. = \$3,000 Top 1/3; \$2,000 Mid 1/3; \$1,000 Base 1/3 15 y.o.s. = \$4,500 Top 1/3; \$3,000 Mid 1/3; \$1,500 Base 1/3 20 y.o.s. = \$6,000 Top 1/3; \$4,000 Mid 1/3; \$2,000 Base 1/3
Palm Beach County	10 y.o.s. = 5%; 15 y.o.s. = 7.5%; 20 y.o.s. = 10%
Palm Beach Gardens	10 y.o.s. = 5%; 15 y.o.s. = 7.5%; 20 y.o.s. = 10%
Riviera Beach	4 y.o.s. = 2%; 8 y.o.s. = 4%; 12 y.o.s. = 6%; 16 y.o.s. = 8%; 20 y.o.s. = 10%
West Palm Beach*	10 y.o.s. = 5%; 20 y.o.s. = 10%

* Employees currently frozen at current longevity payment and employees hired on or after 10-1-2009 receive no longevity benefit.

**ARTICLE 18
WORKWEEK**

**IMPACT ON
HOURS WORKED AND WAGES EARNED**

	CURRENT	TOWN'S PROPOSAL	DIFFERENCE
HOURS/WEEK	48	56	8
HOURS/YEAR	2,496	2,912	416

- Eliminating the Kelly Day will require all shift employees to work an additional 416 hours per year (8 additional hours per week) with no additional pay.
- A shift employee working an additional 416 hours per year with no additional pay is the equivalent of a 40 hour employee working an additional 52 days (more than 10 additional 5 day work weeks) per year with no additional pay.
- Elimination of the Kelly Day results in a 14.3% reduction in the hourly rate of pay for all shift employees.
- Though shift employees would work 416 additional hours per year, the Town has proposed no additional leave time for shift employees.
- 40 hour employees will continue to work 2,080 hours per year.

ARTICLE 18 (WORKWEEK) & ARTICLE 19 (OVERTIME)

COMPARABLE DATA

**CURRENT WORK SCHEDULE, KELLY DAY SCHEDULE
AND OVERTIME THRESHOLDS**

DEPARTMENT	WK SCHEDULE	KELLY DAY	OT THRESHOLD*
Boca Raton	24 on / 72 off	N/A	Outside Regular Work Hours
Delray Beach	24 on / 48 off	7th Shift	144 Hours
Palm Beach	24 on / 48 off	7th Shift	144 Hours
Palm Beach County	24 on / 48 off	7th Shift	Outside Regular Work Hours (144)
Palm Beach Gardens	24 on / 48 off	7th Shift	Outside Regular Work Hours (144)
Riviera Beach	24 on / 48 off	7th Shift	144 Hours
West Palm Beach	24 on / 48 off	7th Shift	159 Hours

*Number of hours worked in a 21 day cycle before receiving overtime pay (time and one-half).

COLLECTIVE BARGAINING AGREEMENT

BETWEEN

CITY OF PALM BEACH GARDENS

AND

PROFESSIONAL FIRE FIGHTERS/PARAMEDICS OF
PALM BEACH COUNTY
LOCAL 2928, IAFF, INC.

OCTOBER 1, 2008 TO SEPTEMBER 30, 2011

ARTICLE 27 Personal Leave

Section 1: Intent. This section establishes the City's policy regarding the accrual and use of personal leave. It is the policy of the City to promote the efficiency, health and morale of employees through periodic interruption from their duties. Personal leave provides time away from the work environment to pursue activities that promote the well-being of the employee and good physical, mental, and emotional health.

Section 2: Applicability. This section applies to all full time employees. Personal leave may be used for vacation, illness, or personal days.

Section 3: Accrual.

- a) Personal leave is accrued monthly as follows for full time employees assigned as forty hour work week:

<u>Years of Service</u>	<u>Monthly Accrual</u>	<u>Annual Accrual</u>
0 - 4 years	13 hours	156 hours/year
5 - 8 years	15 hours	180 hours/year
9 - 12 years	17 hours	204 hours/year
13 - 16 years	19 hours	228 hours/year
Over 17 years	21 hours	252 hours/year

- b) Personal leave is accrued monthly as follows for full time employees assigned as forty-eight hour (48) work week:

<u>Years of Service</u>	<u>Monthly Accrual</u>	<u>Annual Accrual</u>
0 - 4 years	15.4 hours	184.8 hrs/yr
5 - 8 years	17.8 hours	213.6 hrs/yr
9 - 12 years	20.2 hours	242.4 hrs/yr
13 - 16 years	22.6 hours	271.2 hrs/yr
Over 17 years	25 hours	300 hrs/yr

- c) Personal leave shall be credited to the employee's personal leave balance on the first day of each month for the leave earned in the preceding month. For a new employee, the beginning date of employment shall be on or before the 20th day of the month in order for the employee to be credited with a personal leave time for that month. An employee must complete the initial probationary period to be eligible to use scheduled personal leave.
- d) The maximum accrual of personal leave is based on the length of continuous service. Unused personal leave accumulated over these amounts is forfeited.

<u>Years of Service</u>	<u>Maximum Accrual</u>
0 - 4 years	300 hours
5 - 8 years	400 hours
9 - 12 years	450 hours
13 - 16 years	500 hours
17 - 20 years	550 hours
Over 20 years	640 hours

- e) Employees may receive pay for all accrued personal leave hours that have been accumulated over 100 personal leave. Payments in lieu of personal leave time shall be paid twice a year. The requesting employee shall receive payment in lieu of personal leave time on the paycheck for the first full pay period following the employee's request to receive such payment at the employees then current base rate of pay. (See Appendix A, Personal Leave Cash-In Form)
- f) Each January, six (6) hours of time shall be credited to the Union Time Pool from each union member's accrued personal leave bank. The City shall provide the Union with a quarterly statement reflecting the balance of the Union's time pool bank. The Union reserves the right to redistribute the hours in the time pool bank in cases of hardship with the approval of the Chief.

Section 4: Scheduled Leave. Personal leave shall be requested by employees by utilizing departmental scheduling software with the approval of their supervisor. Requests for personal leave shall be submitted in advance of the proposed absence. Each employee shall give their supervisor at least 24 (twenty-four) hours notice for scheduled leave and may be granted leave with less notice by the Chief or his designee and shall not be arbitrarily denied.

- a) Twenty-four (24) Hour Shift Employees:

- 1) Personal Leave shall be scheduled from February 1 through January 31 except that vacation blocks beginning prior to January 31 may continue beyond January 31. The City shall determine the number of employees who can be off on vacation at any time throughout the year. For vacation selection in November 2008 for the 2009-2010 leave year, personal leave may be scheduled for January 1, 2009 to January 31, 2010 and contiguous thereafter.
- 2) In October of each year, the City will advise how many shift employees may be scheduled off for vacation during the next year beginning February 1 per shift by Firefighters, Firemedics, Driver Engineers, and Officers.
- 3) During the month of November, shift employees shall select personal leave periods by departmental seniority on a per shift basis, in the following groupings: Firefighters, Driver Engineers, Firemedics, and Officers as set forth herein:
 - b) Personal leave selection during the months of November and December shall be made in two (2) rounds:
 - 1) Employees choosing three (3) or more consecutive shifts (which may include Kelly Days) shall make the first selections. First round selection forms shall be made available on or before November 1 and shall be

submitted on or before 1700 hours November 15. First round selection shall be awarded within five (5) business days thereafter.

2) Employees wishing to pre-schedule another group of one (1) or more consecutive shifts of time shall choose during the second selection. Second round selections shall be made available on or before November 21 and shall be submitted on or before 1700 hours on December 8. Second round selections shall be awarded within five (5) business days thereafter.

3) At 12:00 p.m. (noon) on December 15th, employees shall be able to schedule leave time for remaining open days for personal leave for the upcoming year, which shall be on a first come, first serve basis. In the event that the Telestaff is inoperative, employees must contact the on-duty Captain in order to submit a request for personal leave. Such approval shall be based on staffing only and shall not be unreasonably denied.

4) Once approved, personal leave time shall not be rescinded by management except in the event of a serious hardship (major emergency i.e.: earthquake, tropical storm, hurricane; or civil emergency). The payment of overtime shall not constitute serious hardship.

5) Employees may cancel their personal leave time only if requested by at least twenty-four (24) hours from the

start of the leave period including Kelly Days, with first round vacation selection being the exception. Cancellation, if requested less than twenty-four (24) hours prior to the start of the leave period, may be granted at the discretion of the Captain and shall not be unreasonably denied.

c) 40 hour employees - In October of each year, the City will advise how many Chief Fire Inspectors, Life Safety Lieutenants Fire Inspectors, and Code Compliance Officers may be scheduled off for personal leave during the next year beginning on February 1 except when scheduling leave for 2009-2010 leave year, when selections will be for January 1, 2009 to January 31, 2010 and contiguous thereafter. During the month of November and December these employees shall select personal leave periods by departmental seniority. When selecting personal leave periods during November and December these employees may not select more than twenty (20) consecutive working days during the personal leave year, which may be waived with the approval of the immediate non-bargaining unit supervisor in charge of scheduling, but such approval shall not be unreasonably denied. The City shall permit at least two (2) Life Safety Lieutenants to be off from work at one time if it is necessary to do so in order to accommodate the personal leave request of an

employee so long as at least one Life Safety Lieutenant remains on duty.

d) Employees cannot cancel their first round vacation selection unless approved by the Chief or his designee.

e) Scheduled Leave for Education: For the purpose of education, when staffing permits, employees may request leave time in hourly increments as long as this leave time does not cause overtime. In the case of scheduled leave (time scheduled before the beginning of the shift), the employee must obtain a pre-approved exchange of time or work if overtime would be created by their absence (the bubble). Time off may be taken during the shift if staffing allows. In cases where more than one employee requests this leave, it will be granted in order of the request. All leaves in taken pursuant to this subsection (e) must be for educational purposes.

Section 5: Unscheduled Leave. To utilize unscheduled leave, for an illness, or emergency, the employee shall notify the on-duty Shift Captain one-half (1/2) hour prior to the beginning of the scheduled workday, or prior to leaving the work assignment with the specific reason for the request. For the purposes of this article, illness means the illness of the employee or

employee's spouse or child, illness by the employee's registered domestic partner or registered domestic partner's children, or the serious illness of a family member living in the employee's household, requiring the presence of the employee. Emergency leave may be requested for an unanticipated situation other than illness which requires the presence of the employee, and may be granted by the Shift Captain only with the approval of the Fire Chief, Deputy Fire Chief or Division Chief of Administration. Unscheduled leave may not be used to work at other employment.

Section 6: General Provisions.

- 1) All probationary full time employees are eligible to use unscheduled personal leave.
- 2) The maximum continuous scheduled personal leave for which employees are eligible shall be four calendar weeks, which may not be extended through the use of shift exchanges. The Chief or his designee may approve more than four weeks if he/she determines the City may not be adversely affected.
- 3) The accrual is not available until the first day of the following month.
- 4) Unscheduled personal leave time must be taken in increments of one full shift with the exception of an illness or emergency which occurs while the employee is on duty. Childcare shall not constitute an emergency. Scheduled personal leave may be used in increments of 12 hours except

in the event of an emergency or for educational purposes as provided in Section 4(e) above.

- 5) Employees are not entitled to use personal leave that has not been earned.
- 6) A bargaining unit member on leave without pay for more than fifteen (15) calendar days shall not be credited with personal leave for that period.
- 7) If the day on which an official holiday is observed, as designated in Article 30 - Holidays; of this contract, shall fall within the period of personal leave being taken by an employee, it shall not be charged to their personal leave.

Section 7: Payout. Upon separation from employment employees shall be paid for all accrued personal leave. Any accrued personal leave shall be paid at the employee's final base rate of pay.

Section 8: Acute Illness Leave

This leave may be used for illness by the employee, the employee's spouse, the employee's registered domestic partner, the employee's or registered domestic partner's dependent children including step-children and adopted children.

- a) Acute illness leave is accrued monthly. Full time employees assigned a forty (40) hour work week shall accrue four (4) hours per month in acute illness leave. Full time employees assigned a forty-eight (48) hour work

week shall accrue six (6) hours per month in acute illness leave.

- b) Acute illness leave may be used only after the employee has used twenty four (24) consecutive hours of personal leave regardless of the employee's work schedule, as a result of illness or injury. The illness or injury shall be verified in writing by a licensed physician.
- c) Acute illness leave shall be credited to eligible employees on the first day of each month for the leave earned in the preceding month. For a new employee, the beginning date of employment shall be on or before the twentieth (20) day of the month in order to be credited with an acute illness leave time for the month.
- d) The minimum charge for acute illness leave shall be units of eight (8) hours except hours used for disability.
- e) Upon separation from employment, employees shall not be entitled to any reimbursement of accumulated acute illness leave.
- f) Employees may not transfer acute leave for any reason.

Section 9: Incentives

- a) Employees will be credited 48 hours of personal leave on October 1 of each year, as an incentive program designed to reward employees for excellent attendance in the preceding year. Employees who have one or less

unscheduled leave occurrence, excluding emergencies per Section 5 above, during the year will be credited 48 hours of personal leave in the first paycheck for the first full pay period in October each year. Employees who have unscheduled leave occurrences during the fiscal year will be subject to the disincentives listed in Section 10.

Section 10: Disincentives

- a) Employees who have unscheduled leave occurrences in any fiscal year (October 1 - September 30), commencing with the first occurrence, shall be subject to disincentive actions as follows:

# OF OCCURRENCES	DISINCENTIVE
1 st Occurrence	No action taken
2 nd Occurrence	50% reduction of incentive time
3 rd Occurrence	75% reduction of incentive time
4 th Occurrence	100% reduction of incentive time
5 th Occurrence	Move to the bottom of the overtime list, loss of step-up, shift exchange and overtime privileges for 15 days.

- 6th Occurrence Move to bottom of overtime list, loss of step-up and shift exchange privileges for 45 days and no overtime for 30 days.
- 7th Occurrence Move to bottom of overtime list, loss of step-up and shift exchange privileges for 60 days and no overtime for 60 days.
- 8th Occurrence Move to bottom of overtime list, loss of step-up, shift exchange and overtime privileges for 120 days, and a 24 hour suspension.
- 9th Occurrence Move to bottom of overtime list, loss of step-up, shift exchange privileges, ineligible for overtime, mandatory referral to EAP, loss of seniority for Kelly Day selection, and 48 hour suspension.
- 10th Occurrence Special performance evaluation with possible recommendation of termination by Fire Chief.



**Collective Bargaining Agreement
between
PALM BEACH COUNTY
AND
PROFESSIONAL
FIREFIGHTERS/PARAMEDICS OF
PALM BEACH COUNTY,
LOCAL 2928, IAFF, INC.**

October 1, 2008 through September 30, 2011

ARTICLE 45 – WELLNESS PROGRAM

There shall be a Wellness Steering Committee in the Fire Rescue Department made up of three (3) representatives from the Union and three (3) representatives appointed by the Fire Rescue Administrator. The Steering Committee shall meet as necessary to direct, establish guidelines, make recommendations, and evaluate the Fire Rescue Wellness Program. Fire Rescue shall maintain responsibility to administer the program and shall designate a Wellness Coordinator to assume responsibility for the daily operation and management of the program. The following areas shall be considered as components of the Wellness Program and shall be included as sections of this Article:

1. Fire Department Physician
2. Medical Physical Program
3. Drug Screening
4. Physical Fitness Program
5. Employee Assistance Program/CISM
6. Sick Leave
7. Leaves of Absence/Blood Donor
8. Communicable Diseases
9. Disability

Section 1. Fire Department Physician

A. The Wellness Steering Committee shall select a Fire Department Physician to direct the medical and physical components of the Wellness Program, administer medical physicals, and keep a health database for all Fire Rescue employees.

B. Once the Steering Committee has chosen a provider, there shall be a written agreement, between the County and the Provider, drafted and approved by the Committee that shall include, but not be limited to, the following provisions:

1. Description of Duties
2. Detailed Costs
3. Term of the Agreement
4. Confidentiality Policy
5. Termination of Agreement Provision

Section 2. Medical Physicals

A. All Fire Rescue employees who are state certified Firefighters shall be required to complete an annual medical examination, administered by the Fire Department Physician. All Fire Rescue employees who are not certified Firefighters will complete an annual physical examination unless they advise Fire Rescue no later than January 1st of their intention not to obtain a physical for the next fiscal year.

B. All medical examinations shall be administered using NFPA 1582 Standards as a guideline except that employees shall participate annually.

C. Employees may choose to use their own physician in lieu of the Fire Department Physician for the Medical Examination. However, employees who choose this option shall be responsible for the following:

1. Notify the Wellness Coordinator of the name and the location of their physician;
2. Bear the cost of the medical examination;
3. Ensure that medical examinations are conducted using the same guidelines, criteria, and standards as the Fire Department Physician.

4. Forward records of the medical examination to the Fire Department Physician for review and placement in the employee's medical file.

All employees shall be required to see the Fire Department Physician for the drug test and any portion of their medical physician not completed by their own physician.

D. All combat personnel shall be responsible for scheduling and completing the medical examination and Physician Fitness Evaluation (PFE) on their own time. All employees shall have their medical physical and Physical Fitness Evaluation (PFE) completed no earlier than one month prior to the month preceding their birth date, and no later than the last day of the month of their birth date. Failure to complete the medical examination and Physical Fitness Evaluation (PFE) during this time frame may result in the employee being placed on unpaid administrative leave, unless prior authorization has been granted by the Fire Rescue Administrator, until such time as the process is complete. In order to compensate combat personnel for off duty participation in completing the medical physical and physical fitness evaluation, and to encourage increased awareness and improvement in overall physical fitness, all combat personnel shall receive a lump sum in the amount of fifty (\$50.00) dollars in the pay period following verification of completion of their medical physical and PFE by the Wellness Coordinator. Employees must complete the medical physical and achieve a minimum PFE rating of "fit" to receive the fifty (\$50.00) dollars payment; however, those employees achieving a PFE rating of "excellent" shall receive a lump sum payment of one hundred (\$100.00) dollars.

E. Any employee who cannot perform the essential functions of their position, in the opinion of the Fire Department Physician, shall not be permitted to engage in fire suppression until the requirements are met. Any employee who disagrees with the results or recommendations of a medical examination conducted by the Fire Department Physician shall be entitled to seek a second opinion from a qualified physician of their choice at the employee's expense. If there is a disagreement between the Fire Department Physician and the employee's physician, a third

physician agreeable to both the FD Physician and the employee shall be consulted for a final determination. The cost of a third party physician shall be split between the employee and Fire Rescue.

F. All employees shall receive a medical examination and a PFE prior to being reassigned to emergency duties after any medical absences greater than six (6) months.

Section 3. Drug Testing

All employees shall be required to submit to a drug screening, as detailed in Attachment I of this agreement.

Section 4 Physical Fitness

A. The Steering Committee shall establish a physical fitness program to enable employees to develop and maintain an appropriate level of fitness to safely perform their assigned functions. Fire Rescue Administration and Local 2928 support the concept that physical fitness is an essential job element of the fire service. All employees are expected to maintain a minimum level of fitness to ensure safe and effective delivery of fire rescue services.

B. All employees shall complete a physical fitness evaluation (PFE), administered by the Fire Rescue Exercise Physiologist, on an annual basis following their medical examination. The PFE will be based on the MicroFit program, administered in accordance with Policy #VII-2, and may be amended by agreement between the Fire Rescue Administrator and the Union President. All operational personnel will be required to participate in all elements of the PFE. On a temporary basis, employees may be granted exceptions to participation in no more than two (2) individual elements of the PFE by the Fire Department Physician, the Occupational Health Clinic or their personal physician. In such cases, said exceptions must be in writing, and the scoring of the PFE shall be adjusted to include just the elements completed. Employees who are on light duty with a documented injury, which

temporarily prevents them from completing any or all elements of the PFE, shall be required to complete the PFE upon release to full duty.

Personnel who score less than a "Fit" rating on the PFE, or who cannot complete three (3) or more of the individual elements of the PFE, shall receive mandatory exercise guidance and dietary counseling from the Wellness Coordinator. Said employees will be retested after no more than ninety (90) days. Personnel who score less than a "Fit" rating on a PFE retest, or who cannot complete three (3) or more of the individual elements of the PFE, will be assigned to light duty on a 40-hour work week, and will be subject to mandatory participation in a supervised exercise program. Said employees may remain on light duty on a 40-hour workweek until a rating of "Fit" is achieved on a PFE retest.

C. Employees will be required to complete a physical fitness assessment as part of a medical examination prior to returning to full duty from any injury, illness, or other extended leave greater than six (6) months.

D. Physical fitness assessments shall take place at the Fire Rescue Fitness Center, unless otherwise indicated.

E. Fire Rescue shall designate a physical fitness area in all permanent fire stations.

F. Fire Rescue shall provide all permanent fire station locations with a standard complement of exercise equipment as specified by the Steering Committee.

G. Any station, which has physical training facilities within its first response zone, may be permitted to participate in physical activities at such facilities upon approval of the District Chief.

Section 5. Employee Assistance Program

A. The Wellness Steering Committee shall select an EAP Coordinator to direct the Employee Assistance Program and assist Fire Rescue employees with personal problems that may affect their well being and their job performance.

B. Once the Steering Committee has chosen a provider, there shall be a written agreement drafted, between the Union Plan and the Provider, and approved by the Wellness Steering Committee, that shall include, but not be limited to, the following provisions:

1. Description of Duties
2. Detailed Cost
3. Term of the Agreement
4. Confidentiality Policy
5. Termination of Agreement Provision

C. An employee who enters a program to quit smoking and who successfully completes the program by quitting smoking shall have the cost of the program reimbursed for one time only, up to a maximum of two hundred (\$200.00) dollars after they have stopped smoking for six (6) months.

D. The County shall continue participating in a Critical Incident Stress Management Team.

Section 6. Sick Leave

A. It is agreed between the parties that sick leave use can have a detrimental effect on the daily operation of Fire Rescue, including the workload of other Fire Rescue employees, the level of service Fire Rescue provides to the public, and the safety of the other employees. Palm Beach County and Professional Firefighters/Paramedics of Local 2928 agree to make every effort to express the importance of dependability and reliability in regards to employee's attendance to all members of Palm Beach County Fire Rescue.

This article is intended as a comprehensive approach to minimizing the use of sick leave to only those bona fide circumstances as provided for in Section D of this section. In order to be effective, two major thrusts have been incorporated into the Article; a disincentive approach, and an incentive approach.

B. Sick Leave Banks

All reserved vacation time shall be banked independent of regular vacation time and not subject to the vacation accrual caps. Reserve vacation time banks shall be scheduled in accordance with the provisions of Article 28 of this Agreement. However, this reserve vacation bank shall not be payable upon separation from the County. In the event of a duty-related death of a Fire-Rescue employee, that employee's Reserve Vacation Bank hours (if any exist) shall be paid on a hour for hour basis at the employee's current hourly rate. An employee's death must have occurred while on-duty or meet the conditions outlined in Chapter 112, Florida Statutes, in order to be considered duty-related.

C. Sick Leave Allotment

1. After the cutoff date each year, which shall be the last day in the payroll period which includes November 1, all permanent twenty-four (24) hour shift employees shall be allotted one hundred and twenty (120) hours of sick leave for the next twelve (12) months. Employees who are not on a twenty-four (24) hour shift shall receive an allotment of sick leave, which shall be proportionate to the total number of hours worked annually, when compared with the twenty-four (24) hour shift employees, according to the same time schedule.
2. Employees may use this time at one hundred (100%) percent of their current salary in accordance with Section D of this Article.
3. Employees shall not be awarded any sick leave compensation beyond one hundred twenty (120) hours during any twelve (12) month period, unless they request to use extended leave due to an illness, injury, or other circumstances consistent with Section D of this Article. Such a request must be approved by the Fire Rescue Administrator or designee, and such approval shall not be unreasonably denied. However, employees may use their reserve vacation banks to supplement an individual, short-term absence (i.e., exceeding one (1) hour but less than six (6) shifts) beyond the one hundred and twenty (120) hour allotment,

until such time as their reserve vacation bank is depleted. In no case shall the employee's main vacation account be used to supplement this type of absence unless, in the sole discretion of the Fire Rescue Administrator (or designee), which shall be final, binding, and not subject to grievance or arbitration, a waiver of this provision is granted. If granted, an employee may elect to have vacation time deducted retroactively. Extended leave shall be defined as a single sick leave occurrence over one hundred twenty (120) hours. In the event of an extended leave, employees shall be awarded pay at one hundred (100%) percent of their remaining allotted hours. Starting with the sixth (6th) consecutive shift of absence, through three (3) months from the date of injury or illness, employees shall be awarded extended leave compensation at eighty five (85%) percent of their current salary. After three (3) months and through twelve (12) months of consecutive leave from the date of illness or injury, employees shall be awarded sixty-five (65%) percent of their current salary. Employees shall not be awarded any sick leave compensation exceeding twelve (12) continuous months from the time of an illness or injury; and shall have up to eighteen (18) months during which to return to work. Employees who are granted extended leave shall be placed on a forty (40) hour week, with all pay and benefits adjusted accordingly, and shall not engage in off duty employment, which is inconsistent with their work restrictions during the period of leave.

4. Employees who require extended leave may use vacation time to supplement any uncompensated portion of the leave. Vacation time used to supplement any extended leave shall first be drawn from the employee's reserve vacation bank, and upon depletion of this bank, from the employee's main vacation bank.
5. Employees who are on extended leave at the time of a new sick leave allotment shall be required to use forty-eight (48) hours (or proportionate amount of time for non 24-hour shift personnel) of their allotted time (120 hours) at one

hundred (100%) percent of their current salary, and thereafter on a pro-rated basis until such time as they return to duty.

6. Employees must return to full duty for a minimum of six (6) months from an extended leave prior to being eligible to start new extended leave compensation for the same illness or injury. Employees who return to extended leave within six (6) months of returning to fully duty, for the same illness or injury, shall be awarded the remaining benefits from the previous extended leave and shall have the duration of the two (2) leaves counted accumulatively.

7. Probationary employees shall be awarded sick leave on a pro-rated basis for the remainder of the year starting after the sixth (6th) month from the date of hire. However, new probationary employees shall not be eligible for any extended leave compensation.

8. Employees who leave Fire Rescue who are in pay status at the time of departure shall be eligible to be paid out for unused allotted sick leave on a pro-rata basis as defined in this Article (this payout shall not include any of the reserve vacation hours).

D. Approved Sick Leave Use

Sick leave shall be awarded on an hour for hour basis to employees for the following reasons provided, that the condition is not job related:

1. Incapacitation due to illness or injury.
2. Attendance would jeopardize the health of co-workers due to exposure to a contagious illness/disease.
3. Prescribed medical treatment that falls on duty days.
4. Care of an immediate family member, residing with the employee for whom the employee is rendering medically related assistance, and there is no other person available to care for said individual.
5. Hospitalization of a family member.

- 6*. Medical, dental or optical examination or treatment.
7. Maternity/paternity leave shall be limited to three (3) months.
8. **Pregnancy** An employee experiencing a documented high-risk pregnancy may apply for extended leave. In such instances, extended leave shall terminate upon the birth of the baby, at which time the employee may begin maternity leave in accordance with this Article. Employees may request in writing (which shall include the reason for the request) to the Fire Rescue Administrator or his designee to extend maternity leave for up to three (3) weeks by using either vacation or going into out-of-pay status. The Fire Rescue Administrator or his designee has the final approval which is not subject to the grievance process. However, in the event the employee has a doctor's note that states the employee is unable to work due to medical reasons related to birth or illness of the child; these can be grieved if unreasonably denied. If at the conclusion of maternity leave the employee is medically unable to return as a result of complications, she may start a new extended leave in accordance with the terms of this Article.

Employees may elect to use vacation time in lieu of extended leave for maternity/paternity leave purposes, provided that such leave may not exceed six (6) weeks.

9. Any absence not described above that prior authorization is received.

* Applies only to forty (40) hour personnel unless emergency treatment is necessary.

E. Disincentives

1. Employees who have five (5) or more sick leave* occurrences in any twelve (12) month period may be subject to disincentives actions as follows:

NUMBER OF OCCURRENCES DISINCENTIVES

5 th Occurrence	loss of early release privileges
6 th Occurrence	5 th occurrence disincentives, loss of overtime, loss of bid rights, loss of step-up privileges.
7 th Occurrence	6 th occurrence disincentives, Special Performance Evaluation.
8 th Occurrence	7 th occurrence disincentives, loss of bid assignment and any corresponding assignment pay.
9 th Occurrence	8 th occurrence disincentives, loss of promotional ability
10 th Occurrence	9 th occurrence disincentives, twenty-four (24) hour suspension.

*Any absence under this Article shall be considered an occurrence. An occurrence shall be defined as actually working less than one-half (1/2) of the hours of the employees normal shift, or any combination of occasions of sick leave utilization which, when combined, total one-half (1/2) of the employees normal shift, with or without an excuse (i.e., for a twenty-four (24) hour employee, four (4) occasions of three (3) hours shall equal one (1) occurrence.

2. Effective with the November 2008, sick leave allotment, Communicator IIs and Communicator Supervisors who have depleted their sick leave bank shall, upon any additional sick leave occurrences, have the above disincentives applied, beginning with the 5th sick leave disincentive. Each November, with the new sick leave allotment, additional sick leave disincentives shall not be applied until the employee's sick leave bank has again been depleted. The number of occurrences for any employee shall be calculated using a continuous twelve (12) month period without regard to fiscal or calendar year. Except as stated in this Article, all disincentives for a specific

occurrence shall remain in effect until the occurrence for which the disincentives were imposed drops off. Upon request of an employee, the Fire-Rescue Administrator may review and waive occurrences on a case by case basis.

F. Incentives

1. After the cut-off date each year, which will be the last day in the pay period which includes November 1st, employees shall receive as a bonus, the remainder of their allotted time paid for on an hour for hour basis at their current hourly rate of pay, including permanent assignments. Employees will be credited with their annual sick leave allotment beginning on the next pay period. Any sick leave taken before the cutoff date which is not processed prior to the bonus payoff will be deducted from the next year's allotment.

2. All eligible employees shall receive the sick leave bonus on the first payday in December that calendar year.

G. Sick Leave Procedure

1. It shall be the employee's responsibility to notify the Fire Operations Officer (FOO) at least thirty (30) minutes prior to the start of their shift with:

- (a) the reason for their absence;
- (b) the battalion, which they are assigned to;
- (c) and the name of their Supervisor.

2. Sick leave shall be awarded on an hour for hour basis, in quarter hour increments, for all employees.

3. Employees may return to work at any time after calling in sick. However, they may only return to work one time during a shift and shall notify the FOO prior to returning to work to receive their station assignment.

4. If, in the opinion of the immediate Supervisor, an employee is determined to be too ill/injured to work, the Supervisor may recommend that the employee be sent home. The first Non-Bargaining Unit Supervisor, above the immediate Supervisor of

the employee in question, shall have the authority to send the employee home, based on the recommendation of the immediate Supervisor and direct observation of the employee.

5. Upon returning to work, all employees shall submit to their immediate supervisor an electronic employee leave request form which shall include an affidavit signifying that the employee's use of sick leave was consistent with this Article.

6. Any employee requesting sick leave for reasons which are not consistent with this Article shall be denied leave time and may be subject to discipline for inappropriate use of sick leave as described in Section A-3 of the disciplinary guidelines of the Fire Rescue Department Manual.

H. Sick Leave Board

The Wellness Steering Committee shall serve as the Fire Rescue Sick Leave Board. The Sick Leave Board shall be responsible for monitoring sick leave use and identifying department-wide trends and patterns of sick leave use.

Section 7. Leaves of Absences/Blood Donors

A. Leave Without Pay

Employees shall be entitled, upon written request, to a leave of absence without pay or benefits for up to six (6) months after exhausting their accrued leave time as follows:

1. Education Leave

Due to education or training of mutual benefit to the employee and the County, upon approval of the Fire Rescue Administrator.

2. Military Leave With Pay

Effective October 1, 2008, all employees shall be entitled to a leave of absence without loss of pay or benefits, not to exceed sixteen (16) shifts for twenty-four (24) hour shift employees, or twenty (20) working days for non-twenty- four

(24) hour shift employees, in a fiscal year, for service in a military reserve unit or National Guard.

Effective October 1, 2008, all employees serving in the military reserve or National Guard and is activated involuntarily into active duty will be entitled to the following pay and benefits:

1. The County shall supplement the military pay up to the amount that would have been paid as a base salary from the County for up to twelve (12) months.

2. The employee shall continue accruals for sick, vacation, and holiday leave time.

3. The employee shall continue to receive holiday pay.

4. If while on active duty, an employee is due for a longevity increase, step increase or ATB increase, the increase will be processed and the supplemental pay due to the employee will be recalculated.

5. Medical coverage for the employee and his/her dependents will remain in force during their active duty. If the supplemental pay is not sufficient to cover payroll deductions associated with medical coverage, the employee will have to make arrangements to pay directly to the Union Insurance Fund.

B. Blood Donors

Employees who volunteer as blood donors to contribute to a not for profit supported blood donor organization will be granted enough time off with pay to accomplish this purpose, consistent with staffing requirements. The Blood Donor Organization shall determine the amount of rest time the employee needs from the point of donation until the employee may return to full duty.

Section 8. Communicable Diseases

A. The Wellness Steering Committee shall review and maintain an Infectious Disease Program for the purpose of minimizing employee exposures to infectious

diseases or hazardous materials. Fire Rescue shall designate an Infectious Disease Coordinator to manage the Program.

B. Communicable Disease

1. Presumption

It shall be presumed that any Operations Division employee who contracts hepatitis B or meningitis shall have contracted the disease while on duty.

2. Immunization

- (a) The County shall provide a one-time immunization during the life of this Agreement for all employees who want to be immunized, as follows:

Tetanus

Hepatitis – (Type A and B)

Rubella (for females of child bearing age)

- (b) Employees who refuse to be immunized for Hepatitis-B and who later contract the disease shall not be presumed to have contracted the disease while on duty.

Section 9. Disability Leave

Definition of Permanent Disability:

- A Firefighter or District Chief is considered permanently disabled if that employee is likely to remain so disabled continuously and permanently.

A. Short Term Disability

- 1. On-The-Job Disability:** Any employee, who incurs an illness or is injured while acting within the scope of his or her employment, and whose Workers' Compensation claim has not been controverted by the County by filing a Notice of Controvert shall be entitled to disability leave with no loss in pay or benefits, except as otherwise stated in this agreement, until the employee returns to the essential duties of the employee's position; or receives a determination that the employee will

not be able to return to the essential duties of the position and receives Supplemental Long Term Disability (SLTD) benefits; provided that such benefits (excluding SLTD Benefits), are limited to a maximum of two (2) years. Further provided, that if the employee returns to work and later goes out with the same illness/injury, within six (6) months of that employee's return to work from the initial illness/injury, that employee's time shall be cumulative with respect to the two (2) year maximum cap. If a controverted claim for Worker's Compensation is later resolved to pay Workers' Compensation benefits, then the employee shall be entitled to disability benefits under this Article, retroactively. Disability benefits shall also be payable if a Workers' Compensation claim is not filed if the disability as provided in this Section is for seven (7) days or less.

2. Light Duty (On-The-Job Disability). The County has the right to assign an employee who incurs an illness or is injured in the line of duty as provided in Section 9(A)(1) of this Article, or for any other duty-related reason as approved by the Fire Rescue Administrator, provided the employee made a request, to light duty within the Fire Rescue Department, or outside the Department if the employee agrees, so long as the employee's medical condition permits. This assignment shall be based on a forty (40) hour work week and may displace an employee assigned to light duty under Section 9(A)(3) of this Article. An employee who does not wish to accept a light duty assignment under this section may use vacation and then sick leave until each has been exhausted, after which, an employee who refuses a light duty assignment in the Department shall not be entitled to benefits under Section 9(A)(1) of this Article. An employee assigned to light duty shall suffer no loss in pay or benefits, provided that if the employee is working at a non-twenty-four (24) hour shift position then benefits shall accrue at the rate of non-twenty-four (24) hour shift employees covered by this Agreement, except the employee shall continue under high risk pension if the employee was under high-risk pension at the time of the injury, and if permitted by law.

3. Light Duty (Off-The-Job Disability). An employee who incurs an illness or injury outside the line of duty or who cannot perform regular responsibilities due

to pregnancy or other reason as approved by the Fire Rescue Administrator, may request and shall be entitled to work light duty if a position is determined by the Fire Rescue Administrator to be available, if the employee qualifies for the position, and if the employee's medical condition permits. An employee working such light duty position shall be paid, and shall be entitled to benefits, as provided for that position, except the employee shall continue under the Union Insurance Plan and shall continue under high-risk pension if the employee was under high-risk pension at the time of injury, and if permitted by law.

4. **Short Term Disability (Off-The-Job).** For non-job-related illness/injuries, an employee shall have a maximum of eighteen (18) months within which to return to the essential duties of the employee's position, with or without a reasonable accommodation. The ability to perform the essential duties of a position shall be determined by the Fire Rescue Department Physician and verified by the Occupational Health Clinic. Provided, that if an employee returns to work and later goes back out with the same injury/illness, within six (6) months of that employee's return to work from the initial illness/injury, that employee's time shall be cumulative with respect to the eighteen (18) months maximum cap.

B. Supplemental Long-Term Disability Benefits (SLTD)

1. The County shall provide the following supplemental long-term disability benefits for line of duty disability for Firefighter personnel who are in the FRS Special Risk Retirement Plan at the time of injury or illness, except that merged Lantana and Royal Palm Beach personnel will receive long term disability benefits as specified below.

Lantana personnel shall be entitled to the long term disability benefit provided for by the Lantana Pension fund. The parties agree to modify the plan to provide a long term disability benefit of seventy-five (75%) percent of the best five (5) years average pay, Average Final Compensation (AFC), and will jointly submit this modification for approval to the Town of Lantana. Calculation of Average Final Compensation (AFC) shall be determined by the Lantana Pension fund administrator in accordance with FRS methodology.

Royal Palm Beach personnel shall be entitled to an SLTD benefit as listed below in 9(B)(6), provided that calculation of these benefits shall be offset by Royal Palm Beach Pension Plan benefits as described in 9(B)(9) below. The best five (5) years average pay, Average Final Compensation (AFC), shall be determined by the Royal Palm Beach Pension fund administrator in accordance with FRS methodology.

2. **Definition of Disability:** A Firefighter is considered disabled if the Firefighter is wholly prevented from rendering useful and efficient service as a Firefighter. A District Chief shall be considered disabled if the District Chief is wholly prevented from rendering useful and efficient service as a District Chief. A Firefighter or District Chief is considered permanently disabled if that employee is likely to remain so disabled continuously and permanently.

3. This benefit will not replace Section 9(A)(1). The two (2) year disability benefit provided in Section 9(A)(1), shall remain in place.

4. **Eligibility:** Employees who are or were ever required to be certified Firefighters as a condition of County employment shall be eligible for this benefit from the first day of employment. Disability must arise or presume to arise in the performance of employment. Determination that the injury occurred in the line of duty, or that the disability is presumed to have arisen in the performance of employment, shall initially be made by the County. Disputes over these determinations shall be finally resolved by the grievance and arbitration procedure established in Article 16 of this Agreement. Supplemental benefits shall not be approved when the disability arises out of an injury intentionally caused by the employee.

Any claim incurred as a result of any injury, illness, or related condition for which a symptom or physical finding existed in such manner as would cause an ordinary prudent, person to seek medical advice, diagnosis, care or treatment, or for which medical advice, diagnosis, care or treatment was recommended or received, within the six (6) month period immediately prior to the employee's hire date, shall not be covered until the employee is treatment free for a period of six (6) consecutive months.

5. **Determination of Disability:** Disability as to whether an employee is "totally disabled" and "permanently disabled" shall be finally resolved by a Physician selected

by the Union and the County, and shall not be submitted to the grievance and arbitration procedure established in Article 16 of this Agreement. Disputes over procedural, non-medical aspects of these determinations shall be finally resolved by the Fire Rescue Administrator and shall not be subject to grievance and arbitration in accordance with this Collective Bargaining Agreement.

6. Benefit: The amount of any SLTD benefit shall be determined in combination with FRS benefits (exclusive of COLAs) and Workers' Compensation wage benefits (exclusive of COLAs after separation) as follows:

(a) Employees who apply for but are not receiving Workers' Compensation or FRS benefits shall receive an SLTD benefit of seventy-five (75%) percent of the best five (5) years average pay, Average Final Compensation (AFC), as determined by the Florida Retirement System;

(b) Employees who apply for and receive FRS disability benefits shall receive a SLTD benefit that, combined with the FRS disability benefit, equals one hundred (100%) percent of the best five (5) years average pay, Average Final Compensation (AFC);

(c) Employees who apply for and receive FRS regular benefits shall receive a SLTD benefit that, combined with the FRS regular benefit, equals seventy-five (75%) percent of the best five (5) years average pay, Average Final Compensation (AFC). Employees receiving an FRS regular benefit in excess of seventy-five (75%) percent shall receive no SLTD payment from the County;

(d) Employees who apply for and receive Workers' Compensation benefits shall receive a SLTD benefit that, combined with the Workers' Compensation benefit at the time of separation, equals one-hundred (100%) percent of the best five (5) years average pay, Average Final Compensation (AFC). If Workers' Compensation benefits are discontinued, the employee shall receive a benefit in accordance with subsection (6)(a) above;

(e) For employees who enter into a Workers' Compensation settlement, once the amount of the settlement treated as wages, calculated as described below in

9(B)(8), has been exhausted, the employee shall receive a benefit in accordance with subsection 6(a) above;

(f) Employees who apply for and receive both Workers' Compensation benefits and FRS disability or regular benefits that do not equal or exceed one-hundred (100%) percent of AFC when combined, shall receive an SLTD benefit that when combined with the Workers' Compensation benefit at time of separation and the FRS benefit shall equal one hundred (100%) percent of the best five (5) years average pay, Average Final Compensation (AFC). If Workers' Compensation benefits are discontinued, the employee shall receive a benefit in accordance with item subsection (6)(b) or (c) above. Employees receiving Workers' Compensation and FRS disability or regular benefits in excess of one-hundred (100%) percent of AFC shall receive no SLTD payment from the County.

7. Florida Retirement System (FRS): As a condition of receipt of supplemental benefits under this Article, all applicants must apply for FRS Disability benefits. FRS "Retirement Option 1" benefit amounts shall be used to calculate SLTD benefits, if the employee elects to receive Option 1 benefits. FRS "Retirement Option 2" benefit amounts shall be used to calculate SLTD benefits, if the employee elects to receive any option other than Option 1 benefits. For employees that elect the FRS Investment Plan, the monthly benefit that would have been received from "Retirement Option 1" under the FRS Defined Benefit Plan shall be used to determine the SLTD benefit. Employees shall be required to apply for FRS Regular benefits if they are denied FRS Disability benefits and if they are eligible to receive FRS Regular benefits without early retirement penalty. No employee shall be required to apply for FRS Regular benefits until such time as they may receive these benefits without early retirement penalty. At such time as an employee qualifies for "non-penalized" FRS regular benefits, and chooses not to apply for "non-penalized" benefits, the SLTD payment shall be recalculated using the Option 1 FRS benefit amount. If the calculation method for determining Average Final Compensation (AFC) is changed by FRS, the method used for calculating AFC for SLTD benefits shall be similarly changed. Retro-active recalculation of AFC, and SLTD benefits shall match the retro-active provisions adopted by FRS.

8. **Workers' Compensation:** All wage monies received from Palm Beach County's Worker's Compensation shall be used in the determination of the County's SLTD payment. Employees who enter into a Workers' Compensation Settlement Agreement with Palm Beach County which contains lump sum amounts designated as anything other than medical, (e.g. wages, Compensation or Indemnity), shall have thirty-five (35%) percent of this amount treated as wages. The amount of Workers' Compensation wages shall be calculated by dividing thirty-five (35%) percent of the lump sum amount by the bi-weekly Workers' Compensation rate at the time the settlement was entered into. The resulting number represents the number of pay periods that the bi-weekly Workers' Compensation amount will be included in the determination of the SLTD payment. Once thirty-five (35%) percent of the lump sum amount has been used in the determination of the SLTD payment, the SLTD benefit shall be adjusted in accordance with 9(B)(6) above.

Example: Employee has a Workers' Compensation settlement which includes \$10,000 identified as indemnity. The settlement agreement identifies that employee was receiving \$700 per pay period. Workers' Compensation non-medical benefit.

$$\text{\$10,000 Lump Sum} \times 35\% = \text{\$3,500}$$

$$\text{\$3,500}/\text{\$700} = 5 \text{ pay periods}$$

The SLTD payment shall be readjusted after 5 pay periods.

9. **Royal Palm Beach Pension Benefits:** Former Royal Palm Beach employees shall be eligible for SLTD benefits as outlined above, with pension benefits off-set as follows. At the time of termination of the Royal Palm Beach Pension Plan, the balance of the employee's retirement account which can be attributed to employer contributions (Royal Palm Beach and Palm Beach County) including investment gain/loss shall be obtained from the Royal Palm Beach Pension Board Administrator, as of the date of the last contribution made by the County. When the employee becomes eligible for non-penalized withdrawals from the pension account, (or if the employee makes withdrawals earlier) that amount shall directly off-set the SLTD benefit, until such time that the recorded balance has been off-set.

Example: Employee has a Royal Palm Beach retirement account balance which at time of termination of the plan includes \$100,000 attributed to employer contributions including investment gain/loss. The employee was receiving \$2,000 per pay period SLTD benefit.

$$\text{\$100,000}/\text{\$2,000} = 50 \text{ pay periods}$$

The SLTD payment shall be reduced to \$0 for 50 pay periods. After 50 pay periods, the SLTD payment shall be re-calculated to the appropriate amount.

10. **Over-Payments:** Due to the impact of FRS benefits and Workers' Compensation benefits on the determination of the SLTD benefit, SLTD recipients shall promptly notify the County of any changes in Workers' Compensation or FRS benefits, other than COLAs. At the time employees apply to receive SLTD benefits, they shall be required to acknowledge the obligation to notify the County of any changes in Workers' Compensation or FRS benefits. Failure to notify the County of these changes shall obligate the recipient to repay any resulting overpayments. Overpayments resulting from retroactive FRS and Workers' Compensation lump sum payments shall be immediately paid to Palm Beach County. In the event of an overpayment the County will recoup said overpayment if the overpayment resulted from the individual's failure to notify the County of a retroaction payment from FRS or Workers' Compensation, or if the employee knew or should have known about the overpayment. Unless a recipient agrees otherwise, recipients who repay through a reduction in SLTD benefits shall not have their benefit reduced by more than \$250 per pay period or thirty-five (35%) percent of their SLTD benefit, whichever is less.

11. **Alternative Employment:** An employee, who is qualified for supplemental long term disability benefits as provided for above, will undergo a functional capacity evaluation by the physician identified in Section 9(B)(5) to determine his/her ability to provide productive service to Fire Rescue in a non-firefighting bargaining unit position.

Employees who are offered and accept a position within Palm Beach County, shall continue to be compensated at the rate of pay of the position they held at the time of the disabling illness or injury, or the new position, whichever is greater, and shall continue to accrue special risk retirement benefits, if permitted by law. Employees who

are deemed able to work by the functional capacity evaluation, and who subsequently refuse an offer of alternative employment for which they are qualified within Fire Rescue, who resign from such a position, or who are terminated for just cause from such a position, prior to eligibility for non-penalized regular retirement benefits, shall only be eligible for an SLTD benefit of sixty-five (65%) percent of AFC. An employee who accepts alternative employment, then subsequently suffers a decline in their medical condition, shall not be precluded from reasserting entitlement to SLTD benefits provided that after re-evaluation the employee is deemed medically unable to continue working in the alternate position. Such benefits shall be calculated on the AFC of Palm Beach County Fire Rescue high risk service only.

12. Time Frame for Application: The County shall send a notice of the right to apply for SLTD benefits at least seventy-five (75) days prior to the expiration of the two-year Short Term Disability period. In order to facilitate the transition from Short Term Disability to SLTD, employees should apply for SLTD benefits at least sixty (60) days prior to the expiration of the 2 year short term disability period to avoid being placed in out-of-pay status. However, employees who leave employment with Fire Rescue shall be eligible to subsequently apply for SLTD benefits for a period of 45 days from the date of termination, or 45 days from the date the employee first becomes aware that they have suffered an illness or injury which is compensable under the SLTD program.

13. Status Review: The Fire Rescue Administrator may request periodic review, not to exceed once every three years, of the status of the individuals receiving SLTD benefits. Individual recipients may be reviewed more frequently based on reasonable suspicion. The cost of this review shall be borne by the County. SLTD benefits will be discontinued if it is determined that the individual is able to return to work as a Firefighter and such a position is made available. Again, disputes as to "totally disabled" and "permanent" shall be determined as previously stated in this Agreement.

14. County Long Term Disability Supplemental payments will coincide with the Fire Rescue Payroll Periods.

C. Fire Academy Instructors

Palm Beach County Fire Rescue (PBCFR) employees who are hired by Palm Beach Community College (or other vendor approved by the Fire Rescue Administrator or designee) to provide high-risk instruction to PBCFR personnel and are injured during said high-risk instruction, shall be provided the benefits according to Article 45, Section 9, as if those employees were working for the County; provided that any benefits received from the Palm Beach Community College (or other vendor approved by the Fire Rescue Administrator or designee) shall be treated as if such benefits had been received from the County for the purpose of calculating and administering the benefits provided pursuant to Article 45, Section 9.

For the purposes of this section, high-risk instruction shall be defined as hands-on instructional activities which require the use of personal protective equipment such as bunker gear and SCBA. Specific examples would include firefighting functions such as advancing hose lines, performing ventilation and search and rescue operations. Specifically excluded from this definition would be classroom instruction, lectures, etc.

Employees seeking coverage under the provisions of this section must immediately inform the PBCFR class coordinator of the injury and complete a PBCFR "Employees Notification of Injury" report, in addition to fulfilling reporting and documentation requirements of Palm Beach Community College (or other vendor approved by the fire Rescue Administrator or designee).



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August 17, 2010

Mr. Jayson E. French
Town of Palm Beach Firefighters Retirement System
249 Royal Palm Way – Room 301
Palm Beach, Florida 33480

Re: Supplemental Valuation

Dear Mr. French:

Enclosed are ten copies of a supplemental actuarial valuation for the Town of Palm Beach Firefighters Retirement System.

Please call if you have any questions regarding the calculations enclosed.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad Lee Armstrong', with a stylized flourish at the end.

Brad Lee Armstrong

BLA:sc
Enclosures

TOWN OF PALM BEACH FIREFIGHTERS RETIREMENT SYSTEM
SUPPLEMENTAL ACTUARIAL VALUATION
AS OF SEPTEMBER 30, 2009

Requested By: Mr. Jayson E. French
Date: August 17, 2010
Submitted By: Brad Lee Armstrong, ASA, MAAA, and Randall J. Dziubek, ASA, MAAA
Gabriel, Roeder, Smith & Company

This report contains an actuarial valuation of proposed changes in benefits for members of the Town of Palm Beach Firefighters Retirement System. The actuaries issuing this report are Members of the American Academy of Actuaries and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinion contained herein.

The date of the valuation was September 30, 2009. This means that the results of the supplemental valuations indicate what the September 30, 2009 valuation would have shown if the proposed benefit changes had been in effect on that date. Supplemental valuations do **not** predict the result of future actuarial valuations. Rather, supplemental valuations give an indication of the probable long-term cost of the **benefit change only** without comment on the complete end result of the future valuations.

Actuarial assumptions and methods were consistent with those used in the regular actuarial valuation of the Retirement System on the valuation date, unless otherwise noted. Actuarial assumptions are adopted by the Retirement Board of Trustees. In particular:

- The assumed rate of interest was 8%.
- Payroll was assumed to increase 5.5% per year.
- Changes in Accrued Liability were amortized over 30 years.

It is our understanding that benefits for current inactive or retired members would not be affected by the proposed benefit changes. They were excluded from this study.

A brief summary of the data, as of September 30, 2009, used in this valuation is presented below.

Active Members			
Number	Covered Payroll	Average in Years	
		Age	Service
73	6,397,554	37.6	9.1

TOWN OF PALM BEACH FIREFIGHTERS RETIREMENT SYSTEM
SUPPLEMENTAL ACTUARIAL VALUATION
AS OF SEPTEMBER 30, 2009

Proposal #1

PRESENT PROVISIONS: Pension amount equals Average Final Compensation multiplied by the greater of a) **3.5%** per year of credited service to a maximum of 25 years, or b) 2.0% per year of credited service to a maximum of 50 years.

PROPOSED PROVISIONS: Pension amount equals Average Final Compensation multiplied by the greater of a) **3.5%** per year of credited service on 9/30/2010 plus **3.0%** per year of credited service after 9/30/2010 to a maximum of 25 years, or b) 2.0% per year of credited service to a maximum of 50 years.

Actuarial Statement

The financial effect of the proposal is shown below:

<u>Valuation Date September 30, 2009</u>	<u>\$ Thousands</u>		<u>Effect</u>
	<u>Valuation Results</u>	<u>Proposal Results</u>	
1) Accrued Liabilities	\$ 78,139	\$ 78,139	
2) Funding Value of Assets	57,852	57,852	
3) UAAL \$: (1) - (2)	\$ 20,287	\$ 20,287	
- % Funded: (2) / (1)	74%	74%	
4) Employer Normal Cost	30.19%	25.18%	
5) UAAL %	17.03%	17.03%	
6) Administrative Expenses	3.84%	3.84%	
7) Employer Contribution Rate (4)+(5)+(6)	51.06%	46.05%	(5.01%)

**TOWN OF PALM BEACH FIREFIGHTERS RETIREMENT SYSTEM
SUPPLEMENTAL ACTUARIAL VALUATION
AS OF SEPTEMBER 30, 2009**

Proposal #2

PRESENT PROVISIONS:

Automatic Death After Retirement Pension:

To Surviving Child(ren): **25%** of the retirant's pension payable to age 18, not to exceed an equal share of **75%** of the retirants pension. Payments to surviving children may be paid to age 25 if no spouse benefits are payable.

To Surviving Spouse: The difference, if any, between **75%** of the deceased retirant's pension and the aggregate amount paid to any surviving children for the month.

PROPOSED PROVISIONS:

Eliminate Automatic Death After Retirement Pension

Actuarial Statement

The financial effect of the proposal is shown below:

<u>Valuation Date September 30, 2009</u>	<u>\$ Thousands</u>		
	<u>Valuation Results</u>	<u>Proposal Results</u>	<u>Effect</u>
1) Accrued Liabilities	\$ 78,139	\$ 75,876	
2) Funding Value of Assets	57,852	57,852	
3) UAAL \$: (1) - (2)	\$ 20,287	\$ 18,024	\$ (2,263)
- % Funded: (2) / (1)	74%	76%	
4) Employer Normal Cost	30.19%	27.64%	
5) UAAL %	17.03%	15.52%	
6) Administrative Expenses	3.84%	3.84%	
7) Employer Contribution Rate (4)+(5)+(6)	51.06%	47.00%	(4.06%)

Comment: The above results reflect the elimination of the automatic death after retirement benefit for all current and future active members.

TOWN OF PALM BEACH FIREFIGHTERS RETIREMENT SYSTEM
SUPPLEMENTAL ACTUARIAL VALUATION
AS OF SEPTEMBER 30, 2009

Comments

Comment 1 — The calculations are based upon assumptions regarding future events, which may or may not materialize. They are also based upon present and proposed plan provisions that are outlined in the report. If you have reason to believe that the assumptions that were used are unreasonable, that the plan provisions are incorrectly described, that important plan provisions relevant to this proposal are not described, or that conditions have changed since the calculations were made, you should contact the authors of this report prior to relying on information in the report.

Comment 2 — If you have reason to believe that the information provided in this report is inaccurate, or is in any way incomplete, or if you need further information in order to make an informed decision on the subject matter of this report, please contact the authors of the report prior to making such decision.

Comment 3 — No statement in this report is intended to be interpreted as a recommendation in favor of the changes, or in opposition to them.

Comment 4 — In the event that more than one plan change is being considered, it is very important to remember that the results of separate actuarial valuations cannot generally be added together to produce a correct estimate of the combined effect of all of the changes. The total can be considerably greater than the sum of the parts due to the interaction of various plan provisions with each other, and with the assumptions that must be used.

Comment 5 — This report is intended to describe the financial effect of the proposed plan changes on the retirement system. Except as otherwise noted, potential effects on other benefit plans were not considered.

TOWN OF PALM BEACH FIREFIGHTERS RETIREMENT SYSTEM
SUPPLEMENTAL ACTUARIAL VALUATION
AS OF SEPTEMBER 30, 2009

Comments (Concluded)

Comment 6 — The reader of this report should keep in mind that actuarial calculations are mathematical estimates based on current data and assumptions about future events (which may or may not materialize). Please note that actuarial calculations can and do vary from one valuation year to the next, sometimes significantly if the group valued changes significantly. As a result, the cost impact of a benefit change may fluctuate over time, as the demographics of the group changes.

Comment 7 — The assumed rates of retirement used in this supplemental valuation are the same as those used in the regular actuarial valuation of the Retirement System. To the extent either of these plan changes would alter the pattern of future retirements, the impact of the proposed change(s) would be different from those provided in this report.

**TOWN OF PALM BEACH
FIREFIGHTERS RETIREMENT SYSTEM
SIXTY-THIRD ANNUAL ACTUARIAL VALUATION
SEPTEMBER 30, 2009**

Outline of Contents

Report of September 30, 2009 Actuarial Valuation

Pages	Items
--	Cover Letter
A	Valuation Summary, Observations, Recommendations and Certification
1-3	Summary of valuation results
B	Detailed Valuation Results
1-3	Contribution requirement
4	Contribution comparative statement
5-6	Funding progress indicators
7	Experience gain/(loss)
8	Funding value of assets
9-10	Supplemental pension distribution
11-12	Unfunded actuarial accrued liability
13	Actuarial balance sheet
C	Summary of Benefit Provisions and Valuation Data Submitted by the Retirement System
1-3	Benefit provisions
4-6	Financial data
7-13	Participant data
D	Actuarial Cost Method, Actuarial Assumptions and Definitions of Technical Terms
1	Actuarial cost method
2	UAAL amortization schedules
3-10	Actuarial assumptions
11-12	Definitions
E	Certain Disclosures Required by Statement No. 25 of the Governmental Accounting Standards Board
1-2	Required supplementary information
F	State Required Data
1-4	

May 13, 2010

The Board of Trustees
Town of Palm Beach Firefighters Retirement System
Palm Beach, Florida

Submitted in this report are the results of the Sixty-Third Annual Actuarial Valuation of the assets, actuarial present values, and contribution requirements associated with benefits provided by the Town of Palm Beach Firefighters Retirement System. The date of the valuation was September 30, 2009.

Valuation highlights, a summary of valuation results, observations, recommendations and our certification immediately follow this cover letter.

Detailed valuation results are contained in Section B.

The valuation was based upon information, furnished by your Administrator, concerning Retirement System benefits, financial transactions, and individual members, terminated members, retired members and beneficiaries. Data was checked for internal and year-to-year consistency, but was not otherwise audited. This information is summarized in Section C.

Actuarial cost methods, actuarial assumptions, and definitions of technical terms are contained in Section D.

Governmental Accounting Standards Board Statement No. 25 information is contained in Section E.

Supplement information requested by the State of Florida Division of Retirement is contained in Section F.

This report has been prepared by actuaries who have substantial experience valuing public employee retirement systems. To the best of our knowledge, this report is complete and accurate and was made in accordance with generally recognized actuarial methods in accordance with standards of practice prescribed by the Actuarial Standards Board and in compliance with the constitution of the State of Michigan. The actuarial assumptions used for the valuation produce results which we believe are reasonable.

The undersigned are Members of the American Academy of Actuaries (MAAA) as indicated, and meet the Qualification Standards of the American Academy of Actuaries to render the actuarial opinions contained herein.

Respectfully submitted,



Brad Lee Armstrong
ASA, EA, MAAA



Randall J. Dziubek
ASA, EA, MAAA

SECTION A

VALUATION SUMMARY, OBSERVATIONS,
RECOMMENDATIONS AND CERTIFICATION

Actuarial Valuation Highlights

September 30, 2009

FUNDING OBJECTIVE

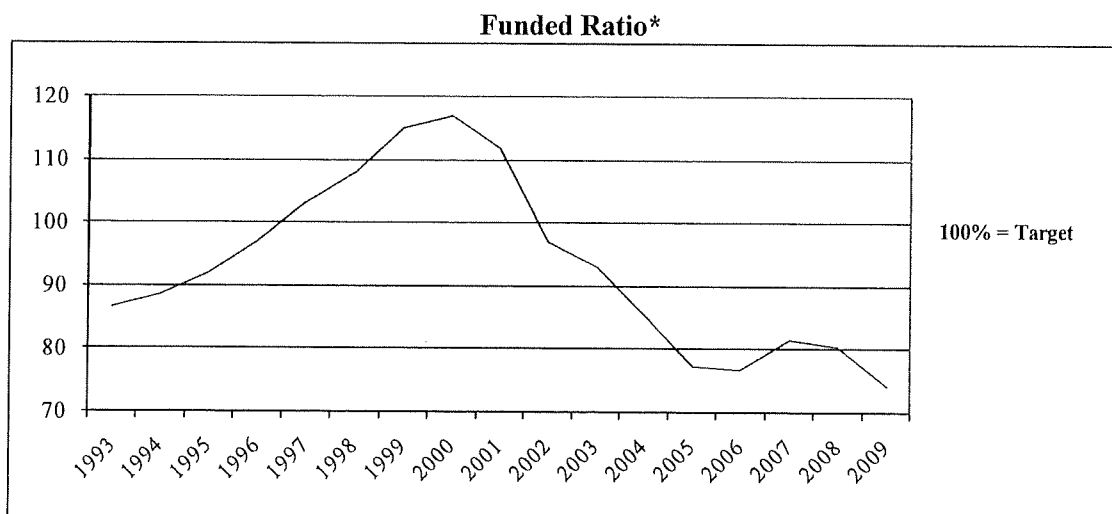
The basic funding objective of the Retirement System is to avoid transfer of the cost of benefit obligations between generations of taxpayers. This objective is implemented by contributions sufficient to:

- ♦ pay for costs allocated to the current year on account of service rendered by active non-DROP members in the current year (Normal Cost).
- ♦ pay for costs allocated to prior years on account of service rendered by participants in prior years (Unfunded Actuarial Accrued Liability) over 30-year closed periods.

The annual actuarial valuation measures the relationship between Retirement System obligations and assets and determines the contribution rates for the ensuing year. The Retirement System is supported by member contributions, property insurance premium tax monies received from the State pursuant to the provisions of Chapter 175, Florida Statutes, Town contributions, and investment income from Retirement System assets.

VALUATION RESULTS - FUNDING PROGRESS INDICATORS

The September 30, 2009 actuarial valuation indicates that the actuarial accrued liabilities of the Retirement and Benefit System, measured in accordance with Statement No. 25 of the Governmental Accounting Standards Board, are 74.0% funded by valuation assets. Last year's funded ratio was 80.3%. Although not historically referred to, the ratio of the market value of assets to the actuarial accrued liabilities is 61.7% compared to 69.2% last year.



* Years prior to 2004 include Police and years prior to 2000 include General and Ocean Rescue.

VALUATION RESULTS - CONTRIBUTION REQUIREMENT

The percent of active member payroll contribution requirements for the 2010-2011 and 2009-2010 fiscal years are:

	2010-2011	2009-2010
Member portion	6.82 %	6.82 %
Public portion	51.06	47.50
State	5.05	5.54
Town	46.01	41.96

The Town's contribution requirement increased 4.05% of payroll since last year due to experience during the year. Comparative contribution information is shown on page B-4. Composition of the current contribution rate is shown on page B-1.

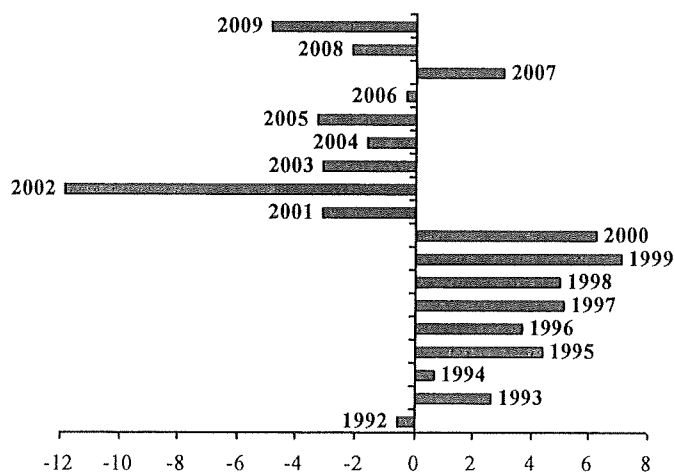
VALUATION RESULTS - LAST YEAR'S EXPERIENCE INDICATORS

The funding value of the assets of the Retirement System increased less than projected by the long-term investment income funding assumption during the last year. Note that each year's investment experience is spread over five-years in equal dollar installments to reduce the effect of market volatility on contribution rates (please refer to page B-8). The return on the funding value of assets was 1.5%, net of investment expenses. The projected return was 8.0%.

The aggregate effect of all system experience was a loss of \$5,021,804, mostly caused by investment losses and higher than expected salary increases.

Year-to-year experience variations are expected and normal in the operation of a retirement system as members vary their activities and economic conditions change. The expectation is that the plus years and minus years will tend to cancel over 5 to 10 periods. Of the last 18 years, 9 have produced favorable experience and 9 have produced unfavorable experience. On net balance, experience has been slightly favorable. However, the last 9 years have been substantially unfavorable (see also page B-10).

Experience Gains and Losses*
(Amounts in Millions)



* Years prior to 2004 include Police.

BENEFIT CHANGES

None.

NEXT YEAR'S EXPERIENCE INDICATORS

Due to the Board's use of a five-year smoothed market asset valuation method, less than expected market returns were only partially recognized, and combined with the scheduled phase-in of the prior four years unrecognized investment income. Subsequently, investment losses are scheduled for the next four years. (Please see page B-8 for details). This will exert significant and sustained upward pressure on future computed employer contribution rates and downward pressure on the funded ratio in the next few reports in the absence of considerable future gains. We recognize that investment markets have recovered somewhat and outperformed expectations for new money invested in the last year, but this has yet to reach a point where assets held for longer periods can be considered recovered.

SUPPLEMENTAL PENSION DISTRIBUTION

There is no supplemental pension distribution payable this year. The accumulated System experience since October 1, 2000 is negative (see page B-10) and therefore the Florida Statutes restrict this provision.

SHARE ACCOUNTS

Share Accounts totaling \$2,045,793 were excluded from assets and liabilities in this report. The Board should annually review and approve the issuance of individual Share Account statements.

RECOMMENDATIONS

The Retirement Ordinance requires reserve account transfers from the Employer Reserve Fund to the Retirement Reserve Fund which will establish a match between assets allocated to the Retirement Fund and liabilities associated with current retired lives.

The balance in the retirement reserve fund as of October 1, 2009 following the transfers should be \$46,211,418.

CERTIFICATION

This actuarial valuation was prepared and completed by me or under my direct supervision, and I acknowledge responsibility for the results. To the best of my knowledge, the results are complete and accurate, and in my opinion, the techniques and assumptions used are reasonable and meet the requirements and intent of Part VII, Chapter 112, Florida Statutes. There is no benefit or expense to be provided by the plan and/or paid from the plan's assets for which liabilities or current costs have not been established or otherwise taken into account in the valuation. All known events or trends which may require a material increase in plan costs or required contribution rates have been taken into account in the valuation.



Brad Lee Armstrong, EA [08-5614]

May 13, 2010

Date

SECTION B

DETAILED VALUATION RESULTS

**Contributions To Finance Benefits of the Retirement System
For the Plan Year Beginning October 1, 2010
To be Contributed During the Fiscal Year Beginning October 1, 2010**

Contributions for	Contributions Expressed as Percents of UnDROPEd Active Member Payroll
Normal Cost	
Service pensions	32.94 %
Disability pensions	0.96
Death in service pensions	0.59
Deferred service pensions	1.71
Refunds of member contributions	0.81
Total Normal Cost	37.01
Unfunded Actuarial Accrued Liability (1)	
Retired members and beneficiaries	0.00
Active and vested terminated members	17.03
Total Unfunded Actuarial Accrued Liability	17.03
Administrative Expenses	3.84
Total Unadjusted Computed Contribution	57.88
Adjustments to Computed Contribution	
FS 112.64(5) Compliance	0.00
Full funding credit	0.00
Total adjustments	0.00
Total Adjusted Contribution Requirement	57.88
Member portion	6.82
Chapter 175 portion (FY97/98 frozen dollars)	3.64
Additional Premium Tax Revenue	1.41
Town portion	46.01

(1) Please refer to page B-12 for a schedule of financing periods.

FS 112.64 requires that Town contributions be deposited not less frequently than quarterly. FS175.131 requires that Chapter 175 monies be deposited within 5 days of receipt from the State. Member contributions, which are in addition to the Public contributions, must be deposited immediately after each pay period.

Comparative contribution amounts for prior fiscal years are shown on page B-4.

Chapter 99-1, Laws of Florida Minimum Compliance and Extra Benefits – Chapter 175

	Prior Year			Cumulative		
	Premium Tax Distributions	Supplemental Compensation Fund	Total	Premium Tax Distributions	Supplemental Compensation Fund	Total
A. Additional premium tax revenues as of 9/30/08 after transfer		\$ -				
B. Chapter 175 receipts during fiscal year ending 9/30/09	\$ 417,905	\$ 103,396	521,301	\$3,872,033	\$ 2,147,359	\$6,019,392
C. Chapter 175 "frozen" receipts during fiscal year ending 9/30/09	201,787	50,247	252,034	2,219,657	502,470	2,722,127
D. Qualifying benefit improvements since Chapter 99-1 effective date			97,920			600,996
E. Additional premium tax revenues as of 9/30/2009 A + [B - C - D. not less than 0]			171,347 *			2,696,269

BENEFITS ADOPTED

Minimum Compliance

- A. 10 year certain & life normal form (\$6,738 per year).

Extra Benefits

- A. 3.25% multiplier, 20 & Out. (\$91,182 per year). 3.5% multiplier funded by Town.
- B. Share Accounts (excess per year, if any, over \$349,954).

* Transferred to Share Accounts and not included in the remainder of this report.

Determining Dollar Contributions

For any period of time, the percent-of-payroll contribution rate needs to be converted to dollar amounts. We recommend one of the following procedures.

Procedure (1). Contribute dollar amounts at the end of each payroll period which are equal to the Public percent-of-payroll contribution requirement multiplied by the covered active member payroll for the period. Adjustments should be made as necessary to exclude items of pay that are not covered compensation for Retirement System benefits and to include non-payroll amounts that are covered compensation.

Procedure (2). Contribute the annual amounts from the following schedule. Included in these amounts is the projected salary increase between the valuation date and the fiscal year in which the contribution will be made. The projection factor used was 1.083624, $(1.055^{1.5})$, which is consistent with the projection used to calculate actuarial liability.

Total Public Contribution Requirement	\$3,539,756
Chapter 175 Premium "frozen"	201,787
Chapter 175 Supplemental "frozen"	50,247
Funding from Add. Premium Tax Revenue	97,920
Base Town Contribution	\$3,189,802 *

The above amounts are assumed to be contributed, on average, halfway through the fiscal year. If contributions are made on a later schedule, interest should be added at the rate of 0.64% (.0064) for each month of delay.

* Chapter 175 Florida Statutes. The base Town contribution amount may need to be increased if the amount received under the provisions of Chapter 175, Florida Statutes, is not sufficient to meet the Total Public Contribution Requirement. CAUTION: If the amount received under the provisions of Chapter 175, Florida Statutes, exceeds \$349,954 during the fiscal year beginning October 1, 2010, the Town may NOT use any of the excess to reduce the Town contribution shown.

Recommended and Actual Contributions Comparative Statement

Fiscal Year	Valuation Date Sept. 30	Public Contributions
		<u>(Additional to Member Contributions)</u> % of Payroll Contributions *
77/78	1976	20.42 %
78/79 (a)	1977	23.59
79/80	1978	23.70
80/81	1979	23.95
81/82 (a)	1980	23.79
82/83 (a)	1981	23.35
83/84	1982	22.77
84/85	1983	22.46
85/86	1984	21.99
86/87 (a)	1985	22.23
87/88	1986	21.58
88/89 (a)	1987	23.35
89/90	1988	23.34
90/91	1989	22.84
91/92 (a)	1990	26.06
92/93	1991	27.17
93/94	1992	28.86
94/95 (a)	1993	29.73
95/96	1994	32.83
96/97 (a)	1995	35.45
97/98	1996	34.32
98/99	1997	32.40
99/00 (a)	1998	30.13
00/01 (a)	1999	26.48
01/02 (a)	2000	15.11
02/03 (a)	2001	22.36
03/04	2002	34.45
04/05	2003	36.75
05/06 (a)	2004	39.34
06/07 (a)	2005	45.97
07/08	2006	46.47
08/09	2007	44.86
09/10	2008	47.50
10/11	2009	51.06

(a) After changes in benefit provisions and/or actuarial assumptions and/or actuarial cost methods.

(b) Before changes in benefit provisions and/or actuarial assumptions and/or actuarial cost methods.

* Contributions were not calculated separately for Police and Fire prior to the 9/30/89 actuarial valuation.

Funding Progress Indicators

We believe an understanding of funding progress and status can be achieved using the following measures:

Indicator (1) **The actuarial present value of gains or losses realized in the operation of the Retirement System** - an experience indicator. Gains and losses are expected to cancel each other over a period of years (in the absence of double-digit inflation) but sizable year-to-year fluctuations are common. An experience gain can result from assets increasing in value by more than anticipated by the funding program, or by the actuarial accrued liability increasing by less than anticipated by the funding program, or by other favorable combinations of deviation from expected asset and liability changes. Further details on the derivation of the gain (loss) are shown on page B-7.

Indicator (2) **The ratio of the funding value of assets to the actuarial accrued liability** measured in accordance with GASB Statement No. 5 prior to the September 30, 1997 valuation and GASB Statement No. 25 beginning with the September 30, 1997 valuation. The ratio is expected to increase over time but the basic trend may be interrupted by changes in benefit provisions, actuarial assumptions, or methods.

Indicator (3) **The ratio of the unfunded actuarial accrued liability to active member payroll** - an inflation adjusted funding level indicator. In a soundly financed Retirement System, the amount of the unfunded actuarial accrued liability will be controlled and prevented from increasing in the absence of benefit improvements. However, in an inflationary environment it is seldom practical to impose this control on dollar amounts which are depreciating in value. The ratio is a relative index of condition where inflation is present in both items. The ratio is expected to decrease over time but the basic trend may be interrupted by changes in benefit provisions, actuarial assumptions, or methods.

Funding Progress Indicators - Historical Comparisons **(\$ amounts in thousands)**

Valuation Date September 30	Indicator (1)		Indicator (2)		Indicator (3)		
	Exper. Gain (Loss)	Funding Value of Assets	AAL	Funded Ratio	Unfunded AAL	Active Member Payroll	Ratio to Payroll
1986	\$ 919	\$ 27,651	\$32,706	85 %	\$ 5,055	\$ 8,856	57 %
1987 (a)	911	31,025	34,101	91	3,076	9,231	33
1988	131	34,191	37,397	91	3,206	9,706	33
1989	1,425	38,999	40,732	96	1,733	10,597	16
1990 (a)	(839)	42,663	48,527	88	5,864	11,556	51
1991	(756)	46,830	53,410	88	6,580	12,287	54
1992	(530)	51,470	58,398	88	6,928	12,712	54
1993 (a)	2,632	57,089	61,692	93	4,603	12,443	37
1994	674	62,651	66,474	94	3,823	12,415	31
1995 (a)	4,437	70,326	72,339	97	2,013	12,543	16
1996	3,707	78,929	77,327	102	(1,602)	13,382	--
1997 #	5,135	88,697	86,042	103	(2,655)	14,092	--
1998 (a)	4,961	99,939	92,703	108	(7,236)	14,549	--
1999 (a)	7,056	113,770	98,866	115	(14,904)	14,422	--
2000 (a)@	6,214	81,196	69,425	117	(11,771)	6,230	--
2001 (a)@	(3,133)	91,992	82,361	112	(9,631)	7,064	--
2002	(11,845)	86,446	88,991	97	2,545	7,769	33
2003	(3,088)	88,091	94,991	93	6,900	8,558	81
2004 (a)&	(1,587)	44,080	51,703	85	7,623	4,444	172
2005 (a)	(3,287)	45,765	59,314	77	13,548	5,237	259
2006	(290)	49,236	64,220	77	14,984	5,710	262
2007	3,038	54,723	67,027	82	12,304	5,573	221
2008	(864)	57,652	71,813	80	14,161	5,823	243
2009	(5,022)	57,852	78,139	74	20,287	6,398	317

(a) After changes in benefit provisions and/or actuarial assumptions and/or actuarial cost methods.

GASB Statement No. 25 basis.

@ Excludes General and Ocean Rescue members (shown in separate report beginning 9/30/2000).

& Excludes Police members (shown in separate report beginning 9/30/2004).

AAL represents actuarial accrued liability. Measured in accordance with GASB Statement No. 5 prior to 1997 and GASB Statement No. 25 beginning in 1997.

**Experience Gain/(Loss)
Year Ended September 30, 2009**

DERIVATION

(1) UAAL at start of year	\$14,160,537
(2) Employer Normal cost for year	2,164,932
(3) Employer contributions for defined benefits	2,709,281
(4) Interest accrued .08 x [(1) + 1/2 ((2)-(3))]	1,111,069
(5) Expected UAAL before changes (1) + (2) - (3) + (4)	14,727,257
(6) Effect of assumption changes	0
(7) Effect of cost method changes / accounting and timing differences	538,208
(8) Effect of benefit changes	0
(9) Addition to supplemental pension reserve	0
(10) Expected UAAL after changes	15,265,465
(11) Actual UAAL	20,287,269
(12) Gain/(loss) (10) - (11)	(5,021,804)

UAAL represents unfunded actuarial accrued liability.

Derivation of Funding Value of Retirement System Assets

Year Ended September 30:	2008	2009	2010	2011	2012
A. Funding Value Beginning of Year	\$54,722,895	\$57,652,278			
B. Market Value End of Year	49,729,313	48,209,802			
C. Market Value Beginning of Year	57,916,949	49,729,313			
D. Non-Investment Net Cash Flow	33,162	(651,462)			
E. Investment Income					
E1. Market Total: B - C - D	(8,220,798)	(868,049)			
E2. Amount for Immediate Recognition at 8.0%	4,379,158	4,586,124			
E3. Amount for Phased-In Recognition: E1 - E2	(12,599,956)	(5,454,173)			
F. Phased-In Recognition of Investment Income					
F1. Current Year: 0.20 x E3	-(2,519,991)	(1,090,835)			
F2. First Prior Year	573,963	(2,519,991)	\$ (833,678)		
F3. Second Prior Year	104,803	573,963	(2,519,991)	\$ (833,678)	
F4. Third Prior Year	225,510	104,803	573,963	(2,519,991)	\$ (833,678)
F5. Fourth Prior Year	132,778	225,508	104,802	573,961	(2,519,992)
F6. Adjustment to Recognize 20% Corridor	<u>0</u>	<u>(1,028,626)</u>	<u>0</u>	<u>0</u>	<u>0</u>
F7. Total Recognized Investment Gain/(Loss)	(1,482,937)	(3,735,178)	(2,674,904)	(2,779,708)	(3,353,670)
G. Accelerated Recognition of Investment Income	0	0	0	0	0
H. Funding Value End of Year: A + D + E2 + F7 Not to Exceed 120% of Market Value	57,652,278	57,851,762			
I. Difference between Market & Funding Value	(7,922,965)	(9,641,960)			
J. Recognized Rate of Return	5.29%	1.48%			
K. Recognized Rate of Investment Expenses	0.52%	0.26%			

The Funding Value of Assets recognizes assumed investment income (line E2) fully each year. Differences between actual and assumed investment income (line E3) are phased in over a closed 5-year period. During periods when investment performance exceeds the assumed rate, the Funding Value of Assets will tend to be less than Market Value. During periods when investment performance is less than the assumed rate, the Funding Value of Assets will tend to be greater than Market Value. If assumed rates are exactly realized for 4 consecutive years, it will become equal to Market Value.

Calculation of Supplemental Pension Distribution

Amount - Sec. 82-97 as of SEPTEMBER 30, 2009*

Factor (i): Actuarial present value of future payments to 85
fire pension recipients on 9/30/09 using 8%. \$41,966,550

Factor (ii): (a) Gross rate of investment return 10/1/08 through 9/30/09
estimated by actuary. If this rate is over 8%, the actual
rate used will be as determined by the Board's investment
consultant. (1.5)%

(b) Lesser of (a) and 10% (1.5)%

Preliminary Distribution Amount (prior to experience gain limitation):

Factor (i) x [(Factor (ii) - 8%) > 0] 0

Expenses:

Expense rate (administrative and investment) 0.805%

Preliminary Distribution Amount x Expense rate 0

Amount Available for Distribution:

(a) Unamortized Balances of Accumulated net experience
gains (page B-10) (25,366,833)

(b) Unamortized Balances of Accumulated distributions
@ (page B-10) 0

(c) Accumulated net gains less Accumulated distributions:
[(a) - (b)] > 0 0

(d) Amount available for distribution# 0

* Pensions are subject to automatic post-retirement cost-of-living adjustments.

@ This amount does not include the supplemental pension distribution, if any, for the current year.

The lesser of the Preliminary Distribution Amount less expenses and accumulated net gains less accumulated distributions.

Supplemental Pension Distribution Accumulated Gain/(Loss) Limitation

Year Ended September 30	Experience Gain/(Loss)*		Addition to Supplemental Pension Distribution Reserve		Net Unamortized Balance
	For Year	Unamortized Balance	For Year	Unamortized Balance	
2001	\$(1,885,924)	\$ (1,885,924)	\$ 0	\$ 0	\$ (1,885,924)
2002	(5,945,550)	(7,888,995)	0	0	(7,888,995)
2003	(1,908,839)	(10,036,116)	0	0	(10,036,116)
2004	(1,587,255)	(11,917,120)	0	0	(11,917,120)
2005	(3,286,941)	(15,541,592)	0	0	(15,541,592)
2006	(289,811)	(16,959,878)	0	0	(16,959,878)
2007	3,038,175	(15,885,596)	0	0	(15,885,596)
2008	(863,774)	(18,464,285)	0	0	(18,464,285)
2009	(5,021,804)	(25,366,833)	0	0	(25,366,833)

* All sources.

**Unfunded Actuarial Accrued Liability
as of September 30**

	<u>2009</u>	<u>2008</u>
A. Actuarial present value of future benefits	\$94,407,576	\$86,013,073
B. Actuarial present value of future normal costs	16,268,545	14,200,258
C. Actuarial accrued liability	78,139,031	71,812,815
D. Actuarial value of assets	57,851,762	57,652,278
E. Unfunded actuarial accrued liability	20,287,269	14,160,537
F. Funded ratio	74.0%	80.3%

Sources and Financing of Unfunded Actuarial Accrued Liability

Year Established	Initial Years	Years Remaining	Initial Amount	Current Amount	Amort. Factor	Contributions		FS112.64(c), Compliance
						Dollar	Percent of Payroll	
Initial Unfunded								
1981	37	9		\$ 3,665,610	8.114743	\$ 451,722	6.52 %	0.00 %
(Gain)/Loss Experience								
1981	30	2	\$ 37,256	18,446	1.953882	9,441	0.14	0.00
1982	30	3	282,654	199,817	2.897033	68,973	0.99	0.00
1983	30	4	165,232	146,065	3.818352	38,253	0.55	0.00
1984	30	5	(145,383)	(150,734)	4.718343	(31,946)	(0.46)	0.00
1985	30	6	(248,587)	(290,218)	5.597502	(51,848)	(0.75)	0.00
1986	30	7	(233,467)	(298,483)	6.456309	(46,231)	(0.67)	0.00
1987	30	8	(202,227)	(277,362)	7.295236	(38,020)	(0.55)	0.00
1988	30	9	(225,320)	(326,199)	8.114743	(40,198)	(0.58)	0.00
1989	30	10	(455,145)	(687,104)	8.915280	(77,070)	(1.11)	0.00
1990	30	11	385,923	601,510	9.697286	62,029	0.89	0.00
1991	30	12	476,404	760,503	10.461189	72,698	1.05	0.00
1992	30	13	779,775	1,302,180	11.207409	116,189	1.68	0.00
1993	30	14	(966,611)	(1,587,284)	11.936356	(132,979)	(1.92)	0.00
1994	30	15	35,481	60,300	12.648428	4,767	0.07	0.00
1995	30	16	(879,540)	(1,499,303)	13.344017	(112,358)	(1.62)	0.00
1996	30	17	(729,036)	(1,237,920)	14.023504	(88,275)	(1.27)	0.00
1997	30	18	(1,846,518)	(3,112,707)	14.687263	(211,932)	(3.06)	0.00
1998	30	19	(1,900,075)	(3,170,020)	15.335656	(206,709)	(2.98)	0.00
1999	30	20	(1,677,265)	(2,761,835)	15.969040	(172,949)	(2.49)	0.00
2000	30	21	(3,567,847)	(5,784,681)	16.587762	(348,732)	(5.03)	0.00
2001	30	22	1,885,924	3,003,949	17.192161	174,728	2.52	0.00
2002	30	23	5,945,550	9,284,532	17.782570	522,114	7.53	0.00
2003	30	24	1,908,839	2,916,950	18.359312	158,881	2.29	0.00
2004	30	25	1,587,255	2,369,605	18.922703	125,226	1.81	0.00
2005	30	26	3,286,941	4,786,440	19.473052	245,798	3.55	0.00
2006	30	27	289,811	316,007	20.010662	15,792	0.23	0.00
2007	30	28	(3,050,348)	(3,222,573)	20.535826	(156,924)	(2.26)	0.00
2008	30	29	863,774	890,119	21.048834	42,288	0.61	0.00
2009	30	30	5,021,804	5,021,804	21.549967	233,031	3.36	0.00
Benefit Changes								
1985	30	6	119,626	139,232	5.597502	24,874	0.36	0.00
1990	30	11	1,186,280	1,848,969	9.697286	190,669	2.75	0.00
1995	30	16	360,493	614,514	13.344017	46,052	0.66	0.00
1998	30	19	8,495	14,173	15.335656	924	0.01	0.00
1999	30	20	40,595	66,846	15.969040	4,186	0.06	0.00
2000	30	21	2,428,000	3,936,606	16.587762	237,320	3.42	0.00
2004	30	25	1,119,182	1,670,822	18.922703	88,297	1.27	0.00
2005	30	26	2,043,685	2,976,011	19.473052	152,827	2.20	0.00
Assumption/Method Changes								
1981	30	2	(59,995)	(30,149)	1.953882	(15,430)	(0.22)	0.00
1987	30	8	(689,072)	(945,091)	7.295236	(129,549)	(1.87)	0.00
1995	30	16	478,422	815,540	13.344017	61,117	0.88	0.00
2000	30	21	(1,084,054)	(1,757,618)	16.587762	(105,959)	(1.53)	0.00
Totals				\$ 20,287,269		\$ 1,181,087	17.03	0.00

Actuarial Balance Sheet -September 30, 2009

Present Resources and Expected Future Resources

A. Funding Value of System Assets:	
1. Net Assets from System Financial Statements (Market Value)	\$48,209,802
2. Funding Value Adjustment	<u>9,641,960</u>
3. Funding Value of Assets	57,851,762
B. Actuarial Present Value of Expected Future Employer Contributions:	
1. For Normal Costs	13,277,925
2. For Unfunded Actuarial Accrued Liability	<u>20,287,269</u>
3. Totals	33,565,194
C. Actuarial Present Value of Expected Future Member Contributions	<u>2,990,621</u>
D. Total Present and Expected Future Resources	<u><u>\$94,407,576</u></u>

Actuarial Present Value of Expected Future Benefit Payments and Reserves

A. To Retirants and Beneficiaries	\$46,211,418
B. To Vested Terminated Members	97,730
C. To Present Active Members:	
1. Allocated to Service Rendered Prior to Valuation Date	31,829,883
2. Allocated to Service likely to be Rendered After Valuation Date	<u>16,268,545</u>
3. Totals	48,098,428
D. Reserve for Additional Premium Tax Revenues	0
E. Reserve for Employer Contributions	0
F. Reserve for Supp. Pens. Dist. - 13th Check	0
G. Total Actuarial Present Value of Expected Future Benefit Payments	<u><u>\$94,407,576</u></u>

SECTION C

SUMMARY OF BENEFIT PROVISIONS AND
VALUATION DATA SUBMITTED BY THE
RETIREMENT SYSTEM

Summary of Benefit Provisions (September 30, 2009)

NORMAL RETIREMENT:

Eligibility - 20 or more years of service, regardless of age; or, age 50 with 10 or more years of service; or, members with at least 10 years of service who retire after 9/30/90 are eligible when the individual's age plus credited service totals 65 years or more.

Pension Amount -

Average final compensation multiplied by the greater of

- a) 3.5% per year of credited service to a maximum of 25 years, or
- b) 2.0% per year of credited service to a maximum of 50 years.

The normal form of pension is a pension payable for 10 years certain. Also, see Automatic Death Benefit After Retirement heading.

AVERAGE FINAL COMPENSATION:

Highest 2 consecutive years within the member's last 5 years of credited service.

DROP RETIREMENT:

Eligibility – Same as Normal Retirement, election must be made within 7 years of the date the member first reaches normal retirement eligibility.

Pension Amount – 100% of the member's accrued benefit at the date of election to participate in DROP.

DEFERRED RETIREMENT (VESTED TERMINATION BENEFIT):

Eligibility - 10 or more years of service. Pension begins upon meeting requirement for normal retirement. Contributions must be left on deposit in the System; failure to do so results in forfeiture of the vested benefit.

Pension Amount - Computed as for normal retirement, based upon service and average final compensation at time of termination.

DUTY DISABILITY RETIREMENT:

Eligibility - No age or service requirements.

Pension Amount - Computed as a regular retirement with additional service credit granted from date of disability to earliest normal retirement eligibility date. Minimum benefit is 60% of average final compensation.

NON-DUTY DISABILITY BEFORE RETIREMENT:

Eligibility - 10 or more years of service.

Pension Amount - Computed as for normal retirement.

DUTY DEATH BEFORE RETIREMENT:

Eligibility - No age or service requirements.

Pension Amount - A pension to each surviving child of 25% of the member's average final compensation not to exceed 50% or an equal share of 75% of the member's AFC when there are 4 or more surviving children being paid. A pension to the widow of the difference, if any, between 75% of the retirant's AFC and the aggregate amount paid to children for the month.

NON-DUTY DEATH BEFORE RETIREMENT:

Eligibility - 10 or more years of service.

Pension Amount - 75% of normal retirement benefit to a surviving spouse or equal shares of 75% of the normal retirement benefit to surviving unmarried children under 18.

AUTOMATIC DEATH AFTER RETIREMENT PENSION:

To Surviving Child(ren): 25% of the retirant's pension payable to age 18, not to exceed an equal share of 75% of the retirants pension. Payments to surviving children may be paid to age 25 if no spouse benefits are payable.

To Surviving Spouse: The difference, if any, between 75% of the deceased retirant's pension and the aggregate amount paid to any surviving children for the month.

POST-RETIREMENT COST-OF-LIVING ADJUSTMENTS:

Members who retire after 9-30-68 and prior to 10/1/90 receive an annual 1.0% increase computed on the base benefit. Other adjustments have been made periodically. Pensions effective after 9/30/90 will be increased 2.0% annually based on the total pension payable subsequent to an initial 3 year deferral period.

SUPPLEMENTAL PENSION DISTRIBUTION

Amount determined on investment return, if any, after expenses, between 8.0% and 10.0% of assets, subject to accumulated gains/(losses) limitation.

MEMBER CONTRIBUTIONS: 6.82% of Annual Compensation.

PREMIUM TAX MONIES: A distribution of casualty insurance premium tax monies collected by the State pursuant to Chapter 175 Florida Statute.

TOWN CONTRIBUTIONS: Actuarially determined amounts which together with member contributions and premium tax monies are sufficient to cover the requirements of the funding objective stated on page A-1.

FIREFIGHTER INDIVIDUAL CHAPTER SHARE ACCOUNTS: Available tax revenues received pursuant to Chapter 175 Florida Statute which have not been otherwise committed for members. Individual member accounts maintained in each member's name effective on or after 10/1/98.

PRIOR GOVERNMENTAL SERVICE ELSEWHERE: During the first five years of employment by the Town, the years or fractional parts of years that a member previously served for any other municipal, county, or state government or district may be added to years or fractional parts of years of credited service provided that the member contributes the sum that would have been contributed to the retirement plan to pay the full actuarial cost.

PURCHASE OF SERVICE CREDIT: A vested member who has not purchased service credit under Prior Governmental Service Elsewhere may purchase years or fractional parts of years of service to be added to years of credited service provided that the member contributes the sum that would have been contributed to the retirement plan to pay the full actuarial cost.

Summary of Assets

	<u>September 30, 2009</u>	<u>September 30, 2008</u>
Cash	\$ 2,010,134	\$ 5,432,870
Accrued interest and dividends	44,327	75,559
Other receivables	1,929,312	34,373
Investments		
- US government securities	2,318,261	2,920,223
- Corporate bonds and notes	5,359,680	6,814,793
- Domestic fixed income funds	3,953,475	1,980,251
- Common stock	4,978,552	6,332,015
- Equity funds	9,880,299	9,716,422
- Real estate funds	3,383,986	5,956,943
- Alternative investments	17,051,858	12,862,055
Accounts payable	(768,460) *	(685,393) **
Other	<u>(1,931,622) #</u>	<u>(1,710,798) ##</u>
Total Assets	\$48,209,802	\$49,729,313

* Includes DROP plan liabilities of \$733,049.

** Includes DROP plan liabilities of \$579,308.

Share Account assets of \$2,045,793 were excluded.

Share Account assets of \$2,049,424 were excluded.

Accounting Information Utilized for Valuation

Revenues and Expenditures

	<u>Year Ended 9-30-2009</u>	<u>Year Ended 9-30-2008</u>
Revenues:		
a. Member contributions	\$ 442,893	\$ 403,835
b. Town contributions	2,359,327	2,525,215
c. State contributions (Chapter 175)	349,954 *	349,954
d. Investment income		
1. Interest and dividends	382,003	1,317,788
2. Amortization of premiums/discounts	-	-
3. Gain or (loss)	(1,104,238)	(9,648,972)
e. Other - audit adjustment	-	-
f. Total revenues	<u>2,429,939</u>	<u>(5,052,180)</u>
Expenditures:		
a. Refunds of member contributions	-	4,270
b. Benefits paid	3,557,684	3,026,573
c. Supplemental pension distribution	-	-
d. Administrative expenses	245,952	214,999
e. Investment expenses	148,414	287,053
f. DROP & share account distributions/earnings	(2,600)	(397,439)
g. Total expenditures	<u>3,949,450</u>	<u>3,135,456</u>
Reserve Increase:		
Total revenues minus total expenditures	<u>\$ (1,519,511)</u>	<u>\$ (8,187,636)</u>

* Amounts received in excess of \$349,954 were excluded, as were the aggregate share account assets of \$2,045,793.

Accounting Information Submitted for Valuation

Reserve Accounts*

	<u>September 30, 2009</u>	<u>September 30, 2008</u>
Employees' contributions (Members' Saving Fund)	\$ 3,531,283	\$ 3,641,334
Employer contributions (Employer Reserve Fund)	(1,630,629)	3,753,950
Retired members and beneficiaries (Retirement Reserve Fund)	46,211,418	42,243,671
Inactive members (Deferred Retirement Fund)	<u>97,730</u>	<u>90,358</u>
Total	\$ 48,209,802	\$ 49,729,313

** After transfers in accordance with Section 82-82(b) of Retirement Ordinance (please refer to page A-3). All reserve accounts are available for funding.*

Retired Member and Beneficiary Data

Historical Schedule*

Year Ended Sept. 30	Number		Net Increase		End of Year		Average Pensions
	Added	Removed	No.	Annual Pensions	No.	Annual Pensions	
1981	11	6	5	\$ 128,569	124	\$ 816,114	\$ 6,582
1982	8	6	2	45,959	126	862,073	6,842
1983	6	3	3	42,198	129	904,271	7,010
1984	6	4	2	32,936	131	937,207	7,154
1985	15	5	10	166,787	141	1,103,994	7,830
1986	10	3	7	119,451	148	1,223,445	8,267
1987	7	2	5	72,350	153	1,295,794	8,469
1988	13	8	5	92,514	158	1,388,308	8,787
1989	9	6	3	142,425	161	1,530,733	9,508
1990	17	10	7	207,012	168	1,737,745	10,344
1991	7	5	2	145,915	170	1,883,660	11,080
1992	16	11	5	291,355	176	2,175,015	12,358
1993	11	8	3	159,198	179	2,334,213	13,040
1994	21	4	17	441,322	196	2,775,535	14,161
1995	15	8	7	199,472	203	2,975,006	14,655
1996	18	9	9	323,738	212	3,298,744	15,560
1997	13	13	0	127,873	212	3,426,617	16,163
1998	17	8	9	272,820	221	3,699,437	16,740
1999	15	7	8	455,698	229	4,155,135	18,145
2000	16	110 #	(94)	(861,467)	135	3,293,668	24,398
2001	12	9	3	215,455	138	3,509,123	25,428
2002	8	3	5	269,507	143	3,778,630	26,424
2003	1	2	(1)	100,315	142	3,878,945	27,317
2004	9	7	2	235,991	77	2,319,749	30,127
2005	2	0	2	247,973	79	2,567,722	32,503
2006	3	4	(1)	187,448	78	2,755,170	35,323
2007	6	5	1	254,745	79	3,009,915	38,100
2008	7	4	3	270,047	82	3,279,962	40,000
2009	6	3	3	316,610	85	3,596,572	42,313

* Prior to the September 30, 2000 valuation, general members were included. Prior to the September 30, 2004 valuation, police members were included.

Includes 107 general members.

Retired Members and Beneficiaries

Historical Comparison

Valuation Date**	% Incr. in Annual Pensions	No. of Active Per Retired	Pension Payroll as % of Active Payroll
9/30/1991	8.4 %	1.3	28.1 %
9/30/1992	15.5	1.3	28.3
9/30/1993	7.3	1.3	30.3
9/30/1994	18.9	1.1	39.2
9/30/1995	7.2	1.1	38.7
9/30/1996	10.9	1.1	41.8
9/30/1997	3.9	1.1	40.1
9/30/1998	8.0	1.0	45.7
9/30/1999	12.3	0.8	58.8
9/30/2000	(20.7)	0.8	65.2
9/30/2001	6.5	0.8	62.8
9/30/2002	7.7	0.7	62.1
9/30/2003	2.7	0.8	54.2
9/30/2004	(40.2)	0.9	52.2
9/30/2005	10.7	0.9	49.0
9/30/2006	7.3	0.9	48.3
9/30/2007	9.2	0.9	54.0
9/30/2008	9.0	0.9	56.3
9/30/2009	9.7	0.9	56.2

** Beginning with the 9/30/00 valuation, General and Ocean Rescue are reported in a separate report.
Beginning with the 9/30/04 valuation, Police is reported in a separate report.

Retired Member and Beneficiary Data as of September 30, 2009
By Type of Pension Being Paid

<u>Type of Benefit Being Paid</u>	<u>No.</u>	<u>Annual Benefit</u>
Age & Service Benefits		
Straight Life	5	\$ 157,972
10-Year Certain	17	944,290
Joint and Survivor Benefits - Regular	36	1,408,961
Surviving Beneficiaries	8	157,190
Total Age and Service Benefits	66	2,668,413
Duty Disability Benefits		
Straight Life	1	26,548
10-Year Certain	0	0
Joint and Survivor Benefits	1	44,567
Surviving Beneficiaries	0	0
Total Duty Disability Benefits	2	71,115
Non-Duty Disability Benefits		
Straight Life	1	16,537
10-Year Certain	3	117,365
Joint and Survivor Benefits	4	94,403
Surviving Beneficiaries	0	0
Total Non-Duty Disability Benefits	8	228,305
Death-In-Service Benefits		
Non-Duty Spouse	1	3,600
Total Death in Service Benefits	1	3,600
Active DROP Members	8	625,139
Totals	85	\$ 3,596,572

Retired Member and Beneficiary Data as of September 30, 2009
(Includes DROP Participants)
Tabulated by Attained Age

Attained Age	No.	Annual Pensions
40 - 44	1	\$ 85,710
45 - 49	8	602,091
50 - 54	15	918,253
55 - 59	12	469,701
60 - 64	11	504,073
65 - 69	16	500,405
70 - 74	8	274,037
75 - 79	5	143,258
80 - 84	4	42,558
85 - 89	4	52,886
90 - 94	1	3,600
Totals	85	\$3,596,572

Average Age at Retirement: 48.5 years

Average Age Now: 63.6 years

Vested Terminated Members as of September 30, 2009
Annual Estimated Pensions
Tabulated by Attained Age

Attained Age	No.	Annual Estimated Pensions
42	1	\$13,598
Totals	1	\$13,598

Active and Vested Terminated Members Included in Valuation

Valuation Date September 30	Active Members	Vested Terminated Members	Valuation Payroll	Average		
				Age	Service	Pay
1995	64	0	\$2,850,626	37.4 yrs.	11.3 yrs.	\$44,541
1996	66	0	2,962,735	37.0	10.5	44,890
1997	66	0	3,081,776	38.0	11.5	46,694
1998	62	0	2,980,932	38.2	12.1	48,080
1999	58	0	2,824,287	37.4	11.1	48,729
2000	56	0	2,785,352	37.3	10.9	49,738
2001	58	0	3,104,984	36.4	10.1	53,534
2002	56	2	3,314,457	36.9	10.3	59,187
2003	63	1	3,845,159	37.2	10.1	61,034
2004	67	1	4,443,846	37.4	9.4	66,326
2005	74	2	5,236,941	37.2	8.7	70,769
2006	74	2	5,709,684	37.7	9.1	77,158
2007	72	2	5,573,348	37.9	9.1	77,408
2008	73	1	5,822,885	37.9	9.3	79,766
2009	73	1	6,397,554	37.6	9.1	87,638

Number Added to and Removed from Active Membership

Year Ended Sept. 30	Number											Active
	Added	Retirement				Disability	Died-in-					Members
	During	A				Retirement	Service	Withdrawal				End of
	Year	DROP	Other	Totals	E	A	E	A	E	A	E	Year
2000	2	4		4	1.7		0.1		0.1		1.9	56
2001	6	1	1	2	2.1		0.1	2	0.1		1.8	58
2002	3	1		1	4.2	1	0.1		0.1	3	2.19	56
2003	8				6.3		0.1		0.1	1	2.0	63
2004	9	2	1	3	8.2		0.1		0.1	2	2.0	67
2005	11	1	1	2	7.0		0.1		0.1	2	3.0	74
2006	4	1	1	2	8.0		0.1		0.1	2	3.7	74
2007	5	3	0	3	8.2		0.1		0.1	4	3.3	72
2008	4	1	2	3	8.7		0.1		0.1		2.8	73
2009	5	3	1	4	9.4		0.1		0.1	1	2.7	73

A represents actual number.

E represents expected number.

Active Member Data as of SEPTEMBER 30, 2009

By Attained Age and Years of Service

Attained Age	Years of Service to Valuation Date							Totals	
	0-4	5-9	10-14	15-19	20-24	25-29	30 Plus	No.	Valuation Payroll
20-24	2							2	\$ 113,861
25-29	9	4						13	847,483
30-34	7	5	1					13	978,987
35-39	2	5	6	3				16	1,547,444
40-44	4	2	3	4	2			15	1,465,057
45-49		2	2	1	3			8	833,322
50-54		2	2	1	1			6	611,400
Totals	24	20	14	9	6			73	\$6,397,554

SECTION D

ACTUARIAL COST METHOD, ACTUARIAL
ASSUMPTIONS AND DEFINITIONS OF TECHNICAL
TERMS

Actuarial Cost Method

The actuarial cost method is a procedure for allocating the actuarial present value of benefits and expenses to time periods. The method used for your valuation is known as the individual entry-age actuarial cost method, and has the following characteristics:

- The annual normal cost for each individual active member is sufficient to accumulate the value of the member's pension at time of retirement or at DROP election, if earlier.
- Each annual normal cost is a constant percentage of the member's year-by-year projected pensionable compensation.

The entry-age actuarial cost method allocates the actuarial present value of each member's projected benefits on a level basis over the member's pensionable compensation between the entry-age of the member and the assumed active status exit ages.

The portion of the actuarial present value allocated to the valuation year is called the normal cost. The portion of the actuarial present value not provided for by the actuarial present value of future normal costs is called the actuarial accrued liability. Deducting accrued assets from the actuarial accrued liability determines the unfunded actuarial accrued liability. The unfunded actuarial accrued liability was financed as a level percent of active member payroll over varying periods of 2 to 30 years. Please refer to page B-12 for a schedule of financing periods.

The characteristics of this method of financing the unfunded actuarial accrued liability are shown on page D-2 using the single equivalent amortization periods.

Member payroll was assumed to increase 5.5% a year offset by members entering the DROP, for the purpose of determining the level percent contributions (except as required by F.S. 112.64 (5)). This estimate is consistent with the base rate of increase in salaries used to calculate actuarial present values. Expressing contributions, as on page B-1, as a percent of active member payroll excluding DROP members may cause fluctuations due to the level of participation in the DROP.

UAAL Amortization Schedule*

Investment Assumption 8.00%		Inflation Assumption 5.50%	
Year	Payroll	UAAL Balance	Payment
1	\$ 6,397,554	\$20,287,269	\$ 941,402
2	6,749,419	20,905,350	993,179
3	7,120,638	21,517,607	1,047,804
4	7,512,273	22,120,536	1,105,433
5	7,925,448	22,710,183	1,166,232
6	8,361,347	23,282,101	1,230,375
7	8,821,221	23,831,304	1,298,046
8	9,306,388	24,352,208	1,369,438
9	9,818,240	24,838,576	1,444,757
10	10,358,243	25,283,455	1,524,219
11	10,927,946	25,679,102	1,608,051
12	11,528,983	26,016,914	1,696,494
13	12,163,078	26,287,343	1,789,801
14	12,832,047	26,479,806	1,888,240
15	13,537,809	26,582,586	1,992,093
16	14,282,389	26,582,731	2,101,658
17	15,067,920	26,465,932	2,217,249
18	15,896,656	26,216,401	2,339,198
19	16,770,972	25,816,733	2,467,854
20	17,693,375	25,247,758	2,603,586
21	18,666,511	24,488,377	2,746,783
22	19,693,169	23,515,391	2,897,856
23	20,776,294	22,303,302	3,057,238
24	21,918,990	20,824,113	3,225,386
25	23,124,534	19,047,099	3,402,783
26	24,396,383	16,938,563	3,589,936
27	25,738,185	14,461,566	3,787,382
28	27,153,785	11,575,646	3,995,688
29	28,647,243	8,236,495	4,215,451
30	30,222,841	4,395,627	4,447,301
31	31,885,098	0	0

* This is an illustrative schedule assuming the unfunded liability is amortized over 30 years.

Actuarial Assumptions Used for the Valuation

Funding objective contribution requirements and actuarial present values are calculated by applying estimates of future Plan activities (actuarial assumptions) to the benefit provisions and people information of the System, using the actuarial cost method described on page D-1.

The principal areas of activity which require assumptions are:

- long-term rates of investment return to be generated by the assets of the System
- patterns of pay increases to members
- rates of mortality among members, retirants and beneficiaries
- rates of withdrawal of active members
- rates of disability among active members
- the age patterns of actual retirement

In a valuation, the monetary effect of each activity is calculated for as long as a present covered person survives - -
- a period of time which can be as long as a century.

Actual activities of the system will not coincide exactly with assumed activities due to the nature of the activities. Each valuation provides a complete recalculation of assumed future activities and takes into account the effect of differences between assumed and actual activities to date. The result is a continual series of adjustments (usually small) to the computed contribution rate.

From time-to-time one or more of the assumptions are modified to reflect experience trends (but not random or temporary year-to-year fluctuations).

The assumptions regarding the INVESTMENT RETURN rate, INFLATION rate, REAL INVESTMENT RETURN rate, and SALARY INCREASE rates were revised effective September 30, 1987. These assumptions are used, in combination with the other assumptions, to (i) determine the present value of amounts expected to be paid in the future and (ii) establish rates of contribution which are expected to remain relatively level as a percent of active member payroll.

INVESTMENT RETURN. 8% per annum compounded annually, net of investment expenses.

INFLATION. 5% per annum, compounded annually. This is the rate at which growth in the supply of money and credit is assumed to exceed growth in the supply of goods and services. It may be thought of as the rate of depreciation of the purchasing power of the dollar. There are a number of indices for measuring the inflation rate. The recent inflation rate, as measured by the Consumers Price Index, has been:

	Year Ended September 30					
	2009	2008	2007	2006	2005	Average for Period
Actual	(1.3%)	4.9%	2.8%	2.1%	4.7%	2.6%
Assumed	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%

REAL INVESTMENT RETURN. 3% per annum, compounded annually net of investment expenses. This is the rate of return assumed to be produced by investing a pool of assets in an inflation-free environment. Recent real investment return for the Retirement System has been:

	Year Ended September 30					
	2009	2008	2007	2006	2005	Average for Period
Total Rate of Return	1.5%	5.3%	11.3%	8.4%	5.4%	6.4%
less investment expenses	0.3	0.5	0.5	0.5	0.4	0.4
Net Rate of Return	1.2	4.8	10.8	7.9	4.0	6.0
less inflation rate	(1.3)	4.9	2.8	2.1	4.7	2.6
Net Real Rate of Return	2.5	(0.1)	8.0	5.8	0.3	3.3
Assumed Real Rate	3.0%	3.0%	3.0%	3.0%	3.0%	3.0%
Assumed Net Rate	8.0%	8.0%	8.0%	8.0%	8.0%	8.0%

The total investment return rate was computed using the approximate formula $i = I$ divided by $1/2 (A + B - I)$, where I is actual realized investment income plus market value adjustments, A is the beginning of year asset value, and B is the end of year asset value.

The preceding investment return rates reflect the particular characteristics of this Retirement System and should not be used to measure an investment advisor's performance or for comparison with other retirement systems. Such use will usually mislead.

SALARY INCREASES. Employee salaries are assumed to increase between the date of hire and date of retirement or DROP election, if earlier. Salary increases occur in recognition of (i) individual merit and seniority, (ii) inflation-related depreciation of the purchasing power of salaries, and (iii) competition from other employers for personnel. A schedule of assumed rates of increase in individual salaries for sample ages follows:

Attributable to:	Annual Rates of Salary Increase for Sample Ages				
	20	30	40	50	60
Merit & Seniority	3.8 %	2.7 %	2.1 %	1.1 %	0.2 %
General Increase in Wage Level Due to:					
Inflation	5.0	5.0	5.0	5.0	5.0
Other Causes	0.5	0.5	0.5	0.5	0.5
Totals	9.3 %	8.2 %	7.6 %	6.6 %	5.7 %

A schedule of recent salary change experience, as measured by average reported pay, follows:

	Year Ended September 30					Average 10-Year
	2009	2008	2007	2006	2005	
% Change: Actual*	16.1 %	6.5 %	3.0 %	10.8 %	15.2 %	
Assumed	7.7	7.7	7.7	7.7	7.8	
% Change in Total Payroll	9.9	2.0	(2.4)	9.0	17.8	9.7 %

* Based on members who were active throughout the year.

In order to achieve the funding objective of a contribution rate which remains level as a percent-of-payroll, the total rate of investment return must exceed the rate of average increase in salaries by an amount equal to the assumed real investment return rate. The following schedule illustrates the recent history of the relationship between total investment return and average pay changes.

	Year Ended September 30					Average 5-Year
	2009	2008	2007	2006	2005	
Net Rate of Investment Return	1.5%	5.3%	11.3%	8.4%	5.4%	6.4%
Rate of Change in Average Pay	16.1	6.5	3.0	10.9	15.2	10.3
Difference: Actual	(14.6)	(1.2)	8.3	(2.5)	(9.8)	(4.0)
Target	3.0	3.0	3.0	3.0	3.0	3.0

MORTALITY TABLE. The 1983 Group Annuity Mortality Table, set back 6 years for females.

Sample Ages	Value of		Future Life	
	\$1 Monthly for Life		Expectancy (Years)	
	Men	Women	Men	Women
50	\$132.10	\$139.24	29.18	34.68
55	124.57	133.42	24.82	30.08
60	115.04	126.21	20.64	25.68
65	103.26	117.13	16.69	21.46
70	90.18	105.77	13.18	17.45
75	76.40	92.85	10.15	13.84
80	62.65	79.21	7.64	10.72

This assumption is used to measure the probabilities of members dying before retirement and the probabilities of each benefit payment being made after retirement.

RATES OF SEPARATION FROM ACTIVE MEMBERSHIP. The rates do not apply to members eligible to retire and do not include separation on account of death or disability. This assumption measures the probabilities of active members remaining in employment.

Sample Ages	Years of Service	Percent Separating Within Next Year
ALL	0	15.00 %
	1	10.00
	2	8.00
	3	7.00
	4	6.00
20	5 & Over	5.00
25		5.00
30		4.50
35		3.55
40		1.45
45		0.75
50		0.75
55		0.75
60		--

RATES OF DISABILITY. This assumption measures the probabilities of active members becoming disabled.

Sample Ages	Percent Becoming Disabled Within Next Year	
	Men	Women
20	0.07 %	0.03 %
25	0.09	0.05
30	0.10	0.07
35	0.14	0.13
40	0.21	0.19
45	0.32	0.28
50	0.52	0.45
55	0.92	0.76
60	1.53	1.10
65	1.65	0.98

The mortality table was set forward 10 years from the age at disability projecting disability costs. 50% of Firefighters disabilities were assumed to be duty related.

RATES OF RETIREMENT. This assumption measures the probabilities of eligible members retiring or electing DROP during the next year.

<u>Age & Service</u>		<u>Rule of 65</u>		<u>Service Based</u>	
<u>Retirement</u>	<u>Percent</u>	<u>Age Plus</u>	<u>Percent</u>	<u>Service</u>	<u>Percent</u>
<u>Ages</u>	<u>Retiring</u>	<u>Service</u>	<u>Retiring</u>	<u>Based</u>	<u>Retiring</u>
50	70%	65	70%	20	70%
51	70	66	70	21	70
52	70	67	70	22	70
53	70	68	70	23	70
54	70	69	70	24	70
55	100	70	100	25	100
56					
57					
58					
59					
60					

**Summary of Assumptions Used
September 30, 2009
Miscellaneous and Technical Assumptions**

VESTED MEMBERS who terminate with a benefit worth less than 100% of their own accumulated contributions were assumed to elect a refund and forfeit their vested benefit.

ADMINISTRATIVE EXPENSES are reimbursed on a retrospective basis by an addition to the Town contribution rate.

ACTIVE MEMBER GROUP SIZE. The number of active members was assumed to remain constant. This is unchanged from previous valuations.

EARNINGS reported for actuarial valuation include all amounts included in average earnings for benefit purposes. Non-recurring amounts were excluded for purposes of projected future earnings.

INVESTMENT EXPENSES are an offset against total investment income.

MARRIAGE PROPORTION: 90% of active members who meet the age and service requirements for pre-retirement survivor benefits are assumed to be married. In each case the male was assumed to be 3 years older than the female.

LUMP SUM PAYMENTS for unused accumulated leave time are excluded in determining pension amounts pursuant to the Town of Palm Beach Code of Ordinances.

PAY INCREASE TIMING. Beginning of (Fiscal) year. This is equivalent to assuming that reported pays represent amounts paid to members during the year ended on the valuation date.

DECREMENT TIMING. Decrements of all types are assumed to occur mid-year.

ELIGIBILITY TESTING. Eligibility for benefits is determined based upon the age nearest birthday and service nearest whole year on the date the decrement is assumed to occur.

BENEFIT SERVICE. Exact fractional service is used to determine the amount of benefit payable.

DECREMENT RELATIVITY. Decrement rates are used directly, without adjustment for multiple decrement table effects.

DECREMENT OPERATION. Disability and mortality decrements do not operate during the first 5 years of service. Disability and withdrawal do not operate during retirement eligibility.

NORMAL FORM OF BENEFIT. The assumed normal form of benefit is 75% joint & survivor for married members and the 10 year certain form for single members.

LOADS. None.

INCIDENCE OF CONTRIBUTIONS. Contributions are assumed to be received continuously throughout the year based upon the computed percent of payroll shown in this report, and the actual payroll payable at the time contributions are made. New entrant normal cost contributions are applied to the funding of new entrant benefits.

Definitions of Technical Terms

ACCRUED SERVICE. Service credited under the System which was rendered before the date of the actuarial valuation.

ACTUARIAL ACCRUED LIABILITY. The difference between the actuarial present value of future benefit payments and the actuarial present value of future normal costs. Also referred to as "accrued liability" or "past service liability."

ACTUARIAL ASSUMPTIONS. Estimates of expected future experience with respect to rates of mortality, disability, separation, retirement, rate or rates of investment income and salary increases. Decrement estimates (rates of mortality, disability, separation and retirement) are generally based on past experience, often modified for projected changes in conditions. Economic estimates (salary increases and investment income) consist of the underlying rates in an inflation-free environment plus a provision for a long-term average rate of inflation.

ACTUARIAL COST METHOD. A mathematical budgeting procedure for allocating the dollar amount of the "actuarial present value of future benefit payments" between future normal cost and actuarial accrued liabilities. Sometimes referred to as the "actuarial valuation cost method."

ACTUARIAL EQUIVALENT. A single amount or series of amounts of equal actuarial present value to another single amount or series of amounts, computed on the basis of appropriate actuarial assumptions.

ACTUARIAL PRESENT VALUE. The amount of funds currently required to provide a payment or series of payments in the future. It is determined by discounting future payments at predetermined rates of interest, and by probabilities of payment. Also referred to as "present value."

AMORTIZATION. Paying off an interest-discounted amount with periodic payments of interest and principal -- as opposed to paying it off with a lump sum payment.

EXPERIENCE GAIN (LOSS). The difference between actual actuarial costs and assumed actuarial costs -- during the period between two valuation dates.

FUNDING VALUE OF ASSETS. Also referred to as actuarial value of assets, smoothed market value of assets, or valuation assets.

Valuation assets recognize assumed investment return fully each year. Differences between actual and assumed investment return are phased in over a closed 5-year period. During periods when investment performance exceeds the assumed rate, valuation assets will tend to be less than market value. During periods when investment performance is less than the assumed rate, valuation assets will tend to be greater than market value. If assumed rates are exactly realized for 4 consecutive years, valuation assets will become equal to market value.

NORMAL COST. The actuarial cost allocated to the current year by the actuarial cost method. Sometimes referred to as "current service cost."

UNFUNDED ACTUARIAL ACCRUED LIABILITIES. The difference between actuarial accrued liabilities and the actuarial value of System assets. Sometimes referred to as "unfunded past service liability," "unfunded accrued liability" or "unfunded supplemental present value."

Most retirement systems have unfunded actuarial accrued liability. It arises each time new benefits are added and each time an experience loss is realized.

The existence of unfunded actuarial accrued liability is not in itself bad, any more than a mortgage on a house is bad. Unfunded actuarial accrued liability does not represent a debt that is payable today. What is important is the ability to control the amount of unfunded actuarial accrued liability and the trend in its amount (after due allowance for devaluation of the dollar).

SECTION E

CERTAIN DISCLOSURES REQUIRED BY STATEMENT NO. 25 OF THE GOVERNMENTAL ACCOUNTING STANDARDS BOARD

This information is presented in draft form for review by the System's auditor. Please let us know if there are any items that the auditor changes so that we may maintain consistency with the System's financial statements.

GASB Statement No. 25
Required Supplementary Information
(\$ Amounts in Thousands)

Schedule of Funding Progress*

Actuarial Valuation Date Sept. 30	Actuarial Value of Assets	Actuarial Accrued Liability (AAL) -- Entry-Age--	Funded Ratio	Unfunded AAL (UAAL)	Covered Payroll	UAAL as a % of Covered Payroll
1999 (a)	\$113,770	\$98,866	115.1 %	(\$14,904)	\$14,422	- %
2000 (a)	81,196	69,425	117.0	(11,771)	6,230	-
2001 (a)	91,992	82,361	111.7	(9,631)	7,064	-
2002	86,446	88,991	97.1	2,545	7,769	32.8
2003	88,091	94,991	92.7	6,900	8,558	80.6
2004 (a)	44,080	51,703	85.3	7,623	4,444	171.5
2005 (a)	45,765	59,314	77.2	13,549	5,237	258.7
2006	49,236	64,220	76.7	14,984	5,710	262.4
2007	54,723	67,027	81.6	12,304	5,573	220.8
2008	57,652	71,813	80.3	14,161	5,823	243.2
2009	57,852	78,139	74.0	20,287	6,398	317.1

Schedule of Employer Contributions*

Fiscal Year Ending Sept. 30	Contribution Rates as Percents of Valuation Payroll	Computed Dollar Contribution Based on Projected Payroll#	Actual Dollar Contribution	Percentage Contributed
2003 (a)	20.67 %	\$1,582	\$1,347	100.00 %
2004	32.32	2,721	2,510	100.00
2005	34.73	1,531	1,466	100.00
2006 (a)	39.34	1,796	1,701	100.00
2007 (a)	45.97	2,609	2,610	100.00
2008	46.47	2,875	2,875	100.00
2009	44.86	2,709	2,709	100.00
2010	47.50	2,997		
2011	51.06	3,540		

(a) After changes in benefit provisions and/or actuarial assumptions and/or actuarial cost methods.

* Beginning with valuation date September 30, 2000, excludes General and Ocean Rescue members.

Beginning with valuation date September 30, 2004, excludes Police members.

In years where the computed contribution exceeds the actual contribution, the difference was funded by the Reserve for Employer Contributions.

GASB Statement No. 25

Required Supplementary Information

The information presented in the required supplementary schedules was determined as part of the actuarial valuations at the dates indicated. Additional information as of the latest actuarial valuation follows:

Valuation date	September 30, 2009
Actuarial cost method	Entry-Age
Amortization method	Level percent of payroll
Remaining amortization period*	2 - 30 years
Asset valuation method	5-year smoothed market
Actuarial assumptions	
Investment rate of return	8.00%
Projected salary increases	9.8% to 6.2%
Includes inflation and other general increases at	5.5%
Cost-of-living adjustments	Members who retire after 9-30-68 and prior to 10-1-90 receive an annual 1.0% increase computed on the base benefit. Members after 9-30-90 will be increased 2.0% annually based on total pension after a 3 year deferral period. Other adjustments have been made periodically.

Membership of the plan consisted of the following at September 30, 2009, the date of the latest actuarial valuation:

Retirees and beneficiaries receiving benefits	85
Terminated plan members entitled to but not yet receiving benefits	1
Active plan members	
Vested	29
Non-vested	44
Totals	159

* The periods are in compliance with Florida Statutes and Actuarial Standards of Practice.

SECTION F

STATE REQUIRED DATA

Actuarial Present Value of Accrued Benefits **(\$ Amounts in Thousands)**

	<u>September 30, 2009</u>	<u>September 30, 2008</u>
(i) Actuarial present value of active member benefits:		
Service retirement	\$45,357	\$41,277
Vested termination benefits	1,365	1,192
Disability retirement	708	617
Survivor benefits (pre-retirement)	494	436
Termination benefits - refunds	174	157
Totals	<u>48,098</u>	<u>43,679</u>
(ii) Actuarial present value of terminated vested members	98	90
(iii) Actuarial present value of retired member & beneficiary	46,211	42,244
(iv) Reserves	0	0
(v) Total actuarial present value of future benefit payments	94,408	86,013
(vi) Present value of active member future payroll	43,851	38,316
(vii) Present value of future active member contributions	2,991	2,613
(viii) Active member accumulated contributions	3,531	3,641
(ix) Actuarial accrued liability using projected unit credit funding method	75,850	69,867

Summary of Valuation Results in State Format (\$ Amounts in thousands)

	<u>September 30, 2009</u>	<u>September 30, 2008</u>
Actuarial Present Value of Accrued Benefits (calculated in accordance with FASB Statement No. 35)		
(i) Vested accrued benefits		
Retired members and beneficiaries	\$46,211	\$42,244
Terminated members	98	90
Active members (includes non-forfeitable accum. member contributions)	<u>7,866</u>	<u>7,762</u>
Total	<u>54,175</u>	<u>50,095</u>
(ii) Non-vested accrued benefits	<u>3,173</u>	<u>2,681</u>
(iii) Total actuarial p.v. of accrued benefits	<u>57,348</u>	<u>52,776</u>
(iv) Actuarial p.v. of accrued benefits at begin. of year	52,776	60,142
(v) Changes attributable to:		
Amendments	-	-
Assumption change	-	-
Operation of decrements	8,130	(4,339)
Benefit payments	(3,558)	(3,027)
Expenses	<u>-</u>	<u>-</u>
(vi) Net change	<u>4,572</u>	<u>(7,366)</u>
(vii) Actuarial p.v. of accr. benefits at end of year	57,348	52,776

Reconciliation of Membership Data

A. Active Members

1. Number Included in Last Valuation	73
2. New Members Included in Current Valuation	5
3. Non-Vested Employment Terminations	
4. Vested Employment Terminations	(1)
5. Service Retirements	(1)
6. DROP Retirements	(3)
7. Disability Retirements	
8. Deaths	
9. Other (Transfer)	
10. Number Included in this Valuation	<u>73</u>

B. Terminated Vested Members

1. Number Included in Last Valuation	1
2. Additions from Active Members	
3. Lump Sum Payments	
4. Payments Commenced	
5. Deaths	
6. Other	
7. Number Included in this Valuation	<u>1</u>

C. Service Retirees, Disability Retirees and Beneficiaries

1. Number Included in Last Valuation	82
2. Additions from Active Members	4
3. Additions from Terminated Vested Members	
4. Removed (Deaths, Benefit Termination, Data Corrections)	(3)
5. Added (Beneficiaries/Data Corrections)	<u>2</u>
6. Number Included in this Valuation	85

**Number Eligible/Number Electing Normal Retirement
During Year Ended September 30, 2009**

Age	Number Eligible	Number Electing Normal Retirement	
		DROP	Regular
40	1		
41	1		
45	2		
46	1		
47	1	1	
48	3	1	1
51	3	1	
52	2		
Totals	14	3	1



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May 13, 2010

Mr. William P. Hanes
Pension Administrator
William P. Hanes Consulting, Inc.
249 Royal Palm Way, Room 301
Palm Beach, Florida 33480

Dear Bill:

Please find enclosed fifteen copies of the Sixty-Third Annual Actuarial Valuation report of the Town of Palm Beach Firefighters Retirement System.

One copy should be sent, within 60 days to:

Department of Management Services
Division of Retirement
Bureau of Program Services
P.O. Box 9000
Tallahassee, Florida 32315-9000

Sincerely,

Brad Lee Armstrong
ASA, EA, MAAA

BLA:mrh

Enclosures

cc: Goldstein Schechter Koch

Goldstein Schechter Koch
4000 Hollywood Blvd., Suite 215
South Hollywood, FL 33021

ADVANCE COPY: Embargoed for release until 10 am ET on Thursday, January 20, 2011

MISUNDERSTANDINGS REGARDING STATE DEBT, PENSIONS, AND RETIREE HEALTH COSTS CREATE UNNECESSARY ALARM

Misconceptions Also Divert Attention from Needed Structural Reforms

By Iris J. Lav and Elizabeth McNichol

Summary

A spate of recent articles regarding the fiscal situation of states and localities have lumped together their *current* fiscal problems, stemming largely from the recession, with *longer-term* issues relating to debt, pension obligations, and retiree health costs, to create the mistaken impression that drastic and immediate measures are needed to avoid an imminent fiscal meltdown.

The large operating deficits that most states are projecting for the 2012 fiscal year, which they have to close before the fiscal year begins (on July 1 in most states), are caused largely by the weak economy. State revenues have stabilized after record losses but remain 12 percent below pre-recession levels, and localities also are experiencing diminished revenues. At the same time that revenues have declined, the need for public services has increased due to the rise in poverty and unemployment. Over the past three years, states and localities have used a combination of reserve funds and federal stimulus funds, along with budget cuts and tax increases, to close these recession-induced deficits. While these deficits have caused severe problems and states and localities are struggling to maintain needed services, this is a cyclical problem that ultimately will ease as the economy recovers.

Unlike the projected operating deficits for fiscal year 2012, which require near-term solutions to meet states' and localities' balanced-budget requirements, longer-term issues related to bond indebtedness, pension obligations, and retiree health insurance — discussed more fully below — can be addressed over the next several decades. It is not appropriate to add these longer-term costs to projected operating deficits. Nor should the size and implications of these longer-term costs be exaggerated, as some recent discussions have done. Such mistakes can lead to inappropriate policy prescriptions.

Bond Indebtedness

Some observers claim that states and localities have run up huge bond indebtedness, in part to finance operating costs, and that there is a high risk that a number of local governments will default on their bonds. Both claims are greatly exaggerated.

- States and localities have issued bonds almost exclusively to fund infrastructure projects, not finance operating costs, and while the amount of outstanding debt has increased slightly over the last decade it remains within historical parameters. Recently, the Build America Bond provisions of the Recovery Act encouraged borrowing for infrastructure building as a way to improve employment; these bonds can only be used to finance infrastructure.
- Interest payments on state and local bonds generally absorb just 4 to 5 percent of current expenditures — no more than they did in the late 1970s.
- Municipal bond defaults have been extremely rare; the three rating agencies calculate the default rate at *less than one-third of 1 percent*.¹ Between 1970 and 2009, only four defaults were from cities or counties. Most defaults are on non-general obligation bonds to finance the construction of housing or hospitals and reflect problems with those individual projects; they provide no indication of the fiscal health of local governments.
- While some have compared the state and local bond market to the mortgage market before the bubble burst, the circumstances are very different. There is no bubble in state and local bonds, nor are there exotic securities that hide the underlying value of the asset against which bonds are being issued (as was the case with subprime mortgage bonds). Most experts in state and local finance do not expect a major wave of defaults. For example, a Barclays Capital December 2010 report states, “Despite frequent media speculation to the contrary, we do not expect the level of defaults in the U.S. public finance market to spiral higher or even approach those in the private sector.”

Pension Obligations

Some observers claim that states and localities have \$3 trillion in unfunded pension liabilities and that pension obligations are unmanageable, may cause localities to declare bankruptcy, and are a reason to enact a federal law allowing states to declare bankruptcy. Some also are calling for a federal law to force states and localities to change the way they calculate their pension liabilities (and possibly to change the way they fund those liabilities as well). Such claims overstate the fiscal problem, fail to acknowledge that severe problems are concentrated in a small number of states, and often promote extreme actions rather than more appropriate solutions.

- State and local shortfalls in funding pensions for future retirees have gradually emerged over the last decade principally because of the two most recent recessions, which reduced the value of assets in those funds and made it difficult for some jurisdictions to find sufficient revenues to

¹ Chris Hoene, “Crying Wolf about Municipal Defaults,” National League of Cities blog, December 22, 2010, <http://citiesspeak.org>.

make required deposits into the trust funds. Before these two recessions, state and local pensions were, in the aggregate, funded at 100 percent of future liabilities.

- A debate has begun over what assumptions public pension plans should use for the “discount rate,” which is the interest rate used to translate future benefit obligations into today’s dollars. The discount rate assumption affects the stated future liabilities and may affect the required annual contributions. The oft-cited \$3 trillion estimate of unfunded liabilities calculates liabilities using what is known as the “riskless rate,” because the pension obligations themselves are guaranteed and virtually riskless to the recipients. In contrast, standard analyses based on accepted state and local accounting rules, which calculate liabilities using the historical return on plans’ assets, put the unfunded liability at about a quarter of that amount, a more manageable (although still troubling) \$700 billion.
- Economists generally support use of the riskless rate in valuing state and local pension liabilities because the constitutions and laws of most states prevent major changes in pension promises to current employees or retirees; they argue that definite promises should be valued as if invested in financial instruments with a guaranteed rate of return. However, state and local pension funds historically have invested in a diversified market basket of private securities and have received average rates of return much higher than the riskless rate. And economists generally are not arguing that the investment practices of state and local pension funds should change.
- A key point to understand is that the two issues of how states and localities should value their pension liabilities and how much they should contribute to meet their pension obligations are not the same. The \$3 trillion estimate of unfunded liabilities does not mean that states and localities should have to contribute that amount to their pension funds, since the funds very likely will earn higher rates of return over time than the Treasury bond rate, which will result in pension fund balances adequate to meet future obligations without adding the full \$3 trillion to the funds. In fact, two of the leading economists who advocate valuing state pension fund assets at the riskless rate have observed, “...the question of optimal funding levels...is entirely separate from the valuation question.”² The required contributions to state and local pension funds should reflect not just on an assessment of liabilities based on a riskless rate of return, but also the expected rates of return on the funds’ investments, as well as other practical considerations. As a result, it is mistaken to portray the current pension fund shortfall as an unfunded liability so massive that it will lead to bankruptcy or other such consequences.
- States and localities devote an average of 3.8 percent of their operating budgets to pension funding.³ In most states, a modest increase in funding and/or sensible changes to pension eligibility and benefits should be sufficient to remedy underfunding. (The \$700 billion figure implies an increase on average from 3.8 percent of budgets to 5 percent of budgets, if no other changes are made to reduce pension costs.⁴) However, in some states that have grossly underfunded their pensions in past years and/or granted retroactive benefits without funding

² Robert Novy-Marx and Joshua Rauh, “Public Pension Promises: How Big Are They and What Are They Worth?” *Journal of Finance*, forthcoming (posted October 8, 2010 on Social Science Research Network), p. 5.

³ Data are for 2008, the most recent year available from Census.

⁴ Alicia H. Munnell, Jean-Pierre Aubry, and Laura Quinby, *The Impact of Public Pensions on State and Local Budgets*, Center for Retirement Research at Boston College, October 2010.

them — Illinois, New Jersey, Pennsylvania, Colorado, Kentucky, Kansas, and California, for example — additional measures are very likely to be necessary.

- States and localities have managed to build up their pension trust funds in the past without outside intervention. They began pre-funding their pension plans in the 1970s, and between 1980 and 2007 accumulated more than \$3 trillion in assets. There is reason to assume that they can and will do so again, once revenues and markets fully recover.
- States and localities have the next 30 years in which to remedy any pension shortfalls. As Alicia Munnell, an expert on these matters who directs the Center for Retirement Research at Boston College, has explained, “even after the worst market crash in decades, state and local plans do not face an immediate liquidity crisis; most plans will be able to cover benefit payments for the next 15-20 years.”⁵ States and localities do not need to increase contributions immediately, and generally should not do so while the economy is still weak and they are struggling to provide basic services.

Retiree Health Insurance

Observers claiming that states and localities are in dire crisis typically add to unfunded pension liabilities about \$500 billion in unfunded promises to provide state and local retirees with continued health coverage. These promises are of a substantially different nature than pensions, however, so it is inappropriate to simply add the two together.

- While pension promises are legally binding, backed by explicit state constitutional guarantees in some states and protected by case law in others, *retiree health benefits generally are not*. States and localities generally are free to change any provisions of the plans or terminate them entirely.
- States’ retiree health benefit plans differ widely. For example, 14 states pay the entire premium for retirees participating in the health plan, while 14 other states require retirees to pay the entire premium. States clearly have choices in the provision of retiree health benefits.
- With health care costs projected to continue to grow faster than GDP and faster than state and local revenues, it is highly likely that current provisions for retiree health insurance will be scaled back. Many states are likely to decide that their plans are unaffordable.
- This would be a good time for states and localities offering the more generous plans to decide whether they want to maintain *and fund* these liabilities, or whether they want to substantially reduce their liabilities by changing the provisions of their plans.

Given the different origins, scope, and potential solutions to problems in each of these areas, calls for a “global” solution — such as recent proposals to allow states to declare bankruptcy⁶ or to limit

⁵ Alicia H. Munnell, Jean-Pierre Aubry, and Laura Quinby, “Public Pension Funding in Practice,” NBER Working Paper 16442, October 2010.

⁶ See, for example, David Skeel, “Give States a Way to Go Bankrupt,” *The Weekly Standard*, November 29, 2010, http://www.weeklystandard.com/articles/give-states-way-go-bankrupt_518378.html and Grover G. Norquist and Patrick Gleason, “Let States Go Bankrupt,” *Politico*, December 24, 2010.

their ability to issue tax-exempt bonds unless they estimate pension liabilities using a riskless discount rate — make little sense in the real world of state and local finances.⁷ Indeed, some proposed solutions could *worsen* states' long-term fiscal picture by undermining their ability to invest in infrastructure and meet their residents' needs for education, health care, and human services. What are needed are targeted solutions that are appropriate to each state and to the nature of its fiscal problems.

State Structural Deficits

Moreover, the confusion between short-term cyclical deficits and debt, pensions, and retiree health insurance — and the overstatement of the magnitude of the latter set of problems — draw attention away from the need to modernize state and local budget and revenue systems and address structural problems that have built up over time in these systems.

States suffer from “structural deficits,” or the failure of revenues to grow as quickly as the cost of services during healthy economic times; this makes it difficult for states to continue meeting their responsibilities each year. Structural deficits stem largely from out-of-date tax systems, coupled with costs that rise faster than the economy in areas such as health care. Fixing these structural problems would help states and localities balance their operating budgets without resort to one-time measures or gimmicks. It would also help states rebuild their rainy day funds before the next recession and meet critical needs for infrastructure investment and adequate funding of pension obligations. It is far more constructive to focus on fixing these basics of state and local finance than to proclaim a crisis based on exaggerations of imminent threats.

Projected Operating Deficits

Most states and localities have experienced unprecedented projected operating deficits — which their balanced-budget rules require them to close — in this recession and its aftermath. State revenues are 12 percent below pre-recession levels, and localities also are experiencing diminished revenues. There simply are few good choices for meeting state and local balanced-budget requirements during an economic downturn this long and this deep.

The unemployment rate is close to a post-World War II high and remains stubbornly elevated 15 months after the official end of the recession. There were 7.4 million fewer people employed in December 2010 than there were prior to the recession, and many workers who are employed have found only part-time work or work at lower wages.⁸ When residents lose jobs and incomes they pay less in state income taxes, and the drop in consumption reduces state and local sales and excise tax revenues. The weak housing market also is placing downward pressure on local property taxes and sales taxes.

⁷ A bill proposed by House of Representative members Paul Ryan, Darrell Issa, and Devin Nunes (H.R. 6484 in the 111th Congress) would require states and localities to report pension liabilities to the federal government using U.S. Treasury Bond rates to discount liabilities as a condition of issuing tax-exempt bonds.

⁸ Seasonally adjusted employment of 139.206 million in December, 2010 compared to 146.584 million in November, 2007. Bureau of Labor Statistics, “Labor Force Statistics from the Current Population Survey,” extracted January 7, 2011.

Yet the need for public services does not decline during recessions. To the contrary, increases in unemployment and poverty have swollen Medicaid rolls and expanded the need for social services, community college education, and job training, among other public services.

Most states and localities are required to balance their operating budgets, even when the economy is weak. Closing operating deficits requires immediate action: most states have to enact balanced budgets, and gaps that develop during the year usually have to be closed within that year or biennium. In this recession and its aftermath, the gaps between revenues and needed expenditures have been particularly large because of the unprecedented drops in revenue. Although states entered the recession with record levels of “rainy day funds” and reserves, and the federal government has provided fiscal assistance, states out of necessity have made rather massive cuts in services and raised additional revenues. State general fund spending in 2011 will be 6 percent lower than it was in 2008, *without* adjusting for inflation, according to data from the National Association of State Budget Officers.

In a few well-publicized instances, states or localities have closed portions of their deficits in ways that will harm their future financial health. For example, some states and cities have sold income-producing assets such as toll roads, lotteries, or parking meters, and a few have sold buildings that they then had to lease back at more expensive rates. While in nearly all cases the state or locality would have been better off in the long run simply raising additional revenues, these deals represent a small fraction of all deficit-closing actions.

States have closed the vast majority of deficits by drawing on rainy day funds and reserves, using federal stimulus funds, cutting expenditures, and raising new revenues. Only a few states — particularly Illinois — have failed to close their deficits responsibly in recent years, instead using a combination of payment delays, borrowing, and other gimmicks. (The fault in Illinois has been largely political gridlock rather than a lack of reasonable options, as explained below.)

The severity and consequences of these operating deficits should not be minimized. Throughout the country, residents are losing services on which they depend — sometimes on which their very life depends, as in the refusal of Arizona’s Medicaid program to fund organ transplants. But these deficits are cyclical and temporary; they will diminish as the economy improves.⁹ They should *not* be confused with the longer-term structural budget problems that a number of states have.¹⁰

⁹ The end of the federal stimulus funding at the end of June 2011 and the pending expiration of some temporary state tax increases enacted during the recession mean that revenue growth would have to be extraordinarily strong over the next year or two to eliminate state deficits; this is unlikely unless the economy grows much more strongly than is currently projected. An unwinding of the housing crisis — an end to elevated levels of foreclosures and resumed growth in the prices of housing and commercial real estate — will likely be necessary to fully eliminate *local* deficits.

¹⁰ The depth and persistence of the economic slump, and thus the deficits in this recession, raise the issue of whether it makes sense to leave states and localities with the problem of balancing their operating budgets when revenues decline and service needs increase. It is worth considering a permanent federal countercyclical facility that ties additional aid to the states to economic conditions, since it is appropriate for the federal government to deficit-spend to stimulate the economy during recessions. Aid to state and local governments is an important macro-economic tool for the federal government: it can help prevent states and localities from creating a fiscal drag as they cut spending and raise taxes to meet their balanced-budget requirements.

Should States Be Allowed to Declare Bankruptcy?

Various pundits have suggested enacting federal legislation that would allow states to declare bankruptcy, potentially enabling them to default on their bonds, pay their vendors less than they are owed, and abrogate or modify union contracts. Such a provision could do considerable damage, and the necessity for it has not been proven.

States have a strong track record of repaying their bonds. In most states, bonds are considered to have the first call on revenues; debt service will be paid *before* any public services are funded. (In California, education has the first call on revenues because of the provisions of a ballot initiative, but bonds are right behind.)

There are no modern instances of a state defaulting on its general obligation debt. One has to reach back to the period before and during the Civil War, when several states defaulted, or the single state that defaulted during the Great Depression (Arkansas), to find examples.

It would be unwise to encourage states to abrogate their responsibilities by enacting a bankruptcy statute. States have adequate tools and means to meet their obligations. The potential for bankruptcy would just increase the political difficulty of using these other tools to balance their budgets, delaying the enactment of appropriate solutions. In addition, it could push up the cost of borrowing for all states, undermining efforts to invest in infrastructure.

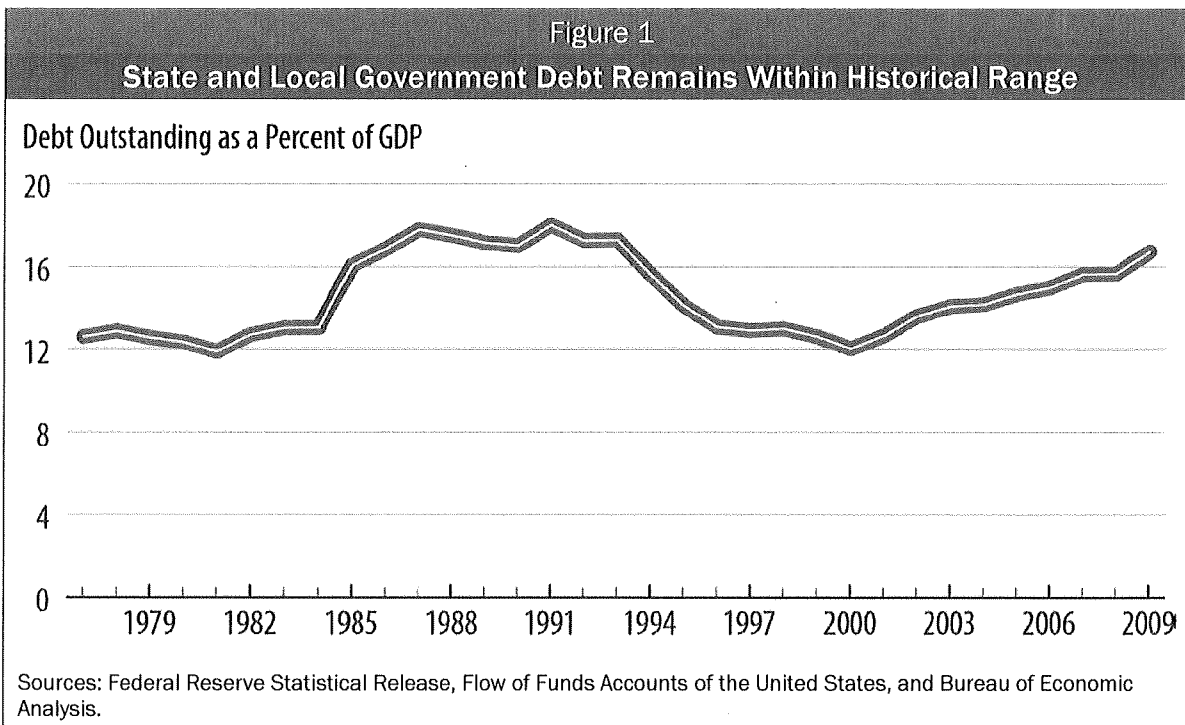
State and Local Debt

Almost all state and local debt is long-term debt incurred to pay for capital expenditures, not to cover operating expenses. (Unlike the federal government, states and localities maintain separate operating and capital budgets.) States issue long-term debt — various types of bonds — primarily for infrastructure projects such as roads and bridges, schools, water systems, and hospitals. States typically prohibit the use of bond proceeds for funding operating expenses,¹¹ although that has occurred in a few instances, most notably in Louisiana in 1988 and Connecticut in 1991.¹² One recent example occurred in Connecticut, which in 2009 sold a bond to cover its operating budget, with a seven-year repayment schedule.

A small number of states issue short-term debt instruments, known as revenue anticipation notes, which they use to match the *timing* of their revenue collections to the timing of the expenditures in their operating budget. This type of debt must be repaid during the same fiscal year as the borrowing. California, a major user of this type of debt, made headlines in 2008 by saying it could not find buyers for its debt and asking the federal government for financing. Ultimately, however, California was able to sell the bonds without federal assistance, as was Massachusetts when it faced a similar situation.

¹¹ According to the National Conference of State Legislatures, “It is extremely rare for a state government to borrow long-term funds to cover operating expenses.” National Conference of State Legislatures, State Balanced Budget Requirements, updated April 12, 1999 and reviewed December 3, 2003, <http://www.ncsl.org/default.aspx?tabid=12660>.

¹² National Conference of State Legislatures, “NCSL Fiscal Brief: State Balanced Budget Provisions,” October 2010, <http://www.ncsl.org/default.aspx?tabid=12651>.



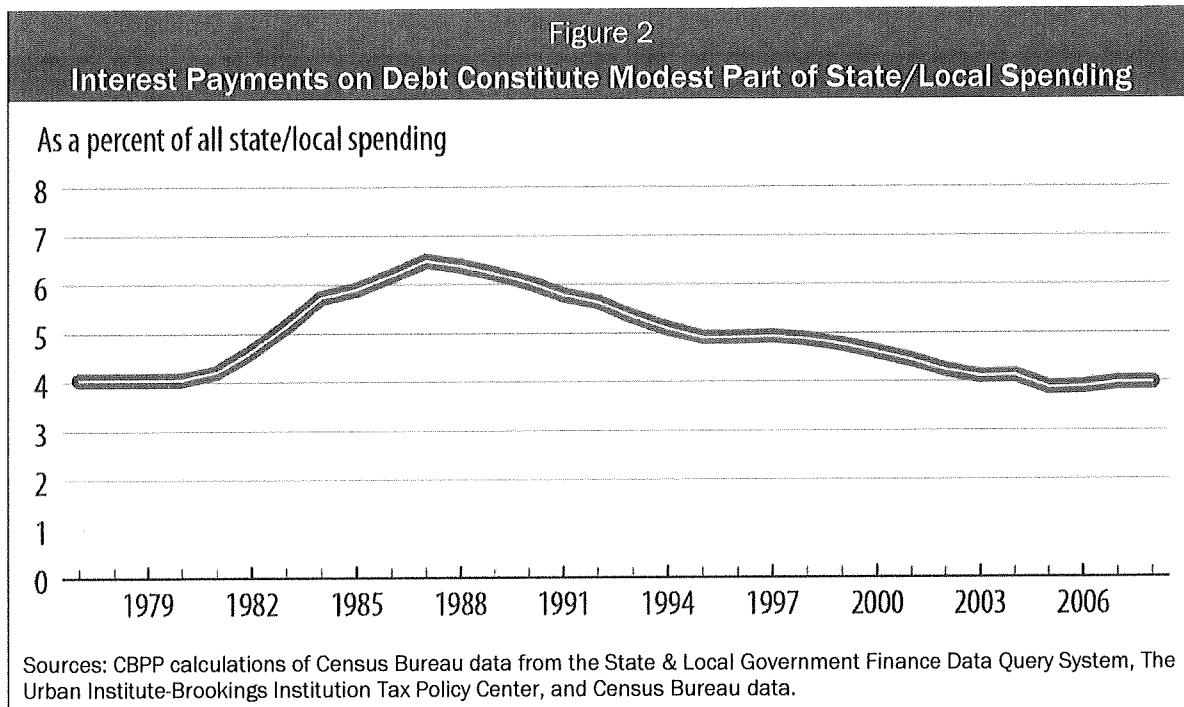
In the vast majority of states, debt levels have risen only modestly during this downturn, largely as states took advantage of the federal Build America Bonds program (which expired at the end of December 2010) to encourage infrastructure development and thereby create jobs. Claims that state and local governments are using the new bonds to finance their operating budgets are incorrect,¹³ since the bonds can only be used to finance infrastructure.¹⁴ Claims that Build America Bonds have

¹³ A statement that appeared to originate in a Reuters blog post, “the lack of a BAB program would make it harder for states to borrow to cover a \$140 billion budgetary shortfall next year, as estimated by the Center for Budget and Policy Priorities,” conflates capital borrowing and operating deficits but nevertheless was repeated in a number of other places. See James Pethokoukis, “Secret GOP Plan: Push States to Declare Bankruptcy and Smash Unions,” <http://blogs.reuters.com/james-pethokoukis/2010/12/07/secret-gop-plan-push-states-to-declare-bankruptcy-and-smash-unions/>.

¹⁴ The Recovery Act created a new kind of taxable state and local bond, called Build America Bonds, because policymakers thought the existing provisions under which states and localities issued bonds for infrastructure were not encouraging a sufficient amount of infrastructure building. It is long-standing policy that interest on state and local bonds is exempt from federal taxation. This has provided a subsidy for state and local infrastructure development because investors are willing to accept a lower interest rate if they don’t have to pay federal tax on the income. Public finance experts have questioned the efficacy of the subsidy, however, because the spread between the interest rate on tax-exempt state and local bonds and comparable taxable corporate bonds has at times not been as great as the tax exemption implies it should be — which suggests that investors, rather than states and localities, have been reaping outsized benefits.

Build America Bonds ensured that states and localities received the full subsidy that theoretically would accrue if a high-income taxpayer purchased the bond by making the bonds taxable to the investor but giving states and localities a direct 35 percent federal subsidy for interest costs. The idea was to make the bonds more attractive to institutional investors and other purchasers or accounts that could not benefit from the tax exemption. The Build America Bonds could be issued only by governments and only for capital expenses, not operating expenses.

led to an explosion in outstanding state and local bond debt are incorrect as well, as outstanding debt remains within its historical range. In the second quarter of calendar year 2010, state and local government outstanding debt stood at 16.7 percent of GDP, up from a recent (and relatively brief) low of 12 percent in 2000 but similar to the average levels from the mid-1980s to the mid-1990s.¹⁵ (See Figure 1.)



Some who claim there is a state debt crisis have likened states' problems to those in Greece or other European countries.¹⁶ There is no way directly to compare the *state* debt situation with a *national government's* debt situation, but Greece's situation was clearly far worse than the situation in the U.S. today. Greece's total governmental debt stood at 115 percent of GDP at the end of 2009 and was projected to peak at 150 percent of GDP if countermeasures were not taken.¹⁷

¹⁵ The 16.7 percent figure includes all forms of debt, both long-term and short-term, whether or not backed by the full faith and credit of the jurisdiction. The Census definition of debt, used here, is: "All long-term credit obligations of the government and its agencies whether backed by the governments' full faith and credit or nonguaranteed, and all interest-bearing short-term credit obligations. Includes judgments, mortgages, and revenue bonds, as well as general obligations bonds, notes, and interest-bearing warrants. Excludes noninterest-bearing short-term obligations, interfund obligation, amounts owed in a trust or agency capacity, advances and contingent loans from other governments, and rights of individuals to benefits from government-administered employee retirement funds."

¹⁶ See, for example, Michael Cooper and Mary Williams Walsh, "Mounting Debts by States Stoke Fears of Crisis," *The New York Times*, December 4, 2010.

¹⁷ International Monetary Fund, Frequently Asked Questions: Greece, <http://www.imf.org/external/np/exr/faq/greecefaqs.htm#q1>. For an article cited in many U.S. news-gathering sites likening state and local problems to Europe's, see Andrew Beatty, "Fears Grow of Euro-style Debt Crisis in U.S.," Agence France Press, http://news.yahoo.com/s/afp/20101221/ts_alt_afp/useconomydeficitlocal/print. Greece's is far higher than the total governmental debt in the U.S. — state, local, and federal — which stood at 83 percent of GDP at the end of 2009.

It also should be noted that states and localities spend a modest 4 or 5 percent of their budgets on debt payments.¹⁸ (See Figure 2.)

Other observers have suggested that the problem in some states isn't the aggregate state and local debt, but rather debt issued by localities for specific projects. They worry that some states may have to "bail out" or assume their local government debt, which in turn would put pressure on state finances. Alternatively, they worry that many localities will repudiate their debt through bankruptcy or other means, undermining confidence in state and local bonds. (Localities can and occasionally do declare bankruptcy, but states cannot.)

One frequently cited instance is Harrisburg, Pennsylvania, where a trash-to-energy project using experimental technology for which the city had borrowed did not work out, resulting in higher debt service than the city could afford. The state provided extra financial support to the city in the fall of 2010 and is helping the city find options to work its way out of its problems. Another frequently cited example is a sewer project in Jefferson County, Alabama that ran into trouble relating to corruption and fraud, causing the price of the bonds issued for the project to drop precipitously.

Although there were consequences — employees were laid off, sewer rates increased, people responsible for the problem went to prison, and some Wall Street firms are being sued — and the county did technically default in 2008, actions have been taken to protect the bondholders, who will likely be paid.^{19 20}

Studies show that defaults on municipal bonds are rare. As the National League of Cities has pointed out, the annual default rate for municipal (local government) debt is a miniscule one-third of 1 percent across the three bond rating agencies.²¹ Moreover, the large majority of defaults (percent in a Moody's study and 80 percent in a Fitch study) were in the health care and housing sectors. Between 1970 and 2009, only four defaults were from bonds guaranteed by cities or counties; the remainder was from bonds based on the revenues from specific projects. Defaults in these non-general obligation bonds are not an indicator of state or local fiscal health.

¹⁸ There are two data sets on debt, one from Census and one from the Federal Reserve. Similarly, there are two sets of data on state and local expenditures, one from Census and one from the Bureau of Economic Analysis Income and Product Accounts. In 2008, debt service was 4.0 percent of state and local spending using Census data for both debt service and total expenditures, and 5.4 percent of current expenditures using the Federal Reserve Bank Flow of Funds Data for debt service and total expenditures from the Bureau of Economic Analysis.

¹⁹ A Moody's analyst said: "The appointment of the receiver is a credit positive for the county, as it provides a mechanism for additional revenue through rate growth on the sewer system, increasing the likelihood for full repayment on the \$516 million in unpaid principal to date." Shelly Sigo, "Moody's Sees JeffCo Sewer Receiver as Positive Move," *The Bond Buyer*, September 28, 2010.

²⁰ The city of Vallejo, California, did declare bankruptcy in May 2008, citing unsustainable labor contracts and dwindling tax revenue. Caught in the housing crisis, its median real estate prices fell 67 percent between 2006 and 2008, and revenues plummeted. While the city plans to suspend debt service payments for three years, the debt does not appear to be the precipitating cause of the bankruptcy. Randall Jensen, "Vallejo, Calif., Officials to Weigh Chap. 9 Recovery Plan," *The Bond Buyer*, November 30, 2010.

²¹ Chris Hoene, "Crying Wolf about Municipal Defaults," National League of Cities blog, December 22, 2010, <http://citiesspeak.org>.

A Barclays Capital December 2010 report states, “Despite frequent media speculation to the contrary, we do not expect the level of defaults in the U.S. public finance market to spiral higher or even approach those in the private sector. We hold this view in large part because of the steps taken thus far by the preponderance of municipalities and the control that public entities can exert over the expense and revenue portions of their balance sheets.”²² Other financial advisers and the bond rating agencies²³ have issued similar statements. Finally, states and localities have many options, from raising taxes or fees to reducing spending, to make good on their bonds. As mentioned above, states and localities generally will pay their bondholders before paying nearly any other expenditure.

In sum, there is no bubble in state and local bonds. States and localities in aggregate have not overextended themselves with respect to their debt-financed capital spending. Indeed, many analysts decry the deteriorating state of infrastructure in this country and its negative effect on economic development.²⁴ For this reason, and to shore up the economy in the short run, the manageable uptick in outstanding state and local capital debt is entirely appropriate.

Pensions

Some who argue that states and localities are in a crisis claim that they have large amounts of “hidden” debt in the form of underfunded pension funds. A figure of \$3 trillion in pension underfunding is sometimes cited; other estimates place the underfunding at levels as low as about \$700 billion, or less than a quarter of the \$3 trillion figure. While some pension funds are indeed underfunded, there are a number of misconceptions about the extent and depth of the problem — and about states’ ability to resolve pension funding issues over time without disrupting their ability to continue public services.

States and localities currently make annual contributions to their pension trust funds equaling an average of 3.8 percent of their general (operating) budgets. They began to make deposits to pre-fund their pension costs in the 1970s. Each year, they are supposed to deposit in a trust fund an amount that equals the present value of the future pensions their employees earned that year. (The present value is the amount that has to be invested today to grow to the desired amount in the year the employees are expected to retire.)

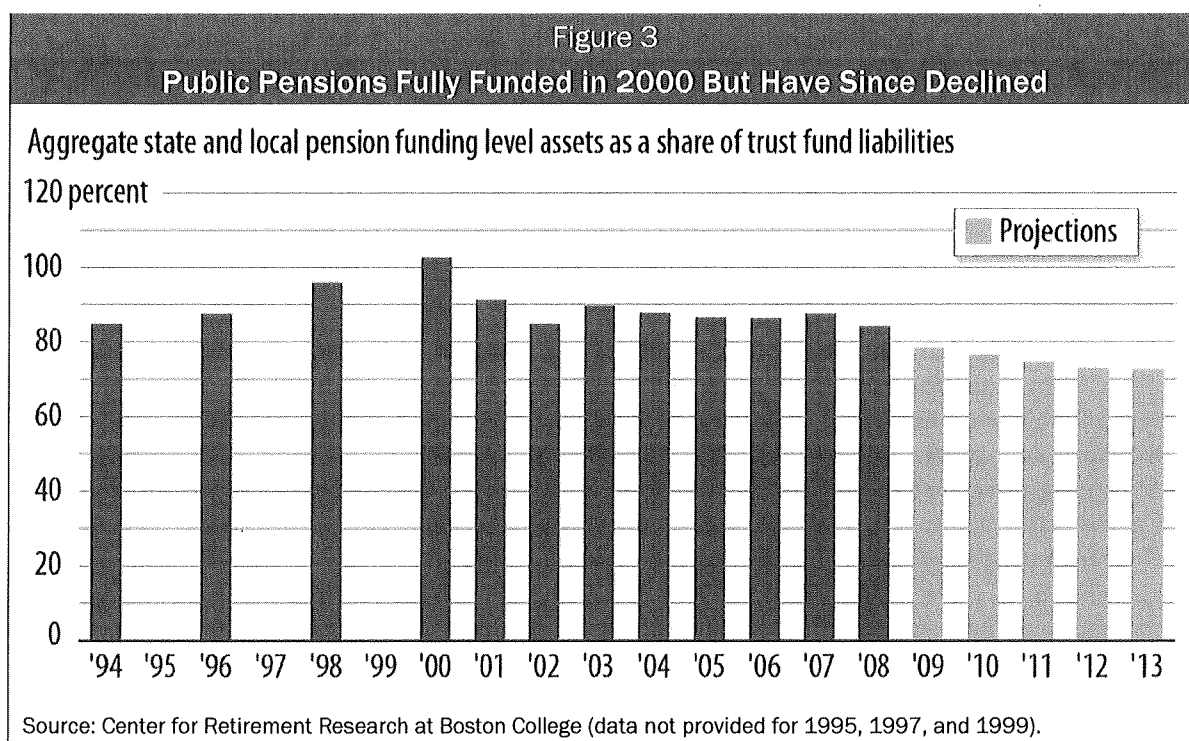
As of 2000, state and local pension obligations were fully funded on average, if obligations are discounted at 8 percent per year, which was the return on pension fund investments over the

²² Barclays Capital, Municipal Research, Taxable Municipal Market Commentary, 2011 Outlook, December 3, 2010.

²³ Some have dismissed the opinions of the rating agencies by noting that they failed to predict the bursting of the housing bubble. But the two cases are very different. The slicing and dicing of mortgages into exotic securities sold through brokers was a relatively new phenomenon, and there was no way to judge the underlying value of those securities. By contrast, rating agencies and other players in the state and local bond market have been following the municipal bond market for many years and have experience in detecting problems. Moreover, while there was a problem in knowing the underlying quality of the mortgages that made up the exotic securities, the basic financial information about states and localities is available.

²⁴ Estimates suggest that a sustained 1 percent increase in public capital growth translates into a 0.6 percentage-point increase in the growth rate of private-sector GDP. For discussion, see Appendix G of *Investing in America's Economy: A Budget Blueprint for Economic Recovery and Fiscal Responsibility*, jointly produced by the Economic Policy Institute, Demos, and The Century Foundation, November 29, 2010, http://epi.3cdn.net/b3c2500a206a5ea13a_n7m6vzdpr.pdf.

previous two decades. (See Figures 3 and 4.) Since then, however, the nation has experienced two recessions, during which some states and localities have reduced or skipped pension trust fund deposits to help balance their budgets. In addition, the recessions have caused significant investment losses. By 2008, state and local pensions in aggregate were funded at 85 percent of their future liabilities; the other 15 percent is considered to be the “unfunded liability.” The Center for Retirement Research at Boston College projects that, in the aggregate, state and local pensions were funded in 2010 at 77 percent of their future liabilities, a ratio projected to decline to 73 percent by 2013.²⁵

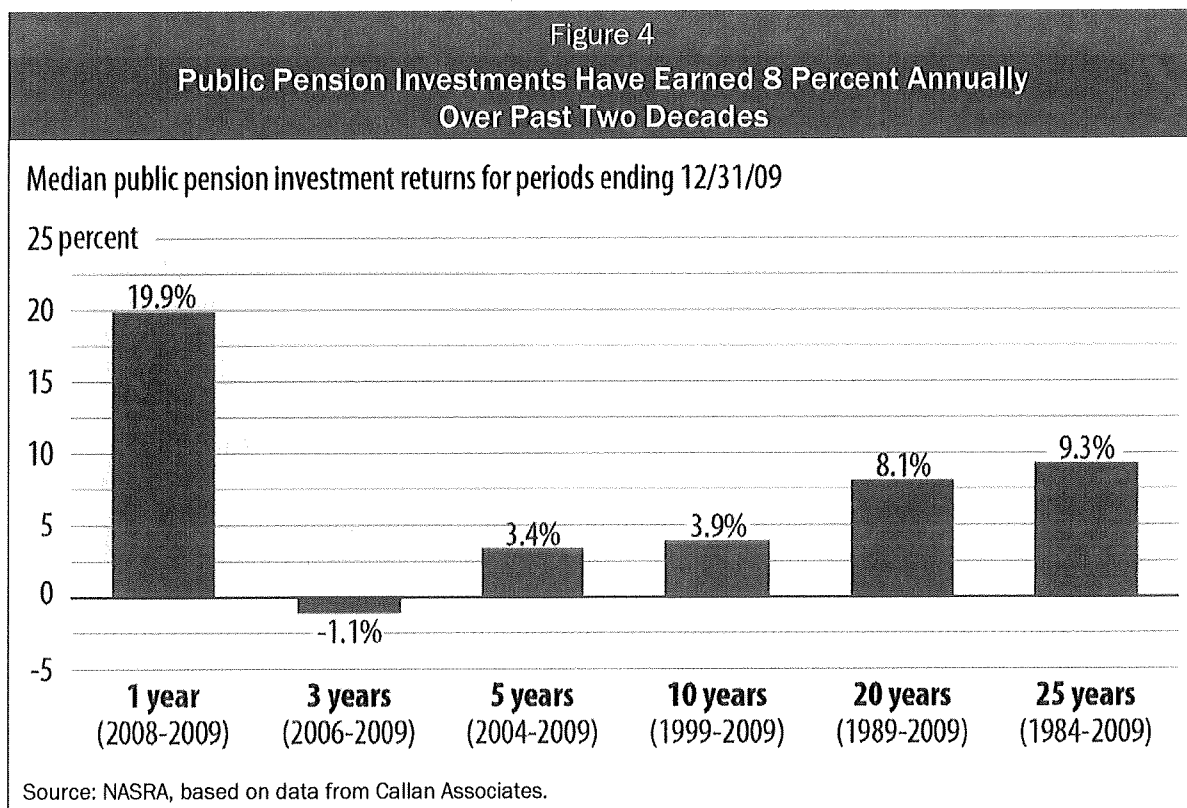


A drop to funding in the 70 percent range is a significant problem, although not an imminent crisis. Many experts argue that 80 percent funding is sufficient for public pensions because states and localities, as ongoing entities, can use tax revenues to make up a shortfall if necessary.²⁶ A private company, in contrast, can go out of business, at which point the federal Pension Benefit Guarantee Corporation (PBGC) pays the company’s employees their accrued benefits out of a combination of the assets the company accumulated before it went out of business and the

²⁵ Alicia H. Munnell, Jean-Pierre Aubry, and Laura Quinby, *The Funding of State and Local Pensions: 2009-2013*, Center for Retirement Research at Boston College, April 2010.

²⁶ U.S. Government Accountability Office, “State and Local Government Retiree Benefits: Current Funded Status of Pension and Health Benefits,” GAO-08-223. The GAO report noted on p. 15, “Many experts and officials to whom we spoke consider a funded ratio of 80 percent to be sufficient for public plans for a couple of reasons. First, it is unlikely that public entities will go bankrupt as can happen with private sector employers, and state and local governments can spread the costs of unfunded liabilities over up to 30 years under current GASB standards. In addition, several commented that it can be politically unwise for a plan to be overfunded; that is, to have a funded ratio over 100 percent. The contributions made to funds with ‘excess’ assets can become a target for lawmakers with other priorities or for those wishing to increase retiree benefits.”

insurance premiums the PBGC collects from private-sector employers with pension plans.²⁷ (Federal law generally requires private companies to be 100 percent funded so the federal government does not have to make up any shortfall.²⁸)



Some states — such as Illinois, New Jersey, and Pennsylvania (and to a somewhat lesser extent Colorado, Kentucky, Kansas, and California) — have skipped or reduced deposits to trust funds and/or expanded future pension benefits without providing the commensurate funding. Over time, to reach adequate funding, these states may have to institute changes more difficult than the potential solutions discussed below. These states, however, are not representative of states in general.

The issue of whether states' discount-rate assumptions are reasonable is more complicated. The "discount rate" is the interest rate used to translate future benefit obligations into today's dollars. Discount rates are important, since 60 percent of pension trust fund revenues come from trust fund

²⁷ PBGC operations are financed by a combination of insurance premiums set by Congress and paid by sponsors of defined benefit plans, assets from pension plans trusted by PBGC, investment income earned on the PBGC's assets, and recoveries from the companies formerly responsible for the plans.

²⁸ The Pension Protection Act of 2006 requires private defined benefit plans to be 100 percent funded and to make full contributions each year, although there is the possibility of a waiver for economic hardship. It also requires plans that are not fully funded to pay higher premiums to the PBGC. The discount rate that private plans use is tied to corporate bond rates.

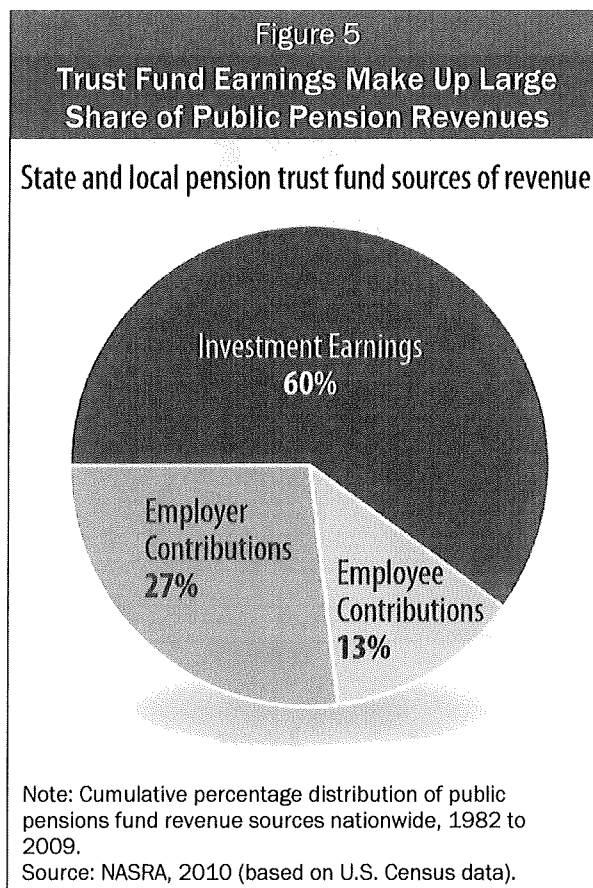
earnings (see Figure 5), and discount rates help determine how much money a state should put into the fund each year.

One school of thought argues that that it is appropriate to continue to use the actuarial method recommended by the Governmental Accounting Standards Board (GASB), which is to use as a discount the historical return on funds' assets — about 8 percent. (State pension trust funds invest their assets in a diverse mix of stocks, bonds, and other instruments until they are needed to pay for benefits.) Others, most prominently Joshua Rauh at Northwestern University and Robert Novy-Marx at the University of Rochester, argue that a much lower assumption is warranted: because pension obligations are guaranteed, they argue, the assumed growth of assets (the discount rate) should be similarly “riskless” and based on the returns from the safest investments such as Treasury bonds — around 4 percent or 5 percent.

The alarming reports that pension funds are about to run dry or that unfunded pension liabilities number in the trillions of dollars generally rely on these more conservative assumptions about the appropriate discount rate. For example, a recent *Washington Post* editorial said that “Public-employee pension funds are notorious for understating their liabilities through the use of vague projections and rosy investment return assumptions” and took note of a proposal by three members of Congress — Paul Ryan, Darrell Issa, and Devin Nunes — that would force pension funds to calculate their liabilities using a riskless discount rate.²⁹

While economists generally support use of a riskless rate in valuing state and local pension liabilities, they do not generally argue that the investment practices of state and local pension funds should change. State and local pension funds historically have invested in a market basket of private securities and have received rates of return much higher than the riskless rate. As Figure 4 shows, the 8 percent discount rate that most funds now use reflects actual returns over the past 20 years.

Even if state and local pension liabilities were valued at the riskless rate, that would not mean that states and localities “owe” \$3 trillion to their pension funds. The issue of how states and localities value their pension liabilities and the issue of how much they have to contribute to meet their pension obligations are not the same. The \$3 trillion of unfunded liabilities is not equivalent to the amount that states and localities should contribute to their pension funds. It thus is mistaken to portray this as a huge liability that will lead to bankruptcy or other similarly dire consequences.



²⁹ *Washington Post*, “Pension Reality Check,” December 8, 2010.

Indeed, Novy-Marx and Rauh, the leading economists advocating valuation at a riskless rate, have observed, "... the question of optimal funding levels ... is entirely separate from the valuation question."³⁰ The required contributions to state and local pension funds should take account of expected rates of return on their investments, as well as other practical considerations.

While it may make sense to reconsider whether the typical 8 percent discount rate is the right one going forward, simply basing annual state contribution amounts to pension funds on the return to riskless investments appears to go much farther than is necessary for a number of reasons:

- Pension funds invest for the long term, so a few years of below-average returns can be averaged out with years of higher returns. As noted, the 8 percent discount rate that most states assume reflects the experience of the trust funds over the last 20 years (including the 2008 stock market decline); median returns for the last 25 years were even higher, at 9.3 percent. While the rates of return on investments were much lower in the recent recession, it is generally assumed that they will rise in the future, even if they do not return to the very high rates of the late 1980s.
- A business may be sold or go out of business at any time, so it is important to keep its pension plan 100 percent funded for benefits earned to date.³¹ Governments, in contrast, will be in continuing existence, so it makes sense to average or "smooth" expected investment returns over a long period. This also promotes intergenerational equity, enabling the state to contribute approximately the same amount for each cohort (assuming that it makes appropriate contributions each year).
- The stated concern of some that basing required contributions on actual rates of return will lead pension managers to put funds in risky investments is overblown. Pension funds have a long history and have been invested prudently except in rare situations. Most states have other effective barriers to overly risky investing in place (although these could be strengthened), including oversight boards, reporting requirements, and regular actuarial reviews.
- A discount rate that is too low would require a state to put money into the pension funds that it could be using instead to support public services, resupply reserve funds, invest in infrastructure, or return to taxpayers in the form of tax cuts.
- In addition, if the pension fund assumes a 4 or 5 percent discount rate and actually gets higher returns on its investments, funds will build up in the trust fund. When pension trusts have been overfunded in the past this has led to problems such as employee demands for increases in pension benefits that later proved unsustainable. Overfunding also has led jurisdictions to skip payments that they subsequently found difficult to resume because programs were funded or taxes were cut permanently by the amount of the skipped pension contribution. The 2008 GAO report noted experts that said: "... it can be politically unwise for a plan to be

³⁰ Robert Novy-Marx and Joshua Rauh, "Public Pension Promises: How Big Are They and What Are They Worth?" *Journal of Finance*, forthcoming (posted October 8, 2010 on Social Science Research Network), p. 5.

³¹ See discussion in National Conference on Public Employee Retirement Systems, *The Advantages of Using Conventional Actuarial Approaches for Valuing Public Pension Plans*, November 2008, <http://www.ncpers.org/News/PageText/documents/ResearchSeriesIII.pdf>.

overfunded; that is, to have a funded ratio over 100 percent. The contributions made to funds with “excess” assets can become a target for lawmakers with other priorities or for those wishing to increase retiree benefits.”³²

Nevertheless, improvements in pension plans’ policies clearly are needed. There are a number of ways that most states with unfunded liabilities can improve their pension funding without causing major disruptions in their ability to provide public services.

As noted, current employer contributions for public employee pensions average only 3.8 percent of state and local budgets, an amount that pales beside states’ largest expenses — education and health care. Pension contributions are smaller than the amounts spent on transportation, corrections, and many other services. If all states and localities were to fund their pensions based on the “riskless” rate, Boston College researchers calculate that they would have to contribute approximately 9 percent of their budgets, on average. (This calculation uses 5 percent as the riskless rate.³³) A contribution amount this high would cut into states’ and localities’ ability to provide other public services; it arguably would not strike the appropriate balance between funding currently needed services and funding past pension liabilities.

If states and localities continue to use an 8 percent discount rate for calculating required contributions, a funding increase to 5 percent of their budgets would be required on average to fully fund their pensions. This level is not likely to be unduly burdensome after the economy recovers, and states could reduce it somewhat by adopting various pension reforms. (States should not begin to increase their contributions while the economy is still weak, because the budget cuts this move would require would further slow the economy.)

States that have significantly underfunded their pensions, such as California, Illinois, and New Jersey, would require higher contributions (7.3 percent, 8.7 percent, and 7.9 percent of their respective budgets), even using the standard 8 percent discount rate. These states will have to consider more significant changes to their pension plans to bring their required contributions down to a more reasonable level.³⁴

More than 20 states have enacted changes to reduce pension costs in recent years, including raising the length of service and age requirements for receiving a pension and reducing the factor that determines the percent of salary that an employee receives as a pension payment for each year

³² GAO-08-223.

³³ Alicia H. Munnell, Jean-Pierre Aubry, and Laura Quinby, *The Impact of Public Pensions on State and Local Budgets*, Center for Retirement Research at Boston College, October 2010. Munnell *et al.* use 5 percent for the riskless rate. They say, “Just what rate represents the riskless rate is a subject of debate.... Currently, the yield on 30-year Treasury bonds, about 4 percent, is likely less than the riskless rate due to the valuable liquidity they offer investors. Therefore, we would suggest increasing the current [Treasury] rate by about one percentage point and using a number of about 5 percent for 2009.” Alicia H. Munnell, Richard W. Kopcke, Jean-Pierre Aubry, and Laura Quinby, *Valuing Liabilities in State and Local Plans*, Center for Retirement Research at Boston College, June 2010.

³⁴ A report by Novy-Marx and Rauh suggests that various potential changes in pension policies — even relatively extreme ones — could only reduce unfunded liabilities by half, and changes more likely to be made would reduce liabilities by much less. But the authors are measuring impact on unfunded liabilities funded at the riskless rate. Some changes could have a larger impact at a more conventional discount rate. See Joshua Rauh and Robert Novy-Marx, “Policy Options for State Pension Systems and Their Impact on Plan Liabilities,” National Bureau of Economic Research, Working Paper 16453, October 2010.

of service. It is difficult to defend a system where public employees can retire at age 55 with a pension after 25 or 30 years of service, particularly if their work is not physically arduous, while the age for receiving full Social Security benefits is set to increase to 67. While these types of changes generally can be applied only to newly hired employees, they will help with a pension plan's longer-term funding. Another option that could have a more immediate effect would be to increase the contribution that employees make toward their pensions, as a number of states have done, particularly in places where employee contributions are particularly low.

Public-sector employees generally receive lower wages than their private-sector counterparts, and employee benefits such as pensions make up only part of the difference.³⁵ If pensions (and/or retiree health benefits, discussed below) are made less generous, current wages may have to increase so that the public sector can continue to attract high-quality employees. Given the difficulty that some jurisdictions have in funding deferred compensation, this may be a reasonable trade-off.

In addition, all states and localities need to ensure that their employee pension provisions do not permit abuses, such as the ability to inflate pay in the year or two before retirement in order to receive an outsized pension benefit. Reforms in this area are needed in a number of states. States also need to review their provisions for disability pensions to ensure that only employees who are appropriately qualified can retire on a disability pension. While these issues are not the major source of financial stress of pension systems, abuses are frequently publicized and undermine confidence in the administration and fairness of public employee pensions.

In short, there are significant issues with public pensions, but they do not amount to a crisis. In part, pensions' funding status will improve as the economy and investment returns improve. Some states and localities already are taking actions to improve their pension funding; at an appropriate time when the economy is stronger, more states and localities can, if necessary, increase their pension trust fund contributions to put them on a path to funding their unfunded liabilities over the next few decades. A number of states also will need to institute various pension reforms. But for the reasons cited above, the evidence does not support the claim that states and localities are on the verge of bankruptcy because of massive unfunded pension liabilities.

Retiree Health Benefits

The final point typically made by those who claim that states and localities are in dire crisis concerns health insurance for retirees. Some jurisdictions have promised that their employees' health insurance benefits will continue into retirement — in particular, that those benefits will bridge the gap between retirement and eligibility for Medicare at age 65. But, with few exceptions, states and localities have not set aside any funding to finance those benefits. In 2004, the GASB began

³⁵ Studies find that public workers are paid 4 percent to 11 percent less than private-sector workers with similar education, job tenure, and other characteristics. The wage deficit is highest for higher-wage public workers. Low-wage state and local workers, by contrast, do receive a small wage premium. Benefits are more generous and secure for public employees than for most private-sector workers; factoring in the value of these benefits reduces but does not eliminate the gap between state and local employees and their private-sector counterparts in comparable jobs. See Keith A. Bender and John S. Heywood, *Out of Balance? Comparing Public and Private Sector Compensation over 20 Years*, Center for State & Local Government Excellence (CSLGE), National Institute on Retirement Security, April 2010; and John Schmitt, *The Wage Penalty for State and Local Government Employees*, Center for Economic and Policy Research (CEPR), March 2010.

requiring states and localities to assess their future liabilities for retiree health insurance, although it did not put forth any requirements for pre-funding those liabilities.³⁶ Most states continue to fund retiree health insurance benefits on a pay-as-you-go basis, from operating revenue. Estimates suggest that aggregate state and local unfunded liabilities for retiree health insurance are approximately \$500 billion.³⁷

It makes little sense to add this large number to state operating deficits, state infrastructure debt, or even to pension liabilities. Promises for retiree health insurance are quite different from any of those other liabilities:

- While pension promises are legally binding — backed by explicit state constitutional guarantees in some states and protected by case law in others — retiree health benefit promises generally are not. States and localities in many cases are free to change the provisions of the plans, the years of service or other eligibility rules, and the share of the insurance premium the retirees must pay as these elements pertain to current employees.
- While most state pension plans are roughly similar to one another, state retiree health plans differ much more widely. In 2006, 14 states provided only an implicit subsidy, allowing retirees to be a part of the state health insurance plan but requiring them to pay the full premium.³⁸ At the other end of the spectrum, 14 states paid retirees' entire premium.³⁹ The remainder of the states fell in between these two poles.⁴⁰ All three groups include states from different regions, political tendencies, and degrees of unionization. States should have reasonable flexibility to modify retiree health provisions if necessary.

If health care costs continue to rise faster than GDP and faster than state revenues, as they are projected to do for the foreseeable future, it is likely that states that pay all or most of the premiums for their retirees will not be able to continue to do so without making significant cuts in public services or raising substantial additional revenues. For example, the Government Accountability Office projects that the cost of retiree health benefits is expected to increase at an annual rate of 6.7 percent between now and 2050.⁴¹

³⁶ GASB does not have the power to compel state and localities to follow its recommendations, but they usually do follow those recommendations because financial markets prefer that they do so.

³⁷ Robert L. Clark and Melinda Sandler Morrill, *Retiree Health Plans in the Public Sector: Is There a Funding Crisis?*, (Cheltenham, UK and Northampton, MA, USA: Edward Elgar, 2010).

³⁸ They are Idaho, Indiana, Iowa, Kansas, Minnesota, Mississippi, Montana, Nebraska, Oregon, South Dakota, Washington, West Virginia, Wisconsin, and Wyoming. The ability to participate in the state plan is a significant benefit in itself, enabling retirees to join an insurance pool with younger and healthier workers and thus pay lower premiums than if they had to buy insurance in the individual market.

³⁹ They are Alaska, California, Hawaii, Illinois, Kentucky, Maine, New Mexico, New Hampshire, New Jersey, North Carolina, Ohio, Pennsylvania, Rhode Island, and Texas.

⁴⁰ United States Government Accountability Office, *State and Local Government Retiree Benefits: Current Status of Benefit Structures, Protections, and Fiscal Outlook for Funding Future Costs*, September 2007, GAO-07-1156.

⁴¹ United States Government Accountability Office, *State and Local Government Retiree Health Benefits: Liabilities Are Largely Unfunded, but Some Governments Are Taking Action*, November 2009, GAO-10-61. GAO projects that the cost of retiree health benefits will rise from 0.9 percent of total operating revenues to 2.1 percent, on average. But this figure includes states that do not provide much in the way of benefits; the costs would be higher in the states that pay all or most of retiree premiums.

Whether states continue to finance retiree health benefits on a pay-as-you-go-basis or move to pre-fund some or all of those costs as they do for pensions, the reality of health care cost growth suggests that the status quo of benefit provisions is unlikely to prevail over time.⁴² It is also worth noting that the recently enacted Affordable Care Act may lead to significant changes in health insurance markets and in health care cost growth. Unlike pension costs, which behave in predictable ways based on actuarial tables, the future cost of retiree health insurance is subject to various sources of uncertainty. This would be a propitious time for states and localities to rethink their retiree health benefit promises and decide whether it makes sense to modify these promises rather than pre-fund them. The important point is that states have the flexibility to modify their policies regarding retiree health benefits as needed in order to ensure that these benefits remain affordable.

Structural Deficits

As the previous sections of this report have explained, states and localities are not in imminent danger of financial collapse and there is no need for such changes as a new federal law allowing states to declare bankruptcy. States have many ways to meet their obligations through adjustments in taxes or budgets; they should not be encouraged to abrogate those responsibilities through bankruptcy.⁴³ Nor is it appropriate to force all states and localities to report pension liabilities using a “riskless” rate as a condition of issuing tax-exempt bonds, which would likely give a distorted view of how much funding states and localities have to save in order to pay future pensions.⁴⁴

Most states, however, do face a set of fundamental problems in their revenue and budget structures that will continue once the economy recovers. These problems, often called “structural deficits,” make it difficult to fund the ongoing cost of public services year after year. Structural deficits occur when annual revenue growth, in the absence of legislated changes, lags behind economic growth and behind the annual growth in the cost of services.

In significant part, this is a problem of health care costs, which as discussed above are projected to grow much more rapidly than revenues over the foreseeable future. In addition, the cost to states and localities of K-12 education has grown faster than the economy over the past 20 years, rising from 3.58 percent of GDP in 1988 to 4.02 percent of GDP in 2008; it remains to be seen whether that trend will continue after the economy recovers.⁴⁵ And while efforts at improving efficiency in these and other areas of the budget are always appropriate, there are limited opportunities for states

⁴² An employee who wants to retire at age 55 could either get a different job that offers health benefits or pay the full cost to remain in the state/local plan. Or, this person could decide not to retire until he or she is eligible for Medicare. Moreover, if states and localities change their pension plans to increase the normal retirement age, those changes would also reduce their retiree health liabilities.

⁴³ See, for example, David Skeel, “Give States a Way to Go Bankrupt,” *The Weekly Standard*, November 29, 2010, http://www.weeklystandard.com/articles/give-states-way-go-bankrupt_518378.html and Grover G. Norquist and Patrick Gleason, “Let States Go Bankrupt,” *Politico*, December 24, 2010.

⁴⁴ A bill proposed by House of Representative members Paul Ryan, Darrell Issa and Devin Nunes (H.R. 6484 in the 111th Congress) would require states and localities to report pension liabilities to the federal government using U.S. Treasury bond rates to discount liabilities as a condition of issuing tax-exempt bonds.

⁴⁵ U.S. Census Bureau, *Annual Survey of State and Local Government Finance*, 2008.

to reduce cost growth in either area.⁴⁶ Since education and health care expenditures account for more than half of state budgets and more than a third of local budgets, jurisdictions cannot balance their budgets year after year if these two spending areas are growing faster than the economy and revenues are growing slower than the economy. Yet that is the situation in most states, and it can lead to poor public finance practices even in good economic times, as policymakers often devise temporary solutions rather than fixing the underlying problems.

Most states' revenue systems are in dire need of modernization; they have remained largely the same for the last 40, 50, or 60 years. But the world is very different than it was 60 years ago. The role of services in the economy has greatly increased, Internet commerce has come on to the scene, telecommunications and exotic forms of commerce have multiplied, and income has become far more concentrated among the wealthy, to mention just a few trends. State revenue systems have not kept up.

For example, few states adequately tax the sales of services on an equal basis with the sales of tangible goods. Similarly, most Internet sales go untaxed. And the majority of states focus their taxes on moderate- and middle-income residents; they fail to maintain progressive income tax systems that adequately tax the rapidly growing incomes of the top 1 percent or 5 percent of earners. In addition, states do large amounts of spending through their tax codes by giving tax breaks that are intended to accomplish policy purposes such as economic development, and provide large tax exemptions for the elderly and for retirement income regardless of the income of the taxpayer. Yet they rarely scrutinize this spending through the tax code on the same basis as on-budget spending. Together, these and other chronic problems cause revenue growth to lag behind economic growth. Fixing these problems for the long term should be high on states' agenda.

In addition, most states need to overhaul the processes by which they enact budget and revenue changes. For example, there are no more than a handful of states in which budgets include accurate projections of revenues and expenditures, adjusted for expected cost inflation and utilization changes, for as much as four or five years into the future. Without such information, policymakers have no way of understanding the long-term budgetary impact of the changes they are making, especially when such changes are phased in over several years. *Moving to accurate multi-year budgeting is one of the most important reforms that states can adopt.*

Illinois is an extreme example of the implications of failure to fix these types of problems. It has a flat, low-rate income tax that does not adequately capture income growth, and income tax revenues thus routinely lag behind economic growth. The state relies heavily on a state and local sales tax that

⁴⁶ Health care cost growth is a national problem that will require national solutions, and states have limited flexibility to influence that growth. And while the Affordable Care Act is intended ultimately to reduce the annual rate of growth of health care costs, that is unlikely to happen within the next several years; experimentation with potential avenues to "bend the cost curve" will take considerable time. Nor is there a lot of flexibility with respect to education costs; to the contrary, the pressure is to improve education and particularly teacher quality. The ratio of adults aged 25-64 (potential teachers) to children aged 6-17 is projected to decline in future years, so these costs may have to rise *more* rapidly rather than less. In addition, there is evidence that as half the teachers become eligible for retirement in the next decade, teacher quality will decline unless salaries are increased substantially. A McKinsey report estimates that it would cost \$30 billion to increase the percentage of new teachers drawn from the top third of their college classes from the current very low 14 percent up to 68 percent. (The report also projects large gains for the overall economy if this were to be done.) Byron Auguste, Paul Kihn, and Matt Miller, *Closing the Talent Gap: Attracting and Retaining Top-third Graduates to Careers in Teaching*, McKinsey & Company, September 2010.

is almost exclusively applied to goods and excludes almost all services. It is among the states that exempt from state income tax the largest share of income received by elderly individuals, regardless of their income levels. Illinois also does a relatively poor job of scrutinizing its spending through the tax code. Its budget considers only the single upcoming fiscal year, and policymakers often have taken budget actions without full consideration of the longer-term implications.

Because Illinois is chronically short of the revenues it needs to cover its expenses, it has engaged in a number of poor fiscal practices over the years. It has postponed payments to vendors, failed to make adequate pension contributions or borrowed money to make the contributions, securitized or sold assets, and taken other dubious actions. As a result, it has had a particularly difficult time coping with revenue declines during this recession, with a fiscal year 2012 deficit projected to equal *half* of its general fund budget, and has developed an large overhang of longer-term debt and unfunded liabilities.

But it is important to remember that the root cause of Illinois' problem is a revenue system in urgent need of modernization, one that cannot support the level of expenditures that the state has chosen. Proposals have repeatedly been made over the last 25 years to remedy many of these problems, but political gridlock has prevented solutions to Illinois' well-known budget problems from being enacted. In January 2011 Illinois temporarily increased its personal and corporate income tax rates to close a portion of its budget gap. But it still plans to borrow to cover its pension contributions and has not addressed the fundamental problems in its revenue system that are the principal cause of its large structural deficit.

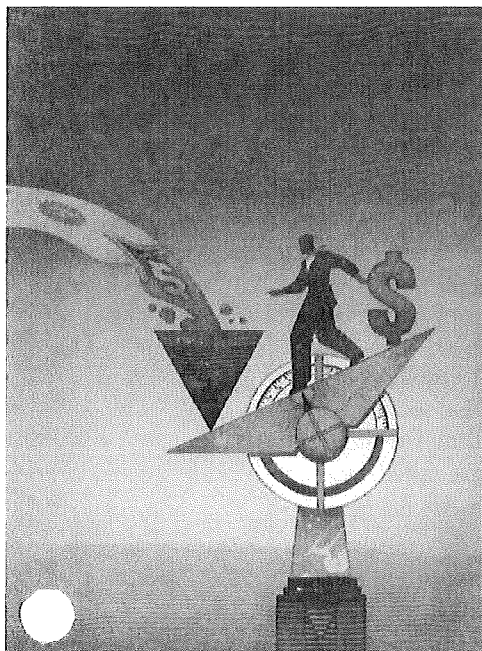
Most states are not in as dire shape as Illinois. Nevertheless, if states fail to reduce their structural deficits and improve their budget processes, it will be more difficult for them both to maintain needed services and to prepare for the next cyclical downturn by accumulating adequate reserves. Nor will they have the funds to fix the problems that have been identified in the funding of public pensions and other areas.



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Illustration by James Endicott @ images.com

The Top Ten Advantages of Maintaining Defined Benefit Pensions

Legislation has been proposed in several states to replace state and local government defined benefit (DB) retirement plans with defined contribution (DC) plans. At issue is not whether state and local employees should have access to DC plans—many already do in conjunction with their DB plans or else through supplemental DC-type plans, which play a useful role in providing additional tax-deferred retirement savings.¹ Rather the issue is whether defined benefit plans should be eliminated and replaced with defined contribution plans.

While recognizing that DC plans are useful in providing supplemental retirement benefits, this paper discusses the advantages of maintaining state and local DB plans and argues against replacing them with DC plans. Eliminating the DB plan and switching to a DC plan is likely to be a lose-lose situation for governments, their employees, and taxpayers for many reasons. After briefly describing how DB and DC plans work, this paper will discuss the following 10 advantages of retaining DB plans:

- Retaining a DB plan is likely to cost state and local governments less over the short term. The long-term cost savings of switching to a DC plan are uncertain at best.
- Almost all state and local DB plans provide disability and survivor benefits as well as retirement income. Switching to a DC plan would require employers to obtain these benefits from another source, likely at a higher cost.
- DB plans enhance the ability of state and local governments to attract qualified employees and retain them throughout their careers. Switching to a DC plan would limit this ability, possibly producing or exacerbating labor shortages in key service areas by increasing employee turnover rates. Higher turnover rates result in increased training costs and lower levels of productivity that can, in turn, result in the need for a larger total workforce.

¹ Examples of DC-type plans available to state and local employees include governmental deferred compensation plans (also known as “457 plans”) and 403(b) annuities. In addition, some state and local employees are also covered by 401(k) plans, if the plans were established before May 6, 1986. As reported by the Nationwide Retirement Education Institute in their 2004 report *America's Retirement Voice: Public Sector Retirement Yesterday, Today, and Tomorrow*, governmental 457 plans are in place for most large and mid-size cities and counties and all 50 states, covering approximately 3 million participants. According to a 2006 survey by the National Association of Government Defined Contribution Administrators (NAGDCA), 7.4 million governmental employees are eligible to participate in some form of defined contribution plan. This represents about half of current state and local government employees.



- DB plans help state and local governments manage their labor force by providing flexible incentives that encourage employees to work longer or retire earlier, depending on the circumstances. Switching to a DC plan would limit this flexibility and make these incentives more expensive for the employer.
- By pooling risk over a relatively large number of participants, DB plans lower the overall risk do to investment losses and participants outliving retirement benefits. Switching to a DC plan would require each individual to bear these risks alone, consequently requiring higher contributions than if the risks were pooled.
- DB plans earn higher investment returns and pay lower investment management fees, on average, than DC plans. Switching to a DC plan is likely to lower investment earnings used to finance retirement benefits and increase management costs, to the detriment of plan participants.
- DB plan investment earnings reduce future employer contributions. Switching to a DC plan would prevent state and local governments from reducing employer contributions through investment earnings, which currently fund over two-thirds of public retirement benefits.
- DB plans provide secure retirement benefits based on a person's salary and period of service. Switching to a DC plan is likely to result in lower and less secure retirement benefits for many long-term governmental employees, including firefighters, police officers, and teachers, who constitute over half of state and local government workers.² State and local employees who are without Social Security coverage would be put at even greater risk.
- DB plans help sustain state and local economies by providing adequate and steady retirement benefits for a significant portion of the workforce. Switching to a DC plan may slow state and local economies, since a large number of retirees would likely receive lower retirement benefits.
- DB plans provide benefits that help ensure an adequate standard of living throughout retirement. Switching to a DC plan likely would result in pressure on state and local governments to augment DC plan benefits and require increased financial assistance for retirees.

Background

State and local government retirement plans in the United States cover 14.1 million active employees (about 10 percent of the U.S. labor force) and 6.9 million retirees,³ including teachers, police officers, firefighters, legislators, judges, and general employees. Ninety percent of state and local governmental employees are covered by defined benefit retirement plans.⁴ Approximately 25 percent are not covered by Social Security, including close to half of public school teachers and about 70 percent of police officers and firefighters. State and local retirement plans paid annual benefits of \$141 billion in 2005, averaging about \$20,400 per retiree.⁵ As of December 31, 2006, state and local plans had accumulated \$3 trillion in assets, which were invested in a broadly diversified mix of equity and fixed-income securities.⁶

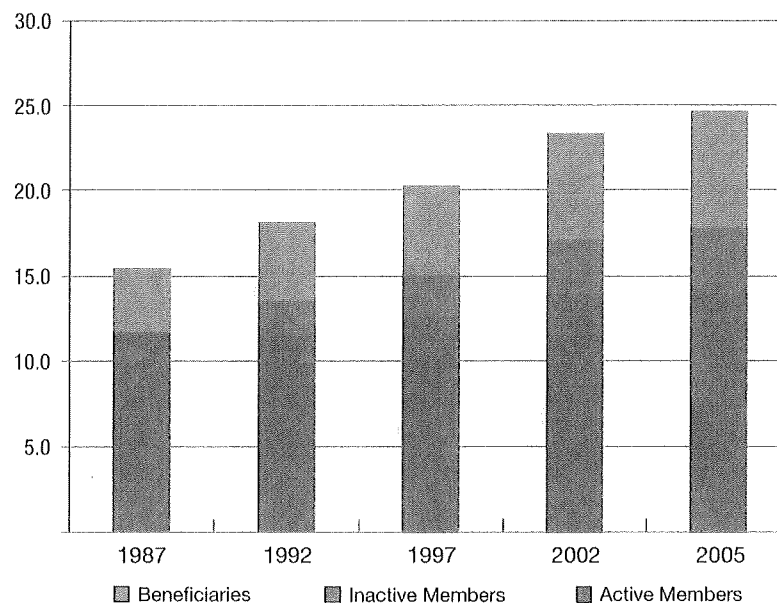
² U.S. Census Bureau, *Statistical Abstract of the United States 2004-2005* (Washington, DC: U.S. Government Printing Office, 2004), Table No. 454. Teachers, school employees, police officers, and firefighters constitute approximately 60 percent of state and local government employees.

³ U.S. Census Bureau, *State and Local Government Employee-Retirement Systems*, Fiscal Year 2005, Table 5a. In addition to active employees and retirees, state and local plans also cover 3.8 million inactive members who are eligible for retirement benefits upon reaching retirement age. (www.census.gov/govs/www/retire05.html)

⁴ U.S. Bureau of Labor Statistics, *Employee Benefits in State and Local Governments, 1998*. (Washington, DC: U.S. Government Printing Office, 2000), p. 5.

⁵ U.S. Census Bureau, *State and Local Government Employee-Retirement Systems*, Fiscal Year 2005, Table 1. Average benefit calculated by the author and rounded to the nearest hundred dollars.

⁶ Board of Governors of the Federal Reserve System, *Flow of Funds Accounts of the United States: Flows and Outstandings, Fourth Quarter 2006*, Table L-119. (www.federalreserve.gov/releases/z1/current/z1.pdf)

**Chart I: Participants in State and Local Government DB Plans**

Source: U.S. Census Bureau, State and Local Government Employee-Retirement Systems, annual

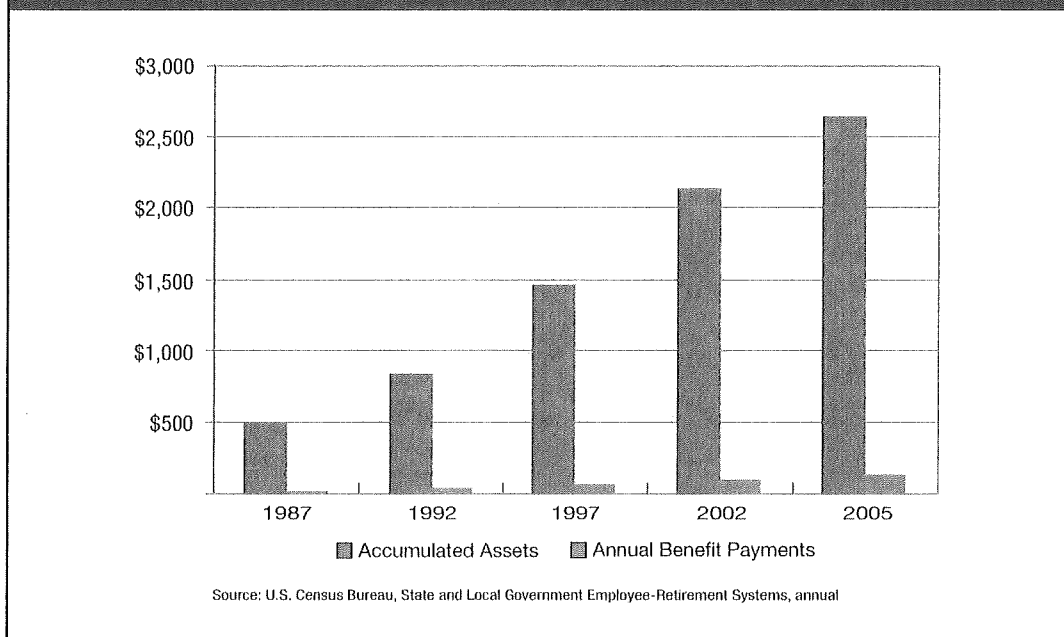
Since the mid-1990s, legislation has been proposed in several states to replace state and local DB plans with DC plans. The pace of these proposals increased from 2003 through 2006, partly due to equity market downturns in 2000 through 2002 that resulted in increased contribution rates for many DB plans, both public and private. Proponents of the change argue that switching to a DC plan would lower the government's cost of providing retirement benefits, thereby reducing state and local taxes. They also argue that DC plans would benefit public employees by giving them higher benefits through DC plan investment earnings and by making it easier for employees to take their benefits with them when they change jobs.

As this paper shows, it is likely that switching to a DC plan would increase retirement costs over the short-term and possibly over the long-term as well. In addition, recent studies indicate that retirement benefits provided through DC plans are, on average, significantly lower than those provided through DB plans. Moreover, while DC plans are useful for providing supplemental, tax-deferred retirement savings, replacing DB plans with DC plans could cause severe, unintended consequences:

- Governments could lose a valuable tool for attracting and retaining qualified employees;
- Public employees could lose a significant amount of retirement income, potentially affecting state and local economies; and
- Legislators could face additional pressure to increase DC retirement benefits and provide additional financial assistance for public-sector retirees.



Chart 2: Accumulated Assets and Annual Benefit Payments of State and Local Government DB Plans



How DB Plans Work

In a typical DB plan, employers promise to pay retirement benefits based on an employee's period of service and final average salary. A typical benefit formula for state and local general employees is 2 percent times final average salary times years of service.⁷ Under this formula, an employee who works 20 years and retires with a final average salary of \$40,000 would earn an annual benefit of \$16,000.

Eligibility for the benefit (i.e., vesting) usually requires employees to work for a minimum period of time, typically 5 years.⁸ Upon retirement, the benefit is provided as a series of monthly payments over the retiree's lifetime (and the surviving spouse's lifetime if this option is selected by the member who, in return, receives a reduced benefit). Most state and local employees are in DB plans that provide cost-of-living adjustments as protection against inflation. In addition, most also provide disability and pre-retirement death benefits.

DB plan benefits are financed by contributions from the employer (and most often from employees as well) and investment income. Employee contributions are usually established at a fixed rate of pay, averaging a little over 4 percent for general employees and almost 7 percent for public safety employees and teachers.⁹ Employer contributions are calculated so

⁷ The "2 percent" portion of this benefit formula is referred to as the "benefit multiplier." Benefit multipliers vary, depending on occupation and Social Security coverage. According to the NASRA/NCTR 2003 Public Fund Survey, the median benefit multiplier is 1.85 percent for state and local employees covered by Social Security and 2.20 percent for those not covered by Social Security.

⁸ National Education Association, *Characteristics of Large Public Education Pension Plans* (Washington, DC: National Education Association, 2004). The 88 statewide plans surveyed cover 9.4 million active workers. Fifty-seven percent of the plans had vesting periods of five years.

⁹ Public Pension Coordinating Council, *2000 Survey of State and Local Government Employee Retirement Systems*, April 2000, Table VII-7. Employee contributions as a percentage of payroll averaged 4.2 percent for general employees, 6.8 percent for teachers, and 6.9 percent for public safety employees.



that, over the long-run (50 years or more), annual contributions plus expected investment earnings are enough to pay the promised benefits plus administrative expenses. These calculations are done by actuaries and designed to maintain employer contribution rates at a level percent of payroll, by smoothing short-term investment fluctuations and using other actuarial techniques.¹⁰ Plan assets are invested in professionally managed, broadly diversified portfolios, with investment fees paid by the plan or employer. Retirement benefits are paid from accumulated contributions and investment earnings.

For employers, a key advantage of DB plans is that investment earnings reduce future employer contributions. In other words, employer and employee contributions generate investment earnings that, in turn, are used to pay benefits that would otherwise have to be paid from future employer contributions. From 1986 through 2005, state and local DB plan investments earned \$2.26 trillion, reducing the need for additional employer contributions and taxpayer revenues.¹¹

A potential disadvantage of DB plans is that when investment earnings are less than expected, additional employer contributions are required. However, it should be noted that the \$2.26 trillion earned by state and local investments over the past 20 years includes investment losses that occurred in 2000 through 2002, as well as in 1987 and 1994.

For employees, a key advantage of DB plans is that they provide secure and predictable retirement income over their lifetimes based on pre-retirement earnings. A key disadvantage is that employees who do not remain employed long enough to become vested often lose their DB plan benefits, although employee contributions are nearly always returned with interest.

How DC Plans Work

In a DC plan, employers provide employees with individual investment accounts and promise to contribute a certain amount to the accounts ranging from 3.5 percent to 8 percent (or more) of pay while the employee is employed. Employees can also contribute to their accounts and decide how the assets are invested, choosing from a number of funds representing major investment categories. Investment management fees are paid from the employee's account, reducing the funds available to pay benefits. At retirement, the employee's benefit is paid solely from the contributions and investment earnings that have accumulated in the individual's account.

For employers, one advantage of DC plans is that the employer's contribution rate is fixed and unaffected by downturns in investment markets. Moreover, the employer has no financial liability for the employees after they retire, even if the DC accounts are insufficient to provide an adequate retirement benefit. (While this may be an advantage for private-sector employers, it is a disadvantage for state and local governments—and taxpayers—who may have to pay increased public financial assistance as a result.)

A disadvantage for employers is that DC plans may not be a strong incentive for attracting and retaining qualified employees, especially if competing employers are offering DB

¹⁰ These smoothing techniques work well when investment fluctuations are moderate and short-lived.

¹¹ U.S. Department of Commerce, U.S. Census Bureau, through 1996, *Finances of Employee-Retirement Systems of State and Local Governments*, Series GF, No. 2, annual; beginning 1997, *State and Local Government Employee-Retirement Systems*, annual.



plans. Moreover, if employees' account balances are inadequate to provide retirement benefits when the employees intend to retire, employers can end up with a number of active employees who are not performing at peak productivity (also known as being "retired in place"). Another disadvantage is that, since the employer's contribution rate is fixed in a DC plan, upturns in the investment markets do not reduce the employer's contribution rate, as they do in DB plans.

For employees, one advantage of DC plans is that the vesting period is typically shorter than for DB plans. Six months to two years is typical.¹² Moreover, DC accounts are more "portable"—that is, easier to transfer if the employee changes jobs. A major disadvantage is that DC accounts are subject to investment risk and may not be enough to sustain employees throughout their retirement. Another disadvantage is that a high percentage of employees cash-out and spend some or all of their DC accounts when they change jobs, significantly reducing the amounts available to pay retirement benefits.¹³

The remainder of this paper describes the advantages of retaining DB plans.

Advantage 1: Retaining a DB plan is likely to cost state and local governments less over the short term. The long-term cost savings of switching to a DC plan are uncertain at best.

- DC plans are costly to establish and maintain. A DC plan must be designed, vendors must be selected, its operation must be monitored, and employees must be informed about plan features and available investments. Staff time is spent throughout this process, and the sponsoring government must pay legal and consulting fees. If a third-party administrator is not hired to operate the plan, the government must do this as well. Even if a third-party administrator is hired, the government will still have operating costs related to the DC plan, possibly ranging in the millions of dollars.
 - ❖ For example, the budget for the State of Florida's DC plan, established in 2000, totaled \$89 million from FY 2001 through FY 2004. This includes \$55 million to educate Florida's 650,000 government employees about the new plan.¹⁴ As of 2004, approximately 3 percent of DB participants had chosen to transfer to the DC plan.¹⁵
- Pension benefits currently promised to state and local employees and retirees may not be abandoned. Switching to a DC plan does not reduce accrued DB plan benefits already earned. Most governmental DB plan benefits are protected by the state's constitution or statutes that prevent accrued benefits from being reduced. Consequently, when an alternative DC plan is established, current DB plan members remain in the DB plan but may be given the option to transfer to the new DC plan. For current DB plan members who elect the DC plan, the value of the member's accrued DB benefit is often transferred to the DC plan.¹⁶

¹² However, some public-sector DC plans require 5 years of service (or more) for employees to completely vest in the employer's contributions.

¹³ This is surprising since the cashed-out amounts are subject to income taxes. In many cases they are also subject to a 10 percent penalty tax on early distributions.

¹⁴ Information provided by the Pension Protection Coalition, based on an analysis of the Florida Public Employee Optional Retirement Program's approved budgets and revenue collections. The analysis was done for the Coalition by the law firm of Olson, Hagel & Fishburn, LLP, January 18, 2005. The budgeted amounts exclude investment management fees paid by plan participants. Used with permission.

¹⁵ Anya Sostek, "Pension Pendulum," *Governing Magazine*, March 2004: 28.

¹⁶ If the member's accrued DB benefit is not transferred to the DC plan, it is maintained in the DB plan.



- **When given the option, most employees remain in the DB plan.** In most cases, only a small percent of employees elect to transfer from the DB plan to the DC plan.¹⁷ To increase the number of employees who eventually enter the DC plan, some governments have restricted the DB plan to current employees and have required newly hired employees to join the DC plan.¹⁸
- **Even when new hires are required to join the DC plan, long-term cost savings for employers are uncertain and may take many years to realize.** When a DB plan is closed to new hires, it still covers current employees and retirees, and benefits continue to accrue to active employees as a result of their service. To the extent that plan assets are less than accrued liabilities, unfunded liabilities remain. For DB plans with unfunded liabilities, closing the DB plan to new hires will likely increase the employer's annual required contribution rate. Because new hires are not entering the plan, the cost of funding the liabilities is spread over a declining number of active members,¹⁹ thereby increasing the employer's contribution rate as a percent of covered payroll. In addition, since a growing portion of plan assets must be used to pay benefits, a growing portion of assets will likely be held in short-term securities, thereby reducing investment returns.
 - ❖ For example, the Los Angeles County Employees Retirement Association (LACERA) estimated that the County's DB plan contribution rate would increase by 3.66 percent if employees hired after July 1, 2007, were required to join a DC plan. This would increase County contributions to the closed DB plan by \$206 million in 2008. While the contributions would gradually decline over time, the County would have to wait until 2018 to see any savings in DB plan costs as a result of the change.²⁰
- **In several cases, states have replaced (or have considered replacing) DC plans due to inadequacy of plan benefits or increased costs.**
 - ❖ In 1977, the North Dakota Public Employees Retirement System, originally established as a DC plan in 1966, was changed to a DB plan. Reasons given include the need to provide adequate retirement benefits and the need to attract and retain quality employees.²¹
 - ❖ In 2000, the State of Nebraska reviewed its two DC retirement plans for state and county workers and found that between 1983 and 1999 the DC plans' investment returns averaged only 6 percent compared with 11 percent for the state's DB plans. Recognizing these returns were inadequate to

¹⁷ Sostek, 2004. Three percent of employees covered by the DB plan elected to join the new DC plan in Florida, 6 percent in Michigan, and 2.5 percent in Ohio.

¹⁸ National Association of State Retirement Administrators, "Overview of Plan Types." Of the 14 state retirement systems discussed in this paper, only two (Michigan and West Virginia) required newly hired employees to join the DC plan. The remaining systems offered DC plans as a voluntary alternative to the DB plan or offered a new plan that combined DB and DC plan features. Available on the NASRA web site (www.nasra.org).

¹⁹ Governmental Accounting Standards Board, Statement No. 27, *Accounting for Pensions by State and Local Governmental Employers* (Norwalk, CT: Governmental Accounting Standards Board, 1994), p. 7. In situations where a DB plan is closed to new members, unfunded liabilities are amortized as a level percent of projected payroll, including projected decreases in the number of active plan members.

²⁰ Los Angeles County Employees Retirement Association, "Proposals to Close Public Defined Benefit Plans." (<http://www.lacera.com/home/ProposalsToClosePublicDefinedBenefitPlans.html>).

²¹ North Dakota Legislative Council, Employee Benefits Program Committee, "Public Employees Retirement Programs – History," October 1998.



sustain retirement benefits, the state responded by creating a new hybrid plan for state and county workers, combining both DB and DC plan features.²²

- ❖ In 2005, the West Virginia Legislature passed a law requiring teachers in the Teacher's Defined Contribution (TDC) Plan (created in 1991) to transfer into the State Teachers' Retirement System, a DB plan, effective upon approval by TDC plan members. According to the West Virginia Consolidated Public Retirement Board's actuary, the change would save the State \$1.9 billion over the next 30 years, because lower employer contributions were required for the DB plan (4.3 percent of payroll) than for the DC plan (7.5 percent of payroll). State teacher representative also indicated the change would help prevent teachers from leaving their jobs.²³ In 2006, TDC plan members voted to merge with the DB plan. However, because the law required the transfer of vested DC assets, it was contested and overturned in circuit court.²⁴

Advantage 2: Almost all state and local DB plans provide disability and survivor benefits as well as retirement income. Switching to a DC plan would require employers to obtain these benefits from another source, likely at a higher cost.

- Almost all state and local DB plans provide disability and survivor benefits. According to the U.S. Bureau of Labor Statistics, 97 percent of state and local government employees in DB plans have disability coverage through the plan and 93 percent may elect joint and survivor benefits.²⁵ These benefits are largely funded through contributions and investment earnings. Disability and survivor benefits are especially important for employees in hazardous occupations such as firefighters and police officers who may die or become disabled in the line of duty.
- Few DC plans provide disability benefits. Moreover, DC plan survivor benefits are usually limited to the participant's account balance. In the absence of a DB plan, employers would need to obtain disability and pre-retirement death benefits through commercial insurance or else would have to self-fund the benefits. Either of these options would result in additional administrative costs. If the benefits were obtained through commercial insurance, the employer's cost would also include the insurer's profit margin.

Advantage 3: DB plans enhance the ability of state and local governments to attract qualified employees and retain them throughout their careers. Switching to a DC plan would limit this ability, possibly producing or exacerbating labor shortages in key service areas by increasing employee turnover rates. Higher turnover rates result in increased training costs and lower levels of productivity that can, in turn, result in the need for a larger total workforce.

- Employers offer retirement plans as a way to attract qualified employees and retain them so their skills and experience are used efficiently. According to the Diversified

²² Anya Sostek, p. 28.

²³ Jim Wallace, "Teacher pension bill has hurdles," *Charleston Daily Mail*, March 31, 2005.

²⁴ *Antony J. Barbario v. West Virginia Consolidated Public Retirement Board*, Civil Action 06-C-687, Circuit Court of Kanawha County, West Virginia.

²⁵ U.S. Department of Labor, Bureau of Labor Statistics, *Employee Benefits in State and Local Governments, 1998* (Washington, DC: U.S. Government Printing Office, December 2000), pp 94-98.



Investment Advisors' Report on Retirement Plans, most large employers see a tangible value in offering a defined benefit plan to their employees – despite the high costs sometimes associated with it. Fifty-eight percent of plan sponsors with 25,000 or more employees believe that their DB plans have a major impact on employee retention.²⁶

- **DB plan provisions encourage employees to remain with an employer longer than DC plan provisions.** The vesting period for DB plans is typically longer (e.g., 5 years) than the vesting period for DC plans (e.g., 6 months to 2 years). Consequently, employees have a financial incentive to continue working for the employer at least until they vest. After that, DB plan benefit accruals based on continued service provide an additional financial incentive to remain.
- **Key governmental service areas, such as education and public safety, require skilled and dedicated employees to work in positions involving high levels of stress or physical activity or both.** Individuals with the skills and temperament to take on these roles usually have other opportunities in the labor market. DB plans provide strong incentives by rewarding long-term, dedicated service with a secure retirement.

Advantage 4: DB plans help state and local governments manage their labor force by providing flexible incentives that encourage employees to work longer or retire earlier, depending on circumstances. Switching to a DC plan would limit this flexibility and make these incentives more expensive for the employer.

- **Governments can use DB plan benefits as a way to manage their labor force by rewarding longer employment and encouraging retirement after a certain period of employment.** DB plan benefit formulas can be structured to provide incentives for longer employment by increasing the benefit multiplier after a certain period of service.
 - ❖ For example, the formula could provide benefits of 2.0 percent of final average earnings for the first 20 years of service and 2.2 percent for service over 20 years. To encourage retirement after a certain period of employment, DB benefit formulas can limit benefit accruals to a maximum percent of final average earnings or a maximum years of service. In this example, if the benefit accrual was limited to 62 percent of final average earnings, it would encourage employees to retire after 30 years of service. Other options, such as early retirement incentives (ERIs) and deferred retirement option plans (DROPs), are also available.

Advantage 5: By pooling risk over a relatively large number of participants, DB plans lower the overall risk do to investment losses and participants outliving retirement benefits. Switching to a DC plan would require each individual to bear these risks alone, consequently requiring higher contributions than if the risks were pooled.

- **DC plan participants must save enough to ensure they will not outlive their accumulated assets while protecting their funds against financial market fluctuations.** According to the Society of Actuaries RP-2000 mortality tables, 50 percent of U.S.

²⁶ "Majority of U.S. Companies That Offer a Pension Plan Say It Impacts Employee Retention," *Business Wire*, September 7, 2004.



males who reach age 65 will live to age 83, 10 percent will live to age 93, and about 1 percent will live to 100. Moreover, 50 percent of U.S. females who reach age 65 will live to age 85, 10 percent will live to age 96, and 2 percent will live to 100. To ensure their DC accounts will sustain them over their expected lifetimes, DC plan participants must save enough to ensure their benefits will be paid into their 90s.

- ❖ A 25 year old male would have to save 17 percent of his salary each year to age 65 in order to replace 75 percent of his pre-retirement income from age 65 to age 93 (assuming 7 percent annual investment returns). A 25 year old female would have to save 18 percent of her salary to assure 75 percent income replacement to age 96. However, if these longevity risks were pooled over a large enough group to allow the risks to be fully averaged, the required savings rate would fall to 13.6 percent of salary for both males and females.²⁷ Risk pooling is one of the main advantages of a DB plan.
- In order to lower investment risk, DC plan participants usually shift a greater portion of their assets from stocks into bonds as they grow older. While this helps protect against equity market downturns, it also lowers likely investment return. According to a 2004 Employee Benefit Research Institute study, 401(k) plan participants in their 20s invest 65 percent of their account balances in equities (including company stock) and 21 percent in fixed-income securities, on average. Participants in their 60s invest 49 percent in equities and 40 percent in fixed-income securities.²⁸ In contrast, large public retirement systems hold 60 percent of assets in equities, 29 percent in fixed-income securities, and the remaining 11 percent in other investments.²⁹ This pooling of assets allows DB plans to maintain a more diversified portfolio and helps to lower investment management fees.
- By averaging longevity and investment risks over a large number of participants, DB plans lower the total costs of providing retirement benefits. Instead of requiring contributions large enough to fund retirement benefits through each individual's maximum life expectancy, DB plans only need to fund benefits through the average life expectancy of the group. This lowers required contributions. Moreover, by spreading investment risk over a longer period, DB plans can maintain an investment mix that includes a higher percentage of equity investments. This increases likely investment returns, which further lower required contributions. In the example presented earlier in this section, if the pooling of funds could increase investment returns from 7 percent to 8 percent, then the required savings rate for the pooled participants would fall from 13.6 percent to 10.0 percent.³⁰

²⁷ Gabriel, Roeder, Smith & Company, "The Advantages of Risk Pooling for Financing Retirement Benefits," *GRS Insight*, July 2006. (<http://www.gabrielroeder.com/pubs/GRSInsight-2006-07.pdf>)

²⁸ Sara Holden and Jack VanDerhei, "401(k) Plan Asset Allocation, Account Balances, and Loan Activity in 2004," *EBRI Issue Brief*, No. 272, August 2004. Employee Benefit Research Institute.

²⁹ Keith Brainard, *Public Fund Survey Summary of Findings for FY 2005*, National Association of State Retirement Administrators, September, 2006, p. 5.

³⁰ Gabriel, Roeder, Smith & Company, "The Advantages of Risk Pooling for Financing Retirement Benefits," *GRS Insight*, July 2006. (<http://www.gabrielroeder.com/pubs/GRSInsight-2006-07.pdf>)



Advantage 6: DB plans earn higher investment returns and pay lower investment management fees, on average, than DC plans. Switching to a DC plan is likely to lower investment earnings used to finance retirement benefits and increase management costs, to the detriment of plan members.

- On average, investment returns for DC plans are lower than for DB plans, resulting in significantly lower investment earnings over an individual's lifetime. According to Boston College economist Alicia Munnell, DB plans outperformed DC plans by one percentage point annually, on average, between 1988 and 2004.³¹ For a person contributing \$5,000 to a DC plan each year for 40 years, the difference between an 8.0 percent annual return and a 7.0 percent return amounts to a loss of over \$279,000.³² Other studies show that individual, non-professional investors may underperform the market by as much as 2.0 percent annually.³³ The difference between an 8.0 percent annual return and a 6.0 percent return amounts to a loss of over \$521,000.³⁴
- Administration and investment costs for DC plans can be more than four times higher than for DB plans. In DC plans, these costs are borne directly by individual plan participants through deductions from their DC accounts. According to the Investment Management Institute, the operating expense ratio for DB plans averaged 31 basis points in 2003 (31 cents per \$100 of assets) compared with 96 to 175 basis points for DC plans.³⁵ According to the Illinois Municipal Retirement Fund, the total annual administrative and investment cost for their DB plan amounted to 44 basis points in 1999. Had they switched to a DC plan, total annual administrative and investment costs could have increased up to 225 basis points, or up to \$250 million more than the annual administrative and investment costs paid by the DB plan.³⁶
- Employees direct their own investments in a DC plan, usually selecting from among several funds that reflect major investment categories. Generally, employees have limited investment experience or training. According to a 2007 study by Watson Wyatt Worldwide, many DC plan participants "don't start saving soon enough, don't save enough, and don't follow sound investment principles in managing their retirement assets." The study also found that assets are more effectively managed in DB plans, in part because plan administrators work with consultants and professional asset managers to set and implement investment goals.³⁷
- DC plan participants often cash-out and spend some or all of their DC accounts when they switch jobs. As a result, the accounts contain less money to earn investment returns and to pay benefits at retirement. According to Alicia Munnell, more than half of DC plan participants withdraw funds from their DC accounts when they change jobs, removing between one-quarter and one-third of their total DC plan assets before they reached retirement.³⁸

³¹ Alicia H. Munnell et al, "Investment Returns: Defined Benefit vs. 401(k) Plans," *Issue Brief*, Center for Retirement Research at Boston College, September 2006.

³² Author's calculations.

³³ W. Michael Carter, Actuary. February 6, 1998. Letter comment on "Pension Liberation: A Proactive Solution to the Nation's Public Pension Systems." Letter is posted on the National Council on Teacher Retirement website (www.nctr.org).

³⁴ Author's calculations.

³⁵ Sean Collins, "The Expenses of Defined Benefit Pension Plans and Mutual Funds," *Perspective*, Vol. 9, No. 6, December 2003. DC plan expenses include 12-b1 marketing and distribution fees.

³⁶ Louis W. Kosiba, "The Defined Benefit vs. Defined Contribution Debate: The \$250 Million Question," Illinois Municipal Retirement Fund, October 13, 1999, p. 2. IMRF serves over 360,000 active employees, inactive members, retirees and beneficiaries.

³⁷ Watson Wyatt Worldwide, *Pension Aspirations and Realizations: A Perspective on Yesterday, Today, and Tomorrow*, March 2007.

³⁸ Alicia H. Munnell and Annika Sunden, *Coming Up Short: The Challenge of 401(k) Plans*, (Washington, DC: Brookings Institution Press, 2004), p. 132.



Advantage 7: DB plan investment earnings help to reduce future employer contributions. Switching to a DC plan would prevent state and local governments from reducing future employer contributions as a result of investment earnings, which currently fund over two-thirds of public retirement benefits.

- State and local governments have benefited from investment returns overall and many have used investment earnings to reduce employer contributions. Over the long-term, an employer's cost of providing DB plan benefits depends on investment earnings. Although investment earnings can fluctuate sharply at times (as happened from 2000 through 2002), over the last 20 years state and local governments have substantially benefited from investment returns and have used the accumulated assets to lower employer contributions. As provided in governmental accounting standards, plan assets that are greater than plan liabilities are amortized to reduce employer contributions.³⁹ A 2002 survey of Michigan state and local government retirement systems shows that of 115 independent local government retirement plans surveyed, employer contributions for 102 (89 percent) were below the normal cost of benefits as a result of this amortization.⁴⁰
- Most of the money paid into state and local retirement plans comes from investment earnings. Over the 20-year period from 1986 through 2005, state and local government investment earnings amounted to about \$2.3 trillion, compared with employer contributions of \$790 billion and employee contributions of \$400 billion.⁴¹ This means two out of every three dollars paid into state and local retirement plans over the last 20 years was received from investment earnings. According to a paper on state and local retirement plans prepared for the Wharton School's Pension Research Council: "Setting aside all the other benefits to employers and employees of DB plans, contributions to public pension plans may be among the best investments a state or local government can make."⁴²

Advantage 8: DB plans provide secure retirement benefits that are based on a person's salary and period of service. Switching to a DC plan is likely to result in lower and less secure retirement benefits for many long-term governmental employees, including firefighters, police officers, and teachers, who constitute over half of state and local government workers. State and local employees who are without Social Security coverage would be put at even greater risk.

- Retirement benefits paid from DC plans are significantly less than those paid from DB plans. The U.S. Congressional Research Service found that, for current older workers, DC-type plans will provide annual benefits of less than \$5,000 for half the workers.⁴³ This is one-quarter of the \$20,400 average annual benefits currently paid by governmental DB plans to state and local workers.
- If average state and local retirement benefits fell from \$20,000 to \$5,000, it would mean a loss of approximately \$106 billion in annual U.S. personal income.⁴⁴ This loss would be felt by state and local economies, since many retirees remain in the

³⁹ Governmental Accounting Standards Board, Statement No. 27, p. 6.

⁴⁰ Gabriel, Roeder, Smith & Company, 2002 *Michigan Public Employee Retirement Systems Survey*, (Southfield, MI: Gabriel, Roeder, Smith & Company, 2002).

⁴¹ U.S. Department of Commerce, U.S. Census Bureau, through 1996, *Finances of Employee-Retirement Systems of State and Local Governments*, Series GF, No. 2, annual; beginning 1997, *State and Local Government Employee-Retirement Systems*, annual.

⁴² Gary W. Anderson and Keith Brainard, "Profitable Prudence: The Case for Public Employer Defined Benefit Plans," Pension Research Council, Wharton School, University of Pennsylvania, 2004, p. 14.

⁴³ Patrick J. Purcell, "Retirement Savings and Household Wealth: A Summary of Recent Data," Washington, DC: Library of Congress, Congressional Research Service, December 11, 2003.

⁴⁴ Author's calculation based on \$141 billion in annual pension benefits paid by state and local government retirement plans in 2005.



same location when they retire. These pension benefits are also, in most cases, subject to federal and state income taxes, thus resulting in a loss of tax revenues. Tax losses would also be seen in reductions of state sales tax revenues.

- The change would have an even greater effect on the 25 percent of state and local government employees who are not covered by Social Security, including about half of school teachers and about 70 percent of police officers and firefighters. When first enacted in 1935, Social Security excluded state and local employees, due largely to constitutional questions about the federal government's right to tax state and local governments. In 1950, Congress amended Social Security to allow state and local governments to voluntarily elect coverage. By then, however, half of the largest state and local plans had already been established, including many plans for teachers and public safety employees.⁴⁵ These DB plans provide benefits that compensate for the lack of Social Security coverage. Replacing them with defined contribution plans would put members at even greater risk, since they would not have Social Security benefits to fall back on.

Advantage 9: DB plans help sustain state and local economies by providing adequate retirement benefits for a significant portion of the workforce. Switching to a DC plan would likely slow state and local economies, since a large number of retirees would likely receive lower retirement benefits.

- Public DB plans have a substantial impact on state and local economies. For example, a 2006 economic impact study by the Perryman Group found that the \$5.4 billion in annual benefits paid by the Teacher Retirement System of Texas (TRS) to approximately 250,000 retired teachers and beneficiaries generates \$9.9 billion in total economic activity within the state. Moreover, as a result of TRS's strong investment performance, the overall return on state (and therefore taxpayer) contributions is significant: every \$1 of state funds contributed to TRS leads to \$7.85 in total spending in the Texas economy."⁴⁶
- The overall economic value added by the investment income of state and local DB plans over what would otherwise have been earned in DC plans is estimated to be about \$200 billion annually, or 2.0 percent of U.S. Gross Domestic Product.⁴⁷ In essence, state and local retirement plans act as financial engines, using employer and employee contributions to generate investment income that, when paid as retirement benefits, bolsters state and local economies by \$200 billion a year. State and local retirees purchase a wide range of goods and services with their retirement income. These purchases, in turn, promote employment and create additional economic demand, generating additional economic activity. As a result of this multiplier effect, the economic activity generated by the higher investment earnings amounts to 2.0 percent of U.S. Gross Domestic Product. As a growing number of state and local employees retire, this percentage will likely increase.

⁴⁵ Olivia S. Mitchell, et al, *Pensions in the Public Sector*, (Philadelphia, PA: University of Pennsylvania Press, 2001) p. 13.

⁴⁶ The Perryman Group, *Beyond the Classroom: The Impact of Pension Benefits Paid by the Teacher Retirement System of Texas (TRS) on Business Activity in Texas, Its Regions, Metropolitan Areas, and Counties*, July 2006.

⁴⁷ Anderson and Brainard, p. 14.

**Advantage 10: DB plans provide benefits that help to ensure an adequate standard of living throughout retirement.**

Switching to a DC plan would likely result in pressure on state and local governments to augment DC plan benefits and require increased financial assistance for retirees.

- If DC plan benefits are less than what is needed to ensure an adequate standard of living during retirement, continued pressure will be placed on state and local governments, legislators, and taxpayers as retirees outlive their retirement income. Since DC benefits are not indexed to inflation, extended periods of even modest inflation will mean almost constant pressure for some form of additional financial support for retirees, who would make up a growing portion of the electorate. When DC plan benefit improvements are granted, they will be paid from current government revenues and will not be offset by investment earnings.

Conclusion

This paper addresses the question, “Should state and local government defined benefit plans be eliminated and replaced with defined contribution plans?” It concludes that such a move would have significant, long-term, detrimental effects on state and local governments, their employees, their economies, and ultimately the taxpayers.

In the final analysis, the real question is, “How can state and local governments efficiently provide secure, sufficient, and sustainable retirement benefits for their employees?” To answer this question, retirement benefits should be viewed in total, including benefits from Social Security, defined benefit plans, defined contribution plans, and individual savings. No single source alone is sufficient, but together they can be used to provide effective and efficiently funded retirement income. Eliminating defined benefit plans would only intensify future problems rather than provide solutions.

Instead, decisions should be based on a clear understanding of the goals that current plan design is intended to achieve for the various stakeholders, including the employer sponsoring the plan, plan participants, and taxpayers. Retirement plan design represents a significant public policy. Therefore, the plan sponsor contemplating changes must understand the policy implications of current plan design as well as any new proposals.

Success is most likely to happen after careful analysis. With proper analysis and an understanding of the needs of a changing population, fine-tuning the basic pension plan design can produce excellent results for all – sponsors, employees, retirees, and taxpayers.



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**CONTRIBUTING FACTORS TO FIREFIGHTER
LINE-OF-DUTY INJURY
IN METROPOLITAN FIRE DEPARTMENTS
IN THE
UNITED STATES**

Authored by,
Lori Moore-Merrell, Ainong Zhou, Sue McDonald-Valentine, Randy Goldstein and
Chloe Slocum

AUGUST 2008



Abstract

Objective: The objective of this study was to analyze retrospective data from a group of geographically diverse metropolitan fire departments for the years 2005-2006 (two years) to identify and quantify the major factors that contribute to firefighter line-of-duty injury (LOD injury). The identified contributing factors were examined for frequency of occurrence and clustering with other factors. Results should be used to alert participating fire department leaders of the primary factors that contribute to firefighter injuries in their respective departments and to identify clustering patterns of those factors. Results should be used to develop or enhance risk management programs within the participating and similar departments.

Methods: A retrospective study was conducted using data compiled from nine geographically diverse metropolitan fire departments throughout the United States. Source departments include Richmond, Virginia, Worcester, Massachusetts, Charlotte, North Carolina, Miami, Florida, Memphis, Tennessee, Shreveport, Louisiana, Kansas City, Missouri, Phoenix, Arizona, and Contra Costa County, California. For each LOD injury, factors contributing to the injury were recorded from internal departmental reports including official injury reports, victim statements, officer and eyewitness reports. Once compiled, the contributing factors were analyzed for frequency of occurrence and clustering with other factors. No factors were excluded from the cluster analysis. Factors and clusters were stratified according to firefighter age, gender, type of injury, body part injured, location where injury occurred, firefighter years of service, medical treatment required, and post injury status.

Results: There were 3450 injury cases with sufficient information to be included in the study. Frequency analysis revealed that the dominant contributing factors to LOD injury are lack of situational awareness (37.35%), lack of wellness/fitness (28.57%) and human error (10.65%). Cluster analysis was performed revealing

contributing factors frequently occurring together. Four main clusters were identified with these contributing factors. Cluster 1 included equipment failure, lack of training, structural failure, act of violence, civilian error, horseplay, and lack of teamwork. Cluster 2 included crew size, lack of wellness/fitness, firefighter fatigue, and weather/act of nature. Cluster 3 included protective equipment not worn (SCBA or seatbelt) and dangerous substance. Cluster 4 included decision making, lack of communication, standard operating guideline/procedure breach, protocol breach, human error, and lack of situational awareness. Cluster 4 alone, (regardless of other clusters) was shown to be responsible for more than 30.0% of all firefighter on duty injuries during the years studied while cluster 2 was responsible for an additional 26.2%.

Conclusions:

Ninety-four and one half percent of firefighter LOD injuries occurring in 2005-2006 in the departments studied, are attributable to an identifiable cluster of contributing factors. Approximately one third of the firefighter LOD injuries studied are attributable to a cluster of factors that are under the direct control of the individual firefighter and chief officers. The information revealed in this study imposes a considerable burden on fire service leaders as well as firefighters themselves. It offers substantial explanation for the LOD injury occurring within metropolitan departments studied thus providing direction for shaping local fire department policy decisions and operational priorities in those departments.

Keywords:

LOD injury, contributing factor, injury, firefighter

The provision of fire suppression and emergency medical services entails sporadic high levels of physical exertion, uncontrolled environmental exposures, and psychological stress from observing intense human suffering. Firefighters experience inordinate numbers of line-of-duty injuries, injuries due to occupational diseases, and forced retirements. (Moore-Merrell, 2008). NFPA estimates that there were approximately 1,140,900 firefighters in the U.S. in 2006. Of the total number of

firefighters, 316,950 or 28% were career firefighters. Most of the career firefighters (76%) are in communities that protect 25,000 or more people. (Karter, 2007) A large percentage of these firefighters are employed by fire departments in metropolitan areas.

Year after year, there are notable advancements in the fire service industry. These advancements range from building code improvement to sprinkled buildings, from better personal protective gear to technologically advanced apparatus. Many profound advances have also been made in both laws and programs designed to improve worker safety and health for all workers in the United States. In spite of these laws and the improvements mentioned, scores of firefighters are injured in the line-of-duty each year. NFPA estimates that 80,100 firefighter injuries occurred in the line of duty in 2005, an increase of 5.6% from the year before. Almost half of the all firefighter injuries occurred during fire ground operations. An estimated 13,325 occurring during other on duty activities, while 12,250 occurred at non-fire emergency incidents. The leading type of injury received during fire ground operations was strain, sprain or muscular pain. (Karter, 2006) This study specifically examines contributing factors leading to firefighter LOD injury in metropolitan fire departments. Results can be compared with similar studies to hone knowledge and thereby provide opportunities for intervention through departmental training, practices and policy to prevent firefighter injuries.

LITERATURE REVIEW

Currently, there is a dearth of published information on firefighter injuries. Government and industry publications, which rely on voluntary incident reporting and annual survey projections, presently offer the broadest scope of information regarding fireground injuries. (Karter 2007) Academic interest in firefighters' occupational risks and hazards has increased in recent years, but many of these papers analyze contributing factors outside the context of specific fireground incidents and individuals' past firefighting experience and training. The most in depth studies to date identify key areas of risk for firefighter injuries, but many findings suffer from limited predictive value due to small sample sizes. If LOD injuries are to be comprehensively evaluated and risks of firefighter injury minimized to the fullest, future investigation must look both in finer and

greater detail at the particular events unfolding at fire and emergency scenarios as well as overarching trends across geographic regions.

The U.S. Fire Administration's (USFA) voluntary-enrollment National Fire Incident Reporting System (NFIRS) comprises the largest information database used for analysis in most academic and government publications on firefighter injuries and fatalities. Module 5 of the current NFIRS Version 5.0, the Fire Service Casualty Module, includes a firefighter injury reporting form. (NFDC 2008) However, the majority of papers using data from this system examine firefighter fatalities and the risk of death associated with coronary heart disease, structure related trauma, and the risk differences for a variety of factors between career and volunteer firefighters. (CDC 2006, Hodous 2004, Kales 2003) Few studies to date have attempted to quantify incident-level risk factors for firefighter injury using NFIRS data. (Fabio 2002) The National Fire Protection Agency (NFPA) Survey of Fire Departments for U.S. Fire Experience is the industrial counterpart to NFIRS annual data and projects responses from 2,500-3,500 departments into national figures by weighting the results to adjust for the proportion of U.S. population represented by community size. NFPA reports provide annual national estimates of injuries by cause, type of duty, and number of injuries per department by population of community protected. (Karter 2007) Conclusions drawn from either of these datasets are confined by study designs that by necessity exclude certain fire incidents. Thus, NFIRS' voluntary reporting system and NFPA's survey projections give the most extensive accounts of U.S. firefighter injuries, but these estimates are still only partially complete.

Presently, academic literature that attempts to identify and assess factors contributing to firefighter LOD injuries tends to focus on broad risk categories that can be studied using a general knowledge of firefighters' physical duties and potentially hazardous fireground exposures. These papers, which usually address overall firefighter fitness or equipment use, emphasize the fact that public safety depends on the general health of firefighters and medical first responders and that effective equipment use can prevent certain types of injury. (Soteriades 2005) Reduced firefighter fitness and cardiovascular health have so far received the most attention as contributing factors to "adverse employment events" including on-duty injury and disability. (Kales 2002, Soteriades 2002-2008, Sothmann 2004) A few studies of firefighter equipment and ergonomics have

confirmed the use of specific uniforms and vehicle restraints in preventing LOD burn and motor vehicle injuries, as well as identified emergency rescue tasks that cause the most musculoskeletal strain. (Becker 2003, Lavender 2000, Prezant 2000) Likewise, several smaller analyses have affirmed the role that the close-knit structure of a fire company plays in shaping various health promotion attitudes. (Elliot 2004 & 2007, Moe 2002) By addressing issues such as hearing loss, eating habits, and psychological stress in the context of unit-level resources and outcomes, such papers come closer to realizing the occupational experience of many firefighters but are still somewhat removed from line-of-duty incidents (Bacharach 2008, Beaton 1998, Hong 2008, Kales 2001, Tak 2007). Studies of breathing apparatus use during overhaul come nearest to documenting the risks of lung injury during specific incident conditions, but these like the majority of academic papers examine a highly localized sample population. (Austin 2001, Burgess 2001)

If the risks and contributing factors for firefighter LOD injuries are to be fully understood, greater study must be given toward the sequences of events unfolding at and around particular fire incidents and emergency situations. While long-term prevention, health promotion, and technological advancements certainly equip firefighters with individual and sometimes unit-level tools to reduce on-duty risks before an incident occurs, far less research has examined the influence that the interaction of these factors and more dynamic, situation-specific elements have on firefighter LOD injuries during fire operations. A review of the current literature suggests a pressing need for information and analysis that synthesizes diverse populations and incorporates the ways in which individual firefighter fitness, fatigue over time, equipment performance and use, staffing, strategic protocols, incident command, teamwork, and changing environmental factors contribute to situations that protect firefighters or make them more vulnerable to LOD injuries.

METHODS

Study Design

Injury data analyzed in the study were compiled from nine geographically diverse metropolitan departments in the United States. Data were limited to firefighter line-of-duty injuries occurring during the years of 2005-2006 with sufficient information for analysis. Injury data were contributed from metropolitan fire departments in Richmond, Virginia, Worcester, Massachusetts, Charlotte, North Carolina, Miami, Florida, Memphis, Tennessee, Shreveport, Louisiana, Kansas City, Missouri, Phoenix, Arizona, and Contra Costa County, California. Data compiled included case information for each line-of-duty injury as well as known contributing factors to the injury including one or more of the following; officer/incident command, crew size, decision making equipment failure, lack of training, lack of wellness/fitness, firefighter fatigue, lack of communication, standard operating guidelines/procedures breach, protocol breach, structural failure, act of violence, weather/act of nature, human error, civilian error, lack of situational awareness, horseplay, or lack of teamwork. Data for each LOD injury and associated contributing factors were compiled from reports profiling the incident leading to the injury as communicated by the victim, peers, and officers and as recorded by each respective department's injury tracking mechanism. Methods for data collection, recording and reporting varied between departments. Though similar, none of the departments collected or reported firefighter injury in the same way. Therefore, data compilation was conducted on a case-by-case basis to assure proper transfer of information and an accurate transfer of data element definitions to the master database used for analysis. A total of 3450 cases had sufficient information available for inclusion in the study.

Data Synthesis

This study was based on data extracted from nine metropolitan fire department's injury files for the years 2005-2006. These data were cross-referenced with data elements and definitions used in the Near Miss Reporting System to assure industry consistency in use of terms recognized in the fire service industry.

The term 'on-duty' refers to a firefighter being involved in operations at the scene of an emergency, whether it is a fire or non-fire incident, responding to or returning from

an incident, or performing other officially assigned duties such as training, maintenance, public education, inspection, and investigations.

Study Protocol

Descriptive data for each LOD injury and associated contributing factors were compiled from reports profiling the incident leading to the injury as communicated by the victim, peers, and officers and as recorded by each respective department's injury tracking mechanism. Data were submitted using a standard template (Appendix I) and were compiled into a master database for analysis. Data tables were prepared with all study relevant information.

Data were analyzed to assess the frequency of identified contributing factors and the circumstances in which the injury occurred. As injury-relevant circumstances and contributing factors were documented, a variable key was constructed containing each variable name and the definition as referenced in data source reports. Frequency analysis as well as cluster analysis were performed on the overall database. Cluster analysis was used to organize the data into meaningful structures, or develop taxonomies or groups of contributing factors that occur together. The aim of cluster analysis was to sort different factors into groups in a way that the degree of association between two factors is maximal if they belong to the same group and minimal otherwise. Clustering is typically used to discover structures in data without providing an explanation or interpretation as to why they exist. Clusters provide a springboard for future research to better identify why relationships exist between various factors.

Data Analysis

Initial analysis identified the overall dominant contributing factors as well as the dominant factors in each of five strata. Strata included firefighter age, gender, rank, years of service, and scene type. Next, data were analyzed for clustering between contributing factors and the frequency of that cluster. Four oblique clusters of the contributing factors were identified using the VARCLUS Procedure using the SAS software (Version 9.1, SAS Institute). All contributing factors were included in the cluster analysis. A binary score was calculated for each cluster based on

presence/absence of any of its constituent contributing factors. Finally, these contributing factor clusters were evaluated for the significance of their contribution to firefighter LOD injury in the departments studied. The relative contribution of these clusters was also evaluated within each stratum identified previously. All data analyses were conducted using the SAS software.

RESULTS

There were 3450 cases identified with sufficient information for inclusion in the study. Firefighter LOD injury characteristics are shown in Table 1. Age information was not available for fourteen of the cases and gender was not identified in three cases. Additionally, the years of service and rank were not identified in eight and two cases respectfully. Stratified analyses were limited to cases with sufficient strata specific data.

As is expected, based on the make-up of the fire service, the majority of LOD injury cases are male (94.9%). For the years and cases included in the study, more firefighter LOD injury occur in firefighters with less than 6 years of service (30.7%) and in those with between 11-20 years of service (31.9%). The majority of firefighters injured are between the ages of 36-45 (39.4%). According to rank, more firefighter LOD injury occurs in the rank of firefighter (72.1%) than in any other rank.

Table 1

Characteristics of firefighter LOD injury cases included in the study (N=3450)			
Age			
	Less than 26	185	5.4%
	26-35	1041	30.2%
	36-45	1358	39.4%
	46-55	740	21.4%
	Greater than 55	112	3.2%
	Unidentified	14	0.4%
Gender			
	Female	174	5.0%
	Male	3273	94.9%
	Unidentified	3	0.1%
Rank			
	Chief	77	2.2%
	Civilian	11	0.3%
	Fire Fighter	2489	72.1%
	Investigator	13	0.4%
	Recruit	84	2.4%
	Captain	774	22.4%
	Unidentified	2	0.1%
Years of Service			
	Less than 6	1058	30.7%
	6-10	627	18.2%
	11-20	1100	31.9%
	Greater than 20	657	19.0%
	Unidentified	8	0.2%
Scene Type			
	Not Specified	37	1.1%
	Fireground	1053	30.5%
	Non-fire Emergency	862	25.0%
	In-Transit	200	5.8%
	Training	344	10.0%
	Other On-Duty	954	27.7%

Characteristics of the injuries incurred were also assessed. Data were compiled on various aspect of each injury including type of injury, body part injured, medical treatment, and number of days off duty or on light duty. As for circumstances surrounding the injuries, most occur on the fire ground (30.5%) and the most common injury is a fracture or muscle sprain (61.7%). For the cases studied, more than half required medical aid (62.7%) and the most common body part injured was an extremity (42.0%).

Table 2

Characteristics of injuries included in the study (N=3450)			
Number of Days Injured (off normal duty)			
	0 days injured	2585	74.9%
	1-10 days injured	546	15.8%
	11-20 days injured	105	3.0%
	21-30 days injured	59	1.7%
	30+ days injured	144	4.2%
	Did not return	11	0.3%
Number of Days on Light Duty			
	0 LightDuty	3102	89.9%
	1-10 LightDuty	176	5.1%
	11-20 LightDuty	58	1.7%
	21-30 LightDuty	26	0.8%
	30+ LightDuty	87	2.5%
	Unidentified	1	0.0%
Medical Treatment			
	No Aid	1287	37.3%
	Yes Aid	2163	62.7%
Type of Injury			
	Not Specified	46	1.3%
	Fire, Chemical Burn	189	5.5%
	Inhalation, Respiratory	188	5.4%
	Wound, Cut, Bleeding	509	14.8%
	Fracture, Sprain, Muscle	2128	61.7%
	Heart Attack, Stroke	150	4.3%
	Skin Exposure	225	6.5%
	Any Combination	15	0.4%
Body Part Injured			
	Not Specified	50	1.4%
	Extremity	1448	42.0%
	Head/Face/Neck	367	10.6%
	Trunk/Abdomen/Groin	490	14.2%
	Back	741	21.5%
	Heart/Respiratory	261	7.6%
	Heat Exhaustion	21	0.6%
	Any Combination	72	2.1%

Contributing factors were identified for each injury. The factors identified were compiled from reports profiling the incident leading to the injury as communicated by the victim, peers, and officers and as recorded by each respective department's injury tracking mechanism. Each factor identified was defined or described and assigned a

variable name for the study. The contributing factors, definitions and variable names are listed below.

- **Incident Commander (IC)** – Individual responsible for the combination of facilities, equipment, personnel, procedures, and communications operating within a common organizational structure with responsibility for the management of assigned resources to effectively accomplish stated objectives pertaining to an incident or training exercise (NFPA Standard 1670,424).
- **Crew Size (CREW SIZE)** – (Fire Crew or Company) A group of members: (1) Under the direct supervision of an officer; (2) Trained and equipped to perform assigned tasks; (3) Usually organized and identified as engine companies, ladder companies, rescue companies, squad companies, or multi-functional companies; (4) Operating with one piece of fire apparatus (engine, ladder truck, elevating platform, quint, rescue, squad, ambulance) except where multiple apparatus are assigned that are dispatched and arrive together, continuously operate together, and are managed by a single company officer; (5) Arriving at the incident scene on fire apparatus (NFPA Standard 1710). An organized group of firefighters under the leadership of a crew leader or other designated official (NIFC, 2006).
- **Lack of Training (TRAIN)** – The deficiency of instruction and hands-on practice in the operation of equipment and systems that are expected to be used in the performance of assigned duties (NFPA Standard 600-601).
- **Lack of Communications (COMM)** – A deficiency of radio, telephone and messenger service networks throughout the emergency response system necessary to facilitate direct communication from the incident commander to officers, firefighters and emergency providers in tactical operations (NFPA Standard 130, 502, 1221).
- **Standard Operating Procedures (Guidelines) Breech (SOP)** – A written organizational directive that establishes or prescribes specific operational or

administrative methods to be followed routinely for the performance of designated operations, actions or administrative functions (NFPA Standard 1521).

- **Protocol Breach (PROTOCOL)** – An organizational directive that establishes a common practice or course of action during tactical operations. A protocol aims to streamline particular processes according to a set routine. By definition, protocol is a term for a mandatory procedure. In the EMS arena, a protocol is intended to guide decisions regarding assessment, management, and treatment of patients.
- **Protective Equipment Not Worn/SCBA or Seatbelt (PE)** – The equipment provided to shield or isolate personnel from infectious, chemical, physical, and thermal hazards (NFPA Standard 1670) and physical injury.
- **Lack of Wellness/Fitness (LWF-WELLNESS/FITNESS)** – The state of uniform personnel signifying a deficiency or absence of physical, mental, or emotional capability to withstand the stresses or strains of living and functioning in the workplace. This adverse state results from cumulative factors including job exposures, stress and personal behavior including poor diet and general lack of exercise.
- **Act of Violence (VIOL)** – Exertion of physical force to injure, abuse or cause death.
- **Dangerous Substance (DS)**- This factor includes substances that are explosive and/or flammable, such as petroleum products and gunpowder. It includes radioactive substances, and products such as aerosol cans which can explode when heat or pressure is applied. It also includes '*hazardous substance*' that includes substances used or produced by industries that have the potential to cause mass disaster to people and the environment. Examples of hazardous substances are chlorine, PCB, chlorobenzene, pesticides, etc. Hazardous substances are listed and controlled under the Poisons Act and the Poisons (Hazardous Substances) Rules. The factor also encompasses *toxic industrial*

waste that includes toxic waste from industries, such as spent acids, alkalis, etchants, solvents and waste oils. (NEA, 2008)

- **Weather/Act of Nature (WEA-WEATHER)** – An extraordinary and unexpected natural event, such as a hurricane, tornado, earthquake or even the sudden death of a person.
- **Human Error by Firefighter or Officer (HE)** – A mistake made by a person rather than caused by a poorly designed process or the malfunctioning of equipment.
- **Civilian Error (CE)** – Persons who are members of the general public and who are not fire service or other emergency services personnel (NFPA Standard 180) who in an act or condition of ignorant or imprudent behavior unintentional cause an adverse event.
- **Decision Making (DM-DECISION MAKING)** – can be regarded as an outcome of mental processes (cognitive processes) leading to the selection of a course of action among several alternatives. Every decision-making process produces a final choice. (Carnegie Mellon, 2008)
- **Structural Failure (SF)** – Structural collapse brought on by fire that precludes buildings or structural components from functioning as designed.
- **Emergency Equipment Failure (EF)** – The unacceptable difference between expected and observed performance of emergency equipment.
- **Firefighter Fatigue (FF-FATIGUE)** – a weariness caused by exertion. It can describe a range of afflictions, varying from a general state of lethargy to a specific work-induced burning sensation within one's muscles. It can be both physical and mental. Physical fatigue is the inability to continue functioning at the level of one's normal abilities, (Hawley, 1997)

- **Lack of Situational Awareness (LSA)** – concerns the absence of knowledge and understanding of the environment that is critical to those who need to make decisions in complex areas such as fire ground operations, air traffic control, and military command and control. Situation awareness has been formally defined as "the *perception* of elements in the environment within a volume of time and space, the *comprehension* of their meaning, and the *projection* of their status in the near future" (Endsley, 2000).
- **Horseplay (HP)** – rough or boisterous play.
- **Lack of Teamwork (TMWK)** – refers to an individual rather than group effort. Lack of teamwork is a general lack of the mindset that aligns firefighters in a cooperative and selfless manner, towards a specific purpose. A team player is one who subordinates personal aspirations and works in a coordinated effort with other members of a group, or team, in striving for a common goal.

Following contributing factor identification and definition, raw frequency scores were determined for each factor. Dominant contributing factors were identified by percentage for the overall dataset and in various categories as described in Table 3 below.

Table 3.

Dominant Contributing Factors by Strata (Top 3 Percentages shown)		
Strata		Contributing Factor (% LOD Injury)
Overall		LSA (37.3) LWF (28.5) HE (10.6)
Age		
	Less than 26	LSA (39.5) LWF (32.4) PE (13.0)
	26-35	LSA (39.2) LWF (25.7) DS (13.3)
	36-45	LSA (37.1) LWF (26.8) HE (10.2)
	46-55	LSA (35.1) LWF (34.1) HE (10.7)
	Greater than 55	FF (36.6) LSA (32.1) COMM (13.4)
Gender		
	Female	LSA (48.3) LWF (20.1) HE (12.6)
	Male	LSA (36.7) LWF (29.0) HE (10.5)
Rank		
	Chief	LWF (36.4) LSA (29.9) FF (9.1)
	Civilian	LSA (54.6) DM (27.3) LWF (27.3)
	Fire Fighter	LSA (38.4) LWF (27.2) HE (10.8)
	Investigator	LSA (53.9) WEA (38.5) LWF (30.8)
	Recruit	LWF (51.2) LSA (38.1) FF (17.9)
	Captain	LSA (33.9) LWF (29.6) HE (11.0)
Years of Service		
	Less than 6	LSA (41.1) LWF (23.5) DS (11.9)
	6-10	LSA (37.5) LWF (27.1) DS (10.5)
	11-20	LSA (37.3) LWF (29.4) PE (10.0)
	Greater than 20	LWF (36.5) LSA (31.2) HE (12.3)
Scene Type		
	Not Specified	LSA (29.7) LWF (16.2) HE (5.4)
	Fire ground	LSA (38.3) LWF (25.4) FF (13.9)
	Non-fire Emergency	LSA (31.0) LWF (24.1) DS (21.4)
	In-Transit	LSA (52.0) LWF (16.5) HE (16.0)
	Training	LWF (44.2) LSA (37.8) FF (15.1)
	Other On-Duty	LSA (38.9) LWF (33.3) HE (12.2)

According to cluster analysis, four clusters of contributing factors were identified. All contributing factors were included in the cluster analysis. Composite cluster variables are listed in Table 4 below.

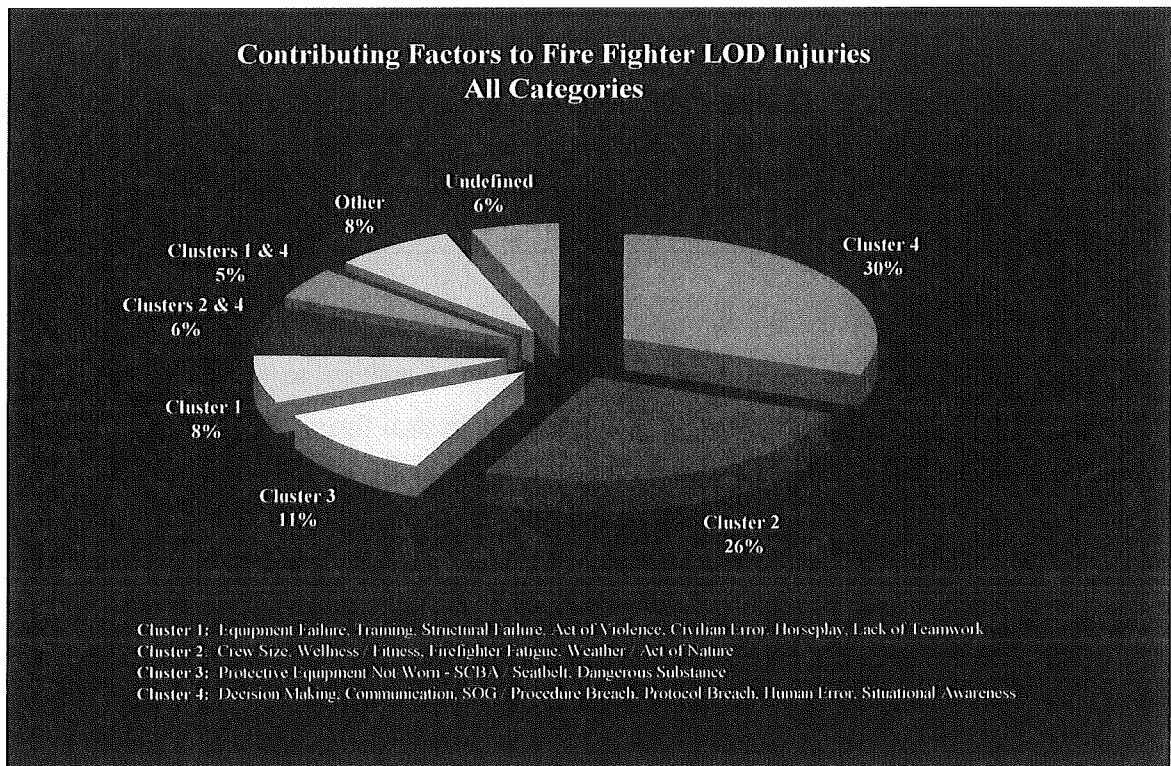
Table 4 Composite Cluster Variables

Cluster 1:	Equipment Failure, Lack of Training, Structural Failure, Act of Violence, Civilian Error, Horseplay, Lack of Teamwork
Cluster 2:	Crew Size, Lack of Wellness / Fitness, Firefighter Fatigue, Weather / Act of Nature
Cluster 3:	Protective Equipment Not Worn - SCBA / Seatbelt, Dangerous Substance
Cluster 4:	Decision Making, Lack of Communication, Standard Operating Guidelines / Procedure Breach, Protocol Breach, Human Error, Lack of Situational Awareness

Though there is no exact pattern to the make-up of the clusters, there seems to be identifiable categorization. For example, Cluster 4 appears to represent the ‘human factor’ while Cluster 2 represents ‘crew size and physical fitness related issues’. Cluster 3 appears to represent ‘personal protective equipment’ while Cluster 1, with the exception of lack of training/teamwork and horseplay seems to represent ‘things that are out of the control of an officer or firefighter’. This categorization is beneficial in honing areas of risk management intervention in the departments studied.

The four clusters identified by the analysis are responsible for 94.49% of all LOD INJURY in the departments studied. The remaining LOD injuries (5.51%) were not explained by any contributing factor cluster. Among the composite clusters, Cluster 4 alone, excluding its interaction with any other contributing factors, is responsible for 30.9% of LOD injury Cluster 2 alone is responsible for another 26.17%, Cluster 3 alone 10.87%, Cluster 1 alone 7.59%, and about 10% were contributed by interactions between clusters as described in Figure 1 below.

Figure 1. Overall Model of Composite Clusters for LOD Injury in Select Metropolitan Departments 2005-2006.



The relative contribution of the clusters was evaluated within various strata in an attempt to hone contributing factor clusters to specific environments making risk management efforts more direct and efficient. Strata evaluated included firefighter age, gender, rank, years of service, and scene type.

Firefighter age strata were defined as 25 and under, 26-35, 36-45, 46-55, and Over 55. Cluster 4 was responsible for more than 29% of LOD injury in firefighters 25 and under while cluster 2 was responsible for an additional 25%. Cluster 4 was also responsible for the majority of injuries in age groups 26-35 and 36-45 (32%). However, cluster 2 was responsible for the majority of injuries in age 46-55 and over 55 with the percentage of attributable injuries increasing with age. Figures 2 – 6 show contributing factor clusters by firefighter age group.

Figure 2. Age Group 25 and Under

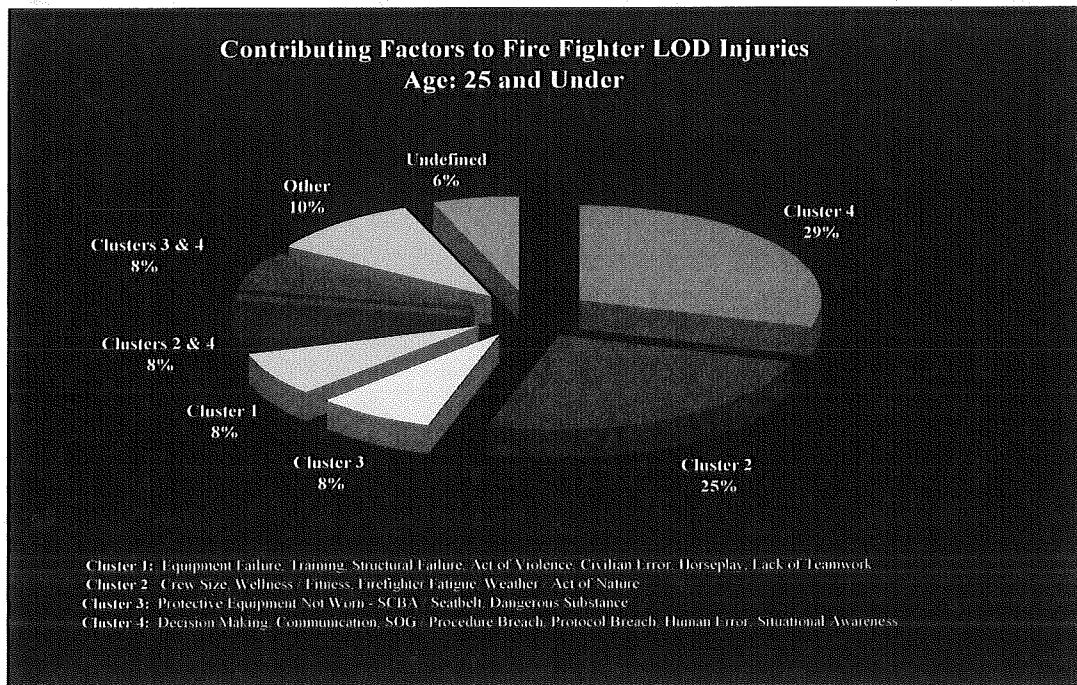


Figure 3. Age Group 26-35

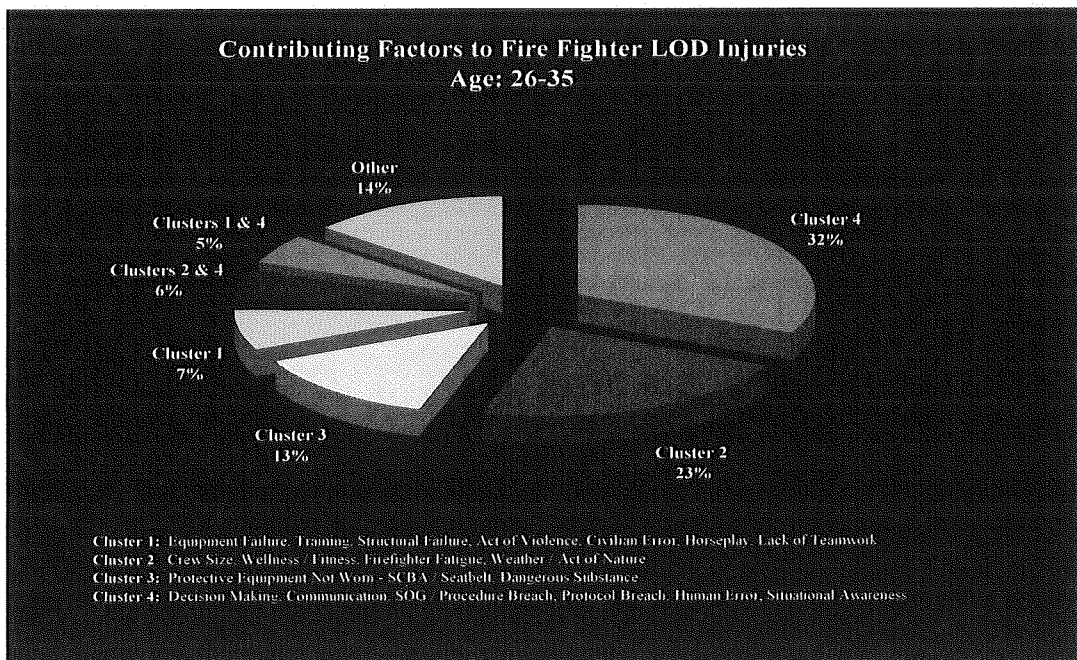


Figure 4. Age Group 36-45

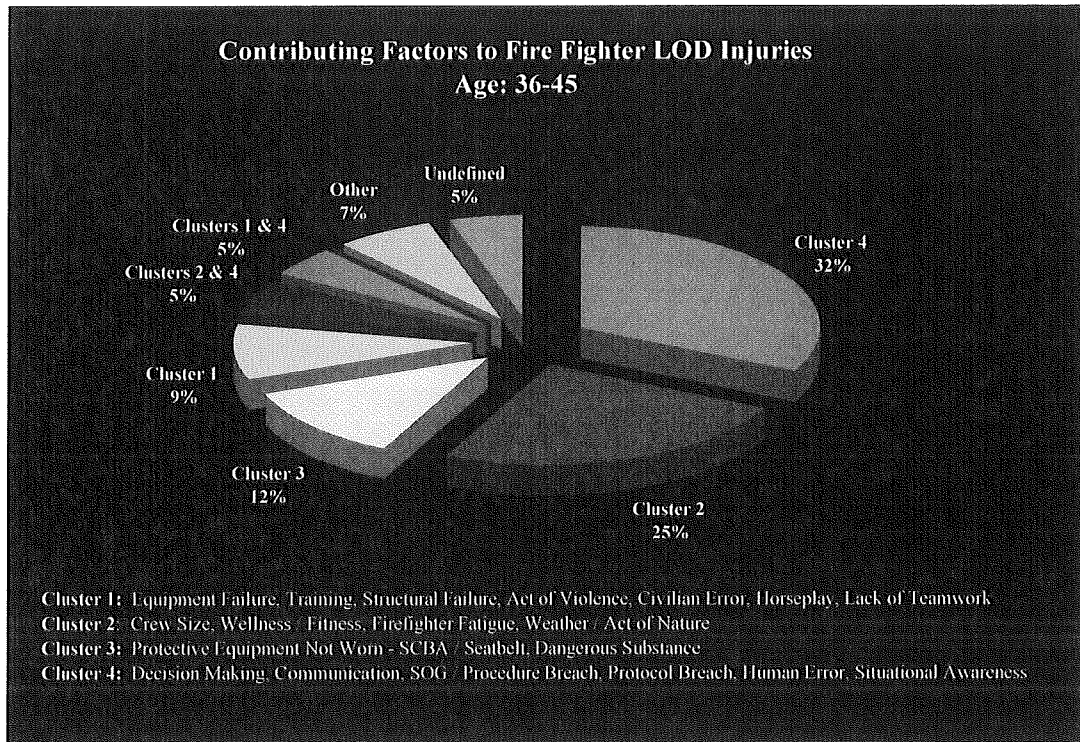


Figure 5. Age Group 46-55

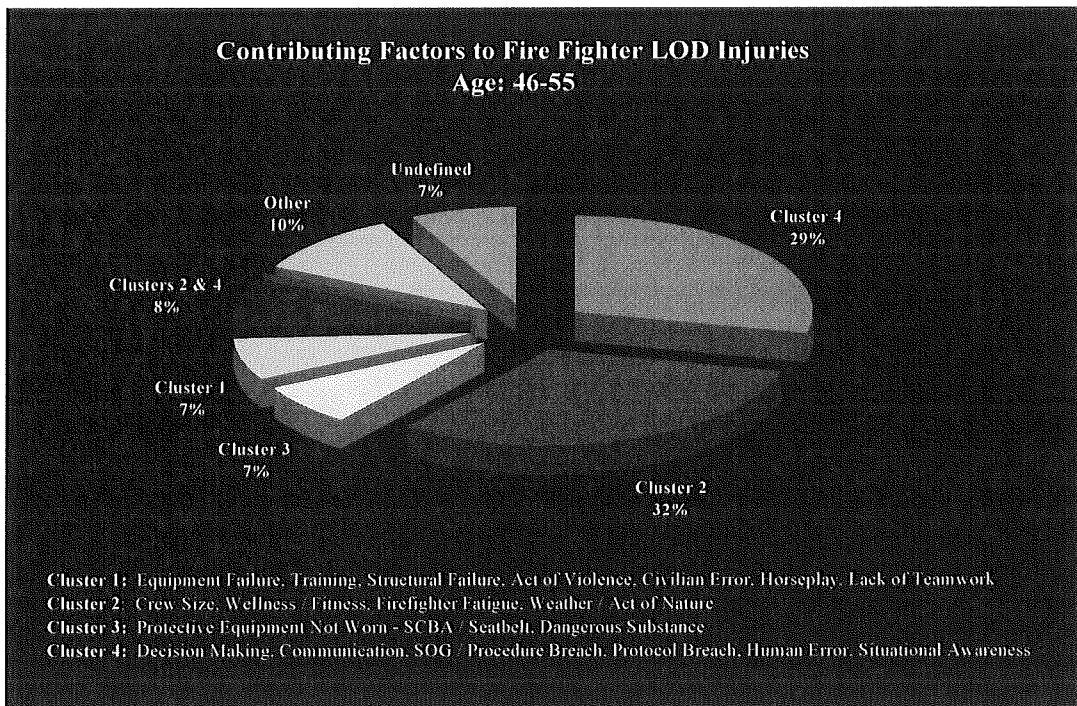
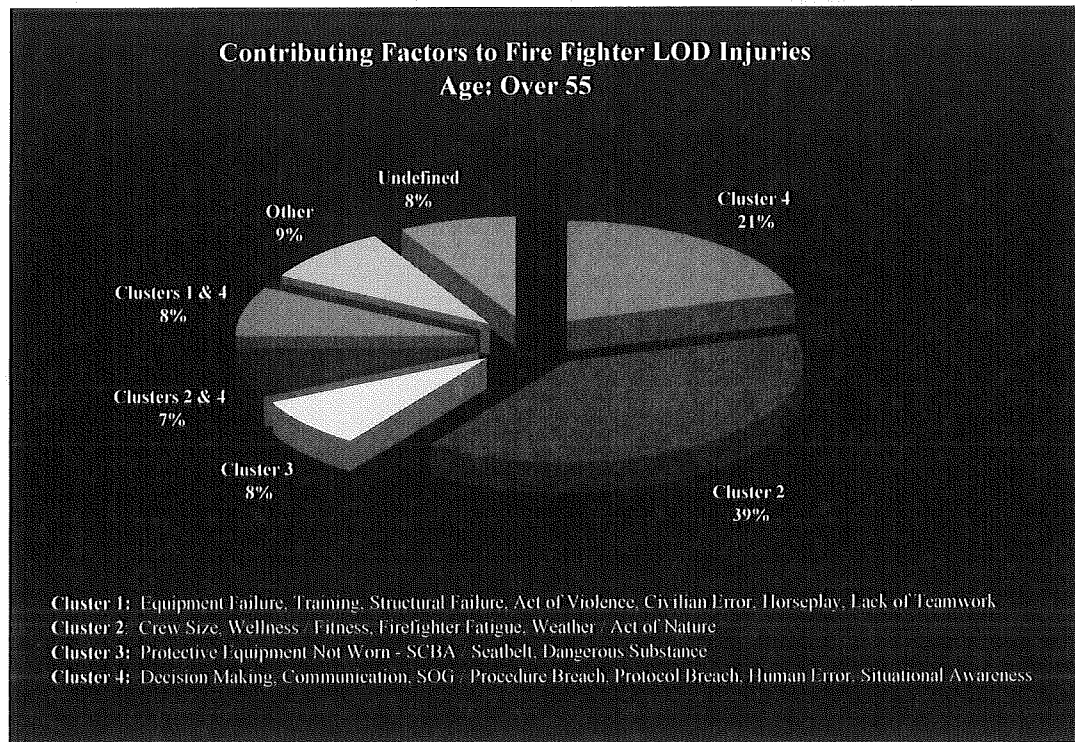


Figure 6. Age Group Over 55



Data were also stratified by years of service to highlight experiential differences in contributing factor clusters. These differences are significant, however reasons for the differences can only be assumed as time on the job and/or experience does not necessarily equal quality performance. Figures 7-10 show the contributing factor clusters most responsible for LOD injury in these strata. Cluster 4 is responsible for the majority of the LOD injuries in firefighters with fewer years on the job particularly in the less than 6 year strata and the 6-10 year strata, while cluster 2 is responsible for the majority in firefighters with greater than 20 years on the job.

Figure 7. Less than 6 Years

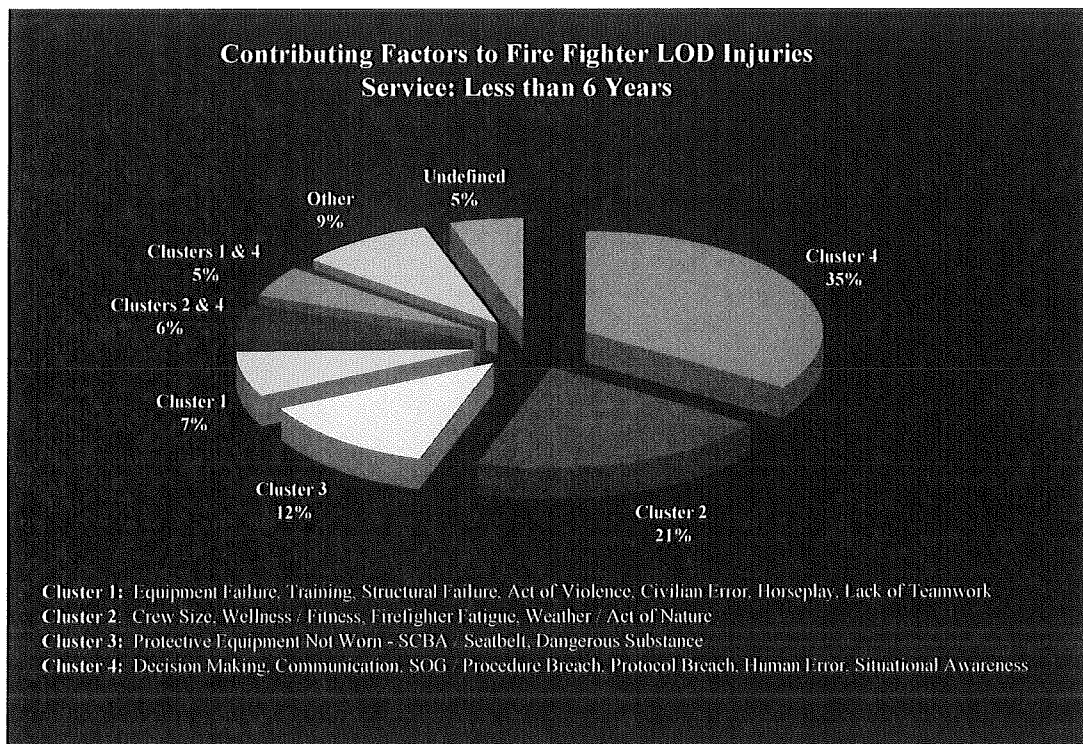


Figure 8. 6-10 Years

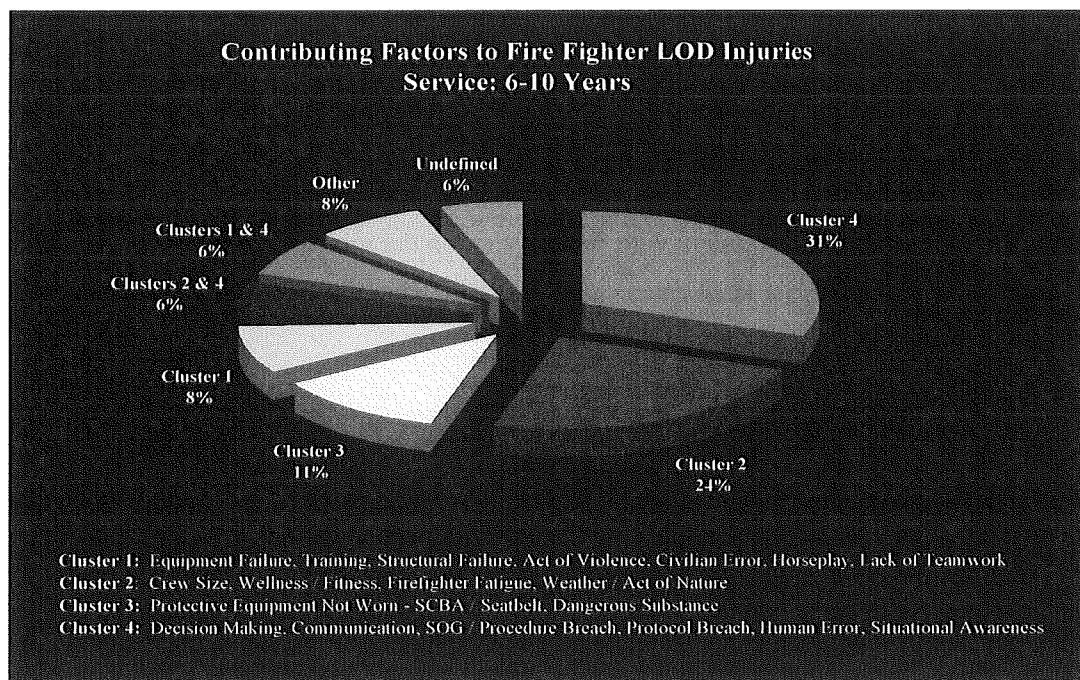


Figure 9. 11-20 Years

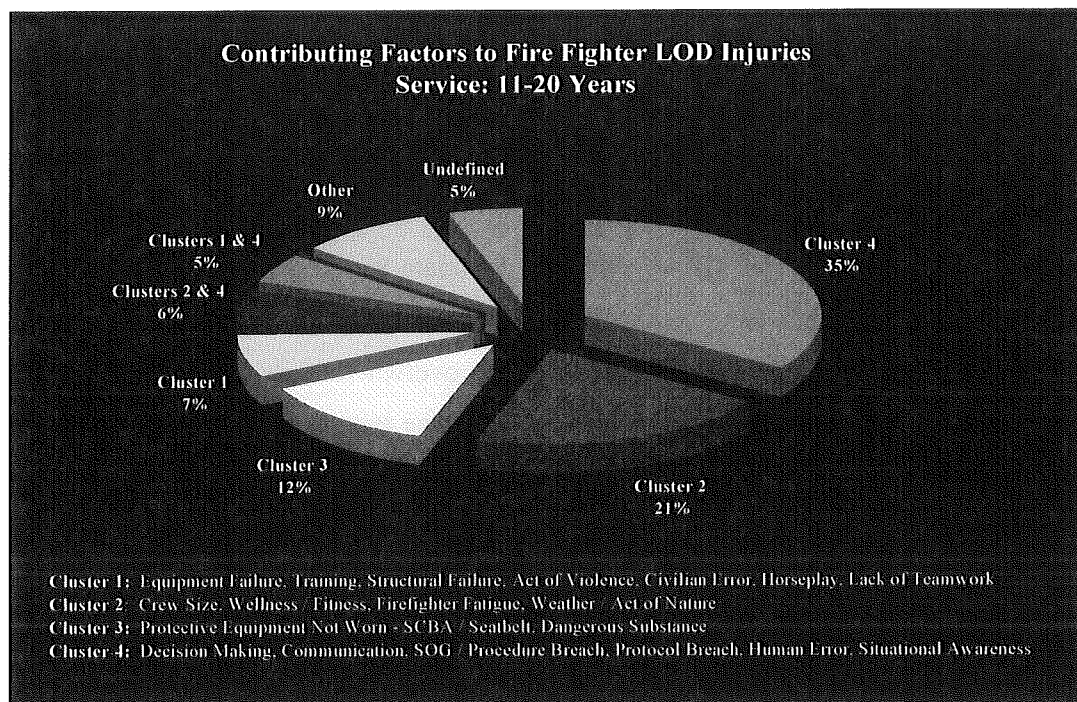
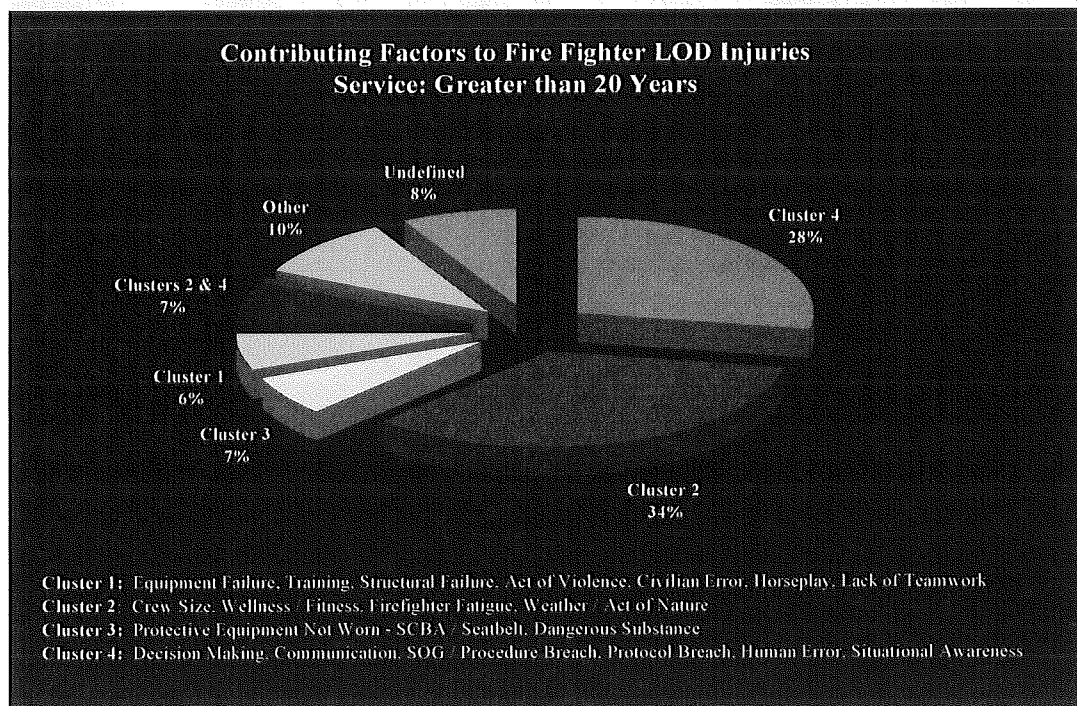


Figure 10. Greater than 20 Years



Data were also stratified by scene type. The various scene types identified include fire ground, non-fire emergency, in-transit, training, and other on-duty activity. As noted in figures 11-15 below, there were differences in the contributing factor clusters responsible for LOD injury between these strata. Analysis of contributing factor clusters for LOD injury occurring on the fire ground shows that Cluster 4 is responsible for 31% of injuries while Cluster 2 is responsible for another 26%. In the stratum for non-fire emergency, Cluster 4 once again is dominant and responsible for 25% while Cluster 3 is responsible for another 22%. This is not surprising as the non-fire emergency stratum contains EMS calls. Cluster 4 is overwhelmingly responsible for LOD injury (50%) in the in-transit stratum. The next scene type evaluated is training. The training stratum shows Cluster 2 as dominant (39%) while Cluster 4, including situational awareness is responsible for an additional 29% of injuries in this arena. The final stratum specifically evaluated was other on-duty activity including apparatus maintenance, station maintenance, meetings, investigation and inspections. In this stratum, Cluster 4 was responsible for the majority of LOD injury (34%).

Figure 11. Fire Ground

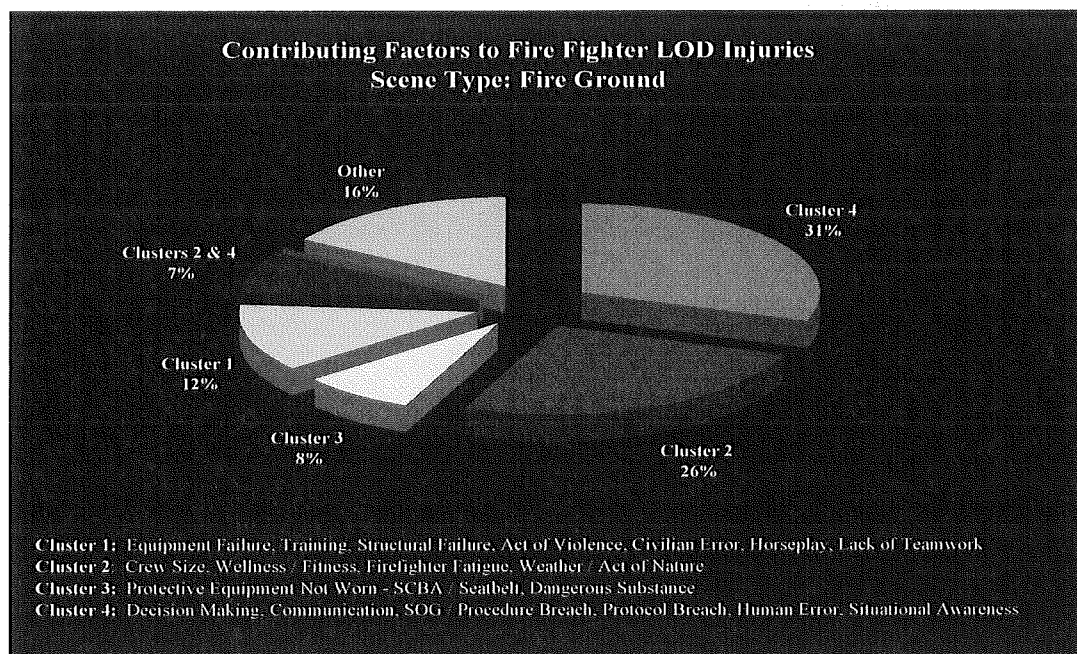


Figure 12. Non-Fire Emergency

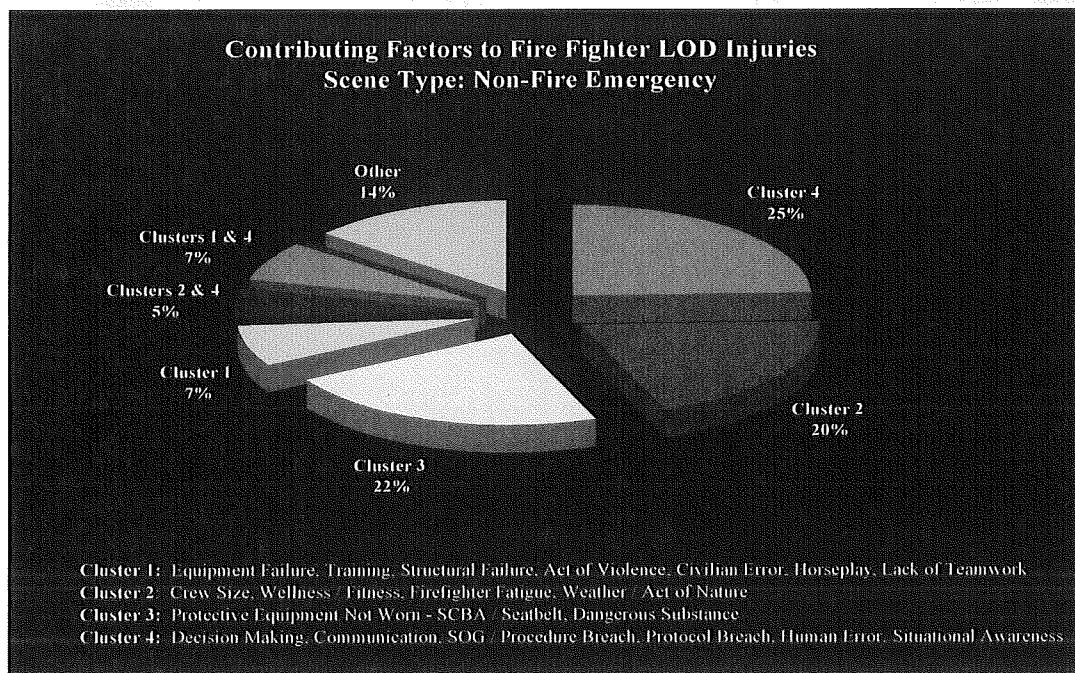


Figure 13. In-Transit

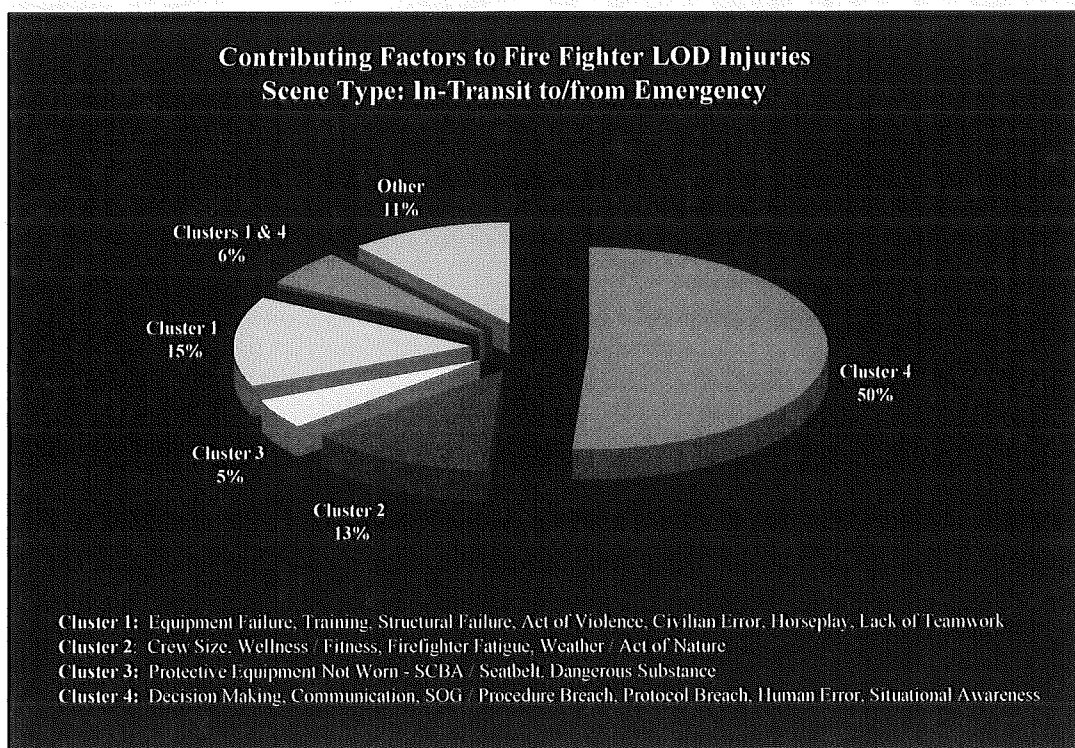


Figure 14. Training

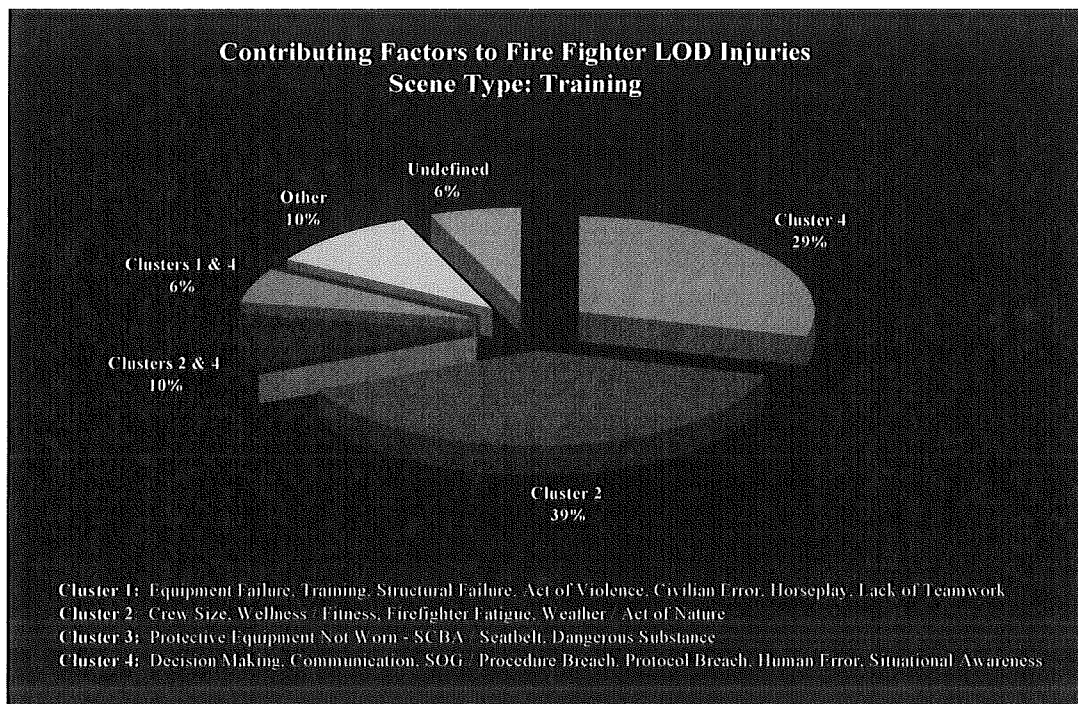
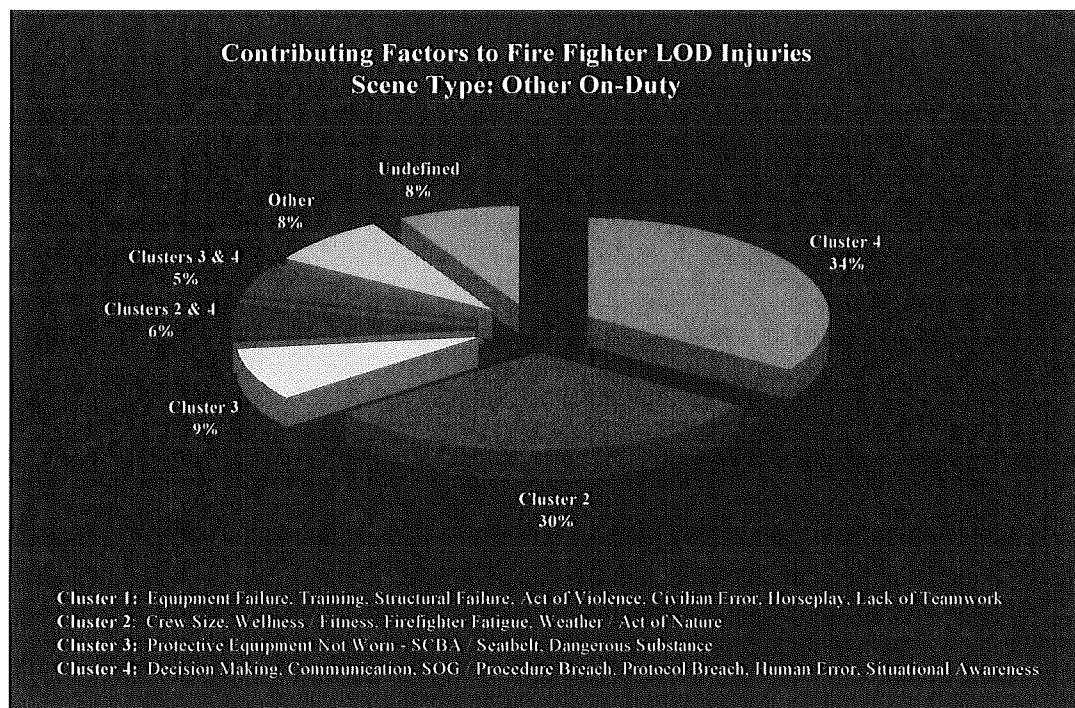


Figure 15. Other On-Duty



Finally, data were stratified by the ‘number of days injured’ defined as the number of days off normal/regular duty. This stratum was used as a proxy for injury severity assuming that more severe injuries required more days off normal duty. Results show that injuries associated with cluster 4 tended to be more severe requiring longer terms of absence from normal duty though injuries associated with cluster 2 were a close second. For injuries requiring 1-10 days of leave, 41% were associated with cluster 4 while 14% were associated with cluster 2. For those requiring 11-20 days of leave, 35% were associated with cluster 4 while an additional 27% were associated with cluster 2. Finally, the most severe injuries, those requiring leave of 21-10 days or greater than 30 days, 32% were associated with cluster 4 while 25%-28% were associated with cluster 2.

DISCUSSION

During the analysis, it was noted that the actual association between factors within a cluster could not be identified. Factors organized into the same cluster may act independently of each other or they may act synergistically with the interaction of factors presenting a greater total risk than the sum of their individual effects (Moore-Merrell, 2008). Unfortunately, these effects could not be assessed in this study due to the lack of a control group. However, the cluster analysis does provide evidence of the consistency of factors with maximum association as seen in table 4 below.

Table 4. Percent of LOD INJURY contributed by Four Clusters

Cluster	#1	#2	#3	#4
#1	7.59%	1.57%	0.78%	4.87%
#2		26.17%	0.67%	6.26%
#3			10.87%	3.59%
#4				30.9%

* 5.51% LOD INJURY were due to none of these clusters, and additional 1.21% LOD INJURY were due to more than two clusters and are not listed in this table.

LIMITATIONS

There are a number of limitations to the study data, methodology and findings. LOD injury cases were compiled from only nine metropolitan departments and therefore results can only be specifically extrapolated to those departments. However, similar departments should consider benefiting from the results and 'lessons learned' in this group. Additionally, the study only explains the factors contributing to LOD injury that have occurred. Predicting the odds of experiencing a LOD injury in departments where the identified contributing factors/clusters exist could not be completed since data for non-injured firefighters were unavailable. Likewise, trend analysis could not be completed due to the lack of data on firefighters who were not injured on the scenes where a LOD injury was experienced.

This study only examined LOD injury data that were available from nine large fire departments in the U.S. without regard to thousands of firefighter line-of-duty injuries that occur daily in a host of other departments of all sizes. Despite the limitations, the results of this study provide a sense of the relative impact of various factors on firefighter LOD injury in the United States.

CONCLUSIONS

Analysis of the roles of various factors suggests that the most prominent contributing factors to firefighter line-of-duty injury in metropolitan fire departments in the United States are lack of situational awareness (37.3%), lack of wellness/fitness (28.5%), and human error (10.6%). When clustered according to contributing factors most often occurring together, the most prominent cluster is cluster 4 including decision-making, lack of communication, standard operating guidelines/procedure breach, protocol breach, human error, lack of situational awareness. Contributing factor clusters identified explain 94.49% of firefighter LOD injury in the departments studied between the years of 2005-2006. The results presented hold implications for fire department risk management priorities. At the most basic level, they compel examination of the way the

departments track injuries. Most of the contributing factors identified in this study were based on those tracked in each department and those used in the “Firefighter Near Miss Reporting System.” Individual departmental tracking of injuries and accumulation of factors and definitions will be essential to quality data collection and analysis in future studies. Based on the results of this study, participating departments can make efforts to interrupt or eliminate factors leading to a firefighter LOD injury.

Policy Development/Alteration Process

It has been noted by fire service leaders that the reasons for firefighter injuries have not changed over time. In spite of the safety programs and practices that are implemented, firefighter’s belief, attitude, and behavior regarding safety has not changed. Many firefighters do not follow safety procedures, national standards, or departmental training doctrine. They do not wear assigned safety equipment. Some leaders also suggest that chief officers should be held accountable when it comes to firefighter safety. Leaders must not tolerate or accept safety misconduct, which can result in firefighter injury or death. (Clark, 2008).

Year after year, an estimated 80,100 firefighter injuries occur in the line of duty (Karter, 2006). If heeded, the results of this study can reduce these on-duty firefighter injuries. This study specifically examines contributing factors leading to firefighter LOD injury in metropolitan fire departments. Results can be compared with similar studies to hone knowledge and thereby provide opportunities for intervention through departmental training, practices and policy to prevent firefighter injuries.

Future Policy Analysis Research

If a significant reduction in firefighter injuries is to be realized, fire service leaders must focus directly on the contributing factors as identified. Future research should include individual departments collecting and reporting data using the format created for this study. Establishing a standardized data collection format for firefighter injuries inclusive of specifically defined contributing factors as well as other relevant information surrounding individual injuries will provide invaluable information for individual departments to alter policy based on evidence thereby reducing injuries.

Using a standardize data collection device will allow departments to collect and report incidence and prevalence of firefighter injuries within their department and will also allow comparison to other departments. Through interdepartmental comparison, decision makers can network to share policy and procedures that prove to reduce overall injury rates. Additionally, standardized data collection will provide an opportunity for data compilation nationally to assist in reporting true rates of injury in the fire service.

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NFPA REPORTS

Firefighter Fatalities 2007

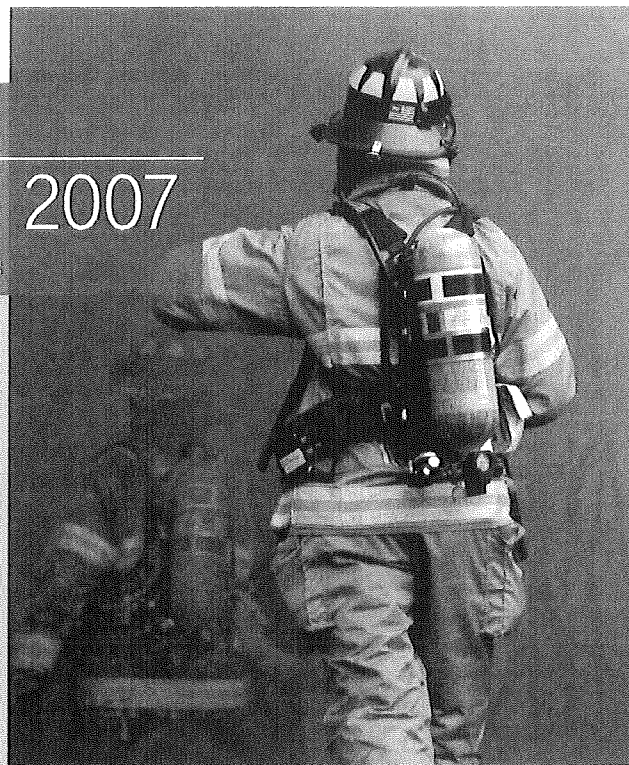
By Rita F. Fahy Ph.D., Paul LeBlanc, Joseph L. Molis

In 2007, a total of 102 on-duty firefighter deaths occurred in the U.S. This is a sharp increase over the 89 firefighter fatalities that occurred in 2006, but returns to the long-term trend of close to 100 on-duty deaths annually¹ Figure 1 shows firefighter deaths for the years 1977 through 2007, excluding the 340 firefighter deaths at the World Trade Center in 2001.

Of the 102 firefighters who died while on duty in 2007, 53 were volunteer firefighters, 42 were career firefighters, four were employees of state land management agencies, one was an employee of a federal land management agency, one was a contractor with a federal land management agency, and one was a member of an industrial fire brigade. This is the largest number of career firefighters to be killed in a single year since 1989 (not including the deaths at the World Trade Center in 2001). The average number of on-duty career firefighter deaths had been approximately 30 over the previous 10 years.

In 2007, there were seven multiple-fatality incidents, the most severe of which resulted in the deaths of nine career firefighters. This incident in Charleston, South Carolina, is described in the accompanying sidebar. The other six multiple-fatality incidents were all double-fatality incidents. Two firefighters were killed in a tanker (water tender) crash while responding to a fire; two in a gas explosion; and eight were killed while operating inside at four separate structure fires. More details will be presented throughout this article.

Analyses in this report examine the types of duty associated with firefighter deaths, the cause and nature of fatal injuries to firefighters, and the ages of the firefighters who died. They highlight deaths in intentionally-set fires and in motor vehicle-related incidents.² A 10-year analysis showing trends in highway vehicle crashes is included. Finally, the study presents summaries of individual incidents that illustrate important problems or concerns in firefighter safety.



Each year, NFPA collects data on all firefighter fatalities in the U.S. that resulted from injuries or illnesses that occurred while the victims were on-duty. The term "on-duty" refers to being at the scene of an alarm, whether a fire or non-fire incident; while responding to or returning from an alarm; while participating in other fire department duties such as training, maintenance, public education, inspection, investigation, court testimony or fund raising; and being on call or stand-by for assignment at a location other than at the firefighter's home or place of business.

On-duty fatalities include any injury sustained in the line of duty that proves fatal, any illness that was incurred as a result of actions while on duty that proves fatal, and fatal mishaps involving non-emergency occupational hazards that occur while on duty. The types of injuries included in the first category are mainly those that occur at a fire or other emergency incident scene, in training, or in crashes

while responding to or returning from alarms. Illnesses (including heart attacks) are included when the exposure or onset of symptoms occurred during a specific incident or on-duty activity.

The victims include members of local career and volunteer fire departments; seasonal, full-time and contract employees of state and federal agencies who have fire suppression responsibilities as part of their job description; prison inmates serving on firefighting crews; military personnel performing assigned fire suppression activities; civilian firefighters working at military installations; and members of industrial fire brigades.

Fatal injuries and illnesses are included even in cases where death is considerably delayed. When the injury and the death occur in different years, the incident is counted in the year of the injury. NFPA recognizes that a comprehensive study of firefighter on-duty fatalities would include chronic illnesses (such as cancer or heart disease)

that prove fatal and that arise from occupational factors. In practice, there is no mechanism for identifying fatalities that are due to illnesses that develop over long periods of time. This creates an incomplete picture when comparing occupational illnesses to other factors as causes of firefighter deaths. This is recognized as a gap the size of which cannot be identified at this time because of limitations in tracking the exposure of firefighters to toxic environments and substances and the potential long-term effects of such exposures.

The NFPA also recognizes that other organizations report numbers of duty-related firefighter fatalities using different, more expansive, definitions that include deaths that occurred when the victims were off-duty. Readers comparing reported losses should carefully consider the definitions and inclusion criteria used in any study.

Type of duty

Figure 2 shows the distribution of the 102 deaths by type of duty. Fire ground operations accounted for 36 deaths. That total is the fourth lowest in the past 10 years, the sixth lowest in the 31 years that we've done this study, and also close to the average number of fire ground deaths annually over the past 10 years, not including the deaths at the World Trade Center in 2001. Twenty-two of the victims were career firefighters and twelve were volunteer firefighters.³ Two of the victims worked for state or federal land management agencies. The higher-than-usual number of career firefighter deaths in this category is accounted for to a large degree by the nine-fatality incident in Charleston. The average number of career firefighter deaths on the fire ground over the past 10 years is 13 per year.

There were 30 fatalities while responding to or returning from alarms. It is important to note that not all deaths in this category are the result of crashes. Twenty of the 30 occurred in collisions and rollovers, nine were due to sudden cardiac events or stroke, and one firefighter fell off a pumper inside the station after returning from a fire. Twenty-five of the victims were volunteer firefighters, four were career firefighters and one was an employee of a state land management agency. All crashes and sudden cardiac deaths are discussed in more detail later.

Thirteen deaths occurred during training activities. These included four during or while preparing for equipment drills, four while returning home from training programs, two at training classes, two during physical fitness activities or annual testing, and one during live

Figure 1 - On-Duty Firefighter Deaths - 1977 - 2007

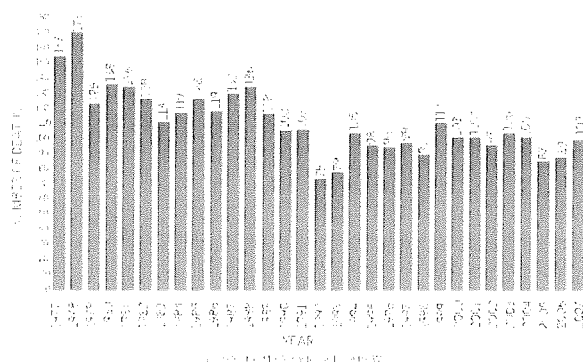
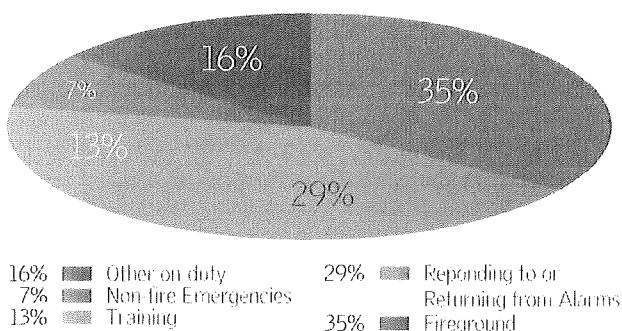


Figure 2 - Firefighter Deaths by Type of Duty - 2007



fire training. Three of the victims, including the firefighter killed in the live fire training exercise, were recruits or new hires.

Seven firefighters were killed at non-fire emergencies, including two while investigating a call about an odor of gas, and one each at scenes of a motor vehicle crash, an EMS call, a rescue in a ravine, a hazardous material spill and while attempting to rescue a drowning victim.

The remaining 16 firefighters died while involved in a variety of non-emergency-related on-duty activities. These activities included normal administrative or station duties (11 deaths), preparations for community fire prevention events (two deaths), preparing for a parade (one death), returning to base from a prescribed burn (one death) and flagging at a fire line construction project (one death).

Cause of fatal injury or illness

Figure 3 shows the distribution of deaths by cause of fatal injury or illness. The term "cause" refers to

2007 FIREFIGHTER FATALITIES

Figure 3 - Firefighter Deaths by Cause of Injury - 2007

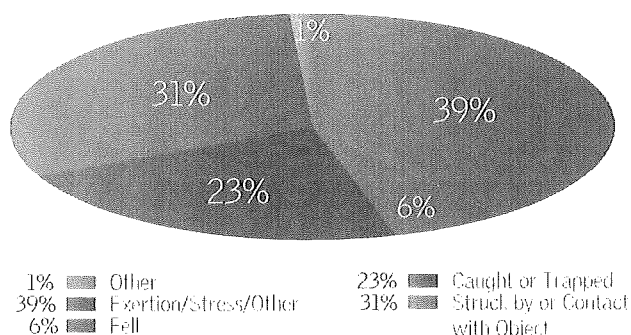
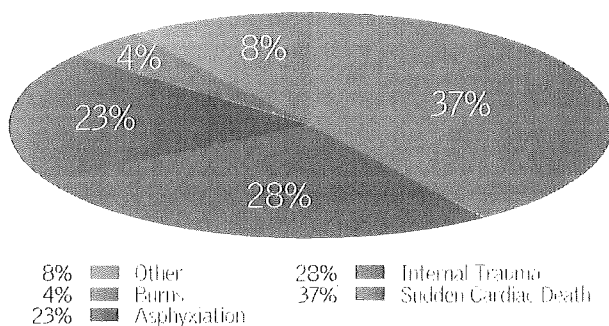


Figure 4 - Firefighter Deaths by Nature of Injury - 2007



the action, lack of action, or circumstances that resulted directly in the fatal injury.⁴

Deaths resulting from exertion, stress and other, often medical, issues made up the largest category of fatalities. Of the 40 deaths in this category, 38 were classified as sudden cardiac deaths, usually heart attacks, and two were due to strokes. See below for more detail on sudden cardiac deaths.

The second leading cause of fatal injury was being struck by an object or coming into contact with an object. The 32 firefighters killed included 27 in motor vehicle crashes and one struck by a motor vehicle. Those deaths are discussed in more detail in a separate section of this article. Two firefighters were struck and killed by shrapnel in a propane tank explosion. One firefighter was struck by a falling tree while training in the use of a power saw. One firefighter was struck by a wooden canopy that collapsed onto him at a structure fire.

The next leading cause of fatal injury was being caught or trapped, resulting in 23 deaths. Nine of these 23 firefighters were killed in the roof collapse at the Charleston fire. One other firefighter was killed in a roof collapse and one

was killed in a wall collapse. Eight firefighters were trapped by fire progress in five structure fires; five were asphyxiated and three were fatally burned. Three firefighters became lost inside fire-involved structures; two ran out of air, and one was fatally burned. One firefighter became trapped under water and drowned.

Six firefighters were killed in falls; two through holes burned in floors in structure fires, two off parked apparatus at fire stations, one from the roof of a fire-involved structure, and one from a bridge during extrication operations at a vehicle crash.

One firefighter was electrocuted at a grass fire when he touched a downed power line.

Nature of fatal injury or illness

The term "nature" refers to the medical process by which death occurred and is often referred to as cause of death on death certificates and in autopsy reports.

Figure 4 shows the distribution of deaths by nature of fatal injury or illness. The largest number of fatalities, 38 deaths, were due to sudden cardiac death. The other major categories were internal trauma (29 deaths), asphyxiation (23 deaths) and burns (four deaths). The remaining deaths included two drownings, two deaths due to projectile wounds, two strokes, one electrocution, and one death due to crushing injuries.

Sudden cardiac deaths

Sudden cardiac death is consistently the number one cause of on-duty firefighter fatalities in the U.S., and this was the case again in 2007. Although the number of deaths in this category has fallen since the early years of this study, from 70 in 1977 to 38 in 2007, sudden cardiac death still accounts for close to 40 percent of on-duty deaths annually.

Of the 38 victims of sudden cardiac events in 2007, post mortem medical documentation showed that 10 had severe arteriosclerotic heart disease, five were hypertensive, four were reported to have had prior heart problems, such as previous heart attacks, bypass surgery, or angioplasty/stent placement, and three were diabetic. Some of the victims had more than one condition.

Over the past 25 years, post mortem information or other details on the victims' medical histories have been available for 720 of the 1,155 sudden cardiac death victims. Of those 720 victims, 663, or 92.1 percent, had suffered prior heart attacks, had severe arteriosclerotic heart disease, had undergone bypass surgery or angioplasty/stent placement, or were diabetic or hypertensive.

NFPA has several standards that focus on the

health risks to firefighters. For example, NFPA 1582, *Comprehensive Occupational Medical Program for Fire Departments*, outlines for fire departments the procedures for screening candidate firefighters and handling health problems that might arise during an individual's fire service career. NFPA 1500, *Fire Department Occupational Safety and Health Program*, calls for fire departments to establish a firefighter health and fitness program based on NFPA 1583, *Health-Related Fitness Programs for Fire Fighters*, and requires that firefighters meet the medical requirements of NFPA 1582.

Information on developing a wellness-fitness program is available from other organizations, for example, the IAFC/IAFF Fire Service Joint Labor Management Wellness-Fitness Initiative. The National Volunteer Fire Council (NVFC) developed the Heart-Healthy Firefighter Program, launched in 2003, to address heart attack prevention for all firefighters and EMS personnel, through fitness, nutrition and health awareness.

An important part of their program includes health screenings that they make available annually at several fire service trade shows around the country. The purpose of the program is to lower the incidence of cardiac-related problems in the fire service by educating firefighters and their families about nutrition, fitness and heart disease prevention. While those screenings provide valuable information to the individuals tested, they've also collected data that provides a disturbing picture of the health status of many of the nation's firefighters. The program has screened 8,000 firefighters, both career and volunteer, over the four years of the project for blood pressure, cholesterol, body fat and glucose.

Cholesterol screening done all four years of the project found high or borderline-high levels (greater than or equal to 200 mg/dl) in 37 percent of the 7,904 firefighters tested.

Blood pressure screenings from 2005 through 2007 found that 6.2 percent of the tested firefighters had Stage 2 hypertension; 28.9 percent had Stage 1 hypertension; and 48 percent were prehypertensive. Only 16.9 percent had normal blood pressure readings.

Almost all of the 5,065 firefighters tested for glucose (non-fasting) in 2006 and 2007 were found to be in the desirable range, or less than 140 mg/dl. Only 2.7 percent were found to be diabetic—that is, greater than or equal to 200 mg/dl—and 5.9 percent were found to be pre-diabetic—that is, between 140 and 199 mg/dl.

Body fat was only tested in 2005, but of the almost 2,000 firefighters tested that year, 44.7

Figure 5 - On-Duty Firefighter Deaths by Age and Cause of Death - 2007

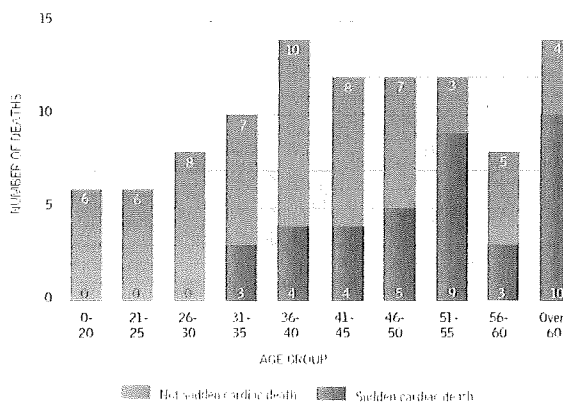
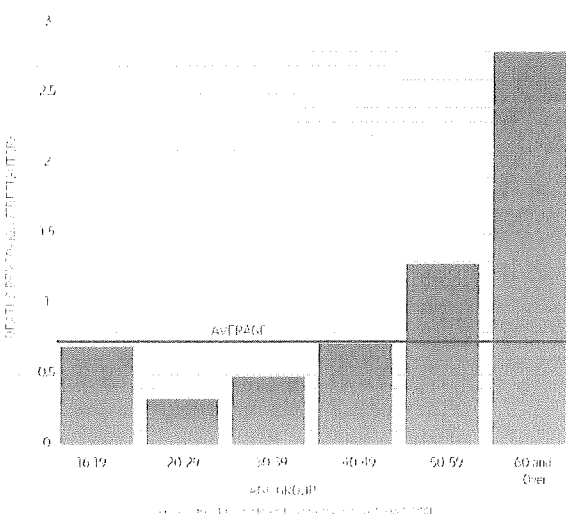


Figure 6 - On-Duty Deaths Rates per 10,000 Career and Volunteer Firefighters - 2003-2007*



percent were found to be obese. Obesity is defined as 25 percent or more of body fat for men and 32 percent or more for women.

The testing will be offered again this year, with screenings planned for cholesterol, blood pressure, and body fat. Through this program, many firefighters have been tested more than once, have come to understand their personal level of risk, and have adopted a more heart-healthy lifestyle. More information can be found at www.healthy-firefighter.org.

Ages of firefighters

The firefighters who died in 2007 ranged in age from 19 to 78, with a median age of 43.5 years.

2007 FIREFIGHTER FATALITIES

Figure 7 - Fire Ground Deaths by Fixed Property Use - 2007*

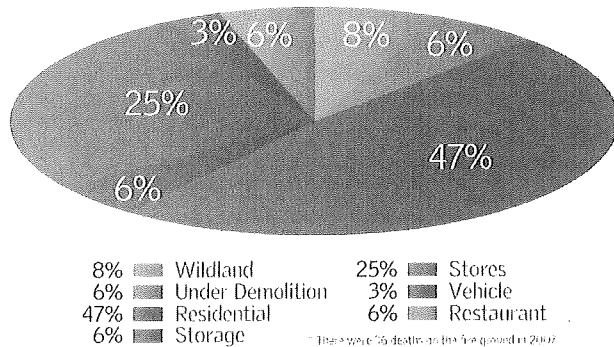


Figure 8 - On-Duty Fireground Deaths per 100,000 Structure Fires - 2002-2006

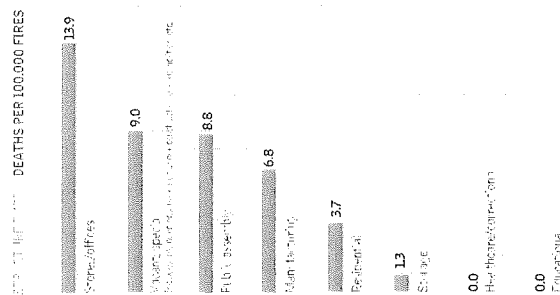


Figure 9 - Firefighter Deaths - Local Career vs. Local Volunteer - 1977 - 2007*

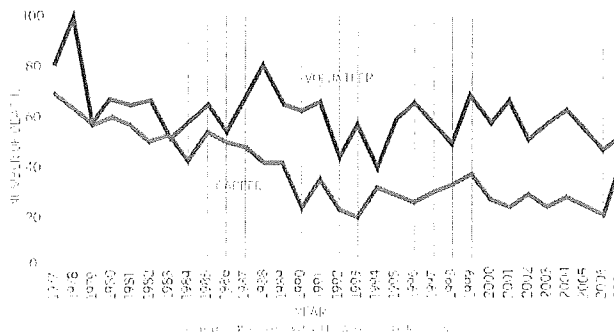


Figure 5 shows the distribution of firefighter deaths by age and cause of death (sudden cardiac death versus other causes).

The youngest victims of sudden cardiac death were aged 34 (three firefighters). Sudden cardiac death accounts for a higher proportion of the deaths among older firefighters, as might be expected. More than half of the firefighters over age 40 and almost two-thirds of those over age 50 who died in 2007 died of heart attacks or other cardiac events.

Figure 6 shows death rates by age, using career and volunteer firefighter fatality data for the five-year period from 2003 through 2007 and estimates of the number of career and volunteer firefighters in each age group from NFPA's 2005 profile of fire departments (the mid-year in the range).⁵

The lowest death rates were for firefighters in their 20s. Their death rate was less than half the all-age average. Firefighters in their 30s had a death rate approximately two-thirds the all-age average. The rate for firefighters aged 60 and over was close to four times the average. Firefighters aged 50 and over accounted for two-fifths of all firefighter deaths over the five-year period, although they represent fewer than one-fifth of all firefighters.

Fire ground deaths

Of the 36 fire ground deaths, 21 were due to asphyxiation, 7 were to sudden cardiac death, 4 were due to internal trauma, 3 were due to burns and 1 was due to electrocution. This very high number of asphyxiation deaths includes the nine fire ground deaths in Charleston.

Figure 7 shows the distribution of the 36 fire ground deaths by fixed property use. Three of the firefighters were killed on wildland fires. This is the lowest number of fire ground deaths on wildland fires since this study began in 1977. Deaths on wildland fires over the past 10 years have averaged over 10 deaths per year. Although the fire-ground-related wildland fire deaths were low in 2007, another four firefighters died while responding to or returning from wildland fires, and three of the training deaths in 2007 were related to training for wildland fire operations.

Operations at vehicle fires resulted in the death of one firefighter.

Seventeen of the 32 firefighter deaths at structure fires occurred in residential properties. Fires in single-family dwellings killed 13 firefighters, and fires in apartment buildings killed four firefighters. There were nine deaths in the furniture store in Charleston (described in the accompanying sidebar). Two firefighters were killed in a restaurant fire, and two were killed in a building undergoing demolition. There was also one death in a fire in a farm shed and one death at a fire in a detached dwelling garage.

Three of the fires, which resulted in four deaths, had automatic suppression systems. Two of the victims were killed in a high-rise fire where the sprinkler system had been shut off during demolition of the building. One firefighter suffered a fatal heart attack during suppression operations in an apartment building. The sprinklers in the building were in the corridors, but not the apartment units.

One sprinkler outside the unit of origin operated. A firefighter fell from the roof of a building with a sprinkler system that operated and was effective in controlling the spread of the fire.

To put the hazards of firefighting in various types of structures into perspective, the authors examined the number of fire ground deaths per 100,000 structure fires by property use. Estimates of the structure fire experience in each type of property were obtained from NFPA's annual fire loss studies from 2002 through 2006 (the 2007 results are not yet available) and from the updated firefighter fatality data for the corresponding years. The results are shown in Figure 8.

This figure illustrates that, although many more firefighter deaths occur at residential structure fires than at fires in any other type of structure, fires in vacant buildings and some nonresidential structures, such as mercantile, public assembly, and manufacturing properties, are more hazardous to firefighters, on average. There were 6.4 fire ground deaths per 100,000 nonresidential structure fires from 2002 through 2006, compared to 3.7 deaths per 100,000 residential structure fires. The highest death rates over the five-year period occurred in stores and offices. The low rate in health care and correctional and educational buildings may reflect the fact that these occupancies are among the most regulated and most-frequently inspected and that their occupants are among the most likely to call the fire department to report fires while the fires are still in their early stages. The low rate in that five-year period for storage properties reflects the small number of fatalities that have occurred in such structures in recent years.

Vehicle-related incidents

In 2007, 27 firefighters died in vehicle crashes. In addition to those deaths, one other firefighter was struck and killed by a vehicle.

Nineteen of the 27 firefighters killed in crashes were responding to, or returning from, incidents when the crashes occurred. All but one were single-fatality crashes. Ten of these 19 victims were driving their personal vehicles:

- A firefighter driving to the station in response to a motor vehicle crash lost control on black ice, crossed the centerline on the two-lane road, and struck an on-coming vehicle head on. He was not wearing his seat belt and was ejected. Speed was not a factor in this crash.
- A firefighter driving to a fire swerved around a slower vehicle and lost control of his vehicle; it overturned. He was speeding, was not wearing his seat belt, and was ejected.

- A firefighter driving to the fire station in response to a brush fire came over a hill, traveling in the center of the road, swerved to avoid another vehicle that was turning into a driveway, went off the road, overcorrected, spun, struck an embankment, rolled, and struck a tree. There were conflicting reports from the police and her family as to whether she was wearing her seat belt. She was not ejected.
 - A firefighter responding to a medical call crashed his vehicle. He died of burns and smoke inhalation. No further details are available.
 - A firefighter responding in light rain to the station for a mutual aid call lost control on a curve, struck a sign post, utility pole and tree, and overturned. He was speeding, was not wearing his seat belt, and was partially ejected.
 - A firefighter responding to a call about a downed power line was killed when he struck a tree that had fallen across the road. He was wearing his seat belt. No other details are available.
 - A firefighter driving to the station too fast for conditions in response to a wildland fire failed to negotiate a curve in the road and struck an oncoming vehicle. He was not wearing his seat belt but was not ejected.
 - A firefighter responding to a motor vehicle crash on a rainy and foggy morning lost control of her vehicle on a curve, went off the road, and hit a tree. No other details are available.
 - Another firefighter responding to a motor vehicle crash was struck at a T-shaped intersection when he failed to stop and yield the right of way before turning onto the main road. He was struck by another vehicle whose driver could not stop in time to avoid him. He was not wearing a seat belt and was ejected. Driver inattention was also cited as a factor in the crash.
 - A firefighter returning from the scene of a motor vehicle crash on a borrowed motorcycle crossed the centerline on a curve, went off the road and down a ditch, and hit a tree. Excessive speed for conditions was cited as a factor in the crash.
- Seven of these 19 victims were driving or riding in pumpers or water tenders (tankers):
- The driver and passenger of a tanker responding to a structure fire on mutual aid were killed when the driver lost control of the tanker on a curve and overcorrected. The vehicle fishtailed and rolled. The tanker was carrying 1,000 gallons of water. The driver was speeding, and neither victim was wearing his seat belt. One was ejected, and the other was partially ejected.
 - A firefighter driving a pumper to a fire in a vacant building was struck by a speeding SUV

2007 FIREFIGHTER FATALITIES

Table 1 - Comparison of On-Duty Deaths Between Career and Volunteer Firefighters, 2007*

	Career Firefighters		Volunteer Firefighters			Career Firefighters		Volunteer Firefighters	
	Number of Deaths	Percent of Deaths	Number of Deaths	Percent of Deaths		Number of Deaths	Percent of Deaths	Number of Deaths	Percent of Deaths
TYPE OF DUTY					AGES OF FIREFIGHTERS - SUDDEN CARDIAC DEATHS ONLY				
Operating at fire ground	22	52 %	12	23 %	31 to 35	1	7 %	2	10 %
Responding to or returning from alarm	4	10	26	49	36 to 40	3	20	1	5
Other on-duty	9	21	4	8	41 to 45	3	20	1	5
Training	7	17	5	9	46 to 50	2	13	3	14
Operating at non-fire emergencies	0	0	6	11	51 to 55	3	20	2	10
TOTALS	42	100 %	53	100 %	56 to 60	3	20	3	14
CAUSE OF FATAL INJURY					over 60	0	0	9	43
Exertion/stress/other related	15	36 %	23	43 %	TOTALS	15	100 %	21	100 %
Struck by or contact with object	7	17	20	38	FIRE GROUND DEATHS BY FIXED PROPERTY USE				
Caught or trapped	18	43	5	9	Dwellings and apartments	8	36 %	9	75 %
Fell	1	2	5	9	Stores	9	41	0	0
Exposure to electricity	1	2	0	0	Buildings under demolition	2	9	0	0
TOTALS	42	100 %	53	100 %	Restaurants	2	9	0	0
NATURE OF FATAL INJURY					Storage Facilities	0	0	2	17
Sudden cardiac death	15	36 %	21	40 %	Wildlands	1	5	0	0
Internal trauma	5	12	19	36	Vehicles	0	0	1	8
Asphyxiation (including smoke inhalation)	13	31	8	15	TOTALS	22	100 %	12	100 %
Burns	6	14	0	0	YEARS OF SERVICE				
Stroke/aneurysm	0	0	2	4	5 or less	8	19	21	40
Projectile wounds	0	0	2	4	6 to 10	6	14	5	9
Drowning	1	2	1	2	11 to 15	8	19	6	11
Crushing	1	2	0	0	16 to 20	8	19	2	4
Electrocution	1	2	0	0	21 to 25	4	10	5	9
TOTALS	42	100 %	53	100 %	26 to 30	3	7	0	0
RANK					over 30	2	5	12	23
Firefighter	26	62 %	40	75 %	Not reported	3	7	2	4
Company officer	11	26	7	13	TOTALS	42	100 %	53	100 %
Chief officer	5	12	6	11	ATTRIBUTES OF FIRE GROUND DEATHS**				
TOTALS	42	100 %	53	100 %	Intentional fires	0		0	
AGES OF FIREFIGHTERS - ALL DEATHS					Search and rescue operations	5		0	
20 and under	0	0 %	5	9 %	MOTOR VEHICLE CRASHES	5		17	
21 to 25	2	5	4	8	FALSE ALARMS	1		1	
26 to 30	6	14	1	2					
31 to 35	5	12	4	8					
36 to 40	8	19	6	11					
41 to 45	5	12	6	11					
46 to 50	6	14	6	11					
51 to 55	6	14	5	9					
56 to 60	4	10	4	8					
Over 60	0	0	12	23					
TOTALS	42	100 %	53	100 %					

*This table does not include the seven victims who were employees of or contractors for state or federal land management agencies, or members of prison crews or industrial fire brigades.

**Because these attributes are not mutually exclusive, totals and percentages are not shown.

at an intersection. There was no information reported on seatbelt use, but the victim was ejected through the windshield and pinned beneath the truck.

- A fire officer riding as passenger in a pumper responding to a fire was killed when the driver drove through a red light, failing to yield the right of way, and collided with another responding apparatus. The vehicle, a reserve piece, was found to have faulty brakes, although they were not a factor in the crash. The victim was not wearing his seat belt and was ejected.

- A tanker overturned on a sharp left turn at a T-shaped intersection and rolled down an embankment. The tanker was a converted military surplus vehicle. No seatbelts were installed in the vehicle and the victim was not ejected.
- Another crash involving a converted tanker, this time a former fuel truck, resulted in the death of the driver when he lost control of the vehicle after coming out of a curve and overcorrected. The vehicle went off the shoulder, struck trees, and overturned. The victim was not wearing a seatbelt. Excessive

speed and driver inexperience were cited as factors in the crash.

- A firefighter driving a pumper on a call that turned out to be a false alarm lost control of the vehicle and overturned. He was wearing his seat belt and was not ejected. Excessive speed for conditions was cited as a factor in this crash.

Two fatal crashes while responding involved other fire department vehicles:

- A firefighter riding in the back seat of a ladder truck responding to a false alarm was killed when a school bus struck the truck at an intersection. The ladder truck, which was traveling through the intersection on a red light, spun and flipped, partially ejecting the victim. The bus driver failed to yield for the emergency vehicle, as other motorists at the intersection had. It was not clear whether or not the victim was wearing his seat belt. There were no children on the bus at the time of the crash.
- A fire police officer responding to a motor vehicle crash in a fire department box van collided with a propane truck and was fatally injured. According to newspaper accounts, he was making a U-turn to change directions on an interstate highway when he was struck, but there was no indication of who was at fault. The victim was not wearing a seat belt and was ejected.

Two firefighters were killed in crashes while operating over or on wildland fires:

- A contractor for a federal wildland management agency was killed when his helicopter crashed after it drifted and its main rotor blades struck a tree while he was dropping off collapsible water containers to fire ground crews in a remote area. The final NTSB report on this crash has not been released yet.
- A state wildland agency employee was killed when the bulldozer he was operating rolled over. No other details have been reported.

Three firefighters were killed in separate

incidents while returning from training activities. All three were driving their personal vehicles when they crashed:

- One of the victims crossed the center line into oncoming traffic and was struck by a tractor trailer truck. He was wearing his seat belt and was not ejected. Road conditions and weather were not factors in the crash.
- One firefighter was struck on a divided highway by a tractor trailer truck that had itself been involved in a collision on the other side of the highway, traveled into the median, and through the guard rail. No details on seat belt usage were reported.

- No details have been reported on the third fatal crash returning from training activities.

The remaining fatal crashes occurred while firefighters were engaged in other on-duty activities:

- A fire chief returning from a meeting in a fire department pickup truck apparently drifted across the center line of a two-lane road, overcorrected, and veered off the road on the right, down an embankment, and into a reservoir, where he drowned in 36 feet of water. Speed was not a factor in the crash. He was found with the seat belt across his chest, but not it was not latched.
- A forestry employee returning to base from a prescribed burn in a department pickup truck crossed the center line and struck an oncoming tractor trailer truck almost head on. Both vehicles caught fire, and both drivers were killed. The victim was wearing his seat belt and was not speeding. Postmortem tests reported the presence of illegal drugs in his system.
- Another fire chief, driving to a meeting in a fire department SUV, went off the road in icy conditions and struck a tree. No other details of the incident were reported.

Of the 25 deaths in road vehicles mentioned above, 11 of the victims were not wearing seat belts (eight were ejected), five were wearing their seat belts, and one crash involved a motorcycle. Seat belt use was not reported in the other eight crashes, but two of the victims were at least partially ejected, suggesting that they were not restrained. Excessive speed was a factor in at least six of the 24 crashes, one of which resulted in two deaths. Drugs may have been a factor in one crash. Other factors reported were failure to yield, driver inexperience, and driver inattention.

Trends in road vehicle crashes from 1998 through 2007 are discussed in a separate section of this article.

One firefighter struck by a vehicle and killed was at the scene of a vehicle fire shortly after 4:00 a.m., loading hose back onto a fire apparatus in the right-hand lane of an interstate highway when he was struck by a bus traveling approximately 65 miles per hour. The bus driver had not noticed the emergency lights of the apparatus parked on the shoulder and in the right-hand travel lane or the traffic cones set up near the fire scene, and was traveling in the right-hand lane. When he tried to change lanes, he sideswiped the first apparatus and struck the firefighter. The fire department had declined traffic control during its operations because there was no traffic on the road.

U.S. Department of Justice Death, Disability, and Educational Benefits for Public Safety Officers and Survivors

Line of duty deaths: The Public Safety Officers' Benefits (PSOB) Act, signed into law in 1976, provides a federal death benefit to the survivors of the nation's federal, state, local, and tribal law enforcement officers, firefighters, and rescue and ambulance squad members, both career and volunteer, whose deaths are the direct and proximate result of a traumatic injury sustained in the line of duty. The Act was amended in 2000 to include FEMA employees performing official, hazardous duties related to a declared major disaster or emergency. Effective December 15, 2003, public safety officers are covered for line-of-duty deaths that are a direct and proximate result of a heart attack or stroke, as defined in the Hometown Heroes Survivors Benefits Act of 2003.

A 1988 amendment increased the amount of the benefit from \$50,000 to \$100,000 and included an annual cost-of-living escalator. On October 1 of each year, the benefit increases as a result. The enactment of the USA Patriot bill in 2001 increased the benefit to \$250,000. The current benefit is \$303,064, tax free.

A decedent's spouse and minor children usually are the eligible beneficiaries. Generally, in cases in which the public safety officer had no surviving spouse or eligible children, the death benefit is to be awarded to either the individual most recently designated as beneficiary for PSOB benefits with the officer's public safety agency, organization, or unit, or, if there is no designation of beneficiary of PSOB benefits on file, to the individual designated as beneficiary under the most recently executed life insurance policy on file at the time of death. (See 42 U.S.C. § 3796(a)(4) for specific details.) If no individuals qualify under 42 U.S.C. § 3796(a)(4), then the benefit is paid to the public safety officer's surviving parents.

Line of duty disability: In 1990, Congress amended the PSOB benefits program to include permanent and total disabilities that occur on or after November 29, 1990. The amendment covers public safety officers who are permanently unable to perform any gainful employment in the future. PSOB is intended for those few, tragic cases where an officer survives a catastrophic, line-of-duty injury. Only then, in the presence of the program's statutory and regulatory qualifying criteria, will PSOB's disability benefit be awarded. The bill's supporters anticipated that few PSOB disability claims would be eligible annually.

Public Safety Officers' Educational Assistance Program (PSOEA): An additional benefit, signed into law in October 1996 and amended in 1998, provides an educational assistance allowance to the spouse and children of public safety officers whose deaths or permanent and total disabilities qualify under the PSOB Act. This benefit is provided directly to dependents who attend a program of education at an eligible education institution and are the children or spouses of covered public safety officers. It is retroactive to January 1, 1978, for beneficiaries who have received or are eligible to receive the PSOB benefit. Students may apply for PSOEA funds for up to 45 months of full-time classes. As of October 1, 2006, the maximum benefit a student may receive is \$860 per month of full-time attendance.

Further benefits information: To initiate a claim for death benefits, to receive additional information on filing a disability claim, or to receive additional information about coverage, call, email, or write the Public Safety Officers' Benefits Program, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, N.W., Washington DC 20531. The telephone number is (888) 744-6513 and the email address is ASKPSOB@usdoj.gov. PSOB death claims can now be filed online as well, at: <https://www.psob.gov>.

Career and volunteer firefighter comparison

The distribution of deaths of career and volunteer firefighters from local fire departments is shown in Figure 9. While the number of volunteer firefighter deaths continued its historic fluctuation between the mid-40s and mid-60s with no clear trend, the number of career firefighter deaths jumped sharply in 2007, to the highest level since 1989 (not including the deaths at the World Trade Center in 2001). Deaths among career firefighters had been falling fairly steadily since 1985. Most, but not all, of the increase

in 2007 can be explained by the nine fatalities in Charleston, South Carolina, furniture store fire.

Over the past 10 years, there has been an average of 30 career firefighter deaths annually, so the total of 42 on-duty deaths in 2007 is well out of range for the period. Among volunteer firefighters, the 10-year average has been 57 deaths per year, with 53 in 2007.

A breakdown of the fatality experience of the 95 career and volunteer firefighters killed in 2007 is shown in Table 1.

Other findings

From 1998 through 2007, 65 firefighters, or 6.5 percent of all on-duty deaths, died in connection with intentionally set fires. The number of these deaths annually has been dropping since 1985, in part because of the decline in intentionally set fires over the same period. Although there had been a sharp increase reported in 2006, the two reported fatalities in 2007 continues the downward trend. One of the victims in 2007 suffered a fatal heart attack while responding on foot to a fire in a vacant building, and the other was involved in a collision while responding to a woods fire.

Two firefighters died in 2007 in crashes while responding to false alarms. Over the past 10 years, 33 firefighters have died as a result of false calls, including malicious false alarms and alarm malfunctions.

Of the 13 training-related deaths, eight were the result of sudden cardiac death, four were a result of internal trauma, and one was a result of fatal burns.

Of the seven deaths at non-fire emergencies, two were the result of sudden cardiac events, two were due to shrapnel injuries, and one each was due to stroke, internal trauma, and drowning.

Conclusions

On-duty firefighter deaths rose in 2007, from the high 80s reported in the previous two years, to just over 100. There are a few important factors in the increase:

- The nine-fatality incident in Charleston was the largest multiple-firefighter fatality incident since September 11, 2001.
- The number of fatal crashes in 2007 (26 crashes) is tied with 1988 for the highest number of crashes in the 31 years of this study, and the number of deaths in crashes (27 deaths) is the second highest reported over those years.

There were some significant variations from the findings in recent years, mentioned earlier:

- The number of deaths in wildland fires in 2007 was much lower (3 in 2007, compared to an average of 10 over the past 10 years, and as many as 26 in a single year).
- The number of career firefighter deaths was much higher (42 in 2007, compared to a 10-year average of 30 per year).
- Seven of the victims in 2007 were not career or volunteer firefighters, compared to an average of approximately 13 annually over the past 10 years.

But the common trends held again in 2007.

Sudden cardiac death, usually heart attacks, claimed the largest number of lives in the year, followed by crashes. The 2008 Fire/EMS Safety, Health and Survival Week, formerly known as

Stand Down, held in June and co-sponsored by IAFF and IAFC, recognized the range of issues affecting the health and safety of the fire service when they chose this year's theme, Committed to Long-Term Results. The activities for the week focused on three areas: vehicle safety (seat belts, stopping at red lights and stop signs, and safe driving); fitness/wellness (annual medicals and physical evaluations, the provision and opportunity to use fitness equipment, and nutrition); and implementation of NFPA 1500.

References

1. The NFPA's files for firefighter on-duty fatal injuries are updated continually for all years.
2. For this report, the term "motor vehicle-related incident" refers to motor vehicle collisions, including aircraft and boats, and rollovers, as well as to incidents such as falls from or being struck by vehicles where the involvement of the vehicle played an integral role in the death.
3. For this report, the term "volunteer" refers to any firefighter whose principal occupation is not that of a full-time, paid member of a fire department. The term "career" refers to any firefighter whose occupation is that of a full-time, paid fire department member.
4. The categories for cause of injury and nature of injury are based on the 1981 edition of NFPA 901, *Uniform Coding for Fire Protection*.
5. Michael J. Karter, Jr., "U.S. Fire Department Profile Through 2005," NFPA Fire Analysis and Research Division, Quincy, Massachusetts, October 2006. The analysis shown here assumes that the number of firefighters adequately estimates exposure and that the age distribution of career and volunteer firefighters is similar.

Credits

This study was made possible by the cooperation and assistance of the United States fire service, the Public Safety Officers' Benefits Program of the Department of Justice, the United States Fire Administration, the National Institute for Occupational Safety and Health, the Forest Service of the U.S. Department of Agriculture, and the Bureau of Indian Affairs, and the Bureau of Land Management of the U.S. Department of the Interior. The authors would also like to thank Carl E. Peterson of NFPA's Public Fire Protection Division for his assistance on the study. ♣

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Firefighter Fatalities 2007

Furniture Store Fire Kills Nine Firefighters

At approximately 7:08 pm on June 18, 2007, the Charleston, South Carolina, Fire Department began receiving 911 calls reporting a fire in the Super Sofa Store on Savannah Highway, including one from a store employee reportedly trapped in the building. The metal-frame building, which included a warehouse as well as the store, had metal roof trusses and a metal roof deck. It covered approximately 50,000 square feet (4,645 square meters).

First-arriving units saw smoke showing from the store and warehouse and located the fire in the building's loading dock area between the showroom and the warehouse. Firefighters began to search for the trapped employee, who was on the phone giving his location to a fire dispatcher, who relayed it to the crews on scene. To help the firefighters find him, he also pounded on the building's outer wall. When firefighters located the trapped man, they removed him through an opening they made in the building's outer metal skin.

Meanwhile, firefighters entered the building with hose lines to find the seat of the fire. As they fought the blaze, it grew rapidly and began spreading from the center of the building through the showroom toward the front entrance.

This rapid fire spread was quickly followed by structural collapses in the showroom, which trapped firefighters, killing nine. The cause of the fire is still listed as undetermined.

After the blaze, a blue ribbon panel from the nation's fire service was convened to look into the incident and into the Charleston Fire Department to report on lessons learned and recommend improvements.

The panel's preliminary report, released in October 2007, recommended improving training, staffing, communications, occupational health and safety, personal protective equipment, apparatus and equipment, and code enforcement. The final version of the panel's report was released on May 15, 2008.

The National Institute of Standards Technology and the National Institute of Occupational Safety and Health (NIOSH) are both looking into the fire and will issue reports in the coming months. A preliminary draft of the NIOSH report was released in early May 2008.

The fire was the worst single firefighter fatality incident since the September 11 attacks and the deadliest fire in South Carolina since 1979, when 11 people died in a blaze in the Lancaster County jail.

Fall through floor

At 3:21 p.m. on January 3, a passerby called 911 to report a fire in a single-family home. The two-story, wood-frame structure, which was of balloon construction and covered 1,200 square feet (111.5 square meters), had no automatic detection system. No one was home at the time of the fire.

The first engine company arrived on the scene at 3:35 p.m. with an officer and two firefighters, who saw a large amount of smoke hanging close to ground with little visible fire. They also saw five firefighters who had responded directly to the scene from home or work and who were not dressed in protective ensembles. One of these firefighters informed the officer that he had pulled the electric meter.

The officer and a firefighter advanced a 1 3/4-inch (4-centimeter) hose to the doorway and forced the door open as the other firefighter operated the pump. The officer, who was wearing a protective ensemble but had no self-contained breathing apparatus (SCBA), instructed the firefighter, who was dressed in a full protective ensemble with a SCBA, to play water from the doorway on the visible fire and to stay out of the house until other fully attired crews arrived.

As the firefighter at the doorway stepped inside the building to see if he could locate any fire, he saw flames spreading up the wall to his left. When he turned to position the hose line to extinguish the flames, he stepped through the fire-weakened floor. He managed to catch himself and hold himself up in the hole by his arms.

Firefighters tried twice to reach him, but they were not wearing SCBAs and had to leave the building, overcome by smoke. During a third rescue attempt, a large piece of ceiling fell and hit the rescuer, knocking his helmet off and dislodging his face piece, which allowed burning embers to fall down his collar. He instinctively let go of his trapped colleague to remove the embers, and the man fell into the basement, where he became entangled in electrical wires.

This furniture store fire in Charleston, South Carolina killed nine firefighters.

Firefighters lowered a ladder to the basement, disentangled the trapped firefighter, and removed him from the building. He was still dressed in his full protective ensemble, but his SCBA's air cylinder was empty.

The firefighters immediately began cardiopulmonary resuscitation (CPR) and transported him by ambulance to a landing strip, where a helicopter was waiting. At the hospital, he was placed on life-support equipment but died two days later of asphyxiation.

The firefighter's equipment was examined and found to be in good condition, including his SCBA and personal alert safety system. Investigators noted that his personal alert safety system did not sound while he was in the building but did sound when it was taken off him and placed outside the building.

Investigators determined that the fire was caused by a failure in an electrical junction box and ceiling light in the basement. The fire then burned through the floor in the area of a return air duct.

Motor vehicle crash during response

At approximately 4:30 p.m. on February 11, an alarm was sounded for a motor vehicle crash with injuries, and a 28-year-old firefighter got into his pickup truck to respond. On the way to the scene, he entered a T-shaped intersection without stopping for the stop sign. The driver of another pickup truck traveling through the intersection with the right of way tried unsuccessfully to avoid a collision by braking, but his truck hit the firefighter's vehicle on the driver's side to the rear of the cab. The impact caused the firefighter's truck to spin around, and the driver's door opened, ejecting the firefighter, who was not wearing his seatbelt. Both vehicles came to rest off the roadway.

The unconscious firefighter suffered severe head trauma, and emergency medical technicians transported him to a local hospital. He was later flown to a medical center and placed on life support. He died 13 days later, never having regained consciousness. The cause of death was listed as severe traumatic brain injury.

Firefighter Fatalities 2007

Propane gas explosion at gas station

At 10:42 a.m. on January 30, the county 911 center received a telephone report of a gas leak at a convenience store and gasoline station. The center dispatched the local fire department a minute later, and two firefighter/emergency medical technicians (EMTs) in the department's EMS unit arrived at the scene at 10:47 a.m.

After parking their ambulance in front of the store, the two men walked around to the back where two 500-pound (267-kilogram) liquid propane gas (LPG) tanks were located and reported to a firefighter who had already arrived. Also behind the building were two gas company employees who were working on the tanks. The two firefighters briefly examined one of the gas company employees who complained of a thermal injury from exposure to propane, but the employee refused treatment. The firefighter in charge then directed the two firefighters to evacuate the area and keep people out of the parking lot.

The next firefighter to arrive also reported to the firefighter at the rear of the building, who told him to return to his vehicle, put on his protective ensemble, and help the other two firefighters keep people from entering the parking lot. As yet another firefighter walked toward the building, an explosion destroyed the store and gasoline pump area.

After the explosion, the bodies of the firefighter in charge and one of the firefighter/EMTs were found behind the building, as were the bodies of the two gas company employees. The other firefighter/EMT sustained minor injuries and began to triage and treat the injured until additional EMS units arrived. The firefighter who had gone to his vehicle to put on his protective ensemble was shielded by the vehicle and was not injured, but the firefighter who was walking toward the scene sustained multiple injuries.

Four employees of the store were also injured and had to be hospitalized.

The explosion is reported to have occurred less than 13 minutes after the initial 911 call. It was also reported that the gas company employees were trying to transfer propane from one 500-pound tank to the other and that the liquid withdrawal valve on the tank malfunctioned, allowing LPG to escape and ignite.

The firefighter who was in charge died of cranio-cerebral injuries from shrapnel and the firefighter/EMT died of head injuries as a result of the blast.

Fall from roof

Firefighters responded at 5:00 p.m. on June 21 to an alarm of a fire at a four-story building that had been illegally converted from a factory to an apartment house. The structure, which was of ordinary construction and covered 7,500 square feet (697 square meters), had a wet-pipe sprinkler system but no detection system.

Arriving firefighters saw smoke and fire coming from the window of one of the fourth-story apartments. A 23-year-old firefighter with less than two years' experience was assigned to ventilate the roof. Attired in a full protective ensemble, including SCBA, he climbed the aerial ladder carrying a power saw on a strap over his shoulder in addition to his regular tools.

As he stepped off the ladder, he lost his footing and fell 60 feet (18 meters) to the sidewalk below. He was transported to the hospital, where he later died of blunt trauma to the head and torso.

Investigators determined that the fire started when an occupant tried to extinguish a cigarette on the wooden window sill. The sill smoldered for some time before igniting, and the fire spread to the rest of the wood sash. A single sprinkler activated and kept the fire from spreading to the interior from the area of origin.

Live burn training

On February 9, a female fire recruit died in a live-fire training exercise that simulated a response to a vacant row house. The three-story row house in which the exercise took place was of ordinary construction and covered 1,200 square feet (111 square meters). The publicly owned property, which had been condemned, was an end unit in a group of three similar occupancies.

The house's third story extended from the front approximately half the building's length and ended at a stairway from the second story. A window 41 inches (1 meter) off the floor and 27 inches (0.6 meters) wide was located on the third-story landing. A lean-to roof extended from the exterior third-story wall just below the window to the

end of the second story. Several weeks before the exercise, when the building was used for training in forcible entry and horizontal and vertical ventilation, the ceilings and portions of the walls on the second and third stories were removed.

At 11:54 a.m., 22 recruits, 11 instructors and adjunct instructors, and 2 paramedics were at the site. An aerial ladder and pumper from the training academy were in front of the building with the aerial ladder positioned to the roof and the pumper connected to a nearby hydrant. Also on-scene were an ambulance and a training academy utility truck carrying extra equipment. The first-due chief officer and fire companies were there to observe and remained in service for emergencies. They were later deployed on the training exercise when conditions deteriorated and the rescue effort took place.

The recruits were organized into three engine companies and three truck companies as evenly as possible, with an adjunct instructor or training academy officer assigned to each company. While all the recruits and instructors in the fire building wore full protective ensembles and used SCBAs, many did not have personal alert safety systems (PASS).

Engine 1, with four recruits and an adjunct instructor, was assigned to enter through the front and go to the third story to extinguish any fire. They were told not to worry about fire on the second floor, as Engine 2 was assigned to the second floor and would come in right behind them. The adjunct instructor did not have a PASS or radio.

Engine 2 was also assigned four recruits with an adjunct instructor and was told to enter the rear of the building and go up the stairs behind Engine 1 to extinguish the fire on the second story. The adjunct instructor had no PASS or radio, either. The officer of Engine 3, which was to function as a rapid intervention team (RIT), had a radio.

Truck 1 was assigned to place ground ladders to the front of the fire building, then enter the building to perform search and rescue. Truck 2 was to go to the rear of the building and perform a forcible entry at ground level. The adjunct instructor of Truck 2 had a radio. The crew of Truck 3 was to climb over the aerial ladder to the adjacent roof and ventilate the fire building.

An officer and two adjunct instructors ignited

two fires in a room on the third story and six fires the second story, two in the front room, two in the room in the rear, one in the bathroom, and one in a closet. No fires were set on the first story. Wood pallets and bales of hay fueled the eight fires.

After the officer and instructors left the building, the simulated dispatch was made. An unknown amount of time passed before the crews went into the building because they were not prepared. When Engine 1 did enter the building from the front, they advanced a 1 3/4-inch (4-centimeter) hose line up the stairs to the second story. At the same time, Engine 2 brought a 1 3/4-inch hose line to the rear and waited for Truck 2 to simulate forcible entry.

When Engine 1 reached the second story, they encountered severe fire conditions that made the adjunct instructor uncomfortable about proceeding before extinguishing some of the fire. When he ordered the recruit on the nozzle to extinguish some of the fire, the nozzle's back pressure knocked her down. The instructor took control of the nozzle and extinguished the fire to a size he was comfortable with, and the crew went on toward the third story.

Engine 2 encountered debris burning in the rear room on the first level and was delayed reaching the second story as planned.

On the stairs between the second and third stories, a recruit from Engine 1 told the adjunct instructor that her legs felt as though they were burning. In response, the instructor climbed out the window of the third-story landing onto the second-story roof and helped the recruit climb out, too. The other two recruits, who were coming up the stairs, saw the recruit who had been on the nozzle trying to climb out the window. She warned them to leave the building. The two took the hose that was on the floor and still flowing water and retreated down the stairs, extinguishing the fires so they could leave the building.

On the landing, the adjunct grabbed the harness of the recruit's SCBA and tried to pull her out the window. Unfortunately, the window was too high, and she fell backwards, landing on her feet. When he grabbed her again, he noticed that her face piece was partially dislodged and her face was starting to blister. Without a radio, the adjunct instructor could only scream for help.

Firefighter Fatalities 2007

As Truck 3, Engine 2, and the RIT became aware of what was going on, they started toward the third level. Members of Truck 3 who were on the third-story roof also responded to the call for help. The rescuers spent several minutes trying to pull the recruit out, during which time she lost consciousness. She was finally pushed out onto the second-story roof by members of Engine 2. Firefighters immediately began CPR and removed the recruit from the building over the aerial ladder. She was transported to the hospital, where she died of burns and asphyxia.

An investigative report listed 36 potential violations of NFPA 1403, *Live Fire Training Evolutions*.

Fall from bridge

At approximately 1:15 a.m. on August 10, fire companies were called to a motor vehicle crash with injuries.

After firefighters removed the victim from the vehicle, the driver's side of which was pinned against the side of the bridge, they began spreading an absorbent material to clean up oil and gasoline that was leaking from the vehicle. A lieutenant climbed on the hood of the car to try to reach the keys in the ignition. He wanted to make certain that the ignition was off to prevent a spark from causing a fire.

As he reached through the driver's side window, he lost his balance and fell off the bridge to the ground 40 feet (12 meters) below. He died on the scene of blunt force injuries.

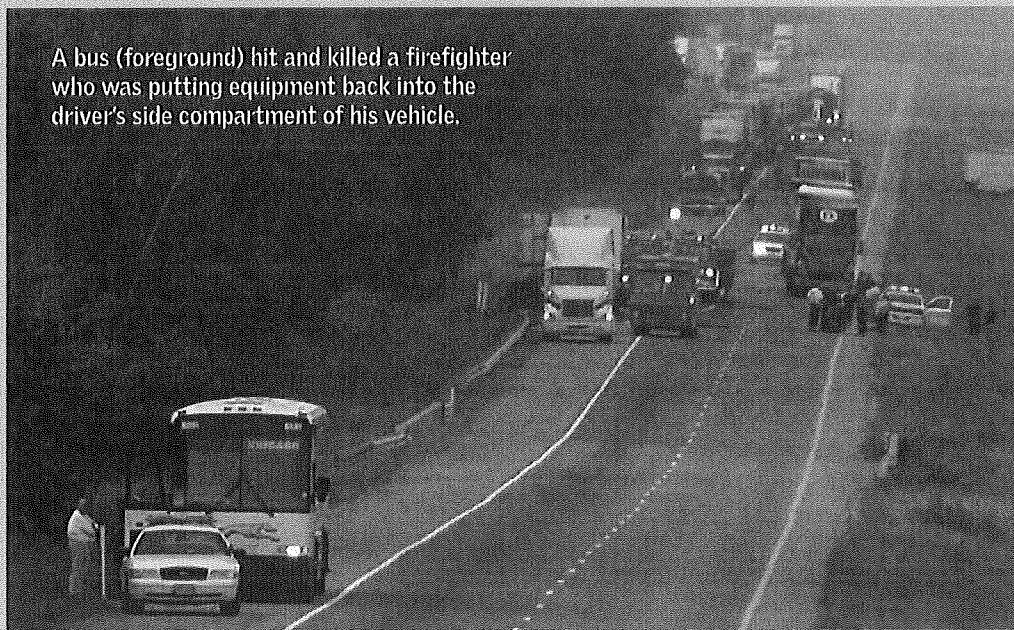
Struck by motor vehicle

One firefighter was killed while working the scene of a tractor-trailer fire on a four-lane interstate highway at 3:00 a.m. on July 27. The fire started when the tractor-trailer's brakes locked, causing its rear tires to ignite, and fire spread to the body of the trailer before it was extinguished.

When the fire companies' three emergency vehicles arrived at the scene, they found the tractor-trailer parked on the shoulder. Two of the vehicles parked on the shoulder behind the tractor-trailer, while the other parked in the travel lane between the other two, all with their emergency lights on. The firefighters set up orange cones to divert traffic to lane two of the highway.

After extinguishing the fire, the firefighters were putting their equipment away when a bus traveling at an estimated 65 miles (104 kilometers) per hour in lane one veered to the left through the cones to avoid hitting the emergency vehicle. The bus sideswiped the apparatus parked in lane one

A bus (foreground) hit and killed a firefighter who was putting equipment back into the driver's side compartment of his vehicle.



and hit a 43-year-old firefighter who was putting a hose back into a driver's side compartment. The firefighter was thrown approximately 230 feet (984 meters) and died instantly.

Electrocuted at a grass fire

A fire lieutenant was electrocuted on September 24 at the scene of a grass fire, which started when a tractor-trailer knocked down a utility pole supporting energized electrical power lines as it turned around on a road that was closed for construction.

A passerby called 911 at 2:00 p.m. to report the wind-driven fire, which was burning near a residential area, and fire companies were dispatched to the scene. A fire lieutenant dressed in protective trousers with knee-high fire boots and leather gloves was operating a hose line when he touched the power line. A firefighter working in the area spotted the downed lieutenant and, with another firefighter, pulled him away from the power line.

The firefighters began performing CPR on the lieutenant in an attempt to save his life. The lieutenant was in critical condition as he was taken by air ambulance to a regional medical center where he died within the hour. Cause of death was electrocution.

Physical fitness evaluation

On April 25 at 2:30 p.m. a fire captain died when participating in an annual physical fitness and job task evaluation. All members of the fire department's suppression force are required to take part in the evaluation. Personnel are not allowed to participate if their systolic blood pressure is 150 and above or their diastolic blood pressure is 100 and above during a screening immediately prior to the evaluation.

The 56-year-old engine company fire captain with 22 years of service was participating in a part of the program that required him to walk at a rapid rate for thirty minutes. The walk was being held at a local university's track. The fire captain dressed in a tee shirt and gym shorts was well into his walk when he collapsed. On-scene fire department medical personnel began life-saving measures and transported him to the hospital where continuing efforts to resuscitate him failed and he was pronounced dead approximately thirty minutes from the time he collapsed. The cause of death

was listed as complications of atherosclerotic cardiovascular disease.

Motor vehicle crash while responding

At about noon on March 24, two firefighters were killed while responding to a fire on a mutual aid call. The two firefighters were riding in the tanker while other firefighters followed in their privately owned vehicles. The driver of the tanker was 45 years old. The other firefighter riding in the passenger seat was 19 years old. Neither was wearing the seatbelts provided.

The 1000-gallon (3,785-liter) tanker was responding on a two-lane highway under good weather conditions and a dry road. It was reported that the tanker was traveling at an estimated speed of 50 miles (80 kilometers) per hour in a 45 mile-an-hour (72 kilometer-an-hour) speed zone when moving out of a slight left-hand curve. The driver braked and steered to the left, crossing the yellow double centerline. The driver then steered to the right, overcorrecting, and causing the apparatus to begin to skid sideways. It went off the right-hand side of the road before skidding back on the road and overturning. It rolled three or four times traveling 55 feet (17 meters), before coming to a rest on its roof across the highway. The driver was ejected from the truck as it rolled and the passenger was trapped in the cab. Both firefighters were pronounced dead at the scene of the crash. Cause of death for both firefighters was blunt force trauma.

The fire that the firefighters were responding to was an uninhabited manufactured home that was completely destroyed.

Helicopter crash

On July 23 at 11:00 a.m., a helicopter went down in a remote and heavily wooded area approximately 12 miles from its base camp. The helicopter, piloted by a contract pilot, was to drop off water blivets (bladders) so firefighters on the ground fighting a complex of fires would have fresh drinking water. The blivets were suspended beneath the helicopter on a 150-foot (46-meter) line.

A number of firefighters witnessed the crash. They reported that as the helicopter set the blivets down on the ground, it drifted to the right and the main rotor blades came in contact with a tree.

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The 150-foot (46-meter) line along with the blivets remained attached to the helicopter as it made a turn to the left, hesitated and then flew down hill. The helicopter was destroyed when it crashed into the heavily forested area and a postcrash fire consumed the helicopter's cabin area. No abnormal engine sounds were heard during the event and the investigation into the crash is on-going.

Heart attack at fire

On February 19 a 44-year-old acting lieutenant with 20 years of service died during a fire in an apartment building. At 8:00 a.m. the acting lieutenant reported for work and checked his equipment and filled out the daily paper work required of that position. During the morning, he and his crew participated in a bladder cancer screening. At 12:30 p.m. they were dispatched to a fire in a two-story, residential structure where they searched for victims, ventilated, and helped to extinguish the fire.

At 4:40 p.m. they were dispatched to their second fire of the day. The fire was in an eight-story, apartment building of fire resistive construction.

On arrival, the acting lieutenant observed a large volume of black smoke coming from windows on the sixth story. The acting lieutenant and one firefighter dressed in full protective ensembles with SCBAs climbed the six flights of stairs at a rapid pace. Reaching the sixth-story they entered the smoke-filled fire apartment and began a search for victims, ventilating at the same time. Thirty minutes into the fire, the acting lieutenant collapsed as he walked out of the apartment.

CPR was immediately started and a defibrillator was used. The acting lieutenant remained asystolic throughout the transport to the hospital and was pronounced dead upon arrival. The cause of death was listed as ischemic heart disease.

Lost inside fire building

On April 16 at 6:00 a.m. numerous 911 calls were placed to the fire department to report a structure fire. Five minutes after dispatch, arriving companies observed a large amount of fire on the exterior left-rear corner of the building. Winds of 25 miles (40 kilometers) per hour with gusts up to 48 miles (77 kilometers) per hour were prevalent at the time of

the fire and caused rapid spread of fire, heat, and smoke throughout the structure within minutes.

The structure was a large, two-story, single-family dwelling with 5,000 square feet (464.5 square meters) of ground floor area. It was constructed of lightweight wood-truss construction. The officers of the first engine and truck companies made independent size-ups and met in the front of the building. They both observed a vehicle in the driveway and vehicles on the street in front of the house. No interior lights were on and given the early morning hour, an occupant rescue situation was suspected. A second alarm was requested as a result.

The members of the first engine and truck company dressed in full protective ensembles with SCBA and entered the building. The engine company advanced a 2 1/2-inch (6-centimeter) hose and the truck performed a primary search of the first level. The windows were still in place and the interior conditions had little smoke and no heat. The companies proceeded to the second story where they encountered smoke banked down 3 to 4 feet (1 to 1.2 meters) from the ceiling.

The officer and one of the firefighters of the truck company were in the process of searching the master bedroom when conditions rapidly deteriorated to thick black smoke with no visibility and high heat conditions. They began to evacuate the bedroom area to exit the building. The officer crawled into the hallway and became entangled with a table. The entanglement caused the officer to fall down 5 to 6 stairs to a curve in the staircase. The officer called out to the firefighter, who stated he was having trouble finding the staircase.

The engine and a rescue company located the officer and were able to bring him to the front yard. Learning that a firefighter was trapped inside, a Mayday was sounded. Multiple rescue attempts were made to ascend the stairs despite the heat and fire conditions. The on-scene fire companies working to bring the fire under control reentered the structure and searched until they found the body of the firefighter in the master bedroom. The cause of death was listed as thermal and inhalation injuries. As a result of this tragic incident a number of improvements in the fire department's operations have been proposed.

Firefighter Fatalities 2007

Deaths in road vehicle crashes, 1998 to 2007

CRASHES, INCLUDING COLLISIONS AND ROLLOVERS, consistently account for the second largest share of firefighter deaths, overall. The 148 deaths of on-duty firefighters in 133 road vehicle crashes over the past 10 years are shown in Figure A. The number of deaths annually ranged from a low of 10 in 1998 and 2006 to a high of 25 in 2003 and 2007.

Almost all the crashes were single-fatality incidents. One crash each killed three, five, and eight firefighters, all employees of or contractors for federal land management agencies. There were two two-fatality crashes; the victims were volunteer firefighters.

Overall, more than two-thirds of the victims (101 firefighters) in these crashes were volunteer firefighters. Fifteen percent (22 firefighters) were career firefighters, and the remaining 25 victims (16.9 percent) were contractors for, or employees of, state and federal land management agencies or the military. Of the 148 victims, 110 were driving, and 38 were passengers.

Types of Duty

Four of five of the crashes and fatalities occurred while firefighters were responding to, or returning from, alarms (106 crashes, 119 deaths). Of these 119 victims, 102 were responding to emergencies at the time of the crashes; 29 to structure fires; 26 to grass, brush or wildland fires; 15 to medical calls; 13 to motor vehicle crashes; 5 to false alarms; 2 each to outside fires and vehicle fires; and the other 10 to a variety of emergencies. Fifteen of these 102 crash deaths occurred during mutual-aid responses (11 to structure fires; 3 to brush, grass, or wildland fires; and 1 to an outside fire). The other 17 victims were killed in 10 crashes while they were returning from emergency calls. This includes one crash where eight firefighters returning from a wildland fire died.

Five deaths occurred during emergency operations, four of them on two wildland fires when vehicles rolled down ravines and one during an EMS call. Nine deaths were related to training activities, but only one occurred during driver training. The other eight crashes occurred while the victims were driving to or from training exercises or courses.

The remaining 15 deaths occurred during a variety of other types of on-duty, non-emergency activities.

Of the 148 victims, 16 were chief officers. All were driving the vehicle when they were killed. Ten were driving fire department apparatus, four were driving other fire department vehicles, and

two were driving their personal vehicles. Ten were responding to alarms (four structure fires; two brush, grass or wildland fires; one EMS call and three other types of emergency calls), and one was returning from a structure fire. Five were engaged in other on-duty activities; two were driving to meetings, one was returning from a meeting, one was going to get a vehicle inspection sticker for the fire apparatus, and one was driving to a controlled burn.

Types of vehicles involved

One-third of the crashes, resulting in 50 deaths involved firefighters' personal vehicles, and all of them were single-fatality incidents. Twenty-eight crashes resulting in 30 deaths involved pumpers. Another 28 incidents that involved water tenders (tankers) also resulted in 30 deaths. Six firefighters were killed in single-fatality crashes involving ambulances or rescue vehicles, and three were killed in single-fatality crashes involving ladder trucks. The remaining 29 deaths occurred in 18 crashes of other types of public safety vehicles. This includes eight deaths in a van returning from a wildland fire and five deaths in a van responding to a wildland fire.

Of the 114 victims for whom information about seat belt use was reported, 67 percent were known to not be wearing seat belts or using restraint systems.

Factors in the crashes

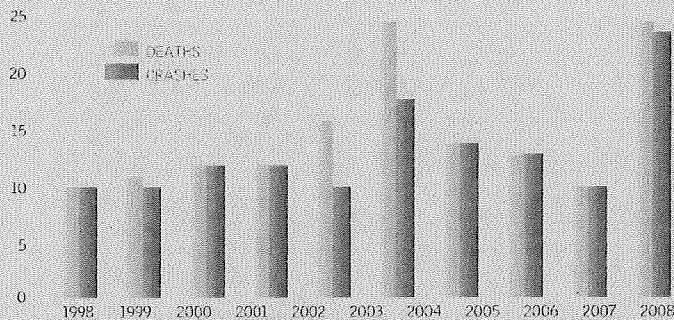
Thirty-five of the crashes occurred on curves in the road, often when drivers failed to negotiate the turn and the apparatus wheels went off the pavement. These crashes resulted in 37 deaths. In 32 of these crashes, the firefighters were responding to alarms. In two cases, the firefighters were returning from calls, one on his motorcycle. One firefighter was involved in a driver training exercise when he crashed on a curve. The vehicle's brakes were found to be defective.

Twenty-three single-fatality crashes occurred at intersections. In 21 of these 23 crashes, the victims were responding to alarms. One victim was on his way to a meeting when he was broadsided by another driver who ran a stop sign, and another was killed when a vehicle involved in a separate collision landed on his car.

Three single-fatality crashes occurred at grade-level railroad crossings when fire apparatus were struck by trains. One of the firefighters was responding to a medical call and did not stop at the crossing. Another was driving a tanker back from a

Firefighter Fatalities 2007

Figure A - Fatal Road Vehicle Crashes 1998-2007



training exercise and was struck at a private railroad crossing. The third, returning from a false alarm, was attempting to drive the fire apparatus around a crossing gate when he was struck by the train.

Excessive speed for the road conditions or exceeding the speed limit was a factor in 48 of the crashes, which resulted in 50 deaths. Wet or icy roads contributed to 31 crashes. In five crashes, the drivers were intoxicated, and drugs or alcohol were possible factors in two of the other fatal crashes. Operator error, including failure to stop at traffic signals, driver inattention, and poor fire apparatus maintenance were factors in several of the crashes.

Other victims of fire department vehicle crashes

According to NFPA's most recent statistics, there were approximately 16,000 collisions in 2006 involving fire department apparatus responding to, or returning from, incidents, resulting in 1,250 firefighter injuries.¹

Firefighters are not the only victims in these crashes. National Highway Traffic Safety Administration (NHTSA) reports show that, from 1997 through 2006, 94 of the victims in fatal collisions involving a fire apparatus in emergency use (operating lights and sirens) and another vehicle were occupants of the other vehicle, while nine were firefighters. In other multiple vehicle crashes where the fire apparatus was not in emergency use, 33 of the victims were occupants of the other vehicles and one was a firefighter. Over that period, crashes involving fire department apparatus killed 21 pedestrians and five bicyclists.²

Reducing firefighter crash deaths

Deaths in crashes continue to account for a significant proportion of the annual fatalities. NFPA publishes several standards related to road safety issues. NFPA 1002, *Fire Apparatus Driver/Operator Professional Qualifications*,

identifies the minimum job performance requirements for firefighters who drive and operate fire apparatus in both emergency and nonemergency situations. NFPA 1451, *Fire Service Vehicle Operations Training Program*, provides for the development of a written vehicle operations training program, including organizational procedures for training, vehicle maintenance, and identifying equipment deficiencies. NFPA 1911, *Inspection, Testing, Maintenance and Retirement of In-Service Automotive Fire Apparatus*, details a program to ensure that fire apparatus are maintained to keep them in safe operating condition.

Taking into account that personal vehicles were the vehicles most frequently involved in road crashes, the latest edition of NFPA 1500, *Fire Department Occupational Safety and Health Program*, added a requirement that, when members are authorized to respond to incidents or fire stations in private vehicles, the fire department must establish rules, regulations, and procedures relating to their operation in an emergency mode at least equal to the provisions regulating fire department vehicle operations.

NFPA 1500 includes requirements that operators successfully complete an approved driver training program, possess a valid driver's license for the class of vehicle, and operate the vehicle in compliance with applicable traffic laws. All vehicle occupants must be seated in approved riding positions and secured with seat belts before drivers move the apparatus, and drivers must obey all traffic signals and signs and all laws and rules of the road, coming to a complete stop when encountering red lights, stop signs, stopped school buses with flashing warning lights, blind intersections and other intersection hazards, and unguarded railroad grade crossings. Passengers must be seated and belted securely and must not release or loosen seat belts for any reason while the vehicle is in motion.

In related efforts, the USFA has formed partnerships with the International Association of Fire Fighters, the National Volunteer Fire Council, and the International Association of Fire Chiefs to focus attention on safety while responding in emergency apparatus. Details can be found at www.usfa.dhs.gov/fireservice/research/safety/vehicle.shtm.

1. Karter, Jr., Michael J. and Molis, Joseph L., "Firefighter Injuries in the United States," NFPA, November 2007.

2. See Table 62 of the National Highway Traffic Safety Administration Traffic Safety Facts reports for 1997 through 2006.

OMNIBUS MOTION

As to the matters before us today, I move that we adopt the recommendations of the:

☐ UNION in their entirety

☐ TOWN in their entirety

☐ SPECIAL MAGISTRATE in their entirety

with respect to:

Article 14 – Drug and Alcohol Testing;

Article 16 – Promotions;

Article 17 – Wages;

Article 18 – Workweek;

Article 19 – Overtime;

Article 38 – Sick Leave and Injury Time; and,

Article 41/30 – Retirement Benefits (Included in Union Materials as

Article 30 – Insurance and Miscellaneous Benefits,

Included in Town's Materials as Article 41)

in the non-supervisory Collective Bargaining Agreement and their companion Articles in the supervisory Collective Bargaining Agreement.

Motion By: _____

Second By: _____

Vote: _____ In Favor _____ Against

INDIVIDUAL ARTICLES MOTIONS

AS TO ARTICLE 14 – DRUG AND ALCOHOL TESTING in the non-supervisory Collective Bargaining Agreement and its companion Article in the supervisory Collective Bargaining Agreement, I move that we:

- ☐ Adopt the recommendation of the UNION as presented in Mark Floyd's letter to the Mayor and Town Council dated April 21, 2011, at p. 2.

[See Council's Hearing Materials, Tab C: C.1; C.2, pp. 2-3; and, C.3, pp. 2-3.]

- ☐ Adopt the recommendation of the TOWN as presented in Peter Elwell's memorandum to the Mayor and Town Council dated March 14, 2011, at pp. 4-5.

[See Council's Hearing Materials, Tab B: Executive Summary, pp. 11-12; Town Manager's Recommendations, pp. 4-5; Rejection of Special Magistrate's Report, Exhibit D.]

- ☐ Adopt the recommendation of the SPECIAL MAGISTRATE.

[See Council's Hearing Materials, Tab B: Special Magistrate's Report, pp. 23-24 and 32.]

- ☐ Other _____

Motion By: _____

Second By: _____

Vote: _____ In Favor _____ Against

AS TO ARTICLE 16 – PROMOTIONS in the non-supervisory Collective Bargaining Agreement, I move that we:

- ☐ Adopt the recommendation of the UNION as presented in Mark Floyd's letter to the Mayor and Town Council dated April 21, 2011, at p. 2.

[See Council's Hearing Materials, Tab C: C.1; C.2, pp. 4-6.]

- ☐ Adopt the recommendation of the TOWN as presented in Peter Elwell's memorandum to the Mayor and Town Council dated March 14, 2011, at pp. 5-6.

[See Council's Hearing Materials, Tab B: Executive Summary, p. 12; Town Manager's Recommendations, pp. 5-6; Rejection of Special Magistrate's Report, Exhibit E.]

- ☐ Adopt the recommendation of the SPECIAL MAGISTRATE.

[See Council's Hearing Materials, Tab B: Special Magistrate's Report, pp. 24-25 and 33.]

- ☐ Other _____

Motion By: _____

Second By: _____

Vote: _____ In Favor _____ Against

AS TO ARTICLE 17 – WAGES in the non-supervisory Collective Bargaining Agreement and its companion Article in the supervisory Collective Bargaining Agreement, I move that we:

- ☐ Adopt the recommendation of the UNION as presented in Mark Floyd's letter to the Mayor and Town Council dated April 21, 2011, at pp. 3-4.

[See Council's Hearing Materials, Tab C: C.1; C.2, pp. 7-9; C.3, pp. 4-5.]

- ☐ Adopt the recommendation of the TOWN as presented in Peter Elwell's memorandum to the Mayor and Town Council dated March 14, 2011, at pp. 6-7.

[See Council's Hearing Materials, Tab B: Executive Summary, pp. 8-9; Town Manager's Recommendations, pp. 6-7; Rejection of Special Magistrate's Report, Exhibit F.]

☐ Adopt the recommendation of the SPECIAL MAGISTRATE.

[See Council's Hearing Materials, Tab B: Special Magistrate's Report, pp. 25-27 and 33.]

☐ Other _____

Motion By: _____

Second By: _____

Vote: _____ In Favor _____ Against

AS TO ARTICLE 18 – WORKWEEK in the non-supervisory Collective Bargaining Agreement and its companion Article in the supervisory Collective Bargaining Agreement, I move that we:

☐ Adopt the recommendation of the UNION as presented in Mark Floyd's letter to the Mayor and Town Council dated April 21, 2011, at pp. 4-5.

[See Council's Hearing Materials, Tab C: C.1; C.2, pp. 10-11; C.3, pp. 6-7.]

☐ Adopt the recommendation of the TOWN as presented in Peter Elwell's memorandum to the Mayor and Town Council dated March 14, 2011, at pp. 7-8.

[See Council's Hearing Materials, Tab B: Executive Summary, pp. 9-10 and Attachment 2; Town Manager's Recommendations, pp. 7-8; Rejection of Special Magistrate's Report, Exhibit G.]

☐ Adopt the recommendation of the SPECIAL MAGISTRATE.

[See Council's Hearing Materials, Tab B: Special Magistrate's Report, pp. 27-28 and 33.]

☐ Other _____

Motion By: _____

Second By: _____

Vote: _____ In Favor _____ Against

AS TO ARTICLE 19 – OVERTIME in the non-supervisory Collective Bargaining Agreement and its companion Article in the supervisory Collective Bargaining Agreement, I move that we:

- ☐ Adopt the recommendation of the UNION as presented in Mark Floyd's letter to the Mayor and Town Council dated April 21, 2011, at pp. 4-5.

[See Council's Hearing Materials, Tab C: C.1; C.2, pp. 12-14; C.3, pp. 8-10.]

- ☐ Adopt the recommendation of the TOWN as presented in Peter Elwell's memorandum to the Mayor and Town Council dated March 14, 2011, at pp. 8-9.

[See Council's Hearing Materials, Tab B: Executive Summary, p. 11; Town Manager's Recommendations, pp. 8-9; Rejection of Special Magistrate's Report, Exhibit H.]

- ☐ Adopt the recommendation of the SPECIAL MAGISTRATE.

[See Council's Hearing Materials, Tab B: Special Magistrate's Report, pp. 28-29 and 33.]

- ☐ Other _____

Motion By: _____

Second By: _____

Vote: _____ In Favor _____ Against

AS TO ARTICLE 38 – SICK LEAVE AND INJURY TIME in the non-supervisory Collective Bargaining Agreement and its companion Article in the supervisory Collective Bargaining Agreement, I move that we:

- ☐ Adopt the recommendation of the UNION as presented in Mark Floyd's letter to the Mayor and Town Council dated April 21, 2011, at pp. 6-7.

[See Council's Hearing Materials, Tab C: C.1; C.2, pp. 17-19; C.3, pp. 13-15.]

- ☐ Adopt the recommendation of the TOWN as presented in Peter Elwell's memorandum to the Mayor and Town Council dated March 14, 2011, at pp. 10-11.

[See Council's Hearing Materials, Tab B: Executive Summary, pp. 12-14; Town Manager's Recommendations, pp. 10-11; Rejection of Special Magistrate's Report, Exhibit I.]

- ☐ Adopt the recommendation of the SPECIAL MAGISTRATE.

[See Council's Hearing Materials, Tab B: Special Magistrate's Report, pp. 29-32 and 34.]

- ☐ Other _____

Motion By: _____

Second By: _____

Vote: _____ In Favor _____ Against

AS TO ARTICLE 41/30 – RETIREMENT BENEFITS (INCLUDED IN UNION MATERIALS AS ARTICLE 30 - INSURANCE AND MISCELLANEOUS BENEFITS, INCLUDED IN TOWN'S MATERIALS AS ARTICLE 41) in the non-supervisory Collective Bargaining Agreement and its companion Article in the supervisory Collective Bargaining Agreement, I move that we:

- ☐ Adopt the recommendation of the UNION as presented in Mark Floyd's letter to the Mayor and Town Council dated April 21, 2011, at pp. 5-6.

[See Council's Hearing Materials, Tab C: C.1; C.2, pp. 15-16; C.3, pp. 11-12.]

- ☐ Adopt the recommendation of the TOWN as presented in Peter Elwell's memorandum to the Mayor and Town Council dated March 14, 2011, at pp. 2-4 as Revised April 13, 2011, and included in the Executive Summary as Attachment 1.

[See Council's Hearing Materials, Tab B: Executive Summary, pp. 4-8 and Attachment 1; Town Manager's Recommendations, pp. 2-4; Rejection of Special Magistrate's Report, Exhibit C.]

- ☐ Adopt the recommendation of the SPECIAL MAGISTRATE.

[See Council's Hearing Materials, Tab B: Special Magistrate's Report, pp. 11-23 and 33.]

- ☐ Other _____

Motion By: _____

Second By: _____

Vote: _____ In Favor _____ Against

Town of Palm Beach

Impasse Hearing

April 21, 2011

COMMENTS BY THE PUBLIC

Name: DANNY DUNNAM Phone: _____ (Optional)

Address: Exempt

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

1. Complete Comment Card.
2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): _____

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

Town of Palm Beach

Impasse Hearing

April 21, 2011

COMMENTS BY THE PUBLIC

Name: J. PATTERSON "PAT" COOPER Phone: 688-4179 (Optional)

Address: 261 SANFORD AVE. PALM BEACH, FL

If you represent any other person, organization, or other entity, please name: PALM BEACH CIVIC ASSN.

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

1. Complete Comment Card.
2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): SPEAKING FOR TOWN MANAGER'S PROPOSAL
GIVING SHORT HISTORY OF WHY

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

✓
Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: ED ROBINSON Phone: 833-4012
(Optional)
Address: 217 CLARICE AVE PM

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

1. Complete Comment Card.
2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): _____

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

✓
Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: Deborah Robinson Phone: 561 779-5943
(Optional)
Address: 217 CLARKE Avenue

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

1. Complete Comment Card.
2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): _____

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: JOHN J. POHANKA Phone: 833-3117
(Optional)

Address: 329 S. LAKE DR. PALM BEACH

If you represent any other person, organization, or other entity, please name: SELF (FAX RITE)

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

1. Complete Comment Card.
2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse):

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: JOHN J. POHANKA Phone: 833-3117
(Optional)

Address: 309 S. LAKE DR. PALM BEACH 3340

If you represent any other person, organization, or other entity, please name: SELF (FAX RITE)

Check what may apply: ☐ I wish to speak ☐ I do not wish to speak ☒ I want my comment read into the record

Comment Card Instructions:

1. Complete Comment Card.
2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse):

Unbelievable! Minutes and the Philadelphia Orchestra municipality cannot decide bankruptcy for such a poor decision. I applaud the town's council for their action and for

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

looking after the taxpayers' interests. Thank you

SPOKE
EARLIER,
COMMENTS
MADE AT THAT
TIME

✓
Town of Palm Beach

Impasse Hearing

April 21, 2011

COMMENTS BY THE PUBLIC

Name: Jayson E French Phone: _____ (Optional)

Address: 8539 Thousand Lines Circle WPB, FL 33411

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): _____

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

✓
Town of Palm Beach

Impasse Hearing

April 21, 2011

COMMENTS BY THE PUBLIC

Name: Peter McGrane Phone: 312-9671 (Optional)

Address: 716 Robin Way NPB FL 33406

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

1. Complete Comment Card.
2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): _____

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

✓

Town of Palm Beach

Impasse Hearing

April 21, 2011

COMMENTS BY THE PUBLIC

Name: Scot McCuskey Phone: _____ (Optional)

Address: 2102 Nova Village Dr Davie FL

If you represent any other person, organization, or other entity, please name: FIREFIGHTERS

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): _____

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

✓

Town of Palm Beach

Impasse Hearing

April 21, 2011

COMMENTS BY THE PUBLIC

Name: Anne Pepper Phone: _____ (Optional)

Address: 333 Seaspray Ave PB

If you represent any other person, organization, or other entity, please name: Charles W. Pepper

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☒ I want my comment read into the record

Comment Card Instructions:

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2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): I Support Peter Ellwell's

Pension reform plan for the Firemen, It is Fair
and will not bankrupt Palm Beach

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

✓
Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: SUSAN MARKIN Phone: _____
(Optional)

Address: 1450 N. LAKE WAY

If you represent any other person, organization, or other entity, please name: NAPB

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): WE MUST MAKE

CHANGES

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

✓
Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: FRED Angelo Phone: _____
(Optional)

Address: 2328 S. Congress Ave #2C WPB FL

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): Wish to speak re

Pension issue.

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

✓
Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: DOUG WATLER Phone: _____
(Optional)

Address: 20181 SHADY VISTA LANE BOCA RATON, FL

If you represent any other person, organization, or other entity, please name: FLORIDA PROFESSIONAL FIREFIGHTERS

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): Impasse Issues

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

✓
Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: Owen Larkin Phone: _____
(Optional)

Address: 315 S. Lake Dr.

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): _____

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✓
Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: Quincy Schider-Heise/ Phone: 56
(Optional)

Address: Exempt

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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Comment (If not enough space, continue on reverse): _____

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✓
Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: David Burke Phone: 72
(Optional)

Address: Exempt

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

1. Complete Comment Card.
2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): _____

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Town of Palm Beach

Impasse Hearing

April 21, 2011

COMMENTS BY THE PUBLIC

Name: Keith Golden Phone: _____ (Optional)

Address: _____

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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Comment (If not enough space, continue on reverse): _____

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Town of Palm Beach

Impasse Hearing

April 21, 2011

COMMENTS BY THE PUBLIC

Name: Mark Bradshaw Phone: 202-785 (Optional)

Address: 1301 Cape May Lane

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): Hybrid plan not

competitive now we should trust
MR Jewell's projection much further into
the future.

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

Mr. Homes had to leave
for 12-1 mtg - can move
to later in the order

Town of Palm Beach
Impasse Hearing
April 21, 2011

Do Not
Speak

COMMENTS BY THE PUBLIC

Name: Henry Homes III Phone: _____
(Optional)

Address: 157 Peruvian Ave

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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Comment (If not enough space, continue on reverse): _____

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Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: SUSAN WATTS Phone: _____
(Optional)

Address: 455 WORTH AVE

If you represent any other person, organization, or other entity, please name: N A P B

Check what may apply: ☐ I wish to speak ☐ I do not wish to speak ☒ I want my comment read into the record

Comment Card Instructions:

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3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): Retired Navy Captain

with 20 years of service (including combat)

Receives \$44,269.92 a year in retire pay!

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

* Sandra Leamy
1215

Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: MARY G. WEISS Phone: 655-6699
(Optional)

Address: 529 S. FLAGLER DR.

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☒ I want my comment read into the record

Comment Card Instructions:

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2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): How can we measure the value of
human life? These brown women are willing to put their lives on
the line EVERY DAY when they come to work - by they die trying to save
someone they will leave their spouse and children without a parent.

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

→

I remember the horror of 9/11 - While people were running OUT of the Twin Towers - Firefighters were running IN to the burning & save lives. 346 firefighters DIED! They would do the same here - if G-D forbid there were a fire in a Condominium or Hotel, they would do everything possible, including giving their lives, to save others, that is their call to duty.

They are not here to ONLY serve town residents - they serve everyone who is on the island and may have an accident or medical emergency - they serve EVERY ONE.

Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: MR & MRS R. DOLLY FOSTER Phone: _____ (Optional)

Address: 64 VIA MIZNER P.B.

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☐ I wish to speak ☐ I do not wish to speak ☒ I want my comment read into the record

Comment Card Instructions:

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2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): We are completely in
favor of the town's proposed pension
reform

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: MARY G. REED, Gordon P. Reed Phone: 655-9146 (Optional)

Address: 231 Chilean P.B.

If you represent any other person, organization, or other entity, please name: Gordon Reed

Check what may apply: ☐ I wish to speak ☐ I do not wish to speak ☒ I want my comment read into the record

Comment Card Instructions:

1. Complete Comment Card.
2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): I hope the Town
Council will support P. Shively, Dan &
put our Town finances in the line
with the private sector.

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Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: BOB GUTHRIE Phone: _____
(Optional)

Address: 320 ISLAND DRIVE

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☒ I want my comment read into the record

Comment Card Instructions:

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3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): IN FAVOR OF RESTRAINT IN
PUBLIC EMPLOYEE BENEFITS TO CORRESPOND TO
PRIVATE SECTOR

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Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: FREDERICK W MCCARTHY Phone: _____
(Optional)

Address: 1519 N Ocean Way PB 33480

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☐ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

Comment Card Instructions:

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3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): Now is the time to rectify the
very costly mistakes of prior Town Councils - ie "kicking
the pension Bomb down the road" which will endanger
the fiscal stability of this Town.

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Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: Emyr Kachan Phone: _____
(Optional)

Address: Plantation Rd, P.B.

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☐ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

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3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): _____

Support Peter Glavin
Dan P. Dan

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Town of Palm Beach
Impasse Hearing
April 21, 2011

COMMENTS BY THE PUBLIC

Name: John Cunningham Phone: _____
(Optional)

Address: 353 El Brillo Palm Beach

If you represent any other person, organization, or other entity, please name: _____

Check what may apply: ☐ I wish to speak ☐ I do not wish to speak ☒ I want my comment read into the record

Comment Card Instructions:

1. Complete Comment Card.
2. Submit Comment Card to representative at seat designated "Submit Comment Cards Here." (NO CARDS WILL BE ACCEPTED ONCE PUBLIC COMMENT BEGINS.)
3. When your name is called and you wish to speak, approach the podium and speak directly into the microphone, giving your name and address for the record.

Comment (If not enough space, continue on reverse): SEE ATTACHED

Any person making impertinent or slanderous remarks or who becomes boisterous while addressing the Council shall be barred from further audience before the Council by the presiding officer, unless permission to continue or again address the Council is granted by the majority vote of the Council members present.

4/21/11

TO THOSE INVOLVED:

THE PROPOSED NEW HYBRID PENSION PLAN IS CREATIVE, FAIR, INNOVATIVE AND ALTHOUGH EXPENSIVE IS LESS THAN THE CURRENT PLAN. FOR HUNDREDS OF EMPLOYEES

THE CURRENT PLAN IS SIMPLY TOO EXPENSIVE GIVEN THAT THERE ARE ONLY 2000 TAXPAYERS IN TOWN THAT PROVIDE 70% OF THE FUNDING FOR THIS AND ALL EXPENSES

I WANTED TO SHARE WITH YOU, BY SELECTING FOUR RECENT RETIREES THAT HAVE THE CURRENT PLAN, WHAT THE CURRENT PLAN (WITHOUT MODIFICATIONS) WILL GENERATE FOR BENEFITS IN THE YEARS TO COME. FOR THOSE INDIVIDUALS:

I ANDREW COX (AGE 45) ASSISTANT FIRECHIEF (RET) -
CURRENT ANNUAL RETIREMENT BENEFIT
\$ 113,619, EXPECTED PAYMENT CUMULATIVE
FOR LIFE \$ 8,168,069.91 - FINAL ANNUAL
BENEFIT \$ 271,549.41

II MICHAEL REITER - RETIRED POLICECHIEF (52) -
CURRENT ANNUAL RETIREMENT PAY \$ 168,000/YR
EXPECTED PAYMENT FOR LIFE \$ 7,250,000
FINAL ANNUAL SALARY BENEFIT \$ 362,000.26

(2)

III PAUL PRADINES (47) RETIRED POLICE SERGEANT -
CURRENT ANNUAL BENEFIT \$ 87,775.00. CUMULATIVE
PAYMENT FOR LIFE \$ 6,310,144.75. FINAL
ANNUAL SALARY BENEFIT \$ 209,782.15

IV RAYMOND DALEY (45) FIRE/RESCUE DRIVER (RET)
CURRENT ANNUAL BENEFIT \$ 90,580.00 - CUMULATIVE
EXPECTED LIFETIME PAYMENTS \$ 6,511,796.20. FINAL
SALARY \$ 216,486.20

I JUST HOPE FOR OUR FUTURE CITIZENS
THAT THESE RETIREES DON'T LEAVE US WITH
YOUNG WIVES OR SPOUSES ~~THE~~ THAT WOULD
THEN GET 75% OF THE FINAL SALARY, WITH
ESCALATORS FOR ANOTHER 20-25 YEARS.
I AM SO SORRY, BUT WE JUST CANNOT
AFFORD THIS - EVEN IF 8-10 YEARS
AGO OUR TOWN COUNCIL MEMBERS AT
THAT TIME THOUGHT THIS WAS A
GREAT IDEA.

JOHN F. CUMMINGS
353 E/ BRILLO
PALM BEACH

✓
Town of Palm Beach

Impasse Hearing

April 21, 2011

COMMENTS BY THE PUBLIC

Name: Carol Simmons Phone: _____ (Optional)

Address: 201 Banyan Road, PB FL

If you represent any other person, organization, or other entity, please name: PB Firefighters Penins Bd.

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

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Comment (If not enough space, continue on reverse): May or may not wish to
Speak.

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✓
Town of Palm Beach

Impasse Hearing

April 21, 2011

COMMENTS BY THE PUBLIC

Name: Joel Brier Phone: 436-4720 (Optional)

Address: 2328 S Congress Ave WPB

If you represent any other person, organization, or other entity, please name: Professional Firefighters

Check what may apply: ☒ I wish to speak ☐ I do not wish to speak ☐ I want my comment read into the record

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