

City of Phoenix
OFFICE OF THE CITY ATTORNEY

To: Chief Daniel Garcia
Executive Assistant Chief Joe Yahner

Date: April 26, 2013

From: M. Hamblin
Assistant Chief Counsel

Subject: Implementation of April 23, 2013 Court Order in *Cheatham/Goldwater*
Lawsuit – CV2011-021634

You have asked, given the Order of the Hon. Katherine Cooper in the Goldwater Release Time lawsuit, for advice on which PLEA activities are now enjoined and permitted for officers who have traditionally been doing such functions under our release time arrangement.

I. Specifically Enjoined.

The Court's order specifically enjoins Sections 1-3(B), 1-3(C) and 1-3(Q) of the 2012 MOU. As a result it is clear the injunction covers:

- Six full time release positions.
- Paid time for 42 representatives to represent union members in grievance and disciplinary meetings.
- Automatic adding of new representatives upon the creation of new bureaus or precincts.
- The "bank" of 1,859 release hours.
- 500 lobbying hours.
- 960 additional hours of compensation.

II. Implicitly Enjoined.

Additionally, the Court found that release time in the following areas benefits neither the City nor the general public but rather a single group of employees:

- Representation in disciplinary and grievance proceedings.
- Advocating for better pay, benefits and policies.
- Lobbying for favorable legislation.
- Engaging in local and national politics that support PLEA's interest.
- Managing union activities and elections.

Though these activities may not all fall within sections of the MOU specifically enjoined by the Court's order, it appears that the view of the Court is that these are for the benefit of PLEA and its members and not the City of the public, and consequently release time should not be used for these purposes.

III. Release Time Allowed.

The Court acknowledges that there is both a dual private/public purpose with regard to:

- Communication with management regarding policies and members' concerns.
- Training on police matters.
- Participation in citywide task forces.
- Community projects.
- Representation of officers involved in critical incidents

The Court states that limited application of release time for these purposes can be serve a dual private/public purpose.

IV. Application to Some MOU Provisions not Specifically Enjoined.

Naturally, in a document as complex as our MOU, there will be some activities or MOU provisions where the Court's instructions are not entirely clear or perhaps ambiguous. Several come to mind and it is certain that others will be brought to our attention in the coming weeks/months. Other MOU provisions, though not specially enjoined by falling into Sections 1-3(B),(C) or (Q), are clearly found by the Court to not to serve a public purpose and for which release time should not be afforded.

For example:

- Section 1-3(I) of the MOU provides that for unit members whose regular shift is other than Shift 1, there will be flexibility in changing “normal work hours for the purposes of attending official Labor-Management meetings called by or with the concurrence of City management or the Police Chief or his designee.” Given the Court's Conclusion of Law No.6 permitting limited applications of release time for communications between PLEA and the Police Department regarding policies, release time for this purpose should be permissible with management concurrence.
- With regard to Section 1-3(K), which provides in part “The employer shall count as time worked any hours or fractions of hours spent within the unit member's regular work shift in pursuit of the benefits provided by this Article”; the “article” (§1-3) are the “Rights of the Association” which do not, according to the Court promote a public purpose permitting release time.
- Though section 1-3(K) is not specifically enjoined, as mentioned above the Court restricts the rights of the association and does not intend that the employer count the hours spent in pursuit of association rights as hours as time worked.
- Section 1-3(L) provides that a “unit representative attending any IRP, DRB, UFB, DAC, or any other review board will be allowed to adjust their work schedule by an equal amount of time spent in the meeting. The adjustment will require the approval of the representative's supervisor....” To the extent this participation is thought by management to be a benefit to the City, it is not enjoined. (Conclusion of Law No. 6). A distinction should be made between a PLEA representative serving on the Board or Committee (and release time allowed), and appearing before the Board or Committee while representing a member (not allowed).
- Section 1-3(N) states the “Association will have two (2) PLEA positions, designated in writing, on continuous paid stand-by for the mutual benefit of both

the City and the Association to respond to critical incidents as needed.” This is not enjoined by the Court’s order. (Conclusion of Law No. 6).

- Section 1-3(P) authorizes Association leaders to attend one mutually-agreed upon briefing quarterly with each squad to discuss Association business and issues of mutual concern to labor and management. This is not enjoined. (Conclusion of Law No. 6)

With regard to member rights in Section 1-4:

- 1-4(A) provides that the member has the right to have the Association serve as his meet and confer representative. Unit members still have that right. However, the representation is not done on release time. (Conclusion of Law No.5(b)).
- 1-4(B) addresses the rights of unit members to be represented by the Association in dealings with the City concerning grievances and matters pertaining to employment rights and obligations.
 - Sub-paragraph 1 provides if a unit member requests, representation will be allowed when the member is the subject of an administrative investigation by PSB or his or her supervisor or other City employee conducting investigatory interview or interrogation. The provision that allows that the City will notify the Association who will obtain the most readily available unit Association representative, is still in effect. However, the Court’s order states that PLEA’s representation of members in grievance and disciplinary matters does not serve a public purpose (Conclusion of Law No. 5(b)). Consequently, release time should not be allowed.
 - Sub-paragraph 4 provides that at the time of the scheduled interview by PSB, or supervisor other City employee, the management will make a copy of the basis for allegations of misconduct available. This is still in effect. But the review of such material is not a release time activity for reasons stated above.
- Section 1-4(D) entitles unit members to representation if a “Not Met” PMG is appealed to the executive level. This is still available, but not the use of release time. This is a little ambiguous since is it a meeting for “discipline or grievance” without a public purpose as suggested by Conclusion of Law No. 5(b) and release time prohibited; but possibly a “member concern” under Conclusion of Law No. 6 for which a “limited application” of release time is permitted. However,

Conclusion of Law No, 6 appears to address group concerns and not individual ones. A “not met” PMG is an individual concern and thereby, I believe, falls under the finding of a “non-public purpose” under Conclusion of Law 5(b) for which release time is not allowed.

- Section 1-4(F) governs the use of the rights of unit members for representation when appearing before the Disciplinary Review Board for disciplinary matters. The right still exists, but use of release time for this purpose is enjoined. (Conclusion of Law 5(b)).
- Section 1-4(F) sub-paragraph 6 addresses member rights before the use of force board. The same result as DRB: representation but not release time. (Conclusion of Law 5(b)).
- Section 2-2 regarding the Labor Management Committee would seem to fall under Conclusion of Law No. 6 and thus permit “limited application” of release time.

As mentioned, areas of ambiguity will arise. We can attempt to address them as they come up and there may come a point that a party to the lawsuit may wish to seek additional clarification from the Court.

Please contact me if you have any questions or concerns.

Cc: Gary Verburg

Lori Steward

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