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**CITY OF OAKLAND**  
**AGENDA REPORT**

TO: Office of the City Administrator  
ATTN: Deborah A. Edgerly  
FROM: Finance and Management Agency  
DATE: December 18, 2007

RE: **An Ordinance Amending The Salary Schedule Of Ordinance No. 12187 (The Salary Ordinance) To Add: Two 84-hour Per Pay Period Permanent Full Time Police Officer Classifications; Two 84-hour Per Pay Period Permanent Full Time Sergeant Of Police Classifications; And Two 84-hour Per Pay Period Permanent Full Time Lieutenant Of Police Classifications**

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**SUMMARY**

An ordinance has been prepared for consideration by the City Council amending the Salary Schedule of Ordinance No. 12187 to add: two 84-hour per pay period, permanent full time equivalent (FTE) classifications of Police Officer; two 84-hour per pay period, permanent full time equivalent (FTE) classifications of Sergeant of Police and two 84-hour per pay period, permanent full time equivalent (FTE) classifications of Lieutenant of Police classifications.

These classifications are being added to the Salary Ordinance to comply with the November 12, 2007 Interest Arbitration Award (Attachment A) involving the Oakland Police Officer's Association and the Oakland Police Department regarding the 12 hour shift. The Arbitrator determined that it is in the best interest of the City to convert the shift schedule in the Patrol Division from a 10-hour shift schedule (80 hour pay period) to a 12-hour shift schedule (84 hour pay period). The impacted classifications are Police Officer, Sergeant of Police and Lieutenant of Police. The effective date of implementation of the 12-hour shifts is January 12, 2008.

**FISCAL IMPACT**

The annual associated costs of implementing the 84-hour shift schedule are:

- Police Officer (PFRS) – \$3,810.96-\$4,567.80 per officer
- Police Officer (PERS) – \$3,458.16-\$4,358.64 per officer
  
- Sergeant of Police (PFRS) – \$5,274.00 per officer
- Sergeant of Police (PERS) – \$5,028.84 per officer
  
- Lieutenant of Police (PFRS) – \$6,096.36 per officer
- Lieutenant of Police (PERS) – \$5,816.52 per officer

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The November 2007 Position Control report shows 266 Police Officer, 43 Sergeant of Police, and 8 Lieutenant positions allocated to the three current Patrol watches. Of these, 10 Officer and 1 Lieutenant positions are vacant. The approximate increase over current salary expenditures for the filled positions is \$1,244,650. If the vacant positions are filled this approximation increases to \$1,285,048. It is anticipated that these additional costs will be offset by the savings realized from a significant reduction in overtime expenditures. See Attachment B.

## **BACKGROUND**

Between February 2005 and spring 2007, OPD commissioned three independent studies to review the Department's operations, including use of overtime and alternate work schedules. All three studies indicated that there were significant problematic issues related to overtime, scheduling, morale, and supervision.

In accordance with the provisions of Section 910 of the City Charter, this matter was submitted to interest arbitration when the parties could not reach agreement on viable solutions to these issues. After a two-day hearing and review of briefs and last, best, final offers from both sides, the Arbitrator, Charles A. Askin, adopted the City's Last, Best, Final Offer on November 12, 2007. Factors such as a 232% expenditure of the overtime budget for FY 2006-2007, a .604 absentee rate, and the "corrosive effects on team integrity, beat integrity and unity of command" of the previous 4/10 schedule contributed to the Arbitrator's findings.

The 12-hour schedule, by enhancing beat integrity, also enhances implementation of geographic accountability, or Community Policing. In the Opinion and Award prepared by Mr. Askin, the December 2006 Harnett Study is referenced:

" Having officers regularly work the same beats and develop familiarity with problems and conditions on those beats increases a police department's store of intelligence about actual neighborhood conditions and enhances its ability to correct conditions in a timely fashion."

## **KEY ISSUES AND IMPACTS**

Under the 12-hour schedule, Patrol Division officers will work a 2-2-3-2-2-3 rotation. There is a daily "locked" rotation of 2 days on work, 2 days off work, 3 days on work, 2 days off work, 2 days on work, 3 days off work (14-day work period) in each bi-weekly pay period. Each officer will work 7 days or 84 hours in each pay cycle. This will result in an increase of 104 hours worked and an additional 26 days off per year. All impacted officers will work one weekend and be off one weekend per 14 day cycle. This schedule is acceptable pursuant to the provisions for sworn personnel, provided by the Fair Labor Standards Act.

The City and Oakland Police Officer's Association have met to discuss the start times and the number of personnel for each shift, with the City retaining final discretion regarding the number of personnel for each shift. The City proposes and expects to meet a "goal" of eliminating mandatory overtime for non-emergency purposes. The Oakland Police Department (OPD) will use its best efforts to implement a minimum time off policy of eight (8) hours between

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consecutive 12-hour shifts for officers who are required to be held over or for officers who work other overtime, such as court appearances. OPD will also provide training on health and safety issues related to working on a compressed work schedule, improving sleep health practices and refurbish existing quiet room facilities in the Police Administration Building and the Eastmont Station.

## **POLICY DESCRIPTION**

Ordinance No. 12187 C.M.S. establishes salaries and other terms and conditions of City employment, including the classification of positions. Amendments to the Ordinance, including changes to the salary schedule, are required periodically to keep the Salary Ordinance current.

The attached ordinance and this report have been prepared in accordance with the legislative requirements for implementing changes to the Salary Ordinance.

## **SUSTAINABLE OPPORTUNITIES**

***Social Equity:*** The Mayor, City Council and the Oakland Police Department Administration have determined that Community Policing is essential to meeting the public safety needs of the citizens of Oakland. The 12-hour schedule for the Patrol Division of the Bureau of Operations will significantly contribute to effective implementation of Community Policing.

***Economic:*** The implementation of community policing will contribute to the economic viability of the City.

***Environmental:*** There are no environmental opportunities associated with this report.

## **DISABILITY AND SENIOR CITIZEN ACCESS**

There are no disability or senior citizen access issues associated with this report.

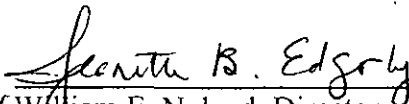
## **RECOMMENDATION(S) AND RATIONALE**

This amendment to the Salary Ordinance is required to implement the Opinion and Award to the City of its last, best, final offer in the matter of controversy between the City of Oakland and the Oakland Police Officer's Association (OPOA). Staff recommends amending the Ordinance to include 84-hour pay periods for the sworn ranks of Police Officer, Sergeant of Police and Lieutenant of Police.

**ACTION REQUESTED OF THE CITY COUNCIL**

Staff requests that the City Council approve this Ordinance in order to effect changes necessary to update and maintain the classification system for the City of Oakland.

Respectfully submitted,

  
for William E. Noland, Director  
Finance & Management Agency

Reviewed by:  
Marcia L. Meyers, Director  
Office of Personnel Resource Management

Prepared by:  
D. Jacquelyn Edwards, Principal HR Analyst  
Recruitment & Classification Division, OPRM

Attachment A: Interest Arbitration Award  
Attachment B: Fiscal Impact to OPD's Patrol Division

APPROVED AND FORWARDED TO THE  
CITY COUNCIL:

  
Office of the City Administrator

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**ATTACHMENT A**  
**OPD 84-Hour Shift Schedule**

1 CHARLES A. ASKIN  
2 31 LOMA VISTA  
3 WALNUT CREEK, CA 94597  
4

5 **IN INTEREST ARBITRATION PROCEEDINGS**  
6 **PURSUANT TO AGREEMENT AND OAKLAND CITY CHARTER**  
7

8  
9 In the Matter of a Controversy

10 Between

11 CITY OF OAKLAND,

City

12 and

13 OAKLAND POLICE OFFICERS  
14 ASSOCIATION,

Association

15  
16 Involving a dispute over shift schedule for  
17 patrol officers (Bureau of Field Operations).  
18

**OPINION AND AWARD**

19 This dispute arises as a consequence of the parties' impasse in bargaining regarding the City's  
20 proposal to adopt a 12-hour work schedule for patrol officers in the Bureau of Field Operations of  
21 the Police Department. Pursuant the parties' written side agreement in December, 2006, and in  
22 accordance with the provisions of the Oakland City Charter, Section 910, the parties submitted this  
23 dispute to interest arbitration. The parties mutually selected the undersigned Arbitrator to issue a  
24 final and binding decision.

25 A hearing was held in Oakland, California on October 3 and October 5, 2007. During the  
26 course of the hearing, the parties were given full opportunity to examine and cross-examine witnesses  
27 and to introduce relevant exhibits. On October 15, 2007, counsel for both parties filed post-hearing  
28 briefs. The matter was deemed submitted upon receipt of the parties' briefs.

1 APPEARANCES:

2 On Behalf of the Association:

3 Michael L. Rains, Esq.  
4 Rains, Licia & Wilkinson LLP  
5 2300 Contra Costa Blvd., Suite 230  
6 Pleasant Hill, CA 94523

7 On Behalf of the City:

8 Jonathan V. Holtzman, Esq. and Charles Sakai, Esq.  
9 Renne Sloan Holtzman Sakai, LLP  
10 350 Sansome Street, Suite 300  
11 San Francisco, CA 94111

12 ISSUE

13 Shall the Arbitrator adopt the last, best, final offer proposed by the City, or that  
14 proposed by OPOA?

15 The Parties' Last, Best, Final Offers

16 The parties' submitted their last, best, final offers at the conclusion of the business day on  
17 Monday, October 8, 2007. A summary of the parties' respective offers is summarized below.

18 The City

19 The City proposes to change the current shift schedule in the Patrol Division from a 10-hour  
20 shift schedule to a 12-hour shift schedule. The City's final offer contains the following features:

- 21 • *2-2-3-2-2-3 rotation.* The 12-hour schedule will operate on a daily "locked" rotation  
22 of 2 days on work, 2 days off, 3 days on, 2 days off, 2 days on, and 3 days off in each  
23 bi-weekly period.
- 24 • *7 days and 84 hours of work for each officer during each 14-day, bi-weekly cycle,*  
25 *an addition of 104 hours of work per year and an addition of 26 days off per year.*
- 26 • *Mirror A and B squads for each shift will have opposite days off and self-relieve.*
- 27 • *All patrol officers will work one weekend and be off one weekend per 14-day cycle.*
- 28 • *The Department proposes 7 shifts with hours (for each A and B squad) as follows:*

29	A Shift	0500 – 1700
30	C Shift	0800 – 2000
31	E Shift	1100 – 2300
32	G Shift	1300 – 0100
33	K Shift	1500 – 0300
34	M Shift	1700 – 0500
35	I Shift	2300 – 1100

- 1 • *Prior to implementation, the Department will meet with OPOA to discuss the start*  
2 *times for the core shifts (A, E, M, and I) and the number of personnel for each shift.*  
*The City retains final discretion regarding the number of personnel for each shift.*
- 3 • *The City proposes a "goal" of eliminating mandatory overtime for non-emergency*  
4 *purposes.*
- 5 • *The Department will make every effort to relieve officers at the end of their shifts*  
6 *and to discourage "holdovers."*
- 7 • *The Department will implement a Minimum Time Off Policy of 8 hours between*  
8 *consecutive 12-hour shifts for officers who are required to be held over or for*  
9 *officers who work other overtime, such as court appearances.*
- 10 • *The Department will provide training on health and safety issues related to working*  
11 *on a compressed work schedule and refurbish existing quiet room facilities in*  
12 *P.A.B. and Eastmont.*
- 13 • *The City will continuously monitor and evaluate the impact of the new schedule,*  
14 *including the creation of a joint Labor-Management Committee consisting of six*  
15 *members (3 appointed by the City, 3 appointed by OPOA), which will prepare*  
16 *Report by October of 2009 recommending any agreed-upon changes to the schedule*  
17 *with respect to issues such as night time fatigue, child care, etc. The City and the*  
18 *OPOA will meet to review the Report prior to the 2010 draw and to make any*  
19 *negotiable changes to which they agree.*

14 **The Association**

15 The Association's final offer is to retain the *status quo* for shift schedules, which is a fixed,  
16 compressed "4/10" schedule consisting of four work shifts each week of 10 hours per shift. The  
17 schedule has four basic starting and ending times: one day shift (06:30 – 16:30); one evening shift  
18 (1530 – 0130), and two night shifts (1700 – 0300 and 2100 – 0700).

19 **FINDINGS**

20 The Arbitrator has carefully reviewed the transcript record of the testimony of all witnesses  
21 who testified at the hearing in this matter, as well as all documentary evidence adduced. The  
22 Arbitrator has also considered the parties' closing arguments. Based upon this review, the Arbitrator  
23 makes the following factual and other pertinent Findings:

24 1. The City of Oakland has a serious crime problem. Its efforts to address this problem are  
25 burdened by the reality that its Police Department is understaffed. The latter problem has been  
26 exacerbated in recent years by the loss of police officers due to an increase in service retirements  
27 (partly due to favorable changes in retirement benefits), a high number of disability retirements, and  
28 by other factors. Although the Department is authorized to carry 803 officers, it currently employs

1 approximately 725 active duty sworn personnel (including command staff), of which 554 hold the  
2 rank of police officer. The City has engaged in extensive and successful efforts to recruit, hire, and  
3 train 212 new police officers in the past 1 ½ years. However, the loss of 138 officers due to  
4 retirements, resignations, and terminations has resulted in a net gain of just 74 officers. Scheduling  
5 is also affected by Measure Y requirements that mandate staffing in specific non-patrol units.

6 2. This dispute concerns the shift schedule for patrol officers working in the Patrol Division  
7 only. The Patrol Division is a component of the Bureau of Field Operations (BFO) and has primary  
8 responsibility for responding to calls for police service in Oakland and its neighborhoods. At this  
9 time, the Patrol Division has a total staff of 275 officers, a total that includes officers on the payroll  
10 but unable to work due to temporary disability, as well as other absences such as vacation leave and  
11 sick leave. When absences due to disability, vacation, and reported illnesses are included, the number  
12 of officers in the Patrol Division available to work on any given day is closer to 200 officers. It is  
13 clear that the Patrol Division, like other units in the Department, is badly understaffed.

14 3. Patrol officers in the BFO have worked under the current shift schedule, a compressed  
15 4/10 schedule consisting of four work shifts of 10 hours each week, for more than eleven years. The  
16 4/10 schedule was adopted pursuant to a negotiated Letter of Understanding signed by the City and  
17 OPOA on February 7, 1996. The Letter of Understanding expressly states that nothing in that  
18 agreement, or the adopted schedule Plan, shall be construed as a binding or beneficial past practice.  
19 The Letter of Understanding further characterized the 4/10 schedule as being implemented on an  
20 "experimental basis," and provided that either party could force a reversion to the prior schedule and  
21 practices in effect before the implementation of the 4/10 schedule after providing 30-day notice to  
22 the other party. Neither party has exercised its right to force a reversion to the schedule and practices  
23 in effect prior to the implementation of the 4/10 schedule.

24 4. The current Chief of Police, Wayne Tucker, assumed command of the Department on  
25 February 5, 2006. Within two months, Chief Tucker concluded that the 4/10 schedule resulted in  
26 inefficiencies and commenced discussions with the OPOA and its President, Bob Valladon, about  
27 alternative work schedules. These discussions about different alternative schedules continued  
28 periodically over the next two years but the parties were unable to reach agreement on the issue.



1           5. The parties' last Collective Bargaining Agreement (MOU), in Article VII (A), contains the  
2 following pertinent language with respect to work schedules: "City shall exercise good faith in  
3 establishing work schedules. The functional needs of the City shall prevail in work scheduling..."<sup>1</sup>

4           6. The MOU expired on June 30, 2006, and the parties are at impasse on multiple issues in  
5 a successor contract. In December of 2006, the parties mutually agreed to submit their dispute over  
6 the City's proposal to adopt a 12-hour shift schedule in the Patrol Division to binding interest  
7 arbitration, separate and apart from the other issues at impasse in the negotiations of the successor  
8 contract which are scheduled to be addressed in a separate arbitration before another arbitrator.

9           7. There is considerable evidence in the record in support of a finding that there is a serious  
10 morale issue among officers employed by the Department and represented by OPOA. This  
11 proceeding is not the proper forum for a comprehensive analysis of reasons for this problem, but there  
12 is no real dispute that two work-related issues have contributed significantly to low morale. The first  
13 issue involves the burdens imposed upon the Department with regard to the compliance with the  
14 Negotiated Settlement Agreement (NSA), which resolved the "Riders" litigation filed in 2000.  
15 Generally, the NSA requires the Department to both comply, and demonstrate its compliance, with  
16 51 specific tasks based on recognized standards of model law enforcement practices. The morale  
17 problem caused by the NSA is not related to any disagreement about the value of complying with the  
18 51 tasks and model practices, but rather in the form of burdensome and time-consuming requirements  
19 required to demonstrate the Department's compliance. At least one study has noted that "most"  
20 Oakland police officers consider the NSA reporting requirements to be "an extremely onerous burden  
21 that has severely damaged department efficiency and morale."

22           8. The Department also has a major problem in that it has been forced in recent years to order  
23 police officers to work mandatory overtime on a consistent, regular basis. Mandatory overtime is  
24 directed in two different kinds of situations: 1) unforeseen, day-to-day orders to extend a scheduled  
25 10-hour shift for up to 5 additional hours due to absenteeism on a particular work day, and 2) the use

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27           <sup>1</sup> The contract language that, "The functional needs of the City shall prevail..." contains a proviso  
28 followed by several "exceptions." These provisos deal with notice requirements in the case of involuntary  
transfers.

1 of "scheduled" mandatory overtime, e.g., the requirement that every Department officer work a  
2 mandatory overtime shift once every third to fifth week. The parties stipulated that the budgeted  
3 amount for Department overtime in FY 2206-2007 was \$11,833,552; however, through June 27,  
4 2007, the actual amount expended was \$27,460,728, or 232% of the overtime budget. It is clear that  
5 such extraordinary use of overtime on a consistent basis is both very inefficient and contributes to the  
6 low morale of the Department's police officers.

7 9. The Department has an unusually high absentee rate. Evidence was adduced that a normal  
8 rate of on-duty attendance in police departments ranges between .8 and .9, i.e., 8 or 9 officers report  
9 to work for every 10 officers scheduled to work. The on-duty factor for the Police Department is  
10 .604, meaning that typically almost four of every 10 officers scheduled to work are absent on any  
11 given day. Whether the high absentee rate is a cause of other problems (such as mandatory  
12 overtime), a resulting effect of such problems, or both, the abnormal absentee rate in a department  
13 that is understaffed speaks volumes about officer morale and the scope of the problem facing the  
14 Oakland Police Department in formulating an efficient and fair method of assigning and scheduling  
15 its officers to meet the law enforcement needs of the community it serves.

16 10. Without regard to the operational needs of the Department, or any law enforcement  
17 agency, there are certain awkward facts about fitting a 10-hour work schedule into a 24-hour, 7-day  
18 a week work environment based on simple arithmetic. For example, both the 8-hour shift and 12-  
19 hour configurations are easily divisible in a 24-hour day (three 8-hour shifts, two 12-hour shifts), but  
20 a 10-hour shift necessarily requires gaps (an unacceptable option for law enforcement) or, as applied  
21 in the Department, shifts with six hours of overlap. Similarly, a schedule of four 10-hour shifts in  
22 a week does not "fit" a seven-day calendar week, resulting in an additional overlap of shifts.

23 11. Under the existing 4/10 shift in the BFO, each squad works four days a week. This  
24 means that the A/B self-relieving squads work the same shift (and beat) on three days of the week,  
25 but there is an overlap on the fourth work day wherein both squads are scheduled. Currently, this  
26 overlap occurs six days a week. On each shift where this overlap occurs, one of the two scheduled  
27 squads is dispersed, or "punked out," throughout the jurisdiction of the Department to cover vacant  
28 positions. The evidence indicates that on these "punked out" days officers work under a different

1 supervisor (for that day only), on a different beat or different assignment (on that day only) without  
2 the benefit of knowledge and familiarity with the beat, their fellow officers, and supervision. It cannot  
3 be seriously disputed that this practice is inefficient and has obvious, corrosive effects on team  
4 integrity, beat integrity, and unity of command.

5 12. Beginning in February of 2005, the Department commissioned three studies by outside  
6 consultants to review various aspects of the Department's operations, including its extensive use of  
7 overtime, the feasibility of alternate work schedules, and other issues. The first study was conducted  
8 by the Public Financial Management Group, which issued a Report that, among other things,  
9 addressed the Department's use of overtime. The PFM Report concluded that the 4/10 shift schedule  
10 was very inefficient in comparison with the traditional 5/8 schedule:

11 With regard to scheduling...most departments reviewed employ a 4/10 schedule for  
12 patrol. A number also use a 5/8 schedule or nine or 12 hour work days. *The*  
13 *disadvantage of a 4/10 schedule is that, with 156 days off (plus paid days off as*  
14 *benefits) it requires 2.169 officers to fill a beat for a single shift, seven days a week,*  
15 *compared to a 5/8 schedule, which, with 104 regularly scheduled days off plus benefit*  
16 *days off, needs 1.67 officers to fill the same beat. A 4/10 schedule expands officer*  
17 *coverage on a single beat to 70 hours (10 hours per day for seven days) instead of*  
18 *the 56 hours associated with the 5/8 schedule. But the 4/10 also requires 25 percent*  
19 *more staffing to fill the same number of beats seven days a week. (emphasis added)*

20 The PFM Report did not conduct any comparison or analysis of a 12-hour shift schedule in the Patrol  
21 Division.

22 13. A second study, issued by Harnett Associates on December 28, 2006, focused on the  
23 Department's use of a "temporal" watch commander system of management. The study concluded  
24 that the watch commander system inefficiently split the supervisory structure between watch  
25 commanders and other higher level managers, who often had little contact and knowledge of  
26 particular geographic beats, and the sergeants who actually supervised and worked with the officers  
27 on specific beats. The Harnett study recommended the abolition of the watch commander system in  
28 favor of a model that provided true "geographic accountability." Management and the OPOA are  
in agreement that the Department should adopt the geographic accountability model. However, it has  
not been fully implemented to date pending the outcome of this proceeding because management is  
not persuaded that the geographic accountability model is workable under the 4/10 shift schedule.

The Hartnett Report did not address feasibility of a 12-hour shift for the Department.

1 14. A third report commissioned by the Department was issued by Tim Freesmeyer of Etico  
2 Solutions in the spring of 2007. Freesmeyer recommended that the City adopt a 12-hour shift  
3 schedule, and specifically recommended the 2-2-3 version of the 12-hour schedule. There are issues  
4 relating to the evolution of Mr. Freesmeyer's report and recommendations that are addressed in more  
5 detail below. Notwithstanding some of those issues, Mr. Freesmeyer has impressive credentials as  
6 a consultant in law enforcement issues, including scheduling issues. Mr. Freesmeyer's report  
7 addressed the twin concepts of Team Integrity and Unity of Command, and he described these  
8 concepts as follows:

9 Team Integrity is a *concept of having all officers on a squad working the same hours*  
10 *and sharing the same days off.* Team integrity can lead to increased productivity as  
11 officers become more accustomed to working together. Over time, officers can begin  
12 to predict the actions of their fellow officers and may become more astute to their  
13 body language and body positioning. This non-verbal communication between  
14 officers can lead to increased officer safety in dangerous situations. When officers  
15 take separate days off or rotate to various shifts on a continuous basis, team integrity  
16 can erode. (Italics in original report)

17 Unity of Command is achieved *when an officer reports consistently to one, and only*  
18 *one, first-line supervisor....* When power shifts overlap multiple watches without a  
19 dedicated supervisor on the shift, officers find that they must sometimes change their  
20 policing efforts based on the on-duty supervisor. This can lead to stress and loss of  
21 productivity. Unity of command and team integrity have a synergistic effect when  
22 they coexist. (Italics in original report)

23 The Arbitrator is persuaded that, apart from their relevance to particular work schedules, the above  
24 concepts of Team Integrity and Unity of Command, as defined by Mr. Freesmeyer, are fully consistent  
25 with the principles of the geographic accountability model recommended by Hartnett Associates that  
26 has been endorsed by both the Department and OPOA.

27 15. Mr. Freesmeyer's final report contained a section entitled, "Recommended Patrol  
28 Staffing." It contains the following "main" finding of the Etico Solutions study:

29 The main finding in this study is that the BFO is grossly understaffed for the workload  
30 that must be accomplished. This is seen in the CAD data workload results even when  
31 using conservative call-for-service times and a conservative shift relief factor. Officer  
32 availability from the roll-call sample data supports this same finding based on the  
33 amount of sick leave usage and on-duty injury absences. A visit to the dispatch center  
34 will verify a call holding stack at almost any hour of the day; yet another indicator of  
35 the BFO's inability to keep up with the required workload due to understaffing.

36 .....  
37 Simply put, the agency needs to increase staffing levels in the BFO...

38 Based on all of evidence presented in this arbitration, the foregoing conclusion that the BFO is

1 "grossly understaffed" is accurate. It is also, as Mr. Freesmeyer characterized it, the "main finding"  
2 of his study, and in the Arbitrator's view, the most significant finding of this Opinion.

3 16. The Etico Solutions report identifies certain problems and deficiencies with the current  
4 method of scheduling officers consistent with the workload requirements of the patrol division. The  
5 sheer number of calls-for-service vastly outstrips the capability of the available number of officers  
6 who report to work each day. The evidence shows that these calls begin to accumulate and become  
7 "backed up" in mid-afternoon, and that officers generally "run from call to call" in a desperate effort  
8 to "catch up" with the call-for-service holding queue well into the evening, which precludes the ability  
9 of officers to engage in true "community" policing as desired by Department management, OPOA,  
10 and the patrol officers. Mr. Freesmeyer has devised a formula, the Probability of Saturation, which  
11 is defined as "the probability that when the next call-for-service is received by the dispatch center,  
12 there will be no units to answer the call." In his final report, Mr. Freesmeyer wrote, "...the numbers  
13 speak clearly that the BFO staffing levels are not keeping up with the call-for-service load."

14 The Harnett Report addressed the importance of "Beat Integrity" in law enforcement  
15 consistent with its recommendation of the geographic accountability model:

16 The central ideas of Community Policing are beyond dispute. A police department  
17 that fails to work with local communities and to make alliances with citizens will  
18 never be as effective as a department that does. Having officers regularly work the  
19 same beats and develop familiarity with problems and conditions on those beats  
increases a police department's store of intelligence about actual neighborhood  
conditions and enhances its ability to correct conditions in a timely fashion.

20 Under the current level of staffing and the 4/10 schedule of assigning shifts, the Department routinely  
21 engages in "cross-beat dispatching" (pulling officers from their assigned beat to another beat), a  
22 practice that is antithetical to the goal of achieving Beat Integrity. In his final report, Mr. Freesmeyer  
23 concluded that the Department had a very high level of cross-beat-dispatching:

24 Based on probability statistics, it is estimated that the officers are only remaining in  
25 their assigned beats for less than 2 minutes out of every hour. It is highly unlikely that  
officers assigned to a particular beat are building any familiarity based on these levels.

26 In the same chart containing the foregoing findings, Mr. Freesmeyer noted that the levels of cross-  
27 beat dispatching would improve (i.e., decrease) "as additional officers are added to patrol."  
28

1 17. As noted above, Dr. Freesmeyer's final report was submitted to the Department on a date  
2 not specified at hearing in the late spring of 2007. The evidence reveals that before the final report  
3 was issued, two "draft" reports were submitted for the Department's review on May 24 and June 1,  
4 2007. The May 24 report did not include any analysis or recommendation of a change to a 12-hour  
5 work schedule. More significantly, the first draft report contained several findings indicating that Mr.  
6 Freesmeyer was primarily concerned with the Department's level of staffing and was not persuaded  
7 that a change in the work schedule (at the same level of staffing) would significantly improve the  
8 problems identified in his study as summarized in Factual Finding #16 (reducing the call-for-service  
9 holding queue, the level of cross-beat dispatching, and the probability of saturation).

10 The final paragraph of the first draft report notes, "At the current time, a new schedule is  
11 being discussed and the Bureau is grossly understaffed." This sentence appears in the final report.  
12 The first draft also contained the following conclusions that were omitted from the final report:

13 This study has not uncovered any blatant inefficiencies in the way BFO is being run  
14 or in the currently scheduling practices. The correlation between the shape of the  
15 workload curve vs the staffing curve in chart 2.1 indicate that the current schedule is  
16 not leading to wasted manpower or inappropriate staffing proportional to workload.  
17 .....

18 The BFO is currently looking at a change in officer work schedules. This may have  
19 a short term impact on morale and may increase recruitment efforts. However, unless  
20 the workload per officer is dropped by adding additional units, a new work schedule  
21 will not reduce the call-for-service holding queue, the level of cross-beat dispatching,  
22 or the probability of saturation.

23 The Arbitrator finds that, with two exceptions,<sup>2</sup> the assessments in the language quoted above are  
24 fully consistent with the evidence presented in this arbitration. It is also fully consistent with the data  
25 and findings made by Mr. Freesmeyer that "the Bureau is grossly understaffed" in particular. It is  
26 noted that Mr. Freesmeyer's finding that there were no "blatant inefficiencies," "wasted manpower,"  
27 or "inappropriate staffing proportional to workload" in the 4/10 schedule does not preclude a finding  
28 that a different schedule may be advantageous and/or superior to the current schedule.

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<sup>2</sup> Mr. Freesmeyer's subsequent analysis, based in part on information not previously available to him, shows that a 12-hour schedule may reduce the calls-for-services queue, as discussed at pp. 13-14. The Arbitrator is also persuaded that adoption of the 12-hour shift schedule, in combination with implementation of the geographic accountability model, will result in *some* reduction of cross-beat dispatching.

1           18. In contrast to the inconvenient arithmetical challenges of a 4/10 work schedule in a 24-  
2 hour, 7-day environment, the proposed 12-hour schedule has certain arithmetic advantages. Initially,  
3 of course, it is a schedule that fits readily into a 24-hour day in the form of two 12-hour shifts a day,  
4 thereby avoiding the 6-hour daily overlap of the 4/10 work schedule. In addition, the 2-2-3-2-2-3  
5 (“2-2-3”) schedule in particular avoids the second weekly overlapping problem of two shifts reporting  
6 on the same, fourth shift each week, resulting in the aforementioned “punk out” issue. Instead, the  
7 2-2-3 schedules employees on a locked 14-day rotation that features working four days one week and  
8 three days the following week, without the duplication of the 4/10 schedule. Simple arithmetic shows  
9 that the 2-2-3 schedule results in an additional 4 hours of work (7 shifts times 12 hours, or 84 hours)  
10 in comparison to the 4/10 schedule (8 shifts times 10 hours, a total of 80 hours).

11           OPOA characterizes these numerical calculations as “squeezing” more hours out of its  
12 members. The undeniable fact is that an apples-to-apples comparison of the 4/10 shift and the 2-2-3  
13 12-hour shift, standing alone, shows that the Department will gain 4 hours of additional scheduled  
14 work from *each officer* every two weeks. This extra work per officer is, without question, a benefit  
15 to the Department. This extra work time will itself result, directly, in the payment of additional  
16 compensation in the form of larger retirement contributions during each bi-weekly period, which is  
17 a benefit to each officer. In addition, because officers are scheduled on 7 days each bi-weekly period  
18 on the 2-2-3, instead of eight days on the 4/10 schedule, officers will receive an extra day off work  
19 each bi-weekly period – and a total of 26 additional off days in the course of a year. The Arbitrator  
20 is persuaded that this is a significant benefit, and advantage, of the proposed 2-2-3 schedule, and is  
21 likely the single factor most responsible for the apparent popularity of the 12-hour schedule in other  
22 police departments, as discussed elsewhere in this Opinion.

23           19. The 2-2-3 “rotating” schedule results in officers working every day of the week over the  
24 14-day rotation cycle; accordingly, all officers work alternating weekends (Friday, Saturday, and  
25 Sunday) and are off work on the intervening alternating weeks. Proponents of this rotating schedule  
26 view it as providing “complete schedule equity,” in that all officers have the same obligation to work  
27 every day of the work week during each 14-day cycle. The 4/10 schedule utilized by the Department  
28 is quite different in that there are fixed days off each week. Thus, for example, some officers work

1 weekends on a weekly basis, while others never work weekends as part of their regular work  
2 schedule. Apart from the specific impact on desired days such as the weekends, a fixed-day off  
3 schedule provides greater "stability" in that officers work the same days and have the same off days  
4 week after week, a permanence that can be significant for officers who need to make child care  
5 arrangements or plan other non-work activities (e.g., attending classes normally scheduled on "fixed"  
6 days of the week).

7         The different interests served by the "complete equity" schedule model and the fixed-day off  
8 model are difficult to evaluate and compare because they represent fundamentally conflicting values.  
9 It appears that Department management, proponents of democratic principles of equality, and even  
10 adherents of Marxist ideology supportive of equitable burdens borne and benefits shared by all  
11 workers and all classes, value most highly the "equal" impact of the complete equity model. It  
12 appears that some, perhaps most, members of OPOA, and others who have fought and earned  
13 entitlement to the fundamental principle of seniority, value most highly the opportunity to those who  
14 have given "the most" in service to receive preference in their workplace choices, such as whether  
15 they want to spend their weekends working or with their families. It is not appropriate for this  
16 Arbitrator to choose which of these competing principles and basic notions of fairness is superior.  
17 Accordingly, it is noted simply that both of these conflicting principles are laudable and important.

18         20. Substantial testimony and conflicting claims have been advanced by the parties with  
19 respect to various operational consequences of adopting the Department's proposal for a 12-hour  
20 shift in the patrol division. It is very difficult to make reliable findings about some of the claims made  
21 by each party based on the record presented herein. As counsel for OPOA noted repeatedly, both  
22 at hearing and in his post-hearing brief, the Department did not, and has not, presented a specific  
23 schedule regarding the number of personnel for each shift; in fact, its final proposal expressly reserves  
24 that issue to the discretion of the Department. It appears that the best "model" of a schedule with  
25 actual staffing calculation that might be adopted is a document produced by the Department to OPOA  
26 counsel shortly before the hearing that sets forth an "Optimized 4/10 Plan" and a comparable 12-hour  
27 plan based on the 2-2-3 configuration. The document was received in evidence as Association X #1.  
28 However, the testimony of management witnesses, and Chief Tucker in particular, indicates that the



1 staffing and schedule provided therein is *not* a final proposed staffing or schedule model. Chief  
2 Tucker referred to it as merely “a work in progress.”<sup>3</sup> The City’s last, best, final offer is a 2-2-3  
3 schedule with the same number of shifts and same start times as depicted in Association #1.

4 21. A major component of the analysis submitted by Etico Solutions addressed staffing and  
5 patrol workload. In its second draft report, submitted on June 1, Mr. Freesmeyer wrote,

6 Even in light of...variations between workload and staffing in the current BFO patrol  
7 schedule, the current staffing curve follows the workload more closely than an equal  
8 staffing model would have produced....<sup>4</sup>

8 Compared to an equal staffing deployment, the 4/10 and the 5/8 fixed day off  
9 schedules are typically more efficient at matching resources to calls-for-service.  
10 Locked and unlocked rotating schedules can provide proportional staffing by hour of  
11 the day but it must be accomplished through the use of “power” shifts (supplemental  
12 shifts scheduled during peak workloads).

11 The foregoing quoted language was omitted from the final report submitted by Etico Solutions. At  
12 the arbitration hearing, Mr. Freesmeyer testified and presented evidence in the form of a PowerPoint  
13 presentation comparing the workload and staffing efficiencies (and inefficiencies) under the current  
14 10-hour schedule and the staffing/schedule model for 12-hour shifts as set forth in Association X #1.  
15 The later information – including the information about seven “waves” of shift times – was not  
16 available to Mr. Freesmeyer when he submitted his second draft (with the above-quoted language);  
17 or before the final report was submitted.

18 Mr. Freesmeyer’s analysis of the workload versus staffing relationship at different hours of  
19 the day as presented at the arbitration is summarized in two slides on pages 47 and 58 of City X #11.

20

21

22 <sup>3</sup> OPOA has attacked the merits of the 12-hour shift proposal in many respects, but perhaps most  
23 vigorously in its claim that the current 4/10 shift puts more officers on duty in the late evening hours and on  
24 weekend evenings when, undisputedly, the incidence of crime activity is at its peak. OPOA argues that an  
25 “equal staffing” model, such as the 2-2-3, is an inferior scheduling model because it does not match “peak”  
26 staffing with “peak” crime periods. The number of officers deployed in Association X #1 in the competing shift  
27 schedule models indicates that there may be late evening time periods under a 2-2-3 schedule with fewer  
28 officers on duty than in the “optimal” 4/10 schedule contained therein. This fact may, or may not, explain  
Chief Tucker’s reluctance to embrace the 12-hour schedule contained in Association X #1 and his description  
of that document as a “work in progress.”

27

28 <sup>4</sup> Mr. Freesmeyer did not define the term “equal staffing model” in the study, or at hearing. The 2-2-3  
schedule does not have fixed days off, a characteristic he cited as a contrast between equal staffing deployment  
and the 4/10 and 5/8 schedules.

1 The slides reveal four material findings: 1) there are multiple and significant inefficiencies between  
2 workload and staffing in both the 10-hour schedule and the 12-hour schedule depicted in Association  
3 X#1; 2) the inefficiencies are greater under the current 10-hour shift (a deviation of 26.58% compared  
4 to a deviation of 16.24% under the 12-hour shift); 3) the 12-hour shift provides superior staffing in  
5 the mid-afternoon (3:00 p.m.) to mid-evening time period (8:00 p.m.) when calls-for-service begin  
6 to increase and currently create extensive backlogs that extend into the night hours; and 4) the current  
7 10-hour shift provides superior staffing (in excess of the workload) starting at 10:00 p.m., a time that  
8 undisputedly is when crime is most rampant and when officer safety is most jeopardized. Overall, Mr.  
9 Freesmeyer testified that he was persuaded that the data showed that the 12-hour shift is more  
10 efficient – meaning that the staffing and workload are more closely correlated – and that the increased  
11 efficiencies of that model could help reduce the amount of cross-beat dispatching.<sup>5</sup>

12 Based on the foregoing and the entire record, the Arbitrator finds that the proposed 12-hour  
13 shift is more advantageous in facilitating a reduction in the backlog of calls-for-service that begin  
14 building in mid-afternoon, but the current 10-hour model is more efficient in addressing the increased  
15 threat of crime and safety concerns in the late evening hours. Based solely upon those two findings,  
16 there is some question as to whether the City met its burden of proving that the 12-hour shift is  
17 sufficiently advantageous to warrant a change for reasons of efficiency during the time periods in  
18 question – particularly in view of the importance of the crime prevention needs and safety concerns  
19 in the late evening hours. However, the Arbitrator credits Mr. Freesmeyer's ultimate conclusion that  
20 *overall* the 12-hour shift is more efficient for the patrol workload herein, albeit only slightly so.

21 22. The City and Chief Tucker have asserted that implementation of the 12-hour schedule  
22 will enable the Department to end its current policy of mandatory overtime. Initially, it is noted that  
23 this representation has been characterized as a "goal," as opposed to an enforceable commitment.  
24 This is understandable in view of the findings of Mr. Freesmeyer that the Department is grossly  
25 understaffed. In view of the high rate of absenteeism, the number of active officers on disability, and  
26

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27 <sup>5</sup> This prediction of a reduction in cross-beat dispatching under the 12-hour shift is in addition to the  
28 reduction anticipated for the separate reasons of the introduction of the geographic accountability model and  
the elimination of the "punk out" overlap problem, as cited in footnote 2 above.

1 the general problem of understaffing, it is difficult to see how a change in work schedules is going  
2 to make a significant change in the amount of overtime required. Stated bluntly, if there are not  
3 enough officers reporting to work now such that overtime is required, how does changing the work  
4 schedule increase the number of available officers so that overtime will not be needed? There is a  
5 paucity of evidence in this record as to how, precisely, the City will be able to achieve its stated goal  
6 of ending mandatory overtime.

7 Both Chief Tucker and Mr. Freesmeyer have cited the use of "power shifts" as a means of  
8 reducing overtime. For example, Mr. Freesmeyer noted in his report, "The use of power shifts can  
9 provide staffing proportional to workload..." It is noted that the use of power shifts (supplemental  
10 shifts during peak workloads) was not identified in Association X #1, and is not addressed in the  
11 City's last, best, final offer. The use of "supplemental" officers depends, necessarily, upon the  
12 availability of "supplemental" officers. In view of the "grossly understaffed" complement of officers  
13 in the patrol division, which is exacerbated by the unusually high absentee rate, it is not clear at all  
14 whether such "supplemental shifts" are, in fact, available without paying overtime, mandatory or  
15 voluntary. Finally, it is noted that there is some question as to whether the use of "power shifts" is,  
16 in fact, an inherent advantage of the 12-hour shift in contrast to other schedules, including the 4/10  
17 schedule. Stated another way, the use of supplemental officers in the form of "power shifts" will  
18 occur if Chief Tucker and his management team deem such an assignment to be necessary and  
19 appropriate, whether under a 12-hour schedule or *any* schedule, including the current 4/10 schedule.  
20 Based on the foregoing and this entire record, the Arbitrator is not persuaded that the City has proven  
21 that it has the ability, or an identifiable plan, to achieve its laudable goal of "ending" mandatory  
22 overtime merely by adopting its proposed 12-hour shift schedule.

23 While the claim that the 12-hour schedule will "end" mandatory overtime is not persuasive,  
24 there is evidence to support a finding that more modest reductions in overtime are likely with the  
25 adoption of a 12-hour shift. Common sense suggests that management and officers alike will be  
26 reluctant to ask an officer to perform the sensitive duties as a patrol officer beyond a 12-hour shift,  
27 except in emergencies, and if so, for comparatively briefer periods of time. Mr. Freesmeyer addressed  
28 the topic of overtime in a 12-hour environment in the final pages of his report as follows:

1 Overtime for special assignments or to cover vacant patrol operations may be harder  
2 to fill on a 12-hour schedule than on the current 10-hour schedule. Agencies working  
3 the 12-hour shifts indicate that there is less overtime in general for the agency.  
4 Supervisors from such agencies have stated that officers pay closer attention to  
5 finishing on time so they can leave at the end of their shift. *It is strongly encouraged  
that officers not be allowed to work a double shift on 12-hour schedules.* Instead,  
vacant slots would need to be staffed by officers who would otherwise be on their  
regular day off or split between two officers with each working only an additional six  
hours.

6 Mr. Freesmeyer also noted that the structure of the 2-2-3 shift, by providing four hours additional  
7 hours of work per officer per bi-weekly pay period, will *reduce* the amount of mandatory overtime:

8 The schedule that is currently being considered for the BFO is a 12-hour schedule  
9 with a 42 hour average work week. The current 10-hour shift schedule is a 40 hour  
10 work week. If the agency changes shift-lengths and does not modify the native 42  
11 hour work week...the agency will require fewer officers on the total patrol staff. This  
is simply because each officer will be working an extra 104 hours each year...This  
would help *reduce* the amount of mandatory overtime currently being used by the  
BFO. (Italics added)

12 To summarize, the Arbitrator is persuaded, and finds, that the Department's claim that the  
13 adoption of a 12-hour shift will end the use of mandatory overtime is not persuasive. However, the  
14 Arbitrator is persuaded, and finds, that adoption of the 2-2-3 configuration of a 12-hour shift schedule  
15 is likely to result in a *reduction* of the use of overtime – perhaps even a significant reduction.

16 23. The “perfect” arithmetic match of a 12-hour shift in a 24-hour work schedule was noted  
17 in Factual Finding #18. A flip-side consequence of this divisible configuration is that there is no time  
18 overlap between shifts for departing officers to transfer timely information about the status of each  
19 beat to officers reporting for duty. It is self-evident that in any workplace environment operating  
20 continuously, on a 24-hour basis, that the communication of timely “institutional” knowledge and  
21 current developments is important, and this fact is particularly true in a law enforcement setting where  
22 crime prevention and officer safety are of paramount importance. The absence of daily face-to-face  
23 communications between officers on different shifts is, without question, a disadvantage of the 2-2-3  
24 12-hour shift proposal.

25 The City argues that there is no evidence in this record that officers currently engage in such  
26 face-to-face communications during shift changes. Technically, the City's characterization of the  
27 state of this record is accurate; however, the Arbitrator is not persuaded that the City's claim that no  
28 such communication is conducted under the 4/10 schedule is factually accurate. The City argues

1 further that the adoption of the 12-hour shift in conjunction with implementation of the geographic  
2 accountability model will result in more focused line-ups conducted by management at the beginning  
3 of each shifts. The Arbitrator agrees that the adoption of these changes will likely improve the focus  
4 of the line-up briefings with respect to specific geographic beats. Nevertheless, it is concluded that,  
5 on balance, the virtual elimination of face-to-face communications between officers in the same beat  
6 during shift changes is an operational disadvantage of the 12-hour shift proposal.

7         24. Both parties adduced evidence, including expert testimony, relating to issues of fatigue  
8 on compressed work schedules, both the current 4/10 and the proposed 12-hour schedule. The  
9 expert witness was Dr. Bryan J. Vila, Ph.D, a Criminal Justice Professor at Washington State  
10 University and who is also employed as a Principle Investigator with the Sleep and Performance  
11 Research Center at Washington State University. He was retained as a consultant by the City, but  
12 called as a witness by OPOA. He testified in a candid, forthright manner, and was a particularly  
13 impressive witness.

14         Dr. Vila submitted comparative data for both the current 4/10 schedule and the proposed 12-  
15 hour schedule to analysis in a state-of-the art computer program (the Fatigue Avoidance Scheduling  
16 Tool, or FAST) for the purpose of analyzing the effect of fatigue on officers working on both  
17 schedules. He testified that compressed schedules, such as both schedules at issue herein, result in  
18 greater fatigue than non-compressed schedules (i.e., the 5/8 schedule). Dr. Vila testified that in  
19 particular, officers working on night schedules suffer greater fatigue, and consecutive night schedules  
20 cause increased fatigue levels for each consecutive night that is worked. At certain points working  
21 consecutive shifts at night, particularly on "midnight" shifts, become hazardous. Obviously, to the  
22 extent that the 4/10 shift routinely schedules some officers to work four consecutive nights on a  
23 weekly basis and the 12-hour shift does not schedule any consecutive four-night shifts, the 10-hour  
24 configuration poses more hazards than the City's proposed schedule. Dr. Vila's evaluation of the  
25 affect of fatigue caused by the two schedules under consideration is summarized as follows:

- 26         \*         Proposed 12-hour shifts are workable for days, but may become hazardous during  
27                 successive night shifts.
- 28         \*         The current 10-hour shift is reasonable, but the evening shift is borderline hazardous  
               and the midnight shift is extremely hazardous and worsens with successive shifts.

1 (Dr. Villa recommended that the length, timing and successive number of midnight  
2 shifts should be changed immediately. He further opined that napping policy and  
other fatigue management and education efforts are necessary for the 10-hour shift).

3 \* The 12-hour shift proposal appears to be superior, although night shift risk pushes  
4 acceptable levels.  
(Dr. Vila recommended studies of mixed shift alternatives).

5 Based on Dr. Vila's testimonial presentation, the Arbitrator finds that the proposed 2-2-3 12-hour  
6 shift schedule is superior to the 10-hour shift with respect to the issue of fatigue, and the foreseeable  
7 impact of hazardous levels of fatigue on officer safety.

8 25. The record establishes that historically the most common shift in law enforcement  
9 agencies was the 5/8 schedule. In recent years, the compressed schedule has become most common.  
10 The 4/10 schedule was the first adaptation of a compressed work schedule, and it remains by far the  
11 most commonly-used schedule for law enforcement officers in California and the western states.

12 Law enforcement agencies that moved to a 4/10 schedule, like the City, have rarely gone back  
13 to the traditional 5/8 schedule. There is evidence that more recently a minority of jurisdictions have  
14 taken the second step of adopting alternative compressed schedules based on the 12-hour model. The  
15 specific configuration of these 12-hour schedules has varied. Curiously, the impetus for changes to  
16 the 12-hour schedule have most commonly been pushed by labor organizations on behalf of its  
17 officer-members, and opposed or adopted reluctantly by management – the opposite of what has  
18 occurred in this jurisdiction.<sup>6</sup> Chief Tucker credibly testified that the Los Angeles Police Department  
19 has adopted one variation of the 12-hour shift schedule (not the 2-2-3), in response to officer-initiated  
20 interest and despite substantial reservations by management, and the new schedule has proven to be  
21 so popular (among officers) that the current Chief has stated that he would not consider returning to  
22 the prior schedule.

23 \_\_\_\_\_  
24 <sup>6</sup> Evidence relating to the opposition of OPOA membership is addressed below. Obviously, in view  
25 of the history of this controversy and the positions of the parties herein, it is clear that OPOA itself is likewise  
26 opposed to the adoption of a 12-hour schedule. However, there is evidence that three months before the subject  
27 arbitration, OPOA advised the City of its willingness to consider recommending adoption of the 12-hour shift  
28 schedule, subject to the City's agreement to 12 separate OPOA proposals. This may, or may not, indicate that  
OPOA's opposition to the proposed change in the work schedule is less strident than might otherwise appear  
to be the case, and perhaps may be motivated, at least in part, by strategic considerations on the part of its very  
skilled, experienced leadership related to negotiations on issues unrelated to the shift schedule.

1 No specific data was adduced, or any law enforcement agency identified, that has adopted the  
2 2-2-3 version of the 12-hour shift schedule. Anecdotal evidence was presented in the form of Mr.  
3 Freesmeyer's testimony about conversations he has had with officers attending his training programs.  
4 Freesmeyer testified that officers who reported they were working in an agency using 2-2-3 12-hour  
5 schedule expressed strong support for it, and that they also reported to him that the 12-hour schedule  
6 was very well received by the officers in those unidentified jurisdictions.

7 26. As noted in the preceding Factual Finding, unlike other law enforcement jurisdictions  
8 where labor organizations representing officers have fought for the adoption of 12-hour shift  
9 schedules, OPOA is, and has been, vigorously opposed to such a schedule in Oakland. There is also  
10 significant evidence that OPOA membership is strongly opposed to a change in the schedule. In late  
11 May and early June of 2007, OPOA conducted an anonymous written "survey" of its members  
12 concerning "the department's proposal to implement 3-12/4-12 deployment schedule..."<sup>7</sup> The  
13 proposal was overwhelming rejected by a "vote" of 411 to 9.<sup>8</sup>

14 Apart from the vote, the second page of the survey provided officers with an opportunity to  
15 make suggestions with respect to various impacts or issues with the 12-hour schedule, including  
16 mitigation for hold overs and for call backs, consideration of different deployment models (e.g.,  
17 rolling days off, partial weekends off, and full weekends off), and a general inquiry as to whether  
18 there was "anything" in the way of added compensation or other changes in working conditions that  
19

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20 <sup>7</sup> At the time of the survey, the 2-2-3 version of the 12-hour schedule had not been identified by the  
21 City as the preferred configuration of its 12-hour schedule. Previously, the Department had considered the 3-  
22 12/4-12 version, which consists of alternating weeks of three consecutive 12-hour shifts in a week followed by  
four consecutive 12-hour shifts in the subsequent week (Tr. 47).

23 <sup>8</sup> The City contends that the survey is flawed because OPOA officials did not "adequately" explain  
24 the proposed change. The evidence shows that OPOA prepared a one-page summary of bulleted "problems"  
25 cited by the City and six bulleted "benefits" asserted by the City in support of the change to a 12-hour schedule.  
26 These bulleted items accurately and impartially outline many of the issues presented by the change. The City  
27 also contends that the results of the survey are misleading because the proposal at issue is not the one being  
28 proposed and because there are other sources of poor morale (e.g., the burdens of complying with NSA and  
dissatisfaction with current contract negotiations) that likely affected the results. However, a review of the  
written comments made by many officers, together with the lopsided vote, compel a finding that there is very  
strong opposition to adoption of a 12-hour schedule generally, and to a schedule with rotating days off and that  
requires all officers to work weekends regularly (features of the 2-2-3 plan) in particular.

1 could change an officer's vote. Many officers availed themselves of the opportunity to weigh in on  
2 these and other issues. A review of those written comments indicates that the greatest objection to  
3 the proposal (cited by about 30 officers) was that it diluted seniority rights: "Seniority should matter,"  
4 "Seniority should mean something."<sup>9</sup> Concerns about family issues (loss of family time and the  
5 impact on child care) were a second major objection, followed by a third concern that 12-hour shifts  
6 would result in greater fatigue, and therefore pose greater risks to officer safety. A significant  
7 number of officers expressly opposed rolling days off on the basis of diminished seniority, impact on  
8 family life, and/or interference with off-duty interests such as educational classes or civic activities.  
9 It should be noted that least 10 officers either objected strenuously to the "fourth day," or expressed  
10 support for a 12-hour schedule without a fourth consecutive work day, which was a feature of the  
11 model that was under consideration at the time of the survey but is *not* a feature of the 2-2-3 plan.

12 The Arbitrator finds, based on the survey results and based on the officers' anonymous written  
13 comments, that there is strong opposition among OPOA officers to the City's proposal to implement  
14 a 12-hour schedule generally, and to a schedule with rotating days off and that requires all officers  
15 to work weekends regularly (features of the 2-2-3 plan) in particular.

#### 16 CONTENTIONS OF THE PARTIES

##### 17 The City

18 This arbitration arises under the provisions of Oakland City Charter section 910, which  
19 establishes a number of criteria for the arbitrator to consider. The applicable criteria in this case are  
20 as follows: 1) Interest and welfare of the public; 2) Fairness to the OPOA bargaining unit; 3)  
21 Comparability and responsiveness to changing conditions; and 4) Existing benefits (*status quo*). In  
22 addition, the phrase in the Charter relating to "all existing benefits and provisions relating to...hours  
23 and terms and conditions of employment" necessarily directs the Arbitrator to the parties' negotiated  
24 agreements with respect to the manner in which schedules should be determined. Here, one such  
25 agreement is the January 6, 2006 Work Shift Agreement, which provides that the City and OPOA will

26 \_\_\_\_\_  
27 <sup>9</sup> The City correctly notes that adoption of the 12-hour schedule will not eliminate the seniority rights  
28 of OPOA officers. Senior officers will still be able to use their seniority rights to select preferred or favorable  
shifts and beats, or even to select assignments in non-patrol functions.



1 meet to review "shift schedules to determine whether there is any need for any modification which  
2 may provide better service to the community..." The second agreement is the parties' MOU, which  
3 states; "City shall exercise good faith in *establishing* work schedules. *The functional needs of the*  
4 *City shall prevail* in work scheduling..." (emphasis added).

5 The evidence herein establishes that the current 4/10 schedule, with its inherent six-hour  
6 overlap and the ongoing necessity of imposing mandatory overtime, is inefficient and incompatible  
7 with the geographic model that has been recommended and which both parties now support. The  
8 City provided expert testimony, which was not rebutted, to the effect that the proposed 2-2-3 shift  
9 schedule will address the problems and deficiencies of the 4/10 schedule in the following ways:

- 10 1. The 12-hour shift creates the ability to more efficiently match staffing to workload  
11 (with staffing always exceeding workload), which should result in reduced call  
backlogs.
- 12 2. The 12-hour shift model improves Team Integrity because all officers assigned to a  
13 particular squad (platoon, unit, etc.) work the same days together.
- 14 3. The 12-hour shift improves Beat Integrity because the amount of cross-beat  
15 dispatching is reduced.
- 16 4. The 12-hour shift improves Unity of Command because command staff and officers  
17 work the same shift.
- 18 5. Working a 12-hour shift on a 2-2-3 schedule provides schedule equity, allowing all  
19 officers on patrol to have days off on every day of the week, including weekends,  
every two weeks.
- 20 6. The 12-hour shift will add two hours per week as part of a regular shift, supplanting  
21 mandatory overtime.
- 22 7. The 2-2-3 work schedule only requires officers to work two or three days in a row,  
rather than four days in a row under the 4/10. Vila testified that the 2-2-3 schedule  
is superior to the 4/10 schedule, which he described as "hazardous."

23 The City contends that, based on the facts summarized above and related record evidence,  
24 the proposed 12-hour shift configuration fulfills the Charter criteria applicable in this arbitration. In  
25 particular, it argues that the 12-hour shift meets both the functional needs of the Department, as  
26 contemplated in the MOU, and the public interest language in the Charter – interests that the City  
27 views as an integrated single criteria. First, the proposal offers strong benefits to the community, and  
28 the planned adoption of a geographic accountability model because it will enhance Beat Integrity.  
The 12-hour shift eliminates the six-hour overlap inherent in the 4/10 schedule, which causes officers

1 on one shift to be "punked out" to other assignments on a regular basis; instead, in the 2-2-3 model  
2 each officers will work the same beat on seven days over the course of two weeks. It will also permit  
3 the Department to end the current program of mandatory overtime, which is particularly destructive  
4 to Beat Integrity because officers on mandatory overtime come from all divisions of the Department  
5 and even patrol officers are rarely assigned to their regular beats. Second, the proposal will better  
6 enable the Department to suppress crime, particularly with respect to its ability to respond to calls.  
7 As Mr. Freesmeyer testified, the 12-hour shift allows the Department to better match crime to staffing  
8 and results in an additional 104 hours of work per years by each officer. Third, the proposed shift  
9 will improve the conduct and performance of the Department in various ways, including Team  
10 Integrity, Unity of Command, and less fatigue than is caused by the 4/10 shift (and its accompanying  
11 mandatory overtime). OPOA has not rebutted the evidence concerning the above advantages of the  
12 12-hour shift with expert testimony in response to the City's presentation, and has instead attacked  
13 the Department and Mr. Freesmeyer.

14 Both the Chief and the Deputy Chief candidly acknowledged that the 12-hour shift presents  
15 a challenge in facilitation communication between officers on different shifts. However, the City  
16 contends that under the 4/10 shift officers do not currently have face-to-face communications. It is  
17 also noted that under the 2-2-3 schedule, officers are scheduled in "waves" in a manner that allows  
18 communication on the street in the same manner as the current overlap, only that it spans a longer  
19 period of time. In addition, implementation of the 12-hour shift with the geographic accountability  
20 model means that line-ups will become far more useful in transferring information because there will  
21 be smaller line-ups for each shift in each geographic location. Thus, in reality communication will be  
22 more effective because it will be concentrated on one particular area of the City and directed to  
23 officers already familiar with the day-to-day problems of that area.

24 OPOA made a great show of the number of days in which an officer could be called in to  
25 court. This argument is a mere distraction. The average officer will work one fewer day every two  
26 weeks so there is a slightly higher chance of being called in to court on an off-day; he or she has a  
27 similarly lower likelihood of being called into court on a work day. In reality, the impact on court time  
28 of the proposed shift schedule is unclear.

1           With regard to the second arbitration criteria contained in the Charter, the proposed 12-hour  
2 shift is fairer to the vast majority of employees than the existing 4/10 schedule. The City notes that  
3 the shift is very popular in law enforcement agencies elsewhere; it is almost always championed by  
4 unions, not management. Under the shift, employees will have an additional 26 days off per year,  
5 more than they currently receive in vacation. The officers will suffer less fatigue. The proposed  
6 schedule also enhances schedule equity and provides an opportunity for *all* officers to have a three-  
7 day weekend off every other week. While it is true that a small number of officers now have every  
8 weekend off, a far larger number of officers will have access to weekends off under the City's plan.

9           The proposed schedule is also supported by the third arbitration criteria because it is  
10 supported by external comparability and is responsive to changes in shift schedules that are occurring  
11 across the country. Mr. Freesmeyer cited a 2004 study indicating that 26% of the agencies in the  
12 Southwest Region are using a 12-hour schedule; similarly, Professor Vila cited a 2006 study showing  
13 that 20% of police departments throughout the country are using 12-hour shifts. In addition to the  
14 testimony of City witnesses Freesmeyer and Vila, OPOA's own witnesses (e.g., Pleasant Hill Police  
15 Chief Peter Dunbar and Long Beach Lt. Stephen James) likewise testified about the growing  
16 popularity of the 12-hour shift, leaving OPOA to challenge only the specific shift pattern proposed  
17 by the City. The City has proposed the particular 2-2-3 configuration of the proposed schedule in  
18 part based on Prof. Vila's studies showing that it is less hazardous than the current schedule. It would  
19 be irresponsible of the Department to propose a more dangerous shift schedule simply because it is  
20 more common. Moreover, the Department should not be disadvantaged by the fact that it, and its  
21 experts, have identified a shift that puts it ahead of the curve. Accordingly, in considering industry  
22 trends, the comparability criterion actually supports the City's proposal.

23           Finally, in determining the weight of the *status quo*, the Arbitrator must consider the  
24 experimental nature of the 4/10 schedule. Here, the *status quo* is not defined solely by the current  
25 4/10 schedule because that schedule has always been experimental in nature and subject to change.  
26 Moreover, unlike many contracts that specify a particular shift configuration, the MOU specifically  
27 provides that shift schedule is a matter over which the Department has substantial discretion. Thus,  
28 the *status quo* with respect to shifts was subject to change at any time at the City's request.

1 In conclusion, what is most clear is that the *status quo* is not working. The current schedule  
2 is inefficient in terms of staffing, defeats the goals of Team Integrity and Unity of Command, results  
3 in increased levels of cross-beat dispatching, and subjects officers to hazardous levels of fatigue.  
4 Neither the City nor the OPOA can afford to stick their heads in the sand and ignore the strong policy  
5 reasons that support implementation of the 12-hour shift. Moreover, ultimately it is the job of the  
6 Oakland Police Chief to run the Oakland Police Department. In light of the acknowledgment of  
7 OPOA President Valladon that “the functional needs of the Department shall prevail,” and because  
8 the City’s offer best conforms to Charter criteria, the Arbitrator should defer to the Chief’s judgment  
9 and award the City’s Last Best and Final Proposal.

10 **OPOA**

11 Although this arbitration occurs pursuant to a written agreement between the parties, OPOA  
12 agrees that some of the appropriate factors the Arbitrator should consider are found in City Charter  
13 section 910. In particular, the Arbitrator is invited to consider “the City’s purpose and policy to  
14 create and maintain...hours...which are fair and *comparable* to similar...public employment and which  
15 are responsive to changing conditions and standards of living.” OPOA agrees that the Arbitrator may  
16 also appropriately consider the “interest and welfare of the public,” as well as the “sources of funds  
17 to defray the costs” of any changes in hours, although this latter issues does not seem to be the focal  
18 point of the parties’ dispute. OPOA does not object to the Arbitrator considering language in Article  
19 VIII of Collective Bargaining Agreement between the parties, which requires the Department to  
20 “exercise good faith in establishing work schedules,” and states that “the *functional needs* of the City  
21 shall prevail in work scheduling...” Finally, OPOA has argued, and will argue here, that the City  
22 established another set of criteria or factors in its “Police Reform White Paper” which can and should  
23 be considered by the Arbitrator.

24 OPOA supports the Department’s intention to move to a geographical model of policing and  
25 will work collaboratively with the City and the Department in implementing that model. Indeed, the  
26 Department has stated that the implementation of a geographical policing model that emphasizes  
27 community policing, without regard to the type of shift worked by officers in the BFO, “...will  
28 dramatically reduce violent crime and property crime and greatly improve the Department’s ability

1 to deliver service in Oakland's many neighborhoods." That commitment is ambitious and untested,  
2 but OPOA supports such an organizational model, even if it can achieve a portion of that objective.  
3 On the other hand, OPOA opposes the Department's desire to engage in an *experiment* by changing  
4 the working hours of OPOA members assigned to the BFO without a shred of credible evidence that  
5 the change in hours will translate into a benefit to the "interest and welfare of the public." OPOA does  
6 not doubt Chief Tucker's sincerity in his attempt to manipulate personnel assignments of a Bureau  
7 "grossly understaffed" according to two separate experts retained by the City.

8         If this arbitration and this record has left the parties with one thing, it is that the Department  
9 is proposing a 12-hour shift plan that will 1) create officer safety issues, and 2) wreak havoc on lives,  
10 family obligations, school schedules, and sleep patterns for 250-300 OPOA members, without  
11 beginning to explain how or why it will achieve the claims made in the Police Reform White Paper.  
12 There is nothing in the 2-2-3-2-2-3 12-hour shift plan which serve the "interest and welfare of the  
13 public" because the Police Chief has testified that there really is no present "plan," instead, there is  
14 simply a "work in progress." Even more stunning is the City's failure to identify a single police  
15 jurisdiction in this country that has adopted the 2-2-3 configuration and is operating successfully, with  
16 or without a geographic accountability model.

17         City expert Tim Freesmeyer testified and wrote a report claiming that this particular 12-hour  
18 plan is "very popular." When asked what agencies it was popular with, he could offer only anecdotal  
19 stories of passing conversations he had with officers while teaching classes. The PFM study  
20 commissioned by the City identified 12 separate California agencies by name and discussed the shift  
21 configuration patrol officers were on. Not one of those agencies had a "straight" 12-hour shift plan;  
22 rather, the majority were 4/10 plans, and the remainder had "blends" that included 8, 10, and 12-hour  
23 days.

24         The Arbitrator should not succumb to the Department's anticipated plea that the Mayor  
25 "wants this program" and the Police Chief should be allowed to run the Department the way he sees  
26 fit, and that the 12-hour shift plan is important to both the Police Department and City management.  
27 The "interest and welfare of the public" is at issue here. If the Department had presented a genuine  
28 "plan" at arbitration that would accomplish the objective of the "interest and welfare of the public,"

1 OPOA would be hard-pressed to complain. However, OPOA and its counsel find themselves  
2 scratching their heads about the Department's paralysis when it was called upon to provide the  
3 Arbitrator with demonstrable evidence that placing officers on the 12-hour shift envisioned by the  
4 Department would achieve even one of the commitments contained in the Police Reform White  
5 Paper, or would benefit the interest or welfare of the public. The Department cannot possibly prove  
6 that the "interest and welfare of the public" are benefitted since it does not have a real "plan" capable  
7 of being understood by anyone. Moreover, the City cannot identify any "comparable" agencies  
8 utilizing the City's proposed 2-2-3 shift plan in a patrol function.

9         Since the Department has no "plan" to talk about, it must inevitably fall back on rhetoric  
10 devoid of factual support. The Department walked into the arbitration on October 3 with a "plan"  
11 (OPOA X #1) and an expert witness, Tim Freesmeyer, with an expectation that his first two reports  
12 would never see the light of day. When that happened, the "plan" became a "work in progress"  
13 because the equal staffing 3/12 "plan" in OPOA X #1 was denounced by Freesmeyer in earlier drafts.  
14 Mr. Freesmeyer originally told the Department that *no shift configuration* would be more effective  
15 than the current 4/10 if the Department did not add about 120 officers to the BFO. Since the  
16 Department had no intention (or capability) of doing that, Mr. Freesmeyer's conclusion had to change,  
17 and change it did. The "honest assessment" of the problems cited by Chief Tucker in the cover letter  
18 to his March 3, 2006 "vision and plan of action" then became a *dishonest assessment* which the  
19 Department intended to keep under wraps at the arbitration. The Department's attempt to conceal  
20 and deceive the OPOA, the Arbitrator, and the public all unfolded when the "draft" reports came to  
21 light, and all the grandiose talk about what the City's 3/12 "plan" would accomplish became confused  
22 chatter. This arbitration gave the Department ample opportunity to "walk the walk," but when the  
23 ugly truth of Mr. Freesmeyer's opinions came out, the Department emerged from the arbitration on  
24 October 5 by staggering, stumbling, and collapsing in a heap of rhetorical rubble.

25         In conclusion, the City has no real "plan" that benefits the interest and welfare of the public.  
26 Since the 2-2-3 configuration is not used in any police agency either party could find, it does not meet  
27 the comparability criteria of Charter section 910. The Department's non-plan is a bad "plan," and  
28 the evidence and testimony at this hearing require adoption of the OPOA's proposal.

1 OPINION

2 *Overview: Relevant Criteria*

3 Both parties recognize and accept that the provisions of Oakland City Charter section 910 are  
4 relevant and pertinent in identifying criteria to be considered by the Arbitrator in this dispute. Charter  
5 section 910 states in relevant part as follows:

6 In any such arbitration, the arbitrator is directed to take into consideration the City's purpose  
7 and policy to create and maintain wages, hours and conditions of employment which are fair  
8 and comparable to similar private and public employment and which are responsive to  
9 changing conditions and changing costs and standards of living. The arbitrator shall also  
10 consider: the interest and welfare of the public; the availability and sources of funds to defray  
the cost of any changes in wages, hours and conditions of employment; and all existing  
benefits and provisions relating to wages, hours and terms and conditions of employment of  
the uniformed members of the Police and Fire Departments, whether contained in this Charter  
or elsewhere.

11 As noted, one criterion set forth in the Charter is "provisions relating to...hours and terms and  
12 conditions of employment..." The parties' MOU contains a clause relating to work schedules that  
13 is obviously such a "provision" relating to "hours" of work, and both parties agree that the Arbitrator  
14 may appropriately consider the content of the parties' negotiated Agreement. The pertinent contract  
15 clause states, "City shall exercise good faith in establishing work schedules. The functional needs of  
16 the City shall prevail in work scheduling..."

17 In applying the criteria specified in the Charter, it is appropriate to identify and focus upon  
18 the precise language of that governing document. The language in the first sentence quoted above  
19 contains, on its face, a single criterion that incorporates multiple factors to be considered within that  
20 criterion, i.e., the arbitrator is to consider "hours...which are fair and comparable" to private and  
21 public employment *and* "which are responsive to changing conditions and changing costs [not  
22 relevant here] and standards of living." That first criterion is then followed by three additional  
23 factors, one of which – the availability and source of funds to defray the cost of any changes in  
24 working conditions – is not at issue in this proceeding. (Neither party is asserting that the cost of  
25 the subject dispute is a material consideration). Based on the foregoing, it is the Arbitrator's view  
26 that there are three relevant criteria that should be, and will be considered, in this dispute:

- 27 1. The extent to which the competing proposals about patrol officers' "hours" are "fair  
28 and comparable" to other law enforcement agencies *and* which are "responsive to  
changing conditions and...standards of living;"

1           2.       Which proposal better serves “the interest and welfare of the public;” and

2           3.       Consideration of existing hours and contract provisions relating to officers’ hours.

3       These three arbitral criteria are not necessarily entitled to equivalent weight in a scheduling dispute.  
4       This case involves the work schedule of patrol officers employed in the City of Oakland. The bulk  
5       of the documentary and testimonial evidence introduced in this proceeding, and the primary issues  
6       addressed in the parties’ post-hearing brief, addressed the “second” of the two criteria listed above,  
7       i.e., which of the competing schedule configurations best serves “the interest and welfare of the  
8       public” in a community with an acknowledged serious crime problem. In addition to the focus of the  
9       City’s proposal as a superior approach to suppressing and responding to crime issues in a difficult  
10      staffing and financial environment, OPOA candidly acknowledged the crucial importance of deciding  
11      which shift schedule best serves the interest and welfare of the public. Thus, at hearing, OPOA  
12      President Valladon agreed during his testimony that, based on the parties’ own MOU, it is “the  
13      functional needs of the City” that drives a decision about scheduling. Similarly, OPOA counsel  
14      commendably acknowledged in his brief that, “The interest and welfare of the public is at issue here,”  
15      and further noted that if the City presents a plan that achieves that objective then “OPOA would be  
16      hard-pressed to complain.” In agreement with the parties, the Arbitrator is persuaded that in a  
17      scheduling dispute arising in a law enforcement arena, the most important of the three criteria in the  
18      Charter herein is which proposal best serves “the interest and welfare of the public.”

19           In the following sections of this Opinion, the Arbitrator will endeavor to apply the foregoing  
20      criteria consistent with the evidence and arguments considered herein. The Findings section of this  
21      Opinion set forth the pertinent factual findings based upon the Arbitrator’s consideration of the  
22      evidence, including resolutions of the parties’ conflicting assessments of the evidence. The Opinion  
23      section will address the “legal” issues involved in applying the factual Findings to the relevant criteria  
24      contained in the Charter. The Opinion will not re-visit the weight of the evidence with respect to  
25      different factual issues because that process is addressed in the Findings section of this decision.  
26      Accordingly, the parties are encouraged to read carefully the 26 separate Findings at pp. 3-20 of this  
27      Opinion for clarification of the Arbitrator’s assessment of the multiple factual disputes in this  
28      proceeding.



1 *Application of the Relevant Criteria*

2 I. Which proposal better serves “the interest and welfare of the public”?

3 As noted in the Findings of Fact, both parties agree that the Department should adopt a  
4 geographic accountability model within the BFO. Based on the Findings set forth above, there are  
5 multiple advantages to the 12-hour shift proposal made by the City with respect to increased  
6 efficiencies and improved ability to suppress and/or respond to crime issues, as summarized below:

- 7 + Extra hours. The 12-hour shift will result in an additional four hours of scheduled  
8 work per officer every two weeks, or an additional 104 hours of scheduled work for  
9 each officer per year. This additional work by each officer, in a department that is  
10 understaffed and has a low on-duty ratio, benefits department efficiency.
- 11 + Elimination of “Punked Out” Scheduling. The inefficiency of the overlapped fourth  
12 shift days in the 4/10 schedule that results in officers being dispatched routinely all  
13 over the City, without regard to beat integrity or unity of command, will be eliminated  
14 with the adoption of the 12-hour shift.
- 15 + Better Support for Team and Beat Integrity, and Unity of Command. The 12-hour  
16 shift is fully consistent with the concept of all officers working on the same hours and  
17 sharing the same days off, working the same beat, under the same supervisor, and is  
18 also fully consistent with the purpose of adopting the geographic accountability  
19 model. The “punk out” practice under the 4/10 schedule undermines these concepts.
- 20 + More Efficient Staffing (May Reduce mid-afternoon Callback Queues and Reduce  
21 Cross-Beat Dispatching). As noted in Factual Finding #21, Mr. Freesmeyer credibly  
22 testified that the 12-hour shift is more efficient (meaning that staffing and workload  
23 are more closely correlated) both generally and in the mid-afternoon, when calls-for-  
24 services increase and generate significant backlogs, in particular. He further stated,  
25 and the Arbitrator finds, that these increased efficiencies would likely result in *some*  
26 reduction in the amount of cross-beat dispatching.
- 27 + Reduction in Overtime. The Department’s claim that the 12-hour shift will  
28 “end” mandatory overtime is not persuasive, as no evidence was presented showing  
exactly how this would be done when the Department is still “grossly understaffed”  
and suffers from the further debilitating fact of a low on-duty attendance ratio. It does  
appear that the use of overtime is likely to be reduced with a 12-hour shift because  
of increased efficiencies as described above (e.g., extra scheduled hours of work).
- + Reduced Fatigue. Prof. Vila credibly testified that the consecutive late night shifts on  
current 4/10 schedule become increasingly hazardous, particularly on the third and  
fourth consecutive nights. The 12-hour shifts eliminates four consecutive night shifts  
and Dr. Vila, an expert on fatigue issues, testified that it was a superior schedule  
compared to the 4/10 with respect to officer fatigue. Reduced fatigue on the 12-hour  
shift should result in some greater efficiencies in work performance.

26 The evidence supports a finding that the 4/10 schedule has two operational and/or efficiency  
27 advantages over the 12-hour shift. First, the 12-hour shift severely reduces and/or eliminates (e.g.,  
28 those shifts not subject to “wave” starts) the opportunity for officers to have face-to-face discussions

1 during shift changeovers, or other on-duty communications between officers working the same beats  
2 on successive shifts. Second, it appears that the 4/10 schedule as currently configured (in part  
3 because of the six-hour daily overlapping factor) provides superior staffing during weekend and late-  
4 hour periods when crime activity is greatest. The latter factor is a disquieting and significant  
5 disadvantage of the City's proposal.<sup>10</sup> Weighing the foregoing advantages and disadvantages of the  
6 12-hour shift compared to the current 4/10 schedule, and in consideration of all of the evidence and  
7 arguments presented herein, it is concluded that the 12-hour shift provides more advantages and will  
8 better serve the interest and welfare of the public in the Department's mission to improve its ability  
9 to suppress and respond to crime as it moves to a geographic accountability model.

10  
11 **II. The Extent to which the Competing Proposals about Hours are "Fair  
12 and Comparable" to other Law Enforcement Agencies and which are  
13 "Responsive to Changing Conditions and Standards of Living."**

14 The first criterion specified in the Charter consists of two components: first, whether the hours  
15 proposals are "fair and comparable" to similar employing entities, and second, whether the competing  
16 proposals are "responsive" to a) changing conditions and b) standards of living. With respect to the  
17 first component, both proposals are "fair." The City's proposal is "fair" in the most fundamental  
18 manner, in that it treats all officers equitably. Thus, the 2-2-3 configuration of the 12-hour shift is  
19 a rotating schedule without fixed days off. Since there are no fixed days off, all officers share equally  
20 in the burden of working weekends and enjoying weekends off work every other week. Indeed, the  
21 2-2-3 schedule is viewed as possessing "complete schedule equity" in that every officer has the same  
22 obligation to work every day of the week during each 14-day cycle. It cannot be seriously disputed

23  
24 <sup>10</sup> The Chief has stated, both before and at the arbitration, that the 12-hour shift will be supplemented  
25 by using "power" shifts at high-crime periods. No evidence was adduced at hearing as to how, exactly, this will  
26 be accomplished in view of the staffing and attendance deficiencies in the Department and the BFO. It is also  
27 not clear why such a "power" shift could only be used for the 12-hour shift schedule, and not the 4/10 schedule.  
28 For these reasons, and as found in the Findings, the Arbitrator is not persuaded that the Department has proved  
that it can 1) end all mandatory overtime, or 2) that the 12-hour "equal model" staffing configuration is  
necessarily a superior staffing choice for the high-crime periods of late-night hours and week-ends in particular.  
Of course, if the Department is able to implement "power" shifts or other means of supplementing the  
scheduling of patrol officers in high-crime periods, and in fact does so, this concern of the Arbitrator (and the  
OPOA) might well be addressed.

1 that these equitable features of the 2-2-3 schedule are “fair” in any objective use of that word.  
2 However, as discussed in Factual Finding #19, the members of this bargaining unit, like employees  
3 in many other bargaining units both in law enforcement and in other industries, have negotiated a  
4 different model of “equity” – seniority rights – that grants preferred choices in multiple respects to  
5 employees in accordance with the length of their service. One of those choices under a fixed  
6 schedule, like the 4/10 model, is the ability of senior officers to select their choice of non-work days.  
7 It is clearly equitable and “fair” to allow senior employees who prefer to spend their weekends with  
8 family, coaching youth sports, or attending weekend football games in their leisure time to restrict  
9 their work time to week days, if they choose, in recognition of the seniority they have “earned” in  
10 comparison to newly-hired and less senior employees. Both of the principles reflected in the  
11 competing proposals reflect strong values of equity and fairness. Both proposals are “fair.” This  
12 Arbitrator declines to choose one of these competing values as being “more fair” than the other.

13         There is little doubt that the current 4/10 schedule has the advantage of comparability to like  
14 work environments in comparison with the City’s proposal. The City was unable to identify a single  
15 law enforcement jurisdiction using the 2-2-3 “complete scheduling equity” model it has proposed.  
16 The evidence shows instead that law enforcement agencies have generally moved from the traditional  
17 5/8 shift schedule to the compressed scheduling model, and that the most common version of the  
18 compressed schedule in law enforcement is the 4/10 model (with fixed days off), or variations of that  
19 model that likewise feature fixed days off. The summary of officers’ sentiments about the City’s  
20 proposal, as reflected in Finding #26, reveal that there is strong resistance by OPOA members to the  
21 rotational feature of the 2-2-3 schedule, and specifically to the fact that senior officers will lose their  
22 current ability to opt out of working a schedule consisting of regular weekend assignments. Based  
23 on the evidence presented herein, the current 4/10 schedule has a very strong advantage of  
24 comparability with other law enforcement agencies in comparison with the City’s proposal.<sup>11</sup>

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25  
26         <sup>11</sup> The Arbitrator is not unsympathetic to the City’s argument that it should not be penalized for being  
27 on the “cutting edge” in proposing the 2-2-3 schedule. Indeed, it is the Arbitrator’s considered view that, if  
28 implemented, OPOA officers will come to support the 12-hour shift schedule – indeed, strongly support it –  
as have officers in other jurisdictions, such as Los Angeles, because of the extra days off (26 days a year).  
However, the Arbitrator’s view cannot override the comparability factor embedded in the City’s Charter.

1           The second component of the subject arbitral criterion in the Charter relates to the competing  
2 proposals' "responsiveness" to a) changing conditions and b) standards of living. The first sentence  
3 in the first Finding of this Opinion notes that the City has a serious crime problem; the second  
4 sentence notes, consistent with the written reports of two experts retained by the City, that the  
5 Department is "grossly understaffed." Findings 8 and 11 note that in the circumstances of the serious  
6 crime problem and the Department's understaffed predicament, the City's current scheduling  
7 practices have resulted in the use of extraordinary levels of overtime, including mandatory overtime,  
8 and routinely disperses (punks out) its officers all over the City due to inherent duplications of shift  
9 schedules on a routine basis. The latter practices are clearly inefficient, and exacerbate the difficult  
10 operational problems faced by the BFO, and the entire Department. OPOA's proposal does nothing  
11 to address these problems and inefficiencies. The City's proposal will eliminate the very inefficient  
12 punk-out practice, and likely achieve some reductions in the amount of overtime needed to meet  
13 workload needs. The Arbitrator is persuaded that the City's proposal better meets the Charter  
14 criterion of "responding" to changing conditions than does OPOA's adherence to the *status quo*.

15           The City's proposal contains at least three advantages relating to officers' standard of living.  
16 It provides an extra day off from their scheduled shifts every two weeks, or a total of 26 more days  
17 off per year. This is a very significant benefit for BFO officers; the increase exceeds the current total  
18 annual vacation entitlement of most officers. In addition, it appears that officers will receive an  
19 increase in retirement contributions based on the additional four hours of work they will perform  
20 every two weeks. It will also reduce fatigue. There are, however, other effects of the 2-2-3 proposal  
21 that are viewed by officers as a significant diminution of their standard of living. The proposal is  
22 likely to create problems, including financial consequences, for families that require child care because  
23 the 2-2-3 rotating schedule will require greater flexibility and likely create complications for some  
24 officers. In addition, many officers are apprehensive that the rotating feature of the 2-2-3 schedule,  
25 without fixed days off or fixed weekly work days, will result in unwanted impacts upon their family  
26 lives and obligations, school schedules, and leisure time. The fact that these latter affects of the  
27 schedule are intangible does not diminish their significance. In the Arbitrator's view, neither proposal  
28 has a notable overall advantage with respect to "responsiveness" to standards of living.

1 In summary, OPOA's hours proposal has a very significant advantage pursuant to the subject  
2 criterion in the Charter in that it is comparable to similar law enforcement work schedules since the  
3 City's 2-2-3 proposal is not a common schedule in law enforcement agencies at all. However, the  
4 City's proposal is clearly more responsive to the crisis staffing and other conditions facing the  
5 Department in satisfying the criterion of being "responsive to changing conditions."

6  
7 **III. Existing Benefits and Provisions Relating to Hours**

8 The final criterion cited in Charter section 910 is consideration of "all existing benefits and  
9 provisions relating to...hours and terms and conditions of employment..." Here, the "existing"  
10 schedule, OPOA's proposal, has been in place for more than a decade, a significant fact in itself. The  
11 evidence also establishes that its existence was the product of the parties' mutual negotiations, an  
12 additional fact of significance in favor of OPOA's proposal. However, as the City correctly notes,  
13 unlike many collective bargaining agreements, these parties' negotiations (and written agreements)  
14 never codified the 4/10 schedule as a *fixed* condition of employment. Thus, the 1996 Letter of  
15 Understanding described the implementation of the 4/10 schedule as an "experiment" that was, and  
16 is, subject to change by either party after 30 days notice. More significantly, the parties' MOU  
17 likewise did not incorporate the 4/10 schedule as a binding, negotiated term of their Collective  
18 Bargaining Agreement; rather, the MOU codifies their agreement with the fundamental, recognized  
19 principle that ultimately management retains the right to schedule work. The pertinent clause makes  
20 no reference to the 4/10 schedule, or any schedule, and states, "City will exercise good faith in  
21 establishing work schedules. *The functional needs of the City shall prevail in scheduling...*"  
22 (*emphasis added*). Accordingly, the evidence pertaining to the "existence" of the current schedule  
23 for an extended period of time must be evaluated and considered in the context that the 4/10 schedule  
24 was never expressly incorporated into the parties' contract as a fixed, binding condition of  
25 employment, but was instead implemented in the context of negotiated agreements that expressly  
26 grant the City the right to schedule based upon its "functional needs." OPOA's President Valladon,  
27 who is clearly a savvy and experienced negotiator, testified that, based on the contract language, "If  
28 an arbitrator...says the functional needs of the City is best to do A, then we go to A" (Tr. 671).

1 Based on the Findings contained herein, and for the reasons explained in the conclusions  
2 discussed at pp. 29-30 with respect to which proposal better serves the interest and welfare of the  
3 public, this Arbitrator is persuaded that the functional needs of the City require adoption of the City's  
4 proposal instead of continuing with the *status quo*.

5  
6 **CONCLUSION**

7 As noted repeatedly in this Opinion, the City has a serious crime problem. Two experts have  
8 found, and the Arbitrator agrees, that the Department is "grossly understaffed," and its staffing is  
9 further undermined by an absentee ratio that is twice the absence ratio, if not more, in the industry.  
10 The City has identified inefficiencies in the current system, including but not limited to the "punch out"  
11 practice that evolved as a direct consequence of an inefficient flaw in the 4/10 scheduling model. It  
12 has proposed an alternative scheduling model that eliminates that inefficiency, provides additional  
13 work hours in the context of its undermanned staffing, will likely reduce the current reliance on  
14 overtime, and provide, at least marginally, a more efficient ratio of staffing to workload. In these  
15 circumstances, the City has established that its proposal is responsive to changing conditions, that the  
16 12-hour schedule has operational advantages over the current schedule that better serves the interest  
17 and welfare of the public, and better serves the functional needs of City in suppressing and responding  
18 to crime. Accordingly, in applying the criteria contained in Charter section 910 and the parties' MOU  
19 provision on scheduling, it is concluded that the City's Last, Best, Final Offer should be adopted.

20 **AWARD**

21 The Arbitrator adopts the City's Last, Best, Final Offer as described in the "Post-  
22 Arbitration Final Offer" submitted on October 8, 2007.

23 DATED: November 12, 2007

24 \_\_\_\_\_  
25 CHARLES A. ASKIN,  
26 Arbitrator  
27  
28

**ATTACHMENT B**  
OPD 84-Hour Shift Schedule

Approximate Fiscal Impact of OPD Patrol Division Change to 12-Hour Schedule

Classification	Number in Rank	Monthly Increase Per EE Range	Average Monthly Increase Per EE	Annual Increase Per EE Range	Average Annual Increase Per EE	Total Annual Cost Range	Total Average Annual Cost
Police Officer (PERS)	256	\$288.18 - \$363.22	\$321.52	\$3458.16 - \$4358.64	\$3,858.18	\$885,288.96 - \$1,115,811.84	\$987,694.08
Classification		Monthly Increase Per EE		Annual Increase per EE			Total Annual Cost
Sergeant of Police (PERS)	43	\$419.07		\$5,028.84			\$216,240.12
Lieutenant of Police (PERS)	7	\$484.71		\$5,816.52			\$40,715.64
						Total Sgt. & Lt. Annual Cost:	\$256,955.76
						Approximate Annual Costs per 11/10/07 Position Control Report Staffing Level:	\$1,244,649.84
Police Officer Vacancies	10			\$3,458.16			\$34,581.60
Lieutenant Vacancy	1			\$5,816.52			\$5,816.52
						Additional Costs if Vacancies Filled:	\$40,398.12
						Approximate Annual Costs at Full Staffing per 11/10/07 Position Control Monthly Report:	\$1,285,047.96

**ORDINANCE NO. PH 5:59 C.M.S.**

AN ORDINANCE AMENDING THE SALARY SCHEDULE OF ORDINANCE NO. 12187 (THE SALARY ORDINANCE) TO ADD: TWO 84 HOUR PER PAY PERIOD, PERMANENT FULL TIME POLICE OFFICER CLASSIFICATIONS; TWO 84 HOUR PER PAY PERIOD, PERMANENT FULL TIME SERGEANT OF POLICE CLASSIFICATIONS; AND TWO 84 HOUR PER PAY PERIOD, PERMANENT FULL TIME LIEUTENANT OF POLICE CLASSIFICATIONS.

**THE COUNCIL OF THE CITY OF OAKLAND DOES ORDAIN AS FOLLOWS:**

SECTION 1. Effective, January 12, 2008, Representation Unit PP1 and the Pay Grade 001 Pay Grade Table, of Ordinance No. 12187, are amended to include the following classification at 84 hours per pay period:

<u>Classification Name</u>	<u>Class No.</u>	<u>Pay Steps/Range</u>	
Police Officer	PS189- FTE	1	6,669.24
		2	6,929.47
		3	7,161.59
		4	7,414.80
		5	7,993.59

SECTION 2. Effective, January 12, 2008, Representation Unit PP1 and the Pay Grade 002 Pay Grade Table, of Ordinance No. 12187, are amended to include the following classification at 84 hours per pay period:

<u>Classification Name</u>	<u>Class No.</u>	<u>Pay Steps/Range</u>	
Police Officer (PERS)	PS190-FTE	1	6,051.70
		2	6,355.53
		3	6,598.90
		4	6,816.94
		5	7,060.20
		6	7,627.57

SECTION 3. Effective, January 12, 2008, Representation Unit PP1 and the Pay Grade 003 Pay Grade Table, of Ordinance No. 12187, are amended to include the following classification at 84 hours per pay period:

<u>Classification Name</u>	<u>Class No.</u>	<u>Pay Steps/Range</u>	
Sergeant of Police	PS191 - FTE	1	9,229.46



SECTION 4. Effective, January 12, 2008, Representation Unit PP1 and the Pay Grade 004 Pay Grade Table, of Ordinance No. 12187, are amended to include the following classification at 84 hours per pay period:

<u>Classification Name</u>	<u>Class No.</u>	<u>Pay Steps/Range</u>	
Sergeant of Police (PERS)	PS192 - FTE	1	8,800.41

SECTION 5. Effective, January 12, 2008, Representation Unit PP1 and the Pay Grade 005 Pay Grade Table, of Ordinance No. 12187, are amended to include the following classification at 84 hours per pay period:

<u>Classification Name</u>	<u>Class No.</u>	<u>Pay Steps/Range</u>	
Lieutenant of Police	PS193 - FTE	1	10,668.54

SECTION 6. Effective, January 12, 2008, Representation Unit PP1 and the Pay Grade 006 Pay Grade Table, of Ordinance No. 12187, are amended to include the following classification at 84 hours per pay period:

<u>Classification Name</u>	<u>Class No.</u>	<u>Pay Steps/Range</u>	
Lieutenant of Police (PERS).	PS194 - FTE	1	10,178.98

IN COUNCIL, OAKLAND, CALIFORNIA, \_\_\_\_\_, 20\_\_\_\_

**PASSED BY THE FOLLOWING VOTE:**

AYES- BROOKS, BRUNNER, CHANG, KERNIGHAN, NADEL, REID, QUAN and PRESIDENT DE LA FUENTE

NOES-

ABSENT-

ABSTENTION-

ATTEST: \_\_\_\_\_  
LaTonda Simmons  
City Clerk and Clerk of the Council  
of the City of Oakland, California

AN ORDINANCE AMENDING THE SALARY SCHEDULE OF ORDINANCE NO. 12187 (THE SALARY ORDINANCE) TO ADD: TWO 84 HOUR PER PAY PERIOD PERMANENT FULL TIME POLICE OFFICER CLASSIFICATIONS; TWO 84 HOUR PER PAY PERIOD PERMANENT FULL TIME SERGEANT OF POLICE CLASSIFICATIONS; AND TWO 84 HOUR PER PAY PERIOD PERMANENT FULL TIME LIEUTENANT OF POLICE CLASSIFICATIONS.

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**Digest**

An ordinance amending the salary schedule of Ordinance no. 12187 (the Salary Ordinance) to add: two 84 hour per pay period, permanent full time Police Officer classifications; two 84 hour per pay period, permanent full time Sergeant of Police classifications; and two 84 hour per pay, period permanent full time Lieutenant of Police classifications.

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