

August 16, 2021

CITY OF WEBSTER GROVES ("CITY") - FORENSIC ANALYSIS - CBA - PAYROLL FIREFIGHTERS (ONLY)

We have completed the CBA payroll analysis for the period of July 1, 2019 through July 30, 2021. We have reviewed the CBA and payroll for the City's thirty-three (33) firefighters. We have also reviewed the payroll for the City's three (3) battalion chiefs and four (4) retirees/terminated firefighters.

A synopsis of our findings is as follows:

- A. Cumulative impact to City - CBA - July 1, 2019 (inception) - July 30, 2021
- B. FY 2020 - July 1, 2019 (inception) - June 30, 2020
- C. FY 2021 - July 1, 2020 - June 30, 2021
- D. FY 2022 - July 1, 2021 - July 30, 2021
- E. Ambiguity and vagueness in CBA
- F. Summary

A. CUMULATIVE IMPACT TO CITY - CBA - JULY 1, 2019 (INCEPTION) - JULY 30, 2021

The total **cumulative net impact to the City**, since inception of the CBA on July 1, 2019 through the most recent pay date of July 30, 2020 was approximately **\$103,090 (net overpaid wages)**. Additionally, as a result, the **net overpaid payroll taxes and lagers totaled \$12,010**. Hence, the **total cumulative net impact to the city with payroll taxes and lagers totaled \$115,100**. In aggregate (all three fiscal years collectively) most firefighters significantly overpaid appear to have the most longevity with the City; and, as such appear to be at the top of the CBA pay scale. The **total overpayments appear to be approximately \$122,028 and the total underpayments appear to be approximately \$18,938**.

B. FY 2020 - JULY 1, 2019 (INCEPTION) - JUNE 30, 2020

The City appears to have miscalculated the pay rate for the firefighters and captains since the inception of the CBA on July 1, 2019. Additionally, the pay rate for battalion chiefs appears to have been miscalculated. These calculation errors appear to have resulted in both **overpayments (21 personnel)** and **underpayments (15 personnel)**. The **overpayments** in FY 2020 appear to **approximate \$43,050** and the **underpayments** appear to **approximate \$14,396**. Additionally, changes appear to have been made in pay rates on July 6, 2019 without proper authorization or approval. In fact, City personnel who had potential knowledge of said matter have no recollection as to who authorized said changes or why said pay rate changes occurred. Additionally, certain adjustments referred to as "retro pay" and "supplemental pay", appear to also have been undocumented. City personnel who had potential knowledge of said matter have no recollection as to who authorized said retro pay adjustments. Please refer to our separate letter "**Communication of Deficiencies in Internal Control and other Comments to Management**".

C. FY 2021 - JULY 1, 2020 - JUNE 30, 2021

As stated above, the City appears to have miscalculated the pay for the firefighters and captains since the inception of the CBA on July 1, 2019. Additionally, the pay rate for battalion chiefs appears to have been miscalculated. These calculation errors appear to have resulted in both **overpayments (29 personnel)** and **underpayments (7 personnel)**. The **overpayments** in FY 2021 appear to **approximate \$74,005** and the **underpayments** appear to **approximate \$4,110**.

D. FY 2022 - JULY 1, 2021 - JULY 30, 2021

As previously stated, the City appears to have miscalculated the pay for the firefighters and captains since the inception of the CBA on July 1, 2019. Additionally, the pay rate for battalion chiefs appears to have been miscalculated. These calculation errors appear to have resulted in both **overpayments (29 personnel)** and **underpayments (7 personnel)**. The **overpayments** in FY 2022 appear to **approximate \$4,973** and the **underpayments** appear to **approximate \$432**.

E. AMBIGUITY AND VAGUENESS THROUGHOUT THE CBA

The CBA was extremely vague and had several ambiguities when dealing with payroll related issues.

First, the cover page of the CBA referred to June 1, 2019 through June 30, 2022. In fact, the CBA did not refer to the start date of the CBA as July 1, 2019 (the beginning of fiscal year 2020 for the City.) The initial read would infer the start date to be June 1, 2019 and not July 1, 2019.

Second, the CBA was constructed with total payroll by step - with no definition of total hours for base salary or scheduled O.T. Please refer to Article 3 page 19 of the CBA. Prior administrations interpreted the CBA to mean divide everything by 2,912 hours (base hours 2,756 + FLSA hours 156), instead of 2,990 hours (base hours 2,756 + FLSA hours 156 + other half of FLSA hours 78). The CBA refers to FLSA, but the CBA was structured on 2,912 base hours and not 2,756 - in violation of fair labor standards act (FLSA).

Third, the CBA appeared to create separate classes of firefighters. On July 1, 2019, when the new CBA was implemented, an attempt was made to start the firefighters at the appropriate step where they would land during the City's 2020 fiscal year. The CBA states "members who are not at their appropriate tenure based on place in the salary schedule commensurate with their tenure with the department or most recent promotional date whichever is later, will be moved to the appropriate place in the salary schedule based on their tenure in the department." This appears to have resulted in the City incorrectly adjusting pay for firefighters on July 1, 2019 and then once again incorrectly adjusting pay rates for firefighters on July 6, 2019. Since documentation and recollection related to these incorrect pay adjustments were unattainable, basis for determining these calculations and incorrect adjustments may never be known.

E. AMBIGUITY AND VAGUENESS THROUGHOUT THE CBA - continued

Fourth, the CBA then refers to future years "for FY 2021 and FY 2022 a 2% across the board adjustment shall be applied to all ranges in the pay scales referenced herein." All new employees who started after the inception of the CBA on July 1, 2019 were incorrectly paid throughout most of their tenure with the City. In fact, the three (3) firefighters hired after July 1, 2019 were all underpaid. The appearance is that the City unknowingly created a second class of firefighters for these three (3) new hires. This is quite understandable given the fact that the CBA is extremely vague. During our conversations with City personnel, we collectively concluded that these three (3) firefighters should be treated in the same manner as all the other firefighters; thus, only one class of firefighters for this CBA should exist.

Fifth, the uniform allowance in Article 3 on page 23 states an "annual" allowance of \$1,122 paid in June and December. Annual was interpreted by the City to mean calendar and not fiscal year. Annual pertains to a year - not necessarily a calendar year. The interpretation given the three (3) fiscal years covered by the CBA probably should have been fiscal year, instead of a calendar year. As such, most of the uniform allowances paid since inception have been in excess of what was negotiated.

Sixth, the execution between the CBA and pay appears to have been an issue. Specifically, performance pay approved and paid were noted to be different in 2021. We highly recommend that procedures be established to ensure these errors are not repeated. Payroll reports and payroll calculations should be reviewed and approved before payment. All payroll reports and calculations should be initialed and dated reflecting said review.

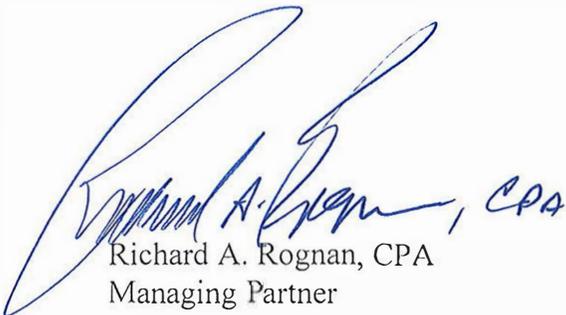
F. SUMMARY

We recommend the City consider reimbursing all the aforementioned underpaid firefighters. We recommend that the City consider the fact that the firefighters who were overpaid had no control over the calculation of their pay rates; and, as such should not be required to repay these significant differences. We recommend the City correct the pay rates for all firefighters as of July 1, 2021 to correspond to the CBA and FLSA pay rates.

F. SUMMARY - continued

Please remember, a firefighter/paramedic should receive 106 hours (53 per week) base pay hours and 6 hours (3 per week) of scheduled O.T. (FLSA) per pay check; calculated in any other manner - such as "common practice" will result in a firefighter/paramedic being based less than agreed contractually. Please refer to the attached "U.S. Department of Labor Wage and Hour Division Fact Sheet #8: Law Enforcement and Fire Protection Employees Under the Fair Labor Standards Act (FLSA)" for substantive support of this issue. As such, employee payroll stubs and the City payroll register should now reflect 106 hours as base pay hours and payroll dollars and not 112 base pay hours and 6 hours FLSA O.T. hours and payroll dollars. We are confident that the future CBA will be well constructed with less ambiguities and constructed with tables outlining and detailing pay rates and FLSA O.T. rates by step.

Respectfully submitted,



Richard A. Rognan, CPA
Managing Partner

Fact Sheet #8: Law Enforcement and Fire Protection Employees Under the Fair Labor Standards Act (FLSA)

This fact sheet provides general information concerning the application of the [FLSA](#) to law enforcement and fire protection personnel of State and local governments.

Characteristics

Fire protection personnel include firefighters, paramedics, emergency medical technicians, rescue workers, ambulance personnel, or hazardous materials workers who:

1. are trained in fire suppression;
2. have the legal authority and responsibility to engage in fire suppression;
3. are employed by a fire department of a municipality, county, fire district, or State; and
4. are engaged in the prevention, control and extinguishment of fires or response to emergency situations where life, property, or the environment is at risk.

There is no limit on the amount of nonexempt work that an employee employed in fire protection activities may perform. So long as the employee meets the criteria above, he or she is an employee “employed in fire protection activities” as defined in section 3(y) of the FLSA.

Law enforcement personnel are employees who are empowered by State or local ordinance to enforce laws designed to maintain peace and order, protect life and property, and to prevent and detect crimes; who have the power to arrest; and who have undergone training in law enforcement.

Employees engaged in law enforcement activities may perform some nonexempt work which is not performed as an incident to or in conjunction with their law enforcement activities. However, a person who spends more than 20 percent of the workweek or applicable work period in nonexempt activities is not considered to be an employee engaged in law enforcement activities under the FLSA.

Coverage

Section 3(s)(1)(C) of the FLSA covers all public agency employees of a State, a political subdivision of a State, or an interstate government agency.

Requirements

[Hours of work](#) generally include all of the time an employee is on duty at the employer’s establishment or at a prescribed work place, as well as all other time during which the employee is suffered or permitted to work for the employer. Under certain specified conditions time spent in sleeping and eating may be excluded from compensable time.

The FLSA requires that all covered nonexempt employees be paid the statutory [minimum wage](#) of not less than \$7.25 per hour effective July 24, 2009.

The FLSA requires that all covered nonexempt employees be paid [overtime pay](#) at no less than time and one-half their regular rates of pay for all hours worked in excess of 40 in a workweek.

Section 13(b)(20) of the FLSA provides an overtime exemption to law enforcement or fire protection employees of a public agency that employs less than five employees during the workweek in law enforcement or fire protection activities.

Section 7(k) of the FLSA provides that employees engaged in fire protection or law enforcement may be paid overtime on a “work period” basis. A “work period” may be from 7 consecutive days to 28 consecutive days in length. For work periods of at least 7 but less than 28 days, overtime pay is required when the number of hours worked exceeds the number of hours that bears the same relationship to 212 (fire) or 171 (police) as the number of days in the work period bears to 28. For example, fire protection personnel are due overtime under such a plan after 106 hours worked during a 14-day work period, while law enforcement personnel must receive overtime after 86 hours worked during a 14-day work period.

Under certain prescribed conditions, a State or local government agency may give compensatory time, at a rate of not less than one and one-half hours for each overtime hour worked, in lieu of cash overtime compensation. Employees engaged in police and fire protection work may accrue up to 480 hours of compensatory time.

An employee must be permitted to use compensatory time on the date requested unless doing so would “unduly disrupt” the operations of the agency.

At the time of termination an employee must be paid the higher of (1) his or her final regular rate of pay or (2) the average regular rate during his or her last three years of employment for any compensatory time remaining “on the books” when termination occurs. For more information on state and local governments under the FLSA, see [Fact Sheet #7](#).

No covered employer may employ any minor in violation of the [youth employment provisions](#) of the FLSA. The Act establishes specific provisions concerning prohibited occupations and/or hours of employment of minors under age 18.

Covered employers must make, keep and preserve payroll-related records as described by regulations [29 CFR Part 516](#).

Where to Obtain Additional Information

For additional information, visit our Wage and Hour Division Website: <http://www.wagehour.dol.gov> and/or call our toll-free information and helpline, available 8 a.m. to 5 p.m. in your time zone, 1-866-4USWAGE (1-866-487-9243).

This publication is for general information and is not to be considered in the same light as official statements of position contained in the regulations.

U.S. Department of Labor
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

1-866-4-USWAGE
TTY: 1-866-487-9243
[Contact Us](#)

CITY OF WEBSTER GROVES
CBA PAYROLL ANALYSIS
COMMUNICATION OF DEFICIENCIES IN INTERNAL CONTROL AND OTHER
COMMENTS TO MANAGEMENT

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis. A material weakness is a deficiency or a combination of deficiencies in internal control, such that there is a reasonable possibility that a material misstatement of the City of Webster Groves ("City") financial statements will not be prevented, or detected and corrected, on a timely basis. A significant deficiency is a deficiency, or combination of deficiencies, in internal control that is less severe than a material weakness, yet important enough to merit attention by those charged with governance.

During our analysis, we also identify certain matters which we communicate only to management. While many of these matters are operational in nature, they may include internal control deficiencies that do not meet the definition of a significant deficiency or material weakness. We have chosen to communicate these matters in this communication.

This communication is intended solely for the information and use of management, Mayor and City Council, and is not intended to be, and should not be, used by anyone other than those specified parties.

SIGNIFICANT DEFICIENCY

1. We noted changes to the City's payroll database related to firefighters and captains pay rates on July 6, 2019. No documentation exists to support the reason for these pay rate changes. Additionally, personnel at the City, who were employed on July 6, 2019, have no recollection or knowledge as to why, how or who made these pay rate changes. Lack of documentation and knowledge also appeared in regard to "retro pay" and "supplemental pay". **This is a significant internal control issue resulting in a significant deficiency.**

2. The CBA was structured with 2,912 hours instead of 2,756 base hours and 156 FLSA hours. The CBA mentioned FLSA, but appeared to be silent in City compliance. The most common FLSA violation that is alleged in litigation is what is referred to as a maximum-hours violation. Such suits are brought by firefighters who claim that they are working hours that are in excess of the statutory maximum without being paid overtime. The statutory maximum for most employees is 40 hours in a seven-day workweek. The FLSA allows a partial exemption for firefighters and law-enforcement personnel, which is known as the 207k exemption. Qualifying firefighters are allowed to work up to 53 hours per week, or up to 212 hours in a 28-day work period, before overtime is required. **The City appears to be in the process of correcting this matter as of August 16, 2021.**

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3. We noted that the calculation of CBA pay rates were incorrectly calculated at 2,912 hours instead of 2,990 hours. **As mentioned in point 2 above, historically, the City has always used 2,912 hours in arriving at the hourly pay rate - instead of 2,990. Hence, this calculation error did not commence with the new CBA; instead, this calculation appears to represent a long standing practice in deriving firefighter pay at the City.** As such, the City paid more in salaries each FY since July 1, 2019 than contractually required. This should have resulted in the City exceeding budget for firefighters in each of these fiscal years. We recommend that the City in future CBAs divide each pay step by 2,990 hours to arrive at the correct pay rate for each step.
4. We also noted the fact that the CBA was silent as to rates of pay and FLSA OT. As such, rates of pay appear to have been incorrectly stated. We recommend that future CBAs have both rate of pay and FLSA OT pay next to each step. We also recommend the City review and correct other positions that may be impacted by FLSA OT.
5. We noted the term "bonus" on performance pay sheets and in the payroll history reports. As you are aware, Missouri State Statutes prohibit bonus payments to personnel in political subdivisions - such as the City. We recommend that bonus be eliminated from all future City documents and consideration be given to terms such as "incentive".
6. We noted that CBA refers to tax deferred \$1,122 for uniforms - page 23 - (tax deferral is when taxpayers delay paying taxes to some point in the future. Some taxes can be deferred indefinitely - uniforms are not able to be tax deferred.) We recommend that the City consider striking the word "tax deferred" from future CBAs.
7. In addition, the uniform allowance in Article 3 on page 23 states an "annual" allowance of \$1,122 paid in June and December. "Annual" was interpreted by the City to mean calendar and not fiscal year. Annual pertains to a year - not necessarily a calendar year. The interpretation given the three (3) fiscal years covered by the CBA probably should have been fiscal year, instead of a calendar year. As such, most of the uniform allowances paid since inception have been in excess of what was negotiated.
8. We noted that the CBA cover states June 1, 2019 - yet the CBA commenced on July 1. This could create a perception issue or grievance as to the start date of the CBA. We recommend that the cover page reflect a start date equal to July 1 (start of City's FY).

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OTHER COMMENTS TO MANAGEMENT - continued

9. We noted that no date was next to signatures on last page of CBA. We recommend that the CBA have not only signatures, but the date each person executed said CBA next to each signature.
10. We noted the CBA signed by the Mayor by resolution on June 18, 2019. The resolution does not refer to the start date being retro or prospective from this signing date. Please remember, the cover page of the CBA referred to June 1, 2019 - June 30, 2022 - adding more confusion to the actual start date of the CBA. We recommend that future resolutions refer to the actual start date of the new CBA.
11. We noted that the payroll rate notifications issued to employees on July 1 of each fiscal year never mention the words "subject to change". Employees should always be notified that based on circumstances unknown to the City at the time of issuance that these pay rates could change. As such, we recommend that the City use the phrase "subject to change" in all future notifications when pay rates are mentioned.
12. We noted that pay rates in the payroll system go out four (4) places to the right of the decimal. This creates issues with rounding for the City. We recommend all pay rates be rounded only two (2) places to the right of the decimal (e.g., 28.10).
13. We noted that the "Payroll History Report" does not break out scheduled OT from unscheduled OT (FLSA). We recommend that future "Payroll History Reports" break out scheduled OT and unscheduled OT (FLSA) separately. We also recommend that the City consider budgeting separately for scheduled OT and unscheduled OT (FLSA) to better monitor and control these expenses. Each paycheck pay stub and City payroll report should reflect 106 hours base pay and six (6) hours scheduled OT (FLSA) = 112 total hours.
14. The execution between the CBA and pay appears to have been an issue. Specifically, performance pay approved and paid were noted to be different in 2021. The differences were insignificant; but, the differences were never approved by City leaders.

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OTHER COMMENTS TO MANAGEMENT - continued

15. Two (2) firefighters were hired fourteen (14) days apart in 2020. When holiday pay was calculated for FY 2022, these two (2) firefighters received completely different holiday pay amounts for the July 1, 2021 - July 31, 2021 pay period. One firefighter (ZM) hired on November 10, 2020 received \$350.05 and the other firefighter (TW) hired on November 24, 2020 received \$260.78. The holiday pay should have been the same (\$271.94). The appearance is that payroll computations related to the CBA are not reviewed and approved before entering said amounts into the payroll system.
16. A payroll discrepancy within the payroll system was noted. The employee's (MS) pay stub had the correct sick hours; but, the City's payroll history had double the sick hours for a firefighter. This creates the possibility that more significant payroll discrepancies exist between the actual employee pay stub and the City's payroll history report.
17. We highly recommend that procedures be established to ensure these payroll errors are not repeated. These payroll errors have resulted in significant overpayment of salaries by the City since inception of the CBA. We highly recommend payroll reports be reviewed and approved before payment of salaries. Reports should be initialed and dated reflecting said review. **Please remember, these issues could signal more significant payroll concerns at the City. The payroll differences noted herein could also be occurring in other departments of the City resulting in more significant payroll discrepancies.**