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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).

OPINION AND AWARD

18
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:

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7 On Behalf of the City:

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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:*

A Shift	0500 – 1700
C Shift	0800 – 2000
E Shift	1100 – 2300
G Shift	1300 – 0100
K Shift	1500 – 0300
M Shift	1700 – 0500
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..."¹

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

27 ¹ 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:

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

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

 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
20 increases a police department’s store of intelligence about actual neighborhood
21 conditions and enhances its ability to correct conditions in a timely fashion.

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

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

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

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,² 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.

² 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.”³ 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....⁴

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 ³ 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 ⁴ Mr. Freesmeyer did not define the term “equal staffing model” in the study, or at hearing. The 2-2-3
28 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.⁵

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

27 ⁵ 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.⁶ 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 ⁶ 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..."⁷ The
13 proposal was overwhelming rejected by a "vote" of 411 to 9.⁸

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

20 ⁷ 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
23 four consecutive 12-hour shifts in the subsequent week (Tr. 47).

24 ⁸ The City contends that the survey is flawed because OPOA officials did not "adequately" explain
25 the proposed change. The evidence shows that OPOA prepared a one-page summary of bulleted "problems"
26 cited by the City and six bulleted "benefits" asserted by the City in support of the change to a 12-hour schedule.
27 These bulleted items accurately and impartially outline many of the issues presented by the change. The City
28 also contends that the results of the survey are misleading because the proposal at issue is not the one being
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.”⁹ 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 ⁹ 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.¹⁰ 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 ¹⁰ The Chief has stated, both before and at the arbitration, that the 12-hour shift will be supplemented
24 by using "power" shifts at high-crime periods. No evidence was adduced at hearing as to how, exactly, this will
25 be accomplished in view of the staffing and attendance deficiencies in the Department and the BFO. It is also
26 not clear why such a "power" shift could only be used for the 12-hour shift schedule, and not the 4/10 schedule.
27 For these reasons, and as found in the Findings, the Arbitrator is not persuaded that the Department has proved
28 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.¹¹

25
26 ¹¹ 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 **III. Existing Benefits and Provisions Relating to Hours**
7

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).

