

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ROBERT D. DELEE,

Plaintiff-Appellant

v.

CITY OF PLYMOUTH, INDIANA, *et al.*,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
THE HONORABLE JAMES T. MOODY
3:12-cv-380

BRIEF FOR APPELLANT ROBERT D. DELEE

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v.

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BRIEF FOR APPELLANT ROBERT D. DELEE

STATEMENT REGARDING ORAL ARGUMENT

The United States believes that oral argument would assist the Court in resolving the issue presented in this appeal.

JURISDICTIONAL STATEMENT

The district court had jurisdiction over this case pursuant to 38 U.S.C. 4323(b)(1). The district court entered its final judgment on March 31, 2014. Plaintiff-Appellant DeLee filed a timely notice of appeal on April 28, 2014. This

Court has jurisdiction over this appeal from the final judgment pursuant to 28 U.S.C. 1291.

STATEMENT OF ISSUE PRESENTED

Whether the City of Plymouth's (the City) longevity pay for police officers constitutes a seniority-based benefit of employment that was fully payable to DeLee upon his reinstatement in accordance with the Uniformed Services Employment and Reemployment Rights Act (USERRA), 38 U.S.C. 4301-4335.

STATEMENT OF THE CASE

A. Statutory Framework And Pertinent Provisions

The Selective Training and Services Act of 1940 first enacted into law the concept of reemployment rights for veterans who return to civilian employment. 20 C.F.R. 1002.2. Federal legal protections for those who serve their country in the uniformed services have continued since that time. Congress enacted USERRA in 1994, as the most recent in a series of statutory protections for members of the United States uniformed services who seek or return to civilian employment. 20 C.F.R. 1002.2.

USERRA was enacted to strengthen existing employment rights of veterans. See H.R. Rep. No. 65, 103d Cong., 1st Sess. 16 (1993) (H.R. Rep. No. 65). The Act's purpose is threefold: (1) to encourage military service "by eliminating or minimizing the disadvantages to civilian careers"; (2) "to minimize the disruption

to the lives” of servicemembers and their employers “by providing for the prompt reemployment of servicemembers”; and (3) “to prohibit discrimination” against servicemembers. 38 U.S.C. 4301(a).

The purposes underlying USERRA and its predecessor statutes have remained consistent over time. See H.R. Rep. No. 65, at 20. In enacting USERRA, Congress emphasized that case law interpreting its predecessor statutes should apply with equal force to USERRA to the extent it is consistent with the new law, thus ensuring substantial continuity of the servicemember employment protection laws. S. Rep. No. 158, 103d Cong., 1st Sess. 40 (1993); H.R. Rep. No. 65, at 19; see also 20 C.F.R. 1002.2. Like its predecessors, USERRA must be construed liberally in favor of servicemembers who left private life to serve their country. See *Fishgold v. Sullivan Drydock Corp.*, 328 U.S. 275 (1946); *Davis v. Advocate Health Ctr. Patient Care Exp.*, 523 F.3d 681, 683-684 (7th Cir. 2008).

USERRA accomplishes its purposes through a comprehensive statutory scheme that, *inter alia*, prohibits an employer from discriminating against a servicemember because of his service, 38 U.S.C. 4311; requires prompt reemployment of a returning servicemember who meets the statutory coverage requirements, unless a change in the employer’s circumstances makes reemployment impossible or unreasonable, 38 U.S.C. 4312, 4313(a); affords a returning servicemember all of the seniority, rights, and seniority-based benefits he

would have attained had he remained continuously employed, 38 U.S.C. 4316(a); and establishes a protective period during which an employer cannot discharge a reemployed servicemember without cause, 38 U.S.C. 4316(c). USERRA also “supersedes any State law (including any local law or ordinance), contract, agreement, policy, plan, practice, or other matter that reduces, limits, or eliminates in any manner any right or benefit provided by” the statute. 38 U.S.C. 4302(b).

An employer must reemploy a servicemember who was absent for military service and otherwise meets the statutory requirements in the position in which he would have been employed if his continuous employment “had not been interrupted by such service, or a position of like seniority, status and pay.” 38 U.S.C. 4313(a)(2)(A). This position is referred to as the “escalator position.” 20 C.F.R. 1002.191; see also *Fishgold*, 328 U.S. at 284-285. The escalator principle envisions the veteran stepping off of the civilian seniority “escalator” to perform military service and stepping back on, upon his return, at the “precise point he would have occupied had he kept his position continuously during” military service. *Fishgold*, 328 U.S. at 284-285. The escalator can move up or down in the veteran’s absence, however, because the veteran could have been promoted or, alternatively, demoted or laid off due to intervening events. The “escalator principle” therefore requires an employer to reemploy the servicemember in a position that “reflects with reasonable certainty the pay, benefits, seniority, and

other job perquisites, that he * * * would have attained if not for the period of service.” 20 C.F.R. 1002.191.

The “escalator position” includes employment benefits associated with the position, but the extent to which USERRA requires the employer to provide those benefits depends on their nature. A reemployed servicemember is entitled to “benefits *determined by seniority* that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.” 38 U.S.C. 4316(a) (emphasis added). The returning servicemember is “entitled to such other rights and benefits *not determined by seniority* as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence” under the employer’s policies or other applicable contract. 38 U.S.C. 4316(b)(1)(B) (emphasis added).

USERRA thus requires employers to provide the latter category of benefits only on a non-discriminatory basis with others on comparable leaves, while seniority-based benefits must be awarded to covered servicemembers regardless of the employers’ treatment of employees who are absent from work for other reasons.

This appeal turns on whether the City’s longevity pay for police officers is a benefit “determined by seniority” under 38 U.S.C. 4316(a), or a benefit “not determined by seniority” under 38 U.S.C. 4316(b)(1)(B).

B. Factual Background

1. The Relevant City Ordinances

As an incentive to remain employed with the City, the City offers all of its full-time emergency personnel and non-emergency personnel a benefit it calls “longevity pay.” Appx. 17-18, 31.¹ Three City ordinances addressing longevity pay are relevant for purposes of this appeal: Ordinance Nos. 2009-1987, 2010-2009, and 1480. Appx. 2. Ordinance No. 2009-1987 (the 2010 Salary Ordinance) and Ordinance No. 2010-2009 (the 2011 Salary Ordinance) have identical terms in relevant part. Compare Appx. 25-26 with Appx. 28, 31. As described further below, Ordinance No. 1480, enacted in 1989, is cross-referenced in, and made applicable to, only those provisions of the 2010 and 2011 Salary Ordinances addressing longevity pay for emergency personnel. Appx. 25-26, 29-30, 33.

With respect to emergency personnel, including police officers, the 2010 and 2011 Salary Ordinances both explain that “[l]ongevity pay is additional

¹ References to “Appx. ___” are to the page numbers of documents included in the Appendix attached to this brief pursuant to Seventh Circuit Rule 30. References to “Doc. ___” are to the document numbers listed on the docket sheet for the district court proceedings in this case.

compensation to be paid to a qualified police officer.” Appx. 25, 28. Both Salary Ordinances define a “qualified” police officer as one “who has at least three (3) years of continuous service to the City.” Appx. 25, 28. The Ordinances set longevity pay at \$225, and provide for police officers to receive an additional \$225 for each year of continuous service, up to a maximum of \$4500 (\$225 x 20 years). Appx. 25, 28. Police officers and other emergency personnel receive their longevity pay annually, in a lump sum, on the first pay date after the employee’s anniversary date of employment. Appx. 1, 25, 28. With respect to emergency personnel only, the 2010 and 2011 Salary Ordinances incorporate and cross-reference exceptions for “those instances noted in Ordinance No. 1480.” Appx. 26, 29.

Salary Ordinances 2010 and 2011 define “longevity pay” for non-emergency personnel in the same manner as for emergency personnel: “additional compensation to be paid to qualified full-time non-emergency personnel” who have “at least three (3) years of uninterrupted City employment.” Appx. 26, 31. Non-emergency personnel receive a smaller amount of longevity pay than emergency personnel; they receive \$50 for each year of employment, up to a maximum of \$1000. Appx. 26, 31. Longevity pay for non-emergency personnel is paid annually in the last paycheck of the year for that year’s service, but those individuals must be employed with the City on the payment date to receive the

benefit. Appx. 26, 31. An employee in an inactive status on the longevity payment date cannot receive the benefit, although “inactive” status is defined to exclude earned vacation time, sick leave, or personal days (not to exceed two days). Appx. 26, 31.

Until 1989, qualified City police officers received their longevity pay based on their number of years of employment multiplied by the longevity pay amount established in that year’s salary ordinance. The City enacted Ordinance No. 1480 on November 13, 1989, to amend the City’s 1989 and 1990 salary ordinances.

Appx. 33. Ordinance No. 1480 states, in pertinent part:

WHEREAS, longevity pay has long been recognized as an incentive for police and firemen to remain in the service of the City; and,

WHEREAS, a question has arisen concerning the advisability of paying longevity to members of the police department or fire department who have gone to an inactive status by reason of a leave of absence, or who have been assigned to duties other than the normal, customary duties of the fire department or police department; and,

WHEREAS, in the interest of fiscal responsibility and fairness, it should be recognized that a member of the police department or fire department who is in an inactive status, but who has reached an anniversary date for purposes of longevity pay, should be paid said longevity, but as calculated on the number of months of active service to the City in the respective departments.

NOW, THEREFORE, BE IT ORDAINED

* * * * *

Longevity pay shall be prorated for any qualified policeman or policewoman who during the year immediately preceding their anniversary date is on a leave of absence, or who is otherwise not engaged in the active performance of the normal and customary duty of the police department. Longevity pay

shall be prorated as based on the number of months of actual active duty during the year immediately preceding the anniversary date.

Appx. 33 (emphasis added).

Accordingly, starting in 1989, only City police officers and firefighters had their longevity pay reduced for time spent not engaged in the “active performance of the normal and customary duty” of their City jobs. Unlike longevity pay for police officers and firefighters, longevity pay for non-emergency personnel is *not* subject to the exceptions in Ordinance 1480. With respect to non-emergency personnel, the 2010 and 2011 Salary Ordinances instead specify that “said longevity pay shall not be prorated under any circumstances.” Appx. 26, 31.

2. *Sergeant DeLee’s Reduction In Longevity Pay Due To Uniformed Service*

Plaintiff-appellant Robert DeLee is a United States Air Force reservist who holds the rank of Technical Sergeant. Appx. 18. He has worked as a patrolman in the City’s police department since April 19, 1999. Appx. 16. The anniversary date of Sgt. DeLee’s City employment thus falls on or about April 19. Appx. 18-19. After that date in 2010, Sgt. DeLee had 11 years of continuous service to the City. Appx. 18. On April 20, 2010, the City paid Sgt. DeLee \$2475 of longevity pay. Appx. 18. That sum represented his 11 years of service multiplied by \$225, in accordance with the City’s policy.

During his twelfth year of City employment, Sgt. DeLee was called up for an eight-month military deployment from September 1, 2010, to May 11, 2011. Appx. 18-19.² Shortly before he deployed, the City paid him \$900 in longevity pay. Appx. 19. That sum represented the four months since Sgt. DeLee's April 19 anniversary date multiplied by \$225, or a prorated one-third of the \$2700 he would have been due to receive after his next service anniversary date (on April 20, 2011). Appx. 19.

Sgt. DeLee's deployment ended on May 11, 2011. Appx. 18. After Sgt. DeLee returned to active City employment, he requested the remaining \$1800 of longevity pay he would have received had he not been deployed for uniformed service. Appx. 19. The City refused to pay Sgt. DeLee because he had not provided police services for Plymouth during his eight months of active duty deployment. Appx. 19-20. The City did provide DeLee with credit for his eight-month deployment for purposes of determining DeLee's period of continuous employment, and to determine his total length of service with Plymouth. Appx. 19-20.

² Sgt. DeLee worked full time as a Patrolman for Plymouth both before and after this deployment. Appx. 18-19.

C. *Procedural History*

Sgt. DeLee filed a USERRA complaint with the Veterans' Employment and Training Service (VETS) of the Department of Labor (DOL) on or about January 31, 2012. After DOL investigated and the City refused to resolve the matter, Sgt. DeLee requested Department of Justice (DOJ) representation to file a lawsuit. DOL referred the matter to DOJ, which agreed to represent Sgt. DeLee.

After unsuccessful efforts to settle the matter without litigation, DOJ filed Sgt. DeLee's Complaint on July 16, 2012. Appx. 10-14. The Complaint alleged that the City violated USERRA, 38 U.S.C. 4316(a), by denying Sgt. DeLee a benefit of employment he would have received, based on seniority, had he not deployed for military service. Appx. 12. DeLee sought liquidated damages for a willful statutory violation pursuant to 38 U.S.C. 4323(d)(1)(C). Appx. 12. No discovery was taken before the parties filed cross-motions for summary judgment on Sgt. DeLee's 38 U.S.C. 4316(a) claim on October 29, 2012.³ Appx. 1; Docs. 6-7, 14, 17-20.

The district court granted the City's summary judgment motion and denied Sgt. DeLee's partial summary judgment motion in a nine-page opinion and order.

³ A liquidated damages claim under USERRA entitles the defendant to a jury trial. See *Middleton v. City of Chicago*, 578 F.3d 655, 659 (7th Cir. 2009). DeLee therefore did not move for summary judgment on that claim, reserving it for a trial. Appx. 1 n.1; Appx. 13.

See *DeLee v. City of Plymouth*, No. 3:12cv380, 2014 WL 1316870 (N.D. Ind. Mar. 31, 2014) (Appx. 1-9).

D. The District Court's Opinion

On summary judgment, the district court addressed whether the City's longevity pay is a "benefit[] determined by seniority" covered by 38 U.S.C. 4316(a), using USERRA's definition of "seniority," see 38 U.S.C. 4303(12), or whether it is a "benefit[] not determined by seniority," subject only to the nondiscrimination provisions of 38 U.S.C. 4316(c).⁴

The court cited Plymouth's characterization of the lump sum annual longevity payment to police officers as "essentially a pay raise of \$225.00 for each year a police officer continues to work for Plymouth." Appx. 5. The court acknowledged that Section 4316 of USERRA "preempts any conflicting state law such as Plymouth's ordinances." Appx. 3. The court nevertheless opined that DeLee's argument that the longevity pay is a seniority-based benefit "completely ignores the existence of Plymouth Ordinance No. 1480, enacted, according to its preamble, 'in the interest of fiscal responsibility and fairness,' requiring longevity pay to be prorated for any leave of absence from active police duty and paid only for the months actually worked." Appx. 8. The court held that the "amount of

⁴ The court stated that, because "the facts necessary to make a decision are undisputed, * * * the issue is purely one of statutory interpretation." Appx. 1.

Plymouth's longevity pay due to be paid for any given year is clearly intended to be compensation for work actually performed in the preceding year." Appx. 8.

The court explained that its decision turned on whether the longevity pay was more analogous to the vacation benefit the Supreme Court considered in *Foster v. Dravo Corp.*, 420 U.S. 92 (1975), which the City principally relied upon, or to the severance pay in *Accardi v. Pennsylvania Railroad Co.*, 383 U.S. 225 (1966), which DeLee's brief discussed along with other Supreme Court precedent. Appx. 6-8. Accepting the City's contention that the *rate* of longevity pay and the *amount* of longevity pay constituted two separate benefit components, the court held, without further analysis, that the amount of the City's longevity pay was "like the vacation benefit in *Foster*, not the severance pay in *Accardi*." Appx. 8. The court explained that it was "not necessary to give lengthy consideration to the additional [Supreme Court] cases cited by the parties" in light of Ordinance No. 1480 and the "clear and unambiguous text of § 4316 of the USERRA." Appx. 8.

SUMMARY OF ARGUMENT

This Court should reverse the district court's grant of summary judgment for the City, and direct entry of summary judgment in DeLee's favor instead, because the court failed to employ the legal analysis the Supreme Court has prescribed to determine the true "nature" of an employment benefit for purposes of federal statutes that protect veterans' civilian employment rights. In particular, the district

court failed to apply the “two axes of analysis” the Supreme Court has used to determine whether a benefit is seniority-based under USERRA’s predecessors, see *Alabama Power Co. v. Davis*, 431 U.S. 581, 587-589 (1977), and improperly focused on the individual components of the City’s benefit calculation formula rather than the dominant nature of the overall benefit, see *Coffy v. Republic Steel Corp.*, 447 U.S. 191, 203 (1980).

Had the district court employed the proper analysis and looked beyond the City’s self-serving characterization of its aptly named *longevity* pay, it should have determined that the longevity pay was a seniority-based benefit of Sgt. DeLee’s employment that the City was not entitled to reduce (or, in the City’s parlance, “prorate”) based on Sgt. DeLee’s absence for military service. Aside from the benefit’s nomenclature, the City’s longevity pay benefit has many indicia that the Supreme Court, this Court, and other appellate courts hold dispositive in determining that a benefit is in the nature of a “reward for length of service,” rather than short-term compensation for work performed. *Alabama Power*, 431 U.S. at 589.

The dominant nature of City longevity pay is an incentive to remain in City employment for a long and continuous period. First, police officers must engage in a substantial, three-year period of service before they receive any longevity pay. See *Coffy*, 447 U.S. at 205. Second, once a police officer becomes “qualified” to

receive the benefit by a three-year passage of time – regardless of the cumulative length of their City employment after that point – a police officer would have to “start over” with another three-year qualifying period of “continuous” employment if he were to resign from the City and be rehired later. Third, the City does not link the particular number of hours an officer works in any month to the amount of the longevity pay received; no greater longevity pay is achieved for overtime work in a given month, and no reduction occurs if a police officer is absent from work for a reason not requiring a leave of absence. *Ibid.* Finally, an officer who performs exceptionally well due to increased work experience does not receive higher rate of longevity pay than an officer who maintains lackluster performance over time; an officer’s increase in longevity pay each year (for up to 20 years) simply reflects longer service and does not ensure that the increased work experience produces a more valuable employee. See *Lang v. Great Falls Sch. Dist. No. 1 & A*, 842 F.2d 1047, 1050-1051 (9th Cir. 1988). Accordingly, the district court’s determination that the City’s longevity pay is short-term compensation for work performed is reversible legal error.

The district court also failed to apply pertinent principles of statutory interpretation to 38 U.S.C. 4302 and 4316. The district court did not give USERRA a liberal construction, in favor of Sgt. DeLee, as it was required to do. The court also did not afford any deference to the DOL’s regulations regarding

seniority-based benefits of employment, or consider the consistent views of the agency (DOJ) that Congress entrusted to litigate USERRA claims on behalf of military service members. Finally, by allowing the City to apply its own notions of fiscal “responsibility and fairness” towards its police officers in Ordinance 1480, Appx. 8, 33, the court also failed to effectuate Congress’s intention that USERRA supersede contrary local ordinances. See 38 U.S.C. 4302(b).

Given this overwhelming authority in DeLee’s favor, the court’s grant of summary judgment for the City rests almost exclusively upon its interpretation of *Foster, supra*. The district court’s view of *Foster*, however, was expressly rejected by the Supreme Court’s decisions in *Alabama Power* and *Coffy, supra*.

ARGUMENT

THE DISTRICT COURT ERRED IN HOLDING THAT THE CITY’S LONGEVITY PAY IS SHORT-TERM COMPENSATION FOR WORK PERFORMED, RATHER THAN A SENIORITY-BASED EMPLOYMENT BENEFIT UNDER USERRA

A. Standard Of Review

This Court reviews the district court’s decision on the parties’ cross-motions for summary judgment de novo, construing all facts and inferences in favor of the party against whom summary judgment was granted. *Gross v. PPG Indus., Inc.*, 636 F.3d 884, 888 (7th Cir. 2011).

B. The District Court Failed To Apply The Proper Analysis Mandated By Governing Supreme Court Decisions

The district court did not apply the legal analysis the Supreme Court mandated in *Alabama Power Co. v. Davis*, 431 U.S. 581 (1977), and *Coffy v. Republic Steel Corp.*, 447 U.S. 191 (1980), when it separated the City's longevity pay benefit for police officers into two supposedly distinct components. In so doing, the court improperly limited its consideration only to whether the disputed component (the amount of pay) was more analogous to the vacation benefits at issue in *Foster v. Dravo Corp.*, 420 U.S. 92 (1975), or the severance pay at issue in *Accardi v. Pennsylvania R.R. Co.*, 383 U.S. 225 (1966). By parsing the City's formula for calculating longevity pay, the district court contravened the Supreme Court's instructions to avoid undue focus on formulas, and instead to consider the true or "predominant" nature of the overall benefit. *Alabama Power*, 431 U.S. at 592-594; *Coffy*, 447 U.S. at 203.

Alabama Power crystallized the Supreme Court's reasoning in prior cases into "two axes of analysis" applicable to determine "whether a benefit is a right of seniority secured to a veteran." *Alabama Power*, 431 U.S. at 589. Pursuant to that analysis, the court must first consider whether the benefit would have "accrued with reasonable certainty" if the servicemember had remained continuously employed, or whether the benefit instead was "subject to a significant contingency." *Ibid.* If the reasonable certainty test is satisfied, the court must next

determine the real “nature” of the benefit. See *ibid.* “If [the benefit] is in the nature of a reward for length of service, it is a ‘perquisite of seniority,’” but if the benefit “is in the nature of short-term compensation for services rendered,” it is not an aspect of seniority. *Ibid.* See also *Coffy*, 447 U.S. at 197-198; 20 C.F.R. 1002.212(a) & (b); 70 Fed. Reg. 75,276 (deriving the first two criteria for determining a seniority-based benefit of employment from *Alabama Power*). This Court has held that the two-pronged *Alabama Power* test is the correct starting point for analyzing whether an employment benefit is a “perquisite of seniority” guaranteed to veterans who return to the civilian workplace after an absence for military service. See *Leonard v. United Airlines, Inc.*, 972 F.2d 155, 160 (7th Cir. 1992).

To be sure, the district court’s failure to apply the first prong of this test was of no import, since it was undisputed that Sgt. DeLee satisfied that prong. The district court, however, committed reversible error in failing to properly apply the second *Alabama Power* prong; *i.e.*, the court failed to follow the Supreme Court’s guidance in ascertaining the true nature of the benefit in question.

The Supreme Court’s application of the *Alabama Power* test to particular employment benefits, and its clarification in *Coffy* of its reasoning in *Foster*, provide crucial guidance about the features of benefit plans that must be assessed in determining whether a benefit is seniority-based. For example, the required

passage of a significant period of time before an employee is qualified to receive the benefit is a hallmark of a seniority-based benefit, rather than short-term compensation for work performed. See *Alabama Power*, 431 U.S. at 593-594; *Coffy*, 447 U.S. at 205. Similarly, the employer's failure to provide any benefit during the initial years of employment indicates that a benefit is neither deferred nor short-term compensation for work performed. See *Coffy*, 447 U.S. at 204-205. The absence of additional or increased benefits to account for overtime hours an employee works, or the failure to provide additional benefits to employees who work more than the minimum time required to receive the benefit for a particular year, also demonstrates that a benefit is *not* intended to be short-term compensation for work performed, but rather a seniority-based benefit. Compare *Coffy*, 447 U.S. at 197, 202, 205; *Lang v. Great Falls School District No. 1 & A*, 842 F.2d 1047, 1050 (9th Cir.1988); and *Palmarozzo v. Coca-Cola Bottling Co.*, 490 F.2d 586, 589 & n.4 (1st Cir. 1973), cert. denied, 417 U.S. 955 (1974), with *Foster*, 420 U.S. at 99-100 (citing a proportional increase in vacation benefits resulting from overtime work as indicative of a *bona fide* effort to compensate employees for work performed). At least one court of appeals also has considered an employer's failure to differentiate between high-performing and lackluster employees in providing the benefit as weighing in favor of a finding that a benefit is seniority-based. See *Lang*, 842 F.2d at 1050.

By failing to follow the guidance provided by these decisions, the district court did not recognize that the “true nature” of the overall employment benefit, as it is commonly understood, is dispositive over any single feature of a benefit plan. See *Coffy*, 447 U.S. at 196-198, 203. Accordingly, even some linkage between time actually worked and receipt of the benefit, or the inclusion of hours worked in a benefit calculation formula, cannot transform a benefit into short-term compensation if the predominant nature of the benefit is to reward continuous service with the same employer over a significant time period or to provide economic security to employees who have been in the employer’s service for a significant period. See *Alabama Power*, 431 U.S. at 592-593; *Coffy*, 447 U.S. at 205. Similarly, the district court failed to heed the Supreme Court’s warning to “look beyond the overly simplistic analysis suggested [by the employer] to the nature of the payments.” *Alabama Power*, 431 U.S. at 592.

As we explain below, the district court erred both in deeming the separate “components” of the City’s longevity pay formula dispositive, rather than determining the predominant nature of the benefit as whole (Appx. 8 n.5), and failing to adopt the Supreme Court’s guidance regarding the particular benefit features that indicate that the predominant nature of a benefit is seniority-based. In accordance with these relevant decisions, this Court should conclude that the City’s longevity pay is a seniority-based benefit, reverse the district court’s

erroneous grant of summary judgment for the City, and remand this case with instructions for the district court to enter summary judgment for DeLee.

C. The Features Of The City's Longevity Pay Make Clear That Its Dominant Nature Is A Reward For Lengthy And Continuous City Employment

The district court erred by failing to recognize that the predominant nature of the City's "longevity" pay for police officers was just what the City specified both in nomenclature and by ordinance – a reward for continuous City employment that is "*intended to serve as an incentive to remain in that employment.*" Appx. 2, 33 (emphasis added); see *Alabama Power*, 431 U.S. at 594. Applying *Alabama Power's* analytical framework and the Supreme Court's instructions to focus on the true nature of the benefit rather than calculation formulas, see *Coffy*, 447 U.S. at 203, this Court should hold that the City's longevity pay is a seniority-based benefit protected under 38 U.S.C. 4316(a).

Although the City's description of longevity pay as "essentially a pay raise" for each year of service (Appx. 5) itself would warrant the conclusion that it is a seniority-based benefit, see *Lang*, 842 F.2d at 1049, the district court nevertheless failed to employ *Alabama Power* to correctly conclude that the City's longevity pay constitutes a seniority-based benefit under USERRA. Under the Supreme Court's line of binding precedent characterizing employment benefits for purposes of USERRA's predecessors, the conclusion is inescapable that the dominant nature of the City's longevity pay is its incentive for individuals to continue in City

employment, and thus may not be reduced for military service under Section 4316(a) of USERRA.

In concluding that the City's longevity pay is compensation for work performed, the district court inexplicably failed to address the significance of the first clause in Ordinance 1480's preamble. Ordinance 1480's preamble states: "WHEREAS, longevity pay has long been recognized as an incentive for police [officers] to remain in the service of the City." Appx. 33. In light of this unambiguous language and the dominant role length of continuous service plays in determining the benefit, the nature of longevity pay as a reward for continuous, lengthy service "c[an] not be disguised" by the City's use of a months-of-work factor to calculate the amount of the payments for a particular year. See *Alabama Power*, 431 U.S. at 588. That is because "[e]ven the most traditional kinds of seniority privileges could be as easily tied to a work requirement as to the more usual criterion of time as an employee." *Id.* at 592.

Applying the Supreme Court's guidance in *Alabama Power* to the features of the City's longevity pay benefit for police officers makes clear that the City intends the true nature of that benefit to be exactly what Ordinance 1480 explicitly declares it to be – an incentive for police officers to remain City employees. Appx. 33; accord 38 U.S.C. 4303(12) (providing that the definition of "seniority"

includes “any benefits of employment which accrue with, or are determined by, *longevity in employment*” (emphasis added)).

The undisputed evidence established that City police officers do not receive *any* longevity pay for the work they have performed during the first three years of their employment, when they are deemed not “qualified” to receive it because they have not accrued the requisite three-years of seniority (or “longevity”). Appx. 2. This feature of longevity pay suggests that it is a seniority-based benefit rather than short-term compensation. See, *e.g.*, *Coffy*, 447 U.S. at 205 (“An employee receives no benefits if he has worked for fewer than two years when he is laid off or if he voluntarily terminates his employment. Such a threshold requirement is more characteristic of seniority provisions than of compensation.”); *United States ex rel. Reilly v. New England Teamsters*, 737 F.2d 1274, 1280-1281 (2d Cir. 1984) (holding that pension rights were not short-term compensation rather than a reward for longevity when employees receive no benefit if employed for only 14 rather than 15 years); *Lang*, 842 F.2d at 1050 (explaining that the fact that teachers with 134 or fewer days of teaching receive no compensation warranted against a finding of “short term compensation”).

The continuous service qualification means that a City police officer who starts collecting the longevity pay after his third continuous year of employment, leaves his City employment for personal reasons, and is then rehired by the City

two years later, also will not receive the longevity pay upon completion of his first year of work after returning to City employment. The City would not deem such a police officer “qualified” to receive the longevity pay after his first post-return year of work, because he did not remain *continuously* employed for a lengthy period, regardless of whether he worked twelve full months in the prior year. The City’s longevity plan thus is targeted towards obtaining the benefits of a stable workforce by incentivizing continuous service for a significant period of time, supporting its characterization as predominantly a seniority-based benefit. See *Lang*, 842 F.2d at 1049.

In this case, as in *Coffy* (but in contrast to *Foster*), the City’s longevity payment to police officers does not increase if an officer has worked overtime hours during any or most months of the prior year. Applying the Supreme Court’s decision in *Coffy*, that aspect of the benefit militates against the conclusion that the benefit is short-term or deferred compensation for work performed. Compare *Coffy*, 447 U.S. at 197, 202, 205, with *Foster*, 420 U.S. at 99-100; see also *Lang*, 842 F.2d at 1050; *Palmarozzo*, 490 F.2d at 589 & n.4. Similarly, the absence of any evidence suggesting that City longevity pay decreases for police officers who are absent for the better part of a month, but for a series of successive reasons that individually do not require a leave of absence, also suggests a seniority-based benefit. See *Accardi*, 383 U.S. at 230.

The amount of longevity pay paid to City police officers also bears no relationship to the quality or productivity of their work. That fact weighs against a finding that the benefit is intended to compensate them for work actually performed. See *Lang*, 842 F.2d at 1050. A City police officer who is demoted during the course of a year suffers no reduction in his longevity pay, nor does the benefit increase for a police officer who is promoted during the year (or who becomes more valuable through advanced training). The absence of any performance-related features in the City's longevity pay scheme therefore reflects that the annual increase in the benefit predominantly serves as an "administrative tool to mark the passage" of the officer's work anniversary rather than a *bona fide* effort to compensate police officers for work actually performed. See *ibid*.

Finally, the district court also failed to consider the longevity pay provisions of the 2010 and 2011 Salary Ordinances applicable to non-emergency personnel to assist it in determining the "true nature" of longevity pay for police officers. The three-year qualification period for longevity pay is the same for both categories of employees, and the description of the pay as "additional compensation" is the same. See p. 7, *supra*. There is no reason to believe that the City's purpose in providing longevity pay to the two different categories of employees – incentivizing continuous and lengthy City employment – was different. Indeed, the two most salient differences are the lower longevity pay increment of \$50 per

year for non-emergency personnel and the prohibition against prorating their longevity pay. By failing to consider the longevity pay benefit as the City historically provided it to all employees, and as it was permitted to continue in the same form for non-emergency personnel, the district court ignored important historical context and practice that sheds light on the dominant nature of City longevity pay, irrespective of job category. See 20 C.F.R. 1002.212(c).

D. The District Court Did Not Employ Applicable Canons Of Statutory Construction, Give Due Deference To The Views Of Federal Agencies Charged With Implementing And Enforcing USERRA, Or Respect Congress's Intent That USERRA Supersede Contrary Local Ordinances

In determining whether the disputed longevity pay was a seniority-based benefit of employment protected under 38 U.S.C. 4316(a) or a non-seniority based benefit subject only to Section 4316(b)'s nondiscrimination requirement, the district court also failed to apply important canons of statutory interpretation. Those precepts include: the rule that remedial statutes benefitting military servicemembers must be liberally interpreted in their favor; appropriate levels of deference to and consideration of the interpretations of federal agencies that have roles in implementing and enforcing USERRA; and the federal supremacy principles embodied in 38 U.S.C. 4302(b) to ensure that federal statutory obligations supersede inconsistent local laws such as Ordinance 1480.

1. *The District Court Interpreted USERRA's Definition Of Seniority Narrowly Rather Than Liberally*

The district court ignored the requirement to interpret federal remedial legislation benefitting veterans liberally in their favor when it gave USERRA's seniority definition an unduly narrow meaning in the context of 38 U.S.C. 4316(a). See *Fishgold*, 328 U.S. at 284-285; *Coffy*, 447 U.S. at 196; *Davis v. Advocate Health Ctr. Patient Care Exp.*, 523 F.3d 681, 683-684 (7th Cir. 2008); *Leonard*, 972 F.2d at 158. Although the district court could have reached the correct result simply by applying *Alabama Power* and its progeny correctly, if there were any doubt, the court should have recognized that "the interests of veterans weigh heavily in the scales" and therefore require a liberal statutory construction. *Leonard*, 972 F.2d at 158.

Section 4303(12) of USERRA defines "seniority" as "longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment." 38 U.S.C. 4303(12). To appropriately afford USERRA a liberal construction in Sgt. DeLee's favor, the district court should have avoided giving a "narrow, technical definition" to the term "seniority" in Section 4316(a) of USERRA, as it did; rather, it should have afforded the term "a meaning that is consonant" with Congress's intention to restore servicemembers to their pre-service positions. *Accardi*, 383 U.S. at 229; see also *Fishgold*, 328 U.S. at 284-285. The district court thus erred in taking an improperly narrow view

of seniority in considering the nature of City's longevity pay. Like its predecessors, USERRA's requirements are "not satisfied by giving returning veterans seniority in some general abstract sense and then denying them the perquisites and benefits that flow from it." *Accardi*, 383 U.S. at 230. By denying DeLee the full benefits of passing the three-year seniority threshold; the increased incentives to remain in City employment with the passage of each year; and his continuous City employment apart from periods of military service, the district court failed to follow both Supreme Court direction and the canon of liberal statutory interpretation applicable to USERRA.

2. *The District Court Did Not Give Due Deference To Federal Agencies With Roles In Implementing And Enforcing USERRA*

The district court also failed to give any deference to DOL's regulations implementing 38 U.S.C. 4302 and 4316, or the agency's explanations of them. See *Leonard*, 972 F.2d at 155 (DOL's construction of USERRA's predecessor is entitled to "some measure of deference."). In particular, DOL's regulation at 20 C.F.R. 1002.212 establishes criteria to determine whether a particular benefit of employment is seniority-based. Those criteria are derived directly from the Supreme Court's decision in *Alabama Power*, and make clear that the City's characterization of the benefit as short-term compensation for work performed should not have been dispositive.

Moreover, as with USERRA's predecessors, DOJ is the agency charged with representing veterans to file suit under USERRA when the Attorney General believes there is a likely statutory violation. 38 U.S.C. 4323(a). Indeed, DOJ represented the veterans to recover their perquisites of seniority in *Accardi*, *Alabama Power*, *Coffy*, and *Leonard* (but not in *Foster*). DOJ's consistent view on the subject of seniority-based benefits under USERRA and its predecessors – expressed in the litigation DOJ files to vindicate the veteran's rights – are also worthy of at least "respectful consideration." See *George v. Junior Achievement of Cent. Ind.*, 694 F.3d 812, 816-817 (7th Cir. 2012); cf. *Old Ben Coal Co. v. Director*, 292 F.3d 533, 542 & n.8 (7th Cir. 2002) (deference to a federal agency's position in a brief may be appropriate, pursuant to *Auer v. Robbins*, 519 U.S. 452, 462 (1997), if there is no reason to believe an agency's position is just a convenient litigating position and it is not defending itself in the litigation).

3. *The District Court Failed To Effectuate Congress's Intention That USERRA Supersede Contrary Local Ordinances*

To ensure that employers do not penalize employees' military service and thereby reduce civilian participation in the uniformed services, local employment ordinances cannot reduce the benefits that Congress has secured for veterans under USERRA. 38 U.S.C. 4302(b); see *Fishgold*, 328 U.S. at 285; *Lang*, 842 F.2d at 1050. Section 4302(b) provides that USERRA supersede all inconsistent laws, agreements, and practices, to effectuate Congress's intention to ensure that

veterans like Sgt. DeLee are not penalized in their civilian careers when they answer the call to serve their country. The district court effectively ignored 38 U.S.C. 4302(b) and the Congressional intent underlying that provision by holding that Ordinance 1480 trumps Sgt. DeLee's USERRA rights. See Appx. 8 (DeLee's analysis of Supreme Court precedent "completely ignores the existence of Plymouth Ordinance No. 1480, enacted, according to its preamble, in the interest of fiscal responsibility and fairness, requiring longevity pay to be prorated for any leave of absence from active police duty and paid only for the months actually worked" (internal quotation marks omitted)).

The district court put the cart before the horse by giving controlling weight to the very Ordinance DeLee challenged as violating his USERRA rights. As a result, the court's holding directly contravenes Congress's purpose of protecting returning servicemembers from the loss of benefits they would have accrued by virtue of their employment longevity had they remained in the workplace rather than serving our country, as well as Congress's concomitant direction that USERRA supersedes all contrary local ordinances. Congress has already determined, in Section 4316 of USERRA, what is "fair" with respect to military servicemembers absent from their civilian workplaces.⁵ Accordingly, the City's

⁵ Under the City's preferred notion of fairness, a City police officer with 20 years of continuous service would be penalized by losing \$375 $((\$225 \times 20)/12)$ for each month he or she is deployed to serve this country in the military.

stated desire to reduce its expenditures by prorating longevity pay only for its emergency personnel (who were more likely to take military leaves of absence and received a higher longevity pay rate than non-emergency personnel) is not dispositive of the City's right to do so with respect its emergency personnel who are also servicemembers protected by USERRA. See 38 U.S.C. 4302(b).

E. Foster Is Inapposite

In the face of all of this relevant authority weighing strongly in DeLee's favor, the district court's grant of summary judgment for the City rests almost entirely on its holding that the City's longevity pay benefit is analogous to the vacation benefit that the Supreme Court determined not to be seniority-based in *Foster, supra*. The vacation benefit in *Foster*, however, bears little resemblance to the City's longevity pay.

In both *Alabama Power* and *Coffy*, the Supreme Court rejected the respective employers' arguments that *Foster* applied to render the disputed employment benefits compensation for work performed. Perhaps because the district court in this case declined to give appropriate consideration to *Alabama Power* or *Coffy* (Appx. 8 n.5), it erroneously accepted the City's similar argument and concluded that longevity pay was akin to the vacation benefit in *Foster*. In doing so, the district court failed to examine the unique features of *Foster's*

vacation pay benefit that the Supreme Court later distinguished in *Alabama Power* and *Coffy*, as well as the Court's subsequent clarification of its reasoning in *Foster*.

In *Alabama Power*, the Supreme Court explained that its decision in *Foster* had "turned on the nature of the vacation benefits, not on the particular formula by which those benefits were calculated," because "[e]ven the most traditional kinds of seniority privileges could be as easily tied to a work requirement as to the more usual criterion of time as an employee." *Alabama Power*, 431 U.S. at 592.

Similarly, in *Coffy*, the Supreme Court described the result in *Foster* as turning on the fact that "the real nature of that benefit * * * was reflected in the common conception of a vacation as a reward for and respite from a lengthy period of labor." 447 U.S. at 197 (internal quotation marks and citations omitted). The Court explained that, in *Foster*, the "contractual provisions for additional vacation credits and higher benefits for overtime work and for pro rata vacations for employees laid off before achieving the necessary number of weeks worked supported that conception" of a vacation. *Ibid.* The Court had accordingly held that vacation pay "was intended as a form of deferred short-term compensation for work actually performed," rather than a seniority right protected by the statute.

Ibid.

Alabama Power and *Coffy* both involved employers that, like the City here, had credited the veteran-employees with their military service time for purposes of

determining continuous employment, but not for determining the total amount of benefit payments to which they were entitled. See *Coffy*, 447 U.S. at 199 n.8; *Alabama Power*, 431 U.S. at 590-591. Despite the potential for the Supreme Court to examine the individual components of the benefit calculation formulas in those cases and treat them as separate “benefits,” as the district court did in this case, the Court declined to do so. The Supreme Court instead engaged in a holistic analysis that considered the overall purpose and dominant nature of the disputed benefits. See *Alabama Power*, 431 U.S. at 593-594; *Coffy*, 447 U.S. at 203-205.

Contrary to the Supreme Court’s guidance in *Alabama Power* and *Coffy*, and in reliance upon *Foster*, the City and district court impermissibly parsed the longevity benefit into the various components of the formula used to calculate the pay for the preceding year: (1) the years of continuous service (for which military leave time was included) multiplied by the \$225 payment factor, and (2) a percentage reduction factor, between zero and 100% (12/12), that the City used to calculate the payment amount for the particular preceding year. In doing so, they failed to heed the Supreme Court’s warning in *Alabama Power* and *Coffy* against improper focus on a formula rather than the true nature of the benefit as it would be commonly understood. Accordingly, *Foster* affords no support for the district court’s grant of summary judgment for the City.

CONCLUSION

This Court should reverse the district court's order granting summary judgment to the City, and remand with instructions for the district court to enter summary judgment in favor of Sgt. DeLee on liability, with the remaining liquidated damages claim to be resolved at trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify, pursuant to Federal Rule of Appellate Procedure 32(a)(7)(C), that the attached BRIEF FOR APPELLANT ROBERT D. DELEE:

(1) complies with Federal Rule of Appellate Procedure 32(a)(7)(B) because it contains 7,604 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(a)(7)(B)(iii); and

(2) complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Word, in 14-point Times New Roman font.

s/ Jodi B. Danis

JODI B. DANIS

Attorney

Dated: June 23, 2014

CERTIFICATE OF SERVICE

I certify that on June 23, 2014, I electronically filed the foregoing BRIEF FOR APPELLANT ROBERT D. DELEE with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the appellate CM/ECF system.

I also certify that all counsel of record are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

s/ Jodi B. Danis
JODI B. DANIS
Attorney

APPENDIX

CERTIFICATION OF REQUIRED MATERIALS

Per Seventh Circuit Rule 30, the appellant hereby certifies that all required materials are included in this appendix.

s/ Jodi B. Danis
JODI B. DANIS
Attorney

Date: June 23, 2014

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ROBERT D. DELEE,)
Plaintiff,)
)
v.) No. 3:12 CV 380
)
CITY OF PLYMOUTH, INDIANA.,)
Defendants.)

OPINION AND ORDER

This matter is before the court on cross-motions for summary judgment.¹ Summary judgment is of course to be granted when “there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). When, as in the present case, the facts necessary to make a decision are undisputed, and the issue is purely one of statutory interpretation, summary judgment is especially appropriate. *Adler v. Madigan*, 939 F.2d 476, 478 (7th Cir. 1991).

The issue in this case is whether the City of Plymouth, Indiana (hereinafter, “Plymouth” or “the City”), violated the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4316 (hereinafter, “USERRA”) when it reduced or pro-rated² a longevity component of plaintiff Robert D. DeLee’s (hereinafter , “DeLee”) salary. DeLee is Plymouth police officer who, at the times relevant here, had

¹ Strictly speaking, plaintiff’s motion is one seeking partial summary judgment on the issue of whether a statutory violation occurred, reserving for trial the issue whether that violation, if it occurred, was wilful.

² The City refers to what occurred as proration of pay and hotly contends that by calling it a “reduction” in pay plaintiff DeLee has mischaracterized undisputed facts or created a disputed issue. The court does not view these alternative characterizations of DeLee’s salary calculation as creating a disputed issue of fact.

been employed in that capacity for 11 previous years. DeLee is also a reserve officer in the United States Air Force, and was called-up for eight month's active-duty deployment from September 1, 2010, to May 11, 2011, occurring during his 12th year of employment by Plymouth. Whether or not the USERRA requires Plymouth to pay him longevity pay for those eight months is the issue in this case.

Plymouth's longevity pay is an amount paid as a lump sum to police officers who have been continuously employed by Plymouth for at least three years, intended to serve as an incentive to remain in that employment. (DE #8-4 at 1.) It is paid annually on the first pay date following the individual's anniversary date of employment in an amount equal to \$225 times years of continuous employment. (DE #8-2 at 3; DE #8-3 at 1.) For example, after completing ten years of employment an officer would receive a payment on \$2250.00 in his first paycheck in the eleventh year.

At all times that matter here, Plymouth had three relevant ordinances governing longevity pay. First, Ordinance Nos. 2009-1987 and 20010-2009, which in pertinent part provide in identical terms:

Longevity pay is additional compensation to be paid to a qualified police officer. A qualified police officer is one who has at least three (3) years of continuous service to the City.

Longevity pay is calculated to be Two Hundred Twenty-five Dollars (\$225.00). The amount to be paid to a qualified police officer is \$225.00 multiplied by the number of years of continuous service. The maximum amount paid shall be \$4,500.00. Longevity shall be paid on the pay day following the anniversary date of employment for that individual.**

...

**Except for those instances noted in Ordinance No. 1480.

(DE #8-2 at 3; #8-3 at 1.) Then, Ordinance No. 1480, which in pertinent part provides:

WHEREAS in the interest of fiscal responsibility and fairness it should be recognized that a member of the police department . . . who is in an inactive status but who has reached an anniversary date for purposes of longevity pay should be paid said longevity but as calculated on the number of months of active service to the City . . .

Longevity pay shall be prorated for any qualified policeman or policewoman who during the year immediately preceding their anniversary date is on a leave of absence or who is otherwise not engaged in the active performance of the normal and customary duty of the police department. Longevity pay shall be prorated as based on the number of months of actual active duty during the year immediately preceding the anniversary date.

(DE #8-4 at 1.) Plymouth's Employee Handbook allows for several types of leaves of absence which could last a month or longer. (DE # 8-1 at 4.)

Turning to the federal statute at issue, the purpose of the USERRA is to "encourage[] military service by granting service members rights with respect to civilian employment that are not available to similarly situated, nonmilitary employees," as, for example, by § 4316 which grants "a reemployed service member the same seniority benefits that would have accrued had the member 'remained continuously employed.'" *Crews v. City of Mt. Vernon*, 567 F.3d 860, 867 (7th Cir. 2009) (quoting 38 U.S.C. § 4316(a)). As relevant to the dispute here, § 4316, which the parties agree preempts any conflicting state law such as Plymouth's ordinances, provides:

(a) A person who is reemployed under this chapter is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.

(b)

(1) Subject to paragraphs (2) through (6), a person who is absent from a position of employment by reason of service in the uniformed services shall be –

(A) deemed to be on furlough or leave of absence while performing such service; and

(B) entitled to such other rights and benefits not determined by seniority as are generally provided by the employer of the person to employees having similar seniority, status, and pay who are on furlough or leave of absence under a contract, agreement, policy, practice, or plan in effect at the commencement of such service or established while such person performs such service.

.

(3) A person deemed to be on furlough or leave of absence under this subsection while serving in the uniformed services shall not be entitled under this subsection to any benefits to which the person would not otherwise be entitled if the person had remained continuously employed.

38 U.S.C. § 4316(a),(b).

DeLee's anniversary date of employment falls on April 20, and after that date in 2010 he had eleven years of continuous service. (DE #8-1 at 5, ¶ 12.) He was paid a longevity sum of \$2,475.00 (*i.e.*, the product of 11 times \$225.00). (*Id.*) In his twelfth year of employment he was on active duty in his capacity as an Air Force Reserve officer for eight months, and received longevity pay in the sum of \$900.00, that is, \$2700.00

prorated by the number of months of active-duty service as a police officer during the year, four, or 1/3 of the year. (*Id.* at ¶ 13.)³ After he returned from his deployment and resumed active duty as a Plymouth police officer, he requested that he be paid \$1800.00 longevity pay for his period of active duty. Plymouth refused, and the present lawsuit followed.

For the purpose of a providing a simplified context, the court explains the parties' opposing views on as follows. Plaintiff DeLee sees his longevity pay as a benefit "determined by seniority," 38 U.S.C. § 4316(a), and because he is entitled to the "additional seniority . . . benefits that [he] would have attained if [he] had remained continuously employed," (*Id.*), he is entitled to the full amount of his longevity pay. In other words, the \$2700 that correlate to 12 years of employment is a seniority benefit that Plymouth cannot reduce. Plymouth, on the other hand, though it pays the longevity pay as an annual lump sum, sees it as "essentially a pay raise of \$225.00 for each year a police officer continues to work for Plymouth." (DE #9 at 19.) Plymouth agrees that the years-based calculation which determines the rate of longevity pay is a seniority benefit that USERRA § 4316(a) requires continue the same for a deployed member of the armed services as if he or she had remained continuously employed. However, Plymouth believes that prorating the amount of longevity pay due based on time actually worked is a legitimate means of paying compensation for work actually

³ Plymouth paid him the \$900.00 in September, 2010, shortly before he left for active duty, for the 4 months he had already worked since his anniversary date on April 20, 2010.

performed, not a seniority-based benefit, and so allowed by USERRA § 4316(b)(3) as interpreted by applicable precedent.

Plymouth believes the outcome of this case is dictated by *Foster v. Dravo Corp.*, 420 U.S. 92 (1975).⁴ In *Foster*, employees were entitled to full vacation benefits only if they worked at least 25 weeks in a year. Foster was deployed for 18 months and failed to meet that requirement in two consecutive years, but when he returned to his job, he argued that he was entitled by the statute to the same vacation benefits he would have received had he remained continuously employed. *Foster*, 420 U.S. at 95. Beginning its analysis by noting that “where the claimed benefit requires more than simple continued status as an employee, the Court has held that it is not protected by the statute,” *Id.* at 97, the Court held that Foster’s vacation benefits were intended as compensation for work performed, and so not required by the statute to be provided:

Generally, the presence of a work requirement is strong evidence that the benefit in question was intended as a form of compensation. Of course, as in the *Accardi* case, the work requirement may be so insubstantial that it appears plainly designed to measure time on the payroll rather than hours on the job; in that event, the Act requires that the benefit be granted to returning veterans. But where the work requirement constitutes a bona fide effort to compensate for work actually performed, the fact that it

⁴ *Foster* involved a predecessor statute to USERRA, the Military Selective Service Act. Like the USERRA, it contained a provision requiring a service member returning to employment to be given the same benefits he/she would have received if continuously employed. See *Foster*, 420 U.S. at 93. Cases interpreting predecessors to USERRA are useful in interpreting it. Cf. *McGuire v. UPS*, 152 F.3d 673, 676 (7th Cir. 1998) (discussing Veterans’ Reemployment Rights Act and the USERRA); see *Lapine v. Town of Wellesley*, 970 F. Supp. 55, 59 n.2 (D. Mass. 1997) (explaining how Military Selective Service Act ultimately became the USERRA).

correlates only loosely with the benefit is not enough to invoke the statutory guarantee.

Id. at 99-100.

The *Accardi* case involved a claim to severance pay that was based on an employee's years of "compensated" service with the employer. *Accardi v. Pennsylvania R. Co.*, 383 U.S. 225 (1966), In *Accardi* the "Court concluded that the severance payments were not intended as a form of deferred compensation for work done in the past, but rather as a means of compensating employees for the loss of rights and benefits accumulated over a long period of service," and thus the payments were a seniority benefit that could not be reduced. *Foster*, 420 U.S. at 98 (explaining *Accardi*). The Court distinguished *Foster's* vacation benefit as a bona fide means of providing compensation for work performed, not a benefit earned purely because of seniority, and so the statute did not require the employer to provide it on *Foster's* return to work from his military duty.

DeLee agrees with Plymouth that *Foster* and *Accardi* are relevant, arguing that his longevity pay is like the severance pay in *Accardi*, and not like the vacation benefit in *Foster*, because:

Plymouth's longevity pay formula does not vary based on factors such as overtime and short periods of illness. Hence, Plymouth's longevity pay formula is "plainly designed to measure time on the payroll rather than hours on the job." *Id.* [*Foster*] at 99. Additionally, longevity pay is defined in Plymouth's city ordinances as a reward and incentive for lengthy service. The very name "longevity pay" denotes a reward for lengthy service and does not suggest a purpose of short-term compensation for

work performed. Therefore, Plymouth's longevity pay is a perquisite of seniority within the meaning of the principles enunciated in *Foster*.

(DE #18 at 17.) This analysis completely ignores the existence of Plymouth Ordinance No. 1480, enacted, according to its preamble, "in the interest of fiscal responsibility and fairness," requiring longevity pay to be prorated for any leave of absence from active police duty and paid only for the months actually worked. (DE #8-4.) Thus, while the rate (*i.e.*, \$225 times years of employment) of Plymouth's longevity pay is plainly a seniority benefit, the amount of Plymouth's longevity pay due to be paid for any given year is clearly intended to be compensation for work actually performed in the preceding year. This makes Plymouth's longevity pay like the vacation benefit in *Foster*, not the severance pay in *Accardi*.

For this reason, and because of the undisputed facts and the clear and unambiguous text of § 4316 of the USERRA, it is not necessary to give lengthy consideration to the additional cases cited by the parties.⁵ Subsection (a) of § 4316 required Plymouth to give DeLee the "the additional seniority and rights and benefits

⁵ Plymouth contends that as in *Gross v. PPG Indus. Inc.*, 636 F.3d 884 (7th Cir. 2011), DeLee is not entitled to have his longevity pay calculated using a formula he finds preferable. *Gross* is inapplicable because it involved a benefit the employer provided only to veterans, voluntarily, and not a benefit applicable to all employees. DeLee argues that his longevity pay is like an unemployment compensation benefit at issue in *Coffy v. Republic Steel Corp.*, 447 U.S. 191 (1980), and the severance pay involved in *Alabama Power Co. v. Davis*, 431 U.S. 581 (1977). Both of those cases, using the principle derived from *Accardi*, found that the "true nature" of the benefit at issue was a reward for longevity, not a form of short-term compensation for work. DeLee argues that the true nature of his longevity pay – as implied by its nomenclature – is a reward for longevity. As explained herein, that is true as to the rate of longevity pay, and DeLee was not deprived of a longevity rate increase based on his seniority. It is not true, however, as to the earning of longevity pay, which Plymouth closely ties, for all police officers, to time actually worked, making it a form of short-term compensation.

that [he] . . . would have attained if [he] . . . had remained continuously employed.” 38 U.S.C. § 4316(a). It is undisputed that Plymouth did this by paying DeLee longevity pay at the same rate as if he had 12 years of continuous service.⁶ Subsection (b) of § 4316 states that DeLee is “not entitled . . . to any benefits to which [he] . . . would not otherwise be entitled if [he] . . . had remained continuously employed.” 38 U.S.C. § 4316(b)(3). It is undisputed that if DeLee had remained continuously employed by Plymouth but taken an eight-month leave for any reason, such as an extended illness, his longevity pay would have been prorated just as it was. Thus, § 4316 of the USERRA does not prohibit Plymouth from making a pro-rata reduction to DeLee’s longevity pay for the eight-month period of work he missed while on active duty.

For the reasons above, Plymouth’s motion for summary judgment (DE #6) is **GRANTED**; DeLee’s motion for partial summary judgment (DE # 17) is **DENIED**. The clerk is to enter final judgment in favor of defendant City of Plymouth, Indiana, stating that plaintiff Robert D. DeLee shall take nothing by way of his complaint.

SO ORDERED.

Date: March 31, 2014

s/ James T. Moody
JUDGE JAMES T. MOODY
UNITED STATES DISTRICT COURT

⁶ Thus, DeLee’s argument that he “received credit for his time in service for purposes of determining eligibility for longevity pay based on the continuous service requirement but was not credited his time in service when the *amount* of his longevity pay benefit was calculated,” (DE # 18 at 11), is simply wrong. His seniority-increased rate produced a greater amount.

FILED

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

12 JUL 16 AM 11:01

FOR THE UNITED STATES DISTRICT COURT OF INDIANA

ROBERT D. DELEE,)
)
Plaintiff,)
)
v.)
)
CITY OF PLYMOUTH, INDIANA,)
)
Defendant.)
_____)

Civil Action No. 3:12CV 380

COMPLAINT AND JURY DEMAND

Plaintiff Robert D. DeLee (DeLee), by the undersigned attorneys, alleges as follows:

INTRODUCTION

- 1. This is a civil action brought pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335 (USERRA).

JURISDICTION AND VENUE

- 2. This Court has jurisdiction over the subject matter of this action pursuant to 38 U.S.C. § 4323(b).
- 3. Venue is proper in this district under 28 U.S.C. §1391(b)(2) because “a substantial part of the events or omissions giving rise to [plaintiff’s] claim occurred” in this judicial district.

PARTIES

- 4. Plaintiff DeLee resides in Marshall County, Indiana. Marshall County, Indiana is within the jurisdiction of this Court.
- 5. Defendant City of Plymouth, Indiana (Plymouth) is a municipal government entity within the territorial and subject matter jurisdiction of this Court.

CLAIM FOR RELIEF

6. DeLee has worked for Plymouth as a Patrolman in the Police Department since on or about April 19, 1999.
7. Ordinance No. 2010-2009 of the City of Plymouth, adopted on August 23, 2010, continued Plymouth's policy that police officers for Plymouth are entitled to longevity pay on the anniversary date of their employment of \$225 per year of service up to a maximum of \$4,500.
8. Pursuant to Ordinance No. 1480 of the City of Plymouth adopted on November 13, 1989, longevity pay "has long been recognized as an incentive for police and firemen to remain in the service of the City."
9. DeLee has served in the United States Air Force Reserve (Air Force Reserve) since on or about July 7, 1997, and currently holds the rank of Technical Sergeant.
10. On April 20, 2010, DeLee received the full amount of longevity pay to which he was entitled of \$2,475 based on 11 years of continuous employment up to that date.
11. DeLee was mobilized for active duty beginning on September 1, 2010 and concluding on May 11, 2011. DeLee worked full time as a Patrolman for Plymouth both before and after his active duty deployment for the Air Force Reserve between September 1, 2010 and May 11, 2011.
12. DeLee notified Plymouth prior to his deployment on September 1, 2010, and at that time Plymouth paid DeLee a prorated amount of longevity pay of \$900 for the four months he had worked for Plymouth since the anniversary date of his employment on April 19, 2010. As of the date this Complaint was filed, Plymouth has not paid, and has

continued to refuse to pay, DeLee longevity pay of \$1,800 for the eight month period he was deployed. On the fourth page of a letter dated December 19, 2011, Plymouth's City Attorney admitted that Plymouth would have paid DeLee the additional \$1,800 of longevity pay if DeLee had not been mobilized for active duty with the Air Force Reserve between September 1, 2010 and May 11, 2011.

13. Pursuant to USERRA, 38 U.S.C. § 4316(a), a person in a uniformed service, which includes the Air Force Reserve, "is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed."
14. Longevity pay that Plymouth provides to its police officers is a "right and benefit determined by seniority."
15. Defendant Plymouth violated USERRA, § 4316(a) by refusing to pay DeLee longevity pay, which is a seniority-based benefit of employment to which he otherwise would have been entitled but for his deployment by the Air Force Reserve, for his eight month period of active service between September 1, 2010 and May 11, 2011.
16. Plymouth's violation of USERRA § 4316(a), as described in the preceding paragraph, was willful.

REQUEST FOR RELIEF

WHEREFORE, DeLee requests that the Court enter judgment against Plymouth as follows:

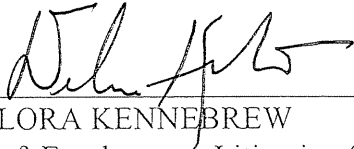
- A. Declare that Plymouth's denial of a seniority-based benefit of employment to DeLee because he fulfilled a service obligation was unlawful and violated USERRA, 38 U.S.C. § 4316(a);
- B. Declare that Plymouth's violations of 38 U.S.C. § 4316(a) were willful pursuant to USERRA, 38 U.S.C. § 4323(d)(1)(C);
- C. Require that Plymouth fully comply with USERRA by paying DeLee longevity pay for the time he was fulfilling his service obligation, and liquidated damages pursuant to 38 U.S.C. § 4323(d)(1)(C) for Plymouth's willful violation of USERRA;
- D. Enjoin Plymouth from taking any action against DeLee that fails to comply with the provisions of USERRA;
- E. Award DeLee prejudgment interest on the amount of lost benefits found due; and
- F. Grant such other and further relief that is just and proper.

JURY DEMAND

Plaintiff demands a jury trial on all issues so triable.

Respectfully submitted,

THOMAS E. PEREZ
Assistant Attorney General
Civil Rights Division

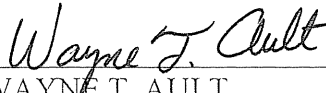


DELORA KENNEBREW
Chief, Employment Litigation Section
Civil Rights Division
United States Department of Justice

JODI B. DANIS
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Employment Litigation Section

Counsel for Plaintiff Robert D. DeLee

DAVID CAPP
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Northern District of Indiana



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Telecopy: 219-852-2770
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

ROBERT D. DELEE,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:12-CV-380
)	
CITY OF PLYMOUTH, INDIANA,)	
)	
Defendant.)	
)	

DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES

Defendant City of Plymouth, Indiana (hereinafter referred to as “Plymouth”),
by counsel, states as follows:

ANSWER

Introduction

1. This is a civil action brought pursuant to the Uniformed Services
Employment and Reemployment Rights Act of 1994, 38 U.S.C. §§ 4301-4335
(USERRA).

Answer: Plymouth admits the allegations of paragraph 1 of the plaintiff’s
complaint.

Jurisdiction and Venue

2. This Court has jurisdiction over the subject matter of this action pursuant
to 38 U.S.C. § 4323(b).

Answer: Plymouth admits the allegations of paragraph 2 of the plaintiff's complaint.

3. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) because "a substantial part of the events or omissions giving rise to [plaintiff's] claim occurred" in this judicial district.

Answer: Plymouth admits that venue is proper in this district pursuant to 28 U.S.C. § 1391(b)(2) and/or 38 U.S.C. § 4323(c)(2).

Parties

4. Plaintiff DeLee resides in Marshall County, Indiana. Marshall County, Indiana is within the jurisdiction of this Court.

Answer: Plymouth admits the allegations of paragraph 4 of the plaintiff's complaint.

5. Defendant City of Plymouth, Indiana (Plymouth) is a municipal government entity within the territorial and subject matter jurisdiction of this Court.

Answer: Plymouth admits the allegations of paragraph 5 of the plaintiff's complaint.

Claim for Relief

6. DeLee has worked for Plymouth as a Patrolman in the Police Department since on or about April 19, 1999.

Answer: Plymouth admits the allegations of paragraph 6 of the plaintiff's complaint.

7. Ordinance No. 2010-2009 of the City of Plymouth, adopted on August 23, 2010, continued Plymouth's policy that police officers for Plymouth are entitled to longevity pay on the anniversary date of their employment of \$225 per year of service up to a maximum of \$4,500.

Answer: Plymouth admits that Ordinance No. 2010-2009 was adopted on August 23, 2010 and further admits that the ordinance addresses, in part, its longevity pay additional compensation for police officers. Plymouth admits that longevity pay additional compensation earned by a police officer is paid on or about the pay day following the anniversary date of a police officer's employment. Plymouth admits that the ordinance provides that the rate of longevity pay additional compensation is, generally, in part, calculated for qualified police officers as \$225.00 per year of service up to a maximum of \$4,500.00. However, Plymouth denies the allegations of paragraph 7 of the plaintiff's complaint to the extent that it characterizes the ordinance as encompassing Plymouth's entire "policy" with respect to longevity pay additional compensation and further denies the allegations of paragraph 7 to the extent that it provides that police officers are "entitled to" a particular amount of longevity pay additional compensation or characterizes a particular amount of longevity pay additional compensation as an entitlement.

8. Pursuant to Ordinance No. 1480 of the City of Plymouth adopted on November 13, 1989, longevity pay "has long been recognized as an incentive for police and firemen to remain in the service of the City."

Answer: Plymouth admits the allegations of paragraph 8 of the plaintiff's complaint.

9. DeLee has served in the United States Air Force Reserve (Air Force Reserve) since on or about July 7, 1997, and currently holds the rank of Technical Sergeant.

Answer: Plymouth admits the allegations of paragraph 9 of the plaintiff's complaint.

10. On April 20, 2010, DeLee received the full amount of longevity pay to which he was entitled of \$2,475 based on 11 years of continuous employment up to that date.

Answer: Plymouth denies the allegations of paragraph 10 of the plaintiff's complaint to the extent that it provides that the plaintiff was "entitled" to a particular amount of longevity pay additional compensation or characterizes a particular amount of longevity pay additional compensation as an entitlement. However, Plymouth admits that, on April 20, 2010, the plaintiff received payment for \$2,475.00 in longevity pay additional compensation then earned and properly calculated pursuant to Plymouth's applicable ordinances.

11. DeLee was mobilized for active duty beginning on September 1, 2010 and concluding on May 11, 2011. DeLee worked full time as a Patrolman for Plymouth both before and after his active duty deployment for the Air Force Reserve between September 1, 2010 and May 11, 2011.

Answer: Plymouth admits the allegations of paragraph 11 of the plaintiff's complaint.

12. DeLee notified Plymouth prior to his deployment on September 1, 2010, and at that time Plymouth paid DeLee a prorated amount of longevity pay of \$900 for the four months he had worked for Plymouth since the anniversary date of his employment on April 19, 2010. As of the date this Complaint was filed, Plymouth has not paid, and has continued to refuse to pay, DeLee longevity pay of \$1,800 for the eight month period he was deployed. On the fourth page of a letter dated December 19, 2011, Plymouth's City Attorney admitted that Plymouth would have paid DeLee the additional \$1,800 of longevity pay if DeLee had not been mobilized for active duty with the Air Force Reserve between September 1, 2010 and May 11, 2011.

Answer: Plymouth admits the allegations of the first sentence of paragraph 12 of the plaintiff's complaint. With respect to the second sentence of paragraph 12, Plymouth admits that the plaintiff has requested payment of \$1,800.00 allegedly due as longevity pay additional compensation for the eight (8) month period he was deployed, and Plymouth further admits that it has denied the plaintiff's request for such payment as such longevity pay additional compensation was not earned and was not due pursuant to Plymouth's applicable ordinances. With respect to the third sentence of paragraph 12, Plymouth denies the allegations to the extent they characterize Plymouth's denial of the plaintiff's request for payment of \$1,800.00 allegedly due as longevity pay additional compensation as being conditioned on or

because of his uniformed service (“if DeLee had not been mobilized for active duty with the Air Force Reserve”) rather than as being conditioned on or because of his not working for or providing services for Plymouth in order to earn such additional compensation during the referenced eight (8) month period.

13. Pursuant to USERRA, 38 U.S.C. § 4316(a), a person in a uniformed service, which includes the Air Force Reserve, “is entitled to the seniority and other rights and benefits determined by seniority that the person had on the date of the commencement of service in the uniformed services plus the additional seniority and rights and benefits that such person would have attained if the person had remained continuously employed.”

Answer: Plymouth admits the allegations of paragraph 13 of the plaintiff’s complaint.

14. Longevity pay that Plymouth provides to its police officers is a “right and benefit determined by seniority.”

Answer: Plymouth admits that the Rate of Pay for Years Served component of its longevity pay additional compensation for police officers, established by the applicable salary and wage Ordinances No. 2009-1987, 2010-2009, is determined by seniority. Plymouth denies the remainder of the allegations of paragraph 14 of the plaintiff’s complaint for the reason that the Time Worked Requirement of its longevity pay additional compensation for police officers, established by Ordinance No. 1480, is not determined by seniority.

15. Defendant Plymouth violated USERRA, § 4316(a) by refusing to pay DeLee longevity pay, which is a seniority-based benefit of employment to which he otherwise would have been entitled but for his deployment by the Air Force Reserve, for his eight month period of active service between September 1, 2010 and May 11, 2011.

Answer: Plymouth denies the allegations of paragraph 15 of the plaintiff's complaint.

16. Plymouth's violation of USERRA § 4316(a), as described in the preceding paragraph was willful.

Answer: Plymouth denies the allegations of paragraph 16 of the plaintiff's complaint.

Request for Relief

WHEREFORE, Plymouth requests that the plaintiff take nothing by way of his complaint and requests that the Court grant all other just and proper relief in favor of Plymouth

AFFIRMATIVE DEFENSES

First Affirmative Defense: Illegality

The plaintiff's claims for relief are barred as they are illegal and in violation of City of Plymouth Ordinance No. 1480.

WHEREFORE, Plymouth requests the Court to enter judgment in its favor and against the plaintiff and further requests that the Court grant all other just and proper relief in favor of Plymouth.

Respectfully submitted,

/s/ Sean Surrisi
Sean Surrisi (IN #25829-71)
Plymouth City Attorney
City of Plymouth
124 N. Michigan St.
Plymouth, IN 46563
Telephone: (574) 936-2948
Fax: (574) 936-4371
E-mail: cityattorney@plymouthin.com

Certificate of Service

I hereby certify that on the 8th day of August, 2012, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which sent notification of such filing to the following:

Wayne T. Ault
Assistant United States Attorney
5400 Federal Plaza, Suite 1500
Hammond, Indiana 46320

/s/ Sean Surrisi
Sean Surrisi (IN #25829-71)

ORDINANCE NO. 2009-1987

AN ORDINANCE FIXING SALARIES OF APPOINTED OFFICERS AND EMPLOYEES,
FIRE AND POLICE PERSONNEL OF THE CITY OF PLYMOUTH, INDIANA FOR THE
YEAR 2010

BE IT ORDAINED by the Common Council of the City of Plymouth, Indiana that from and after the first day of January, 2010, the following appointed officers and employees of the City of Plymouth, Indiana, may receive up to the following salaries and wages. The first payroll for City Employees in 2010 will reflect the hourly rate of pay as established by the 2010 Salary Ordinance. Employee benefits are addressed in the City of Plymouth Employee Handbook adopted by Ordinance No. 97-1686, passed February 24, 1997; Amended by Ordinance No. 2002-1816, passed October 18, 2002.

	<u>2010</u>	
OFFICE OF THE MAYOR		
Secretary	\$ 14.47	per hr
DEPARTMENT OF BUILDING COMMISSION		
Building Commissioner	\$ 47,363.76	per yr
Part-time Building Commissioner	\$ 12.50	per hr
Director of Planning/Development/Grant Administration	42,081.00	per yr
Secretary	14.47	per hr
DEPARTMENT OF LAW		
City Attorney	\$ 77,250.00	per yr
CEMETERY DEPARTMENT		
Cemetery Superintendent	\$ 47,364.00	per yr
Asst. Superintendent	16.63	per hr
Laborers - Regular	14.83	per hr
Laborers (probation 90-180 days)	13.33	per hr
Laborers-Summer/Semiskilled	10.63	per hr
AVIATION DEPARTMENT		
Airport Manager	\$ 31,139.52	per yr
Laborer/Part-time/Semiskilled	10.95	per hr
PARK & RECREATION DEPARTMENT		
Park Superintendent	\$ 48,889.92	per yr
Recreation/Pool Director	32,613.36	per yr
Maintenance Supervisor	16.63	per hr
Laborers/Maintenance-Regular	14.83	per hr
Laborers/Maintenance (probation 90-180 days)	13.33	per hr
Secretary-Office Manager	14.47	per hr
Laborers-Summer/Semiskilled	10.63	per hr
Laborers-Summer Part-time	7.25	per hr
* Life Guards (Instructors WSI)	9.45	per hr
* Life Guards	8.04	per hr

*WSI lifeguards may receive up to \$.25 more per hour for each returning year with cap of \$10.45/hour
*Regular lifeguards may receive up to \$.25 more per hour for each returning year with a cap of \$9.04/hour

MOTOR VEHICLE HIGHWAY/SANITATION DEPARTMENT/CITY GARAGE & WAREHOUSE

Street/Sanitation Superintendent	\$ 48,889.92	per yr
Foreman/Lead Person	16.63	per hr
Mechanics	16.06	per hr
Truck Drivers/Laborers-Regular	14.83	per hr
Purchasing Agent	14.83	per hr
Secretary/Receptionist	14.47	per hr
Truck Drivers/Laborers (probation 90-180 days)	13.33	per hr

CITY ENGINEER/STORM WATER DEPARTMENT

City Engineer/Storm Water Compliance Superintendent	_____	\$ 72,447.84	per yr
Director of Public Works/Storm Water Compliance	_____	64,088.40	per yr

UTILITY DEPARTMENT

Superintendent	_____	\$ 75,000.00	per yr
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WATER WORKS DEPARTMENT

Assistant Superintendent	_____	16.63	per hr
Servicemen	_____	14.83	per hr
Secretary	_____	14.47	per hr.
Servicemen (probation 90-180)	_____	13.33	per hr
Servicemen-Part-time/Semiskilled	_____	10.95	per hr
GIS Programmer	_____	16.19	per hr

The above listed pay for all full time hourly employees shall increase upon each certification of said employees as follows:

DS-L (Requires One Year Exp.)	\$ 1.00
WT-3 (Requires Two Years Exp.)	1.00

WASTE WATER DEPARTMENT

Asst. Superintendent. (Treatment Plant/Coll Sys)	_____	17.48	per hr
Sewage Treatment Plant Lift Station Supervisor	_____	18.59	per hr
Maintenance Repairman - A	_____	16.40	per hr
Sewage Treatment Plant Maintenance Repairman-B	_____	15.00	per hr
Collection System Foreman	_____	16.63	per hr
Laborers Treatment Plant/Coll Sys	_____	14.83	per hr
Laborers (probation 90-180 days) T.P./C.S.	_____	13.33	per hr
Lab Technician Supervisor	_____	16.06	per hr
Asst. Lab Technician	_____	12.13	per hr
Asst. Lab Technician-probation	_____	10.59	per hr
Lab Tech Part-time	_____	11.14	per hr
Watchman/Janitor	_____	9.81	per hr
Part-time Laborer-semiskilled	_____	10.95	per hr
Part-time Receptionist	_____	11.07	per hr
Safety Officer	_____	0.33	per hr

The above listed pay for all full time hourly wastewater department employees shall increase upon certification of said employees as follows:

Class I Plant Operator	\$ 0.50
Class II Plant Operator	1.00
Class III Plant Operator	1.50
Class IV Plant Operator	2.00

OFFICE OF THE CLERK-TREASURER

Deputy Clerk-Treasurer	_____	\$ 16.76	per hr
Deputy Clerk-Treasurer (probation)	_____	14.47	per hr
Utility Billing Clerk	_____	15.09	per hr
Clerk	_____	14.47	per hr
Clerk Part-time	_____	12.33	per hr
Clerk (probation 90-180 days)	_____	13.03	per hr

FIRE DEPARTMENT

Fire Chief/EMS Director	_____	\$ 53,525.28	per yr
Assistant Chief/Fireman	_____	41,503.20	per yr
Assistant Chief/Fireman Paramedic	_____	41,503.20	per yr
Fireman/Chief Mechanic	_____	41,322.96	per yr
Fireman/Chief Paramedic	_____	41,322.96	per yr
Fireman/Training Instructor	_____	41,322.96	per yr
Fireman/Paramedic/Training Instructor	_____	41,322.96	per yr
Fireman/1st Class	_____	39,673.92	per yr
Fireman/Paramedic	_____	39,673.92	per yr
Fireman/Inspector	_____	39,673.92	per yr
Fireman (probation not to exceed one year)	_____	35,706.72	per yr

Fireman/Paramedic (probation not to exceed one year)	_____	35,706.72	per yr
Fireman/EMT (probation not to exceed one year)	_____	33,183.36	per yr
Paramedic Part-time	_____	11.47	per hr
Advance EMT Part-time	_____	10.75	per hr
Basic EMT Part-time	_____	10.01	per hr
Secretary	_____	14.47	per hr
Secretary/Probation (90-180 days)	_____	13.03	per hr

Longevity pay is additional compensation to be paid to a qualified firefighter. A qualified firefighter is one who has at least three (3) continuous years of service to the City.

Longevity pay is calculated to be Two Hundred Twenty-five Dollars (\$225.00). The amount to be paid to a qualified firefighter is \$225.00 multiplied by the number of years of continuous service. The maximum amount paid shall be \$4,500.00. Longevity shall be paid on the pay day following the anniversary date for that individual.**

A Clothing Allowance of \$600.00 per year is paid to all firefighters who have at least one full year of continuous service to the city. Clothing Allowance is payable in equal installments at the end of each quarter.*

Work Schedule - The Fire Department works 24 hours on and 48 hours off. Any extra hours over 212 in a 28 day period are to be paid at time and one-half. If such 28 day period includes benefit days, extra hours worked up to 212 are to be paid at a regular hourly rate. Hours worked over the 212 hours are to be paid at time and one-half. Salaries for the fire department are based on 2928 hours per year.

*Except for those instances noted in Ordinance No. 1479.

**Except for those instances noted in Ordinance No. 1480.

POLICE DEPARTMENT

Chief of Police	_____	\$ 53,525.28	per yr
Asst. Chief of Police	_____	46,114.56	per yr

<u>Position</u>	<u>Projected Hours</u>		
Sergeant	2016 hrs	21.24	per hr
Corporal	2016 hrs	20.75	per hr
Detective/Sergeant	2080 hrs	21.24	per hr
Patrolman Investigator	2016 hrs	20.75	per hr
Patrolman	2016 hrs	20.20	per hr
Patrolman/Probationary (not to exceed one year)	2016 hrs	18.20	per hr

Longevity pay is additional compensation to be paid to a qualified police officer. A qualified police officer is one who has at least three (3) years of continuous service to the City.

Longevity pay is calculated to be Two Hundred Twenty-five Dollars (\$225.00). The amount to be paid to a qualified police officer is \$225.00 multiplied by the number of years of continuous service. The maximum amount paid shall be \$4,500.00. Longevity shall be paid on the pay day following the anniversary date of employment for that individual.**

A Clothing Allowance of \$850.00 per year is paid to all police officers who have at least one full year of continuous service to the city. Clothing Allowance is payable in equal installments at the end of each quarter.*

<u>Position</u>	<u>Projected Hours</u>		
Radio Dispatcher	2016 hrs	\$ 15.55	per hr
Radio Dispatcher (probation 90-180 days)	2016 hrs	13.96	per hr

Work Schedule - There is established a seven (7) day work week for members of the Plymouth Police Department. With the exception of the Records Keeper, Multi-Task Employee, School Patrolman and Part time Radio Dispatcher, the work schedule shall be established as five (5) days on duty, followed by two (2) days off duty, then four (4) days on duty, followed by two days (2) off duty; returning again to the five days on duty, followed by two days off duty; and then four days on duty, followed by two days off duty, with this cycle then repeating itself continuously. This work schedule yields a projected number of work hours of 2,016 per officer.

All non-exempt Police Officers will be paid one and one-half (1-1/2) times their regular rate of pay for all hours worked in excess of forty (40) hours (See §FLSA 553.230) in any scheduled work week. Only hours worked will count for overtime purposes. All overtime work must be approved by the initialing or signing of your time card/sheet by your superintendent.

*Except for those instances noted in Ordinance No. 1479.

**Except for those instances noted in Ordinance No. 1480.

POLICE DEPARTMENT

<u>Position</u>	<u>Projected Hours</u>			
Records Keeper/Clerk	<u>2080 hrs</u>	\$	14.47	per hr
Records Keeper/Clerk--Probation (90-180 days)	<u>2080 hrs</u>		13.03	per hr
Multi-Task Employee	<u>2080 hrs</u>		14.47	per hr

Projected Hours Not Calculated on the Following Part-time Positions

Records Keeper/Clerk Part-time	<u>up to</u>	\$	10.59	per hr
Custodian/Part-time	<u>up to</u>		10.87	per hr
Radio Dispatcher/Part-time	<u>up to</u>		12.83	per hr
School Crossing Guard	<u>up to</u>		28.64	per day

POLICE DEPARTMENT INCENTIVE DAYS

Full-time hourly police personnel who work special details or who work a shift other than the 7:00 a.m. - 3:00 p.m. shift shall be entitled to extra paid days off duty referred to as "incentive days" as follows:

- A. An officer in the Detective/Sergeant or Patrolman Investigator position shall receive one (1) incentive day per calendar month.
- B. Full-time hourly police personnel assigned to the 11:00 p.m. - 7:00 a.m. shift shall receive one (1) incentive day per calendar month.
- C. Full-time hourly police personnel assigned to the 3:00 p.m. - 11:00 p.m. or the 7:00 p.m. - 3:00 a.m. shift shall receive one (1) incentive day every two (2) calendar months.
- D. Full-time hourly police personnel assigned to the 11:00 a.m. to 7:00 p.m. shift shall receive one (1) incentive day every six months.
- E. Full-time hourly police personnel shall begin being compensated for incentive days after working an eligible shift for 30 calendar days.
- F. If a full-time hourly police personnel does not timely use his or her earned incentive days as required above, he or she shall be paid for said day (s) at his or her standard rate. In no event shall any officer be paid overtime (or more than standard rate) for unused incentive days. Said personnel are requested to mark a day off on their time card as an incentive day if they wish to be paid for the day without taking it off.

LONGEVITY PAY FOR FULL-TIME EMPLOYEES (Except Police Officers and Firefighters)

Longevity pay is additional compensation to be paid to qualified full-time non-emergency personnel. Qualified employees are those who are eligible for other benefits paid to full time employees i.e., PERF and health insurance, and who have at least three (3) uninterrupted years of service to the City. Non-emergency personnel includes those employees not employed as Firefighters and Police Officers. Said uninterrupted years of service shall be full calendar years.

Longevity pay is calculated to be Fifty Dollars (\$50.00). The amount to be paid to the qualified full-time non-emergency employee is \$50.00 multiplied by the number of full, uninterrupted years of service to the City of Plymouth in a qualified position. The maximum amount paid shall be \$1,000.00. Longevity shall be paid on the last paycheck of the year for that year's service. Said qualified employee must be employed as a full time employee at the time of payment. Said longevity pay shall not be prorated under any circumstances. If an employee is inactive at the time of said payment, he/she shall not be paid longevity. Inactive shall exclude earned vacation time, sick time or personal days (not to exceed two (2) personal days).


OVERTIME PAY FOR NON-EXEMPT EMPLOYEES (Except Police Officers and Firefighters)

Non-exempt employees will be paid one and one-half (1-1/2) times their regular rate of pay for all hours worked in excess of forty (40) hours in any scheduled work week. Only hours worked will count for overtime purposes. All overtime work must be approved by the initialing or signing of your time card/sheet by your superintendent.

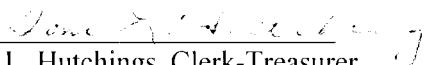
PRINCIPLES OF PUBLIC ACCOUNTABILITY (Exempt salaried employees)

The City of Plymouth's pay system is based on a policy based on principals of public accountability (See §FLSA 541.710(1), which recognizes the City's accountability to its citizens for the use of public funds. Because of this accountability and in the interest of efficient use of these funds, the city will not pay employees for hours that they do no work, unless they have accrued leave available to cover that time. Full-day (8 hour) or partial-day (4 hour) increments will be used if accrued leave is not available.

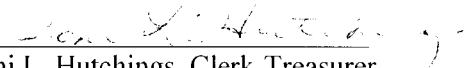
DULY ORDAINED, PASSED AND ADOPTED by the Common Council of the City of Plymouth this 10th day of August, 2009.


Mark Senter, Presiding Officer


Attest:


Toni L. Hutchings, Clerk-Treasurer

PRESENTED by me to the Presiding Officer of the City of Plymouth, Indiana on the 10th day of August, 2009.


Toni L. Hutchings, Clerk-Treasurer

THIS ORDINANCED approved and signed by me on the 10th day of August, 2009.


Mark Senter, Mayor
City of Plymouth, Indiana

ORDINANCE NO. 2010-2009

AN ORDINANCE FIXING SALARIES OF APPOINTED OFFICERS AND EMPLOYEES, FIRE AND POLICE PERSONNEL OF THE CITY OF PLYMOUTH, INDIANA FOR THE YEAR 2011

BE IT ORDAINED by the Common Council of the City of Plymouth, Indiana that from and after the first day of January, 2011, the following appointed officers and employees of the City of Plymouth, Indiana, may receive up to the following salaries and wages. The first payroll for City Employees in 2011 will reflect the hourly rate of pay as established by the 2011 Salary Ordinance. Employee benefits are addressed in the City of Plymouth Employee Handbook adopted by Ordinance No. 97-1686, passed February 24, 1997; Amended by Ordinance No. 2002-1816, passed October 18, 2002.

		<u>2011</u>	
CITY ENGINEER/STORM WATER DEPARTMENT			
City Engineer/Storm Water Compliance Superintendent		\$ 72,447.84	per yr
Director of Public Works/Storm Water Compliance		64,088.40	per yr
DEPARTMENT OF BUILDING COMMISSION			
Building Commissioner		\$ 47,363.76	per yr
Part-time Building Commissioner		12.50	per hr.
Director of Planning/Development/Grant Administration		42,081.00	per yr
Secretary		14.47	per hr.
DEPARTMENT OF LAW			
City Attorney		\$ 77,250.00	per yr.
OFFICE OF THE MAYOR			
Secretary		\$ 14.47	per hr.
OFFICE OF THE CLERK-TREASURER			
Deputy Clerk-Treasurer		\$ 16.76	per hr
Deputy Clerk-Treasurer (probation)		14.47	per hr
Utility Billing Clerk		15.09	per hr
Clerk		14.47	per hr
Clerk Part-time		12.33	per hr
Clerk (probation 90-180 days)		13.03	per hr
POLICE DEPARTMENT			
Chief of Police		\$ 53,525.28	per yr
Assistant Chief of Police		46,114.56	per yr
<u>Position</u>	<u>Projected Hours</u>		
Sergeant	2016 hrs	\$ 21.24	per hr
Corporal	2016 hrs	20.75	per hr
Detective/Sergeant	2080 hrs	21.24	per hr
Patrolman Investigator	2016 hrs	20.75	per hr
Patrolman	2016 hrs	20.20	per hr
Patrolman/Probationary (not to exceed one year)	2016 hrs	18.20	per hr

Longevity pay is additional compensation to be paid to a qualified police officer. A qualified police officer is one who has at least three (3) years of continuous service to the City.

Longevity pay is calculated to be Two Hundred Twenty-five Dollars (\$225.00). The amount to be paid to a qualified police officer is \$225.00 multiplied by the number of years of continuous service. The maximum amount paid shall be \$4,500.00. Longevity shall be paid on the pay day following the anniversary date of employment for that individual.**

A Clothing Allowance of \$850.00 per year is paid to all police officers who have at least one full year of continuous service to the city. Clothing Allowance is payable in equal installments at the end of each quarter.*

		<u>2011</u>	
<u>Position</u>	<u>Projected Hours</u>		
Radio Dispatcher	2016 hrs	\$ 15.55	per hr
Radio Dispatcher (probation 90-180 days)	2016 hrs	13.96	per hr

Work Schedule - There is established a seven (7) day work week for members of the Plymouth Police Department. With the exception of the Records Keeper, Multi-Task Employee, School Patrolman and Part time Radio Dispatcher, the work schedule shall be established as five (5) days on duty, followed by two (2) days off duty, then four (4) days on duty, followed by two days (2) off duty; returning again to the five days on duty, followed by two days off duty; and then four days on duty, followed by two (2) days off duty, with this cycle then repeating itself continuously. This work schedule yields a projected number of work hours of 2,016 per officer.

All non-exempt Police Officers will be paid one and one-half (1-1/2) times their regular rate of pay for all hours worked in excess of forty (40) hours (See §FLSA 553.230) in any scheduled work week. Only hours worked will count for overtime purposes. All overtime work must be approved by the initialing or signing of your time card/sheet by your superintendent.

ORDINANCE NO. 2010-2009

*Except for those instances noted in Ordinance No. 1479.
 **Except for those instances noted in Ordinance No. 1480.

POLICE DEPARTMENT

<u>Position</u>	<u>Projected Hours</u>			
Records Keeper/Clerk	2080 hrs	\$	14.47	per hr
Records Keeper/Clerk—Probation (90-180 days)	2080 hrs		13.03	per hr
Multi-Task Employee	2080 hrs		14.47	per hr

Projected Hours Not Calculated on the Following Part-time Positions

Records Keeper/Clerk Part-time	up to	\$	10.59	per hr
Custodian/Part-time	up to		10.87	per hr
Radio Dispatcher/Part-time	up to		12.83	per hr
School Crossing Guard	up to		28.64	per day

POLICE DEPARTMENT INCENTIVE DAYS

Full-time hourly police personnel who work special details or who work a shift other than the 7:00 a.m. - 3:00 p.m. shift shall be entitled to extra paid days off duty referred to as "incentive days" as follows:

- A. An officer in the Detective/Sergeant or Patrolman Investigator position shall receive one (1) incentive day per calendar month.
- B. Full-time hourly police personnel assigned to the 11:00 p.m. - 7:00 a.m. shift shall receive one (1) incentive day per calendar month.
- C. Full-time hourly police personnel assigned to the 3:00 p.m. - 11:00 p.m. or the 7:00 p.m. - 3:00 a.m. shift shall receive one (1) incentive day every two (2) calendar months.
- D. Full-time hourly police personnel assigned to the 11:00 a.m. to 7:00 p.m. shift shall receive one (1) incentive day every six months.
- E. Full-time hourly police personnel shall begin being compensated for incentive days after working an eligible shift for 30 calendar days.
- F. If a full-time hourly police personnel does not timely use his or her earned incentive days as required above, he or she shall be paid for said day (s) at his or her standard rate. In no event shall any officer be paid overtime (or more than standard rate) for unused incentive days. Said personnel are requested to mark a day off on their time card as an incentive day if they wish to be paid for the day without taking it off.

2011

FIRE DEPARTMENT

Fire Chief/EMS Director		\$	53,525.28	per yr
Assistant Chief/Fireman			41,503.20	per yr
Assistant Chief/Fireman Paramedic			41,503.20	per yr
Fireman/Chief Mechanic			41,322.96	per yr
Fireman/Chief Paramedic			41,322.96	per yr
Fireman/Training Instructor			41,322.96	per yr
Fireman/Paramedic/Training Instructor			41,322.96	per yr
Fireman/1st Class			39,673.92	per yr
Fireman/Paramedic			39,673.92	per yr
Fireman/Inspector			39,673.92	per yr
Fireman (probation not to exceed one year)			35,706.72	per yr
Fireman/Paramedic (probation not to exceed one year)			35,706.72	per yr
Fireman/EMT (probation not to exceed one year)			33,183.36	per yr
Paramedic Part-time			11.47	per hr
Advance EMT Part-time			10.75	per hr
Basic EMT Part-time			10.01	per hr
Secretary			14.47	per hr
Secretary/Probation (90-180 days)			13.03	per hr

Longevity pay is additional compensation to be paid to a qualified firefighter. A qualified firefighter is one who has at least three (3) continuous years of service to the City.

Longevity pay is calculated to be Two Hundred Twenty-five Dollars (\$225.00). The amount to be paid to a qualified firefighter is \$225.00 multiplied by the number of years of continuous service. The maximum amount paid shall be \$4,500.00. Longevity shall be paid on the pay day following the anniversary date for that individual.**

A Clothing Allowance of \$600.00 per year is paid to all firefighters who have at least one full year of continuous service to the city. Clothing Allowance is payable in equal installments at the end of each quarter.*

Work Schedule - The Fire Department works 24 hours on and 48 hours off. Any extra hours over 212 in a 28 day period are to be paid at time and one-half. If such 28 day period includes benefit days, extra hours worked up to 212 are to be paid at a regular hourly rate. Hours worked over the 212 hours are to be paid at time and one-half. Salaries for the fire department are based on 2928 hours per year.

*Except for those instances noted in Ordinance No. 1479.

ORDINANCE NO. 2010-2009

**Except for those instances noted in Ordinance No. 1480.

		2011	
PARK & RECREATION DEPARTMENT			
Park Superintendent	_____	\$ 48,889.92	per yr
Recreation/Pool Director	_____	32,613.36	per yr
Maintenance Supervisor	_____	16.63	per hr
Laborers/Maintenance-Regular	_____	14.83	per hr
Laborers/Maintenance (probation 90-180 days)	_____	13.33	per hr
Secretary-Office Manager	_____	14.47	per hr
Laborers-Summer/Semiskilled	_____	10.63	per hr
Laborers-Summer Part-time	_____	7.25	per hr
* Life Guards (Instructors WSI)	_____	9.45	per hr
* Life Guards	_____	8.04	per hr

*WSI lifeguards may receive up to \$.25 more per hour for each returning year with cap of \$10.45/hour

*Regular lifeguards may receive up to \$.25 more per hour for each returning year with a cap of \$9.04/hour

		2011	
CEMETERY DEPARTMENT			
Cemetery Superintendent	_____	\$ 47,364.00	per yr
Asst. Superintendent	_____	16.63	per hr
Laborers - Regular	_____	14.83	per hr
Laborers (probation 90-180 days)	_____	13.33	per hr
Laborers-Summer/Semiskilled	_____	10.63	per hr

		2011	
MOTOR VEHICLE HIGHWAY/SANITATION DEPARTMENT/CITY GARAGE & WAREHOUSE			
Street/Sanitation Superintendent	_____	\$ 48,889.92	per yr
Foreman/Lead Person	_____	16.63	per hr
Mechanics	_____	16.06	per hr
Truck Drivers/Laborers-Regular	_____	14.83	per hr
Purchasing Agent	_____	14.83	per hr
Secretary/Receptionist	_____	14.47	per hr
Truck Drivers/Laborers (probation 90-180 days)	_____	13.33	per hr

AVIATION DEPARTMENT			
Airport Manager	_____	\$ 31,139.52	per yr
Laborer/Part-time/Semiskilled	_____	10.95	per hr

UTILITY DEPARTMENT			
Superintendent	_____	\$ 75,000.00	per yr
Engineering Technician	_____	18.00	per hr

WASTE WATER DEPARTMENT			
Asst. Superintendent. (Treatment Plant/Collection System)	_____	\$ 17.48	per hr
Sewage Treatment Plant Lift Station Supervisor	_____	18.59	per hr
Maintenance/Repairman - A	_____	16.40	per hr
Maintenance/Repairman - B	_____	15.62	per hr
Maintenance/Repairman - C	_____	14.83	per hr
Maintenance/Repairman Probation (90-180 Days)	_____	14.05	per hr
Collection System Foreman	_____	16.63	per hr
Laborers Treatment/Collection System - A	_____	14.83	per hr
Laborers Treatment/Collection System - B	_____	14.31	per hr
Laborers Treatment/Collection System - C	_____	13.81	per hr
Laborers Treatment/Coll System Probation (90-180 Days)	_____	13.33	per hr
Part-time Laborer/Semiskilled	_____	10.95	per hr
Laboratory Technician Supervisor	_____	16.06	per hr
Assistant Laboratory Technician	_____	12.13	per hr
Assistant Laboratory Technician Probation (90-180 Days)	_____	10.59	per hr
Assistant Laboratory Technician Part-time	_____	11.14	per hr
Watchman/Janitor	_____	9.81	per hr
Receptionist/Laborer - A	_____	14.47	per hr
Receptionist/Laborer - B	_____	13.33	per hr
Receptionist/Laborer Probation (90-180 Days)	_____	12.20	per hr
Receptionist/Laborer Part-time	_____	11.07	per hr
Safety Officer	_____	0.33	per hr

ORDINANCE NO. 2010-2009

The above listed pay for all full time hourly wastewater department employees shall increase upon certification of said employees as follows:

Class I Plant Operator	\$	0.50
Class II Plant Operator	\$	1.00
Class III Plant Operator	\$	1.50
Class IV Plant Operator	\$	2.00
Cross-Connection Device Inspector and Tester	\$	1.00

		<u>2011</u>	
WATER WORKS DEPARTMENT			
Assistant Superintendent	_____	\$ 16.63	per hr
Distribution System Foreman	_____	16.63	per hr
Maintenance/Repairman - A	_____	16.40	per hr
Maintenance/Repairman - B	_____	15.62	per hr
Maintenance/Repairman - C	_____	14.83	per hr
Maintenance/Repairman Probation (90 - 180 Days)	_____	14.05	per hr
Servicemen/Laborer - A	_____	14.83	per hr
Servicemen/Laborer - B	_____	14.31	per hr
Servicemen/Laborer - C	_____	13.81	per hr
Servicemen/Laborer Probation (90 - 180 Days)	_____	13.33	per hr
Servicemen/Laborer -Part-time/Semiskilled	_____	10.95	per hr.
Secretary/Laborer - A	_____	14.47	per hr
Secretary/Laborer - B	_____	13.33	per hr
Secretary/Laborer Probation (90-180 Days)	_____	12.20	per hr
Secretary/Laborer - Part-time	_____	11.07	per hr

The above listed pay for all full time hourly employees shall increase upon each certification of said employees as follows:

Class DSS (Distribution System Small)	\$	0.33
Class DSM (Distribution System Medium)	\$	0.67
Class DSL (Distribution System Large)	\$	1.00
Class WT1 (Water Treatment 1)	\$	0.33
Class WT2 (Water Treatment 2)	\$	0.67
Class WT3 (Water Treatment 3)	\$	1.00
Cross-Connection Device Inspector and Tester	\$	1.00

LONGEVITY PAY FOR FULL-TIME EMPLOYEES (Except Police Officers and Firefighters)

Longevity pay is additional compensation to be paid to qualified full-time non-emergency personnel. Qualified employees are those who are eligible for other benefits paid to full time employees i.e., PERF and health insurance, and who have at least three (3) uninterrupted years of service to the City. Non-emergency personnel includes those employees not employed as Firefighters and Police Officers. Said uninterrupted years of service shall be full calendar years.

Longevity pay is calculated to be Fifty Dollars (\$50.00). The amount to be paid to the qualified full-time non-emergency employee is \$50.00 multiplied by the number of full, uninterrupted years of service to the City of Plymouth in a qualified position. The maximum amount paid shall be \$1,000.00. Longevity shall be paid on the last paycheck of the year for that year's service. Said qualified employee must be employed as a full time employee at the time of payment. Said longevity pay shall not be prorated under any circumstances. If an employee is inactive at the time of said payment, he/she shall not be paid longevity. Inactive shall exclude earned vacation time, sick time or personal days (not to exceed two (2) personal days).

OVERTIME PAY FOR NON-EXEMPT EMPLOYEES (Except Police Officers and Firefighters)

Non-exempt employees will be paid one and one-half (1-1/2) times their regular rate of pay for all hours worked in excess of forty (40) hours in any scheduled work week. Only hours worked will count for overtime purposes. All overtime work must be approved by the initialing or signing of your time card/sheet by your superintendent.

PRINCIPLES OF PUBLIC ACCOUNTABILITY (Exempt salaried employees)

The City of Plymouth's pay system is based on a policy based on principals of public accountability (See §FLSA 541.710(1), which recognizes the City's accountability to its citizens for the use of public funds. Because of this accountability and in the interest of efficient use of these funds, the city will not pay employees for hours that they do no work, unless they have accrued leave available to cover that time. Full-day (8 hour) or partial-day (4 hour) increments will be used if accrued leave is not available.

ORDINANCE NO. 2010-2009

DULY ORDAINED, PASSED AND ADOPTED by the Common Council of the City of Plymouth, Indiana, this 23rd day of August, 2010.


Mark Senter, Presiding Officer

Attest:


Toni L. Hutchings, Clerk-Treasurer

PRESENTED by me to the Presiding Officer of the City of Plymouth, Indiana on the 23rd day of August, 2010.


Toni L. Hutchings, Clerk-Treasurer

THIS ORDINANCE approved and signed by me on the 23rd day of August, 2010.


Mark Senter, Mayor
City of Plymouth, Indiana

ORDINANCE NO. 1480

AN ORDINANCE AMENDING ORDINANCE NO. 1445
(THE 1989 SALARY ORDINANCE), AND ORDINANCE
NO. 1474 (THE 1990 SALARY ORDINANCE)
WITH REGARD TO THE PRO RATA DISTRIBUTION OF
LONGEVITY PAY

WHEREAS, longevity pay has long been recognized as an incentive for police and firemen to remain in the service of the City; and,

WHEREAS, a question has arisen concerning the advisability of paying longevity to members of the police department or fire department who have gone to an inactive status by reason of a leave of absence, or who have been assigned to duties other than the normal, customary duties of the fire department or police department; and,

WHEREAS, in the interest of fiscal responsibility and fairness, it should be recognized that a member of the police department or fire department who is in an inactive status, but who has reached an anniversary date for purposes of longevity pay, should be paid said longevity, but as calculated on the number of months of active service to the City in the respective departments.

NOW, THEREFORE, BE IT ORDAINED by the Common Council of the City of Plymouth as follows:

1. Ordinance No. 1445 (1989 Salary Ordinance) and Ordinance No. 1474 (1990 Salary Ordinance) should be amended by adding the following paragraph under the following subsections:

DEPARTMENT OF POLICE

Longevity

Longevity pay shall be prorated for any qualified policeman or policewoman who during the year immediately preceding their anniversary date is on a leave of absence, or who is otherwise not engaged in the active performance of the normal and customary duty of the police department. Longevity pay shall be prorated as based on the number of months of actual active duty during the year immediately preceding the anniversary date.

FIRE and EMERGENCY MEDICAL SERVICE DEPARTMENTS

Longevity

Longevity pay shall be prorated for any qualified fireman or firewoman or emergency medical technician who during the year immediately preceding their anniversary date is on a leave of absence, or who is otherwise not engaged in the active performance of the normal and customary duty of the fire department or emergency medical service department. Longevity pay shall be prorated as based on the number of months of actual active duty during the year immediately preceding the anniversary date.

2. In all other respects Ordinance Nos. 1445 and 1474 shall remain in full force and effect.

Passed and adopted this 13th day of November, 1989.

William A. Satorius
William A. Satorius
Presiding Officer

ATTEST:

Beverly J. Curtis
Beverly J. Curtis
Clerk-Treasurer

Presented by me to the Mayor of the City of Plymouth, Indiana, this 13th day of November, 1989.

Beverly J. Curtis
Beverly J. Curtis
Clerk-Treasurer

Approved and signed by me this 13th day of November, 1989.

William A. Satorius
William A. Satorius
Mayor