

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

ROBERT D. DELEE,

Plaintiff-Appellant

v.

CITY OF PLYMOUTH, INDIANA,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA, No. 3:12-cv-380
THE HONORABLE JAMES T. MOODY

REPLY BRIEF OF APPELLANT ROBERT D. DELEE

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TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
ARGUMENT	
I LONGEVITY PAY FOR CITY POLICE OFFICERS IS A SENIORITY-BASED BENEFIT PROTECTED BY 38 U.S.C. 4316(A) BECAUSE ITS PREDOMINANT NATURE IS TO REWARD CONTINUOUS AND LENGTHY EMPLOYMENT	3
II FLSA CASES ARE IRRELEVANT TO THIS USERRA DISPUTE.....	11
III USERRA SUPERSEDES CITY ORDINANCES THAT ARE DETERMINED TO REDUCE THE RIGHTS IT PROVIDES	13
CONCLUSION	15
CERTIFICATE OF COMPLIANCE	
CERTIFICATE OF SERVICE	
SECOND SUPPLEMENTAL APPENDIX	

TABLE OF AUTHORITIES

CASES:	PAGE
<i>Alabama Power Co. v. Davis</i> , 431 U.S. 581 (1977).....	<i>passim</i>
<i>Coffy v. Republic Steel Corp.</i> , 447 U.S. 191 (1980).....	<i>passim</i>
<i>Commissioner of Internal Revenue v. Gordon</i> , 391 U.S. 83 (1968)	10
<i>Featsent v. City of Youngstown</i> , 70 F.3d 900 (6th Cir. 1995)	12-13
<i>Foster v. Dravo Corp.</i> , 420 U.S. 92 (1975).....	7, 15
<i>Jackson v. Beech Aircraft Corp.</i> , 517 F.2d 1322 (10th Cir. 1975).....	4
<i>Lang v. Great Falls Sch. Dist. No. 1 & A</i> , 842 F.2d 1046 (9th Cir. 1988).....	7
<i>Rogers v. City of San Antonio</i> , 392 F.3d 758 (5th Cir. 2004)	11
<i>Sgro v. United States</i> , 609 F.2d 1259 (7th Cir. 1979)	10
STATUTES:	
Uniformed Services Employment and Reemployment Rights Act (USERRA),	
38 U.S.C. 4302(b).....	14
38 U.S.C. 4303(12).....	13
38 U.S.C. 4316(a).....	1, 3
REGULATIONS:	
20 C.F.R. 100.212(c).....	9
LEGISLATIVE HISTORY:	
H.R. Rep. No. 448, 105th Cong., 2d Sess. (1998).....	14

IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

No. 14-1970

ROBERT D. DELEE,

Plaintiff-Appellant

v.

CITY OF PLYMOUTH, INDIANA,

Defendant-Appellee

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA, No. 3:12-cv-380
THE HONORABLE JAMES T. MOODY

REPLY BRIEF OF APPELLANT ROBERT D. DELEE

INTRODUCTION

Mr. DeLee alleges that, relying on City Ordinance No. 1480, the City of Plymouth (the City) failed to pay him the full amount of longevity pay he should have received for his 12th year of City employment, in violation of Section 4316(a) of USERRA, because he was absent for military service during a portion of that year. The City admits that the number of years of service the City uses to determine longevity pay *is a seniority-based benefit* of employment that it could

not reduce under USERRA (Appellee's Br. 21-22). It argues, however, that the "particular amount of longevity pay" (Appellee's Br. 21) the City *actually provides* its police officers each year *is a separate benefit* constituting short-term compensation only for time worked rather than a seniority-based benefit. Appellee's Br. 21-23.

As Mr. DeLee explained in his opening brief, the City and the district court erred by subdividing the "longevity" and "pay" aspects of the single longevity pay benefit into two distinct benefits, and then concluding that the latter was not seniority-based. Supreme Court precedent required the district court to assess the predominant or true purpose of the single benefit the City actually provides to determine whether it rewards lengthy and continuous employment and is therefore a seniority-based benefit within the meaning of USERRA. See *Alabama Power Co. v. Davis*, 431 U.S. 581, 594 (1977). The City attempts to sidestep the caselaw by contending that its longevity pay "has no 'dominant' nature." Appellee's Br. 35. The City is wrong on both the facts and the law. The City's longevity pay is a seniority-based benefit and therefore is fully payable to Mr. DeLee under USERRA.

ARGUMENT

I

LONGEVITY PAY FOR CITY POLICE OFFICERS IS A SENIORITY-BASED BENEFIT PROTECTED BY 38 U.S.C. 4316(A) BECAUSE ITS PREDOMINANT NATURE IS TO REWARD CONTINUOUS AND LENGTHY EMPLOYMENT

As explained in our opening brief, the City’s longevity pay benefit is based on seniority, and therefore was fully payable to Mr. DeLee upon his return from service. The City contends that its police officer longevity pay “has no ‘dominant’ nature” and instead is short term compensation, like other wages, that it must provide Mr. DeLee only on a non-discriminatory basis. Appellee’s Br. 35. Neither the record in this case nor binding precedent supports the City’s position.

1. To determine the “true nature” or “predominant” purpose of an employment benefit, and therefore its coverage under USERRA, a court must determine the primary function the benefit serves. A court does so by using the common understanding of the benefit type and the specific features of the employer’s benefit scheme. See *Alabama Power Co. v. Davis*, 431 U.S. 581, 589, 594 (1977) (describing common conception of benefit as decisive); *Coffy v. Republic Steel Corp.*, 447 U.S. 191, 197, 200 (1980) (examining the attributes of the specific plan at issue to confirm or contradict the common understanding of the benefit). In *Alabama Power*, the Court determined that the overall “function” of the pension plan at issue was to reward lengthy service and thereby to help “reduce

employee turnover and training costs and help an employer secure the benefits of a stable work force.” 431 U.S. at 593-594. *Alabama Power*’s analysis establishes that the City’s longevity pay is predominantly a benefit that rewards lengthy service, and therefore is a seniority-based benefit under USERRA.¹

An employer’s labeling of a benefit is not always dispositive of its character for purposes of USERRA, but in this case the common understanding of “longevity pay” as a seniority-based benefit is captured by the term itself: the longer an employee has worked continuously, the greater the benefit he or she receives. The City tries to avoid this common-sense conception by recasting its benefit as having a “Rate of Pay for Years Served” component that is itself a benefit (Appellee’s Br. 21-23) and a separate “Time Worked Requirement” component that determines the “longevity pay additional compensation earned.” Appellee’s Br. 5. It then argues that only the first element is seniority-based; the latter – the amount of longevity pay an officer actually receives – it contends is simply pay for hours of work the employee actually performed. Appellee’s Br. 21-23. But that cannot be right,

¹ The City’s lengthy discussion (Appellee’s Br. 8, 39-43) of a pre-*Alabama Power* decision, *Jackson v. Beech Aircraft Corp.*, 517 F.2d 1322 (10th Cir. 1975), is a puzzling distraction. In *Alabama Power*, the Supreme Court described *Jackson* as part of the circuit split that warranted its grant of certiorari to resolve the proper analysis for determining a seniority-based benefit under USERRA’s predecessor. *Alabama Power*, 431 U.S. at 582 & n.4. *Alabama Power*’s holding is contrary to the Tenth Circuit’s approach in *Jackson*.

since the first element is not, standing alone, a benefit at all. It becomes a benefit when it is combined with the \$225 base longevity pay increment and the months worked in the preceding year to produce a dollar amount. That amount is the benefit provided, and the Supreme Court precedent establishes that that benefit is covered under Section 4316(a) of USERRA.

2. The City's plan here has the attributes the Supreme Court found indicative of a seniority-based benefit in *Alabama Power* and *Coffy*. In *Alabama Power*, the Supreme Court rejected the employer's claim that its benefit plan turned on time worked (rather than seniority) because of the lengthy period required for vesting, the fact that an employee's payment for each year of service depended directly on the length of time the employee continued to work for the employer, and the dissociation of payment levels from the work the employer claimed the payments compensated. *Alabama Power*, 431 U.S. at 593-594. Similarly, in *Coffy*, the Supreme Court considered the facts that the employee received no benefits if he or she was employed fewer than two years, which "is more characteristic of seniority provisions than of compensation," and that the employee was uncompensated for additional work beyond a specified amount of time. *Coffy*, 447 U.S. at 205.

The undisputed features of the City's longevity pay warrant the same conclusion here. The City provides no longevity pay to officers continuously

employed for fewer than three years. Appx. 25, 28. The number of years of service for which the City will increase longevity pay caps out at twenty years, and there is no additional pay for those who work beyond any stated minimum number of hours each month. Appx. 24, 28. As in *Coffy*, the City does not reduce the longevity pay of employees who work fewer than a specified number of hours in a month but do not take a leave of absence. See 447 U.S. at 202 (rejecting employer's claim that a *de facto* minimum 32-hour work week established that the disputed benefit was deferred compensation, because employees earned benefit credits for weeks in which they were paid for hours they did not actually work, *e.g.*, when on paid sick leave or while performing union duties).

In addition, other attributes of the City's longevity pay undercut the Clerk-Treasurer's contention that the amount of longevity pay is short-term compensation only for work officers have actually performed, just like "any other wages." 2d Supp. Appx. 4.² First, Ordinance No. 1480 prorates longevity pay only for "the year immediately preceding the[] anniversary date [of the employee's employment start date]." Appx. 33. As the City concedes (Appellee's Br. 23), the Ordinance *does not* proportionally decrease the number of years of service used to calculate longevity pay to account for a partial year of service. Appx. 33. As the

² References to "2d Supp. Appx." are to the appendix attached to the end of this brief that contains the Affidavit of Toni Hutchings, City Clerk-Treasurer.

City also concedes, a City police officer who does not actually work in his regular City duties for an entire year would still receive increased longevity pay in subsequent years, based in part on receiving full credit for the year when he or she was not working. See Appellee's Br. 23. This feature supports the holding that longevity pay is based on years of service, not hours worked.

The City dismisses as "irrelevant" the fact that its longevity pay does not compensate officers for additional hours worked or penalize them for missed work hours not requiring a leave of absence. Appellee's Br. 33. The Supreme Court, however, has found the absence of additional pay for additional work significant in determining that a plan is seniority-based. See *Coffy*, 447 U.S. at 201. See also *Foster v. Dravo Corp.*, 420 U.S. 92, 99-100 (1975) (relying on an increase in vacation benefits resulting from overtime work as indicative of a *bona fide* effort to compensate employees for work performed); see also *Lang v. Great Falls Sch. Dist. No. 1 & A*, 842 F.2d 1046, 1050 (9th Cir. 1988). The record reflects that the real purpose of longevity pay is "an incentive for police and firemen to remain in the service of the City." Appx. 33; 2d Supp. Appx. 3.

3. The City asserts that Mr. DeLee's arguments about the proper application of Supreme Court precedent to the attributes of its longevity pay are outside the record. Appellee's Br. 32-33. The language of Ordinance No. 1480 and the Clerk-Treasurer's affidavit are the only evidence the City submitted, however, to explain

the relationship between time worked and the City's longevity pay benefit for police officers.³ If there was any evidence that the City's benefit calculation is in fact more fine-tuned to accurately compensate actual work performed than appears on the face of Ordinance No. 1480, the City should have presented it when it moved for summary judgment.⁴

The fact remains that Ordinance No. 1480 does not finely tune longevity pay by using fractions of months when prorating longevity pay, nor does it specify the number of hours of work that constitute a month. The Clerk-Treasurer's affidavit demonstrates that she does not break down time worked beyond the temporal level of a month, and she does not even explain what constitutes a month for purposes of the calculation. 2d Supp. Appx. 4-5. This evidence further confirms that the City

³ If this Court believes that the record contains insufficient evidence to determine the true nature of the disputed longevity pay, it of course may remand the case for further development of the factual record.

⁴ The City challenges Mr. DeLee's argument on this point as purportedly raising facts outside the record on appeal because Ordinance No. 1480's work requirement "speaks of the 'number of months' worked" and the stipulated facts strictly address only months worked. Appellee's Br. 33. By moving for summary judgment before the court issued a discovery scheduling order, the City asserted that there were no other facts outside the record that were material to its position, or disputed material record facts, that prevented resolution of the case based on the law. If there were any evidence that the City's benefit calculation is in fact more fine-tuned to accurately compensate actual work performed than appears on the face of Ordinance No. 1480, the City should have submitted it for the court's consideration.

takes a broad-brush approach to determining longevity pay, and thereby demonstrates the absence of a *bona fide* intent or effort to pay employees short term compensation only for work actually performed. The Supreme Court has held that even if benefits were closely related to hours worked, that fact “would not, by itself, render them compensation rather than seniority rights.” See *Coffy*, 447 U.S. at 203. Here, the City has not even attempted to closely relate hours worked to longevity pay. Instead, the City’s proration method confirms that longevity pay is not designed to compensate only time actually worked.

4. The City’s brief criticizes Mr. DeLee for failing to consider the City’s “actual custom or practice” of prorating longevity pay (Appellee’s Br. 30-31), as 20 C.F.R. 100.212(c) requires. Mr. DeLee’s opening brief did not focus on that prong of the regulation because the City provided *no* evidence of a custom or practice of prorating longevity pay for its employees beyond a single instance – how it treated Mr. DeLee. Appellee’s Br. 8. The City’s prohibition against prorating the longevity pay of the majority of its employees “under any circumstances” reveals a custom or practice of using longevity pay to reward continued and lengthy service.⁵ Appx. 26, 31.

⁵ The City argues that discussion of the longevity pay provided to both emergency and non-emergency personnel under Ordinance Nos. 2009-1987 and 2010-2009 (Appx. 23-32) presents a new claim. That is incorrect. The prohibition against prorating non-emergency personnel’s longevity pay is in a record

(continued . . .)

The Court should consider all of the provisions of the Ordinances.⁶

Evidence that the City does *not* prorate longevity pay for employees holding the majority of its job titles further supports the conclusion that longevity pay is intended to reward employees' seniority rather than to pay them for hours actually worked.⁷ There is no evidence supporting the City's contention that the predominant purpose of longevity pay is different for different categories of

(. . . continued)

document the court considered. This Court therefore can consider the undisputed prohibition against prorating non-emergency employees' longevity pay. See *Commissioner of Internal Revenue v. Gordon*, 391 U.S. 83, 95 n.8 (1968) (holding that the Court could properly consider the allegedly new argument, because the same general issue of statutory coverage had been in the case since its inception, and record left no disputed issue of fact of additional question raised); *Sgro v. United States*, 609 F.2d 1259, 1264 n.8 (7th Cir. 1979) (citing *Gordon, supra*, and considering additional ground for government's argument about statutory coverage because it relied on same factual record and required no new findings of fact).

⁶ Ordinance Nos. 2000-1778 and 2001-1795 (Supp. Appx. 1-11), which the City failed to mention to the district court, do not refute that the City had a custom and practice of prohibiting proration of longevity pay for persons in the majority of its job titles during the years pertinent to this case.

⁷ Here, longevity pay proration is prohibited for the approximately 52-60 permanent full-time non-emergency personnel job titles listed in the Ordinances, compared to the approximately 25-26 permanent full-time emergency personnel job titles for which proration would be permitted (see Appx. 23-26). Those estimates are reached by counting the number of job titles (excluding solely part-time or probationary positions) the Ordinances list in the various departments, and treating all job titles in the police and fire departments as emergency personnel job titles.

employees (Appellee's Br. 43). This strongly undermines the City's argument that its longevity pay program is short term compensation for hours worked; it is clearly a reward for lengthy and continuous City service and therefore covered by USERRA.

II

FLSA CASES ARE IRRELEVANT TO THIS USERRA DISPUTE

This Court should reject the City's invitation to apply an inapposite case decided under the Fair Labor Standards Act (FLSA) to determine the true nature of the City's longevity benefit for purposes of USERRA. Appellee's Br. 36. First, the purposes and standards of the FLSA and USERRA are different. "Congress passed the FLSA, pertaining to minimum wages and working conditions, for the purpose of improving nationwide labor conditions, and USERRA for the purpose of encouraging military service by protecting uniformed service members' rights and benefits." *Rogers v. City of San Antonio*, 392 F.3d 758, 772 (5th Cir. 2004) (refusing to borrow FLSA limitations period for USERRA cases). The City appropriately concedes that the Supreme Court's decision in *Alabama Power* also runs contrary to its argument. Appellee's Br. 36 (citing *Alabama Power Co. v. Davis*, 431 U.S. 581, 594, n.16 (1977), for proposition that treatment of pension benefits as wages under National Labor Relations Act would not be dispositive of

their treatment under USERRA's predecessor statute). That concession alone should be enough to reject the City's argument.

Second, the City cites *Featsent v. City of Youngstown*, 70 F.3d 900 (6th Cir. 1995) (Appellee's Br. 36), to argue that the inclusion of longevity pay in the regular rate of pay under the FLSA means that the benefit is also short term compensation for hours worked under USERRA. *Featsent*, however, actually supports Mr. DeLee's position. The FLSA provisions at issue in *Featsent* required calculation of an employee's overtime rate using a "regular rate" of employment. That regular rate included *all* remuneration for employment, but excluded payments for occasional periods when no work was performed and "other similar payments" that were not compensation for an employee's hours of work. *Id.* at 904. The Sixth Circuit held that the regular rate included bonuses that are compensation for services even when they are not directly attributable to any particular hours of work. *Ibid.* Bonuses for educational degrees were included, for example, because educational advancement enhances the quality of an employee's job performance and the bonuses therefore compensated employees for their services. *Id.* at 904-905. The Sixth Circuit held that, like educational decree bonuses, longevity pay for police officers could not be excluded from the regular rate of pay because, by definition, they "are payments given on the basis of length

of service” and therefore “compensate the police officers for their service to the City.” *Id.* at 905.

Featsent’s analysis is entirely consistent with Mr. DeLee’s argument that the City’s longevity pay here remunerates officers for continuous and lengthy City service. By stating that such pay is given “on the basis of length of service,” *Featsent*, 70 F.3d at 905, the Sixth Circuit’s decision supports the conclusion that, under USERRA, longevity pay is a seniority-based benefit. See 38 U.S.C. 4303(12).

III

USERRA SUPERSEDES CITY ORDINANCES THAT ARE DETERMINED TO REDUCE THE RIGHTS IT PROVIDES

The City tries to evade application of the canon of statutory construction requiring liberal interpretation of USERRA by evoking allegedly countervailing “principles of federalism,” noting that employment is an “area of traditional state concern.” Appellee’s Br. 11-12. This Court should reject the City’s attempt to interject nonexistent federalism issues.

The City argues, in a circular manner, that because longevity pay is “not a seniority-based right or benefit provided by USERRA,” it “is not pre-empted by USERRA and Plymouth was free to implement [a proration] requirement.” See Appellee’s Br. 14. USERRA’s entire subject matter is employment, notwithstanding any traditional state concern with that subject (Appellee’s Br. 12),

and the statute supersedes any local ordinances that reduce or eliminate the federal rights USERRA secures. See 38 U.S.C. 4302(b). Whether the City's Ordinances do so, and are thus superseded because they violate USERRA, is the issue for resolution on appeal. Indeed, when Congress amended USERRA in 1998 in response to cases dismissing USERRA claims against States on sovereign immunity grounds, it explained that the proposed legislation was "to assure that the policy of maintaining a strong national defense is not inadvertently frustrated by States refusing to grant employees the rights afforded to them by USERRA." H.R. Rep. No. 448, 105th Cong., 2d Sess. 6 (1998). Accordingly, no countervailing federalism principles are implicated in this appeal.

CONCLUSION

The district court's grant of summary judgment should be reversed, and summary judgment should be entered in favor of Mr. DeLee.⁸

Respectfully submitted,

MOLLY J. MORAN
Acting Assistant Attorney General

s/ Jodi B. Danis
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⁸ Mr. DeLee agrees that footnote 5 in *Foster v. Dravo Corp.*, 420 U.S. 92 (1973), clarifies that counsel Sachse, identified only as being from "New Orleans, La." at the beginning of the Westlaw published version of that decision, apparently was a federal government attorney, contrary to the parenthetical in his opening brief. Appellee's Br. 24-25; Appellant's Br. 29.

CERTIFICATE OF COMPLIANCE

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

(1) complies with Federal Rule of Appellate Procedure 32 (a)(7)(B) because it contains 3,225 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: August 11, 2014

CERTIFICATE OF SERVICE

I certify that on August 11, 2014, I electronically filed the foregoing REPLY BRIEF OF 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

SECOND SUPPLEMENTAL APPENDIX

CERTIFICATION OF REQUIRED MATERIALS

Per Seventh Circuit Rule 30, the appellant hereby certifies that all required materials are included in this 2d supplemental appendix.

s/ Jodi B. Danis
JODI B. DANIS
Attorney

Date: August 11, 2014

TABLE OF CONTENTS

	PAGE
AFFIDAVIT OF TONI L. HUTCHINGS	1

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.)	
)	

AFFIDAVIT OF TONI L. HUTCHINGS

I, Toni L. Hutchings, first being duly sworn upon my oath, deposes and states as follows:

1. I am more than eighteen (18) years old and I am otherwise competent to testify to the matters stated within this affidavit.
2. I am familiar with the case *DeLee v. City of Plymouth, Indiana* and my statements made within this affidavit are based upon my personal knowledge.
3. I am the elected Clerk-Treasurer of the City of Plymouth, Indiana (hereinafter referred to as "Plymouth"). I have served Plymouth in that capacity since January 1, 1996.
4. Throughout my career as Clerk-Treasurer, I have engaged in various continuing education and certification programs attaining several additional credentials. In 1999, I earned the designation of Indiana Accredited Municipal Clerk (IAMC). In 2002, I was designated a Certified Municipal Clerk (CMC) by the

International Institute of Municipal Clerks. In 2006, I achieved the Level One Municipal Management Institute certification from the Indiana Association of Cities and Towns. Most recently, in 2007, I attained the professional credential of Certified Public Finance Administrator (CPFA). I am a longstanding member of the Indiana League of Clerks and Treasurers having previously served as a district director and executive director of the organization. Additionally, I was appointed by former Indiana State Auditor Connie Nass to the State Auditor's Advisory Committee and served in that capacity from 1999 through 2006.

5. As Clerk-Treasurer, pursuant to state statute and local ordinance, I serve as Plymouth's fiscal officer. In that role, I have responsibilities for all of Plymouth's accounts receivable and accounts payable, including payroll for Plymouth employees.

6. Part of my payroll duties include the calculation and payment of longevity pay additional compensation for qualified Plymouth police officers. The salary and wage ordinances in effect in the years 2010 and 2011, Ordinances Nos. 2009-1987 and 2010-2009 respectively, provided as follows with respect to longevity pay:

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.

Ordinance No. 2009-1987 (a copy of which is attached as Exhibit A); Ordinance No. 2010-2009 (a copy of which is attached as Exhibit B).

7. Ordinance No. 1480 was enacted on November 13, 1989 and provides, in part as follows:

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 and based on the number of months of actual active duty during the year immediately preceding the anniversary date.

...

Ordinance No. 1480 (a copy of which is attached as Exhibit C).

8. Plymouth's current Employee Handbook, which was effective throughout the time period at issue in plaintiff Robert DeLee's complaint in this matter, contemplates numerous types of extended employee leaves of absence that could last for a month or more, including, Family and Medical Leave Act (FMLA) leave, Jury Duty leave, Military leave, and Personal Leaves of Absence leave. City of Plymouth Employee Handbook, §§ 7.6, 7.8, 7.9, 7.10.

9. Pursuant to Plymouth's applicable ordinances, police officer longevity pay is simply additional compensation paid to the officer on his or her anniversary date for work actually performed during the previous year. In this respect, longevity pay is just like any other wages paid by Plymouth to its employees in that it is only paid for the time worked.

10. When calculating a qualified officer's longevity pay earned, the first step is to multiply \$225.00 times the officer's number of years of continuous service. The next step is to determine officer's number of months of active service to Plymouth in the preceding year. If the officer was on leave of absence for a period within that year, then a proration calculation must be undertaken.

11. In this regard, longevity pay has two separate components. The first component is the Rate of Pay for Years Served component based on the officer's

number of years of continuous service, which is determined by seniority. The longevity pay additional compensation of \$225.00 is escalated by an additional factor for each year of service up to a maximum of twenty (20) years of service ($\$225.00 \times 20$ years of service = \$4,500.00 longevity pay cap). The second component is the Time Worked Requirement based upon the actual months worked by the police officer in that year.

12. Applying these calculations, I determined plaintiff Robert DeLee's longevity pay for his eleventh (11th) year of service on or about his anniversary date of April 20, 2010 as follows:

- a) Longevity pay base ($\$225.00$) X years of service (11) = \$2,475.00
- b) Number of months officer worked out of months in preceding year ($^{12}/_{12}$) = 1

(a X b = longevity pay additional compensation earned)

$$\$2,475.00 \times 1 = \$2,475.00$$

13. Applying these calculations, I determined plaintiff Robert DeLee's longevity pay for his twelfth (12th) year of service on or about September 1, 2010, the time that he was mobilized for active military duty through May 11, 2011, as follows:

- a) Longevity pay base ($\$225.00$) X years of service (12) = \$2,700.00
- b) Number of months officer worked out of months in preceding year ($^4/_{12}$) = $1/3$

(a X b = longevity pay additional compensation earned)

$$\$2,700.00 \times 1/3 = \$900.00$$

I, swear or affirm under the pains and penalties for perjury that the foregoing statements are true.

Toni L. Hutchings
Toni L. Hutchings, IAMC/CMC/CPFA
Clerk-Treasurer, City of Plymouth, Indiana

SUBSCRIBED and sworn to before me this 13th day of August, 2012.



Angela C. Birchmeier
Notary Public (Signature)

Angela C. Birchmeier
Notary Public (Printed Name)

My commission expires: May 30, 2015