

In the Matter of the Impasse Between)	
)	
<i>CITY OF WEST COVINA,</i>)	
)	<i>FACTFINDING REPORT AND</i>
Public Employer,)	<i>RECOMMENDED TERMS OF</i>
)	<i>SETTLEMENT</i>
- and -)	
)	<i>PERB Case No. LA-IM-244M</i>
<i>WEST COVINA FIREFIGHTERS</i>)	
<i>ASSOCIATION LOCAL 3226,</i>)	<i>February 1, 2018</i>
)	
Exclusive Representative.)	
)	

COMPOSITION OF THE FACTFINDING PANEL:

Impartial Chairman:	Robert Bergeson, Arbitrator/Factfinder 13351-D Riverside Drive #142 Sherman Oaks, CA 91423
Employer Member:	Thomas Mauk, Retired Orange County CEO 10015 Santa Gertrudes Avenue Whittier, CA 90603
Union Member:	Paul Krueger, Political Action Director 10242 Northridge Drive Rancho Cucamonga, CA 91737

FACTFINDING HEARING ATTENDEES:

On Behalf of the City:	Paul Coble, Deputy City Attorney Chris Freeland, City Manager Larry Whithorn, Fire Chief Edward Macias, Human Resources Director Serena Bubenhein, Mgmt. Analyst Finance Eva Sahagun, Mgmt. Analyst HR/Risk Mgmt. Jim Ballard, Retired Fire Chief
On Behalf of the Association:	Stuart Adams, Esq., Adams, Ferrone & Ferrone Matt Jackson, President Todd Smith, Vice President Bryan Hauser, Board Member

BACKGROUND AND PROCEDURAL HISTORY

This matter concerns the City of West Covina (City) and West Covina Firefighters Association Local 3226 (Association). As its name suggests, the Association is the exclusive representative of a bargaining unit of 75 budgeted positions of which three were unfilled at the time of the hearing herein.

The parties have long had memoranda of understanding (MOUs) covering the wages, hours and other conditions of employment of Association-represented personnel. A side letter extending the most recent MOU expired on or about December 31, 2016 with meeting and conferring over a successor agreement having begun long before that.

On March 27, 2017, the City presented the Association with its last, best and final offer (LBFO). On April 14, the Association submitted its LBFO to the City. It is not entirely clear from the evidence record what transpired immediately thereafter but within a short period of time, the Association declared an impasse and moved the dispute to the factfinding process set forth at §3505.4 of the state Meyers-Milias-Brown Act. Pursuant to notice thereof, the state Public Employment Relations Board (PERB) provided the parties a list of qualified neutrals and the City and Association subsequently chose Arbitrator/Factfinder Robert Bergeson to serve as chairman of the factfinding panel (Panel). Thomas Mauk and Paul Krueger were chosen by the City and Association, respectively, to serve as their member of the Panel.

STATUTORY FACTORS RELEVANT TO THIS PROCEEDING UNDER GOVERNMENT CODE SECTION 3505.4

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations, or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and

conditions of employment of other employees performing similar services in comparable public agencies.

- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally and traditionally taken into consideration in making the findings and recommendations.

DISCUSSION

Factfinding is not a quasi-judicial proceeding but rather a quasi-legislative one. As such, there is no burden of *proof* here as would be the case in arbitration. It has nevertheless been said “the party that is proposing to change the status quo on a mandatory subject of bargaining generally has the burden of *persuasion* on that topic. If a party proposing a change cannot justify the need for a change, a factfinder will likely recommend that the status quo remain.” “Pocket Guide to Factfinding,” Stevens, Novotny & Sommer, eds., California Public Employee Relations Journal (Regents of the UC, November 2013) at p. 16. As Chairman Bergeson advised the parties at the inception of the factfinding hearing on August 31, the “best evidence” rule nevertheless applies. Accordingly, raw data in the form of business records is more persuasive than hearsay testimony. With those concepts in mind, we turn to the issues now confronting the Panel.

Statutory factors not relied upon by the parties or for which no supporting evidence was provided to the Panel have not been addressed herein. It should also be said at the outset that the parties’ LBFOs differ considerably. That is to say that although the City’s actual LBFO addresses solely issues related to the MOU, the Association’s LBFO also deals with withdrawal of the “Busby” grievance and “tolling” a lawsuit over alleged violation of the Fair Labor Standards Act (FLSA). An “alternative global settlement” proposed by the City includes both of the latter two issues as well as

two unfair labor practice charges filed by the Association which are pending before the PERB. The divergence of those approaches complicates the present inquiry as it is not entirely clear just which issues are properly before this Panel. Nevertheless, since the great majority of all proposals flow from a disagreement over the extent to which the City has endeavored to allocate to bargaining unit member pay and working conditions consistent with state guidelines and comparable jurisdictions, they underpin those issues.

The Parties' Positions

City's Position

The City argues it can not afford to continue funding the number of positions for which it budgeted during the expired MOU. It asserts that financial data provided to the City Council on by City Manager Freeland on June 22, 2017 confirms the need to hold salaries to their present level while eliminating what it asserts are six vacant positions. Further necessary according to the City is removal of an engine from service and replacing it with a truck and demotion of three captains and three engineers to their former positions and extension of their "rehire eligibility" from one year to two years while allowing them to "work up" to fill vacancies caused by vacation, sick or other absence of personnel at such higher levels while being paid at that higher level during such times. The City asserts that if the Association would accede to the City's position on all such points that it could thereby afford to staff its new Quint apparatus with four workers rather than merely three, including a firefighter.

Association's Position

The Association asserts that the City's proposal would actually eliminate not merely six but nine vacant positions since three have been unfilled since expiration and non-renewal of a SAFER grant in 2016. That grant, avers the Association, was instrumental in the fire department maintaining a minimal staffing level. Notwithstanding that a survey performed during that year indicated that citizens favored preventing cuts to paramedic and emergency medical services and response times and utilization of up-to-date equipment as being their highest priorities. Such survey also suggested the public was willing to consider a tax measure to meet those goals.

The Association points out that the City has expressed an intent to take one of its five engines out of service and replace its truck with a Quint multi-purpose apparatus which was purportedly be

an adequate substitute. The Association further points out that although the current fire chief supports that change, before being promoted to that position, he opposed the same suggestion in 2011. The idea lacks merit, argues the Association, for a number of reasons including that the volume of cul-de-sacs within the City makes it impractical given that the size of the Quint renders the device incapable of turning around in such close quarters.

According to the Association, the financial information upon which the City relies does not justify what amounts to an elimination of more than ten percent of the positions in the bargaining unit. Indeed, says the Association, if the City is allowed to diminish the unit to the extent it advocates, "As a result of the increased workload and added safety concerns" such changes would create, the employees who remain should be compensated through creation of a new salary step of "five-hundred dollars (\$500.00) above the current top step."

Analysis of the Evidence Presented to the Panel

The City has maintained a 20% reserve pursuant to Council policy. The Association has not asserted that amount is excessive and it appears to the Panel to be prudent. It has also been the City's aim to reduce police and fire services to no more than 70% of the General Fund from a level which is now about 75%. Perhaps that is a laudable goal in the abstract. However, although information provided to the Panel confirms that its overall budget is strained, no data was presented to support the implicit proposition that the reason is overemphasis on such safety services and statistics supplied by both parties suggest the converse.

Each party has presented to the Panel information detailing the amount of money per resident various jurisdictions allocate to fire services. As is common in proceedings such as this, the City and the Association do not entirely agree on exactly what jurisdictions are comparable that issue is accordingly for this Panel to determine.

West Covina is among the jurisdictions in California whose fire department employs "3-0 staffing," meaning three workers per apparatus. Clearly, only jurisdictions which employ such staffing levels provide a useful comparison. Moreover, jurisdictions which employ vastly more fire fighting personnel and have significantly more citizens can not be deemed to be valid exemplars of the financial commitment to be expected of this employer. Extrapolating from the data presented, a representative sample size of 14 other jurisdictions can be obtained. From greatest financial

contribution per capita to least, those comparable cities are the following: El Segundo \$908.24; Manhattan Beach \$376.01; Monrovia \$308.75; Rancho Cucamonga \$287.41; Arcadia \$278.35; LaVerne \$254.45; Orange \$219.24; Torrance \$202.56; Carlsbad \$190.92; San Marcos \$185.79; Rialto \$182.21; Alhambra \$170.04; Compton \$156.86; and Murrieta \$115.97. The amount for El Segundo is so dramatically higher than all others as to either cast doubt on the accuracy of the figures given or to suggest the existence of some unique factor or factors which render that city materially distinguishable from West Covina.

Even disregarding El Segundo, West Covina's recent relevant figure of \$160.02 per capita spent on fire services would place it higher than just two comparable cities and lower than eleven. That \$160.02 amount would also place the City 21% behind the amount spent by the median surveyed city, Torrance. However low the \$160.02 amount may be, it is actually misleadingly positive. That is so because of expiration and non-renewal of the SAFER grant.

The City now asserts it erred in applying for and obtaining the grant because, says the City, the money obtained thereunder came with so many strings. As a consequence of the City's allowing the grant to lapse, its per capita expenditure on fire services has declined to just \$142.66, a figure about 30% below the median of comparable cities.

Recommended Terms of Settlement

As mentioned, West Covina has recently tried to balance its fire budget with grants. Having not attempted to renew the grant, the City is now attempting to balance its books through apparatus and personnel reduction. However, it is quite apparent that so doing will not bring the City to what its peers believe to be a satisfactory financial commitment to fire services. Thus, if the City is going to continue to have its own fire department as opposed to contracting with the County of Los Angeles for such services, logic dictates the need for a long-term infusion of additional revenue.

It is unclear why no action was taken as a result of the survey of City residents conducted in 2016 but in the opinion of the Panel, these parties must therefore consider explaining to the electorate the circumstances in which they find themselves and placing before them an initiative to increase the sales tax. At least for the immediate future, all revenue thereby generated should be allocated to fire services. Particularly considering that a major shopping mall lies within the boundaries of the City, so doing should create a viable revenue source. Granted, opposition can be

expected from some retailers; however, if the amount of the tax is modest, say one percent or half of one percent, the chances of many buyers venturing outside City limits to make purchases simply because of such a minimal additional cost would be exceedingly small. Truly objective retailers can be assumed to understand that.

A joint labor-management committee should be established for that purpose. Although we will not recommend the structure of that committee, the Panel feels compelled to stress that time is of the essence. At least in the opinion of the Panel chairman, the following must also be said.

This City has already been found by an administrative law judge of the Public Employment Relations Board to have failed to meet and confer with the Association in good faith and there remain multiple additional causes of legal action filed by the Association against the City. Accordingly, it is the Chairman's belief that a formal, written commitment should be made by the City to the Association in the following regard. The City should commit that if the Association would support the initiative through the purchase and distribution of signs, the walking of precincts and the like, assuming passage of the measure, within a reasonable time after its effective date, an additional step in the amount of \$500 per month would be added to the salary schedule. (Parenthetically, \$500 only approximates the amount which would be needed to maintain the current 9.25% difference between steps for which the salary schedule currently provides.) Assuming such a measure would fall under the super-majority requirement of a two-thirds vote under Proposition 13 passage will require a firm commitment from both parties. However, the evidence presented to this Panel makes apparent the need for such a commitment and the likelihood of success if such a commitment is made.

All other outstanding issues should be addressed through the aforementioned committee or additional bargaining between the parties.

The Chairman having so opined, that concludes his comments. The opinions of Panel Members Kreuger and Mauk follow.

DATED: February 1, 2018


Robert Bergeson
Chairman

On behalf of the City of West Covina (City), I am shocked that a State agency would recommend, and the West Covina Firefighter's Association (FFA) would support, that the City institute a tax measure as a means to resolve a labor dispute with the West Covina Firefighter's Association (FFA). It is the City's position that the PERB factfinding process identify real solutions for an internal dispute, rather than focusing the matter onto the taxpayers of the community. Furthermore, to suggest that all revenues from such a tax measure be dedicated to the Fire Department is a slap in the face to the other hard-working men and women of the City of West Covina, some of whom have not seen the raises or benefits offered to the sworn personnel of the Fire Department.

While the City appreciates the efforts of the factfinding panel, some errors and misconceptions in the report need to be highlighted. First, the West Covina Firefighter Association represented 72 sworn budgeted positions at the time of the hearing. The dispute at issue is NOT over negotiations concerning a new Memorandum of Understanding. The parties reached a new MOU while this factfinding process was underway. Instead, the dispute is based on changes to the staffing model of the Fire Department. While the FFA claimed safety impacts from the new model the FFA utilized the negotiations and proposal as an opportunity to seek additional salary for its members. They offered to accept the new model so long as each member received additional salary of \$500 per month, thus belying the claim that the change would negatively impact public safety or their own. They have since claimed that they do not want the salary increases, but rather for the staffing to remain the same, even though they are part of the factfinding panel, and a deciding vote on the attached recommendation.

Thus, the plain truth of the matter is that the FFA first claimed it could never sign an agreement that compromised safety as it claimed would result from the City proposal; then the FFA said it would sign off on these very same "unsafe" proposals if the City would only give their members a salary increase of \$500; then repudiated that and said that it would never sign a proposal as purportedly "unsafe" as that offered by the City; but now once again says that it will do so for \$500 each.

The staffing changes are not clearly identified in the report. City is proposing the elimination of an engine company (9 personnel) and truck company (9 personnel) for a total of 18 personnel. Then the City proposed to replace these two apparatuses with a quint (12 personnel), for a net decrease of six positions. The FFA contends there are 9 positions being eliminated. That is not correct, as the other 3 positions were eliminated prior to the end of the SAFER grant and prior to the City's proposal being disputed in this factfinding process.

It is important to note that even with the ongoing delays of this matter, at a cost of approximately \$130,000 a month, the City has converted all previously defined SAFER employees to permanent members of the West Covina Fire Department, as a sign of good faith for their service to the community.

The report includes comparison cities submitted by the FFA, which the City of West Covina never agreed were comparable, and had never seen before the factfinding hearing. A cursory review shows significant differences to many of the cities submitted by the FFA.

For example, the report acknowledges irregularities with El Segundo, which is only 5.5 square miles, 1/3 of which is the large Chevron refinery. In addition, El Segundo has a population of 16,654 residents (2010 Census), two fire stations, 43 sworn fire personnel, \$15.3 million General Fund Fire Department budget (Fiscal Year 17-18) from the City's \$72.4 General Fund million budget (21% of total budget). It also has its own utility company.

Similarly, Manhattan Beach is 4 square miles, has a population of 35,741, two fire stations, 30 sworn personnel, a utility company, and \$12.9 million General Fund Fire Department budget from the City's \$70.4 General Fund million budget (18% of total budget).

Rather than dispute each of the comparable cities, the City contends that other "comparable cities" have similar deficiencies for likeness in size and services, or heavy industrial/ warehouse businesses that generate significant revenues for their Fire Department (i.e. Rancho Cucamonga).

West Covina has a population of 106,098 (2010 Census), 16 square miles, five fire stations, 70 sworn staff, and \$17.8 million General Fund Fire Department budget from the City's \$62.9 General Fund million budget (28% of total budget), even after removal of SAFER grant positions. While the FFA contends the City should have applied for a successor SAFER grant, the City chose not to apply as the guidelines, reimbursement structure, funding mechanism, and matching costs to the City were not economically sustainable.

Moreover, the City is not legally permitted to spend money in support of a tax measure, regardless of whether it is initiated by the City, the Association, or the public. The suggestion that the City promise the FFA a raise if they promote passage of a sales tax measure to fund fire services seems to violate this legal restriction.

While the City Attorney and staff have significant concerns with the legality, ethical, and financial findings of this report, it will of course be presented to the City Council at a future public hearing for the community to provide input and for the City Council to provide direction.

Respectfully,



Tom Mauk
City Impartial Panelist