

In the Matter of the Impasse Between)	
)	
BUENA PARK POLICE ASSOCIATION/)	
BUENA PARK MANAGEMENT)	FACTFINDING REPORT AND
ASSOCIATION,)	RECOMMENDED TERMS OF
)	SETTLEMENT
<i>Exclusive Representatives,</i>)	
)	PERB CASE NO. LA-IM-101-M
- and -)	
)	DATE OF REPORT ISSUANC
CITY OF BUENA PARK,)	SEPTEMBER 20, 2012
)	
<i>Public Employer.</i>)	
_____)	

COMPOSITION OF THE FACTFINDING PANEL :

- Neutral Chairperson:* ROBERT BERGESON, Arbitrator/Factfinder
- Associations Member:* FRANK NUNES, Sergeant, Buena Park PD
- City Member:* DANIEL CASSIDY, Esq., Liebert Cassidy
Whitmore

PRESENTING EVIDENCE/ARGUMENT TO THE PANEL :

- On Behalf of the Associations:* MICHAEL MCGILL, Esq., Lackie, Dammeier &
McGill
- STEVEN HOLLIDAY, Lieutenant, Buena Park PD
- DAVID MARTINEZ, Sergeant, Buena Park PD
- DIRK O'DETTE, Sergeant, Buena Park PD
- On Behalf of the City:* CONNIE ALMOND, Esq., Liebert Cassidy
Whitmore
- EDDIE FENTON, Director, Human Resources
- JAMES VANDERPOOL, City Manager

BACKGROUND AND PROCEDURAL HISTORY

The northern Orange County city of Buena Park was incorporated in 1953. The city is most noted for being home to Knott's Berry Farm, where during the depression Walter Knott took experimental plants abandoned by horticulturalist Rudolph Boysen and nurtured them into a fruit he named the Boysenberry. Originally a famous restaurant, Knott's Berry Farm has for many years been known more for an adjoining amusement park which employs nearly 3,000 workers each summer. As such, Knott's Berry Farm is the largest employer in the city of nearly 100,000 residents.

The City of Buena Park (City) is chartered under the laws of the state as a council-manager form of government. Although fire services are provided by the Orange County Fire Authority, the City maintains its own police department, the employees of which are the subject of the present dispute.

The department's five lieutenants and captains are represented for purposes of collective bargaining with the City by Buena Park Management Association (BPMA). The remainder of the approximately 139 employees of the department, including police officers and sergeants as well as non-sworn employees such as dispatchers, are represented by Buena Park Police Association (BPPA). When mentioned collectively, the two employee organizations will be referred to herein as the "Unions."

Typical of California municipalities, the City has suffered from the effects of the national economic downturn of the last half dozen or so years. In response to declining reserves of the City, through fiscal year 2011-2012, the City and the Unions agreed to furloughs of employees of one day per month or thereabouts. During negotiations over a successor memorandum of understanding (MOU) for 2012-2013, the parties reached impasse over the need to continue furloughs and/or add additional concessions so as to mitigate the City's declining ending balance. Pursuant to that impasse, the Unions initiated the provisions of Government Code § 3505.4 providing for creation of a factfinding panel (Panel) through the offices of the state Public Employment Relations Board (PERB).

Robert Bergeson was chosen by the parties and appointed by PERB to serve as the neutral chairman of the Panel. The City and the Unions designated Daniel Cassidy and Frank Nunes to be their respective members of the Panel. On behalf of their principals, members Cassidy and Nunes waived statutory time limits for conduct of the hearing and the Panel's issuance of this report.

Factfinding panels are statutorily authorized to meet with the representatives of the parties through investigation and/or hearing and, if an agreement settling all issues cannot be reached, to make factual findings based on the evidence obtained and to recommend terms of settlement. To initiate those quasi-legislative responsibilities a hearing was held at City Hall on August 21, 2012, during which the City and the Unions were given full opportunity to present evidence on the outstanding issues. The Panel thereafter met with the parties into the evening on that and a subsequent day in an unsuccessful effort to mediate a settlement to all outstanding issues. Chairperson Bergeson thereafter authored a draft version of the present report which was deliberated upon by partisan members Nunes and Cassidy on September 19 and this final report was then crafted.

RELEVANT FACTORS

Subsection 3505.4 (d) of the Government Code states as follows:

In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (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 or traditionally taken into consideration in making the findings and recommendations.

ISSUES

1. *REPLACEMENT OF PERSONNEL BOARD WITH ADVISORY ARBITRATION*

City's Position

The Personnel Board is a vestige of the past. In contemporary employer-employee relations, appeals of disciplinary actions are more typically submitted to professional arbitrators rather than citizens not versed in the nuances of the just cause standard. Although in many cases, the authority of such arbitrators is binding on the disputing parties, in the Personnel Board, the City has maintained certain control over the process through appointment of the members thereof. An arbitration process in which the City Council retained authority to modify the recommendation of the arbitrator would be an analogous process. Of the cities the City typically compares to, Brea, Fountain Valley, Fullerton, Garden Grove, La Habra, Orange, Tustin, Westminster and Whittier, seven have advisory arbitration to the city council while two have binding arbitration.

Unions' Position

The City has shown no compelling need to alter the longstanding Personnel Board process. Indeed, it is ironic that despite the control the City Council retains over the process through appointment of the members of the Personnel Board, the City nevertheless advocates a change. The change appears to be advocated solely because the last time an appeal was brought to the Personnel Board, the discharge was overturned. The Personnel Board has served the parties well over the years and should be maintained.

Factfinding Panel's Recommendation

It would be inappropriate for the Panel to opine on the propriety of the Personnel Board decision cited by the Unions except to point out that the City challenged the propriety thereof in Superior Court and was unable to get that decision vacated. We would point out, however, that the City has not based its position on that decision and it is the rationale the City relies on that persuades the Panel some change should be adopted.

To expound upon the City's argument, personnel boards or civil service commissions were originally a reaction to the "spoils system" of government originated by Thomas Jefferson. Upon assuming office, Jefferson fired hundreds of diligent federal workers and replaced them with political supporters, many of whom had no qualification for the position beyond having contributed time and/or money to Jefferson's campaign for President. The patent impropriety of that action resulted in creation of the U.S. Civil Service Commission and, eventually, analogous bodies in state and local government. Although preferable to the spoils system, such commissions composed of political appointees have gradually lost their sheen as typically composed of citizens who, although they may be very well meaning, have no expertise with regard to performing such quasi-judicial functions as the making of findings of fact and conclusions of law. Hence, the adoption of the private sector model of arbitration as a substitute. See, generally, Elkouri and Elkouri, *How Arbitration Works*, 6th ed. (BNA, 2003) at p. 1275 et seq. discussing the federal Civil Service Reform Act of 1978. Also see "Pocket Guide to Just Cause: Discipline and Discharge Arbitration," University of California Institute for Research on Labor and Employment, 1st ed., April 2010 and "Pocket Guide to Public Sector Arbitration: California," University of California Institute for Research on Labor and Employment, 3rd ed., November 2004.

The Panel does not wish to suggest that members of civil service commissions or personnel boards are all lacking in competence nor, for that matter, that all arbitrators are fully competent. Rather, it is a matter of degree. To put it another way, professional arbitrators are, as a group, better able to serve in a quasi-judicial capacity than are untrained citizens. Moreover, because it is their profession, arbitrators are versed in what is sometimes referred to as "the law of the shop." To put it another way, arbitrators with experience in peace officer discipline are

better able than others to understand, for example, use of force issues, the extent to which off-duty activities should be grist for discipline, the Public Safety Officers' Procedural Bill of Rights Act and the like.

The above having been said, we cannot recommend advisory arbitration. In Buena Park, appeals of disciplinary actions have historically been decided by a body whose authority has been binding on the disputing parties. Had a persuasive argument for instilling in the City Council review power over the quasi-judicial entity to whom appeals of police discipline are made, we might be inclined to adopt the City's position in full. In the absence of such a compelling argument, however, what the City advocates is akin to providing to its legislative body veto power over the quasi-judicial decisions of what has been an independent entity. On this record, the Panel cannot condone that position.

It is therefore recommended that the parties agree to substitute binding arbitration for the Personnel Board process. Two things should be clear about this recommendation.

First, it is a melding of the positions of the parties and therefore reflects what the Panel believes to be an equitable compromise. Second, in so recommending we do not advocate removal of any authority of the Council over its legislative functions. To reiterate, the present process is quasi-legislative in the sense it involves third party assistance with a dispute over the making of policy. So as not to intrude upon the legislative authority of the Council, our authority over this "interest" dispute is entirely advisory and, as with the Unions, the Council is accordingly free to accept or reject the recommendations made herein as it deems appropriate. Appeals of disciplinary action, however, involve not disagreement over policy making but rather over implementation of existing policy. They are therefore quasi-*judicial* in nature. To this point, the City and the Unions have empowered the Personnel Board to perform that quasi-judicial function over so-called "rights" disputes and we therefore merely recommend such binding authority over that quasi-judicial process be transferred from the Personnel Board to a neutral arbitrator.

Although the City did not advocate the manner in which the parties should select such arbitrators, we believe it advisable to opine on that point.

There are currently three main sources from which disputing parties may obtain a list of arbitrators in order to strike names for selection. Those sources are the Federal Mediation and Conciliation Service, the American Arbitration Association and the California State Mediation/Conciliation Service. The Panel is loath to recommend the FMCS since a significant percentage of the arbitrators on its panel serve primarily in private industry. Police patently have problems unique from employees in private industry so arbitrators with little or no public sector experience would not be a good fit for hearing Buena Park police disciplinary appeals. With regard to the AAA, the Panel is aware that company tends to have less private sector-oriented arbitrators on its panel. Nevertheless, AAA charges for sending lists of names to disputing parties, with the more services provided, the greater the cost. However, the CSMCS, which recently came under the auspices of the state Public Employment Relations Board, provides such services to local government agencies free of charge. It is therefore recommended the parties agree to an advisory arbitration process and that they obtain a list of arbitrator names from the CSMCS.

2. *CONTRACTING OUT JAIL SERVICES*

City's Position

The City's financial reserve has been diminishing rapidly. The City has needed to furlough police officers and civilian employees of the Police Department and will need to continue to do so until the state's fiscal crisis ends. In order to mitigate furloughs, the parties should agree to lay off the five employees whose exclusive function is to staff the jail and replace them with employees of a private sector contractor. Various cities in Orange County have already replaced their jailers with such private sector employees and projected savings in contemporary dollars as a result of this change would be \$187,000 per year.

Unions' Position

Although there will obviously be a detriment to the five jailers through adoption of the City's proposal, there may be mitigatory factors the parties could agree to which would make the change more palatable. However, the parties have not fully discussed such possible mitigation so that cannot yet be determined. Therefore, the parties should agree to table this City proposal for further discussions during the term of the MOU.

Factfinding Panel's Recommendation

On its face, the Unions' position makes some sense. No evidence was presented to suggest the five jailers have been anything but committed, competent employees of the City. Sympathy must therefore be shown for their probable desire to wish to remain employed and if this were a time of fiscal solvency for the City, the Panel could not recommend adoption of this City proposal. However, it is undisputed the City is suffering from significant financial difficulties and that the manner in which the parties have thus far addressed them has not stopped the proverbial bleeding. Since it appears as though contracting out jail services is a cost saving trend in Orange County, it appears to be one manner of so doing.

The problem with the Unions' proposal is that the term of the contract at issue here is merely one year. The Unions' proposal includes no date certain for completion of the advocated discussions, which could therefore easily continue until the end of the fiscal year, thereby providing no relief to the City during the term of the MOU. On that basis, the Panel cannot recommend the Unions' proposal and instead advocates that the Unions agree to the City's proposal to contract out those jobs with the following caveats.

Three of the five jailers are within two years of retirement eligibility under the City's contract with the California Public Employees' Retirement System. The Panel is aware that at least under some circumstances, CalPERS allows post-retirement part-time employment with the contracting agency of what are commonly referred to as retired annuitants who are able to work a finite number of hours per year without prejudicing their retirement. The City has a parks and recreation department which, if typical of public agencies generally, has a need for seasonal help. It is therefore recommended that insofar as any of the five jailers might be interested in such work and qualified to perform it that the City agree to give them first priority for it over and above new hires. The same recommendation is made regarding the filling of any available part-time clerical positions within the City.

For those jailers not intending to retire for some time, it is recommended that the City agree to give them priority for full-time positions within the Police Department for which they would meet the minimum qualifications. We are unaware of exactly which positions that might entail but an example is Parking Enforcement Specialist.

Finally, it cannot be said from the evidence presented exactly to what extent the five affected jailers might be interested in employment with a private company with which the City would contract. However, insofar as one or more might wish to continue staffing the City jail while working for that private company, even for somewhat less money, the Panel recommends that the City include in its request for bids a provision that the selected contractor will agree to hire any of the current employees who may wish to work for that private entity provided that he or she meets whatever general qualifications the contractor may have for its employees.

3. *VACATION ACCRUAL*

City's Position

Although the parties seem to have agreed to language which would accelerate accrual beginning the month following various gradations of time with the City, the practice has been to begin the greater accrual 11 months before that time. It should therefore be expressly acknowledged that the City has essentially been providing bargaining unit members a windfall beyond what was obtained at the bargaining table by the Unions.

Unions' Position

Insofar as an error has been made, it has been the City's mistake in miscalculating eligibility for increased vacation accrual. Therefore, assuming any unit members have had an accelerated accrual of vacation, provided the City does not attempt to recoup such accelerated accrual, the Unions do not object to this proposal.

Factfinding Panel's Recommendation

The Panel does not understand the City to be advocating reimbursement of any possible temporally advanced vacation accrual. As such, we recommend adoption of this City proposal.

4. *SERVICE RETIREMENT ACCOUNT*

City's Position

The parties agreed to implementation of this benefit in 1999 in lieu of lifetime medical benefits at retirement. The program allows for the banking of accrued sick leave to defer out-of-pocket expenses for purchasing group medical insurance. Participating employees benefit in that the City matches their contribution on a two-for-one basis. Of course, so doing is an additional

cost to the City during a time of economic difficulty. Accordingly, the parties should agree to preclude new enrollment while grandfathering in those already taking advantage of the program.

Union's Position

The cost to the City is minimal and foreclosing enrollment would therefore result in only very minimal savings.

Factfinding Panel's Recommendation

The Union may be correct that savings resulting from what would amount to gradual abolition of the program would be slight. However, the intent here is to help the parties create savings beyond what have been realized through the furloughs of the recent past. To repeat, notwithstanding those furlough efforts, the City's financial reserve continues to be drawn down. In combination with other recommendations made herein, the Panel believes that can be accomplished. It is also noted that only 4 of 21 non-sworn and 9 of 37 sworn members of the units eligible to participate have availed themselves of the program. If the past can be deemed an augury of the future, the great majority of new hires are unlikely to be interested in the program anyway. It is therefore recommended that the parties adopt the City's proposal to foreclose future enrollment in the program while allowing those already enrolled to continue to participate.

It is noted that the current cost to the City of the program for unit members is approximately \$89,000 per year. (There is an additional cost for members of other bargaining units.) It is impossible to know whether any of the 13 unit members participating in the program may retire before July 1, 2013 but it stands to reason that the City will realize a savings of an average of about \$6,850 per year as each terminates employment.

5. *BILINGUAL PAY, LONGEVITY PAY, EDUCATION ALLOWANCE*

City's Position

Consistent with the philosophy of attempting to mitigate the need for furloughs through the capturing of savings elsewhere while at the same time imposing the least possible negative impact upon current unit members' income, the parties should reduce the compensation provided to new hires who become eligible for these "special pay" provisions. Applicants for bargaining unit positions would be told before accepting employment that these bonuses enacted during a time of relative City wealth can no longer be made available to them.

Specifically, there should be a change from a percentage of salary to a flat dollar amount per employee receiving the bonus. Accordingly, bilingual pay for new sworn unit members should be reduced from what for sworn employees is now a minimum of \$212.48 per month and maximum of \$275.60 per month to a flat \$135 per month and a reduction for qualified non-sworn employees from a minimum of \$125.32 per month to a flat \$35 per month. The following revision should also be implemented for longevity pay.

For BPPA unit members, rather than the current 3% of base pay with 20-24 years of service (resulting in a minimum of \$203.40 per month for a top step police officer to a maximum of \$263.82 per month for a top step sergeant), longevity pay for new hires should be a \$125 per month upon reaching that length of service regardless of rank. For BPPA unit members with 25 or more years of service, rather than 5% of base pay (resulting in a minimum of \$339.00 per month for a top step police officer to a maximum of \$439.70 for a top step sergeant) new hires should be paid a flat \$175 per month irrespective of rank. For members of the BPMA unit, the change should similarly be a reduction from 3% of base pay (resulting in a minimum of \$326.28 per month for a top step lieutenant to a maximum of \$377.49 per month for a top step captain) to a flat rate of \$175 per month regardless of rank for 20-24 years of service and a rank-neutral flat rate of \$300 per month for unit members with more than 25 years of service.

Education pay should be reduced in a similar manner. Currently, BPPA members receive 2.5%, 5% or 7.5% of their base pay for obtaining an AA or AS degree, an advanced POST certification/bachelor's degree or a master's degree of juris doctor degree, respectively. Cost to the City/benefit to the employee is in the amount of a minimum of \$132.80 per month for a bottom step officer to a maximum of \$482.30 for a bottom step sergeant. Those figures should be reduced to a flat \$100 per month for the first type of degree, \$200 for the second category and \$300 for the master's or JD degree, respectively. For BPMA unit members, the figures currently are 5% of base salary for advanced POST certification/bachelor's degree/master's degree amounting to a minimum of \$448.60 per month for a bottom step lieutenant to a maximum of \$709.66 per month for a bottom step captain. The bonus for obtaining that additional education should be reduced for those newly promoted to \$300 per month regardless of rank. Members of the BPMA unit also receive 7.5% for acquiring a master's or juris doctorate degree amounting to

a minimum of \$628.04 per month for a bottom step lieutenant to a maximum of \$709.66 for a bottom step captain. That education bonus should be reduced for those newly promoted to any unit rank to \$400 per month.

Unions' Position

The Unions won these benefits at the bargaining table and two-tiered compensation plans of this nature have been known to cause dissension between veteran employees and new hires. Accordingly, agreeing to these City proposals is not something the Unions take lightly. Nevertheless, in recognition of the City's financial difficulty, the Unions can agree to this proposal provided that so doing will help reduce the extent of furloughs going forward.

Factfinding Panel's Recommendation

The Panel believes the Unions' position on these City proposals to be prudent and pragmatic under the circumstances. It is recognized these are benefits the Unions have fought for and won in prior negotiations and givebacks are never taken lightly by the membership of an employee organization. Nevertheless, as the City asserts, creation of this two-tiered plan will at once be harmless to present bargaining unit members while serving to create immediate ongoing savings for the City during a time of need and it is therefore recommended the parties similarly adopt this City proposal.

The City has prognosticated the savings which would result from these changes as follows. Twenty-nine members of the two bargaining units will be eligible for retirement by June 30, 2014. Based on previous data, it is estimated that 11 of those 29 will retire during that time. If that is the case, the approximate savings to the City from reducing these special pay provisions will be an average of \$5,169.32 per employee, or a total of about \$56,862 per year.

6. *PUBLIC EMPLOYEES' RETIREMENT SYSTEM/FURLOUGHS*

City's Position

As is the case with the majority of public employers in California, the City has provided its employees with a pension system that is no longer sustainable. The City has been paying the entire 9% member contribution of sworn unit personnel while granting them the 3%@50 formula with their income based on their highest one year of salary. That type of pension became

popular during the 1990s stock market boom when public agencies like the City and CalPERS were flush with money. However, that is no longer the case and this lucrative pension plan for sworn personnel must be curtailed. Similarly, the City has been paying 7% of the 8% member contribution toward CalPERS for non-sworn unit members.

Consistent with the philosophy supporting the approach to changes in specialty pay and the service retirement account, present sworn unit members should be grandfathered in so as to retain their 3%@50 and highest one year formulas. However, the parties should agree that newly hired sworn personnel will receive a 2%@50 formula based on an average of their highest three years of salary and pay the entire 9% member contribution. Current sworn unit members should also pay 5% of the 9% member contribution.

Non-sworn bargaining unit members' CalPERS formula is tied to other miscellaneous employees of the City represented by employee organizations not involved with the present matter. Nevertheless, under state law, whatever changes are made to these non-sworn unit members' CalPERS formulas must be implemented for the other unit members and vice versa. For those other units, the relevant employee organizations have either agreed to their members picking up 1% of the 8% member contribution and 3.142% of the employer's rate for a combined contribution of 4.142% or, in the case of one of the organizations, has had the City impose that requirement upon them.

Picking up of 5% of their retirement contribution by sworn unit members and approximately 3.9% by non-sworn would save the City about \$478,000 annually for the BPPA unit and about \$53,000 annually for the BPMA unit.

The parties should also consider implementation of furloughs in a like amount. Since the annual cost of 1% in salary to the BPPA unit is about \$133,500 and about \$15,300 for the BPMA unit, or cumulatively about \$148,800, quintupling the furlough amount would save the City about \$744,000 annually. Accordingly, if the parties would implement both proposals, it would save the City about \$1,228,000 annually.

The City acknowledges that such cuts in pay will be difficult for its employees. However, drastic measures are necessary to stem the City's declining ending balance. As an example, the City ended the 2010-2011 fiscal year with undesignated general fund reserves of

\$11,610,494. However, by the end of the 2011-2012 fiscal year, the undesignated reserve had diminished to \$9,418,509. Continuing reductions of nearly \$2.2 million could soon result in insolvency for the City.

Unions' Position

There can be no doubt the City has suffered a loss in revenue. Nevertheless, the declining reserve balance is illusory in one sense. That is that the Governor has withheld the redevelopment funds usually shared with local governments like the City.

Although many Southern California cities have implemented furloughs, very few have furloughed police as has Buena Park. In addition to that loss of income, as indicated in a survey conducted by the independent Association of California Cities-Orange County, Buena Park ranks just 14th out of 22 Orange County cities in the total compensation paid to police officers. Even that survey makes the City look too good as it discounts concessions already made by these bargaining units. Adding in those concessions drops Buena Park to 18th out of the 22 cities. Despite that parsimonious approach to unit member compensation, the City has reached a contract with Chief of Police Corey Sianez which will increase his monthly pay from the current \$14,310.26 to \$15,463.27 effective March 11, 2013 with another similar increase in March of 2014. In other words, while the City expects union-represented employees to take significant reductions in income, it is going to *increase* the chief's salary by 8% during fiscal year 2012-2013.

For such reasons, unit members should be furloughed in an amount of 5% of their salary and pay 3%, not 5%, of their CalPERS contribution. So doing would amount to ample sacrifice on behalf of these City employees. Further, if the City is successful in obtaining reimbursement of \$4,500,000 or more of the lost redevelopment funds, the City should recognize the sacrifices made by bargaining unit members and pay each of them a bonus of \$5,000.

Factfinding Panel's Recommendation

A couple comments bear making at the outset.

First, the salary survey provided by the Unions, while a viable guideline, cannot be absolutely accepted. Granted, as the Unions assert, the survey was performed by an independent entity with no apparent intention of skewing the data to make the Buena Park look bad in

comparison to its sister cities within Orange County. However, since the survey includes all cities within the county, it contains compensation information for communities like Irvine, Costa Mesa and Newport Beach where the cost of housing is markedly higher than in Buena Park. Also, although the Panel acknowledges the Unions' argument that the survey fails to consider concessions already made, the survey just as axiomatically fails to take into consideration concessions which may have been made in comparable cities. Although furloughs may not have been imposed, it strikes us as incomprehensible that during a time of statewide budgetary problems that none of the comparison cities have needed to obtain any concessions from their police unions. Therefore, even viewing the survey therefore from an objective viewpoint most favorable to the Unions, assuming no concessions such as furloughs in comparable cities, the survey shows Buena Park to be almost identical to Fountain Valley behind Garden Grove, Orange, Fullerton, Brea and Tustin and ahead of Westminster and La Habra. Put another way, Buena Park's average total compensation of \$11,798.98 per month lies about \$526 per month lower than the average of the former five cities and almost exactly \$900 above that of the average of Westminster and La Habra.

It should also be pointed out that the major concession cited by the Unions is not a reduction in salary but rather furloughs. Accordingly, although City police earn somewhat less than the average of comparable communities in terms of monthly salary, they presumably also work less hours so that their hourly rate can be assumed to lie approximately in the middle of comparable agencies.

The conclusion to be drawn is that unit members appear to have been fairly compensated by the City to this point in time. Of course, it is beyond dispute that as this Panel renders its opinion, the City's financial situation is more dire than was previously the case. As will be noted, we acknowledge this in recommending the City's position on almost every issue above. Moreover, the Panel will recommend the City's position on the present issues with one qualification.

This fact must not be overlooked in addressing the City's fiscal dilemma. The present bargaining impasse addresses merely a portion of the City's workforce and the City's budget should not be balanced solely on the backs of these bargaining unit members. Rather, monetary

sacrifices should be spread throughout the City. Closely evaluating the recommendations above confirms the significant sacrifice these unit members will make if the Panel's recommendations are accepted.

To summarize the above, there will be reductions in income to the bargaining units of about \$1,228,000 in retirement contributions and furloughs, \$187,000 in contracting out jail services, \$57,000 in specialty pay and \$7,000 in the Service Retirement Account. Those figures total about \$1,479,000 per year. In the opinion of the Panel, even assuming the City again sees a reduction of \$2.2 million in its undesignated reserves, by making such concessions these units would be assuming more than two-thirds of that amount. In the opinion of this Panel, that is plenty of sacrifice on their part.

The Unions have persuasively argued that much of the reason for the City's present fiscal dilemma is loss of the redevelopment revenue. Both parties have expressed optimism the City will recoup that lost revenue after the first of the year, with the Unions being sufficiently optimistic they have proposed the parties agree to a figure which would "trigger" their proposed bonus. According to the panel's calculations, the amount advocated by the Unions is about \$670,000. Although the Panel is not persuaded to recommend exactly what the Unions advocate, we do believe that contingency language can provide the basis for an equitable settlement.

The Panel believes that the City should recognize the sacrifices made by employees of the Police Department by agreeing to redistribute some of the redevelopment money back to them. However, the main problem with the one-time bonus is the absence of any rationale to support the amount. Therefore, rather than recommending the Unions' position in its entirety, we advocate the following, with timing of receipt of the anticipated funds being fortuitous.

If the redevelopment funds are obtained, that is anticipated to happen not too long after the first of the year. As the Unions point out, the City is contractually obligated to raise the Chief's salary by 8% in early March. Particularly given the concessions addressed herein, news of that event cannot be anticipated to be well received by the Chief's subordinates. It is therefore recommended that, assuming the City realizes at least a \$3 million enhancement to its budget from reimbursed redevelopment funds that effective not sooner than the first full pay period of March 2013, furloughs be eliminated entirely for these bargaining units.

According to the Panel's calculations, so doing would cost the City about \$166,750 for the BPPA unit over the final three months of the fiscal year plus an additional \$19,125 for the BPMA unit, thereby reducing savings over that final quarter of the year by just under \$200,000. Not only is that a modest amount, so doing would reward unit members for their sacrifices over the fiscal year. There are additional advantages to the Panel's recommendation.

First, eliminating furloughs would provide 5% more in bargaining unit time devoted to service to the citizens of Buena Park. Eliminating furloughs would also serve to eliminate the possibility that some unit members eligible for retirement might continue working in the hope that they might be dispensed with sometime later and that working for 12 months thereafter would enhance the highest one year portion of their CalPERS formula. Since retiring employees would be replaced by personnel with less lucrative special pay entitlements, retirement should not be discouraged through continuation of furloughs. Just as important in our opinion is the following factor.

To be frank, these have been highly contentious negotiations so a cooling of tensions would be advantageous for the parties. The sworn employees subject to this report are of the opinion, and no contrary evidence was presented, that they have been subjected to furloughs whereas the great majority of their peers in comparable cities have not. The Panel believes that abolition of what is accordingly a greatly disliked concession could go a long way toward repairing the parties' relationship and timing, as they say, can be everything.

To repeat, the Panel is authorized to address merely the 2012-2013 fiscal year. However, our charge is also to provide the greatest possible assistance to the parties over that period. In

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that spirit, we note that the parties will undoubtedly be back at the bargaining table before July 1, 2013. Removing furloughs just prior to commencement of such negotiations, assuming it to be financially feasible, would enhance the prospects of settlement going forward and that is as worthy a goal as agreement to an MOU for 2012-2013.

DATED: September 20, 2012

Respectfully submitted,

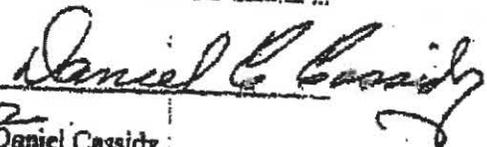


Robert Bergeson
Impartial Chairperson

I concur on all sections of the report: _____

I concur on all sections of the report except the following listed issue(s): _____

Notes: _____

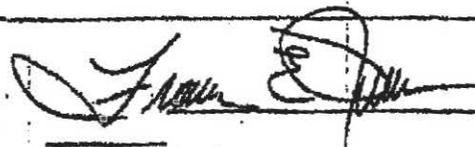
9/20/12 

Daniel Cassidy

I concur on all sections of the report: _____

I concur on all sections of the report except the following listed issue(s): _____

Notes: _____



Frank Nunes

Panel Member Cassidy adds the following comment: "I concur on all sections of the report except for the Panel's recommendation regarding 'Replacement of the Personnel Board with Binding Arbitration.' The City and the Union positions are accurately set forth in the body of the Panel's opinion. The Panel is correct when it observes that outside hearing officers have more experience than a lay panel in deciding complex police officer disciplinary cases. I believe a process ending in advisory arbitration also provides that while retaining the authority to make the final decision with the City Council who are ultimately responsible to the public to do so."