

FACTFINDING REPORT AND RECOMMENDATION

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In a Matter Between:)	
OPERATING ENGINEERS)	PERB Impasse:
LOCAL UNION No. 3)	Case No. SA-IM-110-M
)	
UNION,)	
)	
And)	Hearing: October 18, 2012
)	
CITY OF DOS PALOS)	Report: October 22, 2012
)	
)	
EMPLOYER)	Hirsch Case No. H12-102
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FACTFINDING PANEL

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Appearances By:

Employer: **Shelline K. Bennett, Attorney**

Union: **Doug Gorman, Business Agent**

PROCEDURAL BACKGROUND

The parties, Operating Engineers Local Union No. 3 (“Union” or “Local 3”) and the City of Dos Palos (“Dos Palos” or “City”) reached an impasse in negotiations over three economic issues covering the City’s police officers, who are represented by the Union. By way of a letter dated October 3, 2012, the California Public Employment Relations Board (“PERB”), appointed Robert M Hirsch as Chair of the Factfinding Panel (“Panel”) in this matter.

The Panel held a phone conference call and exchanged several emails setting the factfinding hearing in this matter. The parties agreed to waive the statutory time limits (Cal. Gov. Code, §§ 3505, et seq.) only to allow the hearing to be held on October 18, 2012. Other time limits imposed by statute remain applicable.

The Panel’s factfinding session was conducted informally, in Dos Palos, and included further bargaining and the exchange of new proposals by both the Union and the City. Although the parties made substantial headway in reaching an agreement, ultimately they could not, and the Panel’s Chair thus issues this Report and Recommendation. The City asked that the Chairperson issue a brief Report in order to reduce expenses.

IMPASSE ISSUES

The City presented a Last, Best & Final Proposal to the Union which included the following terms: 1) 5% wage reduction for all officers, 2) City pays 100% of employees’ health coverage, employees pay 100% of dependents’ health coverage, 3) Employees pay 100% of “employee” contribution to the Public Employees’ Retirement System (“PERS”). The City

contemplated a one-year agreement with Local 3. Dos Palos made this proposal retroactive to August 1, 2012.

The parties presented the following issues to the Factfinding Panel:

1) WAGES:

The Union proposed a wage freeze, that is, status quo, for the one-year contract.

The City initially proposed a 5% wage reduction to wages for all affected officers (the Police Chief is not part of the bargaining unit) for one year, under a one-year agreement.

Both parties, during the mediated bargaining session, which took place during the factfinding process, indicated they could agreed to a wage freeze for two years, under a two-year contract. There would be no retroactivity. Although this issue was not subject to a tentative agreement (“TA”), the Chairperson finds that the terms were both fair and reasonable.

2) HEALTH, VISION & DENTAL COVERAGE:

The City initially proposed status quo for health coverage for police officers. It further proposed that “dependent coverage” must be paid for, fully, by the employees.

The Union initially rejected the City’s proposal. After some negotiations, the Union agreed to a Dos Palos proposal covering two years whereby the employees

pay for 100% of dependent coverage. The two-year agreement would require the City to pay for the police officers' health coverage as it currently does. This proposal would not be retroactive. The Chairperson finds that although this provision was not the subject of a TA, it is both fair and reasonable.

3) **RETIREMENT CONTRIBUTIONS TO THE PUBLIC EMPLOYEES' RETIRMENT SYSTEM (PERS):**

The City proposed to continue paying the "employer" contribution to PERS, but, the police officers would have to pay the "employee" contribution, which is 9% of wages.

The Union rejected this proposal and proposed that the City continue to pay 100% of the employee's share, as is currently the case. After mediated bargaining, the Union proposed that the City pay 100% of the "employee" contribution for one year and the employees pay one-half of the "employee" contribution, 4.5% of wages, the second year of the contract.

Dos Palos rejected this proposal.

STATUTORY CRITERIA

MMBA, at Section 505.4(d), sets forth the criteria that factfinders must consider in matters such as this one:

- 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 in 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.

FACTUAL BACKGROUND

It is clear from the presentations made by both the City and the Union, that financial circumstances are dire for Dos Palos right now. The City continues to have an operating deficit, and at fiscal year-end for 2011, it had just \$191,365 in the General Fund, which is the source for

police compensation. By fiscal year-end 2012, the unaudited financial statement shows the General Fund with a little more than \$60,000 remaining as an unreserved balance (unrestricted use).

The police officers, meanwhile operate with a skeletal crew, and earn less than most officers in California, including officers working for comparable, surrounding cities in the agricultural, Central Valley. All in all, both the City and the police department are trying to stay afloat and both bargaining parties presented compelling arguments supporting their positions. All factors (1-7) above were discussed and considered by the Panel.

RECOMMENDATION

1) **WAGES:**

The Chairperson believes the parties' collective proposal to maintain wages at the current level for 2 years, pursuant to a two-year agreement, is reasonable and fair under the circumstances. Accordingly, that is the recommendation of the Chairperson.

2) **HEALTH, VISION & DENTAL COVERAGE:**

As with wages, the Chairperson believes the parties arrived at a fair and reasonable solution whereby the City pays 100% of the employees' coverage while the employee pays 100% of the dependent coverage under a two-year agreement. This shall not be retroactive. This is the recommendation of the Chairperson.

3) RETIREMENT CONTRIBUTIONS TO PERS:

Recognizing the financial strains on both the City and the police officers, and the fact that virtually all public employees in the PERS system are required, or soon will be required, to shoulder the employee share of the contribution, the Chairperson makes the following recommendation: In the first year of a two-year contract, the police officers must make a contribution of 4.5% of salary (50% of the employee's share) to PERS as their share. In year two of the contract, the officers must make a contribution of 9% of salary (100% of the employee's share). This provision shall not be retroactive.

Respectfully submitted,

Date: October 22, 2012



Robert M. Hirsch, Impartial Chair

FACTFINDING PANEL MEMBER'S AUTHORIZATION

I, Shelline K. Bennett, am a Factfinding Panel Member in the matter of *Operating Engineers Local Union No. 3 and City of Dos Palos*, PERB Impasse, Case # SA-IM-110-M, and Employer representative at the October 18, 2012, Factfinding Panel hearing. I agree [] disagree [] with Impartial Chairperson Robert M. Hirsch's foregoing Recommendation on pages 7-8, *supra*.

Dated: October 23, 2012.


Shelline K. Bennett, Panel Member

DISSENT

The City thanks Factfinding Panel Chair Robert Hirsch and OE 3 Factfinding Panel Member Doug Gorman for their respective time at the factfinding session and attempts at trying to reach agreement on the negotiations related to a successor MOU between the Dos Palos Police Officers Association (DPPOA) and the City of Dos Palos.

1. The first page of the Factfinding Report and Recommendation indicates an "Award" date of October 22, 2012. It is unclear to the City how this matter is an "award", but believes that this is instead a recommendation on terms of settlement that is advisory from the Factfinding Panel Chair.

2. The factfinding session focused and the Factfinding Report focus on three key economic issues; nevertheless, the City notes for completeness purposes that there are a number of other items in its September 6, 2012 Last, Best, and Final Proposal to the DPPOA that were not addressed via the factfinding session, some of which the parties verbally tentatively agreed to at the table and some of which were not agreed to by DPPOA.

3. The Factfinding Report indicates that the factfinding session "included further bargaining and exchange of new proposals by both the Union and the City." The City disagrees with this statement and asserts that bargaining and exchanging of new proposals did not occur but instead the parties attempted, through a factfinding mediation process with Mr. Hirsch, to discuss concepts on potential settlement terms whereby the parties could tentatively reach agreement and take the same back to their respective constituents for approval and/or ratification.

4. The Factfinding Report also indicates that during the factfinding mediation process, the parties indicated "that they could agree to" certain issues. During the factfinding session, the City indicated where it would be agreeable to taking a tentative agreement to its governing board, the City Council, and recommending approval of settlement terms Mr. Hirsch proposed to the parties during the factfinding session.

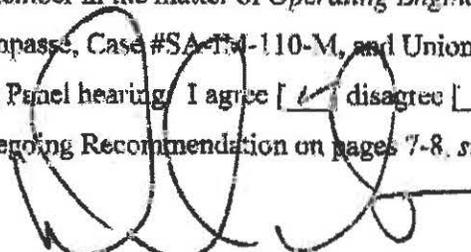
5. Specifically, during the factfinding session, the City advised Mr. Hirsch that if the parties could tentatively agree (which we did not), the City would recommend to the City Council approval of Mr. Hirsch's following mediated proposal regarding the three key economic items: (a) 2-year agreement; (b) status quo on wages; (c) employees paying 100% for dependent health care coverage; (d) employees paying 100% the employee contribution towards PERS retirement; and (e) effective date not retroactive back to August 1, 2012 but effective upon a ratification by membership and adoption by City Council.

6. For the reasons the City presented to DPPOA/OE 3 at the table during negotiations and at the October 18 factfinding session, the City continues to propose and reasserts its September 6, 2012 Last, Best, and Final Proposal to DPPOA.

FACTFINDING PANEL MEMBER'S AUTHORIZATION

I, Doug Gorman, am a Factfinding Panel Member in the matter of *Operating Engineers Local Union No. 3 and City of Dos Palos*, PERB Impasse, Case #SA-TM-110-M, and Union representative at the October 18, 2012, Factfinding Panel hearing. I agree disagree with Impartial Chairperson Robert M. Hirsch's foregoing Recommendation on pages 7-8, *supra*.

Dated: October 22, 2012.



Doug Gorman, Panel Member