

IN FACT FINDING PROCEEDINGS PURSUANT TO CALIFORNIA
GOVERNMENT CODE SECTION 3505.4

PUBLIC EMPLOYEES UNION, LOCAL 1,]	
]	FINDINGS OF FACT AND
]	RECOMMENDED TERMS OF
]	SETTLEMENT
]	
Union,]	of
]	
and]	FACT FINDING PANEL
]	
]	Mathew Mason, Union
WEST COUNTY WASTEWATER DISTRICT,]	E. J. Shalaby, Employer
]	John Kagel, Neutral Chair
]	
Employer.]	
]	
Re: PERB Cases SF-IM 102-M, 103-M, 104-M]	

APPEARANCES:

For the Union: Scott Brown, Supervising Business Agent, Richmond, CA

For the Employer: Richard M. Shiohira, Esq., Wiley, Price & Radulovich,
Alameda, CA

STATUTORY CRITERIA:

California Government Code Section 35095.4.d provides

“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.”

PROPOSALS:

The Parties, having reached impasse on several issues while agreeing to others, presented their positions to the Panel in two hearing sessions for three Bargaining Units of the Employer, the Field Operations Unit (FOU), the Managerial Employees Unit (MEU) and the Administrative/Clerical Unit (ACU). There are no individual issues concerning the latter; individual issues for the FOU and Memorandum of Understanding are discussed below.

The following are the issues before the Panel that affect all three Bargaining Units:

1. Wages: The Union seeks a 6.5% across-the-board wage increase for the initial period of the successor Agreement, date of ratification by both Parties to June 30, 2013, and 5% per year for two years thereafter. The Employer has offered 3% from the date of mutual ratification to June 30, 2013 and 3% for each of the following two years. (Tr. 9) In addition, the Parties have agreed to an

Employer proposal that based on a wage study of what the Employer maintains are comparable employers, to increase wages of individual classifications in the study above and beyond its 3% offer.

2. Medical: The Employer seeks to maintain the *status quo* of \$1500 maximum per month per employee; the Union seeks to increase to a maximum of \$1700, or for the ACU, the Employer to pay for full family Kaiser premiums.
3. Dental: The Union seeks to maintain the *status quo* of 100% Employer contribution; the Employer seeks a provision requiring employees to pay 10% of their dental premiums.
4. An issue concerning unattended operations described in detail below.
5. Pension, at least according to the Employer.
6. MEU vacation.
7. MEU administrative leave/overtime.

DISCUSSION:

Ability to Pay:

According to the Employer, its ability to pay compensation increases to the Union is limited by its commitment to capital expenses to maintain its operating certification over time, as well as the toleration of rate increases by its customers. Because of the operation of state pension legislation, it was able to increase its proposal for compensation increases from three to four percent. (Tr. 99)

The Union contests this on the basis that the Employer had not argued that it was under such constraints during bargaining, can seek further revenue as necessary, and a grand jury report showed that the Employer had adequate reserves and no debt.

The issue of ability to pay does not figure in any but a marginal way, given the overall recommendations of the Panel, as will be shown below.

Wages:

The Employer has offered an across-the-board wage increase of 3% for the initial period of the successor Agreement from the date of mutual ratification to June 30, 2013, and each of three years thereafter. In support of its proposal are cost of living increases as compiled by the Bureau of Labor Statistics of the U.S. Department of Labor in its consumer price index. (Er. Ex. 3) The Union relies on statistics concerning food and energy, which it maintains shows a higher percentage change. However, the criteria required to be applied, the consumer price index (Cal. Govt. Code Sec. 3505.4.d.6), supports the Employer's offer which is necessarily compounded over its three period span. Given no other justification presented by the Union, that across-the-board offer is recommended.

As to comparisons with other comparable public employers, while the Union maintains that the Employer's comparisons are flawed in terms of not comparing total compensation as opposed to wages only, for the purposes of classification adjustments, the Union has presented no comparables of its own for the Panel's consideration. (See Tr. 106) The Union, further, has accepted the Employer's proposal to raise classification rates to what the Employer considers the mean of its comparables, raising the wage rates

of those classifications found to be under that mean in addition to the “floor”, in this case the recommended three percent per applicable period. (Tr. 110) “All classifications that are below the mean will get more than the floor that was proposed.” (Tr. 111) There is no requirement, according to the Union, given its agreement, for the Panel to make a recommendation for each classification, or Unit, in this regard. (Tr. 112, 113)

Health:

According to the Employer, among the reasons for its proposal to maintain the cap of \$1500 per month for health insurance premiums included its consideration for its Other Post-Employment Benefits (OPEB) liability. These are health and dental benefits provided to retirees on the same basis as provided for active employees. The Employer has undertaken to keep the liabilities for these benefits on a fully funded basis, as it believes is required by accounting standards. Accordingly, the Employer maintains that any increase in employee benefits also increases its requirements to fund retiree benefits. There are currently four of 23 retirees or survivors that have family coverage. (Tr. 69)

In terms of presentation to the Panel, according to the Employer, during bargaining the Union proposed either no increase in medical coverage maximums, assuming its proposals were accepted as a package (Tr. 118), nor did the Union provide any particular data in support of increasing the maximums then in effect. The Employer’s position had been there should be cost-sharing of increasing benefit costs so that anything above the maximum should be paid by the employee. (Tr. 107)

According, the recommendation of the Panel is a maximum of \$1500 per month for healthcare premiums.

There was some discussion by the Union with respect to a benefits committee to be established for the purpose of determining alternative delivery of medical benefits. In its final brief, the Employer has made further proposals concerning such a committee, its purpose and effect. Given the inexact aspects of these proposals, as well as lack of evidence concerning it, the Panel declines to make a recommendation, one way or the other, concerning such proposals, noting, of course, that the Parties are free to agree to any or all of them, before final agreements are reached, or thereafter.

Dental:

As a cost-sharing proposal the Employer sought that employees pay 10 percent of their dental premiums, as opposed to no employee payment as currently in place. Given the marginal effect of such payments on the overall compensation requirements of the Employer, and the retention of the medical premiums at \$1500 per month, it is recommended that the Employer continue to pay the full premium costs of dental coverage.

Unattended Operations:

The Employer seeks to have its graveyard shift be covered by on-call personnel rather than the current coverage of a Supervisor and an Operator due to automation. As such, it needs relief from the current Agreement's restrictions, as it understands them, concerning minimum personnel required to be on shift.

The Parties have agreed in principal that this be done, provided no layoffs occur, but differ on such details as to whether to accomplish this by a side letter agreement or a revision to the provisions currently in the Agreement. The Panel recommends that a side

letter agreement be reached providing for no layoffs of affected personnel, and no reduction of affected personnel except by attrition, for conversion to unattended operations. Future classification changes or additions should be addressed by any meet and confer process required by law.

Pension:

The Employer maintains that while the Union has agreed to a new pension tier and contributions attributable to state pension legislation, no tentative agreement has been signed. In its opening presentation, the Union has agreed to these provisions, agreeing to the new tier before AB 340 was adopted, and the contribution rate after. (Un. Ex. 1, p.2) Accordingly, the recommendation of the Panel is to adopt that which the Parties have agreed to, agreeing to the new tier before AB 340 was adopted, and the contribution rate after. (Un. Ex. 1, p.2) Accordingly, the recommendation of the Panel is to adopt that which the Parties have agreed to.

MEU Vacation:

The Union has put forward no basis for its proposal. The Panel does not recommend adoption of that proposal.

MEU Administrative Leave/Overtime:

Elsewhere there may be a recommendation to the District that certain MEU covered employees are exempt from FLSA, and others are not. In the event that there is such a determination, the Employer seeks provisions that those found to be exempt would have the ability to continue to gain four non-cumulative days of administrative leave per Section 13.a of the current Agreement while those not exempt would be compensated by

overtime when required as provided in Section 19. (Er. Ex. 3.B) Current application of the MEU Agreement provides that all MEU covered employees receive both overtime and administrative leave when applicable. The Employer's proposal in essence is one which would eliminate overtime for those its consultant maintains are FLSA exempt employees while those then considered nonexempt would no longer have administrative leave. There is no prohibition in the FLSA against paying exempt employees overtime. This has been the practice and the bargained agreement at the District. There is no basis shown as to why a change is required because of an internal determination at some unknown future date. That determination may be challenged as to particular positions after it is made. Such a change as proposed should be reserved for future bargaining after the particulars of the determination, if adopted by the District, are known.

RECOMMENDATIONS:

1. Wages should be increased by three percent from the date of mutual ratification to June 30, 2013, three percent July 1, 2013 to June 30, 2014 and three percent July 1, 2014 to June 30, 2015. In addition, wages should be increased for those classifications below the mean in the Employer's comparability study to that mean.
2. Employer maximum health contributions towards premiums should remain at \$1500.
3. Dental contributions towards premiums should remain as fully paid by the Employer.

4. A side letter agreement should be reached providing for no layoffs of affected personnel, and no reduction of affected personnel except by attrition, for conversion to unattended operations. Future classification changes or additions should be addressed by any meet and confer process required by law.
5. The Parties' agreement as to pension tiers and contributions should be carried out.
6. The Union's proposal regarding MEU vacations should not be adopted.
7. MEU employees should continue to receive administrative leave and overtime per current practice.

Panel member appointed by the Union: Concur as to Recommendations 1, 2, 3, 4, 5, 6, 7

Dissent as to Recommendations 1, 2, 3, 4, 5, 6, 7

_____ at _____ Date: _____

Panel member appointed by the Employer: Concur as to Recommendations 1, 2, 3, 4, 5,

6, 7 Dissent as to Recommendations 1, 2, 3, 4, 5, 6, 7

 at Palo Alto, CA Date: 12/19/12

Neutral Factfinder: Concur as to Recommendations 1, 2, 3, 4, 5, 6, 7

- 4. A side letter agreement should be reached providing for no layoffs of affected personnel, and no reduction of affected personnel except by attrition, for conversion to unattended operations. Future classification changes or additions should be addressed by any meet and confer process required by law.
- 5. The Parties' agreement as to pension tiers and contributions should be carried out.
- 6. The Union's proposal regarding MEU vacations should not be adopted.
- 7. MEU employees should continue to receive administrative leave and overtime per current practice.

Panel member appointed by the Union: Concur as to Recommendations 1, 2, 3, 4, 5, 6, 7

Dissent as to Recommendations 1, 2, 3, 4, 5, 6, 7

Matt Mason at PEU Local ONE Martinez, CA Date: 12/18/2012

Panel member appointed by the Employer: Concur as to Recommendations 1, 2, 3, 4, 5,

6, 7 Dissent as to Recommendations 1, 2, 3, 4, 5, 6, 7

_____ at _____ Date: _____

Neutral Factfinder: Concur as to Recommendations 1, 2, 3, 4, 5, 6, 7

4. A side letter agreement should be reached providing for no layoffs of affected personnel, and no reduction of affected personnel except by attrition, for conversion to unattended operations. Future classification changes or additions should be addressed by any meet and confer process required by law.
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Dissent as to Recommendations 1, 2, 3, 4, 5, 6, 7

_____ at _____ Date: _____

Panel member appointed by the Employer: Concur as to Recommendations 1, 2, ~~3~~, 4, 5,
6, ~~7~~ Dissent as to Recommendations ~~1, 2~~, 3, ~~4, 5, 6, 7~~

 at WCWD Date: 12/18/12

Neutral Factfinder: Concur as to Recommendations 1, 2, 3, 4, 5, 6, 7

_____ at Palo Alto, CA Date: _____

Dissenting Opinion for Fact Finding Panel: Health Benefits #2

The district during bargaining proposed no increase in the employer share of health care, capping the coverage at \$1500 per month. Their reasoning, one that has been permeating collective bargaining for the last few years, is to limit their OPEB liability (Other Post Employment Benefits) and the employees should share in the burden of increasing benefits. The opinion of this panel is to recommend keeping the employee share at \$1500 a month, one that I'm in total disagreement with. The logic that continues to be used to defend the freezing of the employer share of healthcare is this magical "OPEB" liability concern, one that raised long term concerns if boards and fact finding committees continue to side with the employer when they use it.

The ability to pay question was not in dispute during this fact finding process, although the District did say they had decided to use certain percentages of their budget for certain things (eg. Labor costs, capital improvements, facilities maintenance), to defend their economic proposals. The reason given for the Districts health care "cap" proposal was more in line with an "everyone else is doing it that way" than a legitimate economic cost necessity defense. I'm sure the panel understands the rising costs of health care are difficult for the employer and the necessity to fund and pay for retiree health care is also of concern, however, when does that concern get outweighed by the enormity of the health care costs facing the employee's having to now shoulder the burden of any and all increasing costs going forward? There is a real possibility that for the life of this contract the increasing costs in health care premiums could outpace the wage increases this panel has recommended. In cases where the "ability to pay" is the real criteria at issue, the burden of increasing health care costs is a more immediate concern, however, this District has made a conscious decision to cap their health care costs by shifting them to the employee, without presenting an economic case for that being a necessity. Because the District never presented an economic case for their inability to pay for the increasing of the premium cap, I cannot concur with the panel's recommendation in this case.



Matt Mason

Business Agent, Local One



A Public Agency

WEST COUNTY WASTEWATER DISTRICT

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December 18, 2012

John Kagel
Law Offices of John Kagel
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P. O. Box 50787
Palo Alto, CA 94303

The West County Wastewater District hereby submits the following clarification and dissent relating to the Panel's recommendations regarding wages, dental insurance premiums, and administrative leave/overtime for exempt employees in the MEU.

Wages (Clarification)

The District concurs with the Panel's recommendation that the District's wage proposal be accepted. However, the District would like to clarify that the District's proposal uses the mean of comparable positions at comparable public agencies as its comparison point, but some classifications that are significantly below the mean may not be brought all the way to the mean.

Dental Insurance Premiums

The District dissents from the Panel's recommendation that the District bear the entire expense for dental insurance premiums.

The District presented evidence that comparable agencies have dental insurance cost-sharing with their employees, which demonstrates that the District's proposal is not out of line with the market. The Union presented no evidence supporting its position that, despite ever-increasing dental premiums, the District should continue to pay the entire cost for dental insurance. Therefore, the District's proposal to have employees share the cost of dental insurance premiums is the only one supported by evidence in the record and should be the recommendation of the Panel.

BOARD MEMBERS Leonard L. Battaglia Michael T. Caine Alfred M. Granzelle George H. Schmidt Paul C. Soltow, Jr.
BOARD ATTORNEY Alfred A. Cabral GENERAL MANAGER E. J. Shalaby

Mr. John Kagel, Law Offices of John Kagel
Neutral Dispute Resolution
December 18, 2012
Page 2

Administrative Leave/Overtime for MEU Employees

The District dissents from the Panel's recommendation that the District provide both administrative leave and overtime to the District's exempt employees.

The District's position is that exempt employees should receive administrative leave, but not overtime. The FLSA does not require the District to pay overtime to exempt employees (who receive administrative leave as a form of compensation for the possibility of longer work hours) or to provide administrative leave to non-exempt employees that are paid overtime. Plus, the District's exempt employees receive wages that reflect their exempt status and the fact that they should not receive overtime. The District's proposal simply conforms the District's pay practices to the requirements of the FLSA, rather than providing additional pay that is not required by the law. In addition, the Union did not present any evidence supporting its position. Therefore, the Panel should have recommended the District's proposal.

Respectfully,



E. J. Shalaby, General Manager
West County Wastewater District