

**FACTFINDING REPORT AND RECOMMENDATION**

In a Matter Between:	)	
	)	
IAFF Local No. 1507	)	PERB Impasse
	)	Case No.: SF-IM-110M
UNION,	)	
	)	
And	)	Hearing: January 22, 2013
	)	
CITY OF SOUTH SAN FRANCISCO	)	Award: February 4, 2013
	)	
EMPLOYER	)	Hirsch Case No. H12-126
	)	

**FACTFINDING PANEL**

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**PROCEDURAL BACKGROUND**

The City of South San Francisco (“SSF” or “City”) and the International Association of Firefighters, Local No. 1507 (“IAFF” or “Union”) have been parties to a Memorandum of Understanding (“MOU”) for many years. The most recent contract expired on June 30, 2012. The parties have been negotiating a successor agreement for about 11 months, starting before it ever terminated, and held 12 negotiation sessions during that time frame. All but two issues were resolved in negotiations and the parties reached impasse on October 15, 2012. Thereafter, the Union requested factfinding pursuant to Cal. Gov. Code Section 3505.4.

The Impartial Neutral was selected by the parties, and a hearing was convened in South San Francisco on January 22, 2013. The parties identified the two issues below as the only

issues to be addressed by the factfinding panel. Both the City and the Union waived all time limits set forth in the applicable Government Code provisions.

The parties presented written and oral evidence at the hearing, and also presented arguments in favor of their respective positions. At the conclusion of the hearing, the panel met to discuss the presentations and recommendations. No agreement was reached by the panel at that time, and, accordingly, the matter is submitted to the Impartial Chairperson for a Decision and Recommendation. The City submitted a written statement after the evidentiary hearing was concluded. The Union chose not to. The Recommendations below are based upon the record as a whole.

Unless indicated otherwise, the Recommendations are those of the Impartial Chairperson alone.

### **IMPASSE ISSUES**

The parties agreed to the following issues: Whether factual circumstances support the City imposing on the IAFF for the time period of January 1, 2013 through January 1, 2014, the following with regard to dental insurance and a vacation cap?

1) **Dental Coverage:** Effective January 1, 2013, the City shall pay a premium for a core dental plan of \$1500 CYM and \$1000 Orthodontia, for employees and eligible dependents. IAFF bargaining unit members may buy enhanced dental coverage of \$3000 CYM and \$4000 Orthodontia. All bargaining unit employees on the payroll as of

January 3, 2013 shall receive a one-time lump sum payment of \$1500, payable (in January 2013) immediately.

2) **Vacation Cap:** All bargaining unit employees shall accumulate vacation time up to two-times their annual accrual, with no further accrual until the pay period after the vacation balance has been reduced below the applicable two-year cap. All "Fifty-six (56) hour employees" may cash out up to seventy-two (72) hours of vacation leave during each calendar year. All "Forty (40) hour employees" may cash out up to eight (8) hours of vacation leave during each calendar year. The Fire Chief, with approval of the City Manager, shall have the ability to grant an exception to this provision for bargaining unit employees who reach their cap and are unable to use their vacation due to exceptional circumstances, to be defined by the Fire Chief. In these situations, the Fire Chief, with the City Manager's approval, shall have the authority to grant the unit member the right to cash out additional vacation or allow the member to temporarily exceed the vacation cap.

#### **STATUTORY CRITERIA**

MMBA, at Section 3505.4(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.<sup>1</sup>

## **DISCUSSION AND RECOMMENDATIONS**

### **1) Dental Coverage:**

SSF called one witness, Kathy E. Mount, Human Resources Director, to testify about the City's position with regard to both impasse issues. She explained that SSF has focused on three areas of concessions for its various bargaining units: two-tier retirement benefits, elimination of

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<sup>1</sup> The parties agreed at the hearing in this matter that only factors 7 & 8 shall be applied in this factfinding and the Impartial Chair agrees with that assessment.

lifetime medical coverage for retirees, and medical plan cost-saving changes. With regard to the enhanced dental coverage enjoyed by IAFF members, Ms. Mount testified that no other City employees enjoyed those benefits. SSF offers a core dental benefit to all non-firefighter employees of \$1500 in dental coverage and \$1000 in orthodontic coverage. The firefighters secured the added coverage, which provides for up to \$3000 in standard dental care coverage and up to \$4000 in orthodontia coverage, in 1998. According to the Union, the affected employees agreed to move from the City's long-term disability ("LTD") plan to a firefighters association ("CAPF") plan. All agree that the savings to the City is approximately \$50,000 per year.<sup>2</sup>

The problem with the enhanced dental offering, according to Ms. Mount, is the fact that it has turned out to be far more expensive than the City anticipated in 1998. To induce the Union to accept the City proposal, which sets the IAFF coverage at the level for all other SSF employees, the City proposed a one-time payment of \$1,500 to all IAFF member-employees, and a \$50,000 life insurance policy for each member. Other City employees already have the life insurance coverage, while the Union members have \$12,000 of life insurance provided by the City.

Arthur Mosqueda, a twenty-seven-year veteran with the SSF fire department, testified that the benefit prized most by the bargaining unit members is the orthodontia benefit, even though evidence showed that only 9 children used the benefit in 2008. The employees,

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<sup>2</sup> This LTD covers non-industrial injuries for the first year of disability and enhanced, work-related coverage beyond one year, according to the parties. Most disabilities affecting bargaining unit employees are industrial.

according to Mr. Mosqueda, as well as Mike Root, former Union President, and Todd Rael, current Vice-President, feel strongly that they gave up other benefits and bonuses to secure and maintain the benefit for the few families which really need it. In the 2009 negotiations, the Union acquiesced to the City's two-tier retirement and medical coverage in exchange for keeping the enhanced dental benefit.<sup>3</sup> The Union witnesses also suggested that Ms. Mount promised that the City would not raise reducing the dental benefit again—although Ms. Mount denied this allegation, and no IAFF witness could really establish that the Union's understanding on this point was anything more than a unilateral belief.

The City emphasized that it was intent upon securing parity for all City employees with regard to benefits, and obtaining sustainable economic savings. Ms. Mount did state several times during the factfinding hearing that the City would seriously consider any “principled reason” for deviating from this intention. It should also be noted that SSF has not claimed a financial inability to continue providing the enhanced dental benefit.

**Recommendation:**

The Impartial Chair finds that the factual circumstances do not support the City's proposal on the reduction in the dental benefit. The IAFF gives a “principled reason” for its unwillingness to give up the orthodontic benefit it secured back in 1998. Although the vast majority of unit employees will not benefit from the continuation of this coverage, the employees have rejected money, across the board, as well as additional life insurance for each

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<sup>3</sup> Retirement benefits went from “3% of 50 to 3% of 55.”

member in order to preserve a dental benefit valued by families with children. Moreover, the benefit was initially obtained by the IAFF, and secured over the years, through economic givebacks or benefit reductions over the years. Although it does not appear that any binding promise was, or could have been made, securing the enhanced benefit in perpetuity, the member-employees have taken a principled position, sacrificing financial gain for most in favor of a dental benefit for families and children. The City's desire for benefit-uniformity among its employees is outweighed by the willingness of the IAFF members to forego other economic enhancements for the sake of a few. There appears no basis to conclude this benefit is not sustainable for the term of the contract being negotiated. The evidence presented regarding the overall compensation of the IAFF members by the City (Factor 7, above), does not militate against continuing the dental benefit in light of the Union's willingness to forego other economic benefits.<sup>4</sup> Further, the willingness of the IAFF members to relinquish economic benefits in prior years, and turn down other benefits offered in this year's negotiations to retain the dental benefit, fit well within Factor 8 above, the catch-all set of criteria set out in MMB.

Under the circumstances, the Impartial Chair finds the facts do not support the City's desire to impose a reduction in the dental benefit.

Deborah Glasser                      Concur: \_\_\_\_\_ Dissent:   X  

Tim Kittel                                Concur:   X        Dissent: \_\_\_\_\_

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<sup>4</sup> The City suggested, through testimony of its witness Ms. Mount, that the IAFF members were compensated in the 60<sup>th</sup> percentile of city employees based upon a recent survey. No further survey specifics were offered by SSF.

**2) Vacation Cap:**

The City seeks to save \$300,000 to \$400,000 annually in vacation payouts by proposing a “hard cap” on vacation accrual for unit members. Once an employee accrued twice his annual allotment for vacation, he could no longer accrue further vacation time until the balance was reduced below the cap. IAFF employees could “sell back” up to 72 hours, softening the impact, somewhat, of the hard cap. All other City employees are subject to the hard cap. SSF proposes an effective date for the hard cap of July 1, 2013.

The Union takes issue with the “rolling” nature of the hard cap. Under the City plan, the hard cap can hit during any pay-period where the vacation accrual hits the maximum allotment. The Union argued at the factfinding hearing that employees out on disability leave pursuant to California Labor Code Section 4850, continue to earn vacation time and could be subject to the harsh application of the cap, since they would not be in a position to take vacation time while disabled.<sup>5</sup> The Union was amenable to a hard cap which was fixed in time—year end—rather than a rolling cap. It contended that the fixed in time cap would allow employees to better plan for the use of their vacation time.

SSF countered the Union argument with language in its proposal, which would allow the Fire Chief, with the approval of the City Manager, to approve a temporary exception to the vacation cap and/or grant the right to cash out additional vacation time, beyond the 72 hour

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<sup>5</sup> The record does not establish any significant issue around employees on 4850 leave.

ceiling. Thus, employees caught in a position where they could not use vacation time to avoid hitting the hard cap, could petition the Chief for relief from the rule.

**Recommendation:**

The Impartial Chair finds that the factual circumstances support the City's imposition of the vacation "hard cap" on the IAFF members. Uniformity is a reasonable goal for the City, making administration easier, and reducing antagonism among the various City bargaining units. The Union does not offer any compelling reasons to deviate from the standard city-wide practice of imposing a rolling hard cap. Employees will have to take the time and anticipate their own vacation accrual to manage the cap and payout option. This seems reasonable, and nothing in the record suggests the member can't handle this as other City employees do. And, there is always the discretionary authority of the Fire Chief and City Manager to grant exceptions where to avoid a hardship.

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Under the circumstances, the Impartial Chair finds the facts support the City's desire to impose a rolling hard cap on vacation accrual.

Deborah Glasser      Concur:   X        Dissent:       

Tim Knittel            Concur:             Dissent:   X  

Respectfully submitted,

Date: February 11, 2013.



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**Robert M. Hirsch, Impartial Chair**

### Opinion from Deborah Glasser

I concur with the fact finder's ruling regarding the vacation cap. The City agrees that "[u]niformity is a reasonable goal for the City, making administration easier, and reducing antagonism among the various City bargaining units."

In part for the same reason, I strongly dissent from the fact finder's ruling regarding the enhanced dental benefit. I also dissent because I believe the ruling misstates and ignores the evidence, and is not consistent with the factors delineated in California Government Code Section 3505.4(d) (cited in the fact finder's proposed ruling as "505.4(d)").

Initially, the fact-finder applied the incorrect standard in reaching his ruling. Cal. Gov. Code §3505.4(d) clearly lists the factors to be considered in determining whether imposition is justified. Aside from listing the factors at the beginning of the ruling, the fact-finder makes no reference to any of these factors throughout his ruling, and thus gives no indication that he relies on them at all in reaching his conclusion. Instead, the fact-finder appears to rely on Kathy Mount, the Human Resource Director's, statement that the City would consider any "principled reason" from deviating from its intention to achieve parity in benefits for City employees, and to achieve sustainable economic savings.<sup>1</sup>

The fact finder concluded that the factual circumstances do not support the City's proposal to reduce the enhanced benefit because the IAFF gives a "principled reason" for its unwillingness to "give up" the benefit. In other words, the fact-finder finds, the union feels really strongly about the benefit, so it should not be required to give it up. This rationale is not supported by the statute, and the fact finder does claim otherwise. The only possible support this rationale could have in the statute is in section 3505.4(d), which appears to be a "catchall" provision: "[a]ny 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."

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<sup>1</sup> Here, the fact-finder also misstates the record. As Ms. Mount explained, the City's intention is to establish a compensation system for its employees that is fair, competitive, and sustainable. Necessary to that system is eliminating expensive and underutilized benefits. She did not testify that a "principled reason" for treating benefits differently for different groups was "any reason." Any deviation from the standard rule must rest on a compelling reason rooted in the different circumstances of the bargaining unit. It is simply unfair to permit a unit to retain a unique benefit not offered to any other unit based on nothing more tangible than their dogged attachment to that benefit.





## South San Francisco Professional Fire Fighters Local 1507

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### Executive Officers

*Tim Knittel*  
President

*Todd Ruel*  
Vice President

*Jeff Whitaker*  
Secretary / Treasurer

*Jason Kruijse*  
Recording / Secretary

Dear Mr. Hirsch,

As probably expected, I concur with the fact-finder's recommendation regarding the enhanced dental benefit. In addition, as expected, I dissent from the fact-finder's recommendation regarding the fixed vacation accrual cap

Initially, it was not my intent to provide a written rebuttal to the recommendation. However, given the written rebuttals submitted by Deborah Glasser, I must insist that a brief Union rebuttal also be included.

First, I want to point out it was the City that provided the fact-finder with the basis he used in making the recommendation on both the dental and vacation cap issues. The City's theme throughout the hearing was the need, or desire, to provide the same benefits to all employees unless there was a principled reason to not do so. In response, the Union attempted to convince the fact-finding panel that they were principled reasons as to why the Union members should be allowed to keep the enhanced dental benefit and have a modified version of the City's vacation accrual cap.

In regard to the vacation cap, the Union presented two concerns that it regarded as principled reasons why the fixed cap should be substituted with a rolling cap. First, the short staffing in the department will make it very difficult for the Firefighters to actually utilize their accrued vacation due to the limited number of vacation slots available. The rolling cap would mean that, in order to even have a chance of using their allotted vacation before losing the right to accrue more, newer Firefighters would unfairly be required to take all of their vacation early in the year and thus have none remaining for summer vacations or holidays. The second, and more important, concern was expressed throughout negotiations and brought up numerous times at the bargaining table. That concern was with Firefighters who might be unable to take vacation due to a work-related disability and thus lose the right to accrue vacation. The City's response during negotiations was to research the issue and come back to the Union with the "good news" that Firefighters on 4850 time could go on vacation in order to "burn" excess vacation hours (i.e., give up a statutory right to paid sick leave in order to "burn up" their earned vacation). Understandably the Firefighters did not find this an acceptable resolution. As for the provision the City reluctantly added that allows the Fire Chief and/or City Manager to have the discretion to grant exceptions to the fixed cap, given the City's refusal to include a specific exemption for 4850 situations, the Firefighters have little confidence that such exceptions will be granted. Having said that, the Firefighters understand and accept that the neutral fact-finder does not agree with that assessment.



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In regard to the dental enhancement, it is interesting to note that the City criticizes the fact-finder for relying on assertions rather than on hard evidence in deciding the dental issue, but readily accepts his finding of the vacation cap when that issue can be said to suffer from the same "deficiency." For example, the City finds fault with the neutral fact-finder based on its claim that he relied primarily on assertions made by the Union witnesses rather than by any "evidence." Yet, it can be argued that he relied primarily on Kathy Mount's assertions for his findings on the vacation cap issue. The City called only one witness – Kathy Mount – and its entire case was pretty much based on her "assertions." The City provided no "evidence" supporting her assertions, such as that the Firefighters' compensation was 10% above market, that they have "incredibly rich" compensation packages; that they are among the most highly compensated employees in the City; that they enjoy a total compensation well beyond any other bargaining unit in the City; and that there are no deviations (other than those enjoyed by Fire) from the "everyone the same" philosophy unless there is a principled reason behind the deviation. Additionally, the City provided absolutely no evidence or testimony supporting the contention that other bargaining units felt that they were being treated unfairly because the Firefighters had a unique benefit. Although the City consistently makes this assertion, it has never cited to any specific bargaining unit has made such a claim. Certainly, it provided no evidence at the hearing that this assertion was true.

As stated above, the Union disagrees with the neutral's findings regarding the vacation cap accrual. However, we do not agree with the City advocate's assertion that his findings are inconsistent with the law or with his role. What is inconsistent is the City's position that the same process and criteria used by the neutral were consistent with the law in regard to the vacation cap (the issue on which it prevailed) but inconsistent in regard to the dental enhancement (the issue on which it "lost.").

I believe that Local 1507 and the city can come to agreement based on the fact-finding report of Local 1507 keeping the dental benefit and agreeing to the vacation cap. And the members of local 1507 would pass a contract with the support of the union board based on these findings without the city having to impose a contract.

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