

1 In the Matter of an Impasse

2 - between -

3 *THE CITY OF BLYTHE*

4 - and -

5
6 *LABORERS INTERNATIONAL UNION OF*
7 *NORTH AMERICA, LOCAL UNION 1184,*
8 *AFL-CIO.*

*FACTFINDING REPORT &
RECOMMENDATIONS*

*REPORT ISSUED
JULY 9, 2013*

9 California Public Employment Relations
10 Board Impasse No. LA-IM-132-M

11 *FACTFINDING PANEL:*

12 *Impartial Chairman: R. DOUGLAS COLLINS, Arbitrator*
13 703 Pier Avenue, Suite B #805
14 Hermosa Beach, California 90254-3943

15 *Union Member: JOHN LIGHT, Business Agent*
16 LIUNA Local Union 1184
17 Post Office Box 155
Thousand Palms, California 92276

18 *Employer Member: STEVE W. SMITH, Chief of Police*
19 Blythe Police Department
20 240 North Spring Street
Blythe, California 92225

21 *APPEARANCES:*

22
23 *For the Union: MICHAEL R. FEINBERG, Attorney*
24 Schwartz, Steinsapir, Dohrmann & Sommers, LLP
25 6300 Wilshire Boulevard, Suite 2000
Los Angeles, California 90048-5268

26 *For the City: PAUL R. COBLE, Attorney*
27 Jones & Mayer
28 3777 North Harbor Boulevard
Fullerton, California 92835

1 ***BACKGROUND AND PROCEDURAL HISTORY***

2 In accordance with §3505.4 of the Meyers-Milias-Brown Act (“MMBA,” §3500 – §3511,
3 Chapter 10, Division 4, Title 1, California Government Code), an impasse was declared in the
4 negotiations between the *CITY OF BLYTHE* (“City”) and the *LABORERS INTERNATIONAL*
5 *UNION OF NORTH AMERICA, LOCAL UNION 1184, AFL-CIO* (“Union”) over the terms
6 of a successor to their 2010 – 2012 Memorandum of Understanding (“MOU”). I was jointly
7 selected by the parties to serve as the neutral chairman of the factfinding panel. The Union named
8 Business Agent *JOHN LIGHT* and the City designated Police Chief *STEVE SMITH* as members
9 of the panel. Both parties waived the time limits for the factfinding process.

10 The evidentiary hearing was held May 29, 2013, at the Blythe Police Department in Blythe,
11 California. The parties were afforded a full and adequate opportunity to present documentary
12 evidence, testimony, and argument on each of the issues at impasse. Each party submitted a post-
13 hearing brief, which I received as e-mail attachments on June 7, 2013; after I had received both
14 briefs, I forwarded a copy of the opposing party’s brief to counsel for the City and the Union. I then
15 prepared a draft of this decision, which was provided to the other panel members for their comment.
16 Any concurring or dissenting opinions submitted by the partisan members of the factfinding panel
17 are attached to the final report.

18 ***RELEVANT PROVISIONS OF LAW***

19 California Government Code §3505.4

20 3505.4. Unable to effect settlement within 30 days of appointment; request for submission to factfinding
21 panel; members; chairperson; powers; criteria for findings and recommendations

...

- 22 (c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives,
23 either jointly or separately, and may make inquiries and investigations, hold hearings, and take any
24 other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the
25 panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses
26 and the production of evidence. Any state agency, as defined in Section 11000, the California State
27 University, or any political subdivision of the state, including any board of education, shall furnish
28 the panel, upon its request, with all records, papers, and information in their possession relating to
any matter under investigation by or in issue before the panel.
- (d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be
guided by all the following criteria:

- 1 (1) State and federal laws that are applicable to the employer.
- 2 (2) Local rules, regulations, or ordinances.
- 3 (3) Stipulations of the parties.
- 4 (4) The interests and welfare of the public and the financial ability of the public agency.
- 5 (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the
- 6 factfinding proceeding with the wages, hours, and conditions of employment of other employees
- 7 performing similar services in comparable public agencies.
- 8 (6) The consumer price index for goods and services, commonly known as the cost of living.
- 9 (7) The overall compensation presently received by the employees, including direct wage
- 10 compensation, vacations, holidays, and other excused time, insurance and pensions, medical and
- 11 hospitalization benefits, the continuity and stability of employment, and all other benefits
- 12 received.
- 13 (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are
- 14 normally or traditionally taken into consideration in making the findings and recommendations.

...

3505.5. Dispute not settled within 30 days after appointment of factfinding panel or upon agreement by parties; panel to make advisory findings of fact and recommended terms of settlement; costs; exemptions

- (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

FINDINGS & RECOMMENDATIONS

ISSUE 1. STANDBY/ON-CALL PAY

Positions of the Parties: The City and the Union agree that a standby or on-call article should be added to the MOU, and they are in general agreement on the terms and specific language of that provision. They disagree, however, on the amount of pay that an employee should receive for remaining ready and able to report for duty when an emergency arises during non-working hours.¹

The City's last, best, and final offer ("LBFO") on this issue is set forth in a memorandum to the Union dated March 12, 2013. The City's proposal regarding the amount of standby/on-call pay that employees would received is set forth therein as follows:

¹ Standby/on-call pay is separate from and in addition to the call-out and reporting pay that is provided in Article 4, Section 2 of the MOU, which the parties agree will remain in effect.

1 In addition to overtime compensation for time worked during non-scheduled hours
2 as a result of a call out, those employees who are on call will receive compensation as
3 follows:

- 4 A. One (1) hour of regular pay at the employee's current pay step in their
5 classification for being on call on a weekday;
- 6 B. Two (2) hours of regular pay at the employee's current pay step in their
7 classification for being on call on Saturday or on the employee's scheduled
8 day off;
- 9 C. Three (3) hours of regular pay at the employee's current pay step in their
10 classification for being on call on a Sunday or on a City recognized holiday.

11 The City argues that the rate of compensation it is offering exceeds that of the only other
12 City employees who receive standby or on-call pay.² Moreover, it points out that once the standby/
13 on-call provision is adopted, workers covered by the Laborers MOU will be the only City employees
14 in this contract cycle who will gain opportunities to earn additional compensation.

15 The Union's LBFO on the standby/on-call compensation bargaining unit employees will
16 receive is set forth in its proposal dated March 8, 2013, as follows:

17 In addition to overtime compensation for time worked during non-scheduled hours
18 as a result of a call out, those employees who are on call will receive compensation as
19 follows:

- 20 A. \$35 per day for being on call on a weekday;
- 21 B. \$40 per day for being on call on Saturday or on the employee's scheduled day
22 off;
- 23 C. \$45 per day for being on call on a Sunday or on a City recognized holiday.

24 The Union points out that if the City's proposal were to be adopted, employees would receive
25 significantly less compensation for being on call than they would under the Union's proposal.
26 According to the Union, the City wants to have two laborers, one from streets and one from
27 water/sewer, on call seven days per week. Based on that schedule and each party's compensation
28 proposal, the Union calculates that a Street Maintenance Worker at top step who is on call for seven
29 days would earn \$260 in additional pay under the Union's proposal but only \$190.30 under the

² Certain employees of the Blythe Police Department receive such pay, although the record in this matter does not indicate either the classification of the employees or the level of standby pay they receive.

1 City's offer. Similarly, a Water Services Worker I on top step would receive \$260 under the Union's
2 proposal but only \$215.50 under the City's, and a Lead Water/Sewer Worker on top step would
3 receive \$260 under the Union's proposal but only \$238 under the City's.

4 The Union cites comparisons to two other public agencies, the City of Palm Springs and the
5 City of Indio, in support of its LBFO. It argues that the Memorandum of Understanding between
6 Palm Springs and Service Employees International Union Local 721 provides that employees on
7 standby duty "shall be paid two (2) hours per day for standby at the employee's regular hourly rate,
8 not subject to overtime premium." The Union points out that the Memorandum of Understanding
9 between Indio and the Laborers International Union of North America provides that "compensation
10 for standby or on-call time will be at the rate of two (2) hours pay at current pay scale for each eight
11 (8) hours an employee spends on standby status."

12 The Union argues that its proposal is more modest than the standby provisions currently in
13 effect in either of the comparison cities. Further, it maintains that the City's LBFO on this subject
14 is less generous than the City's earlier proposal of \$35 per day for standby/call-out.

15 *Opinion.* The record in this matter contains very little cogent evidence of the sort
16 contemplated by MMBA § 3504 (d). The City's assertion that other of its employees who are on
17 standby receive less compensation than it is offering here is unsupported by documentary evidence.
18 Moreover, without knowing the classes of employees who currently receive standby pay, the type of
19 work they do, or the frequency with which they remain on call, the testimony of City Manager
20 David Lane is not particularly helpful in determining the appropriate level of compensation here.
21 Absent some rational basis for the City's proposal, it seems rather arbitrary.

22 The Union's proposal is supported by comparisons to the City of Palm Springs and the City
23 of Indio. The employees of both cities receive two hours' pay for each day they are on standby,³
24 which is somewhat more than employees would receive under either the City's or the Union's
25 LBFO. While that evidence is minimal, it tends to support the Union's position on this issue.

26 ³ The Union's calculations regarding standby pay for employees of Indio are questionable. It assumes that an
27 employee would be on duty for 40 hours per week and on standby for the remaining 148 hours of that week. While that
28 may be accurate, there is no evidence to support the Union's assumption. Moreover, if Indio has more than one eight-
hour shift per day, then it would be unlikely that any employee would be on standby for 148 hours per week.

1 The City argues that the comparisons presented by the Union should be disregarded. It
2 maintains that for cities to be comparable for purposes of MMBA, community wealth and
3 demographics must be considered, and it contends that neither Indio nor Palm Springs are
4 reasonably comparable to Blythe on that basis. Moreover, it points out that both cities are
5 considerably larger and have bigger budgets than Blythe, and they are not close to Blythe.

6 The City's position regarding the Union's comparisons is not persuasive. Indeed, the City
7 presented no evidence of the wages and benefits paid by any other cities, not even those that it
8 maintains would be more appropriate.⁴ More significant, however, is that neutrals experienced in
9 public sector factfinding and interest arbitration generally recognize that the appropriate
10 comparisons are those public agencies that provide similar services within the same labor market.
11 Regardless of their demographics or community wealth, those agencies necessarily compete with
12 each other to attract and retain qualified employees to do the work in question. It thus would be
13 reasonable to compare Blythe to all desert cities in San Bernardino and Riverside Counties.
14 Therefore, while the Union's comparisons leave a lot to be desired, they provide the only objective
15 evidence in this record relevant to the issue of compensation for standby/on-call.

16 *Recommendation.* For the above reasons and based on the record as a whole, I recommend
17 that the parties adopt the Union's LBFO regarding compensation for standby/on-call.

18 ***ISSUE 2. HOLIDAYS***

19 *Positions of the Parties:* The parties' 2010 - 2012 MOU provides that permanent and
20 probationary full-time employees enjoy the following 13 holidays with pay:

- | | | |
|----|---------------------------|----------------------------|
| 21 | 1. Independence Day | 8. Christmas Day |
| 22 | 2. Labor Day | 9. New Years Eve |
| 23 | 3. Columbus Day | 10. New Years Day |
| 24 | 4. Veteran's Day | 11. Martin Luther King Day |
| 25 | 5. Thanksgiving Day | 12. Presidents Day |
| 26 | 6. Day after Thanksgiving | 13. Memorial Day |
| 27 | 7. Christmas Eve | |

27 ⁴ The City contends that Brawley, Yuma, and Lake Havasu would be more appropriate comparisons, not only
28 because of community wealth and demographics but because they are closer to Blythe. However, Yuma is only eight
miles closer to Blythe than is Palm Springs, and Lake Havasu is only six miles closer.

1 Apparently all City employees enjoyed the 13 holidays listed above prior to the current
2 negotiations. However, the Blythe City Council directed its negotiators to delete one holiday from
3 all of the MOUs for city employees. The other unions that represent City employees agreed to the
4 elimination of the Martin Luther King Day holiday beginning in 2013. However, the City agreed
5 with each of those unions to include a “me too” clause, meaning that the holiday would be
6 eliminated only if all unions agreed to do so; if any of the unions representing City employees were
7 to obtain a successor MOU that did not provide for the elimination of the holiday, then the holiday
8 would be retained for all employees.

9 Because negotiations between the City and the Union have been protracted, no agreement
10 was reached on the elimination of the Martin Luther King Day holiday prior to its observance on
11 Monday, January 21, 2013. Because the terms and conditions of the 2010 – 2012 MOU remained
12 in effect, employees represented by the Union were therefore contractually entitled to observe the
13 holiday in 2013. Consequently, at least two other unions have filed grievances invoking the “me too”
14 clauses of their MOUs.⁵ According to the City, those grievances are being held in abeyance pending
15 the outcome of this factfinding.

16 The City is therefore proposing that the Martin Luther King Day holiday be eliminated
17 commencing in 2014, and that during the term of the successor MOU between the City and the
18 Union, all unit employees work on Columbus Day in 2013.⁶

19 The Union argues that the City has not articulated any good reason for the elimination of
20 one of the 13 holidays currently provided by the MOU. It again cites the MOUs between Indio and
21 the Laborers International Union of North America and between the City of Palm Springs and
22 Service Employees International Union Local 721. The Union points out that the Palm Springs
23 MOU lists the same 13 holidays that are included in its 2010 – 2012 MOU with the City, and that

24
25 ⁵ It is not clear from this record what remedy the other unions are seeking. Presumably that would be either
26 another day off with pay or an additional day's pay at overtime rates for the work performed by the affected employees
27 on January 21, 2013.

28 ⁶ Although it is not specifically stated in the City's LBFO, it must be presumed that work by unit employees
on that day would be at their regular rates of pay, not at overtime rates unless they worked more than their normal hours.
The City also indicated during the factfinding hearing that it would be amenable to choosing a different holiday for the
Union to give up.

1 while the Indio MOU includes only 11 scheduled holidays, employees also receive one floating
2 holiday each year, which may be accrued to a maximum of 50 hours. However, the Union is willing
3 to agree to eliminate the Martin Luther King Day Holiday beginning 2014, although it remains
4 opposed to the reduction of holidays in 2013.

5 *Opinion:* The evidence in this record, sparse though it may be, tends to support the City's
6 position on the reduction of holidays. First and foremost, all other City employees have agreed to
7 the elimination of one holiday from their MOUs beginning in 2013, specifically the Martin Luther
8 King Day Holiday. The mere fact that the instant negotiations were not concluded before that
9 holiday occurred is not a persuasive reason for treating employees represented by the Union
10 differently from other City employees. Indeed, the Union has impliedly recognized that by its
11 willingness to eliminate the holiday in 2014.

12 Aside from the elimination of one holiday for other City employees, the Union's own
13 evidence, namely the comparisons to Indio and Palm Springs, is inconclusive. Although Indio
14 continues to recognize the same 13 holidays that are listed in the 2010 - 2012 MOU between the
15 City and the Union, the Palm Springs MOU now includes only 11 holidays plus one floating
16 holiday; the fact that an employee may accrue floating holidays is irrelevant.

17 *Recommendation.* For the above reasons and based on the record as a whole, I recommend
18 that the parties adopt the City's LBFO regarding holidays.

19 Respectfully submitted,

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21 _____
22 R. DOUGLAS COLLINS, Chairman
23 Factfinding Panel

24 Dated: July 9, 2013
25 Hermosa Beach, California

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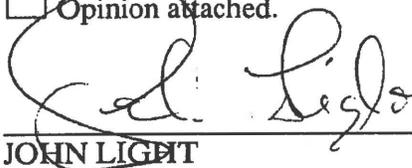
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I concur.

I dissent.

Opinion attached.



JOHN LIGHT
Union Panel Member

Dated: July 8, 2013

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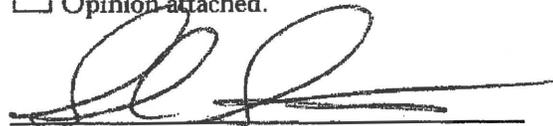
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I concur.

I dissent.

Opinion attached.



STEVE W. SMITH
City Panel Member

Dated: July 9, 2013