

**Fact-finding Report and Recommendations, City of South
Pasadena & South Pasadena Police Officers Association
May 2013**

This Fact-Finding (PERB Case # LA-IM-126-M) involves an impasse over the terms of a successor agreement between the City of South Pasadena and the South Pasadena Police Officers Association. Richard Kreisler was designated Panel member for the City, Robert Bartl was designated Panel member for the Association, and Tony Butka was agreed to as the Panel Chair.

A hearing was held at the South Pasadena City Hall on Tuesday, April 30, 2013, where all parties were represented by counsel and afforded an opportunity to introduce evidence, testimony, and argument as to their respective positions. A number of stipulations were agreed to by the parties at hearing. At the conclusion of the hearing, a post-hearing schedule was agreed upon where the Chair will deliver a Draft Report to the parties by Tuesday May 7th, and the parties will have an opportunity to review the draft and respond by Thursday May 16th. Thereafter the matter will be deemed submitted and a final Report will issue forthwith.

Background:

Inasmuch as the Chair lives in the surrounding community of Glassell Park, he is familiar with the City of South Pasadena, a very nice city indeed, bordering Pasadena, San Marino, Alhambra, and Los Angeles. It boasts excellent schools, a fiscally prudent City Council, a delightful old town, and a first rate police department.

The instant dispute arises out of successor negotiations subsequent to imposition of terms by the City in December 2011. To their credit, the parties have agreed on everything other than salary. In these contentious times that is an accomplishment worth noting.

The City employs approximately 180 employees, of which 43 work for the police department. For this bargaining unit a 1% salary increase represents approximately \$30,000. For fiscal year 1012/13, the City's actuals came in at \$21.2 million, with a deficit of about \$1.5 million as a result of the hit municipalities took when the State eliminated Community Redevelopment Agencies.

The Dispute:

In December 2012 the City presented the SPPOA with its Last, Best & Final Offer, which contained a 4% increase in compensation over a two year period. In their rejection of the Last, Best & Final Offer, the POA countered with a request for 5% over the two year period. Thus the declaration of impasse and this proceeding.

Taken at face value, it is likely that the body politic would wonder why any public employee, including police, would be getting any raises at all in these perilous times. In context, however, this case is not one of arguing over how big the raises should be. Overall, the City's Last, Best & Final Offer represents concession bargaining, in that the wage increases are offered only as a partial offset for increased direct costs to the employees for payment into pension plans and retiree health & welfare over the life of the contract.

In amplifying their position, the City presented oral testimony and a voluminous binder of 4 Exhibits, some 27 Tabs, and substantial girth. The Association provided a detailed outline and three Exhibits, as well as testimony.

Analysis

1) Criteria:

AB 646 (now contained the PERB Regulations) lays out a set of 8 criteria to be used by a fact finding panel:

“(d) 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.”

In an impasse such as this, which is purely over compensation, Items 5 (comparability) and 7 (total compensation) tend to be the two objective and quantifiable relevant criteria which will vary from agency to agency.

II) Comparable Agencies

In the case of comparability in the area of wages, hours and terms and conditions of employment, the record is clear that at one time the parties had agreed upon the following jurisdictions as comparable.:

City of Alhambra	City of Monrovia
City of Arcadia	City of Monterey Park
City of Burbank	City of Pasadena
City of Covina	City of San Gabriel
City of El Monte	City of San Marino
City of La Verne	City of West Covina

Evidently at one time this list of cities was contained in the memorandum of understanding - however, the list was removed from the collective bargaining agreement prior to 2011. That would indicate that there is no contractual agreement to use this set of cities as the appropriate jurisdictions for comparability purposes, although the parties seem comfortable with using this list as a guide.

The reason that agreement or no agreement on which cities to look to is important is that there isn't really any information available to the panel as to how similar or dissimilar the cities themselves in terms of demographics, geography, retail/commercial trade, income, housing, schools, and other socioeconomic information. Or for that matter relative fiscal stability.

III) Total Compensation

The Association provided two exhibits analyzing how the City fares compared to other cities in terms of total compensation relative to each other. The first document was using currently available 2013 information, and the second was to show the same chart in the event that the Council adopts the Last, Best, and Final Offer.

In each case, officers in South Pasadena come in last amongst all agencies. The City did not contest the Association's evidence that this is the case, or provide any rebuttal exhibits and/or testimony.

Having noted this fact, even when the list of cities was in the parties MOU, there was no language or agreement as to how to determine how those cities would be used in determining the appropriate wage/benefit package for the City of South Pasadena.

Also, the City provided a number of exhibits which indicated that compensation aside, they experience no difficulties in recruitment, retention, or staffing of the Police Department.

IV) Reserves

Much was made about the size of the City's reserves, and how they are 'unnecessarily' large. While it is clear that the reserves represent a tempting morsel to employees hungry for increased compensation, it is equally clear that the establishment, maintenance, and amount of reserves is a pure policy decision to be made by the elected officials of the City of South Pasadena.

The panel expresses no opinion as to what an appropriate reserve level would be, but it would be helpful if the Council could adopt a clear policy as to what they believe is a prudent reserve. Even though that percentage or amount of reserves could be subject to annual review and possible modification, from, it would provide clarity both to the parties to collective bargaining, as well as the public.

As matters stand, the City's Three Year Goals as stated in the 2012/13 Proposed Budget states as **Goal #3 Maintain our strong financial position, including reserves** without articulating what constitutes appropriate reserves.

V) Conclusion

The good news is that the City and the Association have enjoyed and continue to enjoy a decent working relationship - a positive sign when compared with a number of other jurisdictions where the relationship could be characterized as 'disharmonious'.

However, there is no clear path to a settlement here, since the parties have already explored all the options that a mediator or fact-finding panel would normally recommend in order to obtain an agreement.

Further, all the contracts in the City are ratified with the exception of the Police Unit, so there is an inherent resistance to providing an additional one percent to this bargaining unit, even if there are arguments in favor of doing so.

Technically what we have here is an economic dispute unique to Police Officers, there being nothing in the record relating to the only other group of Safety employees - Fire fighters. This is important, since the City has been quick to point out that while 1% of payroll for this unit is about \$30,000, if the City were to provide that same 1% to all the employees the cost would be more on the order of \$100,000 (see City's Exhibit D)

Recommendations:

- 1) The City should consider providing a additional 1% raise for the Police bargaining unit over a two year time period;
- 2) The fact is that Safety Employees are not like General employees. They work in paramilitary organizations, their staffing and the 24/7 nature of their work differentiates them from other employees, and their pension system is based on the fact that their job duties are arduous, which results in a retirement system based on earlier retirement ages than for other employees. These fundamental differences need to be reflected in collective bargaining. While this Unit is a mixed unit (containing both sworn and non-sworn) personnel, these units are not uncommon in Cities. The record is devoid of information as to how the general employees in this unit have been treated in relationship to the sworn personnel historically, so the parties would logically look to internal relationships within the bargaining unit to determine how to treat the two classes of employees relative to each other.
- 3) The City should consider establishing a policy for the appropriate reserve amount, be it percentage or dollars, with a rationale which is understandable to all. There are good business reasons to do so, and continued failure to address the issue provides no guidance as to the rationale of the City.
- 4) In the event the City determines not to provide anything beyond the Last, Best & Final Offer, they should take notice of both Item 7 (total compensation), and Item 5 (wages, hours and terms and conditions of employment in comparable agencies), contained in the criteria for fact-finding.

AB 646 did not usurp the ability or authority of public agencies to ultimately vote as they see fit in the collective bargaining arena. However the regulations do provide new and relatively objective criteria which fact-finding panels such as this are to use in analyzing the positions of the parties. Absent an agreement, these same criteria are the ones which will have to be utilized by future fact-finding panels.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tony Butka". The signature is written in a cursive style with a horizontal line above the first name.

Tony Butka
Chair

May 31, 2013

City of South Pasadena and South Pasadena Police Officers Association
Case No. LA-IM-126-M

CONCURRING OPINION to the Findings of Fact and Recommended Terms of Settlement

Submitted by Sergeant Robert Bartl, South Pasadena Police Officers Association's

As the South Pasadena' Police Officers Association representative at the Fact finding Panel, I respectfully **concur** with the Fact-Finding Report and Recommendations issued by Panel Chairperson Butka. Mr. Butka is of course the neutral fact finder who is obliged to examine all facts and issue a fair decision. He has no ties to the City or the Association and is in the best position to provide an honest and accurate recommendation. And he has done that. He has sided with the South Pasadena Police Officers Association stating in no uncertain terms that the City should provide the additional 1% in compensation sought by the Association. The fact that the City has sought fit to provide a "dissent" to Mr. Butka's report and recommendation makes it abundantly clear that the Association's negotiations request is justified both under the law and in consideration of the facts.

I write today to address the dissent of panel member Richard Kreisler, a partner at the law firm of Liebert Cassidy Whitmore, and the City's chosen panel member. Mr. Kreisler represented the City during contract negotiations that led to this fact finding hearing, served as the City's panel member at fact finding, and served as the de facto presenter on behalf of the City as well. Mr. Kreisler works for a for-profit law firm, and is paid to advocate for his client, the City of South Pasadena. He has never worked for the City of South Pasadena, and has not spent his life serving in a law enforcement capacity, risking his life for the citizens of South Pasadena. He is therefore, not the unbiased observer that Mr. Butka is.

The City's dissent takes exception with the "list of comparable agencies" used to rank pay and benefits with South Pasadena police. As was adequately explained at hearing, it matters very little which 12 agencies are used as a comparison. When pressed on this issue, the Association offered the City the opportunity to select the second lowest paid police association in the County, and a chance to bring the South Pasadena police officers up to par with that agency. The City did not take the Association up on this offer, knowing that it did not matter which agencies are used in any comparison. **The fact remains that South Pasadena police officers are paid the lowest compensation in the County of Los Angeles. Embarrassingly low.**

The Chairperson's decision correctly states, and the dissent takes exception with, the statement that "[i]n each case, officers in South Pasadena come in last amongst all agencies. The City did not contest the Association's evidence that this is the case, or provide any rebuttal exhibits and/or testimony." This statement is accurate. The City had no evidence to rebut the fact that the men and women employed by the South Pasadena Police Department who dedicate their lives to protect the public are the lowest paid in the County. The City had their opportunity to disprove this, and they chose not to. In all likelihood, they chose not to, because they lacked

the evidence to do so. (And it is worth pointing out that the dissent spends time and ink discussing the various methods by which Association members can increase their pay; this argument serves no purpose as the salary comparison includes each of these opportunities, and the unmistakable conclusion is that South Pasadena officers still remain the lowest compensated even with these “methods.”)

Although the dissent makes a myriad of technical arguments about why the Association is not the lowest paid agency in the County, it fails to present any of this argument at the hearing. But even if its arguments were correct, the argument would change the status of matters in an insignificant manner. The sworn personnel of the South Pasadena would still be the lowest paid officers in the County even if the City’s technical arguments were true.

Finally, what the dissent remarkably fails to point out is that even if the City offered the Association the additional 1% in compensation that it asked for, the overall net effect of the agreement is a concession on the Association’s part. Importantly, the dissent fails to mention that as part of the request for a 5% pay increase, the Association has agreed to pay 7% in PERS costs. Thus, even if the City paid the 5% increase, the City would still enjoy a net gain of 2% in concessions. And this is at a time where the City is not in any financial crisis. Mr. Kreisler, on behalf of the City, conceded on several occasions, “The city could afford to pay the additional 1%, it just chooses not to.” The dissent fails to mention these crucial points and would rather paint the Association members to be asking for a pay raise, when in fact, they are asking for the concessions they are making to be less.

Should the City Council unilaterally impose the City’s last, best and final offer, there will be negative effects. With the loss of lifetime retiree medical, a new pension tier for new hires, and the lowest compensation in the County, there is no incentive for proactive highly qualified officers to apply, or remain employed, with the City of South Pasadena. Although the negative effects of such unilateral implementation of concessions like these may not be felt for years, they will be undoubtedly felt. And there will be no mistake when such a decline began.

Respectfully submitted,

Robert Bartl

6/9/13

City of South Pasadena and South Pasadena Police Officers Association
Case No. LA-IM-126-M

City of South Pasadena's Representative to Factfinding Panel
Richard M. Kreisler

Dissenting Opinion to the Findings of Fact and Recommended Terms of Settlement:

As the City of South Pasadena's representative to the Factfinding Panel, I respectfully dissent from the Fact-Finding Report and Recommendations issued by Panel Chairperson Butka.

I. Comparable Agencies

The City dissents from the panel chair's statement that, ". . . the parties seem comfortable with using this list [of agencies] as a guide." As the City pointed out, there is no contractual agreement to use the twelve (12) listed cities as the appropriate jurisdictions for comparability purposes.

The City previously struck reference to the twelve (12) listed cities in a prior MOU because the City was and is not comfortable with using the list as a guide. As addressed during the fact finding session, it is the City's perspective that virtually all of the twelve (12) described cities significantly differ from the City of South Pasadena and are not "comparable public agencies" as that term is utilized in AB 646(d)(5).

At a minimum it should anecdotally be recognized that the twelve (12) listed cities have significant retail and other revenue bases that do not exist in South Pasadena, and are significantly larger in population and geography.

II. Total Compensation

The City dissents from the panel chair's statement that "In each case, officers in South Pasadena come in last amongst all agencies. The City did not contest the Association's evidence that this is the case, or provide any rebuttal exhibits and/or testimony."

First, it should be noted that the "surveys" presented by the POA during the fact finding were first presented to the City for review, during the fact finding. The City never acknowledged that the April 30, 2013 POA-provided list of cities was appropriate or that the survey information was accurate. Moreover, because the POA survey document (1) did not include the previous MOU-addressed cities of El Monte, La Verne, Monrovia, Monterey Park or West Covina; (2) included POA "surveyed" cities that were never before formerly considered by the parties in the meet and confer process (Azusa, Sierra Madre, Glendora and Irwindale); and (3) addressed 13 components of compensation unilaterally chosen by the POA, the City could not have "rebutted" a survey document presented to it moments earlier during the fact finding.

Second, the POA's survey documents did not, in fact, use "currently available 2013 information." Indeed, for at least two agencies, the POA provided salary information that would

not be effective until fiscal year 2014/2015. The POA survey reported that a top step officer in the Azusa Police Department receives a monthly salary of \$7,793.87. That monthly figure, however, is the salary the top step officer will receive effective August 1, 2014. The monthly salary currently provided a top step officer in Azusa is \$7,3821.31. Likewise, the POA's survey reported that a top step officer in the San Marino Police Department receives a monthly salary of \$7,065.91. Again, however, that is incorrect. A top step officer in the San Marino Police Department currently receives \$6,501 per month. And because many specialty pays are based as a percentage of the monthly salary, the total compensation reflected for these agencies was off as well. Thus, in view of the above, I cannot agree that the City of South Pasadena is "last" amongst all agencies.

III. Recommendations

- 1: "The City should consider providing an additional 1% raise for the Police bargaining unit over a two year time period."

I dissent from the panel chair's recommendation. This recommendation would result in the City providing employees in the POA with a 5% increase, rather than the City-proposed 4%. Such an increase would disproportionately and inequitably favor POA-represented employees over other City employees. The POA presented no evidence to justify its demand that its unit members receive a greater salary increase than other City employees. Instead, the evidence showed that the City has had no difficulty in recruiting or retaining unit members, or in staffing the department.

Accordingly, I cannot recommend that the City provide an additional 1% salary increase to the POA.

- 2: "The fact is that Safety Employees are not like General employees. They work in paramilitary organizations, their staffing and the 24/7 nature of their work differentiates them from other employees, and their pension system is based on the fact that their job duties are arduous, which results in a retirement system based on earlier retirement ages than for other employees. These fundamental differences need to be reflected in collective bargaining."

I dissent from the panel chair's recommendation because it provides no rationale for providing the entire unit, including miscellaneous members, with a greater increase than was provided to and agreed upon by other City personnel, whether miscellaneous or safety. The evidence before the panel established that the other rank and file safety unit in the City (Firefighters Association) agreed to the same increases that have been offered to the POA. Employees represented by the Firefighters Association also work in a paramilitary organization and the nature of their work "differentiates them from other employees." The fundamental differences between the type of work performed by the City's safety and non-safety employees is already reflected in the different pension benefit provided (ability to retire at an earlier age), as well as in the rate of pay and types of pay.

The evidence established that the City pays its sworn employees more than its non-sworn employees. For example, under the City's proposal, a top step police officer would earn \$5,864 per month for the remainder of fiscal year 2012-2013. In contrast, as set forth in the MOU for the South Pasadena Public Service Employees Association (PSEA), which was included as one of the City's exhibits, a top step electrician earns \$4,923 per month, while a water production/treatment operator earns \$4,477. The electrician and the water production/ treatment operator both perform services essential to public health and safety, yet they are paid less than a police officer.

In terms of types of pay, the City's sworn employees have more opportunities than its non-sworn employees to increase their base salary. For instance, as set forth in Resolution 7194, which the City included as an exhibit, sworn unit members receive an additional 5% to their base salary when working specialty assignments (detective, motorcycle, K9) or when assigned as a field training officer. At top step, the City's proposal would mean an additional \$293.20 per month for police officers, \$312.20 per month for corporals and \$365.80 per month for sergeants for the remainder of the 2012-2013 fiscal year. The PSEA MOU, however, provides no additional pay to the electrician's or water production/treatment operator's base salary based on their work assignment.

Sworn unit members also receive an additional 2.5% or 5% to their base salary depending on whether they have an intermediate or advanced P.O.S.T. certificate. Depending on the type of certificate, again at top step, the City's proposal would mean an additional \$146.60/\$293.20 per month for police officers, \$156.10/\$312.20 per month for corporals and \$182.90/\$365.80 per month for sergeants for the remainder of the 2012-2013 fiscal year. Based on the City's exhibit showing employees' hire dates, it appears that approximately 64.5% of sworn unit members are eligible for this pay. Again, the electrician and water production treatment operator receive no additional pay to their base salary for having obtained a certain level of education or acquired a certain type of certification.

Accordingly, based on all the above, I cannot agree with, and hereby dissent from the panel chair's Factfinding Report and Recommendations.

Richard M. Kreisler

Name

Richard M. Kreisler

Signature

May 29, 2013

Date