California City & California City Police Officers Association Fact-finding Report & Recommendations, PERB Case # LA-IM-137-M August 14, 2013

This Fact-Finding (PERB Case # LA-IM-137-M) involves an impasse over the terms of a successor agreement between California City and the California City Police Officers Association. The Panel Members were Marty Roubanis for the City, Sgt. Shannon Hayes for the Police Officers Association, and Tony Butka was jointly selected as the neutral Chair of the Panel.

A hearing was held at the California City Hall on Thursday, June 25, 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.

Statutory Criteria

Prior to 2012, the only impasse resolution under the Meyers-Milias-Brown Act (the State law governing cities, counties, and special districts) was for voluntary mediation. However, in 2012 the State of California enacted **AB 646,** which establishes a Fact finding process and lays out a set of 8 criteria to be used by the fact finding panel. Those criteria are listed below:

"(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."

Background Information

According to their Wikipedia, California City was incorporated in 1965 and is located in the Northern Antelope Valley in Kern County. The current population is in excess of approximately 14,120 residents. California City is a master planned community with over 52,000 lots and is the third largest city in land area in the State of California –. California City has one prison (California City Correctional Center operated by the Corrections Corporation of America), a large automotive test track (Hyundai USA Proving Ground), one landowners' resort (Silver Saddle Ranch), one PGA golf course (Tierra del Sol), and one municipal airport.

Thus it is a relatively small city in terms of the population size and city government, with an enormous land area – over 200 square miles.

Governed by a 5 member City Council, the community has largely recovered from the nationwide housing market collapse, and has even achieved modest growth.

Policing such a large area has always proved challenging given the city's relatively small size and property tax base as contrasted to its huge geographic mass. As a result of the economic stresses felt by most California cites over the last few years, the Police Department dipped to a low of only 12 officers. In 2012, to support better law enforcement and fire services, a 6 year Parcel Tax was voted in specific to Police and Fire.

The Current Dispute & Issues

In terms of bargaining history, the Police Department currently stands at 26 employees – 18 sworn personnel and 8 non-sworn personnel in the areas of Dispatch, Code Enforcement and Animal Control. Of the 18 sworn officers, 2 are not in the bargaining unit (the Chief and Lt.).

Partially due to the difficult economic circumstances referenced to above, the POA bargaining unit has been without a labor contract since 2009.

The current Factfinding dispute as certified by PERB includes the following issues at impasse for a two year contract from July 1, 2012 thru June 30, 2014:

1. Wages
2. Benefits
3. Sick Leave Accrual/Payout

4. Vacation Caps & Payouts
5. Modified Residency Requirements
6. Full Payment of Employee Contributions to CALPERS
7. Term

ANALYSIS

Term & Wages - Due in large part to poor economic times, the City and the Police Officers Association have been without a contract since 2009. The City' Last, Best & Final offer to the Association was for a two year agreement effective July 1, 2013, with a 1% cost of living raise for each of the two years of the proposed agreement. Separately, for sworn personnel only, the City offered a one time only 2% adjustment for the salary ranges of sworn personnel only, effective the first year of the agreement.

For its part, the Association has provided wage data for a market basket of 7 cities that they believe to be comparable to California City; Barstow, Kern County Sheriff, Ridgecrest, Palmdale (LA County), Tehachapi, Victorville, and Adelanto. While there was no express stipulation at the hearing, this seems to be a reasonable starting place for determining comparable cities to look at for the local marketplace for police department personnel.

The Association Survey indicates that, on average, California City is about 26% below the average for starting pay of officers, and about 30% below average at the top step. Looking at the nearest city, Tehachapi, the starting pay is slightly lower, while at the top step it is approximately $500/month less.

While the City did not agree with the Association numbers, there is clearly a substantial gap between California City and the other cities in the local hiring area. And while the Association would like to bring the wages of the department up to the average of the surveyed cities, that goal is simply not feasible over a two year contract term.

Further, it would seem that at least a part of the wage offer was for sworn personnel only, thus excluding the classifications of Dispatcher, Animal Control Officer, and Code Enforcement Officer.

Dealing with the non-sworn police department personnel issue first, it is apparent that the reason they are excluded from the City's proposal to move the salary grid up by 2% is the impact that this would have on all non-sworn employees of the city. As matters stand, the California City Classification/Compensation Salary Grid lumps together police department only classifications with all other general employees of the city. Thus, any movement for non-sworn police department employees would necessarily move up the salary range for all city employees, the vast majority of whom are not a part of this bargaining unit.

The non-sworn issue is resolvable. First, it was made evident to the Chair that the recently enacted 6 year parcel tax increase was for Police & Fire, without specifying which classifications would be included or excluded. Thus, there is no logical reason to exclude these three police department only classifications from movement on a salary grid. Second, a cursory examination of the classification/compensation structure of the current salary grid reveals that there is little if any community of interest between the three police only classifications and the other general employee classifications contained in the grid.

Recognizing that formal classification/compensation studies are inordinately expensive, the Chair recommends a simple fix. Recognizing that there is no community of interest between the classifications of Dispatcher, Animal Control Officer, and Code Enforcement Officer, these three classifications should be removed from the general salary grid, and added to the sworn salary grid, as "non-sworn" classifications. In such a way, 2% range movement can be added to the grid just as for police officers, without impacting the rest of the city. It is also consistent with the recently enacted limited-term parcel tax increase.

As to the term of agreement, clearly it would be very complicated to try and implement a retroactive agreement – think, for example, of the CALPERS complications regarding pension changes, and the potential for litigation. And given the fact that there has been no agreement since 2009, there is no magic to a July 1, 2013, effective date.

Therefore the Chair recommends that the term be based on a go-forward basis of two years, effective upon ratification by the Association and final ratification by the City Council.

Benefits (Cafeteria Plan) - The City proposes in increase in the monthly cafeteria contribution up to $150 effective July 1, 2013. The Association agrees with this proposal and the matter is deemed resolved.

Sick Leave – Currently, employees with 7 years or more of service may cash out their sick leave upon retirement at 100%. The City proposes a twofold change in this provision. First, the City proposes to cap the maximum amount of accrued sick leave at 300 hours, effective the effective date of the agreement, with all hours in excess of 300 hours being paid out by the City over a five (5) year period.

Second, the City proposes that with the new agreement, employees with 10 years or more of service with the City may cash out their accumulated sick leave upon retirement from the City at 75% of accrual.

The Association would accept this proposal if the City would maintain the current length of service requirement of 7 years instead of 10 years.

A reasonable compromise would seem to be to keep the old system for employees who currently have 10 years or more of service, and to impose the new system on a go forward basis for those with less than 10 years of service.

Vacation – The City proposes to cap the amount of vacation leave accrual at 200 hours per employee effective the effective date of the agreement and pay out any excess over a five (5) year period of time.

Since vacation is a vested earned benefit, there is no cost impact to the proposal over time – it simply allows the city to pay down their excess liability in a fiscally prudent time frame.

Modified Residency Requirement - The City has proposed that all new police officer hires must reside within a 30 minute response time to the City of California City.

The idea of trying to ensure that city employees also be residents of the city in which they work has been tried before, and certainly sounds like a good idea, keeping the spending of city employees largely within the city where they work & live. The courts, however, have not looked favorably on the idea. Modified approaches to this idea such as California City's proposal have also been attempted, with mixed judicial success. Since the legality of such provisions are well beyond the scope of a fact-finding report, we will not discuss this issue further beyond noting that there is a history of litigation on this issue in California.

Be that as it may, in the case of law enforcement there are good and sufficient reasons why this generally good idea is a not a good idea at all for sworn personnel. When police officers and their families live in the same community where they perform their legal duties of arrest & conviction of criminals, they potentially place themselves and their families at risk from the criminals and/or their associates. For example, the Chair lives in Northeast Los Angeles, and it was not all that long ago when a Los Angeles police officer residing in the area where he worked was shot and killed as he exited his residence to go to work. By a gang member he had been involved in previously apprehending.

It is for this very reason that by and large, police officers do not live anywhere near the jurisdiction in which they work. There is simply too much potential risk for them and their loved ones.

Pension Reform - Pension reform is the 800 pound gorilla in almost all recent contract negotiations, being prominently displayed in the news media almost every day, and invariably mentioned on network & cable news show. Over time, there now an almost universal belief that all public employees should pay their full employee share of CALPERS retirement, notwithstanding whatever may have been negotiated in the past.

The City's offer reflects these changes. All current sworn employees will pay their full CALPERS employee share towards retirement of 9%, phased in as 4.5% in year one, and 9% in year two of a two year agreement. All new hires covered by the provisions of PEPRA (California's Public Employees' Pension Reform Act of 2013) will immediately pay the full 11% employee share towards a final pension benefit of 2.5% per year at age 57 for sworn personnel.

The Association's argument, of course, is that the current pension benefits have been negotiated over a long period of time, and the employees gave up salary and other cost benefits in prior contracts in order to pay for their pension plans.

Background to Safety Pensions - In the case of sworn personnel, the reason for their having a separate Safety only pension system markedly different from the General pension system of CALPERS is based on the fundamental difference in their employment. These jobs are physically arduous, and over time this physicality takes a toll on the health of the employees. To put it crudely, most officer's bodies get dinged up over time at a disproportionately higher rate than that of the average employee. That's why most Safety plans in California contemplate retirement at age 50 or 55 years of age for Safety employees vs. 65 for General employees.

Recently, these plans have been modified into various "Tiers" based on when an employee is hired into the system, and in the case of California City there are three current tiers, with the final retirement benefit being calculated on a combination of different multiplication 'factors' and years of service; 3% per year @ age 50, 2% per year @ age 50, and the new State Plan (PEPRA) of 2.75% per year @ age 55.

For this bargaining unit, we need to look at the specifics of who is in what system to try and find a path to resolution.

For current sworn personnel as of July 2013, we have the following numeric realities:

# Employees	Factor	Employee Contribution Rate
5	3@50	0%
5	2@50	0%
6	2.75@55	11.2%

(Note – this excludes the two sworn personnel not in the bargaining unit – the Chief and the Lt.)

So, if you look closely, 6 of the 16 officers are already paying the full amount towards employee contribution, and those 6 are also in the new PEPRA tier of 2.75%@55 plan which will be less expensive over time, since this retirement plan pays less and requires more years of service to receive the benefit. And any employee hired on in the future will be covered by this arrangement.

What this leaves are 10 current employees, whose number will be reduced over time, since their plan is frozen and all new hires will go into the new plan. The reality is that these 10 officers represent the core institutional knowledge and experience necessary to maintain the department at high efficiency. If these officers receive a 9% pay cut, which is what making them suddenly pay the full cost of retirement, it is likely that many, if not all, will look elsewhere for employment, and that would be a tragedy for California City.

Doing the replacement math – While California City has been in the enviable position of being able to hire up to the level needed, there is no guarantee that the new hires will stay for the duration of their careers. That is because, for the last few years, most cities have had serious financial problems, and have either been laying off, or not hiring, peace officers. As a result, those cities who have been doing any hiring have been able to hire these fully trained officers from other jurisdictions at a relatively low cost. However, starting in 2012, that ability has largely been eliminated as most jurisdictions have started hiring again.

And remember, within the CALPERS system, the pension plan is essentially portable, so that if an officer leaves California City for Lancaster, or Tehachapi, or Bakersfield or Kern County, their pay will instantly jump based on current respective salaries (see the discussion on pay earlier in this report).

This is important for a simple reason - if good senior officers in California City with all the institutional knowledge start looking at a 9% pay cut, which is what paying their full employee contribution rate without any offsetting wage increases would be, then there will be a tendency for these officers to look to other cities within the local labor market to avoid that pay cut.

And at the same time, newly hired officers represent a very expensive investment in terms of both training dollars and time before they become the journeyman officers that everyone wants.

First there is the cost of the POST training which all officers need, and thereafter there is the on job training both one on one and supervised by experienced senior officers. This high initial investment is amortized over a time, with the expectation that the officer will continue his or her career with the City.

The difficulty is that a 'newer' officer is likely to have less loyalty to the employer and more interest in moving where the grass is greener, leaving California City after they have made the money and time investment in training the officer up to speed.

Finessing the Quandary - Thus it seems to the Chair that the quandary is how the City can keep their core officers while training up the next generation of police officer.

In terms of Pensions, there is a way to at least offset any pay decrease for that set of officers, remembering that they will be retiring over time, and also remembering that there is an institutional interest in not having them leave too soon.

The idea is to have a Supplemental Sworn Salary Schedule for that group only, which will self-destruct over time as the incumbent officer's move on. Thus the 10 current officers' under either the 3@50 or 2@50 formula would commence paying their full 9% CALPERS employee share towards retirement on the effective date of the new contract. In this manner, the City would accomplish its goal of all employees paying their full share towards retirement.

At the same time, the Supplemental Sworn Salary Schedule would have wage scales increased by 9% to offset the pay cuts resulting from paying increased costs towards their pension. No new hire would be eligible for this 'grandfathered' schedule, and as all the incumbents' cycle out over time, it ends as it empties.

The recommendation is based on the idea of finding a way for the City to meet its objectives, while at the same time keeping their core police force intact as new officers are trained up. Over the two year period of time, the parties can monitor their turnover statistics, and modify this arrangement depending on how well it works.

A GENERAL OBSERVATION REGARDING THE RECOMMENDATIONS

Clearly the goal of any Fact-Finding Recommendation is to try and narrow the differences between the parties and to try and find enough common ground for an agreement. This underlying goal of impasse resolution is particularly important in this case because of two serious and competing facts.

First, it needs to be recognized that the passage of a limited parcel tax for safety (Police & Fire) is recognition of departmental needs, not an invitation for precipitous salary increases. Thus the recommendation to implement the City's wage proposal, with one modification regarding non-sworn police department personnel.

At the same time, the new Fact-finding statute creates two external criteria that must be looked at by every Fact-finding panel from here on out – what constitutes 'comparable' jurisdictions for purposes on analysis, and "total compensation" comparability for those jurisdictions. By both of these criteria, it is clear that California City is significantly behind the marketplace for police jobs. Over time, it will be necessary to develop policies and guidelines to address both of these issues.

This report is not designed to really address the comparability issues for the reasons stated. It is designed to try and produce an agreement, and to allow the city to retain is core officer force in the light of significant pension changes.

RECOMMENDATIONS

1. Term – Two years from ratification of the Agreement
2. Salaries - The City's offer of 1% cost of living raise for each of the two years of the proposed agreement. Separately, for sworn personnel only, the City offered a one time only 2% adjustment for the salary ranges of sworn personnel only, effective the first year of the agreement, with one change. That change is to put the three classifications of Dispatcher, Animal Control Officer, and Code Enforcement Officer into a new Police Department Salary Schedule, and to increase the old salary ranges by 2% effective the first year of the agreement.
3. Sick Leave Payout - Adopt the City's offer of capping the maximum amount of accrued sick leave at 300 hours, effective the effective date of the agreement, with all hours in excess of 300 hours being paid out by the City over a five (5) year period. Further, employees with 10 years or more of service with the City may cash out their accumulated sick leave upon retirement from the City at 75% of accrual. However, any employee with 10 years or more of service as of the effective date of this agreement shall be 'grandfathered' in using the old system.
4. Vacation Payout – Recommend the City proposal to cap the amount of vacation leave accrual at 200 hours per employee effective the effective date of the agreement and pay out any excess over a five (5) year period of time.
5. Cafeteria Plan - The Recommendation is for the City's proposal to increase the monthly cafeteria contribution up to $150 effective July 1, 2013.
6. Modified Residency Requirement – The Panel recommends no residency requirement
7. Pensions – The recommendation is for a two step pension reform. For all new hires, the City's PEPRA tier based an employee contribution of 11% for a sworn plan giving 2.75% per yr at age 55, and for the more senior officers, a combination of their paying the full 9% employee contribution and simultaneously being covered by a self-erasing Supplemental Salary Schedule with a parallel increase in the range.

Respectfully Submitted,

Tony Butka
Chair

Dated: August 14 2013