

FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of Factfinding:)	
)	
CITY OF GLENDALE)	PERB IMPASSE
)	No. LA-IM-121-M
Employer,)	Unit 40, Glendale Water & Power
)	
and)	DATE ISSUED:
)	
INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS (IBEW), LOCAL 18)	September 16, 2013
)	
)	
Union.)	

Factfinding Panel:

Impartial Chairperson:

_____ **Walter F. Daugherty**
Arbitrator/Factfinder

Employer Member:

Richard M. Kreisler
Attorney at Law
Liebert Cassidy Whitmore

Union Member:

Martin Marrufo
Assistant Business Manager
IBEW Local 18

Appearances:

For the Employer:

Adrianna E. Guzman
Attorney at Law
Liebert Cassidy Whitmore

For the Union:

D. William Heine
Attorney at Law
Schwartz, Steinsapir, Dohrmann &
Sommers

BACKGROUND AND PROCEDURAL HISTORY

Since April 18, 2011, IBEW Local 18 (“Union”) has been the certified exclusive bargaining representative for the unit designated Unit 40, Glendale Water and Power. This Unit was carved out of an existing bargaining unit; it currently consists of some 149 employees in 51 craft classifications employed in the Glendale Water and Power Department (“GWP”).

With respect to the impasse before the Factfinding Panel (“Panel”), by letter dated October 3, 2012, the City notified the Union of a pending reduction in force affecting up to 28 represented employees. This reduction was attributed by the City to the current financial situation of the GWP, specifically a projected \$10.8 million revenue shortfall for fiscal year 2012-2013 (C. Ex. 6). By letter dated October 4, 2012, the Union demanded to bargain over the decision to implement the reduction in force and the effects of this decision (C. Ex. 7). The City refused to negotiate regarding its decision but agreed to bargain on the effects of its decision. The Union thereafter filed an unfair employee relations practice charge with the Public Employment Relations Board (“PERB”). This matter is currently pending before PERB.

Effects bargaining began on October 8, 2012. Additional negotiation (a.k.a. “meet and confer”) sessions were held on October 9, October 17, November 1 and November 14, 2012. At the November 14, 2012 session, the City’s Chief Negotiator advised that it appeared the parties were at an impasse. In its December 19, 2012 letter to the Union, the City summarized its understanding of the parties’ positions on the issues discussed during negotiations, stating that the City’s position remained that it “appeared the parties were at impasse” (C. Ex. 15, p. 2).

On January 18, 2013, the Union submitted its “MMBA Factfinding Request” to the PERB (C. Ex. 16). By letter dated February 20, 2013 from the PERB, the undersigned was

notified of his selection by the parties to serve as the Chair of the Factfinding Panel. This letter further advised that Richard M. Kreisler was designated as the City's Panel Member and that the Union had selected Martin Marrufo as its Panel Member.

At the request of the Chairperson, both parties waived the statutory time limits for the hearing and the completion of the factfinding process. Factfinding hearings were held on June 21 and June 26, 2013 at which both parties appeared and were afforded full opportunity to present evidence and offer argument. Although it participated in the factfinding, the City stated that it was doing so under objection. It was its position that the factfinding procedures in Government Code Section 3505.4 are applicable only to impasses reached in contract negotiations.

The presentations of the parties' respective proposals were presented in a "point – counterpoint" fashion, with each party having the opportunity to present and explain its proposals and respond to the other party's proposals. At the close of the June 26, 2013 presentations, it was agreed that the Union would submit an affidavit from Station Electrician James Griggs regarding safety issues at the Power Plant by July 19 and that the City would submit an affidavit in response from a designated individual by August 2. It was further agreed that the parties could submit written summaries and new arguments based on the evidence submitted no later than August 2. The City elected to do so, the Union did not.

The Panel met in an executive session on June 26 following the parties' presentations. On August 23, 2013, the Chairperson by e-mail and regular mail forwarded copies of his draft Report and Recommendations to the Panel Members for review. The Panel Members were given until the close of business September 13, 2013 for the submission of any concurring and/or dissenting opinions. Any such opinions timely submitted are attached.

ISSUES AND RECOMMENDATIONS

In its December 19, 2012 letter to the Union, the City listed nine issues raised and discussed during the negotiation sessions regarding the effects of the layoffs. At the hearing, the City identified five issues that it believed remained in dispute before the Panel. During the proceedings, this list was winnowed down and/or modified for various reasons including mootness and that consideration thereof by the Panel was premature. With respect to the issue of cross-training for Power Plant employees, the City on June 26, 2013 submitted an email to all interested parties stating its position as follows:

The City of Glendale agrees that it will include IBEW Local 18 in discussions regarding the training that will be proposed by Edison Systems Incorporated (ESI) – or by any other source, including internal sources, should ESI’s proposal be unacceptable to the City – to the extent that such training involves matters within the scope of representation.

The Chairperson believes the City’s position as stated above to be a reasonable proposal to the training issue as it now exists. As such, it is incorporated herein by reference as the Chairperson’s recommendation regarding the issue of training.

Review of the record as developed during the parties’ respective presentations reveals that two distinct issues remain in dispute and are ripe for consideration by the Panel. These are the dispute regarding bumping rights and the dispute whether a Station Electrician Supervisor I should be assigned to the GWP’s Grayson Power Plant. These matters will be addressed sequentially.

Issue 1 – Bumping Rights

The parties agree that seniority should be the controlling factor in determining which of any bumping rights an employee targeted for layoff may exercise. However, they disagree as to the extent that any bumping rights may be exercised. The City's position allows an employee with more seniority to bump down only to the last previously held classification. The Union's proposal requires that the City furnish every employee on a layoff list with a list of all previously held classifications, a "service time" seniority list of every City employee in such previously held classifications, and the identification of every position to which the employee is entitled to bump. The employee on a layoff list then has the option of selecting the position into which he or she will bump. The Union further proposed that every employee so displaced will be furnished with the above information and given the opportunity to select the position into which he or she will bump (C. Ex. 13).

The City argues that its position is derived from and is consistent with the City Charter and City Civil Service Rules and complies with its Layoff Policy Handbook, has been followed in previous layoffs affecting employees represented by another certified representative, and is less burdensome to administer than the Union's proposal. The City argues further that the Union's proposal could conceivably inject favoritism and harassment elements into the bumping process as an employee might elect to bump an employee in a previously held class because of personal animosity or dislike. These concerns, says the City, are obviated under its current bumping process that is fair and objective.

The Union asserts that its bumping proposal does not conflict with existing Civil Service Rules and inserts transparency and openness into the layoff process as employees are given the

necessary seniority records. According to the Union, some employees affected by a reduction in force may not have the physical ability to perform the job duties of their last previously held position. Allowing employees to choose which of their formerly held classifications their seniority allows them to bump into, argues the Union, eliminates these concerns and by furnishing the affected employees the seniority data the layoff process is made more open and transparent.

The Chairperson first notes that the layoff process occasioned by a reduction in the workforce is unsettling and disruptive for both management and the potentially impacted employees. It creates additional work for human resources personnel and causes concerns to affected supervisors and managers about how staff will be allocated to meet organizational goals and needs. The disruption and uncertainty caused by layoffs, however ostensibly falls even greater on those employees potentially affected. For these employees are confronted with foreseeable modifications in often long established working and reporting relationships with their coworkers and supervisors, changes in job assignments and work locations, and the financial impact and uncertainty attributable to the loss of one's job or pay reduction. The Chairperson believes that these employee concerns may be ameliorated to some extent by the more open and transparent the layoff process can be made.

The Chairperson's review of Civil Service Rule XI, Section 2, C persuades that this provision does not expressly limit an employee's right to bump only to the last previously held classification. For this Rule states that "Any employee so affected [a laid off employee] may be assigned to an equal or lower classification in the same series or in a different formerly occupied classification, provided he/she has greater service time than the person in said classification. . . ."

(C. Ex. 22, p. 45). Thus, the Union's proposal if limited only to previously held classifications is not in direct conflict with the applicable Civil Service Rule. The Chairperson acknowledges that the Union's proposal would ostensibly impact employees not in the Union's bargaining unit as a previously held classification may not be included in Unit 40. However, under the current City procedures limiting the bumping rights of an employee with the requisite seniority to the last held permanent job classification, it appears that an employee could conceivably bump to a classification outside the bargaining unit.

In considering the parties' positions concerning bumping rights, the Chairperson is persuaded that the Union's position with the modifications as described below comprises a reasonable approach to balancing the respective concerns of the City and the Union. Again, it is noted that reductions in force with their attendant layoffs are particularly disruptive and unsettling for employees, many of whom have formed strong bonds with particular coworkers and attachments to their job assignments during their time with the City. Providing information concerning their seniority and bumping options while expanding their choice of job assignments within reasonable limitations constitutes some recognition for and acknowledgment of an employee's service to the City.

The City's position concerning the impact on non-bargaining unit employees if the Union's bumping rights proposal were to be adopted in full is noted and is not without justification. However, the Chairperson believes that these concerns would be substantially ameliorated by restricting the right to bump to a previously held classification other than the last classification held to those classifications included within Unit 40. It is acknowledged that this procedure and the furnishing of the information specified in the Union's proposal would, as the

City points out, increase the administrative workload associated with the implementation of a reduction in the City's workforce and associated "cascade." However, given technological advances in the ability to store, access, and retrieve employment data and the small size of this Unit and prospective layoff pool, the additional workload does not appear unduly burdensome.

The City expressed concerns that the Union's bumping proposal would allow favoritism and even harassment issues to service during the layoff and bumping process. Its concerns were grounded in the possibility that an employee who could choose into which position he or she would bump might exercise this right out of dislike for a particular individual. In such regard, barring demotion for performance issues or a reduction in force, the customary career path is that an employee progresses through successively higher paid classifications during the employment tenure. As such, the earlier held classifications are usually lower paying than the most recently held former classification. Bargaining unit employees who bump to a lower classification are apparently not "Y-rated" but are placed in the salary range for the lower level classification to which they bump.¹ In the Chairperson's opinion that employees who elect to bump to an earlier formerly held classification would in all likelihood receive a greater pay decrease than if bumping to their last held classification would discourage most, if not all, the "retaliatory bumping" feared by the City.

For the foregoing reasons, the Chairperson recommends that the parties adopt the Union's proposal as made at the October 17, 2012 meet and confer sessions and as memorialized in writing (C. Ex. 13) with the following modifications. The right to bump into previously held classifications other than the last held classification is limited to those classifications included

¹See Layoff Policy Handbook, p. 14 (C. Ex. 21).

within Unit 40, Glendale Water and Power Unit as is the information to be provided under the Union's proposal in such regard. Further, it is recommended that to move to any formerly held job classification, the employee attempting so to bump must have greater service time than at least one of the employees in the lower classification.

Issue 2 – Station Electrician Supervisor I at the Power Plant

Previous to November 2012, staffing at the Grayson Power Plant included Station Electricians James Griggs and Jose Martinez and Station Electrician Supervisor I Duane Ball. Due to the reduction in force in the GWP, Martinez was laid off and Ball was reduced to a Station Electrician.²

During the effects bargaining, the Union requested that Ball be returned to his supervisor position because of safety concerns as the current supervisor did not have the requisite training and experience properly to supervise the Station Electricians, that Ball's reduction to the journey level classification precluded him from providing adequate training, and that a supervisor needed to be present always as this individual writes performance evaluations. The City's position was to the effect that the organization structure was in transition and that supervisory needs were being assessed. The City has not returned Ball to his former position. As previously noted, declarations were filed by Station Electrician Griggs and Acting Power Plant Superintendent John Escudero regarding this issue.

The Station Electrician Supervisor I classification is included in the bargaining unit. Review of the job posting for this position shows that it is a working supervisor position with

²Griggs had initially been subject to layoff. During the meet and confer sessions, he was reinstated to his Station Electrician position at the Power Plant.

duties and responsibilities akin to a “lead position” (Griggs Declaration, Exhibit B). Given the delineation of the job duties for this position and Escudero’s declaration, it appears that Griggs and Ball during the latter’s tenure as a supervisor frequently worked apart and at different locations in the Power Plant. As often the case in the work environment, even when Ball held the Station Electrician Supervisor I classification, he was not in constant observation of Griggs’ work performance. Thus, that Ball is no longer a supervisor does not appear to comprise a significant hurdle with respect to the preparation of Griggs’ performance evaluations.

As to the Union’s contention that Power Plant operational efficiency has declined since Ball’s reduction, its efficiency as measured by the number of open work orders has apparently increased. For open work orders were reduced from 121 in August 2012 to 35 as of June 2013 (Escudero Declaration, Exhibits one and two).

Review of the declarations submitted by Griggs and Escudero discloses that there are dangers inherent in the operation of the Power Plant and that safety issues are of serious concern to the crew. The Chairperson has reviewed the accounts of Griggs and Escudero as set forth in their respective declarations regarding a January 2013 arcing incident involving the commutator on the Unit 2 exciter. The relevant portions of Griggs’ and Escudero’s declarations are in some conflict as to the proper procedures that should have been followed regarding the inspection and repair of the exciter. The Chairperson is not persuaded, however, that the outcome as to Unit 2’s status would have been different had Ball then held the Station Electrician Supervisor I position. For the decisions made regarding the actions taken in response to the arcing problem with Unit 2 were made by supervisors and managers higher in the organizational chain, including Acting Power Plant Superintendent Escudero.

On this evidence record, the Chairperson cannot conclude that the operational and safety issues at the Power Plant as claimed by the Union are directly attributable to the absence of a Station Electrician Supervisor I at the facility. As such, and since the Chairperson believes that absent a compelling basis on which to do so staffing decisions made by managers experienced in GWP's operations should not be set aside, it is not recommended that Ball be reinstated to his former Station Electrician Supervisor I classification at the Power Plant.

Respectfully submitted,

Walter F. Daugherty
Factfinding Panel Chairperson

Dated: September 16, 2013
Los Angeles, California

In the Matter of Factfinding between City of Glendale
and International Brotherhood of Electrical Workers (IBEW) Local 18
Case No. LA-IM-121-M

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

Concurring and Dissenting Opinion to the Factfinding Report and Recommendations:

As the City of Glendale's representative to the Factfinding Panel, I concur with some portions of the Factfinding Report and Recommendations (Report). There are, however, several significant points with which I disagree, and for that reason, I am providing this concurring and dissenting opinion.

I. Training – Concurrence

One of the issues in dispute concerned the issue of cross-training. The City agreed to cross-train the Station Electricians, who work at the Power Plant, and the Station Electrician/Operators, who work at the substations. While IBEW advised that it was not opposed to cross-training, it wanted to ensure that safety measures were followed. IBEW, however, offered no particulars on the safety issue, other than a proposal that the City retain Duane Ball as Station Electrician Supervisor I.

On June 26, 2013, the City submitted an email to all interested parties which contained the following proposal on the issue of cross-training:

The City of Glendale agrees that it will include IBEW Local 18 in discussions regarding the training that will be proposed by Edison Systems Incorporated (ESI) – or by any other source, including internal sources, should ESI's proposal be unacceptable to the City – to the extent that such training involves matters within the scope of representation.

I concur with Panel Chairperson's Daugherty's recommendation that the City's proposal concerning training is a reasonable proposal.

II. Station Electrician Supervisor I at the Power Plant - Concurrence

As noted above, IBEW took the position that safety concerns at the Power Plant would be lessened if the City retained Duane Ball as Station Electrician Supervisor I. The City, however, took the position that Mr. Ball's status as a Station Electrician Supervisor I had no impact on safety concerns.

I concur with Panel Chairperson Daugherty's recommendation that Duane Ball not be reinstated to his former Station Electrician Supervisor I classification at the Power Plant. I concur with the finding that the evidence does not support IBEW's claim that operational and

safety issues at the Power Plant have been negatively impacted by the absence of a Station Electrician Supervisor I at that facility.

III. Bumping Rights - Dissent

During effects bargaining and the factfinding process, the City's position was to follow the bumping procedures set forth in the City's existing layoff policy. The City procedure is as follows:

- An employee identified for layoff can bump into his last previously held position if he has more classification seniority in that previously held position than an employee currently in that position who would then be displaced.
- Where the laid off employee has previously held multiple positions, the seniority bumping process proceeds in order of the chronology as to when the employee filled the prior positions. Thus, if the employee cannot bump into the most current prior held position because the employee lacks classification seniority in that position, the process would repeat itself as to the next most current position until the employee either lands in a position for which he has classification seniority, or there are no more previously held positions for the employee to bump into.
- Where the above bumping procedure would be unavailable because of a lack of seniority in any previously held classification, the employee would then be subject to layoff. If other vacancies exist either within the department or elsewhere in the City, the City has the authority to transfer the laid off employee to an available vacant position in lieu of layoff, regardless of the employee never having previously held that position.
- If the employee has a physical or mental disability that precludes him or her from performing the essential functions of the position he or she bumped into, the City would participate in an interactive process with the employee to see if there was a reasonable accommodation the City could provide to enable the employee to perform the essential functions of that position, or of any vacant and available position for which the employee would be qualified

IBEW's position throughout this process was to let employees choose which previously held positions they would bump into. Thus, the IBEW position is that if an employee previously held multiple positions and had classification seniority in multiple positions, the employee could select which of those multiple positions he would bump into without regard to which former position was most recently held. It proposed that seniority be used for both bumping in lieu of layoff, as well as transfer in lieu of layoff.

I dissent from Panel Chairperson Daugherty's statement that it is the City's position that an employee can "bump down only to the last previously held classification." Rather, it is the City's position that an employee can bump down to the last previously-held classification in

which the employee has classification seniority over an incumbent in that lower-level classification. That classification, however, may be two, three, or even more steps down.

For instance, if Employee A currently held the position of Senior Electrical Test Technician, but had previously held the classifications of Electrical Test Technician II, Electrical Test Technician I, and Electrical Test Assistant, then, under the City's position, if Employee A's current position was identified for layoff, Employee A could bump down to the Electrical Test Technician II classification, provided Employee A had classification seniority over an incumbent in that classification. If Employee A did not have classification seniority over an employee in the Electrical Test Technician II classification, then Employee A could bump down to Electrical Test Technician I; again, however, the ability to bump would be contingent upon Employee A having classification seniority over an employee in the Electrical Test Technician I classification. This same scenario would apply to all of Employee A's previously held positions until he or she reached a previously held position in which he or she had classification seniority. If no such position existed, then Employee A would be laid off.

I also dissent from Panel Chairperson Daugherty's statements that layoffs "create [] additional work for human resources personnel..." and that "the furnishing of the information specified in the Union's proposal would ... increase the administrative workload associated with the implementation of a reduction in the City's workforce and associated 'cascade.'" These statements imply that the City's position derives from a desire to avoid the work associated with conducting a layoff. That is not the case at all. The City's human resources personnel, as has been demonstrated time after time, will do what needs to be done to ensure that it provides a fair and objective layoff process. The City's position regarding IBEW's proposal being more administratively burdensome concerns the fact that allowing employees to choose which of their previously held positions they want to bump into will drag out and complicate the bumping process as various bumping scenarios would each have to be processed (as opposed to the City's process where bumping options proceed in the order of which classifications were last held) as a result of employee choice. This delay will actually create more disruption and uncertainty for both employees and the management.

I further dissent from Panel Chairperson Daugherty's implication that the City's layoff process is neither open nor transparent, or that the City refused to furnish IBEW with the information specified in IBEW's proposal. The City provided IBEW with all the information and layoff lists it requested. (See City's Exhibit 23.) If IBEW or any impacted employee wanted either more or different information, all they had to do was ask. IBEW presented no evidence that the City refused to provide it with any requested information.

Finally, I dissent from Panel Chairperson Daugherty's statement that "the right to bump into previously held classifications other than the last held classification is limited to those classifications included within Unit 40." As stated, it is unclear whether he recommends that employees not be allowed to bump across bargaining unit lines or that there be no transfer-in-lieu of layoffs. Regardless, however, restricting these options to only positions within the bargaining unit unnecessarily limits the City's ability to retain employees. There have been many instances where the bumping process has resulted in employees bumping into a different department and/or a different bargaining unit. Thus, keeping the policy as is provides the fairest way for the

City to implement bumping rights, and also provides the most options for the City to retain employees.

Accordingly, I do not recommend that the City adopt Panel Chairperson Daugherty's recommendation that the City adopt either IBEW's October 17, 2012 bumping proposal, or Panel Chairperson Daugherty's modified version of that proposal.

Dated: September 12, 2013

Respectfully submitted,

for

Richard M. Kreisler
City of Glendale's Panel Representative

**CONCURRING AND DISSENTING OPINION OF UNION FACTFINDER MARTIN
MARRUFO TO THE IMPARTIAL CHAIRPERSON'S FACTFINDING REPORT AND
RECOMMENDATIONS**

As the Union-appointed factfinding panel member, I hereby concur with some of the Chairperson's findings and recommendations but dissent from others, as explained below.

I. I dissent from the Chairperson's statement that both parties "were afforded full opportunity to present evidence and offer argument in this proceeding. The reasons for this dissent are explained in my dissent to the Chairperson's findings and recommendations regarding Issue 2, the Station Electrician Supervisor I at the Power Plant, below.

II. I dissent from the Chairperson's acceptance and crediting of the City's statement that it has participated in this factfinding "under objection," for the following reasons. The Union filed its request for factfinding with the Public Employment Relations Board on January 18, 2013. On January 23, 2013, the City's attorney, Adrianna Guzman, objected to the Union's request on the ground that it was untimely. The City's attorney did not object on the ground that the factfinding procedures of Government Code Section 3505.4 are applicable only to impasses reached in contract negotiations. On January 28, 2013, PERB overruled the City's objection and found that the Request was timely, and advised that each party must select its factfinding panel member and notify PERB of that selection by February 4, 2013.

On February 4, 2013, the City's attorney notified PERB that Richard Kreisler would serve as the City's panel member in this proceeding. The City did not state that this selection was being made under protest or objection because the Government Code did not require factfinding in the effects-bargaining context. Nor did the City state such an objection on February 19, 2013 when the City's attorney confirmed to PERB that the parties had selected Walter Daugherty as the neutral Chairperson. It is noteworthy that PERB maintains that the Meyers-Milias-Brown Act's factfinding procedures are mandatory with respect to impasses reached in bargaining over the effects of layoffs. By not raising its objection to PERB when that body advised the City that

it must select its factfinder and engage in factfinding, the City waived any claim that this proceeding is somehow invalid and should not be processed to completion in accordance in Government Code section 3505.5.

III. I concur with the Chairperson's recognition that the City agreed in this factfinding proceeding that it will include the Union in any discussions regarding the training of employees to the extent that such training involves matters within the scope of representation. I note, however, that training of employees clearly is a term and condition of employment within the scope of representation and a mandatory subject of bargaining. The City must therefore meet and confer with the Union over the terms of any such training.

IV. I concur in part with and dissent in part from the Chairperson's finding and recommendations regarding Issue 1- Bumping Rights. I concur with the Chairperson's recommendation that the parties adopt the Union's proposal made at the October 17, 2012 meet and confer session, submitted herein as City Exhibit 13, but I dissent from any modification of that proposal that would limit both the right to bump and the information to be provided only to classifications in the IBEW bargaining unit. This recommendation, if implemented, would deprive employees represented by the Union of rights that they already have under the City's current layoff policy and that all other City employees enjoy.

The City's current layoff policy, at section C.2.c provides, "Any employee so affected [by a layoff] may be assigned to an equal or lower classification in the same series *or in a different formerly occupied classification*, provided he or she has greater service time than the person in said classification and meets the minimum requirements for examination for said position." Subsection d of that section further provides, "Any employee so affected maybe assigned to a vacant lower classification within the same series, *not formerly occupied*, provided he/she meets the minimum requirements for said position." The explanation of the layoff and seniority policy at section II.A , which is "based on the Civil Service Rules and Regulations and past practice," provides, "If a position is eliminated in your department, the person with least seniority in that classification within your department will be laid off unless they are able to

move to another department. If your position is eliminated, you may bump a City employee with less seniority within that classification *in another department.*" (emphases added) These provisions, read together, create a bumping process that extends to all City departments and all City job classifications, provided that the bumping employee has the minimum qualifications for the position and greater City-wide service time than the employee to be bumped, notwithstanding the existence of separate bargaining units represented by different employee organizations.

The Union's proposal, if adopted, would simply provide employees who are subject to layoff or bumping with adequate information about their bumping options and allow them to make their own choices about which of the available positions they will assume. The Union did not propose to change the existing bumping rights of the Unit 40 bargaining unit employees. It only proposed to give those employees the ability to choose which position among the available bumping options they would prefer, rather than allowing the Employer to make that choice, a procedure that the Employer can manipulate to favor some employees over others in derogation of contractual seniority rights.

For this reason, the limitation the Chairperson would impose is not within this factfinding panel's jurisdiction or authority. Since neither the City nor the Union proposed in effects bargaining to modify the City's current written layoff policy to eliminate its allowance for bumping on a City-wide basis and, of course, no impasse was reached on this issue, such a modification is not properly before the panel. This panel member would urge the Chairperson to revise his report to recommend the adoption of the Union's proposal, shown in City Exhibit 13, as is, without limitation.

V. I respectfully dissent to the Chairperson's finding and recommendations regarding Issue 2- Station Electrician Supervisor I at the Power Plant, on both procedural and substantive grounds.

The conclusions in the Chairperson's report are based almost entirely on his acceptance and crediting of the declaration of the acting Power Plant Superintendent, John Escadero. The Chairperson, however, did not allow the Union the opportunity to submit responsive declarations

by the affected employees, Duane Ball and James Griggs, before reaching his conclusions. The Chairperson ruled, in response to the Union's motion for reconsideration, that each party could present only one declaration regarding the Station Electrician Supervisor I issue and that no response or rebuttal declarations could be filed.

The declarations the Union was not allowed to present, however, show that Mr. Escudero's declaration contains many material inaccuracies, misrepresentations, and mischaracterizations and that the City's failure to assign a Station Electrician Supervisor I to the power plant endangers the safety of the employees working there. These declarations are attached to and incorporated by reference into this dissenting opinion.

The Chairperson's report on this issue is based on two factual conclusions. First, the Chairperson concludes,

Given the delineation of the job duties for this position and Escudero's declaration, it appears that Griggs and Ball during the latter's tenure as a supervisor frequently worked apart and at different locations in the Power Plant. As often the case in the work environment, even when Ball held the Station Electrician Supervisor I classification, he was not in constant observation of Griggs' work performance.

The Chairperson further concludes that he was,

not persuaded . . . that the outcome as to Unit 2's status would have been different had Ball then held the Station Electrician Supervisor I position. For the decisions made regarding the actions taken in response to the arcing problem with Unit 2 were made by supervisors and managers higher in the organizational chain, including Acting Power Plant Superintendent Escudero.

The declarations that the Chairperson would not receive, however, show that these conclusions are erroneous. The declarations contradict Mr. Escudero on almost every material point.

While the Supervisor I did not "constantly observe" the work of the Station Electricians, the Station Electricians reported to the Supervisor I every day at which time the day's work was

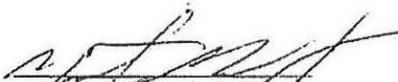
assigned and discussed. The Supervisor I and the Station Electricians thereafter were able to communicate with each other at any time by phone, plant radio, or in person. The Supervisor I was always available to assist and advise the crewmembers if they had questions or needed help with problems arising during the day. The Supervisor I, further, was responsible for organizing and planning the daily activities of the power plant electricians, planning for preventative maintenance and coordinating and supervising the training of inexperienced electricians.

Mr. Escudero stated in his declaration that “[n]o employee’s safety was compromised, and the power production process was not jeopardized” by the arcing problem that developed with Unit 2 in January 2013, and the Chairperson credited that statement. But the declarations of Mr. Ball and Mr. Griggs, attached, show that the opposite is true. The employees from Operations who were assigned to diagnose and correct the arcing problem, in lieu of the missing Supervisor I, had neither the training nor the experience to do so correctly and safely. As a result, employee safety was jeopardized and expensive equipment was burned, damaged and taken out of service. Had an experienced Supervisor I such as Mr. Ball been present to supervise the work of these employees, none of this would have occurred.

This panel member therefore concludes that the City’s refusal to reinstate Mr. Ball to his Supervisor I position and, instead, allow inexperienced and untrained electricians to perform this potentially dangerous work without proper supervision, is a breach of the City’s duty to provide a safe work place to its employees. I therefore respectfully dissent from the Chairperson’s report and recommendations on this issue.

Respectfully submitted,

Dated: 9/13/13


MARTIN MARRUGO

DECLARATION OF DUANE BALL

I, DUANE BALL declare and state:

1. When I was hired April 2, 2001, Rick Gohlick, the Maintenance Mechanic Supervisor at the time, supervised the electric shop. Sometime in or around 2002, Mr. Gohlick decided that he could no longer supervise the Station Electricians effectively or efficiently. We were then placed under the supervision of Tom Twogood, the Maintenance Supervisor. Sometime in 2003, Mr. Twogood decided that the electricians needed a working supervisor and I was promoted to Station Electrician Supervisor 1 on December 16, 2003. I worked in that position for almost ten years until November 15, 2012.

2. As Station Electrician Supervisor 1, I planned the daily activities of the crew based on the priority of work orders and the condition of equipment. I made decisions regarding what work the electricians I supervised would perform every day: i.e. when, where, how long, together or separately. I had the qualifications and the authority to make those decisions.

3. As the Station Electrician Supervisor, I also planned and coordinated the training of inexperienced electricians, such as Jose Martinez. James Griggs helped train Mr. Martinez under my supervision.

4. As the Station Electrician Supervisor 1, I planned preventive maintenance procedures based on the unit outage time restraints created by Operations. Before outages, I would examine past maintenance records to avoid repeats. I would examine outstanding work orders that only allowed troubleshooting while the unit is off-line, and I met with crewmembers for the execution of finalized action for proper coordination and reasonable expectations. Every preventive maintenance action that I designed was sent to my immediate supervisor Tom Twogood for review and approval.

5. The Supervisor I should be able to visualize the possibility of an accident and initiate accident prevention measures. If an accident occurs, the Supervisor I should be able to give details, analyze a chain of possible events, and help to implement change in view of the

larger scheme of things. Tom Twogood was the mid-manager for the electric shop, and he was always pleased with my electric shop supervision.

7. Attached hereto as Exhibit A is my performance evaluation dated June 16, 2011. It states, "Mr. Ball continues to always ensure his subordinates follow proper safety procedures and city policies. Duane participates during monthly safety meetings and conducts daily safety tailgate meetings with his crew."

8. Mr. Escudero states in his declaration that "arcing is a problem when it is excessive." However, excessive arcing occurs only when minor arcing is not promptly addressed. Minor arcing, as in this case, is a warning of bigger things to come. During my 12 years in the GWP power plant, I have addressed arcing from brushes many times. None of my responses have resulted in a brush rivet hitting the rotating commutator, as happened in this instance. In my 35 years working as an electrician and 22 years working in power plants, I have almost always detected a warning sign before a brush rivet hits a rotating commutator. An experienced electrician, such as Mr. Griggs and me, can recognize the warning and take preventative action before the unit is damaged as it was in this instance.

9. Mr. Escudero states in his declaration that the procedure Heng Chan and Vince Salcedo used to address the arcing and seat the brushes was correct. He is completely wrong. I am the most experienced electrician in the power plant. In my opinion, the choices made by Chan and Salcedo, *i.e.*, (1) not responding when the arcing was first reported, (2) cleaning the damaged commutator while the shaft was rotating, (3) seating the new brushes while the shaft was rotating, replacing all of brushes with a bad seat, and (4) seating brushes with a metallic paper that could cause shorts on the commutator, were all bad choices. The aging insulation in the DC generator had everything stacked against placing Unit 2 back in-service when this arcing occurred and created greater arcing, high currents, and excessive heating of windings causing insulation damage, not to mention endangering the safety of the employees working on the problem.

10. I would have handled the problem with the Unit 2 brush arcing totally differently than Mr. Chan did. And I would have handled the day-of-repair "OK TO clearing" of Unit 2 differently. I would have selected a more experienced repair crew. I would not use a metal base sandpaper to seat the new exciter brushes. I would not have replaced all of the exciter brushes. And I would not have allowed the crew to seat the brushes while the shaft was rotating.

11. Seating the brushes while the shaft is rotating, even at at the rate of 1-3 rotations per minute, is an unsafe work practice. The rotating shaft weighs about 20 tons and it cannot be stopped by mere human exertion. The brushes have to be seated by hand. If seating is attempted when the shaft is rotating, the electrician's fingers can get caught up in the rotating gear and can be snapped off. Mr. Escudero should have known that seating brushes when the gear is turning is a danger to employee safety. If I had been the Supervisor I supervising this procedure on the day in question, I would not have allowed the crew to seat the brushes with the shaft still rotating. The outcome as to Unit 2's arcing would have been completely different had I been the Station Electrician Supervisor I in the power plant directing the repair process.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 12, 2013 at Glendale, California.

A handwritten signature in black ink, appearing to read "Duane Ball", is written over a horizontal line.

DUANE BALL

SUPPLEMENTAL DECLARATION OF JAMES GRIGGS

I, JAMES GRIGGS declare and state:

1. I have worked in electric power industry industry for 18.5 years. Previous to my employment at GWP, I was employed by the State of California, Department of Water Resources for 11.5 years as a Hydro-Electric Power Plant Electrician. I worked in large Hydro-Electric pumping and generating stations.

2. Supervisors at GWP do not constantly observe employees perform their work. Many employees, such as station electricians and power plant electricians, report to their supervisor in the morning and are then assigned to work in designated areas in the facility or the substations spread throughout the city. When Duane Ball was my immediate supervisor, he held "tailgate" meetings nearly every morning at which time the day's work was assigned and discussed. Mr. Ball and I were then able to communicate with each other at any time of the day by phone, plant radio, or in person. He was always available to assist and advise the crewmembers if they had questions or needed help with problems arising during the day.

3. Mr. Ball, as a working supervisor, was responsible for organizing and planning the work of the power plant electricians. He planned for preventative maintenance and training and organized the daily activities of the crew, including establishing the priority of work orders. When I helped train inexperienced electricians, such as Jose Martinez, I did it under the supervision and direction of Mr. Ball.

4. Mr. Escudero states in his declaration, at paragraph 11, that "[n]o employee's safety was compromised, and the power production process was not jeopardized" by the arcing incident in question here. He says I exaggerated the impact of the arcing and that "whenever electricity is present there can be arcing." But Mr. Escudero shows in his declaration that he does not know how an exciter works and is unaware of the dangers that unattended arcing can cause. The "contact between the brushes and the commutator" does not "generate electricity," as Mr. Escudero says. An exciter is a generator whose output is at the commutator. The commutator

converts alternating current sine wave into direct current. This direct current is then transferred to the generator field. It is not "a simple fact that wherever electricity is present there can be arcing." Arcing is abnormal and arcing of brushes on a commutator must be corrected immediately. During Mr. Ball's tenure as the Supervisor I, he never allowed the brushes to create a situation in which a Unit had to be forced out of service and the exciter removed for repair.

5. Mr. Escudero states in his declaration that "Chan and Salcedo changed the brushes while Unit 2 was on turning gear, which means it was rotating very slowly, at a rate of 1-3 rpm. Had Salcedo not felt comfortable about working on Unit 2 while it was still rotating, he could have asked the Shift Supervisor to stop the rotation. He did not." This is an ill-informed statement. First of all, the concern was not about when Chan and Salcedo were *changing* the brushes; the risk of harm occurred when they were *seating* the brushes. Replacing brushes and seating brushes are two different jobs requiring different levels of precaution. It is true that we can *replace* brushes on rotating units. These brushes are replaced on the slip rings, which provide direct current to the generator field. These brushes do not require seating and have a different type of holder. But *seating* a brush improperly can lead to arcing.

6. It is true we once had a different procedure at one time. That process involved sandpapering the brushes outside of the holder to try and match the angle, then replacing them. This procedure was stopped because of improper seating and the danger of shorting a brush. Shorting a brush involves either touching the brush to ground or between opposite polarities. I once shorted a brush on the Unit 2 exciter. I had high voltage gloves on and part of my glove nearly melted completely through. There was also significant arcing. After that, I no longer felt safe doing it that way. We developed a policy under the supervision of Mr. Ball to seat the brushes only when the unit was shut down and with the turning gear off. This danger was discussed in a monthly safety meeting at which our previous Power Plant Superintendent, Mr. Moorehouse, was present. He expressed his concern that I could have been seriously injured.

7. Mr. Escudero, in contrast, would leave it up to employees who are not highly trained Power Plant electricians, such as Mr. Chan and Mr. Salcedo, to decide whether to seat

brushes while the unit is rotating. This is an irresponsible delegation of a supervisor's responsibility to keep the work environment safe for all employees. Mr. Chan and Mr. Salcedo had never changed or seated brushes on Unit 2 exciter or any other unit in the plant. They lacked the experience to perform this dangerous job safely.

8. Mr. Ball and I had a conversation with Mr. Salcedo and Mr. Escudero in the electric shop not long after the brushes were seated on the turning gear. Mr. Ball said that Unit 2 should have been taken off turning gear after the cool down period, and the brushes should have been seated at time. I told Mr. Escudero that the guys should not have seated the brushes on a turning gear and that next time we should turn the machine off. Mr. Escudero's response was, "we can do that."

9. In paragraph 20 of his declaration, Mr. Escudero claims that "Unit 2 is still out of service, but that has nothing to do with Chan and Salcedo replacing the brushes while the unit was rotating at a reduced speed" or his direction to put it back on line. He claims it is still out of service because the inner poles deteriorated due to age. However, during my inspection of the damaged unit, I could see that the brushes were not fitted to the circumference of the commutator and could see the gaps. They had been seated with emory cloth instead of correctly with sand paper, which I later found in the shop. Additionally, the commutator was not properly cleaned. In my opinion, the commutating poles or interpoles insulation were damaged as a result of the commutator damage caused by the brushes. They are interconnected electrically through the brushes, so the problem was transferred.

10. The Unit was taken out of service because of excessive arcing, as stated in paragraph 12 of Mr. Escudero's declaration. If the interpoles caused the problem why would the Unit be returned to normal as Mr. Escudero stated in paragraph 16 of his declaration. After the Unit was removed from service Mr. Ball and I tested the armature, which is part of the commutator, for ground. We also tested the field windings, which are tied to the interpole windings for resistance and ground. Those test were good. We did not have the equipment to test the armature for shorts. On May 17, 2013 the machinists from ESI came to repair the

commutator. They did not bring an electrician with them. They intended to machine it on site. I suggested they request an electrician before they machined the commutator, so that it could be tested. If it tested bad they would have to remove the exciter anyway. They agreed and an electrician arrived that afternoon. I informed him as to what happened including the test that we had done. *He tested the armature and concluded that the readings were bad and the exciter would have to be removed and transported to the shop for repair.* He told me later that the armature did require some work.

11. Mr. Escudero claims, "there was no fire in or around the 'exciter' on Unit 2." I was informed by Steve Cameron, a Power Plant Shift Supervisor in Operations, however, that it wasn't just arcing, but a fire. The photographs of the commutator and brushes presented in Exhibits C and D attached to my first declaration show that the brushes did burn.

12. Mr. Escudero, in paragraph 9 of his declaration, claims the reduction in work orders since September 2012 shows that "the Power Plant has become more efficient." The reduction in work orders does not show greater efficiency in performing the needed work but, rather, efficiency in closing out stale work orders. In September Kerry French, the Power Systems Analyst, was responsible for closing out work orders. He told Mr. Ball and me that his policy was to close out work orders if they had been open for an extended period of time and, if the problems on the work orders had not been resolved, someone would resubmit the order. We did not physically do all that work. It just appears that way on paper. In my estimation, the reduction in orders identified by Mr. Escudero was more the result of Mr. French's policy of closing out stale work orders periodically than an actual improvement in efficiency. Mr. Escudero never said to Mr. Ball and me that the number of work orders outstanding was

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unacceptable, as he says in his declaration.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on September 12, 2013 at Glendale, California.



JAMES GRIGGS