

**FACTFINDING PROCEEDINGS PURSUANT TO
MEYERS-MILAS BROWN ACT**

In the Matter of:)	
)	
DAVIS CITY EMPLOYEES ASSOCIATION,)	
)	OPINION, FINDINGS OF FACT, AND
Association or Union,)	RECOMMENDATIONS OF THE
)	FACTFINDING PANEL
and)	
)	
CITY OF DAVIS, CALIFORNIA,)	
)	
City or Employer.)	
)	

Hearing Dates: May 14, 2013; May 16, 2013; May 22, 2013;
May 23, 2013; June 21, 2013

Hearing Location: Davis, California

Date of Award: October 4, 2013

PANEL MEMBERS

Association Member: Dave Owen
City Member: Darren Pytel
Neutral Member: John B. LaRocco

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I. INTRODUCTION

On April 4, 2013, the California Public Employment Relations Board (PERB) notified me that the Davis City Employees Association (Union or Association or DCEA) and the City of Davis, California (Employer or City) had selected me to be the Neutral and Chair of their Factfinding Panel established pursuant to the Meyers-Milias-Brown Act.

The three members of the Factfinding Panel (Panel) convened a meeting with the parties' counselors via telephone conference call on April 10, 2013. The parties had a preliminary meeting with the Panel on April 23, 2013. Thereafter, the Panel presided over hearings on May 14, 2013; May 16, 2013; May 22, 2013; May 23, 2013; and June 21, 2013.¹

At the conclusion of the hearings, the parties filed post hearing briefs, which the Panel received on August 19, 2013 and the matter was deemed submitted.

II. PERTINENT STATUTORY PROVISIONS

This factfinding proceeding is governed by recent amendments to the Meyers-Milias-Brown Act (MMBA). Legislation (AB 646) added Sections 3505.4 and 3505.5 to the California Government Code. These two sections provide:

3505.4. (a) If the mediator is unable to effect settlement of the controversy within 30 days after his or her appointment, the employee organization may request that the parties' differences be submitted to a factfinding panel. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree

¹ The Panel conducted two post hearing mediation sessions on July 2 and 26, 2013. These sessions were confidential. Subjects not discussed on the record, including tentative proposals, are irrelevant to the factfinding herein. See *California Evidence Code* §1119.

upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigation, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) 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.

3505.5. (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's resume on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an

impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

Government Code Section 3505.7 addresses what course of action a public agency may take upon conclusion of the factfinding procedures as follows:

After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

III. BACKGROUND

The City is a general law city operating under the Council-Manager form of government. In mid-2013, the City employed approximately 353 workers in seven bargaining units.

The DCEA represents 81 employees who occupy 38 classifications in a miscellaneous bargaining unit. Currently, the total compensation cost for the unit is \$10,382,672.38. The parties concur that 60% of the employees are funded through enterprise funds while 40% are compensated from the City's General Fund.

The last Memorandum of Understanding between the DCEA and the City ran from June 19, 2006 through June 30, 2009. The parties negotiated over a successor agreement from April,

2009 until December 4, 2009 when the City declared impasse. The City's last, best, final offer, dated December 4, 2009, contained substantial concessions regarding health benefits, retirement benefits and mandatory furlough days.

On February 18, 2010 and following unsuccessful mediation, the DCEA requested factfinding pursuant to Employer-Employee Relations Resolution No. 1303. While the record is not entirely clear, the parties endeavored to select a factfinder but encountered some difficulty in scheduling a factfinding hearing. Factfinding did not occur. On May 25, 2010, the City Council adopted a resolution imposing the City's last, best, final offer on the members of the DCEA bargaining unit.

On June 2, 2010, the DCEA filed an unfair practice charge with PERB claiming that the City did not bargain with the Union in good faith and, more specifically, that the City violated the MMBA by failing to exhaust the impasse resolution procedures. In mid-2011, while the unfair practice charge was still pending before PERB, the parties resumed bargaining. These negotiations apparently ceased in November, 2011. On or about October 31, 2011, a PERB Administrative Law Judge issued a proposed decision holding that the City committed an unfair practice. The City appealed the Administrative Law Judge's decision. On June 8, 2012, PERB adjudged that the City committed an unfair practice by failing to exhaust its impasse procedures before imposing its last, best, final offer. Among other remedies, PERB ordered the City to make employees whole for all lost wages and benefits and to complete the factfinding process in compliance with the City's local rules. The City complied with PERB's order. The City paid all employees back pay and benefits.

Consequently, the DCEA unit did not incur any compensation reductions due to furlough days. The DCEA employees did not have to endure concessions to health and pension benefits. However, they did not receive a wage increase.

Melissa Chaney, the Human Resources and Communication Service Director for the City, testified that the City laid off nine DCEA represented employees to fund the PERB decision. Chaney elaborated that, since the City had to “pay back concessions” that it had achieved as a result of the 2010 impasse, the City had no choice but to lay off nine workers. It cost the City approximately \$1 million to fulfill the remedy ordered by PERB. Ken Akins, the DCEA’s Chief Negotiator and the Proprietor of University Research and Associates, testified that, by laying off nine workers, the City saves \$800,000 to \$1 million annually. Besides the nine layoffs, the City did not fill positions made vacant via attrition so that, as of the time of this factfinding, 81 employees comprised the DCEA unit.²

The City and the DCEA proceeded to factfinding based on the February, 2010 impasse, albeit the City questioned the necessity for such a proceeding. Nonetheless, PERB notified the City that it had to participate in factfinding under its local rules to fully comply with the PERB decision.

The parties established and convened a factfinding panel in early 2013 presided over by Joe Henderson (the *Henderson Factfinding Panel*). The issues submitted to the *Henderson Factfinding Panel* were: (1) grievance and discipline appeal process; (2) water study; (3) certification and licensing; (4) standby pay; (5) safety footwear allowance; and, (6) the term of the Agreement.

² The bargaining unit contained about 100 employees when the 2006-2009 MOU expired.

The *Henderson Factfinding Panel* issued its findings and recommendations on August 12, 2013. The parties stipulated that the entire record before the *Henderson Factfinding Panel* be incorporated into the record before the instant Factfinding Panel.

Sometime during Spring 2012, the parties resumed negotiations. From the City's standpoint, the floor for these negotiations became the terms and conditions contained in the 2006-2009 MOU.

On October 24, 2012, the City tendered its last, best, final offer to the DCEA.³ DCEA rejected it.

On March 6, 2013, counsel for the City informed DCEA's counsel that if the DCEA filed a request with PERB for factfinding on or before March 15, 2013, the City would stipulate that such a request was timely. On March 14, 2013, DCEA submitted a request to PERB to initiate the factfinding proceedings although the DCEA believed that the request was premature because the parties had not yet completed factfinding under the City's local rules.

IV. GENERAL OBSERVATIONS AND FINDINGS OF FACT

Before setting forth the parties' proposals and issuing recommendations for the appropriate contents of a MOU, the Panel must discuss several subjects which form a foundation for the Panel's recommendations. The Panel must also address an issue concerning the proper application of Government Code Sections 3505.4 and 3505.5.

A. The Statutory Timelines

Government Code Section 3505.5 provides that a factfinding panel shall render recommendations 30 days after its appointment absent a mutual agreement for a "longer period". While the City reluctantly agreed to extend this deadline, the 30 day limitation period is

³ The City's last, best, final offer is attached to this Factfinding Opinion as Appendix A.

unrealistic.⁴ The Panel finds that it has authority to grant extensions of the 30 day deadline for compelling justifications due to the conflict between the Section 3505.5(a) time limit and the due process described in Sections 3505.4(c) and 3505.4(d). To fully consider the factors enumerated in the statute, the Panel is obligated to hold an evidentiary hearing unless the parties agree to an informal process.⁵ Also, after receiving evidence, the parties may wish to file briefs and the Panel needs time to deliberate to formulate appropriate recommendations. Nevertheless, this Panel exerted extraordinary efforts to expedite the factfinding of this interest dispute. The Panel denied the DCEA's request to hold these proceedings in abeyance until the *Henderson Factfinding Panel* issued its decision. The Panel mediated with the parties on two days in attempt to help the parties reach a negotiated MOU without a factfinding decision.

In sum, this Panel complied with the statutory intent of having a rapid factfinding process.

B. The Parties Bargaining Relationship

Government Code Section 3505.4(d) lists seven criteria that the Panel must weigh when arriving at its findings and recommendations. Besides these seven items, the statute contains a catchall provision that the Panel may consider any factor which is "normally or traditionally taken into consideration" when making findings and recommendations in a labor dispute. One such factor is the nature of the parties bargaining relationship. The Panel concludes that the tense relationship between the parties impeded their ability to reach an agreement.⁶

⁴ However, the City opposed the DCEA's request for an extension of time to file post hearing briefs. The Panel granted the DCEA a two week extension for filing briefs because of a compelling circumstance.

⁵ In this case, the DCEA insisted on holding an evidentiary hearing.

⁶ Prior to 2009, the parties had a cordial and professional bargaining relationship.

The genesis of the tension is two-fold. First, the longer the parties were unable to reach an agreement, the harder it became to find a bargaining resolution to their problems. The employees have not enjoyed a wage increase since 2009, while the City did not get the benefit of structural concessions that it received from other labor organizations in 2010 and 2012. Second, the City's reaction to the PERB ruling irritated the DCEA. Although its members were made whole for back pay and benefits that the City imposed in May 2010, the DCEA was upset that the City laid off nine employees to pay for the PERB ruling. Akins claims that the City has not only recouped the money that it paid to the bargaining unit members, but it also saves additional monies by making the layoffs indefinite. In other words, the DCEA asserts that since it cost the City about one million to fund the PERB decision, the City has now saved far more than a million dollars because the layoffs continue. The City was upset it had to reinstate the wages, benefits and conditions of employment contained in the 2006-2009 MOU. In sum, both parties are frustrated.

This Panel will try, to the best of its ability, to take into account the economic effects of the protracted bargaining situation and the PERB decision, especially with regard to the term of the contract. In making its recommendations, the Panel endeavors to reestablish stable labor management relations.

C. The City's Financial Condition

Government Code Section 3505.4(d) specifically provides that the Panel consider the "... interests and welfare of the public and the financial ability of the public agency."

Chaney declared that throughout negotiations, the City never claimed either that it lacked money or was headed to "bankruptcy". Yvonne Quiring, Assistant City Manager, related that the City faces some financial challenges in the near future regarding OPEB [Other (Than

Pension) Post Employment Benefits]; pension costs; a new water treatment facility; and maintaining community services. Quiring gave several examples of these impending challenges. She forecasts water costs to rise from \$859,000 in 2013 to approximately \$3 million within two to three years.⁷ Quiring recounted that the City budgeted about \$1 million for street and road maintenance during fiscal year 2012-2013, but the City rolled the expenditure into the budget for next fiscal year because the City did not achieve sufficient savings in 2012-2013 to fund the \$1million expense.

John Bartel, President of Bartel Associates and an Actuary, prepared several reports for the City regarding the City's current and future liability for retiree health benefits.⁸ Bartel related that although benefit costs did increase as much as he predicted from 2011-2012, he forecasts an 8.5% to 8.9% increase in the PERS premiums 2014. Bartel opined that the City has unfunded liability amounting to about \$59 million. Bartel calculated that the City's Annual Required Contribution (ARC) at \$7.3 million for fiscal year 2012-2013, \$6.4 for fiscal year 2013-2014, and \$6.6 million for 2014-2015. The ARC amounts to 23.5%, 20.4% and 20.4%, respectively, of the City's payroll. Bartel projects that through 2023, the ARC will remain at 20.4% of payroll, albeit the dollar figure will increase as aggregate payroll increases. Bartel was asked to prepare alternative retiree medical plans which could reduce the ARC. One such alternative would decrease the ARC to 14.3% of total annual payroll.

Bartel related that Governmental Accounting Standards Board (GASB) 68 which becomes effective in 2014, encourages public employers to payoff unfunded liability sooner rather than later although he acknowledged that the employers can adopt a pay-as-you-go system. Bartel opined that the pay-as-you-go cost would be substantially higher in the long run.

⁷ The City is transitioning from well water to surface (Sacramento River) water.

⁸ Bartel's reports examine the City's retiree healthcare plan costs as of June 30, 2011.

Akins related that the only savings accruing to the City by paying down the unfunded liability for retiree medical benefits is the return that the City receives by investing the ARC. He opined that foregoing a pay-as-you go plan could actually cost the City more than the ARC if the investment returns are negative. Akins also asserted that there is no urgency to pre-fund the retiree medical liability because, unlike private companies, the government is not going out of business.

Evelyn Hayden, who is temporarily employed in the City's Finance Department, prepared tables and charts depicting the financial condition of the General Fund. The unreserved General Fund balance shrank from \$8.4 million in 2004-2005 to \$5.5 million in 2012-2013. In fiscal year 2011-2012, the General Fund had revenues of \$38,392,156.00 and expenditures of \$38,263,499.00 for a small, positive change in fund balance of \$128,657.00. Hayden declared that the City's target for its unreserved General Fund balance is 15% and that the City is presently "a little shy" of meeting its goal.

The City prepared a financial forecast covering the next five years. The City projects General Fund revenues to grow at an average annual rate of 2.4% per year, resulting in total revenue growth of \$5.3 million through fiscal year 2018-2019. However, the City also forecasts General Fund expenditures to average 4.1% a year and grow by \$9.3 million over the five year period. If this forecast is accurate, the unreserved General Fund balance will decrease.

Timothy Reilly, a Certified Public Accountant retained by the DCEA, analyzed figures, data and information in the City's Comprehensive Annual Financial Reports (CAFR). He utilized CAFRs for the last ten years in an effort to discern trends. He prepared a report

concerning the financial condition of the City.⁹ Based on his analysis, Reilly rendered several opinions.

Reilly computed the City's current asset to liability ratio at 9.04 to 1. Reilly deduced that the City does not have any problem meeting its ongoing liabilities. Reilly stressed that the City has about \$27.8 million available to fund ongoing expenses.

Reilly wrote that property tax revenues have increased, except for 2012, when there was a substantial decline due to the end of the property tax increment and the dismantling of the redevelopment agencies. Reilly predicts that property tax revenue will increase by 2% in 2013 while sales taxes revenue will increase 8% to 9%.

Reilly related that the City has a practice of constructing "very conservative" budgets. Reilly noted that, from 2007 to 2012, the City spent less money than it had budgeted and revenues were higher than anticipated for four out of five years.

Reilly declared that the General Fund has a balance of \$6.25 million. The asset to liability ratio was 2.43 to 1 in 2012. Reilly pointed out the Fund's unrestricted balance to total revenues was 9.21% and to total expenditures was 15.95%. Reilly stated that the minimally acceptable unreserved fund balance is 5%, but he agreed that the City's target of 15% is "reasonable".

Reilly characterized enterprise funds as healthy and growing. Reilly opined that several internal service funds may have accumulated more dollars than necessary to replace a particular asset or to fund capital projects. Reilly pointed out that the balances of internal service funds rose from \$4.5 million in 2007 to \$12.9 million in 2012. According to Reilly, these

⁹ Riley's report is dated June 19, 2013.

monies could be transferred to the General Fund. However, Reilly acknowledged that there could be some restrictions governing the use of money held in certain internal service funds.

Hayden replied that the internal service funds are used to avoid interest charges. If the City saves up money to buy an asset, such as a fire truck, it does not have to pay interest while the asset is utilized. In addition, the full value of the asset appears in the CAFR, which improves the financial condition of the City. Hayden also emphasized that the two internal service funds with the most money, Facility Replacement and Fleet Replacement, are absolutely necessary for the City to function.

The Panel carefully reviewed all of the financial evidence in the record. The Panel concludes that the City of Davis is in adequate financial health. Stated differently, the City is not in desperate financial straits like many other governmental entities in California. The City has earmarked funds to replace aging assets and to deal with its unfunded liability for future retiree benefits. Although these items are not required and do put pressure on the budget, they are prudent financial strategies. While both sales tax and property tax revenues are increasing, expenditures are increasing at a slightly faster rate than revenues. Thus, there is not much margin for error.

The DCEA failed to identify a source of money to fund generous pay raises or to retain lucrative benefits such as the PERS pick up and no employee contribution to health insurance premiums. Reilly conceded that although the general fund is not broke, the City can reasonably target an unreserved general fund balance at 15%. Also, while he characterized the enterprise funds as healthy, he never opined that they contain excessive amounts of money. Finally, Reilly's analysis did not consider the water, deferred maintenance and community service challenges confronting the City.

The internal service funds have a slight excess of money, but the oversupply is insufficient to fund huge salary increases. Also, these monies are only available once and so, it is imprudent to use only internal service funds to pay for a wage increase which becomes a continuing expenditure. However, there is sufficient money in the enterprise funds and the general fund to provide some wage increases and minimal pay equity adjustments to two classifications.

Therefore, as will be discussed later in our recommendations, the City rightly needs structural changes to the benefits afforded to employees, but it also has sufficient money to provide modest wage increases which are needed to partially cushion the financial sacrifices that the DCEA employees must make.

D. MOUs Between the City and Other Labor Organizations

The City has reached agreements with all other bargaining units except for the firefighters.

The primary agreements which set a pattern for the DCEA bargaining unit are the PASEA (Program Administrative and Support Employees Association) MOU, the civilian police terms in the police MOU and, to some degree, fire. Attached to this Opinion is a table illustrating the terms and conditions that the City reached with other bargaining units.¹⁰

The City argues that the DCEA must accept compensation and benefits similar to those contained in these other agreements, especially the two PASEA MOUs. The City stresses that PASEA and the other labor organizations entered into two MOUs during the time period that the DCEA has not entered into any MOU to succeed the 2006-2009 MOU.

¹⁰ The City prepared this table at the request of this Panel. It is attached as Appendix B.

The pattern set by other contracts has a significant spillover effect on the DCEA employees. The City rightly wants to maintain internal equities. However, the precedential value of the other MOUs, including the PASEA agreement, is diluted by the presence of “most favored nations” clauses. The most favored nations clause means that if DCEA negotiates better wages and benefits than those contained in the other MOUs, the other MOUs are automatically upgraded to the level of wages and benefits in the DCEA MOU. Put simply, the bargaining pattern is soft. It is subject to change. The City argues that it did not want to penalize labor unions that went first in reaching an agreement. However, since the City agreed to the most favored nation clauses, the City fully understood that it might have to augment the wages and benefits in the other agreements.

The Panel concludes that its recommendations can deviate, to some degree, from the pattern of bargaining in other units and still achieve internal equity across all bargaining units.

V. FINDINGS AND RECOMMENDATIONS ON EACH OUTSTANDING ISSUE

A. Issue No. 1: Duration of the Memorandum of Understanding

1. The Union’s Proposal

DCEA’s proposal is multifaceted. The Union proposes that the Agreement begin either at the end of the term of a MOU negotiated pursuant to the recommendations of the *Henderson Factfinding Panel* or one day after the City’s unilateral implementation of employment conditions if no agreement is reached. The Union then proposes that this Panel send the City and DCEA back to the bargaining table to negotiate a successor agreement or a new MOU if the City imposes conditions of employment.

2. The City's Proposal

The City proposes either a one year or a three year Agreement.

3. Panel Discussion

The DCEA argues that the City must be barred from "going through the motions" simply to arrive at the point where it is permissive for the City to take unilateral action. The Union charges that the City has negotiated in bad faith following the expiration of the 2006-2009 contract as amply demonstrated by the PERB ruling. The City rushed to declare impasse even before the *Henderson Factfinding Panel* started its hearings. The Union concludes that the City is making a mockery out of its duty to meet and confer under MMBA. Consequently, the DCEA urges this Panel to recommend that the parties return to the bargaining table.

The City contends that a one year contract is appropriate unless the MOU contains concessions on retiree health care. The City stresses that the floor for a new MOU is the conditions of employment at the end of the 2006-2009 MOU and so, immediately after this factfinding, the City may implement its last, best, final offer with the caveat that it would only be implementing a new *status quo*.

The Panel finds that it has primary jurisdiction over the factfinding proceedings based on terms and conditions of employment found in the 2006-2009 MOU. While the parties went to the *Henderson Factfinding Panel* to redress the City's unfair practice, all of the issues before that Panel are now submitted to this Panel.¹¹ We are authorized by the MMBA to recommend the appropriate contents of an entire MOU.

Sending the parties back to the bargaining table would be futile and contrary to the policy expressed in Government Code Sections 3505.4 and 3505.5. The parties

¹¹ The *Henderson Factfinding Panel* recommended a MOU term from July 1, 2009 to June 30, 2013. Since such a hypothetical MOU is already expired, any new MOU will not conflict with this recommendation.

have bargained for four years and have been unable to reach an agreement. As discussed earlier herein, the MMBA imposes tight deadlines to expedite the factfinding process. Additional bargaining would thwart the legislative intent to reach a definitive end to this interest dispute. Consequently, we are unpersuaded by the DCEA's proposal.

As previously discussed, this Panel wants to reestablish a stable labor management relationship between the parties. The Panel holds that this is only possible with an agreement term longer than advocated by the City. A four year agreement will permit the implementation of structural reforms and the application of wage increases which, this Panel hopes, will improve the parties bargaining relationship.

4. Panel Recommendation

The Panel recommends that the parties enter into a four year agreement ending on December 31, 2017.

B. Issue No. 2: Contributions to Health Plan Premiums for Active Employees

1. The City's Proposal

The City proposes that the City pick up the first 3% annual increase in the health insurance premium; that the employee pick up the next 3% annual increase in the health insurance premium; and that the employee and the City split (50%-50%) any health insurance premium increase above 6% per year. The City proposes that the base rate be retroactively set to the 2009 rate but with no retroactive employee contributions.

2. The Union's Proposal

Although the DCEA did not make a specific proposal on active employee health benefits, it is willing to accept an employee contribution "close to" the City's proposal.

3. Panel Discussion

The City currently provides employees with cafeteria health benefits at no cost to the employee. The main component of the cafeteria benefit is the Kaiser Full Family rate, which was \$1,587.14 in 2013. The total cafeteria benefit is \$1,949.32.¹² The other components of the benefit are dental, vision, long-term disability and life insurance.

In the 2010-2012 and 2012-2015 contracts, PASEA agreed to cap the City's sole monthly contribution to health premium at \$1,561.55 and PASEA adopted the 3%, 3% and 6% joint contribution formula described in the City's proposal for annual health insurance premium increases over the cap.

There is little disagreement between the DCEA and the City with regard to initiating an employee contribution. The parties recognize that the employees and the City must share in paying for escalating health care benefit costs. Having employees share in the cost of future premium increases might incite the parties to jointly invent ways to stem the spiraling increases in health care premiums. When employees and the City contribute, both parties will win if they can devise a strategy for reducing the escalation of health benefit costs because they will share the savings. In addition, the new formula conforms to the internal equities since the PASEA represented employees have the same formula. Thus, the 3%, 3% and 6% joint contribution formula is appropriate.

The real dispute concerns when the joint contribution formula is triggered. The city's present contribution in the PASEA group is \$1,772.43. The City wants its sole contribution to be retroactively reduced to \$1,561.55. This is too severe of a decrease. It is unlikely that the employees will have a chance to adjust their level of health care coverage based

¹² The DCEA computes the total insurance benefit to be \$1,962.91.

on the sudden application of a large employee contribution. Therefore, the Panel recommends that the City's sole contribution be set at \$1,949.32 on the effective date of the MOU. Assuming that the increase in health insurance premiums is more than 3% in 2014, employees will begin sharing in the cost which, while appropriate, will still be an enormous financial burden especially if the 2014 annual premium increase is 10% or greater. The financial burden could become an undue hardship on DCEA employees if the employees must not only pay 50% of the monthly increase over \$1,949.32, but also are required to pay the excess amount over \$1,772.43 each month.

4. Panel Recommendation

The Panel recommends that the MOU include a provision whereby the City pays the first 3% of the annual increase in health insurance premium; the employee pays the next 3% annual increase in health insurance premium; and the parties split (50%-50%) any increase above 6% per year. The Panel further recommends that the joint contribution formula be applied to a base rate of \$1,949.32 per month.

C. Issue No. 3: Cap on Cafeteria Cash Out Benefit

1. The City's Proposal

The City proposes that the current maximum monthly cash out of the cafeteria health benefits be capped at \$1,000 per month upon implementation of the Agreement; at \$750 per month as of July 1, 2014; and at \$500 a month as of June 30, 2015, for all current employees. The City proposes an immediate cap of \$500 per month for new employees.

2. The Union's Proposal

The Union proposes to gradually reduce the cash payout from the current monthly maximum to \$750 per month. The DCEA proposes an immediate cap of \$750.00 per month for new hires.

3. Panel Discussion

For some years, the DCEA-City agreements, as well as the City's agreement with other labor organizations, permitted an employee to take all or part of the cafeteria health benefit as cash back if the employee does not need to utilize all of the benefits, or if the employee is covered by a spouse's health insurance plan. For example, an employee, who receives 100% of the employee's health benefits through a spouse's employer, receives cash back of \$1,925.42 per month.¹³ An employee who needs only single Kaiser coverage receives the difference between the cost of the full family benefit and the premium for individual coverage. In 2013, 40 employees were receiving more than \$1,700 per month in cash back payments. Only 28 employees were receiving no monthly cash back or less than \$500 per month in cash back payments.

The DCEA contends that quickly reducing the cash payout will cause irreparable suffering among the employees. The Union predicts that employees will lose their homes, cars and other possessions because the salaries of a large number of employees will decrease by as much as \$17,000 a year.¹⁴ The Union also argues that in the past, the City used this benefit as a recruiting tool. The City informed potential new hires that while their wage rates may be lower than the compensation in comparable agencies, the new employee would

¹³ Chaney explained that the maximum cash back is slightly less than the total cafeteria benefit amount because long-term disability insurance and life insurance are mandatory.

¹⁴ The maximum cash back payout per year amounts to a little more than \$23,000 a year. If the monthly cap is set at \$500, the maximum cash payout will be \$6,000 a year.

make up the difference with the cash out benefit provided they obtained health insurance through their spouse.

The City emphasizes that other bargaining units have accepted a cap and never collected any cash back above \$1,561.55 per month. The City points out that the other groups, including PASEA, have agreed to the following schedule of cap reduction: \$1,200 as of January 1, 2013; \$1,000 as of January 1, 2014; \$750 as of January 1, 2015; and \$500 as of December 31, 2015. The City seeks a quicker cap decrease for the DCEA employees since they have enjoyed an uncapped cash out since 2009 while the other employees have been subject to a cap. The City submits that its proposal reduces costs, yet it retains a sufficient incentive for employees to take the cash if they do not need medical coverage.

The Panel holds that this benefit is ripe for reform. First, it is discriminatory. The cash payout in lieu of health insurance favors those employees who happen to be fortunate enough to have access to health insurance through another source. An employee who is unmarried or does not have a working spouse (or the spouse's employer does not provide health benefits), must forego the cash and obtain coverage under the City's plan. Thus, the benefit is inequitable. Some employees are precluded from enjoying a huge amount of supplemented pay on top of their basic wages. Second, as health insurance premiums escalate, it gives employees in the fortunate situation a substantial compensation increase. For example, since the aggregate health insurance premium rose from \$1,483 in 2009 to \$1,949.30 in 2014, some employees received, in essence, a \$500 a month raise in total compensation. The benefit is too generous. Third, reducing the cash out amount will not only create equity among employees inside the DCEA unit, it will also conform to the pattern set by other city labor organizations.

The Panel notes that capping the cash payout will not affect compensation studies conducted by the parties. The health benefit will continue to follow its major component, the Kaiser full family coverage, for the purpose of salary comparison with other jurisdictions.

The Panel finds it somewhat difficult to estimate the cost savings for the City by reducing the cash payout and imposing a cap. At some point, employees who are not taking any health insurance may switch to the City's health insurance coverage because the \$500 cash back may not be a sufficient incentive to keep spouses' health insurance. Nevertheless, a \$500 per month cap is appropriate.

Due to the DCEA's legitimate concerns that a large number of employees will have to absorb a substantial decrease in take home pay, the schedule to reach the \$500 cap should be more gradual than the City proposes. The incremental reduction will give employees time to engage in personal financial planning to adjust to the great reduction in compensation.

New employees do not expect (or even imagine) a potential lucrative benefit of more than \$1,900 per month in addition to basic wages. Thus, the \$500 cap should be effective immediately for new hires.

4. Panel Recommendation

The Panel recommends that the MOU include a provision that the caps the cafeteria benefit cash pay as follows: \$1,300 on January 1, 2014; \$1,000 on January 1, 2015; \$750 on January 1, 2016; and \$500 on January 1, 2017.

The Panel recommends that the monthly cap on the cafeteria cash payout be set at \$500 for all new employees.

D. Issue No. 4: The Employees Contribution For PERS Retirement Benefits

1. Union Proposal

The Union proposes maintaining the EPMC (Employer Paid Member Contribution) for the CalPERS retirement benefit.

2. City Proposal

The City proposes that the employees pay the full portion (8%) of the employees' CalPERS pension contribution.

3. Panel Discussion

Currently, the City pays 100% of the employee's retirement contribution, plus an additional amount because the City's payment is counted toward an employees' compensation for pension proposes.¹⁵ All other City employees have agreed to pay 100% of the employee's share of retirement costs, which is 8% of salary for miscellaneous employees. Members of the PASEA bargaining unit pay 7% of the employee's contribution as of January 1, 2013 and will pay 8% as of January 1, 2014. The PASEA employees have been paying a portion of the employee's contribution since 2009.¹⁶

The City's pension contribution is expected to rise from about 20.8% of payroll for the 2013-2014 fiscal year to 30.4% of payroll in fiscal year 2018-2019. Therefore, the DCEA employees must commence shouldering the employee's cost of benefits, and concomitantly, cease the EPMC. Furthermore, only three jurisdictions among the comparative agencies pick up almost all or all of the employee's pension contribution. Last, the policy underlining the recently adopted Public Employees' Pension Reform Act contemplates that a

¹⁵ According to Chaney, the City pays 8% of the 8% that it pays for the employee's contribution.

¹⁶ The DCEA workers, along with other miscellaneous employees, forewent a 4.4% COLA increase negotiated under the 2006-2009 MOU to cover the cost of enhancing the retirement benefit from 2% at age 55 to 2.5% at age 55.

public employer shall not pay any of the employee contribution. See *California Government Code* §20516.5

The PASEA unit received wage increases in the 2010-2012 and 2012-2015 MOUs which could be construed to partially offset the employees' pick up of the PERS pension contribution. The PASEA employees received a 5% salary increase during the 2009-2012 bargaining cycle, and a 6% increase in the 2012-2015 MOU. Although PASEA received a 5% salary increase in the 2010-2012 MOU, the members of that bargaining unit experienced a pay cut due to 19 furlough days. The DCEA employees did not absorb any furlough days since they were completely reimbursed pursuant to the PERB decision. The City also agreed to provide the police officers with a salary increase equivalent to their share of the PERS pension in exchange for picking up the employees' PERS contribution albeit that deal was made over a decade ago. Nevertheless, the pattern is set that a small wage increase is necessary to offset the picking up the employee's share of the PERS contribution. The Panel must also recognize that the police and PASEA units have been picking up some or all of the employee's contribution for some years, while DCEA employees have not made any contribution toward their pension.

The Panel finds that a rather steep incremental pickup offset by a 3% wage increase through the four year agreement is the best solution to this very difficult problem.

4. Panel Recommendation

The Panel recommends that the MOU provide that the employees pick up 7% of the employee's pension contribution as of January 1, 2014 and 8% as of January 1, 2015. The employees shall receive a 1% salary increase as of January 1, 2014 and a 2% salary increase as of January 1, 2015. The Panel recommends that the EPMC be eliminated.

E. Issue No. 5: Retiree Health Benefits

1. The Union's Proposal

The Union proposes referring this subject matter back to the parties for serious discussion. Alternatively, the Union proposes changes in the retiree health benefits for new employees.

2. The City's Proposal

The City's proposal is multifaceted. The City proposes a 6% increase (3% + 2% + 1%) to base hourly rates if employees agree to the following changes in retiree healthcare benefits. The City proposes that for those employees, who retire after December 31, 2012, the City pay up to the supplemented/managed Medicare monthly rate for employee plus one dependent set to the CalPERS Bay Area Kaiser rate for coverage elected instead of up to the non-Medicare family rate. The City also proposes that effective January 1, 2013, the amount paid by the City will be a maximum of \$576.74 with any unused portion not returned to the employee. The City also proposes eliminating a vesting period contract language. The City proposes a second tier of retiree health benefits for new employees. The details of the City's proposed changes to both active employees and new employees is set forth in a table attached hereto as Appendix C.

3. Panel Discussion

Chaney explained that many City retirees began taking the more expensive medical plan upon reaching 65 because the retiree health benefit is still predicated on the Kaiser full family rate; yet, the retirees are henceforth covered by Medicare. Thus, to alleviate this loophole, the City's proposal provides that the City pay the monthly Kaiser rate for the supplemented/managed Medicare plan for the retiree and one dependent. Chaney also related

that in exchange for agreeing to all of the changes to retiree health set forth in the City's proposal, the PASEA bargaining unit received a 3% COLA.

The DCEA is willing to close the loophole in the benefit coverage for retirees that are age 65 and older. Akins declared that the DCEA would consider the tiers based on retirement date, for retiree health benefits agreed to by the City and PASEA although he characterized the chart (Appendix C) as complicated.

This Panel previously discussed the City's enormous unfunded liability for retiree healthcare. Because the City's ARC is 20.4% of payroll, reform is a necessity. By closing the coverage loophole, making changes based on the retirement date for active employees, and having lower benefits for new hires, the City will reap some savings which could, depending on the forecasts, conceivably reduce the ARC.

In exchange for these reforms as specified in the City's proposal, the DCEA bargaining unit will receive a 6% wage increase. Since the reform to retiree health care has been delayed, the wage increases will be spread across the term of the recommended four year agreement.

4. Panel's Recommendation

The Panel recommends that the parties adopt the City's proposal for retiree healthcare benefits (for both active and new employees) with the DCEA employees to receive a 3% wage increase on January 1, 2014; a 2% wage increase on January 1, 2015; and 1% increase on January 1, 2016.

F. Issue No. 6: Hours of work

1. The Union's Proposal

The Union proposes remanding the issue of employees' work schedules back to the parties for negotiation. The Union proposes that sick leave and vacation be counted towards hours worked under the Fair Labor Standards Act (FLSA) until the firefighters bargaining unit agrees to a provision excluding sick leave and vacation from hours worked.

2. City's Proposal

The City proposes giving the City the right to assign employees to a 9/80 work schedule. The City also proposes that both sick leave and vacation leave not count towards the 40 hour weekly minimum under the FLSA.

3. Panel Discussion

The DCEA has not lodged a vigorous objection to giving the City the discretion to assign employees to a 9/80 work schedule providing the DCEA has some input into the new work schedules. Therefore, the Panel recommends adoption of the City's proposal provided there are provisions for advance notice to both the Union and the affected employees regarding implementation of a 9/80 schedule and an opportunity for employees to give the City feedback after the implementation.

The Union failed to offer a good reason to wait for the firefighters bargaining unit regarding what paid leave counts toward of the 40 hour work week, within any seven day period, under the FLSA. It is true that fire generates more overtime, but there is no logic to tie the DCEA unit to the fire unit.

4. Panel Recommendation

The Panel recommends that the MOU give the City the discretion to establish 9/80 work schedules provided the City tenders reasonable advance notice to both the DCEA and affected employees and provided further that employees have opportunity to give the City feedback on the effects of a 9/80 work schedule.

The Panel recommends that the MOU contain a provision that sick leave and vacation leave will not count toward the 40 hour weekly minimum under the FLSA.

G. Issue No. 7: City Rights

1. The City's Proposal

While the record is not entirely clear, the City proposes some restriction on outside employment by DCEA employees.

2. The Union's Proposal

The Union proposes that the City rights described in Article 4 of the 2006-2009 MOU remain unchanged.

3. Panel Discussion

Article 4 of the 2006-2009 MOU, which is entitled "City Rights" reads:

The rights of the CITY include, but are not limited to, the exclusive right to determine the mission of its constituent departments; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action for proper cause; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise control and discretion over its organization and the technology of performing its work. Provided however, that the exercise of such exclusive rights does not preclude affected recognized employee organizations from consulting or

filing grievances with the CITY regarding the practical consequences that decisions on these matters may have on employees.

The Panel did not hear any evidence on the City's proposal.

4. Panel Recommendation

The Panel recommends that the language in Article 4 of the 2006-2009 MOU be carried forward into the new MOU. The Panel recommends that the parties continue the present practice with regard to outside employment.

H. Issue No. 8: Water Study

1. The Union's Proposal

The DCEA wants to be involved in the water study process.

2. The City Proposal

The City agrees to involve DCEA in the water study as soon as a draft water study is completed.

3. Panel Discussion

The parties are not far apart on this issue. In addition, the issue was presented to the *Henderson Factfinding Panel* which recommended that the City involve the DCEA in the water study and for the City to furnish DCEA with the draft report no later than July 12, 2013.

This Panel concurs with the reasoning of the *Henderson Factfinding Panel*. We adopt the *Henderson Factfinding Panel* recommendation, but with a minor modification. The City must give DCEA meaningful involvement in the water study, yet the involvement must be practical and feasible. Therefore, we recommend that the involvement occur as soon as is practically possible as opposed to specifying a precise date.

4. Panel Recommendation

The Panel recommends that the City meaningfully involve the DCEA in the water study as promptly as possible.

I. Issue No. 9: Certification and Licensing.

1. The Union's Proposal

The DCEA wants to be involved in the certification and licensing process.

2. The City's Proposal

The City agrees to involve DCEA in the certification issues as soon as a draft water study is completed.

3. Panel Discussion

The parties are not far apart on this issue. The *Henderson Factfinding Panel* found that the DCEA demonstrated good cause for the parties to meet and confer to identify employees who may need certifications, licenses, or specialized training. The *Henderson Factfinding Panel* provided that the information should go to the DCEA no later than July 15, 2013. As with the water study matter, this Panel makes a minor modification in the recommendation to ensure that the involvement is meaningful and for the involvement to occur as quickly as possible without specifying a precise date.

4. Panel Recommendation

The Panel recommends that the City meaningfully involve the DCEA in the certification, license and training issues as promptly as possible.

J. Issue No. 10: Standby Pay

1. The Union's Proposal

The DCEA proposes an increase in standby pay and to incorporate the standby pay policy into the MOU.

2. The City's Proposal

The City seeks to maintain the *status quo*.

3. Panel Recommendation

For the reasons more fully set forth in the Opinion of the *Henderson Factfinding Panel*, this Panel adopts the recommendation made by the *Henderson Factfinding Panel*.

4. Panel Recommendation

The Panel recommends that standby compensation be increased from 19 hours a week at the straight time rate of pay to 24 hours per week at straight time rate of pay and that the standby pay policy be incorporated into the MOU.

K. Issue No. 11: Safety Footwear Allowance

1. The Union's Proposal

The DCEA proposes an increase in the annual safety footwear (boot) allowance from \$160 to \$200 and to include the subject matter in the MOU.

2. The City's Proposal

The City seeks to maintain the *status quo*.

3. Panel Discussion

For the reasons more fully set forth in the Opinion of the *Henderson Factfinding Panel*, this Panel adopts the recommendations of the *Henderson Factfinding Panel*.

4. Panel Recommendation

The Panel recommends that the annual safety footwear allowance be increased to \$200 and be included in the MOU.

L. Issue No. 12: The Grievance Arbitration Procedure

1. The Unions Proposal

The DCEA proposes that binding arbitration be the final step in the appeal of all grievances, including employee disciplinary appeals.

2. The City's Proposal

The City seeks to maintain the *status quo*.

3. Panel Discussion

The *Henderson Factfinding Panel* issued a persuasive opinion supporting the DCEA's proposal. The *Henderson Factfinding Panel* discussed, in depth, why the City's current grievance process is an anachronism.

Article 5 of the 2006-2009 MOU incorporates by reference the grievance procedure contained in Article 8 of the City's Personnel Rules and Regulations. Article 8 provides for a grievance procedure that exempts disciplinary action. The third and final step of this grievance procedure is a review by the City Manager. Next, the policy announces that the City Manager's decision on the grievance is final and that the employee does not have any further appeal rights. Article 7 of the City's policy governs the disciplinary appeal procedure. Article 7 provides that oral warnings and documented counselings are not subject to appeal. An employee who has received a written reprimand may appeal to the City Manager. More severe disciplinary penalties, called major discipline, can be submitted to the Personnel Board. Section

7.10 of the City's policy provides that the City Manager has the discretion to accept, reject or modify the Personnel Board's proposed decision.

This Panel concurs with the *Henderson Factfinding Panel* that contract and discipline grievances must be subject to a grievance arbitration procedure. Employees and citizens lose confidence in final decisions which are rendered by one party to the dispute.

The *Henderson Factfinding Panel* recommended revisions to Article 7 of the City of Davis Personnel Rules.¹⁷ This Panel finds that it lacks the jurisdiction to change City Personnel Rules. However, we recommend that the MOU include a grievance and arbitration procedure which supersedes conflicting Personnel rules in accord with the MMBA. The new grievance procedure shall culminate in final and binding arbitration. Counselings (verbal or written), oral warnings and written warnings shall be exempt from the grievance arbitration procedure.

The grievance procedure will take effect for disciplinary actions that are imposed subsequent to January 1, 2014 and for alleged MOU violations which occur subsequent to January 1, 2014.

In exchange for the grievance arbitration procedure, the City must receive a guarantee of labor peace. Therefore, we recommend that the MOU contain a broad no strike clause and a prohibition against DCEA employees from honoring a picket line established by any other labor organization.

4. Panel Recommendation

The Panel recommends that the MOU contain a comprehensive grievance arbitration procedure culminating in final and binding arbitration for both contract and discipline

¹⁷ For some unknown reason, the *Henderson Factfinding Panel* did not refer to Article 8 of the City Personnel Rules.

cases provided, the procedure will have jurisdiction over discipline that the City imposes on employees subsequent to January 1, 2014, and provided further the grievance arbitration procedure will have jurisdiction over alleged contract violations which occur subsequent to January 1, 2014 and provided further, that written and oral warnings and written and oral counselings be exempt from the grievance arbitration procedure. The Panel recommends that MOU contain a broad no strike clause and a provision prohibiting DCEA employees from honoring another labor organization's picket line.

M. Issue No. 13: Comparable Compensation Study Agencies

1. Union Proposal

The Union proposes maintaining the list of comparable agencies in the 2006-2009 Agreement (although in its compensation study, the DCEA dropped one employer).

2. City Proposal

The City proposes to eliminate the compensation study language in the 2006-2009 Agreement.

3. Panel Discussion

The 2006-2009 MOU lists the comparative agencies for compensation surveys. Those agencies are: Antioch, Fairfield, Folsom, Lodi, Martinez, Napa, Rocklin, Roseville, Vacaville, West Sacramento, Woodland, University of California at Davis (UCD), Delta Diablo Sanitation District, Sacramento Regional Sanitation District, Contra Costa Sanitation District, Mount View Sanitation District, and Napa Sanitation District.

The parties have historically used five benchmark positions to conduct the compensation comparisons. These benchmark jobs are: Building Maintenance Worker II, Electrician, Equipment Mechanic II, Public Works Maintenance Worker II, and Waste Water

Treatment Plan Lead Operator. The DCEA submits that since the compensation study conducted before the 2006-2009 MOU, two positions, Store keeper and Waste Water Treatment Plan Laboratory Analyst, have been added to the classifications represented by the DCEA.

Akins explained that the five sanitation districts were included in the list to collect sufficient data to reliably compare the wages for the Waste Water Treatment Plant Lead Operator. He elaborated that those five sanitation districts are also essential to comparing the salary of the Waste Water Treatment Plant Laboratory Analyst. Akins stressed that without including sanitation districts in the list of comparative agencies, the compensation survey for the waste water treatment plant employees would be invalid. While the DCEA's formal proposal is to maintain the list of jurisdictions in the 2006-2009 MOU, Akins testified that UCD should be deleted from the list of comparables because UCD is a higher education institution predicated on funding quite disparate from the City.

The City advocates eliminating the compensation study language from the Agreement, but acknowledges that a comparative compensation survey would still have to be conducted. During negotiations in October, 2012, the City presented a new list of comparative agencies to the Union. The City's proposed list of comparative agencies is: Fairfield, Folsom, Lincoln, Napa, Rocklin, Roseville, Sacramento, Vacaville, West Sacramento, Woodland, and UCD. The City proposed dropping the five special districts along with the cities of Antioch, Lodi, and Martinez. The City wants to add Lincoln and Sacramento to the list.

Janice Koch, a consultant for the law firm representing the City, related that the various MOUs enumerated 25 different agencies which, Koch asserted, was far too many. She explained that a different labor market for each bargaining unit wreaks havoc with the City's internal salary structure. Therefore, Koch recommended to the City that it adopt one

labor market applicable to all bargaining units. Koch opined that including special districts in a compensation study is problematic inasmuch as they have different revenue sources and they provide specialized services that do not match the types of services which the City provides to its citizens.

The Panel concludes that the parties should keep the current list of comparable agencies but with the elimination of UCD. The City has not provided a sufficient justification for transitioning to its list of comparative agencies. While the City's goal of having a uniform labor market for all its bargaining units is laudatory, the objective may not be pragmatically possible. The list of comparable jurisdictions must include some special sanitation districts in order to gather a sufficient amount of data to have confidence in the compensation comparisons for the Waste Water Treatment Lead Operator and the Waste Water Treatment Plant Laboratory Analyst. The Panel makes an ancillary recommendation that the five sanitation districts be used only for these two classifications.

4. Panel Recommendation

The Panel recommends that the parties carry forward the list of comparable agencies set forth in the 2006-2009 MOU, but with the elimination of UCD, and that the five sanitation districts be used only to survey comparable compensation for the Waste Water Treatment Plant Operator and the Waste Water Treatment Laboratory Analyst.

N. Issue No. 14: Salary Increases

1. The Union's Proposal

The DCEA did not proffer a specific salary increase proposal during bargaining but the DCEA indicated increases are appropriate in exchange for concessions and to maintain the employees relative position in the comparable market.

2. The City's Proposal

The City proposes no salary increases (besides the wage increases tied to the retiree health care proposal).

3. Panel Discussion

In our discussion on retiree health benefits, we related that the City's last, best, final offer contained a 6% salary increase, which this Panel recommended. We also recommended a 3% salary increase in exchange for the PERS pickup.

The next issue is whether any further increases are justified.

Based on the City's financial condition, the compensation surveys, and the term of the recommended MOU, a small salary increase is justified.

The DCEA's May 2013 compensation survey revealed that, except for the Waste Water Treatment Plant Lead Operator and the Waste Water Treatment Plan Laboratory Analyst, the compensation of the benchmark positions is above the mean compensation of similar positions in the comparable cities and districts. Aside from the Electrician (which is .8% above the average), the compensation of the benchmark positions is 6% to 8% above the average. However, the classifications will be at or below the market mean compensation once the employees begin paying for the employees' PERS contribution.

As Chaney related, the City never asserted that it lacks money or is near bankruptcy. The enterprise funds and General Fund are sufficiently healthy to support a modest wage increase in addition to the increases specifically made in exchange for concessions. Also, a modest wage increase is necessary since the MOU will be effective for four years. The Panel concludes that the appropriate salary increase is 3.5% which must be applied near the end of the MOU.

Two classifications are below the market compensation average. The Waste Water Treatment Plant Lead Operator's compensation is 5.4% below average and the Waste Water Treatment Plan Laboratory Analyst is 8.4% below average. These two positions rightly deserve a 4% equity adjustment. Given that the City cannot be overly generous, a 4% adjustment is the maximum permissible increase even though such adjustment does not alleviate the entire compensation inequity.

4. Panel Recommendation

The Panel recommends that the MOU contain a 1% general increase for all classifications effective July 1, 2015; a 1% general salary increase effective July 1, 2016, and a 1.5% general salary increase, effective July 1, 2017.

The Panel recommends that the MOU contain an equity adjustment of 4% for the Waste Water Treatment Laboratory Analyst and the Waste Water Treatment Plant Lead Operator as follows: 2% effective July 1, 2015 and 2% effective July 1, 2017.

VI. THE PACKAGE

This Panel has formulated recommendations which, as a package deal, address the vital interests of the City and the DCEA. The City gains structural changes to employee benefits that are currently unsustainable. The DCEA employees will have to endure financial sacrifices, as did other City employees, especially on the cafeteria cash payout. In return, the DCEA member receive wage increases albeit most of the increases are designed to offset the decrease in net wages from the 8% PERS pickup and as an exchange for retiree health benefit reforms. The DCEA also gains a raise in allowances and reform to the grievance procedure. The Panel respectfully asks the parties the carefully consider these recommendations.

Last, the Panel urges the parties to reach a negotiated settlement as opposed to resorting to drastic measures.

The Neutral Member of this Panel certifies that these recommendations are proper and appropriate in accord with California Government Code Sections 3505.4 and 3505.5. The Neutral Member specifically endorses the recommendations on Issues 1 through 14.

I concur with the Recommendations on Issues:
1, 2, 3, 4, 7, 10, 11, 12, 13 & 14.

I concur with the Recommendations on Issues:
5, 6, 7, 8 & 9.

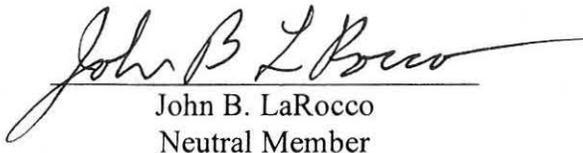
I dissent to the Recommendations on Issues:
5, 6, 8 & 9.

I dissent to the Recommendations on Issues:
1, 2, 3, 4, 10, 11, 12, 13, & 14.

Dave Owen, Association Member

Darren Pytel, City Member

Dated: October 4, 2013



John B. LaRocco
Neutral Member

APPENDIX A

2012
City of Davis Negotiations
DCEA

City → DCEA
via email

11/24/12

12 0

Date: 10/24/12 – City's Last Best Final Offer
Issue: **Multiple Economic**
Proposed By: **City**

OPTION 1

CITY'S PROPOSAL FOR ONE YEAR CONTRACT (Proposals based on terms and conditions as of June 30, 2009)

- **DURATION OF CONTRACT**
 - Contract Term: November 1, 2012 – October 30, 2013.
- **ARTICLE IV: CITY RIGHTS**
 - Extend areas of contracting out of certain bargaining unit work for cost savings; or equivalent cost concessions.
- **ARTICLE VI: COMPENSATION**
 - Eliminate compensation study language
- **ARTICLE VII: HOURS OF WORK, OVERTIME AND SCHEDULING**
 - City shall have the right to assign employees to a 9/80 schedule
 - Conform overtime to FLSA: only hours worked shall count as hours worked by the employee for overtime purposes.
- **ARTICLE VIII: BENEFITS**
 - Cap at \$500 the amount of Section B City \$125 Benefit Contribution that all employees may take as cash in lieu of taking benefits. \$500 Cap effective immediately for all new employees.
 - Three Year Phase-in, in four increments, of above for current employees according to timeline below:
 - Effective November 1, 2012 the cap is reduced to \$1200.00
 - Effective July 1, 2013 the cap is reduced to \$1000.00
 - Effective July 1, 2014 the cap is reduced to \$750.00
 - Effective June 30, 2015 the cap is reduced to \$500.00
 - Apply a cost-sharing model for health benefits contribution (City first 3%, employee next 3%, 50/50 above 6%), through all years of contract. This formula would be applied retroactively to 2009 rates solely for purpose of establishing a base rate for new contract. No retroactive payments.
 - Employees to pay full employee portion (8%) of CalPERS pension cost.
- **ARTICLE VIII: BENEFITS – RETIREE HEALTH**
 - City will provide 3% increase to base salary rates if Employees agree to change retiree health benefits to the following:
 - Those retiring after 12/31/12: City pays up to the Supplemented/Managed Medicare Monthly Rate for employee and one dependent set to CalPERS Bay Area Kaiser rate for

TA by City: _____ Date: _____
TA by DCEA: _____ Date: _____

12P

2012
City of Davis Negotiations
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coverage elected instead of up to non-Medicare family rate. Effective January 1, 2013, the amount paid by the City will be a maximum of \$576.74. Any unused portion will not be returned to the employee. City will eliminate vesting period contract language.

- The above salary increase is contingent on agreement to the retiree health changes.

OPTION 2

CITY'S PROPOSAL FOR THREE YEAR CONTRACT (Proposals based on terms and conditions as of June 30, 2009)

- **DURATION OF CONTRACT**
 - Contract Term: July 1, 2012 to June 30, 2015
 - Reopener 1: In event City declares a fiscal emergency, parties agree to reopen economic provisions of MOU
- **ARTICLE IV: CITY RIGHTS**
 - Extend areas of contracting out of certain bargaining unit work for cost savings; or equivalent cost concessions.
- **ARTICLE VI: COMPENSATION**
 - Eliminate compensation study language
- **ARTICLE VII: HOURS OF WORK, OVERTIME AND SCHEDULING**
 - City shall have the right to assign employees to a 9/80 schedule
 - Conform overtime to FLSA: only hours worked shall count as hours worked by the employee for overtime purposes.
- **ARTICLE VIII: BENEFITS**
 - Cap at \$500 the amount of Section B City \$125 Benefit Contribution that all employees may take as cash in lieu of taking benefits. \$500 Cap effective immediately after ratification for all new employees.
 - Three Year Phase-in, in four increments, of above for current employees according to timeline below:
 - Effective November 1, 2012 the cap is reduced to \$1200.00
 - Effective July 1, 2013 the cap is reduced to \$1000.00
 - Effective July 1, 2014 the cap is reduced to \$750.00
 - Effective June 30, 2015 the cap is reduced to \$500.00
 - Apply a cost-sharing model for health benefits contribution (City first 3%, employee next 3%, 50/50 above 6%), through all years of contract. This formula would be applied retroactively to 2009 rates solely for purpose of establishing a base rate for new contract. No retroactive payments.
 - Employees to pay full employee portion (8%) of CalPERS pension cost.

TA by City: _____ Date: _____
TA by DCEA: _____ Date: _____

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- o In exchange for employees giving up all longevity pay, the City will provide an additional 3% COLA to offset the employee paying the full 8% Employee PERS rate upon ratification of this contract.

• **ARTICLE VIII: BENEFITS – RETIREE HEALTH**

- o Employees agree to change retiree health benefits to the following:
 - Those retiring after 12/31/12: City pays up to the Supplemented/Managed Medicare Monthly Rate for employee and one dependent set to CalPERS Bay Area Kaiser rate for coverage elected instead of up to non-Medicare family rate. Effective January 1, 2013, the amount paid by the City will be a maximum of \$576.74. Any unused portion will not be returned to the employee. City will eliminate vesting period contract language.
- o In exchange for the change in the retiree medical benefit the City agrees to the following:
 - Effective with the first pay period after the ratification of the contract the City agrees to provide a 3% increase for Employee to base hourly rates.
 - Effective July 1, 2013 the City agrees to provide a 2% increase for Employee to base hourly rates.
 - Effective July 1, 2014, the City agrees to provide a 1% increase for Employee to base hourly rates.
- o The above salary increases are contingent on agreement to the retiree health changes.

TA by City: _____ Date: _____
 TA by DCEA: _____ Date: _____

APPENDIX B

Economic Agreements by Bargaining Unit/Group – 2009 to 2012 Bargaining Cycle

Bargaining Unit/Group	2009	2010	2011	2012	2013	2014	2015	2016
PERB 2009		2.5@55	No cap, no cost-sharing, full family Kaiser	No cap	None	0%	0%	No change
PERB 2010	5% salary	2.5@55	Cap and cost-sharing	\$1,483.08 cap; 500 for new EEs	19 days	2%	3%	No change
PERB 2011	Civilian 3.5% salary; sworn 4% salary	Civilian: 2.5@55; Sworn: 3%@50	Cap and cost-sharing	7/1/11 = \$1,428.76 cap; \$500 for new EEs	Civilian: 1.5% reduction + 72 floating furlough hrs; Sworn: 3% salary reduction	Civilian: 2%; Sworn: 9%	3%	No change
PERB 2012		3%@50	No cap, no cost-sharing full family Kaiser	80% cap	Successive decreases of 6%, 4% and 3% off 2009 hourly rate	9%	0%	No change
PERB 2013	3% salary		Cap and cost-sharing	\$1,483.08. (\$500 cap for EEs hired after 1/25/10)	21 days	0%	3%	No change
PERB 2014	Unit not established							
PERB 2015	Unit not established							

¹ The PERB decision referenced here is *City of Davis* (2012) PERB Decision No. 2271-M issued June 8, 2012.

Economic Agreements by Bargaining Unit/Group – 2012 to Present Bargaining Cycle

		2.5@55	No cap, no cost-sharing, full family Kaiser	No cap.		0%	0%	No change
	6% increase	2.5@ 55	Cap and cost-sharing.	12/31/15 = \$500		1/1/14 = 8%	0%	See MOU
	Civilian: 6% increase; sworn: 5% increase	2.5@55 civilian; 3@50 for sworn	Cap and cost-sharing	12/31/15 = \$500		Civilian - 1/1/14 = 8%; Sworn: 9%	Civilian: 0% Sworn: 3%	See MOU
	6% Increase	2.5@55	Cap and cost-sharing.	12/31/15 = \$500		1/1/14 = 8%	0%	See MOU
	5% Increase.	3@50	Cap and cost-sharing.	6/30/15 = \$500		9%	3%	See MOU
	None	3@50	Cap and cost-sharing	\$500		9%	3%	See MOU

¹ The PERB decision referenced here is *City of Davis* (2012) PERB Decision No. 2271-M issued June 8, 2012.

APPENDIX C

	Retire by December 31, 2015	Retire Jan. 1, 2016 through Dec. 31, 2025	Retire January 1, 2026 or later
Employees hired before July 1, 1996 with at least 25 years City service.	No change to current benefit (100% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.)	100% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants. Once the employee has transferred to a Medicare plan, the City will pay the Medicare Supplemented/Managed Medicare Monthly rate based on the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.	75% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants. Once the employee has transferred to a Medicare plan, the City will pay the Medicare Supplemented/Managed Medicare Monthly rate based on the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.
Employees hired before July 1, 1996 with less than 25 years City service.	No change to current benefit (100% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.)	75% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants. Once the employee has transferred to a Medicare plan, the City will pay the Medicare Supplemented/Managed Medicare Monthly rate based on the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.	Does not apply.
Employees hired July 1, 1996 through December 31, 2012 with at least 25 years City service.	No change to current benefit (Age 55-59 50% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants, age 60-65 100% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.)	50% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants until age 60. After age 60, 100% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants. Once the employee has transferred to a Medicare plan, the City will pay the Medicare Supplemented/Managed Medicare Monthly rate based on the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.	50% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants. After age 60, 75% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants. Once the employee has transferred to a Medicare plan, the City will pay the Medicare Supplemented/Managed Medicare Monthly rate based on the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.
Employees hired July 1, 1996 through December 31, 2012 with less than 25 years service.	No change to current benefit (Age 55-59 50% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants, age 60-65 100% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.)	50% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants until age 60. After age 60, 75% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants. Once the employee has transferred to a Medicare plan, the City will pay the Medicare Supplemented/Managed Medicare Monthly rate based on the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.	50% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants. After age 60, 75% of the CalPERS Kaiser Bay Area rate for employee plus two or more dependants. Once the employee has transferred to a Medicare plan, the City will pay the Medicare Supplemented/Managed Medicare Monthly rate based on the CalPERS Kaiser Bay Area rate for employee plus two or more dependants.
Employees hired January 1, 2013 and after	Medicare Supplemented/Managed Medicare Monthly rate based on the CalPERS Kaiser Bay Area rate for employee plus one dependant.		