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October 8, 2013

INTERIM
FINDINGS AND RECOMMENDATIONS
PURSUANT TO
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between)	
City of Sunnyvale)	
Employer)	
and)	Collective Bargaining Impasse
Sunnyvale Employees Association)	Factfinding
Union)	PERB Case No: SF-IM-120-M

Interim Findings and Recommendations: City of Sunnyvale – Sunnyvale Employees Association

APPEARANCES:

For the Employer: Arthur A. Hartinger, Attorney
Meyers, Nave, Riback, Silver & Wilson
555 12th St. Suite 1500
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For the Union: Valerie J. Armento, Attorney
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PO Box 279
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FACTFINDING PANEL:

Appointed by the Employer: Teri Silva, Director of Human Resources
City of Sunnyvale, CA

Appointed by the Union: Carol L. Koenig, Attorney
Wylie, McBride, Platten & Renner

Neutral Chairperson: Paul D. Roose, Arbitrator and Mediator
Golden Gate Dispute Resolution

STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND

Under amendments to the Meyers-Milias-Brown Act that went into effect on January 1, 2012, local government employers (cities, counties, and special districts) and unions in California have access to factfinding in the event they are unable to resolve contract negotiations. At the request of the exclusive representative, the parties are required to go through a factfinding process prior to the employer implementing a last, best and final offer. In accordance with regulations put in place by the California Public Employment Relations Board (PERB), the exclusive representative can request factfinding either after mediation has failed to produce agreement or following the passage of thirty days after impasse has been declared. Each party appoints a member of the factfinding panel. A neutral chairperson is selected by PERB unless the parties have mutually agreed on a neutral chairperson.

Under the statute, the factfinding panel is required to consider, weigh and be guided by the following criteria in formulating its findings and recommendations:

- 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 parties 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

Sunnyvale Employees Association (SEA) is the exclusive representative for miscellaneous employees of the City of Sunnyvale, California. SEA represents a large miscellaneous non-safety unit,

with approximately 482 budgeted positions. It is the city's largest bargaining unit. The unit includes dozens of classifications, ranging in (in alphabetical order) from accountant to water pollution control plant mechanic.

The City has five other bargaining units. Three other units include miscellaneous employees – the part-time workers unit (represented by SEIU), the Communication Officers Association, and the Sunnyvale Managers Association. There are two safety units – Public Safety Officers Association and the Public Safety Managers Association. There also is a non-represented confidential employees group.

The parties had a collective bargaining agreement (CBA) that expired on June 30, 2012. A tentative agreement on a successor CBA was reached on October 12, 2012. The membership of SEA failed to ratify that agreement. Among the provisions that led to the membership's rejection of the tentative agreement were the proposed PTO provisions, the four year term and some salary and benefit issues. After the SEA leadership informed the City that the major reason for the negative vote had been objection to the paid time off / disability provisions of the proposed agreement, the parties agreed to carve out that issue and implement the remainder of the agreement. The signed off agreement has a term of agreement from July 1, 2012 through June 30, 2015. It includes a reopener clause as follows:

Article 22 Paid Time Off

SEA and the City agree to renew their negotiations for a paid time off benefit to replace paid vacation leave and paid sick leave during February, 2013. The Parties shall meet and confer to impasse on this issue as a stand-alone subject pursuant to State law and City policy governing mandatory subjects and impasse procedures. If the Parties reach agreement, they shall memorialize their agreement in a side-letter, after approval by the SEA membership.

On the basis of this reopener clause, the parties commenced bargaining in early March, 2013. Bargaining was conducted in March and April. On April 18, the Employer invoked the impasse procedures of the City's employer-employee relations rules. Under those rules, the parties were to hold an impasse meeting under the auspices of the City's Municipal Employee Relations Officer (the City Manager Gary Luebbers). The impasse meeting was held on May 13, 2013. At that meeting, the City proposed a modified PTO benefit. SEA agreed to take the modified PTO proposal back to its members¹. The tentative PTO agreement was signed off by the parties on the following day. The SEA membership subsequently voted down the tentative PTO agreement.

¹ The Employer believes that the May 13 agreement was a tentative agreement that the Union bargaining team agreed to recommend to its membership. The Union believes that it was a City proposal that the Union bargaining team agreed to take back to its membership for a vote. For the purposes of this Interim Report, the panel makes no finding on this aspect of the dispute.

On June 15, 2013, the Employer contacted the California State Mediation and Conciliation Service, requesting mediation of the dispute. A mediation session was held with state mediator Seymour Kramer, and the parties failed to reach agreement. The Union then invoked the MMBA factfinding procedure by notifying PERB. On August 15, 2013, PERB notified the undersigned that the parties had selected him as the neutral chairperson of the factfinding panel in this matter.

The panel convened on September 27, 2013 in Sunnyvale and the parties presented their positions, outlined below. The panel took on-the-record evidence and argument from both sides concerning the issues in dispute. The parties also requested that the neutral factfinder act as a mediator in assisting the parties in off-the-record discussions to attempt resolution of the matter. Accordingly, the factfinding panel met in executive session on that date. Mediated panel discussions proved successful, and an agreement was reached that has won the unanimous endorsement of the three panel members.

The panel agreed that the settlement agreement would be expressed in the form of an interim factfinding report. The panel also agreed that, in the event that either side did not ratify the proposed settlement contained in the interim report, the panel would issue a final report based on the positions of the parties as outlined below. Prior to the issuance of this final report, the parties would have an opportunity to submit briefs to the panel in support of their positions. The panel at that juncture would make findings and recommendations to adopt either the Employer's proposal or the Union's proposal.

POSITIONS OF THE PARTIES

The Employer: The Employer put forward the May 13, 2013 tentative PTO agreement (PTO-TA) as its proposal for settlement of outstanding issues. The only modification of the PTO-TA proposed by the City is changing the implementation dates in the preamble and in the "Conversion" section from July 2013 to "upon ratification of the agreement." The May 13, 2013 PTO-TA is as follows:

New Article – Paid Time Off

This Article replaces the current Article 18.1 Vacation, 18.6 Disability Leave, and Article 18.8 Personal Business Leave.

"Article 18.1 – Paid Time-Off

Effective with the first full pay period in July 2013, all probationary and regular employees shall accrue and use paid time off (PTO) consistent with the provisions of this Article.

Definition

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Paid Time Off (PTO) is paid leave earned by employees that may be used for vacation, medical appointment, illness/injury, emergency, or personal business such as care of sick family members or school visits or similar appointments. Leaves not included in PTO which remain separate leaves are bereavement, jury duty, military duty, workers' compensation, floating holiday and holiday.

Conversion

The first full pay period in July 2013, each full-time employee shall receive a paid medical leave credit for PTO based on the conversion chart below. Employees who do not work a full-time schedule shall receive a pro-rated share of the conversion of PTO.

Years of Service	Hours Credit
0-5 years	15 hours
5+ to 10 years	25 hours
10+ to 15 years	30 hours
15+ to 20 years	35 hours
20+ to 25 years	40 hours
25+ years	45 hours

In addition to the paid medical leave credit, each employee's accrued vacation hours will be converted to PTO hours on a one-for-one basis.

As a one-time only option, any and all personal business leave (up to 10 hours) not yet used by a full time employee during the current payroll year shall be converted to PTO hours on a one-for-one basis.

On a one-time basis, employees may cash-out existing, accrued vacation hours on or before July 1, 2013 as follows: An employee who has worked for the City for less than five years may cash-out up to 50 hours of vacation time so long as the employee retains at least 60 other hours of accrued vacation which will be converted to PTO hours. An employee who has worked for the City for five years or more may cash-out up to 100 hours of vacation time so long as the employee retains at least 80 other hours of accrued vacation which will be converted to PTO hours.

Accrual

All probationary and regular employees shall accrue PTO. PTO begins accruing on the first day of employment and is prorated on an hourly basis for each paid hour. All regular paid hours shall count toward PTO accrual. Time-off in excess of PTO accruals and other available leave shall be leave without pay. As employees use PTO, the time used shall be deducted from the employee's current PTO balance.

Accrual Rates

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Employees shall accrue PTO each pay period in relation to their years of continuous service.

The accrual rates are listed below:

Service Period Pay Periods	Years	Hrs/pp	Accrual Rate Hrs/Yr	Days/Yr*
1-26	0 to 1	5.5	143	17.875
27-130	2 to 5	6.5	169	21.125
131-260	6 to 10	8.0	208	26.000
261-442	10+ to 17	9.5	247	30.875
443-650	17+ to 25	10.5	273	34.125
651 or more	26 or more	11.0	286	35.750

*Based on an eight hour/day schedule.

Accruals carry over from one payroll calendar year to the next.

PTO Accrual Cap

An employee may accrue up to 885 hours of PTO. An employee will no longer accrue PTO once the employee reaches the 885 hour cap until the employee uses PTO to reduce the employee's leave balance, or the employee cashes-out PTO time as provided in this Article.

Scheduling PTO

Employees use 8 hours of PTO leave to take a full day of leave on a 40 hour schedule. An employee on an alternative work schedule shall use the number of hours relevant to the alternative work schedule to take a full day of leave. An employee may take scheduled or non-scheduled PTO in increments of less than one full day.

PTO may be taken in either of two methods, scheduled and non-scheduled, as follows:

Scheduled PTO

All employees may take scheduled PTO. Except for illness or emergency, all PTO shall be pre-planned and pre-approved in accordance with any applicable department, division and/or City policy.

Non-Scheduled PTO

All employees may take non-scheduled PTO for an unanticipated illness or emergency. On the day of the absence, an employee, or someone on the employee's behalf, must provide notice of non-scheduled PTO at or before the start of the employee's scheduled work day. The notice must designate the absence as either an illness or an emergency. The City may take disciplinary action against any employee who fails

to provide notice, uses non-scheduled PTO for a reason other than unanticipated illness or emergency or circumvents the scheduled PTO process.

An employee's routine use of non-scheduled PTO might cause the City to suspect leave abuse and initiate an investigation. This investigation could include but is not limited to requesting that the employee obtain a physician's note concerning an illness which the City suspects is part of a pattern of leave abuse or if the City has information that the employee may not have been ill or injured.

Return to Work Following Illness or Injury

The City may require, with approval by the Human Resources Director or the Director's designee, a return to work medical clearance for any employee using PTO due to an illness or injury if the employee is absent more than five (5) consecutive days.

PTO Cash-Out

One time each year, each employee may cash-out accrued PTO at the end of the payroll calendar year.

An employee with five years or less City service may cash-out up to 50 hours of PTO each year, so long as the employee maintains a balance of 80 hours of PTO and the employee has used at least 40 hours of PTO during the calendar year.

An employee with more than five years of City service may cash-out up to 100 hours of PTO each year, so long as the employee maintains a balance of 120 hours of PTO and the employee has used at least 80 hours of PTO during the calendar year.

Notwithstanding the above, an employee assigned to shift work may cash-out up to 100 hours of PTO each year, so long as the employee maintains a balance of 120 hours of PTO.

The City will compensate the employee for the cashed-out hours at the employee's base pay rate at the time of the cash-out. The minimum number of hours that may be cashed out is 8 hours.

PTO Compensation at Separation

An employee will be paid for all PTO hours in the employee's leave bank upon separation. The PTO will be paid at the employee's base pay rate at the time of separation. An employee, at the employee's option and with City Manager approval, may use accrued available PTO to extend the date of separation or retirement.

PTO Donation

An employee may donate PTO to another City employee who has experienced a serious illness or injury that is not fully covered by the injured or ill employee's PTO and/or other City leave programs, consistent with the City-Wide Employee Emergency Relief Fund Program set forth in Article 19.3.

Short Term Disability

With the implementation of this Agreement, employees shall be required to use PTO for the first 160 hours of any absence for illness or injury. Following the employee's use of PTO for the first 160 hours, the City will cover the remaining time period in Paid Medical Leave (PML) for the same illness or injury for the employee up to 90 days of paid leave for the same illness or injury. After 90 days, the employee shall refer to the long-term disability benefit.

Short Term Disability Insurance

A Short Term Disability program will not be implemented for SEA members until a Short Term Disability program is implemented with the Sunnyvale Managers Association (SMA) and the Confidential unit. At the time of implementation with SMA and Confidential, the same structure and benefits will be provided to SEA. The City shall provide notice and relevant information to SEA prior to implementing the Short Term Disability Program, but no further meet and confer will occur.

Long Term Disability Insurance

After 90 calendar days of each absence due to illness or injury, the employee shall be eligible to apply for Long Term Disability coverage provided pursuant to the City's insurance policy.

PTO and Workers' Compensation

Employees will be eligible for Worker's Compensation benefits, as provided by State law. An employee on a Worker's Compensation leave will have the option to use PTO or any other leave balance available to him/her, have it paid off, or keep it in his/her leave bank for future use upon his/her return to work."

The Union: The Union proposes the May 13 PTO-TA (also with updated implementation dates), with the following modifications:

In the section Short Term Disability, "80 hours" would be substituted for "160 hours".

In the section Short Term Disability Insurance, the last sentence would read "The City shall provide notice and relevant information to SEA prior to implementing the Short Term Disability Program, and the parties shall meet and confer."

PANEL RECOMMENDATION

The following is the panel's unanimous recommendation:

The tentative agreement of May 13, 2013, shall be included in the parties' collective bargaining agreement, with the following modifications:

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1. The Tentative Agreement between the City of Sunnyvale and the Sunnyvale Employees Association (May 13, 2013), shall become the unanimously recommended agreement, with the following changes:
 - a. Effective Dates: The effective date to implement the paid time off (PTO) program, to include the conversion, shall be the first day of the first full pay period after the City Council approves the agreement. The effective date for the one-time cash out will be the last pay period in January 2014.
 - b. Short Term Disability: For the first 9 months after this Article becomes effective, employees shall be required to use PTO for the first 80 hours of absence for illness or injury. Following the employee's use of PTO for the first 80 hours, the City will cover the remaining time period in Paid Medical Leave (PML) for the same illness or injury for the employee for up to 90 days of paid leave. After 9 months, employees shall be required to use PTO for the first 160 hours of absence for the illness or injury. Following the employee's use of PTO for the first 160 hours, the City will cover the remaining time period in PML for the same illness or injury for the employee for up to 90 days of paid leave. After 90 days, the employee shall become eligible for Long Term Disability.
 - c. Leave for New Members: While the PML program is in effect for SEA, the City will provide an additional forty hours of non-accrued paid leave (for illness or injury) for employees during their first year of City service.
 - d. Employees on PML: Employees on PML for more than one week when this Article becomes effective shall be permitted to utilize PML for the specific injury or illness under the current PML program until they return to work. Once they return to work they will transition to the PTO Program.
 - e. Short Term Disability Insurance: The parties contemplate that SEA will explore alternative short term disability plans, including the California SDI program. Nothing herein shall preclude the parties from implementing by agreement a short term disability plan. If SEA selects the State SDI program, it will be adopted with an integration feature. In the event there is no agreement between SEA and the City regarding the implementation of a plan other than SDI, and the City is preparing to implement a short term disability insurance program with its management group, the City will provide notice and relevant information to SEA prior to implementing such short term disability program with respect to SEA. The City will provide an opportunity for input, but formal bargaining (per GC § 3505) will not be required.
 - f. The accrual rate chart shall be amended to reflect years of service to be 0 to 1; 1+ to 5; 5+ to 10; 10+ to 17; 17+ to 25; and 26 and more.
2. If this recommendation is not ratified by the SEA, or approved by the City Council, the matter will be referred back to the panel to issue a final decision. The final decision will recommend either the Tentative Agreement (dated May 13, 2013,) or the position presented by SEA at the

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factfinding hearing. The parties commit to work diligently and in good faith to achieve agreements with their respective parties.

3. If this interim decision is not adopted for any reason, nothing in the decision shall preclude the City from adopting its Tentative Agreement (May 13, 2013)



Paul D. Roose, Neutral Chairperson

Date: October 8, 2013

/s/ Carol L. Koenig_____

Carol L. Koenig, Union-appointed Panel Member

Date: October 8, 2013

I concur with the Recommendation

/s/ Teri Silva_____

Teri Silva, Employer-appointed Panel Member

Date: October 8, 2013

I concur with the Recommendation