

**City of Pasadena and International Union of Operating Engineers Local 501 (IUOE) – Report and Recommendations of the Fact finding Panel (PERB Case No. LA-IM-142-M), November 19, 2013**

This Fact-Finding involves an impasse over the terms of a successor agreement between the City of Pasadena and IUOE Local 501, generally referred to as Stationary Engineers Local 501. Kristi Recchia was designated Panel member for the City, Blair Brim was designated Panel member for the Association, and Tony Butka was agreed to as the Panel Chair.

After agreeing to waive time limits, a hearing was held at Pasadena City Hall on Wednesday, October 9, 2013, where all parties were represented by counsel and afforded an opportunity to introduce evidence, testimony, and argument as to their respective positions. Further, a follow-up meeting was held by Panel members only on October 22<sup>nd</sup> at City Hall to review the hearing and discuss possibilities for settlement.

**Background:**

In addition to hosting the Rose Bowl, the City of Pasadena is a moderately large and diverse city within Los Angeles County, and boasts both being incorporated early on (1886 to be exact) as well as being a major cultural center of the County. It also is home to Cal Tech, the Jet Propulsion Laboratory, the Pasadena Playhouse, the Norton Simon Museum and the Pacific Asia Museum.

**The Dispute:**

As with many other California municipalities, the City Council made a priority in this year's bargaining cycle to have all employees pay 100% of the employee contribution for their CALPERS pension plan. In the case of Local 501's agreement, this would require an additional contribution from bargaining unit employees of 3.4%, in order to bring their total contribution up to the full 8% employee share of pension costs.

The City also wished to rationalize their Vacation benefit system to change from an allotment bank effective January of each year to a more standard per-pay period accrual system, generally referred to by labor relations practitioners as a 'monthly accrual system'.

Similarly, the City proposed to rationalize their somewhat archaic Sick Leave system, which was a combination of an occasional sick leave bank, an annual allotment of sick leave based on years of service, together with a long term disability plan.

Finally, the City proposed to cap their health insurance contribution rate for existing employees at \$1141.88/month, along with providing a formula based on the least expensive family health insurance plan available to all City employees.

After a series of negotiations, the parties reached a Tentative Agreement with Local 501 and the agreement was sent out for a ratification vote by the membership. Unfortunately, the agreement failed to be ratified, and that fact led to an impasse, after which the parties engaged in an unsuccessful mediation. Local 501 then filed the instant request for Fact-Finding with PERB, leading to the ultimate appointment of the undersigned as neutral Chair of this Panel.

As of the date of hearing, there were only three issues in dispute; (1) employee contribution levels for retirement and some salary offsets attached thereto, and (2) a series of issues relating to the elimination of the current sick leave/extended sick leave program and its replacement by a combination of monthly sick leave accrual, a one-time lump sum of sick leave hours, a short term disability plan for employees paid for by the employer, and a basic long-term disability plan paid by the employee with the option for the employee to purchase a higher benefit long-term disability plan at his/her own expense.

**PERB Criteria:**

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

“(d) In arriving at their findings and recommendations, the fact finders 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.”

## Analysis

In the opinion of the Chair, the inability of the parties to have a ratified agreement rests on a combination of trust issues (largely from past negotiations experiences), and the difficulty for employees trying to understand a number of technical changes all at once -- communications issues. Hopefully, this Report and Recommendations will provide some guidance to the parties.

There are really two fundamental issues which have made it impossible for the parties to reach a successor agreement. First, there is the issue of having all employees pay the full cost of employee contributions to CALPERS, together with salary increases designed to offset the increased contribution rates in part or in whole. Second, there is the complex of issues surrounding the City's desire to change the current sick leave policy into a standard monthly accrual system.

On all other issues contained in the City's Last, Best & Final Offer, there seemed to be little disagreement, and the Union bargaining committee had recommended settlement based on that offer.

**Pension Contributions & Wages** - By the end of fiscal year 2013, all but a handful of Cities will have all of their employees paying the full employee contribution rate into CALPERS. It is a public phenomenon which is ongoing, and has also produced the State mandated PEPRA pension plans for all new hires, which are substantially less generous than those of vested incumbents.

To their credit, Local 501 agreed in concept to this change for the successor agreement. The major bone of contention has to do with whether some kind of salary increase could be negotiated to offset the sudden loss of an additional 3.4% of pay, which is the difference between what vested employees currently contribute, vs. the full 8% employee contribution rate of CALPERS.

During the course of negotiations, the City offered a 2% salary increase to offset the increased employee costs. While the math is a bit complex, the result for most employees is that the net impact on their take home pay is a wash -- that is, the difference is negligible.

The concern expressed at hearing was that the City currently uses a device called EPMC, which has an impact in terms of what income is pensionable, and that the elimination of this mechanism would result in a lesser pension for the vested employees. However, it was also demonstrated during the hearing that anyone retiring in the near term would

suffer no loss, and that legacy employees retiring in the future are likely to have earnings increases which would more than offset any short term effects.

**Sick Leave Modifications** - While most municipalities currently have some sort of monthly sick leave accrual system in place, there is an old public sector legacy system of using a grid of banking hours in percentages of pay based on seniority, and they are still in place in a number of jurisdictions. These systems were designed to provide a paid time off grid of various percentages (such as 75%, 50% etc.) in light of the fact that most city employees in California are not covered by State Disability Insurance (SDI). Thus, when an employee gets sick for any significant period of time, they can wind up without pay or a safety net during an extended illness.

Clearly, the City's desire to change this system is in line with 'best practices' for handling public sector sick leave. Over time, the old 'Legacy' sick leave systems have tended to benefit long time employees at the expense of newer hires, and led to unequal treatment for those who have the misfortune to become ill for any period of time.

After a commendable amount bargaining on this issue, and give and take, the City ultimately came up with a hybrid system to try and meet the underlying needs of their employees who do not have the benefit of SDI. Their final offer was to:

- 1) Provide a one-time only bank of sick leave hours for all employees, populated with 400 hours for employees with over 15 years of service, 240 hours for employees with between 10 and 15 years of service, and 178 hours for all other employees in the unit;
- 2) To begin offering an employer-paid short term disability plan triggered after 30 days due to injury/ illness; and
- 3) Continue to provide the basic long term disability plan and the optional employee-paid (and popular) long-term disability plan which is currently in place for IUOE members.

While it is possible for very senior employees to make out better under the old system than the new one, especially if they have enough time on the books to cover up to the six months it takes for the Long Term Disability plan to kick in, for the overwhelming majority of employees the new system provides an equitable and evenhanded bridge to handle most illness.



### **Recommendations**

Applying the criteria of the statute against the position of the parties, it seems clear that the City's Last, Best & Final Offer dated June 12, 2013, provides a reasonable basis for settlement. From an economic standpoint the offer provides the City with a justifiable

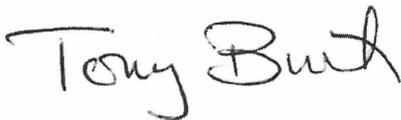
basis to keep the current CALPERS pension plan for incumbent employees, while moving to the employee & employer contribution rates contemplated by the Plan itself. At the same time, the salary offsets protect the employees from the effects of a 3.4% pay cut, and are more than reasonable compared to the pattern of other municipal settlements in the area. Finally, it should be pointed out that new hires are subject to the State-mandated modified pension plan entitled PEPRA, and over time the less generous provisions of that plan will provide the City with long term savings necessary to keep a defined benefit plan in place.

As to the changes to the Vacation and Sick Leave systems, they have been fully covered in the Analysis above. It is the belief of the Chair that resistance to their inclusion in the successor agreement is based more on poor communications and a residual lack of trust from prior years bargaining experiences than in any objective problems with the changes and offsets offered by the City. Hopefully this Report can provide some clarity for the parties on a go-forward basis.

Therefore, it is the Recommendation of the Panel that the City's Last, Best & Final Offer dated June 12, 2013 be the settlement.

Dated: November 19, 2013

Respectfully submitted,

A handwritten signature in black ink that reads "Tony Butka". The signature is written in a cursive, slightly slanted style.

Tony Butka  
Chair