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**IN FACTFINDING PROCEEDINGS**  
**PURSUANT TO THE MEYERS-MILLIAS-BROWN ACT**

In the Matter of a Controversy  
Between  
CITY OF DAVIS,  
City  
and  
DAVIS FIREFIGHTERS LOCAL 3494,  
Union  
Involving bargaining impasse for successor  
contract after June 30, 2012 contract expired.

**FACTFINDER'S REPORT AND  
RECOMMENDATIONS**  
**PERB Case No. SA-IM-129-M**

This is a factfinding proceeding conducted pursuant to the Meyers-Millias-Brown Act, Government Code § 3500 *et seq.* between the City of Davis (City) and and Firefighters Local 3494 (Union). On June 21, 2013, the parties notified the Public Employment Relations Board that they had selected the undersigned Factfinder to serve as the sole Factfinder in this bargaining impasse.

A hearing was held in Davis, California, on August 14, 2013 and on August 16, 2013 in Sacramento, California. During the course of the hearing, the parties were given full opportunity to present relevant exhibits and explain their respective positions. Both parties submitted post-hearing written briefs which were filed on October 18, 2013. The matter was deemed submitted upon the Factfinder's receipt of the parties' briefs on October 18, 2013.

1 APPEARANCES:

2 On Behalf of the Union:

3 Gary M. Messing, Esq. and Jason H. Jasmine, Esq.  
4 Carroll, Burdick & McDonough, LLP  
5 980 9<sup>th</sup> Street, Suite 380  
6 Sacramento, CA 95814

7 On Behalf of the City:

8 Timothy G. Yeung, Esq. and Ivan Delventhal, Esq.  
9 Renne Sloan Holtzman Sakai, LLP  
428 J Street, Suite 400  
10 Sacramento, CA 95814

11 *Background*

12 The City of Davis is a general law city with approximately 65,000 residents which is located  
13 in a University-oriented community west of Sacramento County. The City has a Council-Manager  
14 form of local government, with a five-member City Council, each of whom are elected on a citywide,  
15 or at-large, basis. The City Manager is appointed by the City Council, and serves as the City's chief  
16 administrator charged with implementing the policies adopted by the Council. The City employs  
17 about 350 employees in seven different bargaining units, the largest of which (PASEA) is an  
18 administrative and support unit with about 100 employees. All of the other units, including the  
19 Davis Police Officers Association (DPOA), have negotiated current collective bargaining contracts,  
20 except the Davis City Employees Association (DCEA) and the Union.

21 The City Council adopted what it refers to as Guiding Principles on Employee Compensation  
22 and Goals for Labor Negotiations with all of its multiple employee-represented organizations, and  
23 the City seeks multiple compensation concessions. Three key elements of the City's bargaining  
24 objectives are 1) modification of the City's cafeteria health-plan "cash-out" provision for employees  
25 with alternative health insurance coverage; 2) negotiation of larger employee contributions to their  
26 retirement plan; and 3) reducing the City's long-term liability for retiree medical costs while still  
27 providing for a progressive benefit. In nearly all of the other bargaining units, the City succeeded  
28 in achieving a phased-in reduction (to \$500) of the amount employees may receive in cash in lieu  
of health benefits, a cap on the City's contribution to the cafeteria plan, a sharing of the cost of  
increased premiums between employees and the City, and a more affordable retiree benefit.



- 1           6.     Modification of Uniform Allowance Benefit.
- 2           7.     Overtime – Conformance with FLSA (Only hours worked for overtime).<sup>2</sup>
- 3           8.     Salary compensation.
- 4           9.     Arbitration clauses for grievances (binding) and discipline (advisory).
- 5           10.    Duration of contract.<sup>3</sup>

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10           <sup>2</sup> At hearing, the City made a single-sentence presentation in support of a contract proposal for calculating  
11 overtime pay entitlement based on “productive” hours, i.e., hours worked, and not counting sick leave and vacation hours  
12 towards overtime (Tr. 88). The Union did not assert any confusion or objection to this proposal at the hearing when it  
13 was presented, and thereafter did not present any formal response or counter-argument to this proposal at the hearing.  
14 Based on these facts, this issue is deemed to be properly before the Factfinder in this proceeding.

13           Immediately before the above proposal was presented, the City asserted that a second overtime issue – involving  
14 its proposal to eliminate what was characterized as “pre-paid” overtime – was an issue in dispute for submission to the  
15 Factfinder. In the course of presenting the City’s explanation of this proposal, Union counsel repeated stated at the  
16 hearing that he did not understand the proposal, as explained. The City acknowledged that no formal written proposal  
17 had been submitted (Tr. 79). The Factfinder expressed the need for more detailed, documentary evidence in order to  
18 understand the City’s pre-paid overtime proposal, including pertinent evidence supporting the City’s factual claims of  
19 the practice, and “problem,” that the proposal was ostensibly intended to address (Tr. 79-81). The Factfinder specifically  
20 requested that such evidence be presented on the second hearing date, Friday, August 16 (Tr. 80). However, no such  
21 evidence was presented at the hearing, nor was there any request to submit such evidence at a later time. The Union did  
22 not respond to a proposal that it asserted that it did not understand, in the circumstances of the Factfinder’s specific  
23 direction to the City of the need to present more detailed, written substantiation of the City’s unwritten proposal.

19           When the briefs were filed on October 18, the City attached documentation of its so-called pre-paid proposal  
20 to its post-hearing brief, the first time the Factfinder – and apparently the Union – was aware of this information. The  
21 Union objected to the attachment of the post-hearing evidence and argument in support of this proposal when, in the  
22 Union’s view, the proposal appeared to be abandoned when the City failed to provide the documentation requested by  
23 the Factfinder on the first hearing day. Since the Union had no opportunity to review the post-hearing document in  
24 support of this proposal, or question City representatives at the hearing about its contents or the proposal generally,  
25 consideration of this evidence – and the proposal itself – would present serious concerns about due process. For these  
26 reasons, it is the view of the Factfinder that the City’s pre-paid overtime proposal is not properly before this Factfinder  
27 in this proceeding, in the specific circumstances described above. Accordingly, the City’s Attachment C exhibit filed  
28 with its post-hearing brief will not be considered and the City’s pre-paid overtime proposal itself will not be addressed.

25           <sup>3</sup> In its post-hearing brief, the Union argued that two additional proposals (for the creation of a Health Savings  
26 Account and for an increase in the employees’ life insurance benefit) were issues submitted for consideration by the  
27 Factfinder. Similar to the paucity of evidence presented in support of the City’s pre-paid overtime proposal as discussed  
28 in footnote 2, the Union did not present evidence, argument, or make any formal presentation specifically identifying  
these proposal as issues that remained in dispute at the hearing on August 14 and August 16. Not surprisingly, the City  
did not address either proposal, either at the hearing or in its post-hearing brief. Accordingly, like the ruling made above  
in footnote 2, it is concluded that these two proposals are not properly before the Factfinder and that there is insufficient  
evidence in the hearing record for the Factfinder to address these proposals, consistent with due process.

1 1. Inclusion of Compensation Survey in Contract

2 *Positions of the Parties*

3 The City proposes the elimination of existing contract language that provides a list of other  
4 municipal jurisdictions for use in compensation studies because, it contends, that the existing  
5 compensation study provisions are flawed. The City conducted its own compensation surveys,  
6 which it relied upon in the current negotiations, and contends that the parties should have the ability  
7 to rely upon their separate surveys in this, and future, negotiations without an applicable contractual  
8 standard. The Union contends that the best evidence of which municipalities are comparable to the  
9 City is the language negotiated by the parties for their subsequent contract negotiations for the past  
10 three decades, and that the City's displeasure with the results of the surveys based on the current  
11 language is not a sufficient basis to justify a change in this long-standing method. The Union also  
12 argues that, if a change was warranted, it should be applied only on a prospective basis – not for the  
13 bargaining of this contract for which the existing language was intended and agreed upon.

14 *Pertinent Factual Findings*

15 The parties' expired MOU contains a contract section entitled "Wages and Benefits Survey"  
16 which states that, in conducting "any" survey, "Firefighter I shall be compared to 'Firefighter' in  
17 comparable agencies." Ten comparison agencies are specifically listed in the same section; in the  
18 expired contract those agencies included seven cities (Fairfield, Napa, Roseville, Sacramento, West  
19 Sacramento, Vacaville, and Woodland), two fire districts (Sacramento County Fire District and the  
20 El Dorado Hills Protection District), plus the University of California at Davis. It appears that such  
21 language (with periodic modifications of the comparison agencies) has been included in the prior  
22 collective bargaining agreements for unit for at least nearly thirty 30 years. Union President Bobby  
23 Weist testified, without contradiction, that these contractually-agreed upon comparison agencies  
24 have been used by the parties for the "next" round of bargaining for at least 27 years. The expired  
25 contract contained separate language regarding the components to be used for "total" compensation:

26 The CITY and the UNION have agreed that the following components have been used and  
27 will be used in the future in determining total compensation: top step salary, retirement,  
28 vacation..., in-lieu of holiday pay, sick leave, bereavement leave, health, dental, life  
insurance, long term disability, uniform allowance, paramedic pay, vision insurance,  
longevity, educational incentive, deferred compensation, bi-lingual pay, and...other items...

1           The City's proposal to eliminate the compensation study provisions in the MOU is based on  
2 its contention that the model provided in the MOU is flawed. Its primary illustration of this claim  
3 is the inclusion of the City of Napa as one of the ten comparison agencies, which has a top salary  
4 step wage rate well in excess of any of the other listed agencies. The City contends that this higher  
5 wage is attributed, at least in part, to the fact that the other agencies employ two classifications –  
6 Firefighter I and Firefighter II, of which only the former is pertinent – while Napa has just one  
7 position, which is the "higher" Firefighter II classification. The Union presented testimony that the  
8 employees in both classifications have similar, even nearly identical job duties – including the basic  
9 duty of driving fire engines.

10           A threshold issue is presented in this case as to whether it is appropriate for either party to  
11 insist upon a different compensation survey than the model specified in the expired contract that,  
12 based on the parties' prior bargain, "will be used in the future in determining total compensation."  
13 In the bargaining at issue here, the City initiated and paid for a labor survey that recommended a  
14 different model of 11 comparison agencies; the proposed alternative model eliminated the two fire  
15 districts contained in the prior MOU, and added three new cities (Folsom, Lincoln, and Rocklin).  
16 The City also prepared a compensation study utilizing all of the contractually-agreed upon agencies,  
17 *except* Napa, and repeatedly relied upon that modified model in its discussion of compensation  
18 comparability both during bargaining, as well as in this Factfinding proceeding.

19           The Union's initial compensation survey (in March, 2012), based on the comparison criteria  
20 in the expired contract, indicates that the Firefighters' "total" compensation is 17.08% below the  
21 "mean" (average) of the total compensation for firefighters in the comparison agencies. In July,  
22 2012, an updated survey conducted by the Union indicated the unit employees were 17.58% below  
23 the mean. The City's study using the prior contract criteria, *except* the City of Napa (omitted for the  
24 reason discussed above), revealed that the "total" compensation for unit firefighters is 11.9% below  
25 the mean and 9.4% below the median of the comparison agencies (except Napa). (The City argues  
26 that the median is the superior comparison point, in contrast to the Union's reliance upon the mean.  
27 The contract language does not expressly address that issue, but it appears that the practice in the  
28 past has been to use the "mean" comparison calculation preferred by the Union).

1           In view of the City's primary bargaining objectives of seeking compensation concessions  
2 with respect to various benefits that are part of the "total" compensation calculations in the MOUs,  
3 the City contends that the more relevant comparison criterion in any comparison study for this round  
4 of bargaining is the monthly base salary rate (rather than the "total" of all compensation components,  
5 certain of which the City is striving to reduce). Based on the City's study (excluding the highest  
6 salary paid to the Napa firefighters), the monthly salary rates of the unit employees is 4.7% above  
7 the mean monthly wage rate and 3.8% above the median rate (excluding Davis itself). The Union's  
8 calculation of the mean top salary rate (which includes the City's monthly salary as part of the mean)  
9 is 3.32% lower than the City's firefighters' monthly salary rate. Thus, it is clear that viewing the  
10 wage rates as a single point of comparison, the City's wages are higher than the mean provided in  
11 the previously-agreed upon comparison model.

12 *Recommendations on Comparison Survey Inclusion in the Contract*

13           As noted above, the City proposes to eliminate the compensation study language in the  
14 contract because it is "flawed" in favor of allowing the parties to conduct their own comparability  
15 studies for negotiations. The City's position is not persuasive and is viewed by the Factfinder as one  
16 that would hamper, not improve, the parties' ability to conduct successful negotiations, particularly  
17 on the most vexing issues of compensation. Where, as here, the parties have agreed upon a sample  
18 of other jurisdictions that are a representative comparative sample, the parties can compile the  
19 appropriate data and focus their discussions upon measuring compensation proposals against that  
20 agreed-upon standard (and in the context of other criteria besides comparability, where warranted).  
21 What is likely, if the City's proposal is adopted, is that both parties will rely upon their preferred  
22 study, and the compensation negotiations will be conducted in two entirely different universes and  
23 different assumptions, with less inclination by either party to compromise – much like what  
24 happened in these negotiations. Accordingly, the Factfinder recommends – strongly – that the parties  
25 continue their longstanding practice of including in this contract an agreed-upon group of entities  
26 and components for compensation studies for use in the next, "future" negotiations.

27           The fact that the City's effort to eliminate the compensation contract clause in its entirety  
28 does not mean that it is inappropriate to modify the list of agreed-upon jurisdictions. In the view of

1 the Factfinder, the City has made a plausible argument that the inclusion of the City of Napa – an  
2 municipality that is arguably more appropriate for inclusion in a Bay-area comparison model than  
3 the Sacramento/Central Valley region – appears to be an outlier with respect to its compensation  
4 practices as compared to the other entities previously agreed to, which may or may not be related to  
5 the Firefighter II issues raised by the City. It is the Factfinder’s view that the importance of retaining  
6 the survey compensation provision would be best served by the Union’s agreement to substitute one  
7 of the Sacramento-area cities listed in the City’s survey – specifically, either Rocklin or Folsom –  
8 in lieu of the City of Napa in the next contract. Both of these cities, like Davis, are located very near  
9 the City of Sacramento, in the central valley, and both (unlike the City of Lincoln) are more  
10 proximate to the size of the City of Davis.

11 Finally, in view of the fact that the parties did not themselves modify the composition of the  
12 comparison model from the last contract, the Factfinder finds that the appropriate model to be used  
13 in this round of negotiations is the model that was bargained, and agreed to, by both parties for the  
14 “future” negotiations at issue herein. The City’s exclusion of one of the contractually-agreed upon  
15 agencies in the preparation of a complete compensation survey for these negotiations was  
16 inconsistent with the parties’ prior contract, the bargain that was struck in the last negotiations, and  
17 the parties’ practice of using the “last” contract model for the “next” negotiations.

## 18 2. Cafeteria Cash Out Cap for Health Insurance Benefits

### 19 *Positions of the Parties*

20 The City proposes that the current 80% cap on cash-out entitlements for current employees  
21 whose medical coverage is covered by a spouse who works for a different employer should be  
22 reduced in four stages to an ultimate “hard” cap of \$500 per month; for new employees, the \$500  
23 cap would be effective immediately. The Union proposes that the cash-out be reduced from 80%  
24 to 62% (\$1,077.83), then 44% (\$764.91), then 26% (\$451.99), and then back up to a “final” cash-out  
25 rate of 50% as of January 1, 2016.

### 26 *Pertinent Factual Findings*

27 Prior contracts have provided that the monthly amount of the City’s contributions to be used  
28 by employees in the cafeteria plans for their health benefits could be taken as cash-in-lieu in certain

1 circumstances, e.g., if the employee receives medical coverage through a spouse working elsewhere.  
 2 In the prior contract, the Union agreed to a limit on this cash-out of 80% of the monthly contribution  
 3 paid by the City, which is currently \$1,390.75 (which is 80% of the current monthly contribution of  
 4 \$1,738.44). It appears that this 80% cash-out was the lowest cash-out received by employees in all  
 5 of the City's bargaining units under the prior contracts.

6 The City contends that this cash-out benefit of nearly \$1,400/month is overly generous, and  
 7 the goal of significantly reducing that benefit was one of the major, if not the major, goal of the City  
 8 in its negotiations with all represented units (Tr. 32). The City believes it has formulated a proposal  
 9 that 1) encourages employees to take health insurance available to them in another jurisdiction, with  
 10 a cash-out, but 2) with a cap on this generous benefit that was "just enough" to encourage employees  
 11 to do so – which the City believes is \$500/month. Other employee-s represented organizations have  
 12 agreed to this \$500 cap and the City contends that for reasons of internal equity – and the cost of this  
 13 benefit – that the Union should agree to the same cap. The City proposes that the reduction of this  
 14 existing benefit (\$1,390.75/month) be phased in for current employees in the following manner:

15	<u>Date</u>	<u>Cafeteria Cash-out Cap</u>
16	Upon agreement for a new contract	\$1,200.00
17	January 1, 2014	\$1,000.00
18	January 1, 2015	\$ 750.00
19	December 31, 2015	\$ 500.00

20 The ultimate cap of \$500 would be effective immediately for all newly-hired employees.

21 As stated in the summary of the parties' positions on page 8 above, the Union has agreed to  
 22 further concessions with regard to this benefit but proposes both a different rate of implementation  
 23 and a higher "final" cap. The Union's proposal is summarized as follows:

24	<u>Date</u>	<u>Reduction Pct.</u>	<u>Cash-out Cap</u>
25	Upon ratification	62%	\$1,077.83
26	January 1, 2014	44%	\$ 764.91
27	January 1, 2015	26%	\$ 451.99
28	January 1, 2016	50%	\$869.22

1 The Union notes, correctly, that its proposal saves more money for the City in the first three stages  
2 of implementation, and still would take several years for the Union's proposal to "break even."

3 *Recommendation on the Cafeteria Cash Out Cap*

4 There is widespread recognition that the existing cash-out benefit for cafeteria health benefits  
5 is a very generous. Both this Union, and all of the other employee-represented organizations with  
6 whom the City negotiates, agree that this generous and costly benefit should be reduced,  
7 significantly. The City's proposal of a final \$500 cap is more consistent with the principle of internal  
8 equity based on the negotiations in other units; moreover, it is a more financially sound proposal that  
9 contemplates a "final" lower cap, consistent with the recognition of both parties (and the Factfinder)  
10 that this very generous benefit should be curtailed in the current (and likely future) economic climate.  
11 Therefore, the Factfinder recommends adoption of the City's proposal.

12 3. Cost-Sharing of Increased Health Benefit Contributions

13 *Positions of the Parties*

14 The City proposes that future increases, if any, in the cost of premiums for the medical  
15 benefits of active employees (using the 2009 Kaiser family rate as the base) should be shared by the  
16 City and unit employees. It proposes that the first 3% of any future increases in premiums would  
17 be paid the by the City; up to the next 3% of increased future premiums would be borne by unit  
18 employees; and all increases in excess of 6% of the baseline premiums would be shared equally by  
19 the City and unit employees on a 50% – 50% basis. The Union objects to this proposal on the basis  
20 that it reduces the employees' total compensation entitlements and that the economic issues posed  
21 by this proposal should instead be addressed as part of the parties' larger total compensation offers.

22 *Pertinent Factual Findings*

23 Health insurance costs have increased at a rate of more than 6% per year since 2009. It is  
24 expected that further increases, at rate higher than the rate of inflation, will be required in the next  
25 several years. In 2013, the City has paid the full family monthly Kaiser premium of \$1,738.44,  
26 which was 9 percent higher than the rate the year before; the 2014 rate is expected to increase  
27 another 11%. The Union and DCEA are the only units that do not contain a cost-sharing provision.  
28 The City's proposal is "retroactive" in that it seeks to set the rate "back" to 2009 (like other units).

1 *Recommendation on Cost-Sharing Proposal for Increased Benefit Contributions*

2 In view of the widely-recognized fact that medical insurance costs are increasing at rather  
3 high rates, the proposal that the employees bear the responsibility for (expected) future increases  
4 above an existing base rate is prudent, equitable, and consistent with the principle of internal equity  
5 in view of the acceptance of such clauses in nearly all of the other City bargaining units; thus, the  
6 Factfinder recommends that the Union join with its sister bargaining units and accept the proposed  
7 cost-sharing concept. However, the portion of the proposal that seeks adoption of the "base" rate  
8 back to the premiums paid in 2009 amounts to an indirect modification of the bargain struck by the  
9 parties in the prior contract. Thus, the premium costs paid by the City in the prior contract  
10 constituted a portion of the negotiated "total" package in that prior contract, and the City's proposal  
11 amounts to a costly current concession to employees in this unit when there was no contemporaneous  
12 agreement for this unit to accept a cost-sharing arrangement based on the 2009 base rate.

13 The Factfinder proposes that the parties adopt a modified proposal as follows: 1) generally,  
14 future increases, if any, in the cost of premiums using the current (2013) Kaiser family rate will be  
15 shared by the City and unit employees; and 2) the first 3% of any future increases in premiums  
16 above the 2013 Kaiser family rate will be paid the by the City; the next 3% of increased future  
17 premiums above the 2013 rate will be borne by unit employees; and all increases in excess of 6%  
18 above current premiums will be shared equally by the City and unit employees.

19 4. Employees' Contribution to City's Share of Pension Contributions

20 *Positions of the Parties*

21 The City proposes that unit members begin to pay 3% of the City's share of pension costs,  
22 or accept an equivalent salary reduction. The Union is amenable to the principle of employees  
23 paying 3% of the City's share, but rather than starting that entire increase upon ratification (as sought  
24 by the City) the Union proposes that the employees' payment of this portion of the City's share be  
25 phased in at 1% per year for three years for a total of 12% or 50% of normal cost, whichever is less.

26 *Pertinent Factual Findings*

27 Historically, the City paid for virtually all of the pension contributions for its employees,  
28 including the pensions for safety (police and fire) employees. In recent years, the City – like most

1 other public jurisdictions throughout the state – has arranged for employees to pay their own shares.  
2 However, the costs of pension contributions is continuing to rise at a rapid rate, particularly for  
3 safety employees. It is expected that employer pension contributions for safety employees will  
4 increase by nearly forty percent in the next five years. Accordingly, the City has persuaded some  
5 bargaining unit members to undertake the cost of a part of the Employer's share of this benefit  
6 which, unlike health care premium costs, result in a specific long-term benefit to employees in  
7 retirement. It is noted that when the police and fire units agreed to pay all of the employees' shares,  
8 the City agreed to pay raises to help pay for that concession and the greater costs to employees.

9         The evidence further shows that in 2009, the sworn membership of DPOA began paying a  
10 3% percentage of the City's share of the pension costs, and further agreed to continue doing that in  
11 the current (2012 - 2015 MOU). Accordingly, while the police component of the City's safety  
12 employees have been, and are continuing, to pay 12% toward their own pensions, the Firefighters  
13 are still paying only 9%. At the hearing, the City cited this proposal (along with the cafeteria cash-  
14 out concession discussed above and the retire health benefits concession discussed below as one of  
15 the City's greatest priorities in the current contract negotiations (Tr. 32, 38).

16 *Recommendation for Employees' Contributions to City's Share of Pension Costs*

17         It is clear, and recognized by both parties, that the dramatic increase in the cost of pensions,  
18 especially for safety employees, resulted in a wide-spread recognition that employees are expected  
19 to take more responsibility for the security and benefit levels of the pensions they will earn and  
20 receive upon retirement. Both parties accept the concept that the Firefighters should begin, as the  
21 police unit is already doing, to pay 3% of the City's share of these costs. In view of the fact that the  
22 police unit began paying for the 3% additional contribution for the duration of the last contract (and  
23 the current contract), the Union's proposal to phase-in the increase at a slower pace is not persuasive.  
24 The Factfinder recommends that the parties adopt the City's pension-sharing contribution, subject  
25 to the City's agreement to grant the pay raises recommended below.

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1 *Recommendation on Retiree Health Benefit Proposal*

2           It is implicit in the Union's (very reluctant) concession on the principle of a two-tier retiree  
3 benefit that both parties recognize and acknowledge that the rising costs of retiree health benefits is  
4 a vexing issue that requires the "strong" response of a two-tiered system, with different entitlements,  
5 especially because of the legal impediments of making changes for currently retired employees and  
6 the equity considerations of not implementing significant reductions in benefits for current  
7 employees who, understandably, have come to rely upon their expectations of the current benefit  
8 structure. Having accepted the need – and importance – of beginning a long-term solution to the cost  
9 crisis that is emerging in the retiree medical care area, it is clear that the City's proposal provides  
10 significantly greater savings than the Union's modest change in the benefit entitlement for new hires  
11 when they retire and reach the age 65. Accordingly, the Factfinder recommends that the parties  
12 adopt the City's proposed Option 1 for retiree health benefits of new employees hired after the  
13 ratification of the next contract (not, as proposed, on January 1, 2013).

14                           6. Modifications of the Uniform Allowance Benefit

15 *Positions of the Parties*

16           The City proposes a reduction in the annual reimbursement payment to Firefighters for  
17 uniform replacement from \$2,000 to \$1,000. It further proposes the elimination of a nine percent  
18 payment by the City of the employees' share of PERS payment for the uniform compensation that  
19 is calculated as income for employees' pensions. It appears that the Union opposes the reduction  
20 of the annual allowance amount, and it did not respond to the nine percent payment proposal.

21 *Pertinent Factual Findings*

22           Using the Union's comparative compensation survey in accordance with the expired contract,  
23 it is clear that the uniform allowance is more generous – indeed, far more generous – than every  
24 other agency in the survey. The monthly compensation for unit members is \$167; the next highest  
25 monthly allowance is \$100, the third highest is \$75, and the "mean" compensation for the uniform  
26 allowance for all agreed-upon comparative jurisdictions is \$62.

27           The City adduced evidence that the nine percent payment of the employees' required payment  
28 for pension contributions is a recently discovered "mistake." This evidence was not refuted.

1 *Recommendations on Modifications of the Uniform Allowance Benefit*

2 • Since it is undisputed that employees are required to pay 9% of their income  
3 compensation towards their pensions and that the City has been paying that  
4 9% share of the uniform allowance that is calculated as income, apparently  
5 by mistake, the parties should agree to correct this mistake and adopt that  
6 portion of the City's proposal.

7 • It is equally clear that the cost of the uniform allowance benefit far exceeds  
8 the cost of that benefit in the survey of comparative jurisdictions; therefore,  
9 standing alone, a significant reduction of the benefit would be warranted.  
10 However, if the parties adopt most, or all, of the recommendations in this  
11 Report by the Factfinder, the "total" compensation calculation for this unit  
12 will be reduced by multiple concessions sought by the City – and  
13 recommended by the Factfinder. Since the total compensation estimate for  
14 this unit (based on the contract-specified survey) is approximately 17% *below*  
15 the mean for the comparative jurisdictions – a deficit that is likely to be  
16 exacerbated by the recommended reductions discussed herein, the Factfinder  
17 recommends that the inevitable reduction of this overly-generous benefit be  
18 postponed for future (subsequent) MOU negotiations in the interest of  
19 protecting in-pocket, current income for unit members in the circumstances  
20 of the multiple, and significant concessions recommended herein.<sup>4</sup>

21 7. Overtime FLSA Conformance

22 *Positions of the Parties*

23 The City proposes that the calculation of overtime should be based on hours worked (and  
24 exclude sick leave and vacation time) in accordance with the law (FLSA). The Union did not  
25 respond to this issue at the hearing or in its brief.

26 *Pertinent Factual Findings & Recommendation*

27 The City's one-sentence presentation at the hearing proposes that the City pay overtime based  
28 only on "productive time" (hours worked), and that sick leave and vacation hours should not be used  
to calculate overtime. This proposal is reasonable, appropriate, and recommended.

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23 <sup>4</sup> It is the intention of the Factfinder that this recommendation may be subject to potential tweaking by the  
24 parties, in accordance with the recommendation below on the salary compensation issue. As discussed therein, the  
25 Factfinder recommends that the Union's compensation proposal be adopted in the percentages and years contained in  
26 the Union's final offer, but only for the *salary* entitlements (as opposed to the proposed increases in *total* compensation).  
27 The Factfinder is not in a position to formulate an accurate calculation of the impact of the (reduced) non-salary benefit  
28 recommendations, in conjunction with the (increased) salary recommendations, to determine whether the "new" total  
compensation calculations will result in a further diminution of the current 17% discrepancy in total compensation, or  
whether the salary increases will out-weigh the reduced compensation of the other benefits. The recommendation that  
the uniform allowance benefit should be retained for *this* next contract is premised upon the view that the new total  
compensation calculation should either reduce the current 17% deficit or, at least, not make it worse. Thus, some  
tweaking may be warranted by the parties after they calculate the new total compensation survey comparison.

1 8. Salary Compensation

2 *Positions of the Parties*

3 The City proposes that the salary for the firefighters should be reduced by three percent, back  
4 to a prior decreased rate that was terminated upon expiration of the predecessor contract. The City  
5 further proposes that this proposed reduction be implemented retroactively, to March 1, 2013,  
6 because this reduction was not negotiated and agreed to at this time. The Union proposes multiple,  
7 sequential raises to unit employees in four stages of 2%, 2%, 1%, and 4%, the last of which would  
8 be effective on January 1, 2016. Unlike the City's proposal that is limited to employees' salaries,  
9 the percentage increases sought by the Union encompass percentage increases of *total* compensation,  
10 and not just salary compensation, in accordance with the standard for total compensation included  
11 in the parties' expired contract (see p. 5, lines 26-30 of this Report).

12 *Pertinent Factual Findings*

13 During the prior (2009) negotiations, the City and most of its employee-represented units  
14 agreed to furloughs at a time of particular financial duress. Furloughs were not a viable option in  
15 the firefighters unit because fire service must be scheduled, and covered, 24 hours a day.  
16 Accordingly, in lieu of the furloughs experienced by other bargaining units, these parties agreed to  
17 successive annual decreases of 6%, 4%, and 3% over the course of the 2009-2012 MOU. These  
18 percentages were intended to be equivalent to the lost income suffered by the employees who took  
19 furloughs instead. Upon the expiration of the prior contract, the last of these reductions expired; thus,  
20 unit employees since have been paid a salary 3% higher than the salary that which was in effect prior  
21 to the expiration of the 2009-2012 MOU.

22 The City contends that the proposed decreases are supported by the principle of internal  
23 equity. In this regard, the City notes that, while the majority of other units received modest increases  
24 in their 2012-2015 contracts, those increases were granted in the context of significant concessions,  
25 particularly with respect to changes in retire health benefits and reductions in the cafeteria cash-out  
26 amount. The City further argues that the comparability data from the compensation surveys –  
27 including the Union's own survey – show that Local 3494 members are paid at least 3.43% above  
28 the salary mean and as much as 4.8% above the mean (depending on which survey is considered).

1 Finally, the City contends that its expenses are rising faster than its revenues, and that without  
2 additional corrective action the City's General Fund reserve balance will continue to deteriorate.

3 As noted above, the Union's proposal is not only considerably different in the "direction" of  
4 proposed raises (four consecutive raises, as opposed to the City's proposal for a 3% decrease – to  
5 be applied retroactively), but the scope of its financial package is likewise substantially greater.  
6 Thus, the Union's proposal contemplates compensation increases for the employees' entire *total*  
7 compensation, and not just the employees' salaries, which it argues is justified by the evidence from  
8 the contractually-agreed upon comparison survey that shows that the total compensation calculation  
9 for unit firefighters is 17% below the mean of the comparison jurisdictions. Accordingly, the  
10 Union's final proposal provides for "total" compensation increases (salary, retirement, dental, health  
11 care, and other costs) be provided as follows:

12	July 1, 2013	2%
13	January 1, 2014	2%
14	January 1, 2015	1%
15	January 1, 2016	4%

16 The increases in this final Union proposal represent increases that are slightly higher (in years 1 and  
17 2) in view of the Union's willingness to accept certain concessions in non-salary compensation that  
18 the Union had not previously been willing to accept. The Union notes, accurately, that these  
19 proposed raises will still not close the 17% deficit in the firefighters total compensation based on the  
20 comparative survey data.

#### 21 *Recommendations for Salary Compensation*

22 The parties' presentation and arguments with respect to the salary component of this impasse  
23 is a classic "apples-and-oranges," difference universes disagreement. The Union's strong argument  
24 for consideration of salaries as part of the larger "total compensation" context is understandable in  
25 view of the "total compensation standard" defined in the prior MOU. Its position is even more  
26 understandable in view of the clear evidence that, based on the contractually-approved standard and  
27 model for comparative surveys, unit employees are currently 17% below the mean of fighters in the  
28 comparable agencies. However, it was apparent from the City's presentation at the hearing – and

1 reinforced by the arguments in its post-hearing brief – that the City’s primary objectives in the  
2 negotiation of this contract were to achieve significant concessions with respect to non-salary  
3 compensation benefits, and for multiple benefits as well, many of which had been achieved with  
4 other bargaining units with whom the City has labor contracts. In these circumstances, the Factfinder  
5 determined that it was necessary to address the City’s proposals on a “stand-alone” basis to assess  
6 their weight and propriety on their separate “merits.”

7         The City advised that its three highest priorities in these negotiations were its proposals for  
8 a cap on the cash-out provision of the cafeteria health plan benefit, a concession that the firefighters  
9 pay 3% of the City’s share of the employees’ pension contributions, and a “reform” of the retiree  
10 health benefit in the form of both a new two-tier system and a very significant reduction in the cost  
11 of the retiree benefit for new hires. As indicated by the recommendations and findings above, the  
12 Factfinder has recommended that each of these priority concessions be adopted, either in whole as  
13 proposed, or with minor recommended modifications. In addition, the Factfinder has recommended  
14 the adoption of the City’s proposal for cost-sharing of increased health benefit contributions during  
15 the life of the contract, and a diminution of employee income in the form of calculating overtime  
16 based only on productive hours –two further financial concessions sought by the District. Based on  
17 these multiple recommendations, it is difficult for the Factfinder to now apply a “total compensation”  
18 standard, as argued by the Union.

19         The Factfinder notes – and the City has acknowledged – that other bargaining units have  
20 received salary increases in the context of (and in exchange for) concessions by other bargaining  
21 representatives even on some of the same subjects addressed in this Report. Here, it is recommended  
22 that the parties adopt virtually all of the “priority” concessions sought by the City, plus at least two  
23 other economic concessions. In these circumstances, the City’s proposal to reduce salaries by 3%  
24 (and make the reduction retroactive) is not appropriate in the event the Union agrees to all (or even  
25 most) of the above recommendations. Assuming that the Union agrees to these recommendations,  
26 it is the Factfinder’s view that the City must step to the plate and “pay” for some of these concessions  
27 in the form of higher salaries in the circumstances of significant further lost “total” compensation  
28 to be borne by the unit employees.

1           It is recognized that the recommendation to increase salary compensation, when the unit  
2 employees are above the mean for salary compensation, and recommend reductions in non-salary  
3 compensation when the “total compensation” data shows that unit employee receive 17% less in total  
4 compensation seems counter-intuitive (or worse). However, the Factfinder is persuaded that the City  
5 has made a persuasive case with respect to the particular compensation concessions which have been  
6 recommended for adoption. If the Union accepts these recommendations, in satisfaction of the  
7 City’s highest priority objectives for these negotiations, the Factfinder is persuaded that the parties  
8 should also adopt the Union’s final percentage increases *for salary compensation* in an effort to  
9 recoup the compensation losses attributed to the other recommendations – and more importantly, to  
10 insure that the firefighters total compensation deficit in the comparability survey (after these salary  
11 increases, plus the retained uniform allowance is include) does not exacerbate the 17% discrepancy  
12 in total compensation for the unit employees. Accordingly, it is recommend that the parties adopt  
13 a salary increase of 2% to be retroactive to July 1, 2013; another salary increase of 2% to be effective  
14 on January 1, 2014; a 1% salary increase to be effective on January 1, 2015; and a final salary  
15 increase to be effective on January 1, 2016.

16                                   9. Arbitration provisions for grievance and discipline

17           *Positions of the Parties*

18           The Union proposes that the parties agree that grievances involving interpretation of the  
19 parties’ MOU would be resolved through binding arbitration, and that disciplinary appeals be subject  
20 to an option for advisory arbitration (if requested by the affected employee, and authorized by the  
21 Union). The costs of such arbitrations would be divided equally between the City and the Union.  
22 The City has not agreed to either proposal, and has not made a counter-proposal.

23           *Pertinent Factual Findings*

24           Currently, contract interpretation disputes are submitted to the City Manager, whose decision  
25 is not final and binding. The Union may challenge such a decision by filing a writ in court, which  
26 can result in extensive delays and significant legal costs to both parties. Disciplinary appeals are  
27 heard by a individuals appointed by the City to its Personnel Board, and this process can result in  
28 large back pay liability in some instances.

1 *Recommendations on an Arbitration Procedure*

2 The Union's proposal is a reasonable, even modest and conservative, proposal for the  
3 resolution of disputes in the modern labor environment, especially in a progressive area like the City  
4 of Davis (and the Northern California region). It will provide for the final resolution of at least  
5 contract interpretation disputes in a more expeditious manner, and may prove to be less costly (at  
6 least to the City). The Factfinder recommends the adoption of both proposals, especially in the  
7 context of the substantial concessions by the Union that are recommended in this Report.

8 10. Duration of the Contract

9 Both parties appear to be agreeable to a three-year contract to be effective through June 30,  
10 2016. In view of the fact that the parties spent 14 months in negotiations for a successor contract  
11 without successfully resolving their impasse, and the fact that the parties have gone nearly 1 ½ years  
12 without an MOU, it is hardly advisable that the parties accept a short-term contract, like one year,  
13 which may well result in another longstanding dispute (without a contract) that will hardly improve  
14 the parties' bargaining relationship. The Factfinder recommends that, upon acceptance of the  
15 recommendations herein (or any mutual acceptance of any modifications of one or more of these  
16 recommendations), the parties agree to a new contract with a term to expire on June 30, 2016.

17 Respectfully submitted,

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20 CHARLES A. AS KIN, Factfinder

21 DATED: November 26, 2013

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