

FINDINGS AND RECOMMENDATIONS
PURSUANT TO
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between)	
)	
East Bay Municipal Utility District)	
)	
Employer)	
)	
and)	Factfinding
)	
)	PERB Case No. SF-1M-115M
AFSCME, Local 444)	
)	
Union)	
_____)	

Submitted By:

Ruth V. Glick
Attorney at Law, Arbitrator and Mediator
1325 Howard Ave., #512
Burlingame, CA 94010

APPEARANCES:

For the Employer:

Michael K. Rich, SPHR
Manager of Employee Relations
East Bay Municipal Utility District
375 Eleventh Street
Oakland, CA 94607-4240
Mrich@ebmud.com

For the Union:

Felix Mario Huerta, jr.
Business Agent
AFSCME, Council 57
1333 Pine Street, Suite 1
Martinez, CA 94553-1865
Felix.huerta@ca.afscme57.org

FACTFINDING PANEL:

Appointed by the Employer:

Darrell P. Murray
IEDA
2200 Powell Street, Suite 1000
Emeryville, CA 94608
dmurray@ieda.co

Appointed by the Union:

Brenda Wood
Business Agent
AFSCME, Council 57
80Swan Way, #110
Oakland, CA 94621-1438
[Brenda.wood@ca.afscmeS 7.org](mailto:Brenda.wood@ca.afscmeS7.org)

Neutral Chairperson

Ruth V. Glick
Attorney at Law, Arbitrator and Mediator
1325 Howard Ave., #512
Burlingame, CA 94010
rvg@ruthvglick.com

In accordance with the requirements of the Meyers-Milias-Brown Act, Chapter 10, Section 3500, a Factfinding panel was appointed by the Public Employment Relations Board ("PERB"), due to an existing and unresolved controversy between the East Bay Municipal District ("District") and AFSCME Local 444 ("Union"). The controversy centers on the issue of the appropriate level of pay for a new job classification of Meter Reader/Mechanic.

The Parties have agreed to waive the statutory time restraints pertaining to the convening of the Factfinding hearing and submission of the findings of fact and recommendations. The panel met and heard testimony on August 21, 2013; briefs were submitted on September 30, 2013 and October 15, 2013; the panel conferred on October 21, 2013 and on several subsequent dates.

ISSUE PRESENTED

What is the appropriate level of pay for the new job classification of Meter Reader /Mechanic?

BACKGROUND TO THE DISPUTE

The District proposed a new position of Meter Reader/Mechanic as part of a reorganization of its meter reading function to increase efficiency of the operation. The reorganization includes reassignment of employees in existing job classifications of Meter Reader and Meter Reader/Mechanic Foremen from Field Operations Division of the Administration Department to the new Meter Division of the Operations and Maintenance Department. A tentative Letter of Understanding regarding application of seniority for employees has been proposed but not signed by the parties. (Jt. Ex. 2).

The rationale for creating the new position of Meter Reader/Mechanic is that the same employee who reads the meters can easily check and ascertain whether or not a meter needs maintenance or replacement. Workplace health and safety is improved because when a meter reader becomes involved with the maintenance function, it breaks up the repetitive physical nature of the job. Finally, the new job classification provides the opportunity for employees to gain experience performing maintenance activities, thereby offering a career path opportunity leading to jobs performing construction and/or maintenance activities.

The District currently has a job classification of Meter Reader whose primary duty is to read water meters. The new classification will not eliminate the Meter Reader job, thereby, allowing incumbents to remain in that job classification. The current work rule for the Meter Reader classification defines an eight-hour day as the amount of time it takes a Meter Reader to accomplish reading the meters

allocated to his or her route. If the Meter Reader can accomplish reading their route in five hours, they are presumed to have completed an eight-hour shift. This work rule, known as the "8 or Skate" rule, would not apply to employees in the new job classification of Meter Reader/Mechanic.

Employees in the job classification series of Water Distribution Plumber currently perform field maintenance on water meters. That job classification has three levels that employees can matriculate through, eventually reaching the journey-level of Water Distribution Plumber III. These level III employees not only perform field maintenance on water meters, but can also provide more complex construction and maintenance activities including installation, replacement and repair of underground water distribution systems. However, entry-level employees, at the level of Water Distribution Plumbers I, can perform field maintenance, one of the least complex activities assigned to the Water Distribution Plumber series, with two weeks of training. The District has hired several entry level Water Distribution Plumbers on a limited basis to perform this maintenance on water meters to accommodate a maintenance backlog of 38,000 meters.

POSITIONS OF THE PARTIES

The District

The District proposes Pay Range 54 with a minimum of \$4877 and a maximum of \$5646 for the position of Meter Reader/Mechanic. They base their proposal on four considerations:

- 1.) Pay range 54 is sufficient to attract qualified candidates as shown by recent job interest. The recruitment for Water Distribution Plumber conducted in 2013 up until the fact-finding attracted 955 applicants. In 2012, it attracted 1299 applicants. In 2011, recruitment for Meter Reader attracted 1362 applicants whereas in 2009, only 686 applicants applied. In addition, the District pays the existing Meter Reader job classification more than other comparable agencies. The average salary for Meter Reader from 11 other agencies is \$5307 per month compared to the District salary for Meter Reader of \$5,371 per month. When employer retirement contributions, social security and other benefits are added, the District pays 19% higher than the average. As a result, the District argues there is no external market justification for setting the higher salary the Union proposes for the new position.
- 2.) Since Pay Range 54 is 5% higher than the existing Meter Reader classification of Pay Range 52A, the District believes that there is an incentive for current Meter Readers to promote to Meter Reader/Mechanic because they will be paid more for the additional duties they will be performing. The District points to the Marin Municipal Water Agency, which is the only agency that has a classification that is almost identical to the new District classification.

The Marin Municipal Water Agency provides a 5% difference between the existing Meter Reader classification and the Meter Reader/Mechanic, which is the same differential offered by the District for the new position.

- 3.) The District has recently hired several Water Distribution Plumbers I on a limited term basis, to work on the backlog of water meter maintenance. The salary for the new Meter Reader/Mechanic is 7.5% higher than this entry-level Water Distribution Plumber I. The District argues that Pay Range 54 is more than sufficient to compensate for the addition of water meter maintenance duties to the existing job classification of Meter Reader.
- 4.) Pay Range 54 would be 2.5% lower than Water Distribution Plumber II. The Union's proposal of Pay Range 55 would provide the new Meter Reader/Mechanic with the same compensation as Water Distribution Plumber II, a position that is attained after an employee attends a six-month training academy and has six additional months of field experience. The District argues that the Union would then complain that compensation paid in the three level job classifications of Water Distribution Plumber series would have to be raised in order to avoid internal inequity. This would cost the Agency an additional \$326,330 per year without taking in account additional costs such as overtime and retirement contributions, which are indexed to the salary.

The Union

The Union proposes Pay Range 55 with a minimum of \$4997 and a maximum of \$5784 for the position of Meter Reader/Mechanic.

The Union acknowledges the desirability for a new division; there is a backlog of 38,000 meters in need of repair and/or replacement; issues of health and safety would be improved; transition for incumbents would be voluntary; and a new classification could provide new career paths for employees. However, they insist that the Pay Range should be higher than the District proposes based on several arguments.

The Union believes that the District is unwilling to grant the higher pay range because it wants to prevent the Union from using those wages for future negotiations such as those for Water Distribution Plumber II. They contend that the District was close to agreeing to the higher pay range by pointing to a July 18, 2013 email from Michael Rich to Felix Huerta about possible language for the Letter of Understanding ("LOU") as shown in Union Ex. 4. The language suggested was "the parties agree that the salary for the job classification of Meter/Reader/Mechanic shall not be referred to as a justification for increasing the pay range for any other job classification in the AFSCME, Local 444 bargaining unit". The email ends with the statement: "I want to be clear that if AFSCME, local 444 agrees to add that language to the LOU, it does not waive your right to make wage proposals, but you would be precluded from using the pay range for the Meter Reader/Mechanic as a justification." The Union also points to Union Ex. 1, page 3, describing options and

considerations, contending that the District was concerned that the salary range for Meter Reader/Mechanic would be the same as Water Distribution Plumber II and the Union would likely use that as justification to propose an equity adjustment for the Plumber series.

The next argument the Union makes is that the internal linkage or optimal difference in salary between the line workers or Meter Reader/Mechanic salary at Pay Range 55 and that of the Reader/Mechanic Foreman at the agreed Range 64 would be maintained, whereas it would not be maintained at Pay Range 54. The Union argues that because the District has a pattern and practice of maintaining a certain distance or range between the line workers in a classification series and the Foreman and Supervisors who oversee the day-to-day activities of their subordinates, their proposal at Pay Range 55 would maintain the internal linkage at 12.5%. Because the Foreman would be in Pay Range 64, they argue that the new position must be at Pay Range 55 to maintain internal equity.

Finally, the Union argues that the District proposed the combination of a position incorporating both meter reading and repair by using the Marin Metropolitan Utility District ("MMUD") as its example. The Union, therefore, compared a comparable job classification, which it found to be Meter Reader and Repair Worker II with a salary range at MMUD of \$4,967-\$6,001. They compared that to their proposal of Pay Range 55 of \$4,997 to \$5,784 and contend that their proposal of Pay Range .55 is reasonable. They also made a side-by-side comparison of the MMWD Meter Reader and Repair Worker II job duties with the EBMUD proposed Meter Reader/Mechanic's job description and maintain that their proposed salary for performing similar duties is not unreasonable.

FINDINGS AND RECOMMENDATIONS

The Panel conferred by telephone on several occasions. Each Union and District Factfinder went back to their respective parties to test whether an agreement could be reached which would address the internal equity arguments. However, there are ongoing negotiations for a new MOU and some of these issues are now under discussion. Therefore, the only issue that the Fact-Finding panel has to decide is whether the new job classification of Meter Reader/Mechanic should receive Pay Range 54 or 55 by the evidence presented.

The undisputed facts are that there is a substantial backlog of 38,000 water meters in need of repair and/or replacement. Creating the new position of Meter Reader/Mechanic would help alleviate that backlog by allowing current Meter Readers to move up to that position and take care of maintenance at the same time they would be reading the meters. In addition, workplace health and safety for Meter Readers would be improved because they would be able to break up the repetitive physical nature of only reading meters. And it might offer a career path into other construction related jobs for those so inclined.

The District has already hired entry level Water Distribution Plumber I's on a limited basis to catch up with the maintenance backlog. Pay Range 54, as proposed by the District for the new Meter Reader/Mechanic position, is 7.5% higher than the compensation for the entry-level Water Distribution Plumbers 1who are already performing maintenance functions. The recruitment for Water Distribution Plumber I attracted 995 applicants up until September of this year. In addition, the 2011 recruitment for the Meter Reader position attracted 1362 applicants, almost twice as many applicants who applied during the 2009 recruitment. In other words, there is no apparent shortage of applicants for either of these positions and no market justification to offer a higher salary for the newly created position of Meter Reader /Mechanic.

The argument that Pay Range 54 does not offer sufficient incentive for existing Meter Readers, who are at Pay Range 52.5, and who enjoy the "8 or Skate" rule, which would not be available in the new position, is unproven. As pointed out earlier, there appears to be a plethora of applicants for Water Plumber I and Meter Reader positions. If there are insufficient applicants for the new position, the District can always offer a higher pay range.

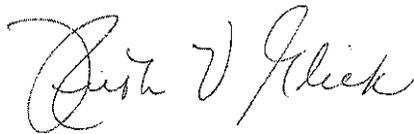
As the Union points out, the compensation for a similar position to Meter Reader/Mechanic at the Marin Metropolitan Utility District is closer to the Pay Range 55 that they propose. Gina Jenkins, Manager of Meter Reading and Maintenance testified that she helped create the job description for the new position of Meter Reader/Mechanic and used not only the MMUD, but also the San Francisco, San Jose and Contra Costa County Districts as models. While the similarity to Marin may be true to some extent, the Marin compensation also represents a 5% premium for a similar job classification of Meter Reader/Mechanic to Meter Reader as the one proposed by the District. The actual pay range in Marin for all classifications may be greater due to any number of other factors that are not relevant here. Therefore, the comparison, while valid, is not necessarily a basis for pegging the pay range for the new EBMUD position.

Finally, the Union's argument that salary relationship between Meter Reader/Mechanic and Meter Reader/Mechanic Foreman should remain the same as the 12.5% differential between Meter Reader and Meter Reader Foreman is not based on factual evidence. The Union argues that the internal linkage or difference salary between the line workers and the former should be maintained and since the District has already proposed Salary Range 64 for the Meter Reader/Mechanic Foreman, only Salary Range 55 would keep the 12.5% internal linkage. First, there is no District policy or practice that requires a new job classification series to have a particular salary relationship between entry-level and lead classifications. Second, Ruth Baxley, the Senior HR analyst, testified that other job classifications, such as the Gardner job classification series, have no such relationship. There is no factual evidence that keeping a 12.5% differential between line worker and foreman has

any relevance to market or economic justifications for pricing the new Meter Reader/Mechanic position.

SUMMARY OF RECOMMENDATION

For all the reasons articulated above, the Factfinding Panel adopts the District's proposal that the newly created position of Meter Reader/Mechanic shall receive Pay Range 54.



12/4/13

Ruth V. Glick, Neutral Chairperson

Darrell P. Murray, District Representative on Panel

I concur with the Recommendations

I dissent from the Recommendations (see attached explanation)

Brenda Wood, Union Representation on Panel

I concur with the Recommendations

I dissent from the Recommendations (see attached explanation)