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In the Matter of Factfinding:

-between-

CITY OF REDONDO BEACH

EMPLOYER

-and-

POLICE OFFICERS ASSOCIATION
MANAGEMENT UNIT

UNION

FF-717-M
RECEIVED
PUBLIC EMPLOYMENT
RELATIONS BOARD
2014 FEB 13 PM 12:37
CASE NO. LA-IM-147-M
SAN FRANCISCO
REGIONAL OFFICE

FINDINGS
CONCLUSIONS
RECOMMENDATIONS

DAVID B. HART
CHAIRMAN

HEARING HELD

January 24, 2014

Redondo Beach, California

REPRESENTING:

CITY OF REDONDO BEACH

Philip Toomey, Esq.
Carico Johnson Toomey LLP

REPRESENTING:

POLICE OFFICERS ASSOCIATION-MU

Richard Levine, Esq.
Silver, Hadden, Silver, Wexler, Levine

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JURISDICTION

This Fact Finding arises pursuant to Government Code Section 3505 concerning Impasse Procedures as administered by the (Public Employee Relations Board hereinafter may be referred to as "PERB") between the City of Redondo Beach (hereinafter may be referred to as the "City") and the Redondo Beach Police Officer's Association-Management Unit (hereinafter may be referred to as the "Union").

Unable to reach a settlement on the current meet and confer process, David B. Hart was selected by the parties to act as an impartial Chairman and empowered him to render an advisory decision in accordance with the PERB'S rules concerning Fact Finding. The panel met in executive session within the times lines as set forth by the rules. The Hearing was held within the time lines of the rules. The parties could not agree as to the time lines for a report by the panel.

The Factfining panel in addition to the Chairman, included Steve Berliner, Esq. Appointed by the City, and Howard Liberman, Esq. appointed by the Union.

The Hearing was held on the date enumerated and the parties had ample time to present evidence including documents and witnesses.

Panel members submitted to the chairman their perspective of the issues. Prior to the Chairman writing these recommendations.

ISSUE

'WHAT TERMS SHALL BE INCLUDED IN THE AGREEMENT BETWEEN THE CITY OF REDONDO BEACH AND THE REDONDO BEACH POLICE OFFICER'S ASSOCIATION-MU'

1 PERB Criteria:

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

4 "(d) In arriving at their findings and recommendations, the
5 fact finders shall consider, weigh, and be guided by all the following

6 Criteria:

7 (1) State and Federal laws that are applicable to the employer.

8 (2) Local rules, regulations, or ordinances.

9 (3) Stipulations of the parties.

10 (4) The interests and welfare of the public and the financial
11 ability of the public agency.

12 (5) Comparison of the wages, hours, and conditions of employment
13 of the employees involved in the factfinding proceeding with the
14 wages, hours, and conditions of employment of other employees
15 performing similar services in comparable public agencies.

16 (6) The consumer price index for goods and services, commonly
17 known as the cost of living.

18 (7) The overall compensation presently received by the employees,
19 including direct wage compensation, vacations, holidays, and other
20 excused time, insurance and pensions, medical and hospitalization
21 benefits, the continuity and stability of employment, and all other
22 benefits received

23 (8) Any other facts, not confined to those specified in paragraphs
24 (1) to (7), inclusive, which are normally or traditionally taken
25 into consideration in making the findings and recommendations. "

26
27 BACKGROUND

28 The recognized Bargaining Unit in the City of Redondo Beach is made of

1 Captains (2) and Lieutenants (4). They belong to the Redondo Beach Police Officer's
2 Association.

3
4 **THE DISPUTE:**

5 This dispute is essentially over compensation. Prior to the fact-finding, the City had
6 provided the Association with their Last, Best & Final Offer dated November
7 13,2013. .

8 **CITY'S FINAL OFFER:**

9 The City of Redondo Beach and the representatives from POA-MU have met and
10 conferred in good faith for over 16 months without resolution or agreement over
11 terms and conditions of their contract. The City is prepared to offer this Last Best and
12 Final Offer to POA-MU.

- 13 1. Beginning the first pay period after the City Council approves this agreement,
14 the existing 6% Compensation Reduction will be reduced to 3% through the
15 elimination of 50 hours of furlough time-off and 2.76% base pay reduction or
16 90 hour vacation bank reduction as applicable
17
- 18 2. Beginning the first pay period after the City Council approves this agreement,
19 the remaining Compensation Reduction will be 3% in the form of an annual
20 pre-tax deduction of 62 hours of unpaid holiday time-off, spread equally across
21 pay periods
22
- 23 3. This 3% deduction will remain in effect until a successor agreement is reached
24 between the City and POA-MU
25
- 26 4. 6% Compensation Reduction is in effect until the new agreement is approved
27 by City Council
28

1 5. Members will be eligible to receive Snapback payments for FY 2012-13 under
2 the same calculation as Management Confidential. POA-MU's portion of the
3 Snapback is projected at \$8,867

4
5 6. Members who have not had their leave banks reduced pursuant to the
6 requirements of the FY 2011-12 MOU will have their leave banks reduced

7
8 7. All other terms and conditions FY 2011-12 MOU remain in effect until June
9 30, 2014

10

11 Finally, the following Last, Best and Final City Proposal shall remain valid through
12 and including 4:00 p.m. on November 20, 2013. If the Assistant City Manager does
13 not receive written notice from POA-MU on or before November 20, 2013 at 4:00
14 p.m. that this Last, Best and Final City Proposal has been tentatively agreed to in full
15 as written (subject to subsequent consideration for adoption by the City Council), the
16 City shall consider the failure to timely agree to result in a concurrent declaration of
17 impasse by the City, and POA-MU shall be concurrently on notice that an impasse
18 has been declared without provision to it of further notice in that regard.

19

20

CITY POSITION

21

22 The City has shown it has taken steps to position itself for future stability. It
23 was determined to have the best fiscal practices of any of the County's 88 cities by
24 the Los Angeles County Grand jury. The City Council obviously has a good grasp on
25 what is best for the City financially and overall. It has determined that a 3% total
26 compensation increase is in the City's best interest considering the many priorities of
27 the City and its many challenges. The City is proposing that increase to all employees.

28

28 The RBPOA-MU is not being singled out with a lesser proposal than the other
units. It is being treated the same as the other groups, fairly. The RBPOA-MU has

1 presented no evidence that suggests that the City Council's proposal is inappropriate,
2 nor that the Council's judgement for the best use of limited City resources should be
3 usurped.

4 UNION POSITION

5 Seven (7) years since its last raise and five (5) years since the commencement
6 of the 6% concessions, the Association merely wants a return to 2007 salary levels.
7 The City wants to continue taking concession money that is no longer needed based
8 on the present economic recovery and recent prosperity. The concessions need to end
9 immediately.

10 ANALYSIS

11
12 It is generally believed that the best labor-management contracts are those that
13 are negotiated through bargaining without outside assistance. There are instances,
14 however, where the parties find it difficult or impossible to reach agreement by direct
15 negotiation.

16 In these situations the fact-finding process perhaps, is a way of settling this
17 dilemma. It is certainly not the panel's intention to prolong or bring obstacles into the
18 process towards bringing about settlement. It is also not the intent to split the baby so
19 to speak. The Chairman is not of the belief that would be beneficial to anyone
20 involved.

21 The Chairman is also cognizant that the current dispute is somewhat the result
22 by the economic conditions of the times and the political climate. The nature of the
23 issue and the current relations of the parties are of obvious significance.

24 The sworn testimony presented by witness, Peter Grant, Assistant City Manager
25 for the City of Redondo Beach, was concise. Direct and cross examination of this
26 witness in the Hearing gave the panel a general idea historically of where the
27 differences arise, that were keeping the parties from reaching a successor agreement.
28 Sworn testimony by the Union's witnesses was also given with detail.

1 After careful consideration and examination of sworn testimony and documents
2 the Chairman presents the following recommendations in the hope the parties can use
3 these recommendations to reach an agreement. Unilateral implementation of terms
4 and conditions by the Employer would tend to disrupt good labor relations. Good
5 labor relations are a desired goal.

6 The panel members have had an opportunity to concur or dissent on the issues
7 as put forth by the Chairman, and attached to these recommendations are those
8 notations.

9
10
11 **RECOMMENDATIONS**

12
13 **ECONOMIC TERMS AND CONDITIONS**

14 **EFFECTIVE JUNE 30, 2014, THE CITY SHOULD IMPLEMENT THEIR**
15 **LAST BEST AND FINAL OFFER DATED NOVEMBER 13, 2013.**

16
17 **THE THREE PERCENT (3%) SAVINGS (\$40,337.00) FOR THE YEAR JULY**
18 **1, 2013-JUNE 30, 2014 SHALL BE ON A PRO RATA BASIS BE PAID TO**
19 **UNIT MEMBERS IN A ONE TIME OFF THE SALARY SCHEDULE**
20 **PAYMENT.**

21
22 **THE CHAIRMAN RECOMMENDS THIS AS A WAY TO REWARD THE SIX**
23 **(6) MANAGEMENT UNIT PERSONNEL WHO ARE RESPONSIBLE FOR**
24 **THE DAY-TO-DAY OPERATION AND SUPERVISION OF THE REDONDO**
25 **BEACH POLICE DEPARTMENT. THERE IS NO REASON TO PUNISH**
26 **THIS UNIT FOR NOT COMING TO TERMS EARLIER IN THE MEET AND**
27 **CONFER PROCESS.**

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Respectfully submitted;



David B. Hart
Chairman

Signed and dated this 12th day of February, 2014

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REDONDO BEACH POLICE OFFICER'S ASSOCIATION-MU
PANEL MEMBER -HOWARD LIBERMAN,ESQ.
AS TO CHAIRMAN'S RECOMMENDATIONS

ECONOMIC TERMS AND CONDITIONS

CONCUR _____ **DISSENT** **X** _____

SEE ATTACHED

Panel Member

Signed and dated this 10 Day of February, 2014

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CITY OF REDONDO BEACH
PANEL MEMBER STEVE BERLINER, ESQ.
AS TO CHAIRMAN'S RECOMMENDATIONS

ECONOMIC TERMS AND CONDITIONS

CONCUR _____ DISSENT x _____

SEE ATTACHED

Steve Berliner
Panel Member

Signed and dated this 11 Day of February, 2014

Liebert Cassidy Whitmore
A Professional Law Corporation
6033 West Century Boulevard, 5th Floor
Los Angeles, California 90045

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sberliner@lcwlegal.com
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Los Angeles, California 90045
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Facsimile: 310.337.0837
5
6
7

8 **FACTFINDING HEARING**
9

10 In the Matter of the Impasse Between
11 THE REDONDO BEACH POLICE
OFFICERS' ASSOCIATION-
12 MANAGEMENT UNIT
13 and
14 THE CITY OF REDONDO BEACH,
15

OAH Case No.: Case No. LA-IM-147-M

**PANEL MEMBER STEVEN M. BERLINER'S
CONCURRENCE AND DISSENT TO
FINDINGS, CONCLUSIONS AND
RECOMMENDATIONS OF CHAIRMAN
DAVID B. HART**

16 I am in agreement with the majority of the Findings, Conclusions and Recommendations
17 ("Recommendations") of Chairman David B. Hart, and concur in the recommendations except as
18 to two significant parts, outlined below.

19 First, the retroactive component of the Recommendations is improper. While there may
20 be merits favoring retroactive compensation in the abstract, it would be inappropriate under these
21 circumstances. The City of Redondo Beach ("City") cannot limit a retroactive compensation
22 increase, even a one time stipend, to only members of the Redondo Beach Police Officers
23 Association-Management Unit ("RBPOA-MU"). The Redondo Beach Firefighters Association
24 ("Fire") would argue that such retroactive compensation would trigger the "Me Too" provision in
25 its expired collective bargaining agreement. Consequently, while the cost of the 3% retroactive
26 payment in the Recommendations is reasonable in a vacuum, the actual cost may be much higher.
27 The "Me Too" component, if triggered, would increase the City's cost of the retroactive
28

783434.1 RE050-016

PANEL MEMBER STEVEN M. BERLINER'S CONCURRENCE AND DISSENT TO FINDINGS,
CONCLUSIONS AND RECOMMENDATIONS OF CHAIRMAN DAVID B. HART

Liebert Cassidy Whitmore
A Professional Law Corporation
6033 West Century Boulevard, 5th Floor
Los Angeles, California 90045

1 increase/lump sum payment by approximately \$243,000.00. This results in a windfall for Fire
2 members as the Chair in their fact finding panel with the City recommended only a 2% increase
3 in 2014, with no retroactivity. Consequently, I dissent to any retroactive compensation.

4 Second, I dissent to the statement at page 8 of the Recommendations that the City's
5 prospective looking proposal acted as a punishment to RBPOA-MU. There was no evidence
6 introduced to suggest that the City had any anti-union animus and, in fact, the evidence to the
7 contrary was clear on this issue. The rank and file Police Officers Association reached a long-
8 term agreement with the City. The City values long-term agreements over shorter term ones, as
9 do most public agencies. The stability derived from a long-term agreement has significant value,
10 and as a result, garners greater enhancements from the City. This is standard throughout
11 California and the lack of retroactivity in the City's proposal was not intended to punish RBPOA-
12 MU.

13
14 Dated: February 11, 2014

LIEBERT CASSIDY WHITMORE

15
16 By:


Steven M. Berliner
Panel Member for the City of
Redondo Beach

1 HOWARD A. LIBERMAN, (State Bar No. 183634)
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5
6
7 FACTFINDING HEARING
8

9 In the Matter of the Impasse) Case No. LA-IM-147-M
10 Between)
11 THE REDONDO BEACH POLICE) BOARD MEMBER HOWARD A.
OFFICERS' ASSOCIATION-MANAGEMENT) LIBERMAN'S DISSENT TO
12 UNIT) FINDINGS, CONCLUSIONS, AND
13 and) RECOMMENDATIONS OF
14 THE CITY OF REDONDO BEACH) CHAIRMAN DAVID B. HART
15

16 I respectfully submit my dissent to the Findings, Conclusions and Recommendations of
17 Chairman David B. Hart as follows:

18 Applying the PERB Factfinding criteria identified by Chairman Hart, the Redondo Beach
19 Police Officer's Association-Management Unit ("Association"), the City's Last, Best, and Final
20 Proposal was inappropriate and not supported by the evidence introduced at Factfinding and
21 consequently, the Association members are entitled to the total extinguishment of the 6% salary
22 concessions which began on July 4, 2009.

23 1. Comparison of Wages, Hours and Conditions of Employment of the Association Members
24 with Comparable Public Agencies

25 The Association's salary survey of Southbay cities utilized the survey cities historically
26 used by the parties during negotiations. The Association's survey was reliable and established that
27 Redondo Beach Police Department Lieutenants and Captains were 23.7% and 19.3% respectively,
28 below the survey average. (Assoc. Exh. I)

1 2. Consumer Price Index/Cost of Living

2 Since 2007, the last date of a salary increase for members of the Association, the Consumer
3 Price Index (CPI) for the subject geographical area has increased 10.06%. (Assn. Exh. J)

4 3. Financial Ability of the City to Fund the Association's Proposal

5 Since FY 2009/2010, City revenues have steadily increased culminating in nearly five
6 million dollars in excess of budgeted revenues for FY 2012/2013. Cumulatively, the City's
7 General Fund balance increased approximately 7.5 million over the past five years from FY
8 2008/2009 to FY 2012/2013, while annual General Fund expenditures decreased by approximately
9 2 million dollars (Assn. Exh. G, p.3). According to the testimony of Assistant City Manager Peter
10 Grant, there is no inability of the City to pay the difference (\$40,347.00) between the City's Last
11 Best and Final Offer and the Association's proposal to resolve the impasse.

12 4. The City's Proposal Fails to Correct the Compensation between Ranks

13 Notwithstanding the undisputed goal of maintaining at least a 5% to 10% compensation
14 differential between the ranks of Police Lieutenant and Sergeants, the City's proposal will not
15 correct the existing overlap between the total compensation received by those respective ranks.

16
17 Respectfully submitted,

18
19 Date: 2/10/14

20 
21 _____
22 HOWARD A. LIBERMAN, Board Member
23
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