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August 15, 2014

FINDINGS AND RECOMMENDATIONS
PURSUANT TO
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between)	
City of Vacaville)	
Employer)	
and)	Collective Bargaining Impasse
Stationary Engineers Local 39)	Factfinding
Union)	PERB Case No: SF-IM-143-M

APPEARANCES:

For the Employer: Jack Hughes, Attorney
Liebert Cassidy Whitmore
153 Townsend Street, Suite 520
San Francisco, CA 94107

For the Union: Stewart Weinberg, Attorney
Weinberg Roger & Rosenfeld
1001 Marina Village Parkway, Suite 200
Alameda, CA 94501

FACTFINDING PANEL:

Appointed by the Employer: Dawn M. Del Biaggio, Human Resources Director
City of Vacaville

Appointed by the Union: Steve Crouch, District Representative
International Union of Operating Engineers
Stationary Local No. 39

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

STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND

Under amendments to the Meyers-Milias-Brown Act that went into effect on January 1, 2012, and as amended again on January 1, 2013, local government employers (cities, counties, and special districts) and unions in California have access to factfinding in the event they are unable to resolve contract negotiations. At the request of the exclusive representative, the parties are required to go through a factfinding process prior to the employer implementing a last, best and final offer. In accordance with regulations put in place by the California Public Employment Relations Board (PERB), the exclusive representative can request factfinding either after mediation has failed to produce agreement or following the passage of thirty days after impasse has been declared. Each party appoints a member of the factfinding panel. A neutral chairperson is selected by PERB unless the parties have mutually agreed on a neutral chairperson.

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

- 1) State and federal laws that are applicable to the employer
- 2) Local rules, regulations, or ordinances
- 3) Stipulations of the parties
- 4) The interests and welfare of the 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

International Union of Operating Engineers, Stationary Local No. 39, is the exclusive representative for a unit of miscellaneous employees of the City of Vacaville, California. There are approximately 90 members in the bargaining unit, working in the public works and utilities departments.

The City has six other represented bargaining units with collective bargaining agreements. All six units had agreements in place at the time of this factfinding proceeding. In addition, the City has two other non-represented groups – department heads and administrative management group – whose compensation is set by resolution of the City Council.

The parties have a collective bargaining agreement that expired on June 30, 2013. The parties conducted lengthy negotiations between February 2013 and April 2014, but agreement on a successor contract was not reached. The Union requested that the parties engage in a voluntary mediation process, but the City declined. On April 30, 2014, the parties notified PERB that the undersigned had been selected from a PERB-supplied list to be the chair of a factfinding panel in this matter pursuant to Government Code 3505. A hearing was set by mutual agreement on July 8, 2014.

The panel convened on that date in Vacaville and took on-the-record evidence and argument from both sides concerning the issues in dispute. The parties also requested that the neutral factfinder act as a mediator in assisting the parties in off-the-record discussions to attempt resolution of the matter. Accordingly, mediation was also conducted on that date. Mediation efforts proved unsuccessful. The parties then submitted their final proposals and written argument for the panel's consideration on July 23, 2014.

BACKGROUND TO THE DISPUTE

The City of Vacaville is located in Solano County about midway between San Francisco and the state capital Sacramento. It has a population of approximately 92,000. (7,800 of those are prisoners residing in a state medical penal facility). The city is home to many San Francisco commuters, but also has its own strong economic base. It is home to a large Genentech manufacturing facility, other biotech firms, and the famed Nut Tree retail complex. City government provides a full range of services to its residents and businesses, including police and fire services.

Representative classifications in the Local 39 unit include blue collar and technical employees such as equipment mechanics, environmental compliance inspectors, laboratory analysts, maintenance workers, traffic signal technicians, utility plant technicians, and wastewater plant operators.

The City, like nearly all governmental entities in the state, suffered a significant decline in revenue due to the economic recession. In 2007, the year before the decline commenced, the City’s revenue was approximately \$62 million. It dropped to a low of \$56 million in 2010 and 2011. Declines resulted from decline in sales tax revenues and property tax revenues. While sales tax recovered by 2012, property taxes have not yet recovered to their pre-recession highs. The City projects revenue to continue to increase over the next few years, to over \$73 million by 2019.

Revenues spiked to over \$69 million in 2013. The City provided documentation that most of the increase can be attributed to a one-time receipt of over \$7 million in redevelopment funds that resulted from the dissolution of the city’s redevelopment authority by state mandate. The City is concerned that the redevelopment money will be “clawed back” by the State. However, the City acknowledges that the law enabling this clawback is being challenged by “multiple parties.”

Since expenditures proved to be less elastic than revenues, fund reserves plunged during the lean years. In 2006, general fund reserve balances were 26% of annual operating expenditures. By 2012, they had fallen to 2.6%. The City projects that annual expenditures will climb to \$79 million by 2019. In May of 2011, the City Council adopted a policy on reserves in line with recommendations by the Government Officers’ Finance Association. The new policy was as follows:

The City shall strive to maintain a General Fund operating reserve in the range of two months (16%) to three months (25%) of General Fund operating expenditures, with the target being 20% of General Fund expenditures.

In the face of these economic and budgetary realities, the Union signed a series of concessionary agreements beginning in 2011. The following chart captures the concessions made by Local 39 and its members:

Beginning Date	Concession	Notes
7/1/09	Unit members to pay 1.5% of employer share of PERS retirement	Offset by 1.5% equity adjustment for entire unit
1/1/10	Unit members to pay additional 3% of employer share of PERS retirement for a total of 4.5%	Offset by 3% raise for entire unit

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2/1/11	Unit members to pay additional 6.59% of employer share of PERS retirement for a total of 11.09%	Ended 12/31/11
3/1/12	Unit members to pay 14.26% of employer share of PERS retirement	Ended 9/30/12 (percentage was higher than 11.09% due to lapse of two months)
10/1/12	Unit members to pay 11.09% of employer share of PERS retirement	Ended 6/30/13

In exchange for the reduction in take-home pay, the unit members received a total of 27 additional days of paid time off during the twenty nine month period between February 2011 and June 2013.

After the expiration of the most recent contract between the parties, the City sent a letter to the Union expressing the view that the most recently negotiated concessions (11.09% employee pickup of the employer’s share of PERS retirement) would continue until and unless modified by a successor MOU. The City cited the following clause from Appendix E in the CBA:

All terms and conditions not otherwise modified by this Tentative Agreement shall remain in effect through June 30, 2013, or until the parties complete the negotiations process for a successor MOU, whichever occurs later.

The Union responded by disagreeing with this point of view, insisting that the deductions cease, and threatening legal action if the City continued the deduction from unit members’ paychecks. The Union quoted from the following CBA language, also in Appendix E:

The City shall deduct 11.09% from each employee on a pre-tax basis as an employer PERS contribution. The deduction shall be effective January 1, 2013 – June 30, 2013. Employees continue to pay the 7% Employee portion toward PERS and 2% portion toward PARS.¹

In an email to the Union on July 23, 2013, the City relented and agreed to cease the deductions effective July 1, 2013. The City also informed the Union that it would no longer grant the paid time off provided for in the concessionary agreement. The email also warned the Union as follows:

¹ The employee paid 7% for the employee share of PERS and an additional 2% for PARS precedes the contract dates referenced in this background recital.

From the onset of the negotiations, the City has indicated that it needs fiscal year savings totaling \$809,780.38. The union's actions mean that its members will have to bear the annualized cost savings over a shorter duration. As you will recall, your members have been impacted by this before.²

In the current round of bargaining, the parties reached agreement on most issues, including tentative agreements on utility plant workweek, health and welfare, crane operator differential, and changes to the retirement plan consistent with the Public Employees' Pension Reform Act (PEPRA).

The parties exchanged proposals on ways to continue the concessionary wage rollbacks. The City expressed flexibility about whether the concessions would take the form of pension contributions or wage reductions. But the Employer remained firm on the total dollar amount of the concession needed. At one point, in January 2014, the Union submitted a proposal that included wage rollbacks. The City rejected it, and the Union withdrew the proposal. Going into the factfinding process, the parties remained far apart on the key issue of wage concessions and related issues of paid time off.

FACTS

As part of the March 2012 contract extension, and again in August 2012, the parties agreed that the City would conduct a total compensation survey for Local 39 benchmark positions. The data were to be used in preparation for the next round of bargaining. The City and the Union conferred on the agencies to be surveyed and what elements would be surveyed. The Union did not object to the methodology used or the comparable jurisdictions. A survey was completed at the end of 2013.

Prior to the factfinding hearing, both parties did additional surveying on their own. The City did an update of the previously agreed upon survey, dated June 26, 2014. This update included an increase of the City of Vacaville's total compensation due to the expiration of the employee payment of 11.09% of the employer PERS share. The Union did a separate survey of contract settlements in geographically proximate jurisdictions. Of the eleven jurisdictions surveyed by the Union, three are included in the previously agreed to selection of jurisdictions: City of Fairfield, City of Napa, and Solano County.

While the Union had not had an opportunity to review the updated City survey prior to the factfinding hearing, they did have an opportunity to review it throughout the remainder of the factfinding process. They expressed no disagreement with the information provided. In a spot check of the new data, the undersigned neutral chairperson found that the updated City survey and the Union's settlement survey are consistent in areas where they overlap. In fact, in one instance (City of Napa) the Union had no data

² This last sentence is apparently a reference to the period of March through September 2012, when unit members paid a higher percentage due to a lapse in payments in January and February of that year.

while the City's updated survey reflected an increase for surveyed classifications in that comparable jurisdiction (to the advantage of Local 39).

In sum, the chairperson finds the June 26, 2014 City survey to be the most reliable data for the purposes of analyzing the statutory factor of external comparability. Of the fourteen benchmark classifications surveyed, all but two classifications (Environmental Compliance Inspector II and Laboratory Analyst II) in the City of Vacaville are above the median. The one farthest below the median is the Lab Analyst, at 2.54% below the median. Of those same classes, five are below the mean.³ Those five are the two noted above plus wastewater plant operator II, utility plant control system technician II and utility plant mechanic II. The Vacaville position farthest below the mean is the wastewater operator at 3.41% below mean.

The rest of the Vacaville positions are above both the median and mean. The highest above median is cross connection specialist at 16.8% above the median. Equipment mechanic II is 13.20% above the median, maintenance worker II (streets) is 10.65% above the median and utility plant electrician II is 9.66% above median. The maintenance worker II (streets) is the highest above the mean (average) at 13.21% above mean, followed by the cross connection specialist at 11.74% above mean, the equipment mechanic II at 10.93% above the mean and the maintenance worker II (parks) at 10.18% above the mean.

Both parties presented consumer price index data responsive to the statutory factor. The Employer's data showed an average 2.3% annual increase since 2007. The Union's showed a 2.34% annual increase over that same time period.

It was not in dispute that every bargaining unit in the City has agreed to concessions comparable to that proposed by the City to Local 39 in the current round of negotiations. Each of these units has an agreement that expires June 30, 2015 and includes either pension contributions or salary rollbacks, additional paid time off, and revenue triggers comparable to that being proposed to the Union. In each case, the concessions continue at the end of the agreement, unless negotiated otherwise or unless certain revenue targets are reached.

³ The mean, or average, can be different than the median due to exceptionally high or exceptionally low numbers in the survey. These outliers tend to skew the average in one direction or the other. In this case, the inclusion of a few "high-rollers" has raised the mean in some cases.

The City's contract with Local 39 currently has no provisions requiring the Employer to fill vacant positions, nor any restrictions on the right of the Employer to leave positions vacant or eliminate positions. The contract does require the City to seek the Union's input prior to laying off unit members.

In the City's proposal, outlined below, the City proposes to reduce the amount of the concession contingent on a specified revenue measurement at the close of the fiscal year 2013-2014. As of the factfinding hearing date of July 8, 2014, the final revenue figures had not been determined. However, the City's chief financial officer Jeremy Craig stated that the City was likely to hit the \$1 million target and unlikely to hit the \$4 million target.

POSITIONS OF THE PARTIES

The Employer

The City put forward its April 1, 2014 last best and final offer as its proposal for settlement of outstanding issues:

Term: Through June 30, 2015

Salary: Reduce salary by an amount sufficient to achieve \$1,537,049 from the bargaining unit between the first pay period of the salary rollback to and including the payroll period starting June 1, 2015⁴

Revenue Trigger: The City agrees to modify the salary / pension contribution as specified on January 1, 2015 if one of the following occurs:

If 2013-14 non-Measure M revenues, less increases in non-discretionary expenditures (limited to CalPERS, PARS and Healthcare), exceed 2012-13 revenues by \$1,094,307, then the City will increase wages by 1.95%

If 2013-14 non-Measure M revenues, less increases in non-discretionary expenditures (limited to CalPERS, PARS and Healthcare), exceed 2012-13 revenues by \$4,377,228, then the City will end the wage reduction

If 2013-14 non-Measure M revenues, less increases in non-discretionary expenditures (limited to CalPERS, PARS and Healthcare), exceed 2012-13 revenues by an amount between \$1,094,307 and \$4,377,228, then the City will increase wages proportionately

⁴ In a clarification submitted by the City after the factfinding hearing, the City estimates the percentage salary decrease, if the concessions were paid beginning September 1, 2014 and ending June 30, 2015, would be 20.26%.

Paid Time Off: Effective upon agreement, 144 hours shall be added to the PTO bank

Effective January 1, 2015, 48 hours shall be added to the PTO bank

All PTO hours must be used by June 30, 2015

Prior Tentative Agreements: Included

The City argues that its proposal is necessary because it must comply with its own reserve policy. The City points out that the one-time revenue realized in 2013-14 cannot be relied upon to alleviate long term structural deficits, and may be taken back by the State.

The City contends that it has experienced large cost increases in the areas of pension and retiree medical benefits. There are also basic infrastructure needs that can no longer be neglected.

The City acknowledges that it restored the pay for Local 39 members in July 2013. However, the City has explained that it wanted the concessions to continue but did not want litigation regarding that issue.

Finally, the City argues that internal comparability is critical under “other factors traditionally taken into consideration.” Every other bargaining unit, as well as non-represented employees, has made the same concession sought by the Employer.

The Union

The Union put forward the following proposal to the factfinding panel:

Term: Through June 30, 2015

Salary: Status quo

Local 39 positions: All current funded Local 39 vacant positions as of July 1, 2014, will remain unfilled through June 30, 2015.

Prior Tentative Agreements: Included

The Union argues that not filling the Local 39 vacant positions will save the Employer \$1 million.

The Union contends that the City's financial situation has improved significantly and the concession proposed by the Employer is unnecessary. Local 39 does not need to follow the pattern of all of the other bargaining units. The Union argues that its survey shows a trend toward raises, not pay cuts.

PANEL CHAIRPERSON FINDINGS

Taking into account all of the statutory criteria referenced above, the following are the panel chairperson's findings in regard to the specific issues in dispute.

The panel chairperson finds that both Employer and Union proposals lack consistency with the statutory factors.

The Union's proposal falls short primarily due to its disregard for internal comparability. While comparison with the compensation of other City employees is not a factor explicitly called out in the statutory factors, it becomes relevant through factors four, seven and eight. An examination of the other City bargaining units' contract settlements over the time period in question is highly relevant to the issues before the panel. These other settlements shed light on what the city can afford to pay and what the City Council's spending priorities are. And these contracts illustrate that the City has adopted a consistent but flexible labor relations approach in this bargaining round.

In the instant case, the overwhelming unrefuted evidence is that all six of the other bargaining unit representatives of the City of Vacaville have agreed to major concessions. In each case, the package includes bargaining concessions through June 30, 2015 equivalent to the same percentage concession the City is proposing to Local 39. This includes the police and fire unions, organizations that traditionally have "most favored nation" status in local government labor relations. Local 39 is the only bargaining unit representative that has not agreed to concessions past the date of July 1, 2013. If the City were to allow Local 39 members not to make the same sacrifices as the other city employees, the balance of labor relations would be disrupted.

The Union's offer to allow the City to leave Local 39 positions vacant as a way of generating savings is not a collective bargaining concession. The fact is that the City already reserves the right to fill or not fill positions. It also retains the right to eliminate positions and lay off unit members. The Employer does not need agreement from the Union to do that.

On the other hand, the City's proposal is also not a measured response to the specific situation it faces with Local 39. The City proposes to condense two years' worth of concessions into ten months. Due to the sheer size of the sacrifice being asked, this creates an untenable short-term pay reduction for Local 39's members.

The City has argued that the Union is to blame for the delays in resolving the contract, placing the City in a position where it needs to recover a large savings from unit members' paychecks in a short period of time. However, the bargaining history is not clear that the responsibility for delays can be solely placed at the doorstep of the Union. In July, 2013, the City relented to the Union's demand that the concessions expire after receiving an email from the Union. As a result, wages were prematurely restored to the pre-2009 level.

Should the City implement its proposal as submitted to the factfinding panel, it would result in a pay cut of over 20% for a period from September 1, 2014 through June 30, 2015. It would be an even higher percentage if the implementation were to be delayed for any reason. This is a far greater pay cut than any other City employee has experienced. This solution is not something that the panel chairperson can recommend.

The other major deficit in the City's proposal is that it lacks a pathway forward toward an augmented compensation package for unit members commensurate with the improving economy and sounder City financial position. It is not completely clear from the City's proposal that the concessions would expire on June 30, 2015 and that the pay would be restored to status quo ante. And, while the proposal does have a revenue trigger that could result in a reduction in the concessions, this trigger only addresses one side of the ledger sheet. The City has made certain conservative assumptions about its expenditures that may or may not pan out.

In this light, the City's proposal is deficient when measured against the factors of external comparability and consumer price index. While the Local 39 benchmark classifications are for the most part competitive with those in other jurisdictions at the present, this would reverse were a pay cut to be implemented. Moreover, the Union's point that other jurisdictions are beginning to give post-recession raises rings true.

PANEL RECOMMENDATIONS⁵

⁵ These recommendations are supported by a majority of the panel; namely, the neutral chairperson and the Employer's panel member. They are, in essence, a compromise constructed in order to produce a set of

The wage concessions proposed by the City are appropriate, given the strong pattern of internal comparability. However, it would be better if Local 39 members had more time to meet the concessions target. The settlement should also include a mechanism to address the fact that a longer agreement will stretch into a new fiscal year with a potentially changed budgetary picture.

In order to create a more reasonable time frame for Local 39 members to pay the same concessions amount as other City employees, the contract should be extended. Extending the agreement would allow the concession to be spread out over a longer time period.

Accordingly, the majority of the panel recommends the following:

The City's last, best and final offer, with the following modifications:

1. Extend the term of agreement beyond June 30, 2015.
2. Include a mechanism to allow the parties to go back to the table as of a certain date, or if the budgetary picture changes, to negotiate salary adjustments.
3. Achieve the proposed salary savings during the time period between the implementation of the agreement through and including a pay period to be agreed upon by the parties.
4. Negotiate a sunset date or explore annual triggers for reduction of the concessions should the City's finances improve.
5. Extend the usage of PTO through the agreed upon term.

recommendations from the panel, not just from the panel chairperson. The panel chairperson's recommendation is more specific than what the panel majority is prepared to recommend. Specifically, the undersigned chairperson recommends a term of agreement through June 30, 2016. He recommends a salary reopener for the 2015 – 2016 year. Also, he recommends that the concessions expire explicitly on June 30, 2016. The temporary wage reduction resulting from this recommendation would be approximately 9.21%.

Paul D. Roose

Paul D. Roose, Neutral Chairperson

Date: August 15, 2014

/s/ Steve Crouch_____

Steve Crouch, Union-appointed Panel Member

Date: August 15, 2014

I concur with the Recommendations

I dissent from the Recommendations (see attached explanation)

/s/ Dawn M. Del Biaggio_____

Dawn M. Del Biaggio, Employer-appointed Panel Member

Date: August 15, 2014

I concur with the Recommendations

I dissent from the Recommendations (see attached explanation)



Stationary Engineers, Local 39

INTERNATIONAL UNION OF OPERATING ENGINEERS AFL-CIO

JERRY KALMAR
BUSINESS MANAGER-SECRETARY

Union's Dissent

August 1, 2014

I respectfully dissent from Mr. Roose's opinion. Mr. Roose (the neutral) violated his own ground rule in rendering this recommendation. At the start of the fact finding session the first rule he established for the proceeding was that he would base his recommendation solely on either the union's or the employer's proposal. Had the parties known that he was going to deviate from his own self-imposed rule, there is a strong possibility that the parties would have constructed their proposals differently.

In Mr. Roose's draft report he has elected to submit his own solution to the impasse by proposing a two year agreement which neither side advocated for nor desires. Both sides proposed a one year agreement, which would allow the parties to return to the table early next year when the economic direction of the City will be clearer. The Union rejects the City's claim that what appears to be a healthy trend is merely a reflection of one-time only funds from the state that may be "clawed back". The neutral's justification for a two year agreement is premised upon a misconception of his role. He is apparently motivated by a desire to have Local 39 members "share the pain" experienced by members of other bargaining units. No working person believes that the standard for workers should be the lowest common denominator. However, after admitting that the Legislature did not include comparison with other bargaining units of the employer as a relevant factor in negotiations, he makes the legally unsupportable statement that such a comparison becomes relevant in factors 4, 7, and 8. Mr. Roose is wrong in his assessment of the factors. Factor 4 is the "interests and welfare of the public and the financial ability of the public agency"; factor 7 is the overall compensation of the employees in the pertinent bargaining unit including benefits; and factor 8 is "any other facts normally or traditionally taken into consideration in making findings and recommendations". While some might say that comparison of wages and benefits with other bargaining units of the employer could fit under factor 8, common sense would indicate that that is not the case. It appears the Legislature gave each bargaining unit the ability to stand alone in negotiations, otherwise it would not have permitted multiple bargaining units for a public agency and there would have been single "wall to wall" units in public employment.

I am most disappointed that the neutral did not identify for the parties what the exact percentage of the wage reduction contained in the employer's last, best, and final offer (LBFO) is, as the employer's LBFO does not specifically say. Not only did he fail to do that, he also failed to state what the exact amount is in his recommendation. Therefore, this report with respect to this matter is incomplete.

Sincerely,

Steve Crouch
District Manager

SC:lt:IUOE#39/afl-cio