FF-723-M

In the Matter of the Impasse Between	)	
	)	
CITY OF DESERT HOT SPRINGS	)	FACTFINDING PANEL'S
	)	FINDINGS, CONCLUSIONS
- and -	)	AND RECOMMENDATIONS
	)	
DESERT HOT SPRINGS POLICE OFFICERS ASSOCIATION	)	PERB Case No. LA-IM-153-M
	)	

Composition of the Factfinding Panel:

Neutral Chairman:

ROBERT BERGESON, Arbitrator/Factfinder
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Association Panel Member:

RALPH ROYDS, President
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Presenters/Participants in the Factfinding Process:

For the City:

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Liebert Cassidy Whitmore

AMY AGUER, Admin. Services Director

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KENNETH PUN, Managing Partner
The Pun Group Accountants & Advisors

For the Association:

WENDELL PHILLIPS, General Counsel

MIKE VALENTICH, President

JOSE GUERRERO, Board Member

CORINN LINDSEY, Treasurer

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BACKGROUND

Desert Hot Springs (DHS or City) was incorporated in 1963. Although its approximate 24 square miles were home to just 16,582 residents in 2000, today the City has about 27,000 citizens. Notwithstanding such growth, as California cities go, Desert Hot Springs is relatively small. Regardless, its problems are huge. Among them are a high crime rate and looming fiscal insolvency. Thus, few factfindings involve circumstances as dire as exist here. Indeed, it is no exaggeration to say that the very survival of Desert Hot Springs Police Department (DHSPD) is at stake, at least insofar as what accountants term a "going concern."

The evidence presented to this factfinding panel (Panel) suggests a number of factors have been responsible for the City's plight.

First of all, DHS' budget has often been only marginally balanced. For example, the City came close to filing for bankruptcy a number of years ago as the result of losing a lawsuit which resulted in a judgment of $2.1 million. Then in 2012, the City opened a Health and Wellness (H&W) Center. Although that facility provides some excellent services to the community in terms of a Boys and Girls Club, the Borrego Coommunity Healthcare Foundation and what is referred to as the Desert Recreation District, as discussed below, the cost of operation in comparison to the modest income generated by user fees for such services has been difficult for the City to maintain.

Confusingly, about a year ago, the City paid for an outside audit of its finances. Notwithstanding the ongoing cost of operating the H&W Center, no mention was made in the audit of that burden on the City's general fund. Perhaps that was because during the 2012-2013 fiscal year, the City obtained $700,000 from the federal government for running the H&W Center. However, that is one-time money whereas the below-articulated difference between the cost of operation and user fees acquired will be ongoing. In contrast to the aforementioned audit, a well-articulated June 2013 report (Report) by Urban Futures, Inc. (UFI), with which the City also contracted, was replete with bad news.

The UFI Report projected that by the end of fiscal year 2013-2014, the City would face a budget deficit of at least $2 million. No evidence was presented to suggest that but for cuts since

made, that prognostication was overstated.

Among the problems identified in the Report are that DHS "is primarily a bedroom community." By that was meant that the tax base enjoyed by peer cities includes a big box store like Costco or Home Depot or a "flagship" automotive dealership which brings much needed sales tax revenue whereas DHS is bereft of such a tax producer. Moreover, said UFI, the City has little in the way of economic development programs in the works, a topic which is addressed in more depth below. Nevertheless, as also discussed in the Report and discussed below, "opportunities" exist for revenue enhancement through tax increases.

Also identified in the Report is that notwithstanding its fiscal problems, the City's sales tax rate remains 7.75%, or identical to that of other municipalities not facing a financial emergency and lower than the 8.75% rate charged in Cathedral City and Palm Springs. For reasons not entirely clear from the record provided to the Panel, the City Council has opposed the raising of the sales tax rate as a means of reducing the deficit.

With regard to public safety, the UFI Report states that "Given . . . our experience with other Coachella Valley cities, the percent of [the] General Fund allocated to Public Safety is higher in DHS than the other cities." On the other side of the coin, the Panel would point out that larger cities are able to capture economies of scale and it is beyond dispute that the City has violent crime problems which may not exist in comparison jurisidictions.

Prior to 1987, the City contracted with Riverside County Sheriff's Office (RCSO) for law enforcement. What can be assumed to have been community dissatisfaction with that arrangement led to advent of DHSPD and with its creation, response times and the number of violent crimes per capita have decreased. Accordingly, it is the desire of both the City and the employee organization which represents DHSPD police officers and sergeants, Desert Hot Springs Police Officers Association (POA), that although a means of keeping the City out of bankruptcy would be abolition of DHSPD and a return to contracting with RCSO, the primary focus of this impasse resolution procedure should be to find a way to mitigate DHSPD recruitment and retention problems while simultaneously keeping the City fiscally solvent.

Apparently the City and the POA have never before reached an impasse in negotiations over a memorandum of understanding (MOU). Indeed, prior to the present bargaining cycle, negotiations

have been a rather perfunctory process, with a former City manager and POA representatives sitting down for a few meetings and arriving at an agreement.

Bob Adams was appointed interim city manager on September 2, 2013 for a period of six months. According to Adams, upon his arrival in the City, his predecessor informed him that a tentative agreement had been reached with the POA on or about June 25, 2013 which "was not very costly," an assessment not borne out by the evidence provided to this Panel.[1]

Whether the POA later asked that the tentative agreement not be brought to the City Council for approval is at issue but it is undisputed that it never was. Soon after assuming the reins of city manager, Adams opined that the City could not afford the salary increases set forth in the tentative agreement and Adams therefore understandably never placed the tentative agreement on the Council's agenda for consideration.

On November 19, the City Council declared a fiscal emergency. The POA has initiated litigation contesting the lawfulness of that action and subsequent City conduct and urges this Panel to weigh in on those issues. However, we are clearly without authority over such matters.

Continuing with the relevant timeline, on December 5, Adams met with Wendell Phillips, legal counsel for the POA, and expressed the opinion that in the absence of something approximating 25% in concessions from the POA, the City would need to declare bankruptcy. A week or so later, Adams and Management Analyst Jeanine Plute informed the POA that a 22.5% cut to salaries and simultaneous reductions in "incentives" such as educational achievement stipends and leave accruals, including combining sick leave and vacation into "annual leave," would be needed. At its meeting of December 19, the City Council approved Adams' recommendations and the relevant cuts

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Although the Panel makes no express findings because the scope of its authority does not extend to that area, for the benefit of members of the public who may read this report, the following should be said. If verbal reports given the Panel are accurate, among the many problems with the City's pre-2013/2014 budget has been a tendency to use categorical funds for general fund purposes. The Panel wishes to make clear there is no evidence whatsoever that any of the participants in this proceeding were culpable of such budgeting tactics. Unfortunately, however, those participants have been left to pick up the pieces and try to right the proverbial ship.

were formally imposed commencing with the pay period which commenced on December 28.[2]

The parties have not agreed on the exact amount in compensation that the imposed cuts have cost members of the POA bargaining unit. However, the City has presented nothing to rebut the POA's calculations that the relevant cuts have cost unit members total compensation ranging from a low of 23.85% to a high of 44.11%, with a mean decrease of 37.65%.

In addition to such reductions a number of the 34 budgeted police officer and sergeant positions have since gone unfilled and the 24%-44% reduction in total compensation for unit members has placed DHSPD in a state of flux from a personnel standpoint. Although the City has indicated that DHSPD has recently managed to recruit one new officer, the Panel takes the POA at its word that the considerable reductions in income have not only resulted in several officers leaving for comparable positions elsewhere, others are seriously contemplating leaving City employment.

As a result of such problems, on February 18, 2014, the state Public Employment Relations Board appointed Robert Bergeson to serve as impartial chairman of the instant Panel. Daniel Cassidy of the law firm Liebert Cassidy Whitmore was appointed by the City as its Panel member and the POA selected Ralph Royds of Public Labor Advisors, Inc. to serve as its Panel member.[3]

STATUTORY CRITERIA PER GOVERNMENT CODE § 3505.4(d)

> In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:
>
> (1) State and federal laws that are applicable to the employer.
>
> (2) Local rules, regulations, or ordinances.

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In addition to cuts previously identified to the POA, the City expanded the salary schedule from five steps to nine steps, thereby increasing by a few years the time needed for police officers and sergeants to achieve the maximum scheduled salary.

As an additional means of immediate salary savings the City also combined layoffs and unfilling of vacant positions such that about two-thirds of miscellaneous employees not represented by Teamsters Local 911 are now nonexistent. The latter employees were spared at least temporarily by existence of an MOU which does not expire until July 1, 2014.

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References to the "Panel" hereinafter refer to all three members except to the extent identified in any concurring or dissenting opinion attached hereto.

(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 good 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.

FINDINGS AND CONCLUSIONS

The City's Financial Situation

As of March 25, 2014, the City had $194,777 in its general fund. While that might suggest the City is not as bad off as prognosticated in the UFI Report, the aforementioned cuts to the City's payroll are in large part the reason for that. Further contributing to keeping the City in the black has been the one-time federal grant of $700,000 to run the H&W Center, the City's ability to obtain 10% reductions in contracts from many of the vendors with which it contracts for services and a modification of the contract the City has for trash disposal, which the City agreed to extend for another decade with the quid pro quo being a one-time payment of $1 million from the disposal company. However helpful such measures have been, all are mere stop-gap measures which cannot be expected to continue. Since the Panel has been tasked with helping the City maintain a balanced budget going forward, the question becomes what measures might enable that to occur.

Can the compensation cuts imposed upon police officers and sergeants be perpetuated? The answer is they must be viewed as merely temporary. Even in the event the City should prevail in defending the lawsuit filed by the POA and the contested reductions in salary and benefits be deemed lawful in light of the circumstances, such cuts have already resulted in a significant reduction in the

number of officers employed by DHSPD. Since the community wishes not to return to police services provided by the Riverside County Sheriff's Office but rather to retain its police department, prudent steps should be taken to find revenue to do so.

Police Officer Salaries

The UFI Report states that "It appears that the salary structure for Police Officers in DHS is commensurate with that in surrounding communities." Of course commensurate means simply similar and not superior to and that statement was made before the drastic cuts of December 28 were imposed. Indeed, a careful review of the evidence shows that even at the time made, DHSPD officers at the highest step of the salary schedule were earning slightly less than their peers in comparable agencies. No evidence was presented that officers at any of the six comparable agencies have, since the UFI Report, received any reduction in total compensation and extrapolating from the Report, it is therefore clear that personnel represented by the POA are now vastly underpaid in relation to their peers.

At the inception of fiscal year 2013-2014, Indio police officers were earning a top step salary of $90,156 per year supplemented by an additional 5% in incentive and longevity pay, for a total compensation of $94,664 exclusive of overtime pay. In Palm Springs, the highest scheduled straight time pay was $81,672, supplemented by 10% in incentive and longevity pay for a total compensation of $89,839. In Beaumont, the figures were $81,540 plus an additional 10%, for a total of $89,694 annually. For Riverside County deputy sheriffs, the figures were $76,512, plus an additional 11% in incentive and longevity pay, for a total of $84,928. Desert Hot Springs was merely fifth, with totals of $69,996 plus an apparent average of an additional 17.5% for a total of $73,496. Only Banning, at $68,664 plus incentive and longevity pay totally $600 per month for total compensation of $75,864 and Cathedral City, at $69,996 plus 5% for a total of $73,496 were lower than DHS. Thus, the mean total income of the six jurisdictions believed by Urban Futures, Inc. to be comparable to DHS was $84,747. Accordingly, even before the December 28 cuts, DHSPD officers were earning a total compensation of $1,360 per year less than the mean of comparable agencies.

Even assuming they have not since received any increase, the conclusion to be drawn is that DHSPD officers are now earning, on average, 1% (the difference between their former compensation and the mean elsewhere) plus 37.65% (the salary cut of 22.5% for all personnel plus the average loss

in incentive pay) for a total of almost 40% less than their geographically proximate peers. In combination with the large retention problems DHSPD has been having over the last six months, it is apparent that the maximum must be done to mitigate that disparity and restore the cuts made. That is obvious. What is far less clear is where money can be found to accomplish that.

RECOMMENDATIONS

At its meeting of March 4, 2014, the City Council voted to place a parcel tax on the June 3, 2014 ballot. It was anticipated that had the parcel tax been approved, it would have generated additional revenue of about $3.8 million per year beginning January 1, 2015. However, the initiative came just short of reaching the two-thirds support required under Proposition 13. Just how informed the electorate was about the ramifications of a "No" vote on that initiative cannot be said. However, this report is not merely for the benefit of the captioned parties. As evidenced by the requirement in Government Code § 3505.5 subsection (a), it was the intent of the state Legislature that reports of this nature be made available to members of the public for their review. Consistent with that directive, the following comments are in order.

The Panel recognizes that Desert Hot Springs is a less affluent community than most on the south side of Interstate 10. Accordingly, it is beyond dispute that the citizens of DHS are in large part financially constrained to keep taxes within moderate amounts. Nevertheless, no community can effectively function independently of the county structure without an adequate tax base and the lion's share of the evidence presented to the Panel indicates that DHS is suffering from such an infirmity. As will be seen, in combination with questionable spending, the very existence of the DHSPD as a viable law enforcement entity is in doubt, to say nothing of the very existence of DHS as an incorporated city.

The Panel wishes to stress that partially alleviating the reductions imposed on December 28, 2013 is far more than simply a matter of equity. Indeed, if the City were to make a conscientious effort to mitigate those cuts it might be seen as a means of holding together a satisfactory core of sworn personnel superior to the skeletal staffing by RCSO which presumably led to creation of DHSPD in the first place.

A cost saving option which has been advocated by certain members of the POA as a means

of reducing the drastic cuts made on December 28 is closure of the H&W Center. Although the Panel cannot go so far as to recommend something that drastic, the H&W Center can be seen as one means of immediately addressing the current problem.

As mentioned, however well intentioned creation of that facility was, and it is without a doubt beneficial to the community, the record makes clear that operation of the H&W Center's current panoply of services at the modest user fees charged is unsustainable. In response to a request from the Panel, the City provided information which shows that during the 2012-2013 fiscal year, the cost of operating the center was about $991,000. Meanwhile, revenues to fund it totaled only $811,000. Accordingly, although the H&W Center required a general fund subsidy of "only" $180,000, that figure is quite misleading insofar as $700,000 came from the federal government. Thus, revenue derived from the center itself was in the amount of only $111,000, or just a fraction of the total cost of operation.

Perhaps a disparity of almost $900,000 per year would not be problematic in some cities of less than 30,000 which are privileged to house a big box store or a large automotive dealership. If such a commercial enterprise were located on City land abutting Interstate 10 so residents of other communities would avail themselves of its wares, DHS would not be in the shape it is in. However, a small city without the sales tax revenue garnered from such a facility cannot afford to take a significant amount from its general fund in order to subsidize recreational facilities. As an example, more than $320,000 of the cost of operation of the H&W Center has gone into funding the Boys & Girls Club which pays the City merely $1 per year in rent. In contrast, among the reasons shuttering the H&W Center seems unduly harsh and unwise to the Panel is the presence therein of the medical clinic run by the Borrego Community Healthcare Foundation, which includes two medical examination rooms and four dental stations which help disadvantaged residents obtain important services which might otherwise be unavailable to them. Nevertheless, the health foundation similarly leases space for just $1 per year as is also the case with the recreation district.

What should be done to lessen the financial burden of operation of the H&W Center? The Panel has no specific recommendation but believes the City must seriously consider increasing the service fee for its use. Considering that membership in a typical YMCA costs about as much per month as what is charged by the H&W Center for an entire year, doubling or tripling the user fee

would not seem inappropriate. Alternatively, there is the option of some decrease in the amount of services to be provided. Or since the Boys & Girls Club makes available recreational opportunities to children between the ages of 8 and 18 which are typically provided by public school districts, perhaps Palm Springs Unified School District, which includes the DHS community, could provide some financial assistance, or at least donate some personnel.

The longer the H&W Center remains a financial drain on the City's general fund, the greater the deficit will become and the prospect of municipal bankruptcy should not be taken lightly. As we write, only Stockton and San Bernardino of California's nearly 500 cities are in bankruptcy. Not only can the fact of bankruptcy be psychologically damaging to a community, filing for bankruptcy acts as an additional anchor holding down a city financially since bankruptcy requires retention of lawyers to see an agency through the process. Moreover, as evident from San Bernardino, legal costs can be further aggravated by the need to defend lawsuits filed by such creditors as CalPERS.

Accordingly, it is the parties' mutual interest to resolve this dispute so as to obviate the need for further litigation, to say nothing of additional animosity which continuation of the impasse could well create. The Panel is aware that the POA actively supported the parcel tax. No such evidence was presented as to the extent of support from the Council but insofar as the Council did not similarly support that means of alleviating the dire financial situation in which the City finds itself, to put it as delicately as possible, that approach appears to have been self serving and not in the best interests of the community as a whole.

With regard to those members of the POA bargaining unit who have not left the City, as the POA argues, it was not such unit members who determined to stretch the budget to the breaking point in prior years. But that said, however onerous cuts to police officer compensation have been, those reductions at least allowed them continued employment, an option which has been rendered unavailable to many other City workers.

Failure of the parcel tax sadly necessitates recommending that the POA concede to the cuts it believes were unlawfully imposed. To do otherwise has the potential of a Pyrrhic victory for police officers in that granting them a significant court-ordered back pay award could necessitate abolition of the DHSPD in favor of the City's contracting with Riverside County Sheriff's Office. That said, the POA should not be required to accept the imposed burdensome cuts without a quid pro quo.

To repeat, the parcel tax failed to win approval by mere percentage points. It is therefore within the realm of possibility that placing a similar initiative on the ballot would have the opposite outcome. In some manner not entirely clear from the record provided to the Panel, it is apparent that an initiative exclusively addressing law enforcement has previously been approved in Desert Hot Springs. To the Panel, then, a commitment by the City Council to place such an initiative on the November ballot and to support it would be justification for an agreement by the POA to accept, at least through the end of the 2014 calendar year, the cuts which became effective December 28, 2013 and to withdraw the pending lawsuit against the City.

Perhaps the reader might wonder why a recommendation is made which would solely deal with law enforcement. The answer is two-fold. First, this proceeding addresses solely the POA and not other employees of DHS. Second, so doing would not preclude the Council for taking additional steps to address ongoing problems elsewhere, such as increasing the sales tax to the level in Cathedral City and Palm Springs, for example. Or increasing user fees for the Health & Welfare Center. Because to continue to balance the budget by cutting services without raising taxes will eventually result in a skeletal City government which after half a century would be a shame.

To conclude, both parties to this factfinding process must realize the difficulty their counterpart is in. If they do and work together with this report as a basis for settlement of their bargaining dispute, the Panel is optimistic that the City of Desert Hot Springs can avoid both bankruptcy and the need to return to police patrols being provided by the Riverside Sheriff's Office rather than Desert Springs Police Department.

The concurring opinions of Panel Members Royds and Cassidy follow this page.

Robert Bergeson, Chairman — Date 7/15/14

Daniel Cassidy, City Panel Member — Date 7/17/14

Ralph Royds, POA Panel Member — Date 7/14/14

City of Desert Hot Springs and Desert Hot Springs Police Officers Association
PERB Case No. LA-IM-153-M

Desert Hot Springs' Police Officers Association Concurrence to the Factfinding Panel's Findings, Conclusions and Recommendations

Desert Hot Springs' Police Officers Association Representative to the Factfinding Panel
Ralph Royds

As the Desert Hot Springs' Police Officers Association ("POA") representative to the Factfinding Panel, I concur in whole, to the Factfinding Panel's Findings, Conclusions and Recommendations in the above referenced matter and add the following facts in support thereof:

I. Emergency

1. There was no "emergency." Long term City fiscal mismanagement certainly, sudden catastrophic event, no. The City declared a "fiscal emergency" but there is no legal authority permitting such a declaration in either the City Municipal Code or statutory law, case law or PERB case citations. City Municipal Code Article I Section 2.48.010 et al comports with court decisions on what constitutes an emergency - imminent, sudden, unexpected disaster threatening extreme peril to persons and property requiring a response *that is temporary in nature and not continuous*. The City, according to statements made by City officials during this fact-finding, made permanent compensation reductions to alleviate budgetary shortfalls with no intent to file for bankruptcy. A former City Manager intentionally, also according to statements made by City officials to this fact-finding panel, kept the City's true financial position from the City Council. A March 25, 2014 decision by PERB in *SEIU Local 721 v. Riverside County*, PERB Decision No. 2360-M also citing *Sonoma County, infra,* as precedent, that economic necessity does not excuse the employer from the duty to bargain in good faith and declares such a tactic is a per se violation of the MMBA -"As for the County's claim of economic urgency, we recognize that it, and virtually every other public agency in California was under severe economic pressure during the period of time encompassed by these negotiations. **It has long been noted that such economic exigency provides no justification for suspending the duty to bargain in good faith.** (San Francisco Community College District (1979) PERB Decision No. 105; San Mateo CCD, supra, PERB Decision No. 94; Pleasant Valley School District (1985) PERB Decision No. 488. See also, Sonoma County Organization of Public Employees v. County of Sonoma (1979) 23 Cal.3d 296, 303-314.)" Simply put, the facts show the City violated state law under the MMBA duty to bargain in good faith by presenting one take-it-or-leave-it draconian concession proposal to the POA, walked away from the table, gave no notice of impasse, and then imposed takeaways. This panel, however, has no authority to decide Unfair Labor Practice issues such as the one presented here.

2. The City failed to follow its own impasse resolution procedures. No impasse was ever declared, and from the circumstances, no "constructive impasse" could have been inferred. The City's own Employee Resolution Ordinance (ERO) requires a

declaration of impasse after good faith negotiations have failed. The City never provided the required notice under its own local rules to the POA that negotiations have failed and impasse would be implemented. There is no factual dispute on this issue. There is a full body of case law and PERB decisions addressing the requirement to follow local ERO to complete the impasse procedure. Again, this panel has no authority to decide issues related to an Unfair Labor Practice.

3. The City's "one and done" meeting followed by imposed terms and conditions was a fact confirmed by City statements made during this fact-finding process. No "Last, Best Offer" was ever made or inferred. Only two proposals were made, one by the City and a counter proposal by the POA. City then went to Council and imposed the reductions.

4. The City's statements made during this fact-finding confirmed the imposed terms and conditions included provisions that were never previously proposed by the City, much less negotiated. The 9 Step Pay Table imposed by the City was never proposed by the City at the bargaining table.

5. The City's CPA Report for the closing FY 2011-2012 was in possession of the City Council when the "tentative offer" for a 07-01-2013 to 06-30-2015 successor MOU was presented to (by former CM Rick Daniels) and ratified by the POA.

6. Former ICM (Interim City Manager) Bob Adams admitted during Fact Finding that no other "offer" of any kind was presented to the POA between the time the City was notified by Valentich that the City's "offer" presented by Daniels had been ratified by the POA on 07-25-2013 until 12-12-2013; that no mention of impasse or unilateral implementation was ever made to the POA prior to the evening of 12-19-2013, when the Council unilaterally implemented.

7. There was no dispute by the City that the announced 22.5% salary cuts averaged over 37%, with at least two officers receiving over 44% cuts in salary.

8. Amy Aguer, the City's Financial Analyst, stated in Fact Finding that, given the $1M payment which will now be received from DVD (the City's the waste management company), the City will end FY 2013-2014 approximately $1.7M "in the black." That amount is more than enough to restore the cuts to POA members.

9. Amy Aguer also stated the City recently hired 2 police officers and was actively recruiting for 11 vacancies. She also stated some of those 11 vacancies were also existing when the City declared its 'fiscal emergency" in November 2013. She stated the City used 18 officers as the critical number to maintain - currently at 21.

10. The $1 million franchise fee from DVD was not disclosed to Urban Futures Budgetary Analysis for the June 2013 Update or at the time the City Council imposed wage reductions on the POA. Former C.M. Bob Adams disclosed during Fact Finding that contract negotiations with DVD were ongoing regarding receipt of

the $1 million franchise fee *at the same time* the City imposed wage reductions on the POA declaring a fiscal emergency.

11. The POA was the only represented group targeted by the City for contract concessions - Fire contract was not renegotiated or were any other groups.

12. The City did not cite any law or precedent that allows imposition based on potential budget shortfall with no intent of filing or having actually filed for municipal bankruptcy. The City confirmed during this fact finding the City did not file for bankruptcy and thus did not prepare the required financial disclosures in preparation for such a filing.

II. Post Hearing Update

1. The POA unilaterally endorsed the parcel tax measure that was voted on June 3rd. The POA took a public position to endorse the measure and produced its own literature supporting the measure and took an active role in promoting its passage to the voters of Desert Hot Springs. There was no known corresponding support from the City on the measure. It would appear from the lack of public support by the City and Council they did not fully support the measure. Why not?

Recommendation

I concur with the fact-finding panel findings. It was clear the current City officials providing statements to the Panel were honest, forthright and well intentioned. It was also evident, based upon the information provided to the Panel, that prior actions by former City officials (and perhaps as yet unknown current officials) who had a duty to provide material information to the City Council arguably failed to do so. The City did not make any claim during this fact-finding the POA engaged in any wrongdoing prior to, during, or after the City imposed its pay cuts and new working conditions which were the basis for this fact-finding process.

Considering the facts presented, the positions of the parties, the economic realities of the City, the conduct the City engaged in by making the unilateral wage cuts, and the response since made by the POA to support the parcel tax measure before the voters in order to keep the City's effective law enforcement a local matter, the recommendations made by the Panel Chair are both reasonable and prudent.

City of Desert Hot Springs and Desert Hot Springs Police Officers Association
PERB Case No. LA-IM-153-M
City of Desert Hot Springs' Concurring Opinion to the Factfinding Panel's

Findings, Conclusions and Recommendations and Dissent to the Concurring Opinion of POA Panel Member Ralph Royds

City of Desert Hot Springs' Representative to the Factfinding Panel
Daniel Cassidy

As the City of Desert Hot Springs' ("City") representative to the Factfinding Panel, I concur in whole to the Factfinding Panel's Findings, Conclusions and Recommendations in the above referenced matter, but note the need for clarification on the following issues:

I. Findings by Factfinding Panel

A. The City's Financial Situation

While I agree with the Factfinding Panel's finding that the City's financial situation is dire, I disagree with the panel's assumptions regarding the utilization of the Riverside County Sheriff's Office ("RCSO") as a possible option to address the City's dire financial situation. The panel finds that the City's "community wishes not to return to police services" provided by the RCSO. There was no evidence presented to the panel, beyond speculation, to support this finding. The panel states that RCSO previously provided deficient services to the City when it last contracted with the City prior to 1987; again, there was no evidence presented on this issue. The quality of services that RCSO provided to the City over 27 years ago does not necessarily accurately depict the quality of services that RCSO can provide the City today. Indeed, RCSO currently provides quality police services to numerous contract cities and communities in the City's geographic proximity, e.g. Indian Wells, Palm Desert, La Quinta, Coachella and Rancho Mirage. Therefore, I believe that the panel's assumptions regarding the implications of the retention of RCSO are unsupported.

B. Recommendations by Factfinding Panel

While I agree with the Panel's ultimate recommendation that the POA concede to the imposed cuts, I believe the Panel also incorrectly assumes that the City and the Council did not as actively support the parcel tax as the POA. The City and the Council proposed the parcel tax in the first place, and voted at its meeting of March 4, 2014 to place the parcel tax on the June 3 ballot. The POA did not decide to support the parcel tax until more than two months later, on or about May 8, 2014, and less than one month before the election. The Panel notes that no evidence was presented regarding Council support, but the POA provided such evidence over a month after the factfinding was concluded. The Panel's comments as to the Council's motives are therefore unsupported and inappropriate.

II. Concurring Opinion by the DHSPOA Representative to Factfinding Panel

I disagree in whole, with the concurring opinion submitted by the DHSPOA representative to the Factfinding Panel. The concurring opinion includes numerous unsupported allegations that are not appropriate for consideration by the Panel. For example, the concurring opinion erroneously alleges that the City violated the Meyers-Milias-Brown Act (MMBA), specifically the duty to bargain in good faith, and that it failed to follow its own impasse procedures. These issues are the subject of pending litigation between the City and the DHSPOA, and are not relevant to the Panel's findings. The Panel correctly did not address these issues in the Factfinding Panel's Findings, Conclusions and Recommendations.

The concurring opinion also erroneously claims that the City has not cited any precedent or law to support its actions in response to its financial emergency. This claim is disingenuous. As noted above, the Factfinding Panel was not tasked to make legal conclusions on whether the parties bargained in good faith under the MMBA. Moreover, the City has, on numerous occasions, cited precedent and law to support its actions in the pending litigation with the DHSPOA. Indeed, the Superior Court, County of Riverside, sided with the City in denying the DHSPOA's request for a preliminary injunction to enjoin the City from unilaterally implementing changes in terms and conditions of employment for DHSPOA members. The Court found the City faces the possibility of disincorporation and bankruptcy if it is forced to reverse the actions it took in response to its financial emergency.

It should be noted that there are only three groups of employees at the City – the POA, the Teamsters and unrepresented employees. The emergency cuts were implemented in December 2013 as to the POA (with an expired contract) and the unrepresented employees; Teamsters was under a current contract.

Finally, the concurring opinion makes a highly speculative assertion that current and former City staff members did not provide the City Council with all material information when the Council took action in response to the City's financial emergency. There is no evidence, beyond speculation, to support this contention. Moreover, the various statements by current and former City staff members during the Factfinding, cited in the concurring opinion, do not support this contention. Rather, these statements demonstrate that the City's financial situation is tenuous and fluid, and that its staff members are open and transparent regarding any changes to the situation.

In conclusion, I respectfully disagree in whole, with the concurring opinion submitted by the DHSPOA representative to the Factfinding Panel.