

CITY OF EL CENTRO  
AND  
TEAMSTERS LOCAL 542  
(Case No. LA-IM-171-M)

FR-732-M

FINDINGS OF FACT AND  
RECOMMENDED TERMS OF SETTLEMENT

December 26, 2014

FACTFINDING PANEL

Impartial Chairperson	David G. Miller
Union Representative	Murtaza H. Baxamusa
Employer Representative	Ryan D. Childers

REPRESENTATIVES

For the Employer	Frances E. Rogers Liebert Cassidy Whitmore
For the Union	Fern M. Steiner Smith Steiner Vanderpool & Wax

HEARING DATE: December 5, 2014  
El Centro, California

BACKGROUND

The parties to the impasse and, therefore, this procedure are the City of El Centro (“City” or “Employer”) and the Teamsters Local 542 (“Union”). The parties did not present any background stipulations but I propose that the following facts are true:

1. The City is a public agency within the meaning of Government Code section 3501, subdivision © of the Meyers-Milias-Brown Act. El

Centro has a population of about 44,000 and is located within Imperial County.

2. The Union is a recognized employee organization within the meaning of Government Code section 3501, subdivision (b) of the Meyers-Milias-Brown Act and has been formally acknowledged by the City as the exclusive bargaining representative for employees in the bargaining unit.
3. The Union declared impasse by letter dated September 26, 2014.
4. The parties complied with applicable laws and regulations regarding selection of the Factfinding panel and are timely and properly before the panel. The issues which remain before the Factfinding Panel are as follows:
  - a. Tuition Reimbursement and
  - b. Effective date for wage increase [The percentage amount of increase is not at issue].
5. The City and the Union have been parties to a series of one-year MOUs the most recent of which contained an expiration date of June 30, 2014; this impasse resulted from the parties' negotiations for a successor agreement.
6. The City currently employs approximately 245 employees and has eight (8) bargaining units including the Union's bargaining unit.
7. The Union's bargaining unit consists of approximately forty (40) employees in the following classifications: Animal Control Officer, Building Maintenance Mechanic I and II, Community Service Officer, Chief Mechanic, Equipment Mechanic I and II, Facility Maintenance Mechanic I, Park Maintenance Worker I, II and Lead, Police Identification Technician, Parking Deputy, Public Safety Dispatcher I

and II, Sewer Maintenance Worker I and II, Water/Sewer Maintenance Worker I, II and Lead.

8. Pursuant to Government Code section 3505.4, subdivision (d), the panel is required to consider, weigh and be guided by all the following:

- (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.

## ISSUES

At the outset of the Hearing the parties presented the Panel with a number of issues. However, through post-hearing negotiations, discussions and mediation all but two of those issues were resolved either by agreement or withdrawal. The remaining issues are Tuition Reimbursement and Effective Date for Wage Increase.

### TUITION REIMBURSEMENT

Currently employees are eligible for up to \$1000 annually in reimbursement of expenses for tuition and textbooks. Reimbursement is available for employees "...who, in their sole discretion, want to broaden their knowledge by pursuing academic training and higher education on their off-duty hours..." (MOU section 3.12.B). There is no requirement that the courses be job-related. In the past three years only nine (9) of the bargaining unit's forty (40) employees have taken courses which qualified for reimbursement.

The Union has proposed that the tuition reimbursement amount be increased from \$1000 to \$1200 per year and that "other related expenses" be added to the MOU language as expenses to be reimbursed. The City countered by offering to add "parking" as a reimbursable expense but rejected any increase in the total reimbursement amount. Apparently at one time the Teamsters' MOU called for up to \$1200 reimbursement but the amount was lowered to

\$1000 in previous negotiations recognizing the City's fiscal constraints.

In support of its proposal the Union argued that the yearly tuition costs at Imperial Valley College are rising based on the projected two-year cost to earn a degree; the Imperial Valley College cost sheet showed that for California residents the costs for a Class of 3 credit hours is \$108 and for 4 credit hours is \$144; the trend for hourly fees was not presented however it is fair to assume that they rise with the increase in tuition costs. The Union also cited to the Wastewater Treatment Plant MOU which provides tuition reimbursement up to \$1250

The City presented the following facts in support of rejecting the increase: None of the nine (9) unit employees receiving reimbursement in the past three years reached the maximum amount of \$1000. Six other bargaining units are at the \$1000 tuition reimbursement level. Tuition reimbursement figures from five nearby jurisdictions show the following: the City of Calexico ended tuition reimbursement for new hires in January 2006 but provides additional pay for degrees (5% for AA, 10% for BA), the City of Brawley provides up to \$250 and the units must be job related; the County of Imperial provides \$1500 for units which must be job related, the City of Indio provides \$2000 for units which must be job related; the City of Coachella provides a maximum of \$5000 but pays only 50% for non-job related units and pays 100% for job related units.

## RECOMMENDATION FOR TUITION REIMBURSEMENT

Thus, for non-job related units the City's \$1000 level compares favorably with other jurisdictions [only the City of Coachella reimburses at a higher level than El Centro for non-job related units] and compares favorably internally with all but one of the eight bargaining units.

The Chair recommends that there be no change in the current provisions for tuition reimbursement except to add reimbursement for parking at the location where the units are being earned.

The Chair also recommends that for future negotiations the parties consider an increase to apply only to job related units so that reimbursement may exceed \$1000 up to an agreed upon maximum for job related units.

## EFFECTIVE DATE FOR WAGE INCREASE

The parties had agreed upon what amounts to a four percent (4%) wage increase comprised of a two percent (2%) across the board raise and a two percent (2%) merit increase for individual unit employees who earn an evaluation rating of Satisfactory or above; any merit increase will be retroactive to the employee's anniversary date. This is the first time in six years that the City agreed to fund merit increases.

At issue is the effective date for the across-the-board 2% wage increase. The Union proposed that the increase be retroactive to July 1, 2014 [Note: With full retroactivity however the earliest effective

date would be July 8, 2014-- the beginning of the first payroll period of the 2014-2015 fiscal year]. The City proposes that the increase be effective upon ratification which, as of this date, will not occur until after the parties reach complete agreement.

The Union has consistently proposed full retroactivity; the City has consistently proposed that the raise be effective "...July 8, 2014 or the beginning of the first pay period following adoption of this MOU by City Council, whichever is later."

The City's proposal was formulated, in part, as an incentive for the Union to settle early and to avoid prolonged negotiations. Obviously, the proposal failed to achieve its purpose. Nonetheless the proposal is consistent with those presented to the seven other bargaining units. There is no evidence that the City informed the Union that the issue of retroactivity remained negotiable; indeed, in light of the City Council's policy against retroactivity it is unlikely that the issue was negotiable.

According to testimony, the bargaining units which settled prior to July 8, 2014 received their increases effective July 8. One bargaining unit which settled on July 8 received their increase effective the following pay period. Fire and Police units settled in September and December respectively and their increases were effective the pay periods following ratification, not retroactively.

The City's position is consistent with the preceding year's Teamsters' negotiations where there was no retroactivity and the wage increase was effective November 19, 2013.

There is no evidence that the Union did not negotiate professionally and in a timely manner; nor did it engage in concerted

activities. The bargaining was confined to the bargaining table so that City operations were not threatened, let alone disrupted, by the City-Teamster negotiating process.

RECOMMENDATION FOR EFFECTIVE DATE  
OF WAGE INCREASE

Facts and fairness are not always synonymous. The facts support the City's position. Its treatment of other bargaining units this year and over preceding years and its treatment of the Union are all consistent with its practice of not providing retroactive across-the-board increases. The City is a bit disingenuous when it takes a stance against prolonged negotiations but, as here, benefits from them: A December effective date means that the 2% wage increase in reality costs the City approximately 1% in 2014-2015 because it's being paid only one-half the year.

This is not "final offer" arbitration and the Chair is not compelled to adopt the Union's position of full retroactivity nor the City's position of retroactivity upon ratification which now would occur, if at all, at an uncertain future date. Negotiations for this MOU are, in effect, complete; the parties participated in good faith in the factfinding process, prepared and made professional presentations and through post-hearing efforts resolved all but the two issues discussed herein. There is truly not much left to negotiate.

The Chair makes the following recommendation: The wage increase shall be effective the first payroll period in December 2014; negotiations for a successor agreement shall begin no later than March

1, 2015. This would allow more opportunity timely to negotiate a full year's raise if offered.

## GENERAL

The above recommendations include all prior tentative agreements reached by the parties prior to December 5 as well as those reached in post-hearing negotiations on December 5.

Dated: December 26, 2014

Respectfully Submitted

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David G. Miller, Chair

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Murtaza Baxamusa  
Union Representative  
Concur ( ); Dissent ( )  
Concur in part; dissent in part ( x )  
(x) See Attached

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Ryan Childers  
City Representative  
Concur ( ); Dissent ( )  
Concur in part; dissent  
in part ( x )  
(x) See Attached

1, 2015. This would allow more opportunity timely to negotiate a full year's raise if offered.

GENERAL

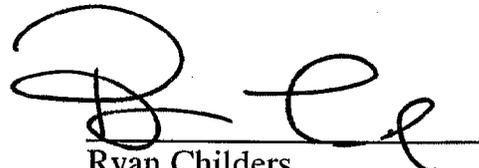
The above recommendations include all prior tentative agreements reached by the parties prior to December 5 as well as those reached in post-hearing negotiations on December 5.

Dated: December 15, 2014

Respectfully Submitted

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David G. Miller, Chair

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Murtaza Baxamusa  
Union Representative  
Concur ( ); Dissent ( )  
Concur in part; dissent in part ( )

  
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Ryan Childers  
City Representative  
Concur ( ); Dissent ( )  
Concur in part; dissent  
in part

1, 2015. This would allow more opportunity timely to negotiate a full year's raise if offered.

GENERAL

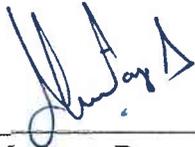
The above recommendations include all prior tentative agreements reached by the parties prior to December 5 as well as those reached in post-hearing negotiations on December 5.

Dated: December 15, 2014

Respectfully Submitted

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David G. Miller, Chair



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Murtaza Baxamusa  
Union Representative  
Concur ( ); Dissent ( )  
Concur in part; dissent in part (4)

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Ryan Childers  
City Representative  
Concur ( ); Dissent ( )  
Concur in part; dissent  
in part ( )

PARTIAL DISSENT ON Case No. LA-IM-171-M

I agree on first issue, regarding Tuition Reimbursement. On the second issue, the Chair states that "Fact and fairness are not always synonymous". I wish to add facts to the record that tilt the scale towards fairness.

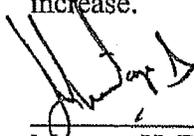
There is no written or adopted City Council Policy prohibiting retroactivity of wage increase for City of El Centro employees. To the extent that an implied directive by the City Council against COLA retroactivity has been proposed, it is to exert a "bargaining penalty" for negotiations beyond a City's self-imposed deadline. This is a negotiation strategy with no anticipated fiscal impact, since the budget had already been approved by the City Council with the full 2% COLA increase for the entire fiscal year.

As the majority seems to agree, the deal is not fair. Our role in recommending terms of settlement is to consider the facts. Here are the facts with regard to the "bargaining penalty":

- (1) No other union reached an impasse. The City's past practices and precedents with unions need to be understood within the context of the circumstances (such as the economic recession) and tradeoffs within those individual agreements. This is a unique situation that necessitated the union to declare impasse.
- (2) No evidence suggests that either side deliberately delayed the process. To the contrary, there were many issues that the bargaining process genuinely resolved. Both sides benefited from the time and consideration given to each other's issues. That is the genesis of good faith bargaining. Yet simultaneously, the time that either the City or the union took in this process cost the rank-and-file members a portion of their pay raises.
- (3) City's deadline was unrealistic given the complexity of the issues involved and the short timeline for meet-and-confer. The processing cycle involved City Council meeting schedules, since they had to be consulted on every position.
- (4) Union initially asked for a 3-year agreement (instead of the City-preferred 1-year agreement), which in retrospect, would have reduced the proportional impact of the "bargaining penalty" by a third. It may have also justified an extended negotiating schedule.
- (5) The fact that the merit pay increases have been given retroactively to employees even after a late MOU, implies an inconsistency in the City's position about a "policy" against retroactivity.

For these reasons, the punitive action in reducing the pay raise by about half (during the term of this agreement) by the City is unjustified. A mitigating circumstance in this case would be to extend the COLA increase for 3 years, so that it would not be an issue in future bargaining.

Therefore I respectfully dissent on the recommendation for the effective date of the wage increase.



Murtaza H. Baxamusa, PhD., AICP  
Union representative

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FACT FINDING PURSUANT TO ASSEMBLY BILL 646

IN RE THE MATTER OF:  
TEAMSTERS UNION LOCAL 542  
AND  
CITY OF EL CENTRO

PERB CASE: LA-IM-171-M  
CONCURRENCE AND PARTIAL  
DISSENT

The undersigned sat as City panel member in a fact finding procedure between the Teamsters Union Local 542 (“Teamsters”) and the City of El Centro (“City”) held on December 5, 2014. The other members of the panel were David G. Miller (“the Chair”) and Murtaza H. Baxamusa. Mr. Miller sat as chair of the panel, having been so designated by the Public Employment Relations Board (PERB.)

Mr. Miller issued his recommendations pursuant to Government Code section 3505.5 on December 15, 2014. The undersigned concurs with Mr. Miller’s recommendations with the following exceptions and therefore dissents as follows.

**1. Effective Date for Wage Increase**

The Chair recommends that effective date of the agreed upon wage increase be retroactive to the first payroll period in December of 2014. The Chair further recommended that negotiations for future agreements commence no later than March 1<sup>st</sup>.

I agree with the Chair’s recommendation that the wage increase is appropriately

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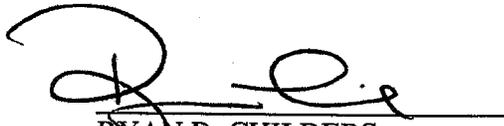
retroactive to the first payroll period in December, however, this retroactivity should be contingent upon the Teamsters reaching a tentative agreement with the City on or before January 9, 2015. If the City is forced to implement its last, best, and final offer pursuant to Government Code §3505.7, then making the wage increase retroactive would be inconsistent with the City's policy regarding retroactivity of wage increases, thereby treating the Teamsters better than the City's other bargaining units.

I also agree with the intent of the Chair's recommendation that negotiations begin no later than March 1<sup>st</sup>, as this would allow more time to reach an agreement prior to the retroactivity deadline. However, given the real world application of such a hard and fast deadline, I recommend that the parties agree to make reasonable and good faith efforts to begin negotiations by March 1<sup>st</sup>, rather than simply setting a deadline.

**2. Conclusion**

While I concur with nearly all of the Chair's recommendations, for the aforementioned reasons, I cannot concur with the specific recommendations regarding the effective date of the wage increase, unless the specific contingencies set forth above are also adopted.

DATED: December 22, 2014

  
RYAN D. CHILDERS,  
City Designated Member of Fact Finding Panel