

## IN THE MATTER OF THE FACTFINDING BETWEEN

<p><b>CITY OF RIO VISTA</b></p> <p><b>PUBLIC EMPLOYER</b></p> <p><b>AND</b></p> <p><b>OPERATING ENGINEERS LOCAL #3</b></p> <p><b>EMPLOYEE ORGANIZATION</b></p>	<p><b>RECOMMENDATIONS OF THE FACTFINDING PANEL</b></p> <p><b>PERB CASE NO. SF-IM-147-E</b></p> <p><b>RONALD HOH, Neutral Factfinding Panel Chairperson</b></p> <p><b>JIM NORDEN, City Panel Member</b></p> <p><b>MIKE EGGNER, Union Panel Member</b></p>
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**APPEARANCES**For the City:

Kristianne Seargeant, Attorney

For the Union:

Darren Semore, Business Representative

**FINDINGS OF FACT****AUTHORITY**

This proceeding arises pursuant to the provisions of the Meyers-Milias-Brown Act, California Government Code 3500, et seq. (hereinafter Act). The City of Rio Vista (hereinafter City) and Operating Engineers Local #3 (hereinafter Union) have been unable to agree upon the terms of a new collective bargaining agreement for the 2015 fiscal year and potentially beyond through their negotiations and mediation. Pursuant to Section 3504.5 of the Act, they therefore jointly chose the undersigned factfinding panel to make "findings of fact and recommended terms of settlement" in accordance with Section 3505.4 of the Act.

A hearing was held before the factfinding panel on December 17, 2013 in Rio Vista, California and was completed on that same date. All parties appeared at the hearing and had full

opportunity to present evidence and argument in support of their respective positions.

Subsequent to the completion of the hearing itself on December 17, the parties through the factfinding panel engaged in an extended mediation session lasting approximately five hours. They were, however, unable to reach full voluntary contract agreement through that process. Thereafter on that date, the factfinding panel met in executive session, discussed recommendations which might be agreeable to all parties, and asked the neutral factfinder to formulate a draft decision containing recommendations which might be acceptable to all parties.

On January 22, 2015 the neutral factfinder sent to both partisan factfinding panel members a draft of his proposed Report and Recommendations, asking the partisan factfinding panel members to either concur or dissent with those recommendations, ideally by January 29. Subsequently, both partisan factfinding panel members dissented from the neutral factfinder's original recommendations, and instead each supported a finding more in line with the position the party represented by that panel member.

As a result, the factfinding panel met again in Rio Vista on February 9, 2015. During that meeting and absent voluntary contract agreement among all panel members, each of those panel members presented a recommendation by which the panel could achieve a factfinding panel majority recommendation. This report is therefore issued in accordance with the panel's discussion during the original mediation and both of the panel executive sessions.

### **STATUTORY CRITERIA**

Section 3505.4(d) of the Act concerns the criteria to be utilized by the factfinding panel in making its recommendations. It provides as follows:

In arriving at their findings and recommendations, the factfinding panel 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.
- (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 fact, 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.

## **BACKGROUND**

The City is located in eastern Solano County, California on the Sacramento River in that River's Delta region. Its current population is 7,736 persons. The Union represents eight employees in the City's Miscellaneous Employees Unit, all of whom work in the City's Public Works Department (hereinafter Department). The parties current collective bargaining agreement (hereinafter contract), extended to cover the time necessary to negotiate the agreement at issue here, originally covered the 2014 fiscal year, with a scheduled end date of July 1, 2014.

The City has a total of five City employee bargaining units covering a total of 38 City employees. The other units with which the City has collective bargaining agreements are police, fire, professional and clerical, and mid-management. City representatives stated at the hearing that the City was not yet at impasse with any other City bargaining unit.

The parties began negotiations over the contract at issue here in early March, 2014. After several negotiations sessions going through the summer and early fall months, the parties were unable to reach agreement in those negotiations and mediation.

In its proposal to the panel here, the Union proposes that all elements of the current contract be extended for the fiscal 2015 year, and that the duration of the contract be that one year.

The City's last proposal in negotiations – described therein as its "last, best and final offer" – is as follows:

1. Two year contract duration through July 1, 2016
2. Employee pays 1% of the contribution to the California Public Employee Retirement System (CalPERS) for each year.
3. Employee pays 1.25% of their FICA and Medicare cost each year.
4. Employee pays 5% of their healthcare costs for each year, for a total percentage of 10% in the second year.
5. The City would retain the ability to seek out alternatives to CalPERS for employee healthcare coverage.

The "Status Quo" Union position here in each of these economic areas is as follows:

1. One year contract duration for fiscal year 2015.
2. Retirement: The City pays the employee's share of CalPERS contribution.
3. FICA and Medicare: The City pays the employee's share of FICA and Medicare contributions.
4. Healthcare: The City pays 100% of the premium costs for each employee and his/her dependents.
5. Alternative Coverage: No position stated at the hearing, but the parties previously agreed to meet on or after June 4, 2013 on the issue of alternative benefit providers for health, vision, dental and life insurance that would reduce City costs.

With regard to the statutory criteria contained in Section 3505.4(d) of the Act, the parties agreed at the hearing that the City has the financial ability to fund the proposal of the Union here under Section 3505.4(d)(4) of that Act. The City's arguments under Section 3505.4(d) instead

focused upon the factors contained in Sections 3505.4(d)(5) concerning comparability, and 3505.4(d)(7) concerning overall compensation. Neither the City nor the Union made any arguments regarding the other statutory criteria set forth in that Section.

With regard to the comparability criterion set forth in Section 3505.4(d)(5) of the Act, the City proposed a comparability group consisting of five relatively small California cities, which it argued were comparable to the City here based primarily upon population, but also to some degree upon their location when compared to the City. That group and its populations are as follows:

City	Population
Clayton	11,700
Dixon	18,963
Galt	24,472
Pismo Beach	7,655
Yreka	7,765
Rio Vista	7,736

The Union did not propose a comparability group which it claimed was appropriate under Section 3505.4(d)(5) of the Act.

## **POSITIONS OF THE PARTIES**

### **THE CITY**

The City supports its proposals before the factfinding panel here with the following arguments:

1. The external comparability group proposed by the City is appropriate under the statute because the City's chosen comparators have comparable size, budgets and geographic locations. The wage data for that group shows that City employees in this unit have wage levels either very similar to or slightly above the averages in that group when comparable job classifications are examined. In the area of benefit costs paid, however, no other comparability city

pays 100% of both retirement and medical benefits as does the City here. All of the comparable cities place a dollar figure or percentage cap upon the employer's monthly medical insurance contributions; and three of the other four comparable cities require employees to pay a percentage of the employer's and/or employee's contribution for employee retirement. That comparability data clearly supports the City's proposal that employees pay a percentage share of both medical and retirement benefit costs.

2. The City's budget for fiscal year 2015 contains a General Fund budget shortfall of \$547,400 of expenditures over available revenues. Under the City's proposal for this unit, a General Fund savings of \$3,237.31 for fiscal 2015 and \$9,927.83 for fiscal 2016 would be realized, part of the projected \$109,800 savings in City cost for employee benefits by fiscal 2016 under the City's proposal. These savings would significantly impact the structural deficit in the budget currently caused in large part by the City's 100% payment of those benefits. The Union's "status quo" proposal does not represent any of the necessary cost savings.

3. The City recognizes that it may not under the law unilaterally implement a change to the employee's contribution for retirement costs until January 1, 2018. However, both the comparability data and the structural problem with the City budget largely attributable to the City's 100% contributions for all employee benefits support a recommendation in this area of multiple years of contract coverage, consistent with the City's proposal.

4. Although it is true as the Union argues that this bargaining unit would under the City's proposal be the only City unit with employee contributions in these areas, this unit is the first of the five City units to reach impasse; the other units will receive the same or similar proposals in this area in negotiations. The City must be mindful of the entirety of its labor costs in order to assure that there is an ability to pay across the board.

5. While the Union places great emphasis upon the relative health of the City's Enterprise Funds relating to Water Services and Airport, those surpluses by law cannot be used for General Fund expenses such as those involved here. They will instead be used largely to fund necessary capital improvements, including water infrastructure improvements.

6. The City understands that its proposed phase-in of employee contributions for these employee benefits makes it necessary to limit the immediate impact upon employees. Even the City's proposal here would produce a General Fund savings, if adopted for all City units, of only \$150,000, and other budget areas would need to be cut in order to fully eliminate the structural budget problem and bring the budget into balance.

#### THE UNION

The Union makes the following arguments in support of its proposal that the "Status Quo" of the current contract remain for the 2015 fiscal year.

1. The City can only impose upon the Union a one year "last, best and final offer" under Government Code Section 3505.7. Additionally, the City is prohibited by law from unilaterally requiring that employees pay a share of their CalPERS benefit before January 1, 2018 under Government Code Section 20516.5(c). The panel's recommendation, therefore, can be for only one year and may not include that employees will share in paying a portion of their CalPERS retirement benefits.

2. The City passed a tax Measure "O" to raise taxes by ½% to assist with the budget deficit. Rather than reducing the deficit, the City used the added dollars to hire a police officer, and obtained a grant through 2015 to pay for three additional firefighters – all contrary to use of that revenue to address the structural budget deficit matter. When the grant expires in 2015, the City will be required to pay those additional salaries from the General Fund – a requirement that will cause an increase in the structural deficit. The Union proposal in negotiations, that the City reduce

staffing levels to those in existence before Measure "O", was rejected by the City. It is thus clear that the existence of a structural budget deficit is not a legitimate basis for the City's proposals here concerning employee benefit contributions.

3. City witnesses admitted at the hearing that as of the December, 2014 City Council meeting, property tax revenues will be greater than projected in the City's evidence here. The degree of any "structural deficit" will thus be less than that claimed by the City.

4. The evidence shows that City wage rates, as shown in a local newspaper article concerning a City police officer leaving City employment for higher pay at Solano County, are as much as \$40,000 less than amounts paid by nearby employers for employees working in similar jobs and having similar years of service. The take-home pay cuts contained in the City's proposal here create greater employee retention problems than the already high rate of employees leaving the City for higher paying jobs.

5. This bargaining unit constitutes only 11% of General Fund costs. Therefore, even the 9% wage increase received in 3% increments by bargaining unit employees over eighteen months ending July 1, 2014 had a minimum impact upon the General Fund, where the claimed "structural budget deficit" exists.

6. The City's proposed comparability group not only includes cities with which the City does not compete for employees, but also fails to show whether employees of those employers received a pay increase to compensate them for paying portions of their health insurance and CalPERS retirement costs. The Union's phase-in proposal in negotiations of paying 7% of the CalPERS costs in exchange for a 5% wage increase was rejected by the City.

## **DISCUSSION**

### **A. THE RECOMMENDED CONTRACT TERM**

Initially in this case, the parties disagree concerning the power of the factfinding panel to

make a recommendation relating to the length of contract under Section 3504.5 of the Act. In this area, the Union cites Section 3505.7 of the Act for the proposition that the factfinding panel may not make a recommendation covering more than one year, and Government Code Section 20516.5(c) for the proposition that the panel's recommendation here cannot include any portion of employee payment toward retirement costs. The City, by virtue of its two year "last, best, and final offer," believes that the panel has the authority to make a contract recommendation covering more than one year, and for an employee contribution toward retirement costs.

Section 3505.7 of the Act provides as follows:

After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a memorandum of understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization of the right each year to meet and confer on matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

A careful reading of the above statutory provision makes clear to the neutral factfinder that the panel is not restricted to making "recommended terms of settlement" covering a period of only one year, and that it may make a recommendation providing that employees pay a share of their retirement costs. While the above provision gives the employee organization "...the right each year to meet and confer on matters within the scope of representation (emphasis added)," that right clearly refers to a public agency's possible implementation of its "last, best, and final offer," and not to any recommendation of the factfinding panel. That provision prohibits implementation of a "memorandum of understanding" – the potential voluntary contract agreement which is the goal of this factfinding process and the recommendations here. In addition, that potential implementation of the City's "last, best, and final offer" may only occur "...after any applicable mediation and factfinding procedures have been exhausted" and "...after the factfinders' written findings of fact

and recommended terms of settlement have been submitted to the parties" – another reference which clearly distinguishes between this procedure and any subsequent final offer implementation.

In view of the fact that nearly eight seven months of fiscal year 2015 will have already expired by the time the recommendations here are submitted to the parties' governing bodies, the panel majority believes that the best interests of the parties are not served by a panel recommendation that would expire on the June 30, 2015 end of the fiscal year; and that such a limitation would require the parties virtually immediately to begin negotiations over a new contract for the 2016 fiscal year, which begins in slightly more than four months on July 1, 2015. Moreover, all of the proposals of both parties made during the mediation portion of this process subsequent to the December 17 factfinding hearing were for a contract duration covering a period ending June 30, 2016.

Based upon the above, it is clear that the Act does not limit the recommendations of the factfinding panel to the one year period of fiscal year 2015. Instead, that statute allows, and the best interests of the parties are served by, a panel recommendation of a contract through the June 30, 2016 end of the 2016 fiscal year. In addition, and for the same reasons, this factfinding panel is not precluded from making a non-binding recommendation relating to employee payment of a portion of their retirement costs.

#### B. THE PANEL MAJORITY'S RECOMMENDATION

As indicated above, Section 3505.4(d) contains the criteria upon which the factfinding panel is to make its recommendations, or more specifically, the criteria which the panel "...shall consider, weigh, and be guided by..." in making those recommendations. The evidence before the panel is limited to information related only to the criteria contained in Section 3505.4(d), Subsections(5) and (7), and therefore the panel's recommendation will be limited to those criteria and to the Section 3505.4(d)(8) criterion described below – all of which are largely based upon the statutory

comparability criteria. In addition, the parties agree that "the financial ability (to pay) of the (City)" is not at issue here, and that the City therefore has the ability to finance both the proposals of each of them and the panel's recommendation here.

Turning then to that evidence and those statutory criteria, the panel chairperson, in past interest cases such as this both in California and under other public sector interest laws, has clearly indicated his view that the statutory comparability criterion is best met by a showing of comparable wages and benefits in similar-sized public employers with which the involved employer competes for employees. Such a local labor market emphasis, in my judgment, gives the statutory comparability criteria real meaning because, as a practical matter, the City here recruits potential employees from both its Solano County location and other counties and cities surrounding the City, and generally must pay competitive wage and benefit amounts in order to do so. In my view, while similar-sized far away cities do, as argued by the City, have some comparability value because they provide a similar level of service and face budget pressures similar to those of the City here, the above market based view of comparability involves those elements plus the realities of competing for quality employees with similar sized nearby cities.

Therefore in my view, while both nearby Galt and nearby Dixon are clearly comparable to the City, and while the limited data provided concerning the City of Clayton in adjacent Contra Costa County is also comparable under the above discussion, neither Yreka nor Pismo Beach provide anywhere near the salient comparability evidence contained in wage or benefit rates for the other three nearby cities. Both Yreka and Pismo Beach are more than 280 miles in distance from the City, and are virtually in all cases not cities with which the City competes for quality employees. In the absence of any other comparability data, the cities of Dixon, Galt and to a lesser

extent Clayton provide particularly pertinent comparability data.<sup>1</sup>

What the comparability data does show is that the City, in contrast to all of the claimed comparable cities in that group, is the only one which pays 100% of both the employee and dependent health insurance costs, and 100% of the employee's retirement contribution. Indeed, only one of those comparable employers – Clayton – pays 100% of either the retirement or the health insurance costs, compared to the City's payment of 100% of the cost of both retirement and employee/dependent health insurance costs. Clayton also pays considerably less in health insurance dollars when compared to the City, in paying less than 60% of the dependent health insurance coverage contribution. Moreover, in the experience of the neutral factfinder in virtually all of his interest cases within the past few years, municipal employees have agreed in their contracts to pay a portion of employee/dependent health insurance and/or to make a contribution to the employee's retirement costs, although in most such cases the involved municipality has provided some level of wage increase to at least minimally cushion the blow of employees being required to pay portions of those costs in many cases for the first time. In such circumstances, it is clear to the panel majority that payment of some portion of retirement and/or the employee and dependent health insurance costs is supported by both the comparability data and the recent practice in municipalities in the past few years.<sup>2</sup>

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<sup>1</sup> In view of the above discussion of the importance of the comparability criteria when formulating recommendations under Section 3505.4 of the Act, the panel chairperson would have liked to have seen a group of cities and/or counties claimed comparable by the Union. In the absence of such data, however, the City's proposed comparability group must be viewed as providing the only evidence concerning the two comparability criteria set forth in Sections 3505.4(d)(5) and (7) of the Act.

<sup>2</sup> The neutral factfinder's statements concerning this area are in my judgment appropriate under the Section 3505.4(d)(8) criterion of "other facts normally or traditionally taken into consideration in making findings and recommendations."

In view of all of these elements, the recommendation of the factfinding panel majority is as follows:

1. The contract shall be in effect through June 30, 2016.
2. Bargaining unit employees shall receive a 1% across the board wage increase, effective July 1, 2015.
3. Bargaining unit employees shall pay 1% of their CalPERS retirement contribution, 1% of their FICA contribution, and 1% of their Medicare contribution, effective July 1, 2015.
4. The City's contributions toward employee and dependent health insurance shall be capped at dollar amount figures contained in the 2015 Kaiser California Health Plan for Sacramento, Placer, El Dorado and Yolo Counties, at the dollar figures of \$660.96 per month for single coverage, \$1,312.92 per month for two party coverage, and \$1,718.50 per month for family coverage.
5. The City and the Union shall meet initially by April 1, 2015 and regularly thereafter to seek out and negotiate alternatives to the existing CalPERS carrier for health, vision, dental and life insurance coverage.
6. All other contract terms shall remain unchanged.

In the judgment of the neutral factfinder, this recommendation properly balances the comparability data's support for some employee contribution for retirement, FICA, Medicare and health insurance, with a small wage increase necessary to retain the City's wage rate position among comparable employers. That wage increase, although minimal, will also help to "cushion the blow" of the employee payment of a portion of the current monthly cost of both their retirement and FICA-Medicare costs, as well as for a possible health insurance cost increase for the 2016 calendar year. The dollar amount limits for the three levels of health insurance shall require no employee cost contribution for such insurance, and retain payment of such costs to the City in calendar year 2015, for those employees opting for the Kaiser California HMO plan, and minimal out-of-pocket monthly costs ranging between \$8.20 and \$21.32 for the next most popular and non-HMO PERS Select Coverage plan. It will establish for the first time in the contract, although generally to small degrees, the concepts of employee contributions to Retirement, FICA-Medicare,

and employee and dependent health insurance contributions – employee cost shifts which are supported by the undisputed comparability data. It will allow the City to move in the direction of addressing what it views as the “structural problem” in the City’s ongoing budgets.

Finally concerning this recommendation, it is the view of the entire factfinding panel that the time has come for a serious attempt by the City and the Union (and ideally all of the City’s unions) to meet and thereafter attempt to find alternative benefit providers for health, dental, and vision and life insurance that would reduce costs to the City and to its employees. It appears in this area that the City agreed to meet with the Union concerning this subject at some point after June 4, 2013 – more than twenty months ago – but that such meeting has not occurred for reasons within the control of both parties. It is further apparent that such lower health insurance costs via use of other providers is possible, in view of the lower employee/dependent insurance caps contained in the data for comparable employers.

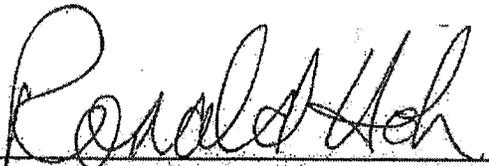
### **RECOMMENDATION**

In accordance with Section 3505.4 of the Act, and for the reasons set forth above, the factfinding panel majority hereby makes “recommended terms of settlement” of the contract dispute between the parties, as follows:

1. The contract shall be in effect through June 30, 2016.
2. Bargaining unit employees shall receive a 1% across the board wage increase, effective July 1, 2015.
3. Employees shall pay 1% of their CalPERS retirement contribution, 1% of their FICA contribution, and 1% of their Medicare contribution, all effective July 1, 2015.
4. The City’s contributions toward employee and dependent health insurance shall be capped at dollar amount figures contained in the 2015 Kaiser California Health Plan for Sacramento, Placer, El Dorado and Yolo Counties, at the dollar figures of \$660.96 per month for single coverage, \$1,321.92 per month for two party coverage, and \$1,718.50 per month for family coverage.

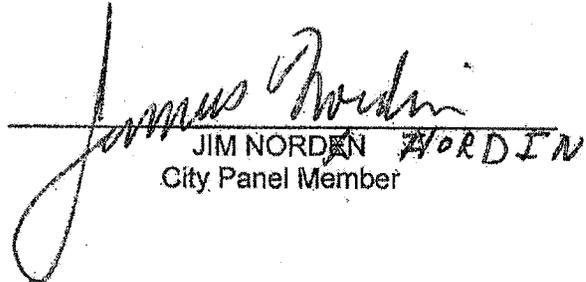
5. The City and the Union shall meet initially by April 1, 2015 and regularly thereafter to seek out and negotiate alternatives to the existing CalPERS carrier for health, vision, dental and life insurance coverage.
6. All other contract terms shall remain unchanged.

February 17, 2015

  
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RONALD HOH  
Neutral Panel Chairperson

Concur

Dissent

  
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JIM NORDEN ~~NORDEN~~ *NORDEN*  
City Panel Member

Concur

Dissent

\_\_\_\_\_  
MIKE EGGNER  
Union Panel Member

5. The City and the Union shall meet initially by April 1, 2015 and regularly thereafter to seek out and negotiate alternatives to the existing CalPERS carrier for health, vision, dental and life insurance coverage.
6. All other contract terms shall remain unchanged.

February 17, 2015



RONALD HOH  
Neutral Panel Chairperson

Concur

Dissent

JIM NORDEN  
City Panel Member

Concur

Dissent



MIKE EGGENER  
Union Panel Member



## OPERATING ENGINEERS LOCAL UNION No. 3

1916 NORTH BROADWAY, STOCKTON, CA 95205 • (209) 943-2332 • FAX (209) 948-2319  
Jurisdiction: Northern California, Northern Nevada, Utah, Hawaii, and the Mid-Pacific Islands

February 17, 2015

Ronald Hoh  
Neutral Factfinding  
Panel Chairperson

Mr. Hoh

Based on the totality of the testimony presented, witnesses and documents presented to the Fact Finding panel, I can not concur with your recommendation. The City has clearly indicated it has the ability to pay or keep the MOU status Quo. The concessions listed in your recommendation, will not if at all help with the structural deficient indicated by the City. In fact what was presented was evidence the City did not follow its own outside consultant recommendations regarding a new sales tax and did not curb spending.

It would appear a vast amount of weight has been given to the City for producing a comparable cities chart. As I've stated the information does not compare apples with apples. What is clearly shown by the totality of the evidence is the City has not corrected its spending and is making an example of this very small group of employees because the City wants to set the bar for negotiations with the other labor groups.

Respectfully submitted

*Michael Eggener*

Michael Eggener  
FactFinding Panel member