

**City of Sanger & Sanger Police Officers Association  
Fact-finding Report & Recommendations, PERB Case # LA-IM-141-M  
Final Report, June 30, 2014**

This Fact-Finding (PERB Case # LA-IM-141-M) involves an impasse over the terms of a successor agreement between the City of Sanger and the Sanger Police Officers Association. The Panel Members were Shelline Bennett for the City, Kevin Callahan for the Police Officers Association, and Tony Butka was jointly selected as the neutral Chair of the Panel.

A hearing was held at the Sanger City Hall on Wednesday, June 11, 2014, where all parties were represented by counsel and afforded an opportunity to introduce evidence, testimony, and argument as to their respective positions

### **Statutory Criteria**

Prior to 2012, the only impasse resolution under the Meyers-Miliias-Brown Act (the State law governing cities, counties, and special districts) was for voluntary mediation. However, in 2012 the State of California enacted **AB 646**, which establishes a Fact finding process and lays out a set of 8 criteria to be used by the fact finding panel. Those criteria are listed below:

**“(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.**
- (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.”**

## **Background Information**

The Sanger Railroad Depot was built in 1887 next to the Southern Pacific Railroad line that connected Fresno to Porterville. Sanger became a center for shipping grain, citrus and lumber from the nearby mountains. Later incorporated in 1911 as a General Law City, Sanger has a council/manager governance system consisting of an elected Mayor and 4 elected Council Members. Ranking as Fresno County's 3<sup>rd</sup> largest city, Sanger is a full service city with police, fire, ambulance & paramedic services amongst others.

As with most cities in the San Joaquin Valley, the City was hard hit by the 2007/2008 meltdown of the nation's financial services industry and the collapse of California's housing market. Nor has the city fully recovered from that event.

Data produced at hearing indicates that unemployment remains at approximately 23%, compared to Fresno County's 15%, and some 21% of households in the city have an income of less than \$15,00/yr. As with most public agencies, Sanger has been recovering from the classic tension of declining revenues with simultaneous increased costs associated with retirement and health care.

On the other hand, the City Manager's Executive Summary to the 2013/14 Budget was relatively upbeat, both in terms of the balanced budget and the upward tick in the City's financial picture.

## **The Current Dispute & Issues**

To set the context for the current dispute, it should be noted that the last agreement between the parties expired June 30, 2010. Further, the Association points out that the last actual salary increase was in June of 2006.

Since the expiration of that 2007-2010 agreement, the POA accepted short-term furloughs of 10% and 5% in 2011, a time when the city was in significant financial distress.

When the finances of the city improved, the parties commenced bargaining for 2012/13, and that process continued throughout fiscal year 2013/14, until a request for factfinding was filed by the POA with the Public Employment Relations Board on April 25, 2014. The city concurred with the filing, and by letter of May 15, 2014, PERB appointed Tony Butka as the factfinding Chair.

There remain four, or five, depending on your perspective, issues in dispute as of the date of hearing:

Term  
Wages  
Pensions

Side Letter offered to Fire Employees

\*(contested) Banked Annual Leave Program (Vacation, Holidays, Sick)

## POSTION OF THE PARTIES

**Term** – Given that the parties have been some four years without a collective bargaining agreement, the issue of term starts to become complicated. The 2012/13 fiscal year is well behind us, and the 2013/14 fiscal year will be over by the time any final action is taken on this current process.

It is further complicated by the fact that as soon as this particular factfinding process is complete, the parties will be back at the negotiations table negotiating for fiscal year 2014/15.

Since this dispute is over what is termed “concession bargaining”, where the City is proposing to decrease the total compensation of the Police Unit, the only practical term for the agreement is for fiscal year 2014/15 (July 1, 2014 through June 30 2015). A one year agreement.

**Salaries & Pension Contributions** – The reason Term becomes so important is that the parties bargaining history had been over a series of proposals for a two-year agreement:

City of Sanger: 1.5% salary increase and employee increased PERS contribution of 3% upon ratification for Fiscal Year 2013/14, and 1.5% salary increase and employee increased PERS contribution of 3% for Fiscal Year 2014/15;

Police Officers Assn: 2% salary increase and employee increased PERS contribution of 3% for Fiscal Year 2013/14, effective upon ratification, and effective July 1, 2014, an additional 2% salary increase and employee increased PERS contribution of 3%.

At hearing, both parties clarified their final position, since the dates of the City’s Last, Best & Final offer would no longer work – Fiscal Year 2012/13 was closed, and any implementation of the first year of the proposal would require a retroactive taking of money from bargaining unit employees. Similarly, “upon ratification” for year 1 of the Association’s proposal had long passed.

Thus in effect at hearing the City urges a 3% salary increase, and an increased employee contribution towards PERS costs of 6%, effective June 30, 2014. Similarly, the POA urges a split wage/benefit proposal for sworn/non-sworn employees – a 9% PERS contribution and a 9% salary increase effective June 30, 2014 for sworn employees, and

an 8% PERS contribution together with an 8% salary increase for non-sworn employees effective June 30, 2014.

At it's heart, this dispute is over the City's determination to have bargaining unit employees contribute 6% of their employee contribution rate towards PERS costs in exchange for a 3% salary increase – a clear concession of a net 3% decrease in total compensation.

Further, since we are now at the end of the two year term that was initially bargained for between the parties, there can be virtually no salary savings to the City which may have been reflected in either the 12/13 or 13/14 City Budgets.

**Fire & Miscellaneous Employees Side Letter** – The POA contends that the City reached agreement with the Fire Department & Miscellaneous Employees, to reimburse certain deductibles & co-pays for medical claims. The POA wishes to have this same benefit for their bargaining unit, although the City has not offered to do so.

**Annual Leave/Vacation/Sick Leave Plan** – Historically, the City has provided a block of annual leave time, with a cap and an annual cash-out provision. In these negotiations, the City proposed to eliminate the annual leave plan in favor of separate vacation, holiday, and sick leave banks. The main bone of contention with the POA is their desire to keep the ability for their members to cash out sick and holiday leave.

At hearing the City claimed “surprise” at the Association’s raising of this issue. They believed that the Association had agreed with the City’s proposal during the course of negotiations, and that the matter was no longer in dispute.

## ANALYSIS

**Background to Safety Pensions** - In the case of sworn personnel, the reason for their having a separate Safety only pension system markedly different from the General pension system of CALPERS is based on the fundamental difference in their employment. These jobs are physically arduous, and over time this physicality takes a toll on the health of the employees. To put it crudely, most officer's bodies get dinged up over time at a disproportionately higher rate than that of the average employee. That's why most Safety plans in California contemplate retirement at age 50 or 55 years of age for Safety employees vs. 65 for General employees.

In the case of Sanger the CALPERS Plan (with the final retirement benefit being calculated on a combination of different multiplication ‘factors’ and years of service) is based on 2.5% per year @ age 55,

The full amount of the PERS pension benefit is currently, for this bargaining unit, paid in by the City of Sanger,

**The Retirement Contribution Issue** - PERS uses a formula to divide the pensions into separate contribution rates for employers and employees. Here a full employee contribution rate would be 9%, and in these negotiations, the City is looking to have this bargaining unit pick up 6% of that 9% towards retirement costs. That percentage would be roughly comparable to that of other city employees, except the Firefighters. The Firefighters represent a unique case, because they elected some time ago to have a significantly more expensive pension plan based on 3% at 55, instead of the POA's 2.5% at 55. Therefore they are paying some 5.6% as the employee share of that plan.

Taken as a whole, these cost shifting measures are common throughout CALPERS jurisdictions, so the City's proposal is not unexpected. But make no mistake about it, requiring the POA unit to pay 6% towards their retirement costs would represent a 6% pay cut, absent some type of offsets.

Viewed with a slightly different lens, however, city employees other than the Fire Department, are contributing about 3% towards their retirement. From this standpoint, as long as Police Department employees are contributing 3%, that portion of the City's goal has been met.

I go into this discussion of pension benefits in some detail, because one of the enumerated criteria under the MMBA factfinding statute has to do with "total compensation", and analysis of pension benefits is a major variable between public sector jurisdictions, particularly amongst sworn personnel.

For example, the City's exhibit regarding this issue (Tab 6) shows a range of pension benefits anywhere from a 2@50 benefit, to 2.5 @ 55 to 3@55. The costs of these varies considerably, both in the employer and employee contribution rates.

While there are some cities that still have a 2@ 50 factor (Coalinga and Kerman), in fairness to the POA, it should be pointed out that a 2.5% at 55 plan is amongst the least expensive safety plans that CALPERS offers, saving considerable cost as compared to the 3% at 55 plan enjoyed by Fire Department employees.

**The MMBA Criteria** - In trying to make a recommendation regarding compensation, the Act has three criteria:

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the fact-finding 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.

Regarding the Consumer Price Index, the POA has correctly noted that since this unit's last salary increase in 2006, the Consumer Price Index has risen 15%. It is equally true that during the last two years, the CPI has risen about 2% per year.

Regarding salaries, the data submitted by the City and the Association are more dissimilar than in agreement. The Association shows an average police officer's total compensation as \$6989.05/month (Exhibit E), while the City indicates the number to be \$8588/month (Tab 6). Both documents are based on spreadsheet printouts from underlying databases, so attempting to determine the truth of the matter from the submitted information would be a non-trivial task.

The good news is that the Association and the City agree on the majority of comparable jurisdictions for purposes of this fact-finding process:

Sanger	Coalinga*	Chowchilla
Dinuba	Kerman	Kingsburg
Lemoore	Reedley	Selma*
Ceres **		

\* = Used by the City of Sanger Only

\*\* = Used by the Police Officers Association Only

To illustrate , here are the comparisons for those agreed upon cities:

	City of Sanger Info	Police Officers Assn Info
Sanger	8588	6989
Chowchilla	7377	7922
Dinuba	9600	8862
Kerman	7032	7016
Kingsburg	8448	7691
Lemoore	7663	7282
Reedley	7919	7103

The City's data places Sanger at 2<sup>nd</sup> of the 7 common jurisdictions, while the Association Data places Sanger at dead last. It is beyond the scope of this proceeding to determine which set of data is correct. It would be helpful, however, if the parties could try to agree on what is in fact included or excluded from 'total compensation'.

**The Salary Increase/Employee Retirement Contribution Swap** - The reality for Sanger City employees is that as of the date of the fact-finding, all employees in the City other than the POA are paying at least 2.8% towards the PERS employee contribution amount for pensions. Only the POA enjoys the City paying the full amount.

Looking at other jurisdictions, the situation is less clear. If the data supplied by the City under Tab 6 is to be credited, under "City Paid Employee Rate" for PERS, all of the cities except Kingsburg are paying between 4% up to the full 9% employee contribution rate.

From the Associations exhibit, I cannot tell if this is true or not, but if true, it would argue in favor of the POA's asking for a significant salary offset for any 6% employee contribution rate. There is simply not enough backup data in the exhibits to ascertain if this is true or not ( see the POA's total compensation exhibit).

Absent some empirically verifiable data, the City's position is understandable that a 3% wage increase and a 6% employee contribution rate would put the POA bargaining unit in the same relative position as the other bargaining units. That is, if you agree with the position of the City that the Police Unit should give the City back more than the 3% employee contribution share which is average for all other city employees.

A review of the City's budget does not indicate that other employees provided the same additional 3% direct pay cut that the City is asking of its Police employees. In fact, in the adopted budget pay cuts are not mentioned, nor are they referred to in the City Manager's Executive Report, which only indicates that there "may include additional employee cost sharing of benefits."

**Arguments Regarding Other MMBA Criteria** - The City points to their Council Resolution stating that it is the City policy to increase the general fund restricted reserve by \$100,000 per year until the City has a reserve equivalent to 15% of the General Fund Budget. They also point to the Government Finance Officers Association (GFOA) recommendation that at least two months of unrestricted general fund operating expenditures be set aside (see City Exhibit 11 on Best Practice).

It is clear that the level of reserves for a public agency is purely a policy determination by the elected officials; it is not mentioned in any of the factfinding criteria under the MMBA. At the same time, it is equally clear that a Police Department staff experiencing significant turnover is not going to be overly impressed with a policy that results in their suffering a pay cut.

Under the "Other Criteria" referenced in the MMBA, the POA introduced (Exhibit G) four anecdotal letters of officers who are leaving the department for other venues. While anecdotal evidence is just that, if 4 or 5 seasoned officers leave a department that only has 35 FTE positions, of which only 23 are officers, there would seem to be a basis for some concern.

## **The Measure S Issue**

I was particularly interested in the references to Measure S, a ¾ cent sales tax specifically aimed at safety employment (police/fire) , with an expiration date of 2017. As I understand the Measure, it is to be used for public safety purposes only, with a Citizen Oversight Committee. According to evidence produced at hearing, this fund currently has in excess of \$1 million in it. My notes indicate that the City is reluctant to utilize these funds for ongoing expenses, such as the hiring of police officers.

However, I note that the exact language of the ballot measure states, in part, that the measure is “to recruit/hire/train additional police officers....”. I find no reference to the funds being prohibited from utilization to meet ongoing costs.

Further, even if there is a concern about utilizing these funds for ongoing costs on the theory that the tax will end, with a significant turnover in the department, there is no particular reason not to tap into those funds. Turnover will take care of the City’s ability to move these positions to the general fund long before the measure expires. It seems fairly clear that a revenue stream specifically earmarked for public safety only expresses the intent of the voters and their priorities. And there was no articulated reason given for hoarding the resource.

**Issue regarding Paid Benefit Cashout** - At hearing, the POA raised the issue of handling the conversion of the current Annual Leave Bank system into separate vacation and sick leave banks. The POA indicated that they believed this issue to be still on the table, while the City claimed ‘surprise’ in that they thought they had an agreement to treat the issue as settled on the same basis as it was for other bargaining units.

The main concern expressed at the factfinding hearing from the POA was that they wished to retain the old system of being able to cash out unused annual leave. Unfortunately, the parties were unable to resolve the issue, so it remains for the factfinder to address.

Looking at the issue narrowly, the substantive part of the POA’s concern seems to be that employees will not be able to cash out unused sick leave. Vacation time is a vested benefit, whereas sick leave is not, so at the end of the day they are not losing any vested benefits, only the ability to swap money for a leave that was originally designed to help employees bridge illness without losing wages.

## RECOMMENDATIONS

Recognizing that the 2013/14 fiscal year is almost over, it seems imprudent to make any recommendations that would substantially change the agreement for a week or so. Therefore, the recommendation for Term is that there be a one year term for Fiscal Year 2014/15 only.

Since wages and pension contributions are inexorably interlinked, a modest change in line with practices for the other City employees seems prudent. The recommendation is therefore that the employees pay 3% of the employee contribution rate to PERS for FY 2014/15, and that the City of Sanger grant the employees a 3% salary increase for FY 2014-15. Both of these changes should be effective the date of ratification or the date of Council action, as the case may be.

This economic recommendation provides a relatively even playing field for both parties, and provides a one year period in which they can hopefully agree on standards for salary and benefit review, as well as the proper place Measure S has in the budgetary process for safety employees. I do not believe the recommendation does any damage to the City's 2013-14 adopted budget, which contained no dependency on pay cuts, nor would it result in an unbalanced budget going forward, looking at the proposed 2014/15 City Budget.

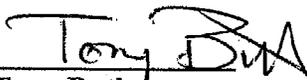
Regarding Annual Leave, it seems that the City's position of 'surprise' has some merit, and it is unclear that bargaining unit employees would be disadvantaged in any significant way by adopting the same separate vacation and sick leave policies that all other bargaining units have agreed to. Therefore, without making a specific finding about who is right on the bargaining history, the recommendation is that POA unit should be subject to the same vacation, sick leave and holiday provisions as are the other City bargaining units.

Regarding the issue raised during the factfinding session that the POA should be granted the same Side Letter benefit regarding some medical insurance issues as was negotiated by the Fire Unit, the Association's arguments are unpersuasive. It is a common practice for different bargaining units to negotiate different language and benefits provisions, and there was no evidence of a 'me too' clause which would lend weight to the Association's argument.

Finally, there is the matter of the Measure S Special Tax Fund for Public Safety. It seems clear from the record that the City of Sanger is maintaining tight fiscal control of its Police Department through position control of the number of budgeted positions for Fiscal Year 2013/14 (FTE's to be bureaucratically correct). This fiscally sound policy has had the necessary consequence of thinning the ability of the Department to perform their functions.

As I read Measure S, there is no reason to treat the special fund like an unused piggy bank. It seems clear that at one time over 2/3 of the citizens of Sanger made a determination as to the importance of public safety, and the moneys are there to be used. The recommendation is that a reasonable amount of this fund be used to pay to recruit/hire/train additional police officers.

**Submitted this 30th day of June, 2014**



**Tony Butka**  
**Chair, City of Sanger**  
**And POA Factfinding Panel**

City of Sanger & Sanger Police Officers Association

Fact-finding Report & Recommendations, PERB Case # LA-IM-141-M

City of Sanger Representative to the Factfinding Panel  
Shelline Bennett  
Liebert Cassidy Whitmore

**Dissent to the Fact-Finding Report and Recommendations:**

As the representative for the City of Sanger (Sanger) to the Factfinding Panel, I disagree with the recommendations contained in the Fact-Finder's Report & Recommendations (Report), and for that reason, I am providing this dissenting opinion.

It is uncontested that the City continues to face significant economic hardship that has devastated Cities and Counties throughout the State. While other public agencies are beginning to recover from the great recession, unfortunately, the City is not. The City is still seeing diminishing revenue while at the same time experiencing an exponential rise in operational costs, including retirement and healthcare costs. Further, the City's reserves have continued to diminish dangerously below a fiscally sound level. Accordingly, the City seeks concessions from the POA in the form of employees picking up a portion of their CalPERS retirement contribution in exchange for a partial salary off-set. The ultimate goal of the City's Revised Last Best and Final Offer (LBFO) is to achieve annual cost savings and help the City remain fiscally sound. The City's LBFO recommends that the POA contribute 6% towards their retirement in exchange for a corresponding 3% salary increase.

The Report agrees that the City is facing challenging fiscal conditions. However, somewhat inexplicably, the Report's recommendations dramatically changed from the initial draft, which recommended concessionary settlement terms, and the final report, which recommends the City increase its liabilities. Attached as exhibit A is a copy of the draft report which was initially provided to the Panel Members. In the initial report, the Fact-Finding Chair recommended that the City implement a 3% employee contribution towards their retirement with a corresponding 1.5% salary increase. This initial recommendation, although short of the City's goal, was an accurate representation of the City's need for concessions. Nonetheless, the final report was changed, without any notice or warning to the City, to a recommended 3% employee contribution towards their retirement, with a corresponding 3% salary increase. This recommendation is not concessionary and will only add to the City's fiscal difficulties.

Accordingly, I respectfully dissent from the Report's recommended terms of settlement for a 3% salary increase and a 3% employee contribution towards their retirement. Regarding the Report's specific recommendations, I find as follows:

1) **Report Recommendation for 3% Salary Increase and Corresponding 3% Increase in Employee Retirement Contributions**

Although I agree with the Report's recommendation that the City should require POA members to contribute to their retirement in exchange for a 3% salary increase, I cannot agree with a recommendation for a retirement contribution less than the 6%.

As established at the hearing, the City's economy over the past few years has been extremely difficult. The City responded to the recession by eliminating positions and curtailing services to the public. For example, the City was only able to balance its most recent budget by enacting an employee layoff. As also established at the hearing, one of the City highest priorities is to restore services to the public. Accordingly, I believe that any increases in expenditures for City employees should be focused on restoration of positions and services.

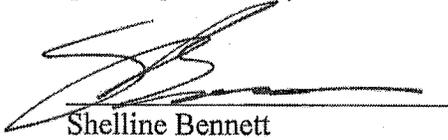
The evidence presented at the hearing supported the City's conclusion that POA represented employees receive higher salaries than employees of comparable jurisdictions. Further, there was no evidence provided that the City's rate of employee attrition is any different than the City's normal attrition rate or that it was any higher than the rate for comparable cities.

More importantly, while other City employees have been contributing toward their retirements over the past year, the POA and the City have been in protracted negotiations for over two years. As such, the POA represented members have not picked up any of the costs associated with their retirement. Thus, I agree with the draft report's finding that **"the City's position is understandable that a 3% wage increase and a 6% employee contribution rate would put the POA bargaining unit in the same relative position as the other bargaining units."** It should be noted that while employees in the Firefighter unit do receive a higher retirement benefit than employees in the POA, this was a negotiated benefit in which the employees agreed to pay the difference. The City presented this same proposal to the POA; however, the POA rejected the proposal.

Regarding the Report's recommendations concerning Measure S, I cannot agree that the City should utilize these funds to cover the proposed costs associated with the "new" recommended terms and conditions of settlement. As established at the hearing, Measure S funds are marked for a specific purpose which is much larger than POA salary increases. These funds have a limited duration, as Measure S will expire in the near future. Accordingly, the City Council has begun the process of reallocating reoccurring liabilities, such as salaries, away from Measure S funds and utilizing Measure S for one-time cost projects. The Report's recommendation that Measure S funds be used will place the City in a fiscally unsound position of having reoccurring costs associated with a short-term fund source.

For the above stated reasons, I respectfully dissent from the Report's suggested terms of settlement. As an alternative, I recommend that the City implement the terms contained in its

LBFO, including that POA unit members contribute 6% towards their retirement in exchange for a corresponding 3% salary increase.



Shelline Bennett

July 9, 2014