

FACTFINDING REPORT AND RECOMMENDATION

In a Matter Between:
MARINWOOD COMMUNITY
SERVICES DISTRICT,

PERB Case No: SF-IM-150-M

Hearing Date: June 4, 2015

Award: June

And

Hirsch Case #: H15-073

MARINWOOD PROFESSIONAL
FIREFIGHTERS, LOCAL 1775

FACTFINDING PANEL

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PROCEDURAL BACKGROUND

Marinwood Professional Firefighters, Local 1775 (Union or Firefighters) and the Marinwood Community Services District (District or Employer) have been parties to a collective bargaining agreement for many years. The current agreement (CBA) expires June 30, 2015 and has a wage reopener clause, which guarantees a 1% raise effective July 1, 2014. The parties commenced negotiating in accordance with the wage reopener in the Spring of 2014.¹ The first meeting was held on July 24, 2014, and three subsequent meetings ensued without an agreement being reached. Several written communications were exchanged, but still no agreement was reached. The District's last, best, and final offer was presented to the Union on February 16, 2015, but rejected by a unanimous vote of the bargaining unit members.

¹ The minimum 1% increase took effect July 1, 2014.

The parties thereafter agreed to engage in factfinding pursuant to Section 3505.4 of the Meyers-Milias-Brown Act (MMBA)² and PERB Regulation 32802. The Impartial Chair was jointly selected by the parties, and a hearing in this matter was held in Marin County on June 4, 2015. The parties agreed to waive all statutory time limits found in MMBA.

ISSUE

The parties presented the following issue to the factfinding Panel:

Whether the Panel should recommend the District's proposed 2.5% wage increase, retroactive to July 1, 2014 or, the Union's 4.5% wage increase, also retroactive to July 1, 2014.

STATUTORY CRITERIA

MMBA, at Section 505.4(d), sets forth the criteria that fact-finders must consider in matters such as this one:

- 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 in goods and services, commonly known as the cost of living.

² Government Code Section 3505.4

- 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.

FACTUAL BACKGROUND

The District provides park, recreation, fire protection and street lighting to the residents of Marinwood. The Fire Department is a single station agency offering fire protection to Marinwood and provides protection to County Service Area 13, Lucas Valley, and nearby jurisdictions needing aid. The Fire Department relies upon surrounding agencies for fire protection support. The District receives revenue from Marin County and in recent years, has benefitted from three different special assessments approved by the voters.

Financial Data

The evidence presented by the parties reveals that after the 2008 recession, the Firefighters along with the other Marinwood employees, made several economic concessions to help the District stay solvent. According to a spread sheet prepared by the Union and entered into evidence as Union Exhibit (UX) 59, the Firefighters increased their healthcare contribution from 5% to 10%, increased their pension contribution by 2.5% to the California Public Employees Retirement System (PERS), gave up one paid holiday, agreed to a retiree vesting schedule for PERS retiree health coverage, increased their healthcare contribution to 15% and then to 20%, lost the Employer's \$100 deferred compensation contribution, and lost the ability to cash out up to 24 hours of accrued vacation time each year—all within the years 2012

through 2015. The District's "Miscellaneous" employees absorbed a furlough, resulting in a 4.6% pay reduction, and increases in healthcare contributions (to 10%) and pension contributions. In 2013 and 2014, Marinwood granted 1-2% raises to various miscellaneous employees and rescinded the furlough—increasing the workweek and pay to those employees by 4.6%. The Firefighters received a 1% increase in July 2014, and a \$100 deferred compensation contribution from the Employer in 2013.

The parties introduced various financial statements and budgets into the factfinding record. The most recent audited financial statement for Marinwood, dated June 30, 2014,³ shows the following: the General Fund revenue increased by \$655,079 while the expenditures increased \$441,409 over the prior year, cash and investments totaled \$1,457,679, total revenues for the District were \$5,096,846 versus \$4,770,868 in 2013, a change in net position for the District of negative \$36,264 versus a negative \$282,750 in 2013, "Other Post Employment Benefits" (OPEB)—accrued liability for retiree health coverage—totaled \$332,867. The Management Discussion and Analysis section of the audited financial statement noted that the "...economic condition of the District as it appears on the balance sheet reflects financial stability."⁴ The financial statement also reviewed the Annual Required Contribution (ARC)—the District's annual contribution to the PERS Defined Benefit Plan for all covered employees—and projected salary increases for affected employees of "3.30% to 14.20%."⁵

The Union presented a financial analysis of the District's Fiscal Year (FY) 2012-2014 financial statements, prepared by the International Association of Fire Fighters.⁶ It noted that the District consistently underestimated revenue (by \$135,000 to \$250,000) and overestimated expenses in two of the three years reviewed (by \$160,000 and \$39,000). The analysis also

³ Joint Exhibit (JX) A, Tab 6.

⁴ Id. at p. 6.

⁵ Id. at p. 21.

revealed that the unreserved fund balance in the District's General Fund slightly exceeded the 16.67% of the General Fund's annual expenditures, as recommended by Government Finance Officers Association (GFOA).⁷ The FY2014-2015 Budget, entered into evidence here as JX A, Tab 46, projects Revenues of \$4,907,191 and Expenditures of \$4,795,434. It also projects Reserve and Contingency requirements of \$301,000. FY2015-2016 Budget, entered as JX A, Tab 47, shows anticipated Total Revenue of \$5,119,225, and Operating Expenses of \$4,834,367. It also indicates Contingencies totaling \$332,000.

The parties also introduced evidence—emails from Tarey Read, President of the Marinwood Board of directors, to John Bagala, Union Vice President—indicating that a budgeted payment of \$53,000 for FY2014-2015, had been delayed to the following year and reduced to \$40,000. The email information also included reference to the fact that the District was prepared, in 2014, to pay \$172,000 to a new district manager, although ultimately one was hired for a base salary of \$97,000.⁸

The Union and the District also presented evidence that the cost of the District's 2.5% proposed increase would total about \$38,000, while the Union's 4.5% proposed increase would cost about \$67,000.⁹

Cost of living data was made part of the factfinding record. Joint Exhibit A, Tab 48, shows a 2.8% cost of living increase in the San Francisco Bay Area, for 2014. Additionally, it shows a total 18% increase for years 2008 through 2014.

Wage and Benefit Comparison

The Union presented a comparability study as part of its factfinding presentation; the District voiced no opposition to it.¹⁰ That survey reveals that the Marinwood Firefighters are

⁶ JX A, Tab 30.

⁷ Id. at pp. 2-5.

⁸ JX A, Tab 28

the lowest paid category of firefighting professionals in Marin County—coming in last of the thirty-three classifications. They earned a top-step, average monthly salary of \$6,080 compared to a County average salary of \$7,462.¹¹ These Firefighters were paid almost \$400 less per month than the next lowest paid firefighters—Marin County employees. The other fire agencies—Kentfield, Tiburon, Novato, Corte Madera, Larkspur, Southern Marin, Ross Valley, San Rafael, and Mill Valley, all paid substantially more. The Marinwood Fire Engineers—higher classified firefighting employees—also made less than their counterparts everywhere else in the County. They made approximately \$1400 less per month than the average fire engineer. And the Marinwood Fire Captains, made about \$2000 less per month than their counterparts. In fact, even the District Captains made less than the vast majority of firefighters and engineers—lower ranking professionals—at the other firefighting agencies in the County. The Union did not dispute the District’s claim that the Marinwood Fire Department is the smallest of these agencies in the County.

We note that the District also submitted a spreadsheet comparing the wages and benefits of the Firefighters with the other firefighting agencies.¹² The District’s witness, Scott W. Kenley, consultant to the Marinwood, testified that the data included in the spreadsheet was based upon information provided to the District by the Union. Unfortunately, the salaries shown do not match the salaries shown in the comparability study referenced above. (A Marinwood Firefighter is shown making a monthly salary of \$6080 by the Union, but \$6,353.60

⁹ Id.

¹⁰JX A, Tabs 39-42

¹¹The Firefighters conceded that the average calculated did not include Marinwood, thus yielding a slightly higher average without them.

¹² District Exhibit (DX) 60.

by the District). This discrepancy is unexplained, but suffice it to say, both charts show the Marinwood Firefighters receiving the lowest salary in the County.¹³

DISCUSSION AND RECOMMENDATION

It is the role of the Panel to apply the relevant factors, set forth in MMBA, to the facts underlying the impasse presented, and render its best recommendation in light of those factors. Here, several of the factors apply—we review them in order below.

The Interests and Welfare of the Public and the Financial Ability of the Public Agency:

The parties disagree on the financial ability of Marinwood to pay the 4.5% wage increase proposed by the Firefighters. The Union points to the relatively healthy financial condition of Marinwood, while District focuses on the growing OPEB liability. There is certainly merit to each side's claims. Marinwood has enjoyed real growth in revenue, exceeding its own estimates. The District acknowledges as much in its brief filed with the Panel in this matter, when it states, "FY 2014-2015 is projected to be one of the best years in recent history to positive operating cash balance at end of year (sic)."¹⁴ This assertion is backed up by the financials made part of the record by the parties. Moreover, all evidence suggests that FY15-16 will be even better.

The District is properly concerned about funding the OPEB and pension benefits of its retiring employees. It is a growing, and very real liability, although it stretches into the distant future. Several reasons however, favor the Union's contention that the District can afford the 4.5% wage increase. First, the difference between Marinwood's 2.5% proposal and the Firefighter's 4.5% proposal is only \$29,000. Nothing in the record suggests that this figure

¹³ We adopt the comparability study submitted into evidence by the Union. The District did not challenge it, nor

materially burdens the District. In fact, just the one noted payment of \$53,000, now deferred until 2016, more than covers the added expense. Second, the District was actually prepared to pay \$172,000 to a new district manager in 2014, far more than \$29,000 above the money ultimately paid to the manager who was retained, Eric Dreikosen. Clearly the District's Board of Directors believed it was financially able to pay the higher sum in FY2014-2015.

Third, the District chooses not to prefund its OPEB liabilities, nor has it sought to raise the retirement age or implement the 20-year vesting schedule approved by the Firefighters three years ago—all measures designed to reduce Marinwood's unfunded liabilities. It is hard to see how the "welfare of the public" is served by the District's insistence that the Firefighters bear the burden of OPEB liabilities when the Marinwood General Fund is flush, revenues tend to be understated while expenses are overstated, and unused measures exist, which could reduce the burden borne by the District. Marinwood appears financially able to carry the 4.5% wage increase.

Comparison of Wages and Terms and Conditions of Employment with other Employees Performing Similar Work:

The Marinwood Firefighters are clearly at the bottom of the economic heap, when compared to the other firefighters in Marin County. The contrast is stark. As noted above, they earned hundreds of dollars less per month than the next lowest paid firefighters. Although these individuals are called upon to perform the same work as other members of the firefighting community in the County, they earn far less than *all their counterparts*. Total compensation for the Marinwood Firefighters lagged the next lowest paid firefighters—those in the Marin County Department—by \$400 per month. The next lowest paid group was the Southern Marin

did it explain the discrepancies in the wages shown in its own spreadsheet.

¹⁴ Marinwood's Post-Hearing Brief, at p. 2.

Firefighters, who made \$1000 more per month than Marinwood's Firefighters. They also have the fewest holidays, among the lowest valued healthcare and among the lowest valued education/training offered.

The Consumer Price Index:

The data submitted by the parties show a CPI for the greater Bay Area of 2.8% for 2014. But it also shows that since the beginning of great recession of 2008, the CPI has totaled 18% (including 2008). The Firefighters have received nothing close to that as a wage and/or benefit increase. The spreadsheet introduced into evidence by the Union as UX 59, shows a 1% salary increase for Marinwood Firefighters and a 2.5% salary increase for Marinwood Engineers from July 2010 to July 2015. This ignores any of the takeaways imposed during that time period. The Bay Area CPI for that time frame—2010-2015—is roughly 14%. Clearly the Firefighters' salaries have fallen behind the CPI over the past several years.

Overall Compensation Received by the Marinwood Firefighters:

We have noted above that the Marinwood Firefighters receive lower wages than Marin's other firefighters. They do receive a host of other benefits including retirement, health coverage, paid vacation, holiday pay, and continuing education. While their health insurance is valued the same as, or near, the value of those enjoyed by other firefighters in Marin County, inexplicably, they are required to pay 20% of their health costs while *every other Marinwood employee pays only 10%*. The Impartial Chair of these proceedings specifically asked why this was the case; the District provided no explanation. There is a patent unfairness in this unjustified disparity.

Any Other Facts Normally Taken into Consideration in Factfinding:

This catchall category considered in factfinding, includes factors which go to the equities of each party's respective position. Here, it appears that the equities reside with the Firefighters. They emphasized at the factfinding hearing that they made several concessions after the severe economic downturn in 2008-09, as did the other District employees. They now resent the District for not restoring to the Firefighters, financial rewards, as other Marinwood employees have apparently received. The hard feelings carried by the Firefighters seem particularly tied to the 20% health care burden they shoulder, and the restored furlough income (a 4.6% increase) now enjoyed by the Miscellaneous District employees, without a comparable enhancement for the Union members. They have gone for years with virtually no wage or benefit increases, save the 1% raise last year.¹⁵

¹⁵ The Dissenting Opinion focuses on the inequities noted by this Impartial Chair, yet fails to address the District's ability to pay and the fact that the Firefighters lag behind all their Marin County peers—the heart of this Recommendation. It should also be noted, in response to the Dissent, that it is not the role of this panel to decide

CONCLUSION

Given the record as a whole, and the factors considered in making this evaluation and recommendation, the Panel adopts the proposal of 4.5% offered by the Union as its recommendation. We conclude this is fair and equitable.

Date: July 2, 2015



Robert M. Hirsch, Impartial Chairperson

AGREE / DISAGREE

SCOTT W. KENLEY MARINWOOD C.S.D.

AGREE / DISAGREE

JOHN J. BAGALA IAFF 1775

where Marinwood should rank in the financial pecking order of all the Marin County fire departments. We are bound to follow the MMBA factors and apply those as best we can.

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SCOTT W. KENLEY MARINWOOD C.S.D.

⁹⁸
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CONCLUSION

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Robert M. Hirsch, Impartial Chairperson

AGREE / 



SCOTT W. KENLEY MARINWOOD C.S.D.

AGREE / DISAGREE

JOHN J. BAGALA IAFF 1775

**FACTFINDING REPORT AND RECOMMENDATIONS
DISSENTING RESPONSE**

MARINWOOD COMMUNITY SERVICES
DISTRICT,

Employer,

and

MARINWOOD PROFESSIONAL
FIREFIGHTERS, IAFF LOCAL 1775,

Association,

PERB Case No. SF-IM-150-M

FACT-FINDING PANEL

Robert Hirsch, Chairperson
Scott Kenley, District Representative
John Bagala, Union Representative

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DISSENTING RESPONSE

At the post-hearing meeting of the factfinding panel members, the Chair of the Factfinding Panel shared with the union and district panel members his assessment of the issues. He stated that, "there is no doubt in his mind that the firefighters are under paid. He also stated that it appears to him that the District appears to have issues relative to financial solvency. He instructed both parties to not only address their specific issues, but to put themselves in the other party's shoes and try to view it from their perspective. He gave direction to both parties that they need to address both issues and present alternatives that address not only the District's financial situation, but also the firefighters belief that they are not being treated fairly. In closing, he said that his mind was not made up and he is looking for both sides to address the firefighter's need for salary equity as well as the District need to have financial stability."

The District believes that the Post-Hearing Brief submitted by the District addressed the concerns expressed by the Factfinding Chair in the post-hearing meeting of the Panel members. The District does not believe that the Union followed the direction of the Factfinding Chair in the post-hearing meeting of the panel members. However, the Factfinding Chairperson has sided with the Union in almost every point made in their 'Post-Hearing Brief.' The District will not dispute the basis for the Chair's final conclusion, however, the District strongly disputes, with respect to the equities internal to the Marinwood Community Services District, the comment on page eleven that "it appears that the equities reside with the firefighters."

A close look at the chronology of concessions imposed on the non-safety employees and those negotiated by the firefighters does not support that statement. First, the non-safety employees had their concessions imposed on them beginning in July of 2012. The District had to negotiate the concessions agreed to by the firefighters, that did not take effect for an additional four months. That includes the fact that the non-safety employees began paying an additional five percent of their health care premium four months before the firefighters, both paying a total of ten percent of the premium at that time.

Second, the non-safety employees' initial concessions were computed at a reduction of over eight percent, not counting the increase in the health care premium, three and one-half percent member contribution and over four and one-half percent due to furloughs. The firefighters' concession, four months later was computed at approximately three and one-half percent, two and one-half percent pick up of member contribution and the loss of one paid holiday. At this point, the employee percentage for Health Care was the same for both groups. Therefore, the non-safety employees have imposed concessions of over eight percent, while the firefighters have an agreed upon concession of approximately three and one-half percent, starting four months later than the non-safety employees. It is hard to justify the statement, "it appears that the equities reside with the firefighters."

In July of 2013, granted, non-safety employees had their furloughs rescinded and received a one or two percent raise. However, the union failed to mention in its post hearing brief that the non-safety employees began paying an additional three and one-half percent of their member contribution for a total of seven percent. The end result was a reduction in total concessions of approximately two and one-half percent. The total concession for non-safety employees was now approximately five and one-half percent.

In July of 2013, the firefighters conceded an additional two percent of their member contribution and increased its cost share of health care premiums by five percent, to a total of fifteen percent. The total concession for firefighters was now approximately five and one-half percent. This does not include the five percent increase in health care premiums, which the District will address that as a separate issue.

As of July 2013, the firefighters' concessions were EQUAL to the level of concessions imposed on the non-safety employees, not greater than. This fact does not take into account that the firefighters' concessions started four months after the non-safety employees and the firefighters' concessions never reached the eight percent level of the non-safety employees. The non-safety employees received a reduction in salary of over eight percent for a twelve month period of time, while the firefighters received a

reduction in salary of approximately three and one-half percent over an eight month period of time. Again, it is hard to justify the statement, with respect to internal equities, that “it appears that the equities reside with the firefighters.”

The non-safety employees, for the most part did not receive any raises in July of 2014, except for the lifeguards and Recreation Manager. The Recreation Manager received his salary adjustment for the added duties of the Park Manager, and the lifeguards received their adjustments based on the need of the District to be competitive with surrounding agencies.

In July of 2014, the firefighters received an across-the-board raise of one percent and the engineers received an additional two and one-half percent raise. The firefighters also had their deferred comp of \$100.00 eliminated. This was negotiated in the current Memorandum of Understanding between the firefighters and the District. The District was willing to increase all members’ salary by an additional two and one-half percent. If the Factfinding Chair’s initial Factfinding Report and Recommendations are finalized, the firefighters and captains will receive, in total, a five and one-half percent salary increase, while the Engineers will receive an eight percent salary increase for Fiscal Year 2014-2015. The non-safety employees’ concessions will remain at approximately five and one-half percent, while the firefighters and captains will have less than a two percent reduction in salary, and the Engineers will have over a one percent increase in salary. The question must be asked, “How do the facts support the comment that, “it appears that the equities reside with the firefighters?”

Finally, the District will address the issue of the ten percent health care premium for the non-safety employees and the twenty percent health care premium for the firefighters. The health care premium is a flat rate dollar amount for all employees. It is no secret that the firefighters are paid significantly higher than every full-time employee except the District Manager and the Recreation Manager. Still, there are fire captains who have a base salary equal to or greater than both the District Manager and Recreation Manager. In addition, unlike non-safety employees, the firefighters have the ability to earn

overtime, in excess of ten thousand dollars a year per individual. When the flat rate premium contribution is computed as a percentage of salary, the ten percent concession on the part of the non-safety employee is similar to the twenty percent concession on the part of the firefighters.

In summary, the District believes that they have addressed both the Union's need for pay parity as well as the financial solvency of the District. In its Post-Hearing Brief, the District asked the Factfinding Chair to provide guidance relative to the appropriate position of the Marinwood Firefighters relative to the other agencies in Marin County. The District does not believe that the Marinwood Firefighters should be compared to the average of the other agencies due to their size, other services provided and the complexities of their revenue stream. The District is disappointed that the Factfinding Chair did not adequately address this issue in his Report and Recommendations. He did not identify where in the mix of the eleven agencies Marinwood should be positioned. This will impede further negotiations in that the Marinwood Firefighters will continue to compare themselves to the average of all Marin County fire agencies. If the Chair agrees with this placement among the Marin County agencies, please provide justification for that placement.

The District thanks the Factfinding Chair for his time and attention to this factfinding process, however, the District must express their disappointment in his findings and recommendation.