

In the Matter of a Fact Finding Between

Operating Engineers Local 3

- and -

City of Stockton

Report of the Panel

NB 3660
SA-IM-154-M

Panel: Norman Brand, Chair
Ann Goodrich, City Member
Richard Stiffler, Union Member

Appearances:

For Operating Engineers Local 3
By Darren Semore, Business Representative

For City of Stockton
Sloan, Holtzman, Sakai
By Allyson Hauck, Esq.

Date: 9/28/15

Jurisdiction

After an impasse in bargaining between the City of Stockton ("City") and the MUD Supervisory Unit ("Unit") represented by Operating Engineers Local 3 ("OE3"), by letter dated July 20, 2015, the Public Employment Relations Board notified the Chair of his assignment. The parties provided the factfinding panel ("Panel") their Last, Best, and Final offer ("LBF"), as well as pre-factfinding briefs. On August 6, 2015, the Panel met in Stockton, CA. Before the formal factfinding presentations, the Panel and parties met in an attempt to reduce the 33 issues in dispute. This resulted in a stipulation of the parties, one of the criteria the Panel is to "consider, weigh, and be guided by" in making its recommendations. Cal. Gov't Code § 3505.4(d)(3).

Stipulations

1. The tentative agreements made before the declaration of impasse are part of the new MOU.¹
2. The term of the MOU is 2 years, July 1, 2014 – June 30, 2016.
3. The parties agree to City proposed language to allow for a \$14.0 re-opener for health care provision changes if required by the Affordable Care Act.
4. The parties agree to §9.2(h) language to conform the Agreement to City's amended CalPERS contract for employees hired after December 29, 2012.
5. The parties agree on §12 Holiday hours language proposed by the City.
6. The parties agree to a 2% increase in the medical cap for each year of the MOU, a total of 4% upon execution of the MOU.

Items in Dispute

1. General salary increase: City 2% upon execution of the MOU; Union 5%
2. City proposes change in certification pay along with an 18% increase for Plant Operations Supervisors.
3. City proposes changing 7 current positions to FLSA exempt.
4. City proposes an administrative fee of \$26.98 per employee enrolled in OE3 health plan.
5. Union proposes a 5.5% Health Retirement Account ("HRA") adjustment for all unit members.

¹ When the Unit declared impasse, it withdrew all of its prior tentative agreements.

Statutory Criteria

(1) State and federal laws that are applicable to the employer.

The parties did not cite any applicable laws that affect the issues in dispute.

(2) Local rules, regulations, or ordinances.

None were cited.

(3) Stipulations of the Parties.

See above.

(4) The interests and welfare of the public and the financial ability of the public agency.

The City argues generally that the interest and welfare of the public is reflected in the “Plan for Adjustment of Debts” approved by the Bankruptcy court. The court retains jurisdiction over the City’s implementation of the Plan. Personnel, compensation, maintenance, and services were all impacted by the bankruptcy. The Long- Range Financial Plan, (“LRFP”) was created to support the Plan of Adjustment and provides for creating a reasonable reserve while balancing restoring services to the public – particularly police services – restoring employee compensation, and meeting specific operational needs. The City points out that increases in General Fund revenue post- Great Recession are partially offset by the unavoidable cost of increases in PERS rates over the next four years. As part of the LRFP, it has included (and other units including Police have accepted) a 2% annual COLA, a 2% annual increase in medical cap, and a temporary freeze on cash payments for vacation during the term of the MOU. It stresses the need to stick to the LRFP for all bargaining units, varying only where there are significant operational needs.

The Union does not take general issue with these assertions, but points to unique problems in this 12 employee Unit, notes they are not paid out of the General Fund, and points out that the wastewater Fund (which would bear most of the costs of requested increases) has a projected ending balance of \$30 million. Because the City is offering to increase some Unit positions by 18%, it has the ability to provide a 5% rather than a 2% increase to the entire Unit.

The City addresses the enterprise funds in two ways. First, it notes the wastewater Fund balance is already spoken for in the Capital Improvement and Energy Management Plan. The water Fund was forced to go into reserves to balance expenditures and is projected to continue doing so. The State's declaration of a drought emergency caused a 13% reduction in use in 2014, with a projected decline of 24% in 2015, and a proportional reduction in revenue. The storm water Fund has been unable to meet its needs for capital projects, so they have been delayed for years. The voters rejected rate increases in 2010, leaving the Fund with a fee structure that is incapable of funding the operations and maintenance needs of the system. If these enterprise funds fail to generate sufficient revenue for their operations, the General Fund must make up the difference. Thus, in the City's view, the interest and welfare of the public dictate following the LRFP for all employees, regardless of their funding source.

FINDING

The Panel finds the LRFP is the product of an extraordinary process – bankruptcy – that forced the City to have its financial condition scrutinized by creditors and the court. The LRFP is an unusual budgeting exercise –containing projections well

beyond those normally made in annual budgets. Because it is a 30 year document covering all aspects of the City's finances, many changes will undoubtedly be necessary. Nevertheless, at this time it provides a definitive general statement of what is in the interest and welfare of the public. It is assumed the City has the current financial ability to pay amounts specifically included in the LRFP, such as its proposed 2% salary increase and 2% increases in the medical cap, as well as amounts that are critical to continuing its operations, such as the 18% increase in the salary schedule necessary to hire Plant Operations Supervisors. In determining the City's ability to pay beyond these amounts, the Panel is keenly aware of the importance of general adherence to the LRFP in the early years. Having constrained increases, and especially in light of the comparative data discussed below, the City has failed to show it has a current financial inability to continue elements of compensation required by current FLSA status or current MOU language on certifications.

(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.

The Union argues the City has conceded the wages in this unit are at least 15% under market median. The City's data show the total compensation for one single person classification is only 3.1% below the median for what it calls the "Regional Market." The total compensation in all other classifications for which the City provided comparisons ranges from 18.2% to 39% below the median for the "Regional Market." The City proposes an 18% increase in the Senior Plant Operations Supervisor classification because it is 39% below the median and it is impossible to recruit for a

vacant position. The City argues that it is the poorest, or almost the poorest jurisdiction among its comparators, with low housing prices depressing tax revenue and high unemployment depressing sales tax revenue. Assuming all of this to be true, there is a great distance between total compensation for members of this bargaining unit and the median compensation among comparators.

FINDING

Comparing the total compensation for these employees with the total compensation for employees in what the City has determined are comparable jurisdictions shows they are substantially below the median. This criterion argues strongly for increases in total compensation over time and against any reductions in current elements of compensation.

(6) The consumer price index for goods and services, commonly known as the cost of living.

The City argues the CPI for the West Region increased 1.1% June 2014 to July 2015. The Union used the figure "just under 2%" without citing any specific Bureau of Labor Statistics table.

FINDING

A 2% COLA as of July 1, 2015 is sufficient to keep the wages of members of this bargaining unit from falling farther behind due to inflation through July 2015.

(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.

The parties did not separately address each element of total compensation. The City asserts Enterprise Fund staffing has been reduced by 42 positions.² Employees took furloughs, had medical benefits reduced, and began paying 7% of the employee's retirement cost (employees who were employed prior to June 30, 2011 pay 7% of the employer's retirement cost in lieu of their payment towards the employee's cost).

FINDING

There have been interruptions in the continuity of employment through layoffs and furloughs. The stability of employment was adversely affected by the City's descent into bankruptcy. These factors argue in favor of promoting stability in employment through following the LRFP.

(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.

The only additional facts considered are part of the discussion of the 5.5%HRA.

² It is not clear whether this is since the declaration of Financial Emergency in 2010.

Recommendations

1. General salary increase: City 2% upon execution of the MOU; Union 5%.

There is no question that a 5% increase is justified by comparing the total compensation of Unit employees with comparable employees in other jurisdictions. The Union provided no information on what a 5% increase would cost in this Unit. The amount could not be great, in light of the size of the bargaining unit and the size of the enterprise funds. The failure of the Union to quantify the raise may reflect its understanding that “ability to pay” – especially for a City just emerging from bankruptcy – is more about how money will be spent in the public’s interest, than how many dollars are currently in an enterprise fund. The LRFP is relatively new and all other Unions have accepted its initial decision about wage increases.

Based on the City’s ability to pay, the Panel recommends a 2% increase upon execution of the MOU.

2. City proposes change in certification pay along with an 18% increase for Plant Operations Supervisors.

The City currently pays additional sums quarterly for certain Waste Water and other Operator Certifications. It proposes eliminating some current certification pay when it increases wages 18% for Plant Operations Supervisors. The City wants to increase these wages because it cannot hire anyone at the current wage. Its justification for eliminating some classification pay is that certifications do not always exceed the minimum qualifications for the classification, and the 18% increase

compensates current employees for the loss. Eliminating an existing portion of total compensation is not necessary to preserve the City's fiscal balance. The City does not argue this is required by the LRFP. Nor does it argue there is an "operational need" to eliminate some certification pay. This group is 39% below the median for its comparators; with the raise they will still be more than 20% behind. There is no justification for eliminating the classification pay and putting them further behind.

The Panel recommends increasing the classification pay without any change to certification compensation.

3. City proposes changing 7 current positions to FLSA exempt.

The City proposes eliminating overtime for Unit members by making seven positions FLSA exempt. One position (Occupational Health & Safety Compliance Specialist) has been vacant since May 2013. It argues the positions are professional and meet the standards for FLSA exemption, and it offers an increase in vacation days as part of the change. The Union argues that three of the positions actually earn overtime, the change would further erode total compensation, and additional vacation days offered are inadequate compensation for the loss of money. Because they are already significantly below the median of comparators, lowering the total compensation is not warranted.

The Panel recommends converting the vacant position to FLSA exempt while deferring action on the other positions to the next round of negotiations.

4. City proposes an administrative fee of \$26.98 per employee enrolled in OE3 health plan.

The City proposes allocating a portion of its health care administrative costs to OE3. These are the costs associated with qualifying eligible employees for health care benefits, maintaining records of eligibility, and providing monthly checks to the OE3 plan for its members. Seven members of the Unit are enrolled in the OE3 plan and do not pay these costs. Two members are in the Kaiser Plan and pay administrative costs. The City calculates OE3 administrative costs as a percentage of its overall administrative cost. The Union does not argue the specific costs, but generally asserts the City expends negligible administrative resources on bargaining unit members enrolled in the OE3 plan. It appears the two employees who are in the City plan, as well as other City employees, subsidize the administrative costs for bargaining unit members in the OE3 plan. The subsidization is extremely small when spread over the active and retired employees in the City's plans. Nevertheless, another OE3 unit has agreed to health care payments of \$26.98 per month for their employees. The charge should be uniformly applied.

The Panel recommends charging a monthly administration fee of \$26.98 to Unit members enrolled in the OE3 health plan.

5. Union proposes a 5.5% HRA benefit for all unit members.

As matters stand currently, members of this bargaining unit do not receive the 5.5% HRA benefit received by members of the bargaining unit they supervise. It has not always been so.

In 2003 the City transferred operation of the water plant to OMI/Thames. It transferred non-supervisory employees who received what was at that time a deferred compensation benefit of 5.5%. During the course of their employment by OMI/Thames, some became supervisory employees and continued to receive the 5.5%. On March 1, 2008 the City resumed operation of the water plant and the employees returned to the City payroll, with the promise they would lose no salary or benefits by transferring back. At the time of the transfer, OE3 became the representative of the newly formed Management/Supervisory Unit. During negotiations for a first contract the City sought to eliminate deferred compensation, but not for the four existing City employees in the new unit. Because of the promise to the OMI/Thames transferee supervisors, the City agreed to include the three of them, by name with the group of four other named supervisors covered by the side letter to the MOU. For reasons that are unclear, when the City created the side letter (Appendix B) the names of the three supervisors who returned from OMI/Thames were omitted. Nevertheless, all seven supervisory employees were provided the 5.5% Deferred Compensation. Moreover, the City paid all new bargaining unit members the 5.5%, although there was no MOU requirement to do so. In 2011 the City was facing bankruptcy and audited all its expenditures. It found no MOU authority for paying the 5.5% benefit to all members of the Unit and stopped

paying it.³ The Union did not grieve the change. Currently, all of the supervisees receive the 5.5% HRA benefit; none of their supervisors receive it.

This difference has a significant consequence for this Unit. There is compaction of the salary schedule and a disincentive for promotion. A Senior Environmental Control Officer who promotes to Technical Services Supervisor must take a small cut in salary, as must a Senior Collection Systems Operator who promotes to a Collection Systems Supervisor. With the single exception of the Water Systems Superintendent, no supervisee who promotes to supervisor will receive a 5% increase on promotion.⁴

The Union makes three arguments. First, it argues that when the 5.5% benefit was negotiated the named people comprised the entire unit. There was a sidebar in 2008 during which the parties agreed the money would be put into the health benefit for all Unit members.⁵ Thus, the benefit was intended to be for the entire Unit, not just the named employees. Second, the Union did not grieve when the benefit was improperly cut off during the financial emergency because there were many more significant issues. The restoration of this benefit is now appropriate in light of the City's emergence from bankruptcy. Third, the failure to provide the 5.5% to supervisors creates a serious disincentive to promoting into the Unit. The City will be unable to replace supervisors through promotion.

The City contends the parties intended to negotiate the 5.5% only for the named persons. It removed the language providing the benefit from the MOU, and placed it in the side letter as applicable only to named employees. The City's bargaining notes

³ Apparently the four employees actually named in the side letter are no longer employed. Only one of the three whose names the City failed to include in the side letter was – and is – still employed.

⁴ In most Civil Service Systems, the minimum increase on promotion is 5%.

⁵ The only Union participant in the sidebar declined to testify either in person or by telephone. The Union offered to have the participant speak privately with the neutral factfinder. The offer was refused.

show it told the Union it intended to preserve wages and benefits only for the named group. While it is unclear why three names never got into the side letter, the Union approved the side letter. Moreover, it never grieved when the payments stopped in 2011. Finally, the Union provided no evidence to support its position there was some other agreement.

The Union failed to establish the City erroneously eliminated the 5.5% HRA benefit for the Unit. The Union's failure to grieve when the unauthorized benefit was cut off argues against its position it merely seeks the restoration of an existing benefit erroneously eliminated. On the other hand, it is clear the City erroneously eliminated the benefit for a current supervisor, to whom it was promised upon his return from OMI/Thames, and on whose behalf the Union negotiated the benefit in the side letter. This fact was discovered as a result of its demand to provide the 5.5% benefit to the Unit. When a new fact is discovered during factfinding it is normally taken into consideration when making recommendations.

The Panel recommends restoration of the 5.5% benefit, as of July 1, 2014, only to the supervisor for whom it was initially negotiated and erroneously eliminated.

The compaction in salary between the supervisors and their supervisees is likely to create an operational problem for the City. If it is unable to promote from within, and the salaries it pays attract no new employees to supervisory vacancies, it will have to act. It may decide, as it did for Plant Operations Supervisors, to simply raise the classification wage scale. That eliminates both recruiting and promotion obstacles.

Alternatively, it may decide to restore the 5.5% to the Unit, to eliminate obstacles to promotion from the supervisee unit into this Unit. In either event, with our recommendation for an 18% increase for Plant Operations Supervisors, the operational problem is only potential at this moment in time.

The Panel does not recommend the Union proposal to provide a 5.5% HRA benefit for the Unit.

6. City proposes to freeze cash payments for vacation for the term of this MOU and until the next MOU is agreed.

The City described this as a cash conservation measure dictated by its recent emergence from bankruptcy. Police and Fire have agreed to eliminate vacation cash out and all other units have agreed to this proposal. The Union does not assert there is no need to conserve cash at this early post-bankruptcy stage. It agrees to freezing the vacation cash payments for the term of this MOU, but not to some uncertain date in the future.

Freezing cash payments for vacation is a prudent cash conservation measure at this time. Continuing the freeze until the next MOU is negotiated provides an incentive to reach prompt agreement. It has been accepted by all other units.

The Panel recommends the City proposal to freeze cash payments for vacation until the next MOU is negotiated.

Factfinding Panel

Norman Brand, Chair
Norman Brand

Date
9/28/15

Ann Goodrich, Employer Member
See Attached

Agree/Date
9/28/15

Dissemt/Date
9/28/15

Richard Stiffler, Union Member
See Attached

Goodrich Dissent to Fact finder 's Conclusions and Recommendations,**City of Stockton vs. Water Supervisors unit (OE#3).**

As the City's Panelist I agree with the majority of the Fact finders findings and recommendations but offer this dissent to the following portions of the fact finder's recommendations.

#2. Salary Increase for Plan Operations Supervisors and reduction in Certification Pay proposed by City

The fact finder agrees with the City 's proposal to increase the salary of this class due to recruitment difficulty, however he believes that the proposal from the City to eliminate the certification pay should not be implemented. The City's two proposals are tied together and part of the savings to pay for the 18% increase for this class comes from the elimination of the certification pay. I understand that his belief is that since the salary survey data indicates the City's salaries are below the labor market average that no compensation reductions should occur at this time and should perhaps be delayed to some future date when a larger compensation increase is being offered to this unit. This is the same rationale for the recommendation on the FLSA change for 7 positions below.

In the past the City agreed to many poor management practices that are either are not typical in the labor market or make no business sense or are wasteful. The certification pay falls in this category and the City is attempting to correct this practice. The certification pay, compensates some employees for education/certification that is already required as part of the minimum qualification for the classification they are employed in. Or the certification pay is also given to employees who have these certifications but are in positions where they are not used to perform their duties. In the first case, the City is paying twice for the same certification and in the later the citizens are paying for a certification that has no value to the City in the employee's performance of their duties.

The City before, during and after its bankruptcy has found and corrected many poor business practices including ones involving employee compensation. The City not only has a business obligation to do so, but a moral one since so many services to the public have been impacted by lack of money to fund services. The certification pay falls in this category and should be eliminated now that it has been identified.

#3 Change in FLSA status for 7 positions from receiving Overtime to being Overtime Exempt

The fact finder recommends deferring this change until a future round of bargaining when presumably the City would be offering a larger compensation package to this unit. As I understand the recommendation is not based on facts that support that the positions do not meet the federal guidelines, but rather is based on the fact that the change might result in a pay reduction in overtime. And due to the fact that these classes are below the labor market and this change should be delayed to some future date.

As part of the City's Long Term Fiscal Plan it assumes several million dollars in savings from improving business practices and correcting poor management decisions from the past. As part of that effort the City, noting that almost all of its classifications including managers received overtime, which is not a typical business practice, had a comprehensive study done to determine which classification met the federal standard for being exempt from paid overtime.

In 2014 after that study was completed, the City bargained with various employee organizations that represented employees in certain classifications that met the federal guidelines for occupations that could be exempted from receiving paid overtime. The City then citywide proposed these classifications be converted from receiving paid overtime to being overtime exempt under the Fair Labor Standards Act. Overtime-exempt employees receive additional vacation, as well as a more flexible time reporting in accordance with City policy.

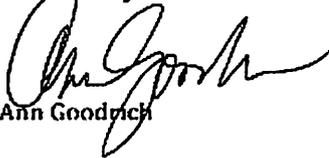
Those other employee groups reached agreement with the City on converting the classes proposed in their bargaining unit. The City also unilaterally made this change for numerous management and supervisor classifications in the unrepresented management bargaining units. Many of these changes (unrepresented groups and represented mid level managers and supervisor organization) occurred over a year ago. (I believe that the City verbally indicated that other units had already agreed to this change, but the fact finder does not recall this information being provided by the City's representative.)

The City before, during and after its bankruptcy has found and corrected many poor business practices including ones involving employee compensation. The change in FLSA status for managers and supervisors who meet the federal standards was repeatedly identified by the City in public Council agenda reports on the bankruptcy as a poor management practice that needed to be corrected. The City not only has a business obligation to do so, but a moral one since so many services to the public have been impacted by lack of money to fund services.

The change of this practice needs to be consistent across the City departments and there is no rationale that supports delaying this change for these classifications when many others have already been changed, often for employees who worked the same or more overtime than employees in this unit and whose compensation increases are the same as what has been offered to this group.

I dissent on these recommendations.

Respectfully submitted



Ann Goodrich

City Panel Member
Water Supervisors unit(OE#3) Panel.

MEMORANDUM

September 28, 2015

TO: Norman Brand, Panel Chair
FROM: Richard Stiffler, Union Panel Member
SUBJECT: REPORT OF THE PANEL - FACT FINDING

In the matter of Fact Finding between Operating Engineers Local 3 (OE3), Water Supervisory Unit, and City of Stockton, I, Richard Stiffler, representing Operating Engineers as the Union Panel Member, offer this dissent to the following portions of the Fact Finder's Report of the Panel (Report).

4. City proposes an administrative fee of \$26.98 per employee enrolled in OE3 health plan.

"The Panel recommends charging a monthly administration fee of \$26.98 to Unit members enrolled in the OE3 health plan."

It is stated in the Report that the subsidization of this fee is extremely small when spread over all active employees in the City's plans. And, given the very limited resources expended by the City for administration of the OE3 plan, I propose that these fees are unwarranted and should not be applied to the Water Supervisory Group, especially when this recommendation is based primarily on the fact that another OE3 bargaining group has agreed to pay these fees.

5. Union proposes a 5.5% HRA benefit for all unit members.

"The Panel does not recommend the Union proposal to provide a 5.5% HRA benefit for the Unit."

While the Union's Last, Best, and Final offer did not propose an alternative to the 5.5% HRA proposal, it is the Union's position that, in addition to the Fact Finding Report recommendation of restoration of the 5.5% benefit, as of July 1, 2014, to the supervisor for whom it was initially negotiated and erroneously eliminated, that this Report include a recommendation that the same 5.5% HRA benefit be provided upon execution of the MOU for only those members who are currently in the Unit at the time the MOU is executed. This benefit would not be provided to any future new members in the Unit, without subsequent negotiations. It is understood that not providing this benefit to new members will allow continuation of the compaction in salary between the supervisors and their supervisees and this will likely create an operational problem for the City. This can be addressed with the City in future negotiations. The provision of this benefit to those members who are currently in the Unit will play a significant role in retaining these valued City employees who have demonstrated the experience, knowledge and leadership qualities that the City desperately needs to retain at this point in a post-bankruptcy working environment.

As the Union Panel Member representing Operating Engineers, I offer agreement on all other remaining recommendations contained in this Fact Finding Report.

Respectfully submitted.



RICHARD K. STIFFLER
OPERATING ENGINEERS LOCAL 3 UNION PANEL MEMBER