



## BACKGROUND

The parties to this Fact Finding are the City of Del Mar (City/Employer) and the Del Mar City Employees Association (DMCEA/Association). This is a small Southern California beach community with a general fund budget of \$13 million which employs about 54 full-time employees. This bargaining unit has about 22 members.

The parties commenced negotiations for a successor three year contract on October 14, 2014 as the current Memorandum of Agreement (MOA) was January 1, 2012 through December 31, 2014. They met in direct negotiations for ten (10) sessions through February 2015. When they were unable to reach agreement on a complete successor contract, they requested that a state mediator be assigned. The mediator met with the parties three times in March 2015. When the parties still were unable to reach an agreement, the Association requested Fact Finding on April 20, 2015.

The City chose Panel Member Steven M. Berliner, Esquire and the Association chose Panel Member Brian Niehaus, Business Representative, to represent them on the Panel. The Panel Members chose Bonnie Prouty Castrey to Chair the Panel. A formal hearing was held July 23, 2015.

In the formal hearing, before settlement discussions, both parties succinctly presented evidence regarding the outstanding issues. The City also presented a volume of evidence which was received and studied for this report. The Association submitted

their Final Proposal and presented information orally. The Chair took copious notes for her use in the preparation of this Report and Recommendations. Initially the parties indicated a desire to reach an agreement on the issues. Therefore, following the formal hearing regarding all the contested issues, the Panel spent several hours on July 23, 2015 attempting to assist these parties to settle. The Chair explained that in confidential settlement discussions, their discussions remained confidential.

In this matter, the Panel is guided by the California Government Code Section 3505.4(d) of the MMBA which states in pertinent part:

In arriving at their findings and recommendation, the Fact Finders shall consider, weigh, and be guided by all the following:

1. State and federal laws that are applicable to the employer.
2. Local rules, regulations, or ordinances.
3. Stipulations of the parties.
4. The interests and welfare of the public and the financial ability of the public agency.
5. Comparison of the wages, hours, and conditions of employment of the employers involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable 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.

The parties did not provide specific stipulations to the Panel.

The contract issues which are properly before the Factfinding Panel are as set forth below:

Wages  
Health Insurance  
Salary Schedule Changes (12 Step Schedule vs current 5 Steps)  
Standby Pay  
Lifeguard Classification Study  
Disability Insurance

All other matters were previously tentatively agreed upon during the course of negotiations.

#### COMPARABLE CITIES

The parties chose different comparables with the Association suggesting the use of special districts, water districts and a few cities. The City chose cities in San Diego County. As the law states, "Comparison of the wages, hours, and conditions of employment of the employers involved in the fact finding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable agencies", the Chair will use the City comparable list which is all cities in the San Diego County area (Emphasis added). The cities have similar funding mechanisms, which is an important consideration as this Report and Recommendation concerns funding for the six disputed

issues.

### GENERAL DISCUSSION OF ISSUES AND RECOMMENDATIONS

The City is not pleading an inability to pay. The adopted budget commenced on July 1, 2015 with a General Fund estimated beginning balance of \$3,647,420 and taking into account major assignments of cash such as self-insurance, the pension reserve and liability for accrued leave, the projected ending balance on June 30, 2016 is \$4,310,600.00. This is the General Fund, which has discretionary money, not the funds which are designated for specific purposes, such as capital improvements (CX tab 2).

The City has as compared the job descriptions of each of the covered classifications, at the top step, with the comparison group, that also had a similar position (Tab 4). The biggest "outliers", in that wage comparison are the Public Enforcement Officer at 16.5% above the median of the four like cities and the Senior Lifeguard which is 19.4% below the two comparisons available. It is noteworthy that in the budget, the City received over \$730,000.00 the last two fiscal years in parking meter income and projects \$765,000.00 this fiscal year (CX tab 3). From the comps, it appears that cities without officers, depend on the local sheriffs to enforce parking regulations (tab 4). This appears to be important in consideration of whether these employees should receive on or off schedule increases. Off schedule payments are not included in pension calculations and are one time, not on-going on the schedule.

Both parties recognize that there is an issue with pay and classification in the life guard series and have indicated a desire to address this.

The City also has an interest in lengthening the salary schedule by dividing the current five steps, with five % between, into ten steps with 2.5% in between and adding two entry level steps for new hires and for current employees promoted to a new classification/job, not in the same series of classifications.

It appears that the biggest issue separating these parties is Health Insurance. Currently the parties have a 75/25% split on payment for the medical plans and there are two plans from which to choose, Health Net and Kaiser with minimal or no co-pays. The City and employees are both struggling to pay the significant increases of 17% to Health Net and 8% to Kaiser. There is an Insurance Committee which includes the various groups of employees, including members of this bargaining unit. The City met with members in May and discussed proposals from the providers, which include eight (8) different plans with varying deductibles and co-pays from which all employees can choose coverage, that meets their needs. The City provided extensive materials regarding these options (CX tab 6). The plans will potentially save both parties significant monies and will stabilize the City expenditures. Based on those significant savings to the City and the stabilization of costs the Chair recommends the following package for discussion and settlement of this dispute:

## HEALTH BENEFITS

The Association accept the City proposals and meet with the City to evaluate the effect of the changes no later than January 15, 2017 to discuss additional plan changes which may be necessary to comply with the Affordable Care Act.

## SALARY SCHEDULE

Lengthen the schedule to ten steps for all new hires with 2.5% between the steps. This saves the City money over time both in how rapidly employees move across steps and in the size of increments.

Current employees, who are promoted, should remain on the current five step plan with five percent increments between steps.

Based on the savings going forward in these two significant areas and additionally, the savings in pension funding going forward, the Chair recommends:

2.5% for all employees on schedule retroactive to January 1, 2015; 3.0% for all employees on schedule on January 1, 2016 and 3.0% for all employees on schedule on January 1, 2017 with a Agreement expiration of December 31, 2017.

## STANDBY PAY

The parties agree to either divide the increase between the Lead and Backup or agree to the increase for the Lead as every one of those affected apparently is the Lead about every sixth week.

#### LIFEGUARD CLASSIFICATION STUDY

The parties should agree to study this issue of the appropriate classification and salary adjustment by March 15, 2016. If they fail to agree, then submit the matter to arbitration.

#### DISABILITY INSURANCE

Based on the savings to the City in the Health Insurance, the City should agree to pay the premiums for employees disability insurance commencing in year two on January 1, 2016.

#### CONCLUSION

Based on careful study of both parties presentations and often conflicting evidence regarding all the issues, the above recommendations are made for the resolution of the 2015-17 contract negotiations between the City of Del Mar and the Del Mar City Employees Association for a three year Memorandum of Agreement.

The Panel Members representing the City and Association conferred by telephone conference call in Executive Session October 22 and 27, 2015, regarding the Recommendations. Based on the above Recommendations of the Chair they concur or dissent as follows:

For the City:

Concur  Dissent

Concur in part

Dissent in part

For the Association:

Concur  Dissent

Concur in part

Dissent in part

Report attached

yes

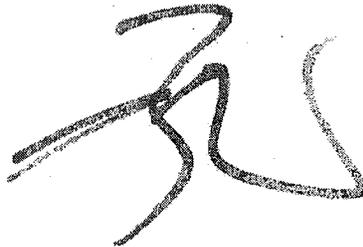
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no



Steven Berliner

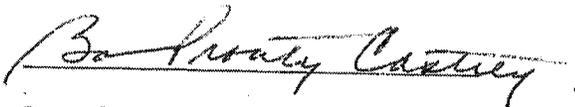
District Panel Member



Brian Niehaus

Association Panel Member

Issued with attachment on November 9, 2015 by



Bonnie Prouty Castrey,

Panel Chair

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8 **FACTFINDING HEARING**  
9

10 In the Matter of Factfinding Between  
11 CITY OF DEL MAR,  
12 Employer,  
13 v.  
14 DEL MAR CITY EMPLOYEES  
ASSOCIATION,  
15 Union.  
16  
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Case No.: LA-IM-177-M

**PANEL MEMBER STEVEN M. BERLINER'S  
CONCURRENCE AND DISSENT TO  
DISCUSSION AND RECOMMENDATIONS  
OF CHAIRWOMAN BONNIE PROUTY  
CASTREY**

18 **CONCURRENCE AND DISSENT**

19 I am in agreement with and concur in the discussion and recommendations made by  
20 Chairwoman Bonnie Prouty Castrey to the extent she agrees that the Del Mar City Employees  
21 Association ("DMCEA") should accept the majority of the June 24, 2015 last, best and final  
22 proposal ("LBF") made by the City of Del Mar ("City"). However, as I explain below, I dissent  
23 to the extent that the Chairwoman recommends that (1) the City increase its offer in years two (2)  
24 and three (3); (2) reduce the number of steps in the salary range from its proposal of 12 steps to  
25 10 and limit application of the new salary ranges to new hires only, rather than new hires and  
26 promoted employees; (3) modification of the City's proposal on standby pay; (4) submission of  
27 lifeguard salary issues to arbitration; and (5) to provide disability insurance in Year 2 instead of  
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PANEL MEMBER STEVEN M. BERLINER'S CONCURRENCE AND DISSENT TO DISCUSSION AND  
RECOMMENDATIONS OF CHAIRWOMAN BONNIE PROUTY CASTREY

1 Year 3.

2 As the Chairwoman states, the City submitted voluminous evidence in support of its LBF  
3 proposal. DMCEA submitted none in support of its proposal. On that basis alone, the  
4 recommendation should be for DMCEA to accept the City's proposal without modification. The  
5 Chairwoman's recommendation does do that for the most part. To that extent, the City concurs in  
6 the Discussion and Recommendations. However, the Chairwoman recommends expensive  
7 enhancements to the City's LBF in an effort to spur agreement. While a laudable objective, it is  
8 not among the factors that must be considered in a factfinding hearing under the Meyers-Milias-  
9 Brown Act (Government Code section 3500 et seq., the "MMBA").

#### 10 CITY FINANCIAL OBLIGATIONS

11 The Chairwoman suggests that a projected City General Fund balance for June 30, 2016  
12 of \$4,310,600 is a basis for her recommendation. In a vacuum, that may seem like a lot of  
13 money. However, the City does not operate in a vacuum. There are twenty-three (23) DMCEA  
14 employees, but also nine (9) fire employees, and twenty-two (22) management, professional,  
15 confidential employees. The City has identified \$63,800,000 in Capital Improvement Projects  
16 ("CIP") in its 10 year, Capital Improvement Program, of which \$35,000,000 is unfunded. The  
17 City has another \$4,200,000 in unfunded non-safety pension obligations, which equates to a  
18 \$10,000 per capita obligation of each City resident. In this broader context, the City's projected  
19 General Fund balance is not sufficient to satisfy the City's overall obligations over the Program  
20 Period.

#### 21 SALARY PROPOSALS

22 The City proposed 2.5% annual across the board increases for 2015, 2016 and 2017<sup>1</sup>.  
23 DMCEA proposed 3% per year. The Chairwoman recommends the City offer 2.5% retroactive to  
24 January 1, 2015 and 3% increases in 2016 and 2017.

25 Given the discussion above about unfunded pension liabilities and CIP approaching  
26 \$40,000,000, any additional increases in compensation above the LBF are unwarranted. DMCEA

27 \_\_\_\_\_  
28 <sup>1</sup> One position would have received a stipend given that the position's salary was in excess of  
10% above the market median.

1 presented no evidence that its members are either underpaid relative to the marketplace or  
2 underpaid internally within the City. Moreover, the City showed that recruitment and retention of  
3 employees is not a problem. Over the past five years, the average number of resignations within  
4 DMCEA's classifications amounted to less than 1% (.67%) per year. There is also great interest  
5 in the marketplace for employment with the City. The City received 77 applications for one  
6 Utility Worker recruitment. Moreover, the City had no layoffs during the recession.

7 The City also introduced evidence that with its proposal, DMCEA members will have  
8 received increases which exceeded CPI since 2012, and that the average increase in salaries in  
9 comparable agencies is 2.24%. Comparable agencies are offering lower salary increases to their  
10 employees than the City's LBF would provide to DMCEA members.

11 There is simply no justification for a recommendation that the City offer more than the  
12 2.5% annual salary increase it has already proposed.

### 13 SALARY RANGES

14 The City proposed changing its 5 step salary schedule (5% per step) to a 12 step schedule  
15 (2.5% per step) for new hires and employees who are promoted to a new classification outside  
16 his/her current class series. It was proposed for two reasons: (1) to control wage inflation and  
17 CalPERS contributions; and (2) to help fund the salary and other enhancements in the City's  
18 LBF. The salary range changes would not impact any current employee unless and until they  
19 promote to a new classification.

20 There is no rationale given in the Chairwoman's discussion and recommendation that  
21 explains why the City's proposal on this issue was not recommended. Given that most members  
22 will never be impacted by it, the salary range changes proposed by the City are a rational method  
23 of addressing long-term funding concerns, while limiting the immediate impact of the changes.  
24 The City's LBF on this issue is more appropriate than the recommended changes.

### 25 HEALTH INSURANCE

26 The City has worked diligently to structure proposed changes to its employees' health  
27 insurance program that both provides more choice for employees and generates savings for  
28 employees and the City. I applaud and concur in The Chairwoman's recommendation that

1 DMCEA accept the City's proposal.

2 **STANDBY PAY**

3 The City proposed that the Lead Standby pay be increased from \$30 to \$45 per day (from  
4 \$60-\$70 per day for holidays). The evidence showed that the Lead is the first responder and  
5 generally handles incidents themselves. The City did not propose a change in the Backup  
6 Standby employee for these reasons. The City's standby pay, as proposed, will be 19% higher  
7 than the regional average. The Chairwoman recommends the DMCEA accept the City's proposal  
8 or that the parties agree to split the increase between the Lead and the Backup. The City's  
9 proposal should be accepted as presented in the LBF. There is no basis to split the increase  
10 between the Lead and the Backup given the evidence.

11 **LIFEGUARD CLASSIFICATION STUDY**

12 The City has agreed to do a classification study for the Senior Lifeguard and Lifeguard  
13 Community Specialist series. The Chairwoman recommends that the parties negotiate class and  
14 salary adjustments by March 15, 2016 or submit the issue to arbitration. There are two key issues  
15 with this recommendation. First, the date is arbitrary and wholly unworkable given the statutory  
16 meet and confer obligations. Second, there is no precedent within the City to submit any  
17 negotiation dispute to arbitration.

18 **DISABILITY INSURANCE**

19 The City proposed picking up the cost (approximately 1% of compensation) in the third  
20 year of the proposed MOU. DMCEA proposed that the City pay these costs retroactive to July 1,  
21 2015. The Chairwoman's recommendation is to split the difference and have the City pay it  
22 beginning in Year 2. There is no evidence cited as to why one proposal or the other is appropriate  
23 under the statutory factors, nor any explanation as to why the City should start paying these costs

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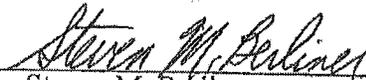
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one year early. Since no evidence was presented in support of DMCEA's proposal or the recommendation, I dissent to this recommendation.

Dated: November 6, 2015

LIEBERT CASSIDY WHITMORE

By:



Steven M. Berliner  
Panel Member for the City of Del Mar