

The Matter of the Impasse Between

City of Visalia

and

Visalia Firefighters, IAFF Local 3719

) **FACTFINDING REPORT**
) **AND RECOMMENDED**
) **TERMS OF SETTLEMENT**

) **PERB CASE #SA-IM-161-M**
) **REPORT ISSUED**
) **May 4, 2016**

Hearing Held on April 11, 2016

COMPOSITION OF THE FACT-FINDING PANEL

Impartial Chairperson: John G. Moseley
Fact-finder
36835 Lexington Avenue
Madera, CA 93636-8212

City of Visalia Member: Shelline K. Bennett
Attorney
Liebert Cassidy Whitmore
5250 North Palm AV, Suite 310
Fresno, California 93704

Visalia Firefighters Member: Al Rush
6459 Big Oak
Sanger, CA 93657

MAKING PRESENTATIONS TO THE FACTFINDING PANEL:

For the City of Visalia:

**Leslie Caviglia, Assistant City Manager
City of Visalia
220 N. Santa Fe Street
Visalia, CA 93292**

**Diana Davis, Human Resources Manager
City of Visalia
220 N. Santa Fe Street
Visalia, CA 93292**

For the Visalia Firefighters:

**Thomas M. Sharpe, Attorney at Law
The Law Offices of Bennett & Sharpe, Inc.
2444 Main Street, Suite 110
Fresno, California 93721**

HISTORY OF NEGOTIATIONS

On or about April of 2015 negotiations between the City of Visalia and the Visalia Firefighters IAFF Local 3719 commenced. During the negotiation process, the parties met approximately seventeen times, which included a mediation session. This was an effort to reach an agreement on a successor agreement as the MOU was to expire on June 30, 2015.

On January 6, 2016, a mediation session was held with SMCS Mediator, Joe Rios. At the conclusion of the session an agreement was reached and a representative of the City signed the tentative agreement, (tab 5 – IAFF Local 3719). The leaders of Local 3719 IAFF submitted the tentative agreement to their members for an on-line ratification vote.

There were complications in the voting process which necessitated a re-vote in February of 2016. While the re-vote was occurring, and in order to comply with statutory timelines, IAFF Local 3719 submitted a request to proceed to fact-finding on February 3, 2016. The parties then mutually agreed to suspend selection of the fact-finder pending the results of the ratification re-vote.

The Tentative Agreement was not ratified, (tab 5 - IAFF Local 3719). The two sides continued to talk to try to reach an agreement while a fact-finding panel was assembled and a fact-finding hearing was conducted.

On March 8, 2016, the City of Visalia informed IAFF Local 3719 by letter, that it had no option but to assume that the tentative agreement was not ratified, and that the City was hereby withdrawing the January 14, 2016 tentative agreement. IAFF Local 3719 then informed the City of Visalia that the tentative agreement had not ratified.

On March 14, 2016, IAFF Local 3719 submitted alternative language to the City of Visalia regarding the Paramedic issue, (tab 8 - IAFF Local 3719).

On or about March 28, 2016, I was informed by the Public Employment Relations Board, that the City of Visalia and its Firefighters IAFF Local 3719 had mutually agreed to select me as the chairperson for the fact-finding panel and PERB fact-finding case #SA-IM-161-M.

On April 11, 2016 a fact-finding hearing was held at the City of Visalia Administration Building, 220 N Santa Fe Street, Visalia, Ca, 93292.

RELEVANT FACTORS

California Government Code

3505.4. (a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(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.

(e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

3505.5 (a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

ISSUE(S)

ISSUE	CITY	LOCAL 3719
2015-2016 Salary	One percent (1%) effective following Council approval of MOU (not retroactive).	One percent (1%) effective first pay period July 2015.
2016-2017 Salary	Two percent (2%) effective first pay period July 2016, with expanded wage re-opener (not	Three percent (3%) effective first pay period July 2016.

	dependent on other increases).	
Paramedic program	<p>Revise MOU to implement changes described in City Counter-Proposal dated Oct. 6, 2015.</p> <ul style="list-style-type: none"> • Prospectively eliminate Eng/Paramedic positions for future appointees (status quo for existing employees) • Newly appointed Engineers maintaining cert receive \$3,200 annual spec. pay • City cover costs (class/licensing to maintain cert • No o/t or travel time for maintaining cert • Employees will not be first responder paramedic (only required to serve as paramedic in emergency) 	<p>Revise MOU to implement changes as described in Local 3719 proposal dated Oct. 9, 2015.</p> <ul style="list-style-type: none"> • Prospectively eliminate Capt/Paramedic position for future appointees • Future appointees to Fire Capt. Allowed to maintain certification • Compensation for costs of maintaining cert. for future Captains
Continuous hours cap	Maintain current status quo limiting maximum continuous hours to 72 unless otherwise ordered by the Dept.	Change limit on maximum continuous hours allowed to 96 unless otherwise ordered by the Dept.

(tab 3 – IAFF Local 3719)

RELAVENT FACTS FROM THE HEARING

The fact-finding hearing began at 9 AM. Local 3719 put its case on first. While the hearing lasted until well after 5:30 PM, the two parties were relying heavily on the January 14, 2016 tentative agreement as a basis for their presentations and discussion before the fact-finding panel. The Representatives for Local 3719 made it clear that they were willing to accept the City's salary proposal as contained in the November 25, 2015 letter to the City of Visalia, (tab 3 - IAFF Local 3719). It also became clear that if an agreement could be reached, that the City of Visalia was willing to accommodate Local 3719's request to increase their maximum continuous hours to 96 hours.

To the Chair it was clear that the City was willing to maintain the current pay for current Fire Captains and Fire Engineer Paramedics, but would not recognize their Paramedic certification, effectively eliminating them from the Paramedic classification, as well as eliminating any future promotions to Fire Captain Paramedic and Fire Engineer Paramedic. Additionally, the City no longer wanted to pay for the certification and training costs for the existing Fire Captain Paramedics, and Fire Engineer Paramedics, (tab 3 - IAFF Local 3719).

There was no disagreement nor discussion of items 4,5,6, and 7 as contained in the January 14, 2016 tentative agreement. The discussions made it clear to the fact-finding Chair that the City could live with the increase from 72- 96 hours if the Paramedic classification issue could be settled.

After Local 3719 had finished presenting its positions, which focused primarily upon the Paramedic issue, the Representative for the City of Visalia, Assistant City Manager, Leslie Caviglia, presented the City's current financial status.

Ms Caviglia presented evidence that the City's finances are in good shape, and the City did not raise the defense of an inability to pay. Based upon the Mid-year Financial Report dated March 21, 2016, the City of Visalia has a reserve equal to 18% of operating expenditures, with a policy of trying to raise that reserve to 25% of operating expenditures, (City of Visalia exhibit; Mid-Year Financial Report March 21, 2016, "Emergency Reserves").

She stated that the City is concerned that the cost of maintaining a Fire Department which consists of approximately 50 filled positions, and 75 authorized positions, would become a fiscal issue and the City in the future would not be able to maintain every fire personnel member as a Paramedic. Currently, Police and Fire consume 70% of the City's budget.

Human Resource Manager, Diane Davis, stated during her presentation that the City was trying to maintain what they considered to be a sufficient level of Paramedics, meaning one Paramedic per fire apparatus, and that the City was concerned that under the regulations governing Paramedic recertification, the Fire Captains would not be able to reach the minimum "touches they need each year", which was explained to me as direct contact with an individual experiencing an emergency requiring Paramedic care. Ms. Davis explained that the idea of all Fire Personnel being

Paramedics was originated in 2004-2005, by a former Fire Chief, and she referred me to City of Visalia's Proposal dated April 9, 2015 which states:

"Discussion: When the paramedic program was initially implemented all ranks were encouraged to become paramedics to ensure that the City had enough to provide quality of service to citizens. Now there is no shortage of paramedics; all firefighters in the department are paramedics, which allows for a paramedic on each company and on every shift. There is no need for an unlimited number of paramedics, particularly at the higher ranks. It is difficult for the City to provide certification training, backfill during that time, and ensure that all get the opportunity to act as the primary paramedic on a specific number of shifts. Additionally, the cost is not sustainable. It is not efficient to have the Captain, who is responsible to ensure the safety of personnel and overall management of the incident scene, be responsible of patient care."

She stated further that the City of Visalia was putting forth the current Fire Chief's recommendation regarding Fire/Paramedics.

Ms. Davis was very clear that the City already possessed the job classification of Fire Captain and Fire Engineer without the Paramedic designation, and that they could hire Fire Captains and Fire Engineers under these classifications, and eliminate through attrition, the Fire Captain/Paramedic and Fire Engineer/Paramedic staff, but that the City did not want to wait for attrition to occur.

The issue of supervision was brought up by IAFF Local 3719. When a call comes in and personnel are dispatched, the Fire Captain is the supervisor at the scene unless a higher ranking supervisor or management personnel arrives. IAFF Local 3719's concern is if Fire Captains no longer possessed the same level of training and certification of their subordinates, how could they properly supervise subordinate personnel and if necessary, intervene if they believed the subordinate personnel was not performing their tasks sufficiently. If a Firefighter is performing Paramedic duties, how would a Captain know if he is performing them sufficiently if the Captain has no training and certification in Paramedic duties.

The Representative for IAFF Local 3719 was very clear that they were fully aware of the City's concerns and wanted to meet them, both because of the finances the City was concerned about and because of the personnel staffing issues.

After both parties had presented their positions, the parties agreed to attempt mediation with me acting as a mediator. As with the previous tentative agreement, and from the presentations by both parties, who were equally polite and professional in their conduct, they could not find a common ground on the Paramedic issue. It was also clear to the fact-finding Chair, that there was a need for further discussion as to how to implement the City's desire for the reduction of Paramedic personnel within the Fire Department. We concluded the fact-finding session at approximately 5:30PM.

RECOMMENDATIONS

I am focusing on the January 14, 2016 Tentative Agreement because it contains the issues that both parties presented to me and which the fact-finding was to investigate and make a finding upon. My recommendation and findings are based upon the November 25, 2015 Letter of Issues from Local 3719 Representative Mr. Sharpe to city of Visalia Representative, Ms. Bennett; (Tab3 – IAFF Local 3719). I was not presented with nor was I asked by either party to do fact-finding on any other issues contained in the expired MOU.

1. I am recommending that the parties return to the January 14, 2016 tentative agreement, including the Preamble and subsequent sections except for section 3, and that both parties seek to obtain ratification of the January 14, 2016 agreement with the following modifications to section 3 which contains the Paramedic Program found in Tab 5 of the Local 3719's exhibits.

"3. Revise the current paramedic program as follows and revise MOU language accordingly:

- *Status quo for all current Fire Engineer/Paramedic and Fire Captain/Paramedic*
- *No future promotions to Fire Captain/Paramedic*
 - *City will allow Fire Captains to take City offered paramedic classes; however, it cannot create overtime or backfill ~~or trade~~ situations.*
 - *City will allow tuition reimbursement to be used for the cost of paramedic classes taken elsewhere within the current cap allowed.*
 - *City will ~~not~~ pay for State certification costs.*
 - ~~*Fire Captains will not be allowed to serve as a paramedic in the scope of employment with the City and will not be identified as a paramedic (no patch)."*~~

The Chair is recommending the strike outs in the above language because it is in conflict with the "Status quo" language above and the stated intent of the City "...for all current Fire Engineer/Paramedics and Fire Captain/Paramedics."

It is clear to me that both sides are very close to finding a resolution to the Paramedic, and both parties need the opportunity to hear fresh ideas and the ability to focus on the issue Paramedic and the staffing issues with a new perspective.

2. *California State Government Code Title 1, Division 4, Chapter 10; Myers-Milias-Brown Act #3505.4*

(D) In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by the following criteria:

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

It is clear to the Fact-finding Chair from the language in the January 14, 2016 tentative agreement, and testimony from the City representatives at the hearing, that the City wants to restructure its paramedic program and eliminate any future Fire Captain/Paramedics. It was clear that this had been discussed in the context of collective bargaining however, there was no testimony given nor documents presented as to whether there was consultation on how the changes would impact the Paramedic Program and its services to the citizens of Visalia.

We are dealing with a service being provided to the citizens of Visalia by the City that directly impacts its' citizens when they are in life threatening situations and in situations when due to an injury or an illness, the severity of the effects of that injury or illness can only be mitigated by the type of care administered as quickly as possible by trained professionals in the earliest stages of the medical emergency.

Therefore, I am recommending that the City seek additional input from its' citizens and its' emergency services staff involved in the Paramedic Program before proceeding with the proposed elimination of the Fire Captain/Paramedic position within the City's paramedic program.

APPENDIX -Exhibits

- A. City of Visalia exhibit; *Mid-Year Financial Report March 21, 2016, "Emergency Reserves"*
- B. Tab 3 - IAFF Local 3719 Exhibits, November 25, 2015 "Letter of Issues" to City of Visalia from Bennett & Sharpe, INC.
- C. Tab 5 - IAFF Local 3719 Exhibits, "**TENTATIVE AGREEMENT** City of Visalia and the Visalia Firefighters Association (Group G) **January 14, 2016**"
- D. Tab 8 – IAFF Local 3719 Exhibits, March 14, 2016 e-mail from Tom Sharpe to Sheline K. Bennett
RE: *Language revision recommendations for Item 3 in Tentative Agreement.*

Exhibit A

MID-YEAR FINANCIAL REPORT

March 21, 2016



EMERGENCY RESERVES

Recommendation:

Remaining surplus of \$1.4 million be deposited into reserves.

- ▶ Current Policy = 25% of operating expenditures.

- ▶ Future Deficits are projected.
 - Add back resources;
 - PERS increases;
 - Operating demands;
 - VECC payment.

**GF Emergency Reserve
(Amounts in Millions)**

Balance as of 6/30/15	\$9.1
FY 15/16 Projected Surplus	<u>1.4</u>
Projected Balance for 6/30/16	\$10.5

**\$10.5 million = 18% of
Operating Expenditures**

Exhibit B Tab3

BENNETT & SHARPE, INC.

*A Professional Corporation
Attorneys at Law*

BARRY J. BENNETT
THOMAS M. SHARPE
KATWYN T. DELAROSA

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November 25, 2015

Shelline Bennett
Liebert, Cassidy and Whitmore
5250 N. Palm Ave., Ste. 310
Fresno, CA 93704

RE: Visalia Firefighters, I.A.F.F. Local 3719 (Group G)
Notice of Impasse and Request for an Impasse Meeting

Dear Ms. Bennett:

In accordance with our discussion at the end of the meet and confer session on November 18, 2015, this is a formal request by the Visalia Firefighters, Local 3719, to initiate the impasse procedure and to schedule an impasse meeting. This request is submitted pursuant to the provisions of Chapter 2.40.130 of the Employer-Employee Relations Ordinance of the City of Visalia.

Based on the bargaining positions communicated during the November meet and confer session, it appears that the parties have reached the point where further movement will not occur through direct discussion. Although the parties have exhausted the possibility of settlement through direct discussion, Local 3719 remains willing to attempt to reach agreement. For that reason, Local 3719 is initiating the impasse procedure described in Chapter 2.40.130. Consistent with the provisions of Chapter 2.40.130, and to facilitate our efforts to reach agreement, Local 3719 provides the following summary of disputed issues.

ISSUE	CITY	LOCAL 3719
2015-2016 Salary	One percent (1%) effective following Council approval of MOU (not retroactive).	One percent (1%) effective first pay period July 2015.
2016-2017 Salary	Two percent (2%) effective first pay period July 2016, with expanded wage re-opener (not dependent on other increases).	Three percent (3%) effective first pay period July 2016.

Paramedic program	Revise MOU to implement changes described in City Counter-Proposal dated Oct. 6, 2015. <ul style="list-style-type: none"> • Prospectively eliminate Eng/ Paramedic and Capt/Paramedic positions for future appointees (status quo for existing employees) • Newly appointed Engineers maintaining cert receive \$3,200 annual spec. pay • City cover costs (class/licensing) to maintain cert • No o/t or travel time for maintaining cert • Employees will <u>not</u> be first responder paramedic (only required to serve as paramedic in emergency) 	Revise MOU to implement changes as described in Local 3719 proposal dated Oct. 9, 2015. <ul style="list-style-type: none"> • Prospectively eliminate Capt/ Paramedic position for future appointees • Future appointees to Fire Capt. allowed to maintain certification • Compensation for costs of maintaining cert. for future Capts.
Continuous hours cap	Maintain current status quo limiting maximum continuous hours to 72 unless otherwise ordered by Dept.	Change limit on maximum continuous hours allowed to 96 unless otherwise ordered by Dept.

By copy of this letter, and in accordance with Chapter 2.40.130 of the Employer-Employee Relations Ordinance, Local 3719 is requesting the City's Employee Relations Officer to schedule an impasse meeting at a time mutually agreeable to the parties.

Local 3719 remains hopeful that the impasse procedure, including the impasse meeting, will allow the parties to review their respective positions on the matters in dispute toward the end of reaching mutual agreement on a successor Memorandum of Understanding.

Sincerely,

LAW OFFICES OF
BENNETT & SHARPE, INC.

A handwritten signature in black ink that reads "Tom Sharpe". The signature is written in a cursive, slightly slanted style.

THOMAS M. SHARPE

cc: Diane Davis, City of Visalia Human Relations Manager
Visalia Firefighters, Local 3719 (Tom Van Grouw)

Exhibit C Tab 5

TENTATIVE AGREEMENT

**City of Visalia and the Visalia Firefighters Association (Group G)
January 14, 2016**

This counter-proposal is in concept format; final language will be drafted as appropriate. References made to the current MOU are for reference purposes only. This counter-proposal is a comprehensive package/proposal. The provisions contained herein are not separate proposals, but are part of a package, which must be accepted in its entirety or it shall be deemed rejected. Unless specifically indicated below, MOU language not changed in this comprehensive proposal shall remain unchanged; however, language that has sunset will be deleted. This counter-proposal is not retroactive and is effective on a go forward basis.

1. Term of contract: Two year contract.
2. Salary ranges for all unit classifications shall be increased by one (1%) percent effective the first pay period following approval of the contract by City Council (no retroactivity). Salary ranges for all unit classifications shall be increased by two (2%) percent effective the first pay period in July 2016.
3. Revise the current paramedic program as follows and revise MOU language accordingly:
 - * Status quo for all current Fire Engineer/Paramedic and Fire Captain/Paramedic
 - * No future promotions to Fire Captain/Paramedic
 - o City will allow Fire Captains to take City offered paramedic classes; however, it cannot create an overtime, backfill or trade situation.
 - o City will allow tuition reimbursement to be used for the cost of paramedic classes taken elsewhere within the current cap allowed.
 - o City will not pay for State certification costs
 - o Fire Captains will not be allowed to serve as a paramedic in the scope of employment with the City and will not be identified as a paramedic (no patch).
4. Leave accruals will be credited at the start of the pay period following the pay period earned.
5. Salary reopener -- The City agrees that, during the term of the MOU, if any bargaining group receives more than the City Council approved base wage percentage increase that Group G receives for this current round of negotiations, the City will reopen negotiations to discuss base wages only. (Propose to include in a side letter agreement)
6. City is reviewing its Personnel Policies and Procedures for the purpose of updating and proposing revisions. Group G agrees to meet and confer over proposed changes as required during the term of the contract. (Propose another side letter agreement as in previous MOU)
7. City agrees to eliminate the residency response requirement.
8. Increase the maximum allowable continuous hours cap from 72 to 96 hours.

Group G Tentative Agreement
January 14, 2016

FOR THE CITY:



FOR GROUP G:



Date: 1-15-16

Exhibit D Tab 8

Tom Sharpe

From: Tom Sharpe <tsharpe@bennettsharpe.com>
nt: Monday, March 14, 2016 11:52 AM
to: 'Shelline K. Bennett'
cc: 'Thomas Van Grouw'; 'Nick Branch'
Subject: RE: Got your voicemail message
Attachments: Visalia FF TA revision.docx

Shelline,

I have attached the revised language we would proposed for item #3 on the January 15, 2016 TA. Our thought is that the remainder of the TA would remain without change. If there are questions, do not hesitate to contact me.
Tom Sharpe

From: Shelline K. Bennett [mailto:sbennett@lcwlegal.com]
Sent: Monday, March 14, 2016 9:24 AM
To: 'Thomas M. Sharpe (tsharpe@bennettsharpe.com)' <tsharpe@bennettsharpe.com>
Subject: RE: Got your voicemail message

Tom – We are playing telephone tag. Just left you a message. Please call me when you can. Thanks. Shelline

From: Shelline K. Bennett
Sent: Friday, March 11, 2016 3:53 PM
To: 'Thomas M. Sharpe (tsharpe@bennettsharpe.com)'
Subject: Got your voicemail message

Hi Tom – I was out of town today; just left you a message; decent chance we won't connect today. I'm in first thing Monday – let's try and connect then. Have a great weekend. Shelline

This email message has been delivered safely and archived online by Mimecast.

Language revision recommendations for Item 3 in Tentative Agreement

Revise the current paramedic program as follows and revise MOU language accordingly:

- Status Quo for all current Fire Engineer/ Paramedic and Fire Captain/ Paramedic
- No future promotions to Fire Captain/Paramedic.
 - City will allow Fire Captains to take City offered paramedic classes; however, it cannot create an overtime or backfill situation
 - City will allow tuition reimbursement to be used for the cost of paramedic recertification courses within the current cap allowed.
 - City agrees that it will be responsible for the cost of EMS related recertification; all required EMS paramedic training by a fire captain shall be done on the employee's own time.
 - City will allow Fire Captains who are certified by the State of California as a paramedic to maintain local (CCEMSA) accreditation and to practice as a paramedic based upon established department standards.
 - Any Fire Captain who chooses to maintain state and local accreditation as a paramedic shall not be placed in a position of primary patient care unless it is necessary. Such as emergency callbacks, multi casualty incidents, etc.

SIGNATURE PAGE

IAFF Local 3719 Panel Member

Concur Dissent _____

Attached Statement

City of Visalia Panel Member

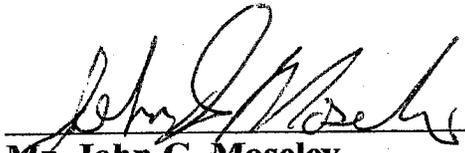
Concur _____ Dissent

Attached Statement

Mr. Al Rush

Ms. Shelline K. Bennett, Attorney

Panel Chair



Mr. John G. Moseley
Fact-finder

John, I concur with final report on the Fact Finding between the City of Visalia and IAFF 3719. Al Rush

**Fact-Finding Hearing with City of Visalia and
the Visalia Firefighters, IAFF Local 3719
Case No. SA-IM-161-M**

City of Visalia Representative to the Fact-Finding Panel
Shelline Bennett
Liebert Cassidy Whitmore

Dissent to the Fact-Finding Report and Recommendations:

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

I respectfully dissent from the Report's recommendations regarding: 1) the ratification of the rejected January 14, 2016 Tentative Agreement; and 2) what appears to be the creation of a committee for the purpose of providing a recommendation to the City concerning the continued use of the Fire Captain/Paramedic and Fire Engineer/Paramedic classifications.

The Report's recommendations, from which I dissent, are contrary to the City's goals of reducing long and short-term operational costs and best providing services to the City. Further, the Report asks that the City surrender its fundamental management right to determine the organizational structure of the City and which services it provides to the public.

1. The City's Operative Proposal for Purposes of Fact Finding was its October 6, 2015 Proposal and not the Withdrawn and Rejected January 14, 2016, Tentative Agreement.

The Report makes a critical error in its recommendations. It incorrectly states that the City and the Union both proposed returning to the terms of the January 14, 2016 tentative agreement which was for settlement purposes only and rejected by the IAFF membership. The Report states:

...the two parties were relying heavily on the January 14, 2016 tentative agreement as a basis for their presentations and discussion before the fact-finding panel. The Representatives for Local 3719 made it clear that they were willing to accept the City's salary proposal as contained in the November 25, 2015 letter to the City of Visalia, (tab 3 – IAFF Local 3719). It also became clear that if an agreement could be reached, that the City of Visalia was willing to accommodate Local 3719's request to increase their maximum continuous hours to 96 hours.

These statements are inaccurate. First, the City's presentation was not based on the January 14 tentative agreement but rather the City's October 6 proposal. The City was clear at the fact-finding hearing that it was seeking a recommendation regarding the October 6 proposal and that the withdrawn (by the City) and rejected (by the IAFF membership) January 14 tentative agreement was no longer operative.

The parties engaged in mediation on January 6 with no agreement. Subsequently, at the request of IAFF, a January 14 tentative agreement was sent to the IAFF lead negotiator. With no explanation as to the delay, the City was advised that the membership ratification vote would not occur until February 9 and last through February 19. During an approximate two month period of time, the City made repeated attempts to ascertain the results of the ratification vote but to no avail. The City was advised by the IAFF lead negotiator that he had no information on the ratification vote. The City had no option then but to assume the tentative agreement was not voted on and/or not ratified. The City was lead to repeatedly believe through bargaining, mediation, and even up through a revised tentative agreement, which was pursuant to IAFF's request, if it continued to agree to additional items requested by IAFF, there would be an agreement, but no agreement occurred.

As a result, on March 8, the City had no option but to withdraw the January 14 tentative agreement, which was clearly for settlement purposes only. The City was subsequently advised that IAFF did not ratify/rejected the January 14 tentative agreement.

Second, the above quote from the fact-finding report is inaccurate in that the City did not state that it was willing to accommodate IAFF's request to increase their maximum continuous hours to 96 hours. The City made clear that with withdrawal of the January 14 tentative agreement, the last previous proposal was its October 6 proposal, which did not include the 96 hours.

Therefore, the recommendation that the City ratify the terms of the rejected and withdrawn January 14, 2015 tentative agreement should be rejected.

2. The Report Inaccurately Presents the City's Status Quo Proposal for All Current Fire Engineer/Paramedics and Fire Captain/Paramedics.

The Report makes another critical error in the facts at issue. The Report inaccurately presents the City's proposal and makes recommendations based on an inaccurate assumption. All City proposals have clearly stated, consistently with what was discussed at the bargaining table, and IAFF understood, *status quo for existing* Fire Engineer/Paramedics and Fire Captain/Paramedics. Changes proposed relate only to future promotions. The Report's misreading of the City's proposal in this regard is significant.

3. The City Should Not Have to Surrender Fundamental Management Rights Which are Outside the Scope of Bargaining.

It is well established that the scope of representation does not include the merits, necessity, or organization of any service or activity provided by the City. Accordingly, the City has the fundamental management right to determine what services it will provide the public. The Report's second recommendation inappropriately infringes upon this right.

The second recommendation refers to "consultation" with and the City seeking "additional input" from citizens and staff before proceeding with its proposal. Although it is unclear what the Report means in this regard, it appears to be recommending some sort of committee involvement and recommendations to City Council. To agree to this recommendation would be the City abdicating its management obligations and waiving critical management rights, which it is unwilling to do. Additionally, many cities do not have Paramedics at all. In the City, an ambulance "rolls" with a Paramedic, and all sworn City Fire officers are EMTs. With even just one Paramedic on an engine, the City is providing a higher level of service than most cities in the Central Valley.

These recommendations appear to replace the City's management right to determine the level of service and purpose of service with the judgment of some sort of ad hoc committee. Ultimately, it is the City's obligation to decide which services it will provide the public, such as the role and purpose of the Firefighters and Emergency Medical Care/Paramedic Services classifications, and the City cannot and will not abdicate its obligations in this regard. Accordingly, I must dissent from this recommendation.

4. Corrections to Fact-Finding Report.

There are a number of inaccuracies in the Report, which should be corrected and include:

- Page 3, paragraph 2 states that at the conclusion of the mediation, an agreement was reached and signed off on January 14. No agreement was reached at mediation; and the IAFF membership did not ratify and rejected the tentative agreement, as noted above.
- Page 3, paragraph 3 - regarding reference to complications in the ratification voting process and a revote allegedly occurring, at the time, the City was unaware of the same.
- Page 3, paragraphs 4 and 5 - It should be noted that after multiple attempts to obtain information as to whether a ratification vote was occurring and if so, the results, it was only then, after approximately two months and receiving no information from IAFF on the vote, that the City had no option but to withdraw the January 14 tentative agreement.
- Page 3, paragraph 6, should be revised to, "On March 14, 2016, after withdrawal of the Tentative Agreement, lead negotiator for Local 3719 sent an email to the City's lead negotiator indicating agreement may be possible if the City agreed to additional items."
- Under "Relevant Facts from the Hearing", page 7, paragraph 1, the "two parties" were not relying heavily on the January 14 tentative agreement, as already noted

above. The City based its presentation on the October 6 proposal. It is also the City's understanding that IAFF understood the City's position regarding the rejected and withdrawn tentative agreement, and the City's October 6 proposal being the City's operative document for fact-finding issues.

- Page 7, paragraph 1 – It should be noted that the November 25 letter from Mr. Sharpe lists the items in dispute, two of which are salary.
- Page 7, paragraph 1 – As set forth above, the City made clear during the fact-finding hearing that it was not agreeing to the increase to 96 hours. The City's presentation, consistent with what it indicated at the table, included concerns with fatigue and safety.
- Page 7, paragraph 2 – This paragraph is significantly inaccurate. All City proposals have clearly stated, and IAFF understood, *status quo for existing* Fire Engineer/Paramedics and Fire Captain/Paramedics. This paragraph incorrectly indicates the City's proposal would change the status quo for existing Fire Engineer/Paramedics and Fire Captain/Paramedics in pay, certification, and training costs. The City's proposal also clearly states, and was articulated at the bargaining table and understood by IAFF, the proposed changes relate to future promotions.
- Page 7, paragraph 3 is not accurate as the City was not agreeing to the January 14 withdrawn, rejected tentative agreement. Instead, the City was discussing its operative proposal for the fact-finding hearing – its October 6 proposal.
- Page 7, paragraph 3 inaccurately indicates the City's discussions indicated it would agree to the 96 hours.
- Page 7, paragraph 6 – The City has a total of 75 sworn Fire employees, 70 of which are Group G/IAFF members. There is only one vacant position. The total number of employees in the Fire Department is 82.
- Page 7, paragraph 7 – top of Page 8 - Regarding reference to "Paramedic care" and "the idea of all Fire Personnel being Paramedics": When originally agreed to, it was not the intent for ALL fire personnel to be Paramedics. The goal was for all Firefighters, but to get enough Paramedics, initially, other ranks were encouraged. Documentation, even in the MOU, clearly states the Firefighter/Paramedic is to be the primary medic. Additionally, the belief that one Paramedic per engine is sufficient was supported by the fact that an ambulance with 1-2 Paramedics goes to every call along with the fire engine. There is a sustainability issue – once all 75 members are Paramedics, how does the City sustain the cost and ensure that all 75 obtain the required patient contact? Additionally, it was discussed that many cities do not have Paramedics at all. In the City, an ambulance "rolls" with a Paramedic, and all sworn City Fire officers are EMTs. With even just one Paramedic on an engine, the City is providing a higher level of service than most cities in the Central Valley.
- Page 8, first full paragraph is inaccurate. Although the City has the classifications of Fire Captain and Fire Engineer, eliminating through attrition is not currently being done. The MOU language provides that employees who are certified as Paramedics and serve in Fire Engineer and Fire Captain classifications will automatically receive the 5% differential as long as he/she maintains Paramedic certification and is certified to practice in Tulare County.

- Page 8, second full paragraph, last sentence – argument is not accurate. Only 4 of 22 Captains are currently Paramedics. They are, however, EMTs. The Paramedics are trained to perform their Paramedic duties, which include 1200 hours. Just as with any professional, the Employer/City has to rely on them to perform their job consistent with their training.
- Page 8, fourth full paragraph – The City did not agree to change the fact-finding hearing to mediation but instead, the process included, consistent with fact finding, a continuation of the bargaining process.
- Page 9, paragraph 1 and recommendation number 1, under “Recommendations”, the January 14, 2016 tentative agreement does not contain the issues that both parties presented at the fact-finding hearing, as already noted above. The City’s position and fact-finding presentation was clearly stated as its October 6, 2015 proposal. The Report then goes on to state its recommendations are based upon Mr. Sharpe’s November 25, 2015 letter to Ms. Bennett, which indicates the increase in hours to 96 is in dispute. Further, the recommendation regarding revising the Paramedic item in the proposal is based on the inaccurate assumption that the City’s proposal is to change *status quo for existing Fire Engineer/Paramedics and Fire Captain/Paramedics*. There is no conflict in the City’s proposal on this piece, which is not only clear to the City, but to IAFF, and has been clearly understood by the parties throughout this process.
- Regarding recommendation number 2, again, the City’s operative proposal for fact finding was its October 6 proposal. The second recommendation refers to “consultation” with and the City seeking “additional input” from citizens and staff before proceeding with its proposal. Although it is unclear what the Report means in this regard, it appears to be recommending some sort of committee involvement and recommendations. To agree to this recommendation would be the City abdicating its management obligations and waiving critical management rights, which it is unwilling to do. Additionally, it was discussed that many cities do not have Paramedics at all, an ambulance “rolls” with the Paramedic, and the Fire officers are EMTs. With even just one Paramedic on an engine, the City is providing a higher level of service than most cities in the Central Valley.

For the above stated reasons, I respectfully dissent from the Report’s suggested terms of settlement. As discussed at the fact-finding hearing, the parties should return to the bargaining table as soon as possible for a new round of successor MOU negotiations.



Shelline Bennett
May 5, 2016