

**In the Matter of the Impasse Between:** )  
 )  
**THE CITY OF SAN MARINO,** )  
 )  
**MUNICIPALITY,** )  
 )  
**and** )  
 )  
**SAN MARINO FIREFIGHTERS** )  
**ASSOCIATION** )  
 )  
**Exclusive Representative.** )  
 )  
\_\_\_\_\_ )

**FACTFINDING REPORT AND  
RECOMMENDATIONS**

**PERB CASE NO.: LA-IM-187-M**

**HEARING HELD: March 16, 2016**

**FACTFINDING PANEL**

**Impartial Chairperson: Paul Crost**  
5318 East 2nd Street, Suite 381  
Long Beach, CA 90803

**City Panel Member: Mark Flannery**

**SMFFA Panel Member: Nathan Foth**  
SMFFA President

## **FACT-FINDING REPORT**

### **BACKGROUND**

1. The City of San Marino ("City") is a municipality within the meaning of Government Code Section 3505.5(d).
2. The San Marino Firefighters Association ("SMFFA") is a recognized employee organization and has been duly recognized as the representative of the City's firefighter bargaining unit.
3. The parties to this factfinding have complied with the public notice provisions of Government Code section 3505.4
4. The parties have complied with the selection of the Factfinding Panel and are timely and properly before the Panel by agreement to waive the timelines for holding the panel hearing.
5. The parties have complied with all the requirements for selection of the Factfinding panel and have met or waived the statutory time limitations applicable to this proceeding.
6. The contract issue which is appropriately before the Factfinding Panel is the staffing of personnel on each shift.

### **GUIDING 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.

### **THE ISSUE IN DISPUTE**

The parties are essentially negotiating over a 1-year successor Memorandum of Understanding (MOU), covering July 1, 2015 through June 30, 2016. The parties have essentially agreed on all items, with the exception of staffing. The City's proposal seeks to add a provision in the MOU that allows the City to reduce staffing below current levels. Currently, each fire engine is staffed with a Captain, an Engineer, and two Firefighter/Paramedics. The City wishes to reduce the two Firefighter/Paramedics to one, thereby changing staffing from a "4-person" engine to a "3-person" engine. The City seeks the reduced staffing because of the costs incurred by the 4-person engine. Moreover, the reduced staff is comparable to the norm in the industry. The City does not contend that its proposed staff reduction is motivated by inability to pay the cost for the current staffing.

The City operates one fire station with one fire engine staffed by four firefighters and an ambulance with two paramedics. There are six employees on duty on all three shifts. When a shift member is absent, the City must call in a replacement member who will be paid on

overtime. By reducing the engine staff to three firefighter/paramedics, it estimates that it can save substantial money that could be used for other purposes.

### **COMPARABILITY FINDINGS**

The agencies selected by the City for comparison are set forth in City's Exhibit 12, attached to this report. The selection of these comparison agencies was not opposed by SMFFA. No doubt this was due to the fact that the agencies constitute a very wide range of fire departments in Los Angeles County, including LA City and County fire departments, and smaller cities such as Alhambra, Arcadia, Beverly Hills, El Segundo, and 25 other departments. Accordingly, I find that the use of these agencies for purposes of comparison to be reasonable and appropriate.

Based on the comparability information submitted by the City, I note that (1) of the 31 listed agencies, only 12 had four on an engine; and (2) there is no apparent size of the agency that corresponds to the staffing of the engine.

### **DISCUSSION**

The staffing issue at impasse puts into question the importance of the two-in/two-out rule and multiple medical calls at the same time. SMFFA submitted a document discussing OSHA's firefighters two-in/two-out regulation. SMFFA states that OSHA requires that the interior structural firefighting procedures provide for at least two firefighters inside the structure, so that they have direct visual or voice contact between each other and direct voice radio contact with two firefighters outside the structure. SMFFA asserts that this standard "may be one of the most important safety advances for firefighters in this decade. Too many firefighters have died because of insufficient accountability and poor communications . . . The standard addresses both and leaves no doubt that two-in/two-out requirements must be followed for fire safety and compliance with the law." SMFFA states that OSHA provides that "once firefighters begin the interior attack on the interior structural fire, the atmosphere is assumed to be immediately dangerous to life or health atmospheres and the two-men/ two-out rule applies."

SMFFA argues that the consequence of reducing the staff to a three-person engine means that, when the ambulance is on a separate call, a three-person staffed fire engine cannot enter a

structure fire to save lives or to attempt fire suppression, as there would be two people in the interior with only one person outside the structure that is on fire. "This means that firefighters must stand and watch as a home burns down."

If there were no issues of cost, it would be undeniably better to have at least two-in/two-out staffing. While it is clear from the comparability records that many agencies have staffed their engines with only three on an engine, SMFFA asserted that the size and other aspects of their operations may not be comparable, because some of the agencies that operate three on an engine are not comparable: "the relatively few that have 'three-person engines,' such as Arcadia and LA County, have fire trucks available to respond with 'four-person' staffing. San Marino has no fire truck."

The City responded to that argument by pointing out that San Marino is a member of the Verdugo Automatic Aid Agreement which establishes a regional response system that supplements the staffing at structural fires. In the previous six years the number of structure fires in the City range from a low of 32 in 2010 to 74 in 2015. In 2015 the Department received 224 calls for automatic aid. The City points out that the number of automatic aids is greater than the number of fires because "our neighboring organizations are sending multiple fire apparatus and a fire response with those multiple units are only counted as one response."

In City Exhibit 13 City Manager John Schaefer, reported to a council member his view on this issue. He wrote, "I believe we can run the engine with three firefighters. I understand that **four could be more efficient in certain situations**, but given various factors (the low probability of the four-man scenario, the fact we have two men on the engine, the fact we have so much nearby mutual aid and the need to control costs) I believe we can, like other cities run the engine with a Captain, Engineer and 1 Firefighter/Paramedic." The issue for the City is the balance of saving costs against Mr. Schaefer's acknowledgement that "four could be more efficient in certain situations." The issue isn't just a matter of efficiency; more importantly, it is the possibility that life and damage to property will be lost due to the reduced staff.

Since the City is not contesting its ability to maintain the current staffing, the issue is whether or not maintaining a four-person engine warrants the costs. SMFFA argues that, even if there is a very low risk that would be created by a three-person engine, it is worth maintaining

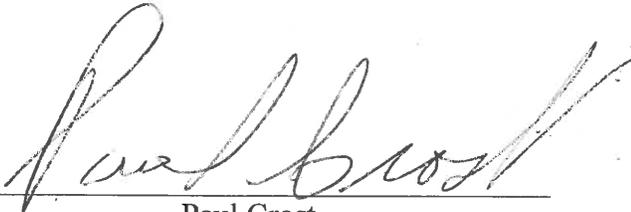
the two-in/two-out policy because the City is financially capable of providing the highest level of protection of its citizens, its structures, and the safety of firefighters. In effect, SMFFA's position urges that premium service for a very affluent City is worth the use of available budget funds, particularly since the residents are taxed for public safety. Not only does it add extra safety, it supports the morale of the fire department employees who put their lives on the line in suppressing fires and other incidents. As one of the wealthiest municipalities in the United States, SMFFA argues that the City should not choose minimum staffing of its fire department. Rather, it should maintain the highest and safest staffing that has been successful over many years.

While I understand SMFFA's passion regarding the two-in/two-out rule, I am constrained by the criteria set forth in the fact-finding process. The critical criteria in this case is comparability. As described above, there are a substantial number of departments that operate with a three-person crew. While it may be the case that some of those departments have other resources that they can dispatch to the incident, the fact that the SMFD does not have that ability is countered by the coverage provided by the Verdugo Automatic Aid Agreement. The statistics provided by the City supports the conclusion that it is unlikely that there would be a situation where only a three-person crew would respond to a fire.

I find that the City has met its burden of proving that the change in the status quo is warranted. Nevertheless, it would be inappropriate to impose language in the MOU which vests in the City "the sole discretion" to implement any staffing changes. More particularly, any change in staffing should be implemented in a manner that does not result in layoffs of any bargaining unit members. Given the importance of the two-in/two-out policy, the layoff of personnel would undermine morale to the detriment of the City and its residents.

**RECOMMENDATION**

"It is my recommendation to allow language in the MOU that would provide that there can be minimum staffing on the engine as follows: One Captain, one Engineer, and one Firefighter/Paramedic."

  
\_\_\_\_\_  
Paul Crost

Concur: \_\_\_\_\_  
Dissent: \_\_\_\_\_  
Concur in part: \_\_\_\_\_  
Dissent in part: \_\_\_\_\_

\_\_\_\_\_  
Mark Flannery

Concur: \_\_\_\_\_  
Dissent: X  
Concur in part: \_\_\_\_\_  
Dissent in part: \_\_\_\_\_

see DISSENT  
\_\_\_\_\_  
Nathan Foth

**RECOMMENDATION**

"It is my recommendation to allow language in the MOU that would provide that there can be minimum staffing on the engine as follows: One Captain, one Engineer, and one Firefighter/Paramedic.

\_\_\_\_\_  
Paul Crost

Concur: \_\_\_\_\_  
Dissent: \_\_\_\_\_  
Concur in part:   X    
Dissent in part: \_\_\_\_\_

Concur: \_\_\_\_\_  
Dissent: \_\_\_\_\_  
Concur in part: \_\_\_\_\_  
Dissent in part: \_\_\_\_\_

Mark Flannery 5/17/16  
Mark Flannery

\_\_\_\_\_  
Nathan Foth

In the last paragraph on page 5, I would include only the first sentence, and would delete the last three sentences.

On the recommendation, I concur in concept, but I would recommend the language offered by the City.

SAN MARINO FIREFIGHTER'S ASSOCIATION (SMFFA) / CITY OF SAN MARINO  
FACTFINDING – MARCH 16, 2016

DISSENT OF SMFFA PANEL MEMBER: NATHAN FOTH

Under the Meyers-Milias-Brown Act, found at Government Code Section 3505.5, subsection (d), “[i]n 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.

Despite being mandated to consider, weigh and be guided by these criteria, the panel majority (consisting of neutral Paul Crost, and City panel member Mark Flannery) ignores them. The sole issue here is the City’s desire to change the status quo by reducing the service level of first responders on a fire engine from 4 public safety members to 3. More specifically, the City of San Marino desires to reduce staffing on a fire engine from a total of 2 firefighter/paramedics to just 1.

Since the City is desiring to change the status quo, it bears the burden of demonstrating that the change is warranted. However, the City has presented virtually no supporting data, evidence or other justification for this 25% cut to the service levels within its Fire Department.

The most common argument asserted at fact finding is that the public entity cannot afford to maintain the status quo. However, that is not the case here. The uncontroverted evidence and unmistakable fact is that the City can afford to maintain staffing at 4 first responders. Indeed, the general fund reserve fund is 73% funded; the state Government Finance Officers Association recommends that it only need be 16.6% funded. City Manager John Schaefer has proclaimed that “The City of San Marino remains in excellent fiscal condition: and that “[p]roperty taxes increased 13% in 2013-2014.” The general fund itself is balanced with ample surplus to maintain current staffing. (The annual surplus was about \$2 million). And the City’s net position (value) increased this year by \$5 million to \$207 million. It remains unclear why a City like San Marino, in a service industry, would need to stock pile away \$207 million; it seems logical that this excess money should be returned to the tax payers (or not collected as taxes) or should be spent on services the citizens deserve.

It remains perplexing that the majority, and Mr. Crost in particular as the neutral, could assert that it is in

the public interest to reducing staffing by 25% within the Fire Department, without a showing of any financial need to do so. It is apparent to this author that to Mr. Crost and Mr. Flannery have placed a modest value of a few thousand dollars in unneeded cost savings as the measure of a potential life lost due to an understaffed Fire Department. This reality was explored in depth.

There was much discussion on the "Two-in, Two-out rule," which requires that two firefighters must enter a structure fire together, and that in order to do so, there must be two additional firefighters waiting outside to assist as necessary. This is required protocol and is best practices. With only 3 firefighters on an engine, no one could enter a structure fire to save life or property. In that instance, the 3 firefighters would have to simply wait outside and watch the structure burn and would not be able to enter in order to save lives. There was no explanation how the City's proposal to reduce staffing would do anything other than seriously undermine the Fire Department mission and jeopardize the lives of the citizens of San Marino.

A few uncontroverted facts discussed at hearing were that 28% of all calls to San Marino are fire related; and a fire doubles in size roughly every 2 minutes. But none of this mattered to the majority and they chose not address it in their written decision. Of course it is noteworthy that neither panel member lives or works in the City and would be subject to the protections offered by the Fire Department; I on the other hand do work here, and can attest that this change would have devastating effects on the level of service offered to our citizens. It would also endanger my fellow firefighters.

It is again important to note that the City bears the burden of proving that the status quo should be changed. Not only has the City not addressed the facts stated above, this panel has ignored its obligation to address the criteria outlined under the statute. I relayed at the hearing a real life event that had just occurred. Weeks ago, our ambulance was on a call, when a separate structure fire call came in. The structure fire occurred on the first floor of a residence. The "4-person" engine was able to respond, and per the "Two-in, Two-out rule," we were able to quickly enter the resident and extinguish the fire. Had the engine been staffed with only 3 firefighters, as the City wants to do here, our personnel would have had to wait for the ambulance to respond, which could have taken some time. The damage could have been catastrophic without proper staffing.

Finally, the majority rests their decision on the weak effort the City put forth to describe other agencies in California who happen run 3-person engines on occasion. However, each of those agencies have multiple personnel, apparatus, and other support to insure that they have at least 4 persons at any given incident. Here, the City of San Marino has only 1 engine and 1 ambulance. In the event that the ambulance is tied up on a call, such as the incident that occurred above, the engine would be left to manage a call by itself. And with only 3 firefighters on the engine, the level of service would be impacted. The other agencies described by the City have multiple engines and multiple ambulances. While they may only have 3 firefighters on an engine, they can send 2 engines, and would have 6 firefighters present. The failure of the majority to even remotely dissect this issue or spend any considerable time on it, is embarrassing to the people of San Marino. To allow two individuals, Mr. Crost and Mr. Flannery, who know virtually nothing about the fire service, to be involved in a decision to cut Fire Department staffing by 25% with absolutely no evidentiary or factual support is a troubling. I recommend that any public safety association seriously consider Mr. Crost and Mr. Flannery's complete disregard for the fact-finding statute before choosing them as panel members in any future hearing. I pray that no tragedy occurs within the City attributable to this decision.

For these reasons, I dissent from the majority opinion.

*Walter Falls*

Proof of Service by U.S. Mail

State of California  
County of Los Angeles

Paul Crost states:

That I am a citizen of the United States, over the age of 18, employed in and a resident of the County of Los Angeles, that my business address is 5318 E. 2nd St. #381, Long Beach, CA 90803, that on June 16, 2016, I served the within notice on:

Steve A. Filarsky, Esq.  
1441 19th Street  
Manhattan Beach CA 90266

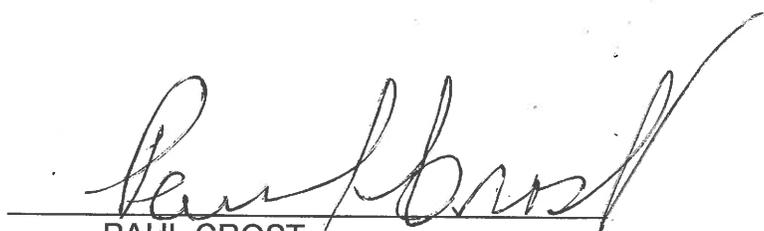
Michael A. McGill, Esq.  
Adams, Ferrone & Ferrone  
4333 Park Terrace Dr. Suite 200  
Westlake Village CA 91361

Laura Davis, Sr. Attorney  
Public Employee Relations Board  
1550 Broadway, Ste. 1532  
Oakland CA 94612-2514

By addressing an envelope to (each of) the above named person(s) and placing in an envelope a true copy of said Notice, sealed with postage thereon fully prepaid, and then deposited in the United States mail at Long Beach, California.

Executed on June 16, 2016, at Long Beach, California.

I declare under the penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
PAUL CROST