

In the Matter of the Impasse Between

**CITY OF
EL SEGUNDO**

Employer

- and -

**EL SEGUNDO
POLICE OFFICERS
ASSOCIATION
(ESPOA)**

Exclusive Representative

**FACTFINDING REPORT
AND RECOMMENDED
TERMS OF SETTLEMENT**

PERB CASE NO. LA-IM-191-M

**REPORT ISSUED
September 16, 2016**

Hearing Held on August 30, 2016

COMPOSITION OF THE FACTFINDING PANEL:

Impartial Chairperson: Daniel R. Saling, Esq.
33192 Ocean Hill Drive
Dana Point, CA 92629

City Member: Laura J. Kalty, Esq.
Liebert Cassidy Whitmore
6033 West Century Blvd., 5th Floor
Los Angeles, CA 90045

Association Member: Jacob A. Kalinski, Esq.
Silver Hadden Silver & Levine
1428 Second Street, #200
Santa Monica, CA 90401

MAKING PRESENTATIONS TO THE FACTFINDING PANEL:

For the City: Steve A. Filarsky, Esq.
Filarsky & Watt LLP
1441 Nineteenth Street
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For the Association: Richard A. Levine, Esq.
Silver Hadden Silver & Levine
1428 Second Street, #200
Santa Monica, CA 90401

BACKGROUND AND PROCEDURAL HISTORY

The City of El Segundo (City) is located in the Los Angeles urban area. It is considered part of the Airport/South Bay sub-region at the southwestern edge of the Los Angeles coastal basin. Downtown Los Angeles is about 20 freeway miles from El Segundo.

The City itself is 5.46 square miles (3,494.4 acres) with a resident population in 2014 of 17,063 people (100% urban, 0% rural) and with an approximate daytime (employee) population of approximately 100,000.

The community served by the City of El Segundo includes a very diverse population, representing the full spectrum of social, environmental and economic issues. The permanent residents of the City, both owners and renters, the employee population, visitors, whether on business or for pleasure, and even neighboring residents, agencies and businesses are all served to a greater or lesser degree by the goals, policies, and programs established by the City.

The City's law enforcement agency is the El Segundo Police Department that has approximately 60 sworn authorized positions, with 45 officers and 9 sergeants, with the remainder being made up of the command staff. The Department is known for its progressive management and enjoys an excellent reputation as an innovative, professional, and community-oriented law enforcement agency. The Department offers a wide variety of special assignment positions.

The police bargaining unit represents sworn Officers and Sergeants employed by the El Segundo Police Department and is comprised of approximately 54 current bargaining unit members. The unit is called the El Segundo Police Officers Association (Association). The impasse and factfinding proceedings at issue arose from the negotiations between the City and the Association on a successor agreement.

Bargaining History

The City of El Segundo has declared an impasse in contract negotiations with its police union, with the Association claiming that the ongoing pay dispute could lead to an exodus of officers from the force. Officers have worked without a contract since October 2014.

The City has indicated a desire for a 5 year agreement that would cover the Association's bargaining unit members from October 1, 2014 through September 30, 2019. The Association has rejected a term of 5 years and has indicated a desire to have a three or four year agreement.

The City has proposed a number of take-backs, while the Association has asked for status quo or slight modifications in the prior MOU. The City has offered the Association a nine (9%) percent increase if the Association's bargaining unit members' will pay the employees nine (9%) percent share of the contribution to their pension (PERS) plan that is currently being paid by the City. Additionally, the City offered a two (2%) percent raise in addition to the 9 percent retirement payment offer.

The city's website shows El Segundo pays its officers slightly below the average across the South Bay in base salary, but more in some incentive categories, such as longevity pay and vacation time. The Association believes that it took the brunt of cuts during the recession, but believes that the City now has a substantial surplus and does not need further concessions. The projected budget increases into the future shows that the City will continue to have an increase in its revenues. The City has not indicated that it has the inability to pay but has indicated that it wishes to make infrastructure improvement to city facilities and therefore is asking the Association for further concessions. The Association has indicated that it is willing to work with the City but does not want its bargaining unit members' benefits reduced. The Association believes that reduction in bargaining unit members' pay would result in the loss of officers currently working in the Department and the inability of the City to recruit acceptable replacements. The Association believes that the deduction in current levels of salary and benefits will negatively impact public safety and the residents of El Segundo.

The bargaining parties were unable to reach tentative agreement on the following issues. Therefore, these issues will be addressed by the Factfinding Panel:

1. EPMC/Salary Increases
2. Longevity Pay
3. Education Incentive
4. Overtime – Paid Leave Exclusions; Exclusion of EPMC
5. Health Insurance
6. Sick Leave and Vacation Payouts at Base Rate
7. Uniform Pay.
8. Term of the Agreement
9. Patrol Shift Rotation

On March 7, 2016, Daniel R. Saling was chosen and appointed by the Public Employees Relations Board (PERB) to serve as the neutral chairperson of the Factfinding Panel. The City and the Association designated Laura J. Kalty and Jacob A. Kalinski to serve as their respective members of the panel. The City and the Association entered into a stipulation to waive statutory time limits for the holding of a hearing and for the issuance of the panel's report.

The panel is statutorily authorized to meet with representatives of the parties through investigation and/or hearing. If an agreement settling all issues cannot be reached, the panel will make a factual finding based on the evidence presented and it will recommend the terms of settlement. To initiate those quasi-legislative responsibilities, a hearing was held on August 30, 2016, in El Segundo, California, during which time the City and the Association were given full opportunity to present evidence on the outstanding issues. The panel members met together with the neutral chairperson to attempt to resolve the impasse. The Factfinding Panel met in their executive session twice, on the afternoon of August 30 and on September 8, 2016, to discuss the parties' presentations and the process they would use to reach a consensus with regard to the issuance of a factfinding report.

At the conclusion of the executive discussions of the panel, the chairperson indicated that he would prepare a draft of the factfinding report and recommendation. A copy of the proposed factfinding report would be emailed and/or faxed to the partisan members of the panel for their comments and/or suggestions. The partisan members of the panel were made aware of their right to either concur or dissent on all or part of the majority opinion. The chairperson prepared the final copy of this report and recommendations which were provided to the partisan panel members for their official signature.

The representatives for both the City and the Association agreed during the hearing that the City has authority to only unilaterally implement an agreement for the fiscal year 2014-2015, if the parties are unable to reach agreement on a multi-year agreement.

RELEVANT FACTORS

Government Code Subsection 3505.4 (d) states as follows:

In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all of the following criteria:

- (1) State and federal laws which 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 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.

CITY'S GENERAL IMPASSE POSITION

It is the position of the City that the issue is not its ability to pay increases in compensation. It is the City's desire to reduce the bargaining unit members' pay to average, when compared to cities and agencies that have historically been used to compare wages, hours, and conditions of employment. The City indicated that it wishes to limit liability and reduce certain benefits that are currently being paid and that any savings or excess reserves in the budget could be used to improve and repair the City's infrastructure.

ASSOCIATION'S GENERAL IMPASSE POSITION

The Association contends that it has made substantial contributions to the City by reducing staff compensation and other benefits. After having made concessions to the City, the Association's bargaining unit members believe that they have fallen behind in total compensation when compared to other Southern California counties and city police agencies. Further, the Association contends that as a result of the decrease in overall compensation, the Department has and will continue to have problems in recruiting qualified new officers and retaining those officers currently employed by the Department. It is the Association's position that no reduction in benefits is justified based on the City's healthy financial condition.

The Association has indicated a willingness to make some concessions but the cost of these must not result in a reduction in the pay of Association bargaining unit members.

FACTFINDING PANEL'S FINDINGS AND RECOMMENDATIONS REGARDING A SUCCESSOR MOU

▪ **Issue 1 : TERM OF THE AGREEMENT**

City's Position:

The City proposed a five year MOU that would run from October 1, 2014 through September 30, 2019.

Association's Position:

The Association indicated that it would be willing to have a four year MOU run from October 1, 2014 through September 30, 2018, providing that the terms of the MOU are acceptable.

Analysis:

The bargaining parties were negotiating a successor MOU to the one that expired on September 30, 2014. An agreement was not reached during the bargaining process and the parties continue to bargain throughout the 2015-2016 fiscal year. During the protracted bargaining, both parties began to make proposals regarding

a multiple year agreement.

The City proposed a 5 year agreement, while the Association proposed a three or four year agreement.

Recommendation:

It is the recommendation of the Factfinding Panel that the bargaining parties enter into a four year MOU that runs from October 1, 2014 through September 30, 2018.

▪ **Issue 2 : OVERTIME**

City's Position:

1. Vacation and sick leave hours will not be considered hours worked for overtime compensation (Exception: Forced Overtime and Reimbursable Overtime) (Work period 80 hours).
2. Employer paid member contributions will not be calculated as part of the regular rate of pay for overtime or pay outs.

Association's Position:

Sick leave will not be considered hours worked for contract overtime compensation but vacation leave will be treated as hours worked for contract overtime compensation.

Analysis:

The City believes that the purpose of sick leave is to allow employees to miss work, without financial penalty, when ill or injured. The purpose of sick leave is not for deferred compensation but is a benefit. If an employee misses work because he or she is ill and then volunteers to work an additional shift or additional hours, but does not exceed the 80 hour work limit during a pay period, he or she would not receive overtime pay. On the other hand, the Association believes that if a person following his or her vacation returns to and, he or

she volunteers to work an additional shift or additional hours, the employee should not be penalized by being denied overtime pay.

Recommendation:

1. The EPMC shall not be calculated as part of the regular rate of pay for overtime and/or payouts (understanding that EPMC is being eliminated).
2. Sick leave shall not count as hours worked for purposes of calculating overtime, except in cases of forced overtime and reimbursable overtime.
3. Vacation time shall not count as hours worked for purposes of calculating overtime, except in cases of forced overtime and reimbursable overtime.

▪ **Issue 3 : EDUCATION PAY**

City's Position:

Future employees will only be eligible for Bachelor's education pay.

Association's Position:

Future employees will only be eligible for Bachelor's education pay. Current employees will be entitled to maintain current educational certificate pay and are eligible for increased educational pay for additional degrees earned during the term of the MOU pursuant to the current MOU language.

Analysis:

The City has expressed the desire to eliminate compensation for the obtaining of a Master's degree but had agreed to continue to pay additional compensation to current and future bargaining unit members that receive a Bachelor's degree. While the City has requested a concession from the Association with regard to the payment for the earning of a Master's degree, there is a need to slowly phase out the program to allow unit members currently enrolled in a Master's degree time to finish their educational program

Recommendation:

Current bargaining unit members should be frozen at the current level unless they obtain a Master's degree by September 30, 2017, or obtain a Bachelor's degree.

Future employees will only be eligible for Bachelor's education pay

▪ **Issue 4 : LONGEVITY**

City's Position:

New hires will be eligible for longevity pay at 6 years (\$500), 13 years (\$700) and 20 years (\$900).

Association's Position:

New hires will be eligible for longevity pay at 6 years (\$500), 13 years (\$700) and 20 years (\$900). Current employees are entitled to longevity pay in accordance with the current schedule in the MOU.

Analysis:

The Association indicated a willingness to establish a new schedule and rate or longevity pay for new hires. The officers currently employed requested that the parties maintain the status quo language of the current MOU regarding the term of the new MOU. The City expressed a desire to establish a new rate for new hires and wanted the existing officers to agree to reduce the amount of their longevity pay.

Recommendation:

The Factfinding Panel recommends that new hires' longevity pay should be at 6 years (\$500), 13 years (\$700) and 20 years (\$900). The language of the current MOU regarding longevity should continue during the term of the new MOU.

▪ **Issue 5: SICK LEAVE**

City's Position:

The City proposed that the accrual cap be set at 800 hours. Sick leave payouts should be paid at the base hourly rate, except for the 10 employees with excess of 800 hours, who will be paid at the regular rate of pay over the next several years. The payout for all other employees shall be as follows:

1. 10 year separation: unused sick leave will be paid at the base hourly rate.
2. 20 year separation: unused sick leave will be paid at the base hourly rate.
3. Disability Retirement: unused sick leave will be paid at the base hourly rate.

Association's Position:

The sick leave cap will be set at 800 hours and payoff of accrued sick leave hours over the cap will be paid to unit members on every December holiday check. All sick leave payouts paid at the base hourly rate, except for the employees with excess hours, will be paid at the regular rate of pay with a lump sum payment to applicable employees within 30 days of adoption of the MOU. The payout for all other employees shall be as follows:

1. 10 year separation: unused sick leave will be paid at the base hourly rate.
2. 20 year separation: unused sick leave will be paid at the regular hourly rate
3. Disability Retirement: unused sick leave will be paid at the regular hourly rate pursuant to the current MOU language.

Analysis:

The purpose of sick leave is to allow employees that are ill or injured to miss work without having to lose compensation. Employees often earn sick leave at one rate and then use the leave when they are at a higher rate of pay. Since the

purpose of sick leave is to confer a benefit to an employee and is not considered additional earned compensation, the payout of sick leave as an economic benefit should be measured by the bargaining unit's base hourly rate and not at the employees' regular hourly rate.

Recommendation:

For the 10 employees with excess of 800 hours, they will be paid at the regular rate of pay within 30 days of adoption of MOU. Bargaining unit members eligible to receive sick leave pay-out payments will on or before September 30, 2017, receive any payment at the regular rate of pay. Thereafter, all sick leave pay-out payments under this provision shall be at the base salary hourly rate of pay.

▪ **Issue 6 : VACATION**

City's Position:

All vacation buy-back will be paid at the base hourly rate.

Association's Position:

All vacation buy-back will be paid at the base hourly rate.

Analysis:

There is not a need to do an analysis of the vacation proposals because the parties are in agreement.

Recommendation:

All vacation buy-back will be paid at the base hourly rate.

▪ **Issue 7 : HEALTH**

City's Position:

The City's contribution to the employee health benefits will be frozen at the \$1,424.00 rate in effect on January 1, 2016, for the term of the MOU.

Association's Position:

The City's contribution to the employee health benefits will be frozen at the \$1,424.00 rate in effect on January 1, 2016, for the term of the MOU.

Analysis:

There is not a need to do an analysis of the health proposals because the parties are in agreement.

Recommendation:

The City's contribution to the employee health benefits will be frozen at \$1,424.00, the rate in effect on January 1, 2016, for the term of the MOU.

▪ **Issue 8 :** **UNIFORMS**

City's Position:

The uniform pay benefit will be eliminated.

Association's Position:

The uniform pay benefit will be eliminated.

Analysis:

There is not a need to do an analysis of the uniform proposals because the parties are in agreement.

Recommendation:

The uniform pay benefit will be eliminated.

▪ **Issue 9 :** **SALARY**

City's Position:

The City offered a 9% increase on the salary upon ratification of the MOU and a 2% salary for the fiscal year 2017-2018.

Association's Position:

The Association's proposal is a 9% salary increase on all compensation (i.e. salary and special compensations) upon ratification of the MOU and a 2% increase on all compensation (i.e. salary and special compensations) effective October 1, 2017.

Analysis:

The City has expressed a desire to reduce spending and to move the bargaining units from slightly above average, when compared to a list of comparative agencies, and to have the unit make concessions to bring their pay and benefits to average. The City has indicated that they have the ability to maintain current levels of compensation and benefits but their proposals are based upon their unwillingness to allow the bargaining unit members to remain at above average in pay and benefits.

Recommendation:

The Factfinding Panel recommends:

1. All bargaining unit members will receive a 9% increase in their compensation (salary and special compensations) upon ratification of the MOU.
2. All bargaining unit members will receive a 2% increase on all compensation (salary and special compensation) on October 1, 2017.

▪ **Issue 10 : P.E.R.S.**

City's Position:

Bargaining unit members will pay 9% of the member's contribution to PERS upon ratification of the MOU.

Association's Position:

Bargaining unit members will pay 9% of the member's contribution to PERS upon ratification of the MOU.

Analysis:

There is not a need to do an analysis of the PERS proposals because the parties are in agreement.

Recommendation:

Bargaining unit members will pay 9% of the member's contribution to PERS upon ratification of the MOU.

▪ **Issue 11 : RETENTION PAY**

City's Position:

Current employees will be paid the difference in gross pay after the MOU has been implemented; second year the same after a 2% increase in deduction and the same payment will be made thereafter.

Association's Position:

The payment of a 9% increase in all compensation, including salary and special compensation and the payment of 2% increase on all compensation effective October 1, 2017 eliminates the need for the Retention Pay. Employees being compensated on both their salary and special compensation will insure that bargaining unit members will fully receive accurate compensation offset on special pays in consideration of their 9% PERS contribution.

Analysis:

The City desires to have the members of the bargaining unit pay their 9% share of the PERS contribution. This level of contribution will increase over the years as salaries increase and these additional amounts will be borne by the members of the bargaining unit and not by the City. The elimination of the employees'

contribution that has been paid by the employer will reduce the employer's future contribution liabilities.

The Association has agreed to have the bargaining unit members assume the 9% payment for the employee's share of the PERS contribution and is willing to forego a salary increase and use the 9% increase in pay to offset the 9% contribution to PERS. The Association has indicated that it is willing to forego an actual increase in salary but does not wish to have a reduction in the current level of pay. To prevent an actual reduction in the compensation paid to bargaining unit members, the 9 % increase that will be paid to PERS must be calculated on both salary and special compensation amount.

Recommendation:

The need for retention pay will disappear if the Factfinding Panel's recommendation on Salary is adopted by the bargaining parties.

▪ **Issue 12 : PATROL SHIFT ROTATION**

City's Position:

The City objected to the introduction of a proposal by the Association regarding patrol shift rotation at the factfinding hearing on August 30, 2016. The City indicated that the first time they saw the patrol shift proposal was at the hearing and that no bargaining had taken place on the issue prior to the factfinding hearing that was introduced for the first time at the hearing.

Association's Position:

The Association proposed that bargaining unit members with 25 or more years of law enforcement service would not be subject to mandatory patrol shift rotation.

Analysis:

The issues certified for factfinding by the Public Employment Relations Board did not include a proposal on patrol shift rotations. The City indicated that the

first time they received notice that the Association wished to propose something on the topic of patrol shift rotation was at the factfinding hearing.

Recommendation

The Factfinding Panel does not have a recommendation on the Association's proposal on patrol shift rotation. The issue was not certified for factfinding, the parties have not bargained on the topic and the issue is not ripe for the factfinding process.

All Other Issues:

1. All other existing wages, hours and other terms and conditions of employment shall remain in full force and effect, unless subsequently modified in writing by the parties.

CONCLUSION

3505.5. Findings of fact

(a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, in which recommendations 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 agencies shall make these findings and recommendations publicly available within 10 days after their receipt.

This report regarding the legal and jurisdictional requirement of Government Code 3505.5, et. seq. as referenced above has been met. This Factfinding proceeding was concluded as required by law within time requirements of the law as agreed to by the parties that the timeline could exceed the thirty (30) day requirement.

Concur_____

Concur_____

Dissent_____

Dissent_____

Concur in part_____

Concur in part_____

Dissent in part_____

Dissent in part_____

Laura J. Kalty, Esq.
City Panel Member

Jacob A. Kalinski, Esq
Association Panel Member

Daniel R. Saling Esq.
Panel Chairperson

Report Issued: September 16, 2016
Dana Point, California

Attachments:

The City and Association dissents are attached hereto and made a part of this Factfinding report.

**City of El Segundo's Concurring and Dissenting Opinion to the Factfinding Report
and Recommended Terms of Settlement**

City of El Segundo's Representative to Factfinding Panel
Laura J. Kalty

As the City of El Segundo's representative to the Factfinding Panel, I concur in part, and respectfully dissent in part, to the Factfinding Report and Recommended Terms of Settlement issued by Chairperson Daniel R. Saling.

▪ **Issue 1 : TERM OF THE AGREEMENT**

The panel recommends a four-year MOU that runs from October 1, 2014 through September 30, 2018.

I dissent to the panel's recommendation that the City and the El Segundo Police Officers' Association (ESPOA) enter into a four-year MOU. Throughout the approximately two years of negotiations, the City focused on a three-year agreement, and one of the primary issues of contention was what portion of Employer Paid Member Contributions (EPMC) ESPOA members would pay, in exchange for a salary increase, to help offset the effects of employees paying *their* portion of retirement costs. The City's last, best and final offer in the negotiations proposed a 3-year MOU, with ESPOA members paying their full 9% EPMC in exchange for a 7% base salary increase. Throughout the negotiations, ESPOA members represented that if the City simply offered a complete offset – 9% EPMC paid by ESPOA members, in exchange for a 9% base salary increase – the parties would have a deal. However, following impasse and as part of extended settlement discussions to attempt to resolve this matter, when the City offered what ESPOA members had been asking for -- the 9% EPMC pick up for a 9% base salary offset -- ESPOA members rejected the attempt at resolution. Thereafter, in its continuing efforts to reach agreement with ESPOA, the City proposed an additional 2% base salary increase on the condition of the certainty and stability of a four-year MOU, and then Retention Pay on the condition of a five-year MOU. Again, these offers were rejected. Accordingly, that the panel is now recommending the significant salary and specialty pay increases as noted in Issue 9, below, without the corresponding certainty (including labor peace) that a five-year MOU would provide is objectionable. It is on this basis that I dissent and cannot recommend that the City and ESPOA enter into a four-year MOU.

▪ **Issue 2 : OVERTIME**

The panel recommends EPMC shall not be calculated as part of the regular rate of pay for overtime and/or payouts, and sick leave and vacation time shall not count as hours worked for purposes of calculating overtime, except in cases of forced and reimbursable overtime.

While I concur with the panel's recommendation, I dissent to the extent the panel failed to include a workable definition of "forced overtime." Relying on comparable language in the Memorandum of Understanding with the El Segundo Firefighters' Association, the City's position is that forced overtime should be defined to occur "when a vacancy cannot be filled with 1) voluntary, prescheduled overtime, or 2) there are no off going employees that volunteer to 'hold over' and work."

▪ **Issue 3 :** **EDUCATION PAY**

The panel recommends current bargaining unit members should be frozen at the current level unless they obtain a Master's degree by September 30, 2017, or obtain a Bachelor's degree; future employees will only be eligible for Bachelor's education pay.

I concur with the panel's recommendation.

▪ **Issue 4 :** **LONGEVITY**

The panel recommends new hires' longevity pay should be at 6 years (\$500), 13 years (\$700), and 20 years (\$900); and the language of the current MOU regarding longevity for current members should continue during the term of the new MOU.

I concur with the panel's recommendation.

▪ **Issue 5:** **SICK LEAVE**

The panel recommends for the 10 employees with excess of 800 hours, they will be paid at the regular rate of pay within 30 days of adoption of the MOU; bargaining unit members eligible to receive sick leave pay-out payments will, on or before September 30, 2017, receive any payment at the regular rate of pay; and, thereafter, all sick leave pay-out payments shall be at the base salary rate of pay.

While I concur with the panel's recommendation, I dissent to the extent the panel is recommending that ESPOA members be allowed to receive sick leave pay-out payments at the regular rate of pay through September 30, 2017. The City offered ESPOA members and other bargaining groups a "grace period" to help with the transition from paying out sick leave at the regular rate of pay to the base salary rate of pay. Other employee groups *who reached agreement with the City*, including the Fire and Police Support Services Employees Association (PSSEA), received a much shorter grace period. A comparable grace period for ESPOA would run through January 1, 2017, and not September 30, 2017.

▪ **Issue 6 :** **VACATION**

The panel recommends all vacation buy-back will be paid at the base hourly rate.

I concur with the panel's recommendation.

▪ **Issue 7 :** **HEALTH**

The panel recommends the City's contribution to the employee health benefits will be frozen at \$1,424.00, the rate in effect on January 1, 2016, for the term of the MOU.

I concur with the panel's recommendation.

▪ **Issue 8 :** **UNIFORMS**

The panel recommends the uniform pay benefit will be eliminated.

I concur with the panel's recommendation.

▪ **Issue 9 :** **SALARY**

The panel recommends all bargaining unit members will receive a 9% increase in their compensation (salary and special compensation) upon ratification of the MOU; and all bargaining unit members will receive a 2% increase on all compensation (salary and special compensation) on October 1, 2017.

I dissent to the panel's recommendation. As noted above, much of the approximately two years of negotiations focused on what proportion of "trade off" there would be for the ESPOA members to start paying their 9% EPMC. At all times during the negotiations, and in the approximately one year period following impasse and as part of settlement discussions, the parties exclusively discussed *base salary increases*. At the conclusion of the negotiations, the City offered a 7% base salary increase in exchange for ESPOA members paying their full 9% EPMC, and later as part of the settlement discussions, the City offered a 9% base salary increase in exchange for the 9% EPMC pick-up by ESPOA members. At one point in time, the ESPOA represented that 9% for 9% would result in a deal. (Similarly, the ESPOA at a later time represented that longevity was the only "hang up." That matter was resolved in favor of ESPOA; sadly, this did not result in an agreement.) And thereafter, in an effort to incentivize a five-year MOU, the City offered Retention Pay, as discussed in Issue 11, below.

ESPOA members receive a number of generous specialty pays, which when compared with neighboring agencies already prove to be at the top of special compensation offered. These specialty pays include items such as longevity pay – additional pay based on years worked in law

enforcement; education incentive pay – additional pay based on degrees earned; and, a number of “differential pays” – additional pay related to assignments to motors, detectives and various other special assignments. The panel’s recommendation proposes to increase *all* of this special compensation – which is already at the top of market – by 9% and then an additional 2%. Many police agencies throughout the state are doing just the opposite, seeking to decrease these hidden pays and costs, which tend to spike compensation and retirement costs, and inherently are less transparent to members of the public. For these reasons, I dissent to the panel’s recommendation to extend the 9% and 2% compensation increases to specialty pays.

- **Issue 10 : P.E.R.S.**

The panel recommends bargaining unit members will pay 9% of the member’s contributions to PERS upon ratification of the MOU.

I concur with the panel’s recommendation.

- **Issue 11 : RETENTION PAY**

The panel recommends the need for retention pay will disappear if the Factfinding Panel’s recommendation on Salary is adopted by the bargaining parties.

I dissent to the panel’s recommendation. Because the panel is recommending an increase to special compensation as noted in Issue 9, above, the panel notes that the need for retention pay will disappear. However, the City believes that retention pay is the much more reasonable and cost-efficient solution related to easing the transition of employees paying their 9% retirement contributions. As part of the settlement discussions between the parties following impasse, and to help ease the transition of employees paying the full 9% of the employee portion of retirement contributions, the City developed the concept of and proposed “retention pay.” Retention pay would be a one-time payment based on each individual officer’s special compensation, calculating the value of 9% of actual specialty pays received, and paying this figure to officers as a one-time retention payment. The retention payment would address the employees’ concerns related to losing compensation as a result of the 9% EPMC pick-up, without creating an on-going, compounding cost to the City which will remain until such time as the parties negotiate otherwise.

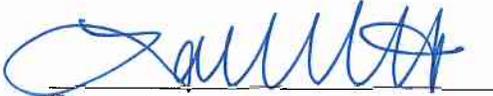
- **Issue 12 : PATROL SHIFT ROTATION**

The panel does not have a recommendation on the Association’s proposal on patrol shift rotation; the issue was not certified for factfinding, the parties have not bargained on the topic, and the issue is not ripe for the factfinding process.

I concur with the panel’s position.

In conclusion, based on all of the above, I hereby concur in part and dissent in part to the panel Chairperson's Factfinding Report and Recommended Terms of Settlement.

Laura J. Kalty, City of El Segundo's representative to the factfinding panel


Signature

9/13/2016
Date

In the Matter of the Impasse Between

**CITY OF
EL SEGUNDO**

Employer

- and -

**EL SEGUNDO
POLICE OFFICERS
ASSOCIATION
(ESPOA)**

Exclusive Representative

**PARTIAL DISSENT OF ASSOCIATION
PANEL MEMBER TO FACTFINDING
REPORT AND RECOMMENDED
TERMS OF SETTLEMENT**

PERB CASE NO. LA-IM-191-M

**REPORT ISSUED
September 16, 2016**

Hearing Held on August 30, 2016

ASSOCIATION PANEL MEMBER RECOMMENDATION

I. Introduction

Although I concur with the Chairperson's recommendations that the term of a recommended multi-year contract should be 4 years (10/1/14-9/30/18) instead of the 5 years proposed by the City, and that the recommended compensation percentage increases should be applied to salary and special compensation, the method utilized by the Chairperson in reaching his recommendations resulted in several conclusions to which I must dissent.

Although the Chairperson's recommendations list relevant factors in Factfinding as set forth in Government Code Subsection 3505.4 (d), in my view, the panel did not actually apply such factors. Instead, the purpose of the Chairperson's recommendations appeared to be only to set forth a possible set of terms to which, in his view, the parties might be able to come to an agreement. Were this a mediation, and this recommendation a Mediator's Proposal, it might well be justified. However, I believe the purpose of this process is to reach findings based on the materials submitted by the parties.

Put differently, if one of the parties desires to make a change to the wages, hours or other terms and conditions of employment, it must *justify* any such proposed changes during the factfinding hearing before this panel can make a recommendation including such proposal. It cannot be stressed enough that the justification for the recommendation cannot merely be the *belief* that the proposed item is necessary for an agreement.

Factfinding necessarily means that the panel must use its judgment regarding the parties' respective positions and evaluate whether they are justified under the facts and evidence provided during the hearing. If that means that one side has failed to justify any of its proposed changes, so be it.

If the factfinding panel's purpose is only to find an acceptable middle ground between the parties' positions, this incentivizes the parties to come to factfinding without fully attempting to reach resolution, leaving "extra padding" on their "last best and final" offers which were made prior to impasse. We do not want to incentivize this conduct. We want the parties to approach factfinding under circumstances where they understand that they are going to have to justify their "last, best and final" positions.

In this case, it was striking that the City made no attempt to convince this panel that its "last, best and final" offer, made prior to declaring impasse, is justified. Instead, the City asked this panel to evaluate a series of off-the-record multi-year "supposals" that it understands it cannot unilaterally implement under the law. If the City had any desire to unilaterally implement its last, best and final" offer, the proper action for it to take would be to submit that offer to the panel. It did not, presumably because it no longer desires to unilaterally implement such a last, best and final offer, and justifiably so.

II. The City failed to justify any net reductions in benefits

The City admitted that it is in good financial condition and thus has no inability to pay for any benefits requested by the Association. With financial condition not being an issue, it is difficult to justify reductions of current benefits to the Association unless they are accompanied by offsetting benefits.

With respect to the two areas in which this panel is recommending takeaways proposed by the City which were not agreed to by the Association (eliminating vacation and sick pay from the calculation of hours worked for overtime purposes and eliminating the ability of Association

members to cash out sick leave at the regular rate of pay), the City's justification appeared entirely philosophical. By philosophical, I mean that the City *perceives* that a certain benefit enjoyed by Association members is unpopular with the public, despite a lack of empirical evidence about how it negatively impacts the public or whether any significant percentage of the public understands the issue, let alone cares about changing it. As a result, the City's justification boils down to nothing more than a change based on unsubstantiated perception and desire. Significantly, the City did not introduce evidence about whether other agencies provide these benefits or what benefit would result to the public if these benefits were eliminated.

If simply articulating at factfinding that a result is *desired* is a meritorious justification, the Association might well have attempted to justify a 20% annual salary increase by saying that such an increase was desired. But expressing a desire alone is insufficient, at least for this panel member.

III. Eliminating vacation leave from the calculation of "hours worked" for overtime purposes

With respect to the elimination of vacation and sick leave from the calculation of hours worked, the City argued (without support) that members of the public are not happy about the fact that these leaves are not counted in private industry and thus should not be provided to Association members. But a mere recitation by the City's counsel is insufficient to establish that the public actually has the concern counsel argues.

More importantly, this change creates a fundamental unfairness as illustrated by the following example: Two employees are working a shift beyond their regularly scheduled hours. Both are equally inconvenienced by the shift in that they have to arrange for extra childcare.

However, one of the employees took a vacation day to attend the funeral of a friend and the other did not. Yet, that employee will be paid a lower rate for the extra shift.

Perhaps most significant, the only thing this change will accomplish is that officers will not volunteer for overtime when they have utilized vacation leave in the given period. The City argued, unpersuasively and without any evidence, that officers will volunteer for extra shifts at straight time pay. This was credibly rebutted by testimony from Association member Sergeant Mike Gill.

In sum, the only result of the City's proposed change is that, instead of having officers volunteer for extra shifts, they will be mandated to work. The people doing the work will not be the ones who wanted to do it; they will be the ones who were forced. The public is not better served by having officers forced to perform extra shifts. Further, the City will not likely see any significant savings by way of reduced overtime.

As a result, I disagree with the recommendation by the majority to eliminate vacation leave from the calculation of hours worked for overtime purposes.

IV. Changing sick leave cash-out from regular rate of pay to base rate

The City understands that a significant portion of an Association member's total compensation is derived from specialty pays. As a result, Association members long ago bargained for the right to cash out sick leave at the regular rate of pay, which includes these specialty pays. This makes sense because, when an officer utilizes sick leave, no one expects that officer to forfeit a percentage of his total compensation derived from the fact that he has, for example, obtained a certain education level. But by its proposed change here, the City will discourage the accrual of sick leave by ensuring it will have reduced value if cashed out rather

than used. This is the exact opposite result that a conscientious member of the public should desire.

In addition, it is fundamentally unfair for officers to have acquired sick leave, likely relying to their detriment on the assumption that it would be cashed out at the regular rate, only to have the proverbial rug pulled out by the City significantly reducing the value of that leave. Moreover, as with the rest of its desires, the City failed to offer any empirical evidence justifying its philosophical desire. Consequently, I cannot recommend this change.

V. Association's Position on Certain Concessionary Items

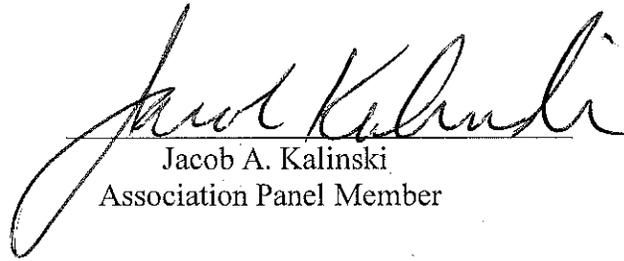
Although I would agree that the panel's recommendations should include various items the Association indicated that it would qualifiedly accept as a part of a complete package (i.e., new hire tier for longevity pay and elimination of uniform pay), I cannot recommend these unjustified takeaways when they are accompanied by the elimination of vacation leave in the determination of hours worked and the alteration to sick leave cash out from the regular rate of pay to the base rate.

VI. Conclusion

I concur with the Chairperson, in part, with respect to his recommendation that the term of a recommended multi-year contract should be 4 years (10/1/14-9/30/18) instead of the 5 proposed by the City) and that the recommended compensation percentage increases should be applied to salary and special compensation in exchange for the employees' paying their 9% PERS member contribution. As to all other recommendations which diminish or impair the compensation of Association members, other than those which flow from these

recommendations (i.e., the recommendations on Retention Pay and the elimination of the EPMC from the regular rate of pay), I dissent.

Date: September 14, 2016



Jacob A. Kalinski
Association Panel Member