

City of Redondo Beach and the Redondo Beach Professional & Supervisors Association – Report and Recommendations of the Fact finding Panel (PERB Case No. LA-IM-150-M), January 29, 2014

This Fact-Finding involves an impasse over the terms of a successor agreement between the City of Redondo Beach and the Redondo Beach Professional & Supervisory Association. Jeffrey Friedman was designated Panel member for the City, Brian Niehaus was designated Panel member for the Association, and Tony Butka was agreed to as the Panel Chair.

A hearing was held at Redondo Beach City Hall on Monday, January 27, 2014, where all parties were represented by counsel and afforded an opportunity to introduce evidence, testimony, and argument as to their respective positions.

Background:

Redondo Beach is a well established Beach City located in southern Los Angeles County, California. It is a full service Charter City, and the population was 66,748 at the 2010 census, up from 63,261 at the 2000 census. The city is located in the South Bay region of the greater Los Angeles area. The primary attractions include Municipal Pier and the sandy beach, popular with tourists and a variety of sports enthusiasts.

The City is justifiably proud of its Number One Ranking (out of 88 cities) in a 2012-13 LA County Civil Grand Jury Report in terms of fiscal best practices. The City is also proud of its high ranking amongst credit agencies such as Moody's and Standard & Poor's, which allows the city to engage in short term borrowing at low interest rates.

It is quite clear through the City's Mission Statement that the Council and the Mayor intend to balance fiscal prudence and reserves against any economic offers at the bargaining table.

The Dispute:

This dispute is essentially over compensation. Prior to the fact-finding, the City had provided the Association with their Last, Best & Final Offer dated November 13, 2013. Thereafter the Association polled their membership, regarding both the City's proposal as well as an internally prepared 'Concept Paper' (see Association Binder Tab 1, "Redondo Beach PSA Proposal December 16th, 2013), to determine the wishes of the Unit. The Offer and the Concept Paper were rejected by the membership.

Also of note, prior to this fact-finding hearing, the City had already unilaterally implemented a very similar Last Best & Final Offer with a Teamsters bargaining Unit in the City. Further, at hearing, it was determined that management intends to recommend a

similar implementation of this LBFO subsequent to the completion of the fact-finding process.

Under all of these circumstances, a Report and Recommendations weighing the merits of the parties respective positions over the Last, Best, & Final Offer is unlikely to produce any positive results. Therefore these recommendations are on a 'go forward' basis, to try and move beyond the current logjam.

PERB Criteria:

AB 646 (now contained the PERB Regulations) lays out a set of 8 criteria to be used by a fact finding panel:

“(d) In arriving at their findings and recommendations, the fact finders 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.”*

Position of the Parties Regarding Proposed Compensation Changes:

The diametrically opposed position of the parties regarding proposals for compensation changes encapsulate how far apart they are. From the standpoint of the Association, they suffered a 6% cut in compensation in 2010. Those cuts were parsed out as a 2% reduction in compensation through 'furlough days', and a 4% cut in compensation via Unpaid Holidays. The Association wants those cuts totaling 6% restored.

From the standpoint of the City, the contract between the City and the Association expired on June 30, 2012, and there has been no new contract since. Therefore, the compensation that the employees enjoyed as of July 1, 2012 is their compensation. The City's Last, Best & Final Offer includes a 3% across the board pay increase, which represents new and ongoing salary increases. Given an expired agreement there are no 'cuts' to be restored.

Analysis

Three of the MMBA fact-finding criteria; #'s 5 (comparison of comparable agencies), 6 (CPI movement) & 7 (total compensation) are the most relevant to determining compensation data for the City relative to other jurisdictions.

In the case of this dispute, it is clear that the parties have not had meaningful discussions during the negotiations process about agreeing on standards for determining what other jurisdictions are comparable to the City of Redondo Beach. For example, economic data provided by the City was essentially geared to utilizing the California Controller's data for LA County jurisdictions as a whole, while the Association provided Exhibits utilizing a marketbasket of 9 agencies (Culver City, Santa Monica, LA County, El Segundo, Torrance, Inglewood, Manhattan Beach, Hermosa Beach, and Redondo Beach) which they believe to be comparable.

In the case of the City's data, they provided a composite number for Los Angeles County as a whole. Evidently the Controller's database provides is a composite number that includes all full-time, part-time, and some other categories of employee. The City has analyzed the raw data and has produced compensation for full-time employees only within Los Angeles County. Exactly how that data fits in with a determination of comparable agencies is unclear, and unsurprisingly, the Association rejects the City's position.

In the case of the Association's data, their 9 city marketbasket uses the Controller's default composite of full time/part time & other employees for wage only analysis. Again, exactly why these 9 agencies should be considered the appropriate comparable agencies is lacking empiric evidence, and unsurprisingly, the City of Redondo Beach rejects the Association's position.

Similarly, while only the Association provided CPI data at hearing, there was little if any evidence regarding how Redondo Beach's wages correlated to any other set of jurisdictions with compensation increases/decreases over time. On the other hand, the City did not provide any competing analysis.

Finally, there was very little discussion of either benchmarking of classifications or the elements of total compensation as delineated in the act – "*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".

This is probably to be expected given the compressed time frames for negotiations and impasse procedures in this case, but it does really make it difficult to do any meaningful comparison of total compensation between agencies or even a 'composite' agency.

Recommendations

As background information, the Chair observes that Parties often believe that the Fact-Finding procedures under the Meyers-Miliias-Brown Act are designed to determine who is right and who is wrong. Actually, the purpose of the entire Act is:

"3500. (a) It is the purpose of this chapter to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations."

So, even though the statute provides a set of eight criteria to be used by the Panel, the underlying purpose of this exercise is to assist the parties in reaching an agreement to their labor dispute. With that in mind there are a number of recommendations which may assist the parties in negotiating a multi-year successor agreement.

This does not require an expensive and time-consuming classification/compensation study; rather, it would simply benefit the parties to sit down and attempt to mutually determine (a) what jurisdictions are useful in looking at outside agencies, and (b) to take a look at exactly what should be included or excluded from the definition of 'total compensation'.

Not really discussed but important in these negotiations are pension costs & employee contributions thereto, retiree health insurance, medical caps/contributions/plans, benefits such as holidays, deferred compensation plans, etc.. From anecdotal information provided at the hearing, it would seem that in some areas Redondo Beach is ahead of other agencies, and in other respects it is behind. How it all fits together is less clear.

It was also clear to the Panel that due to the truncated nature of the bargaining cycle, little attention had been paid to so-called noneconomic items. Prospectively, it is urged that negotiations fully explore these topics, since it is a truism of collective bargaining that agreement on noneconomic items may produce a positive result in terms of the ratification of a full successor agreement.

It is the Panel's belief that by quantifying the data to be used in negotiations, rhetoric can be supplanted by objective information and hopefully lead to the framework for a settlement.

In terms of specific Recommendations for the 2013/14 Fiscal Year negotiations, there are two areas which warrant such. First, the Association is correct that CPI data is one of the mandatory indicators to be used by a Fact-finding Panel in their analysis. While it is difficult to draw a particular conclusion from the data, the City will need to pay attention to the CPI as a factor in the future.

From 2010, when the compensation cuts were initiated, to 2013, the CPI in fact went up about 6%. But it must be pointed out that during this period there were ratified collective bargaining agreements in effect through July 2012. If you look at the CPI data from July 2012 – July 2013, it shows about a 3.1% increase, or if you look at the calendar year data for 2012 and 2013, there was a little over a 2.6% increase. For this panel, there is not enough factual information to direct the parties in the utilization of CPI information, **but it needs to be a discussion in future bargaining** – after all, if the parties end up in another fact-finding process, the next panel will have to address the issue of CPI again.

The second area of specific discussion has to do with the idea of cuts vs. restoration. Those opposite positions of the parties are going to largely preclude any agreement in the future as long as the issues continue to be defined as such.

In this area, the City simply cannot have it both ways over time. If they wish to totally repudiate the idea of restoring cuts, then they cannot continue to have contracts which include the so-called “Snapback” language, and references in whole or in part to ‘Restorations’.

[Note - As it was presented, under the Snapback concept, at the end of the year the City takes a look at their ending fiscal position, and depending of the net available funds, provides employees with a one-time payment based on a formula.]

As to the other ‘restoration’ issues, simply look at the City’s Last Best & Final Offer:

“Beginning the first pay period after the City Council approves this agreement, 3% of the existing 6% Compensation Reduction will be eliminated by the elimination of all unpaid furlough time-off (+2%) and a reduction in the amount of on-going unpaid holiday time-off from 81 hours to 62 hours (+1%)

Beginning the first pay period after the City Council approves this agreement, the remaining Compensation Reduction will consist of a 3% deduction in the form of an annual pre-tax deduction of 62 hours of unpaid holiday time-off, spread equally across pay periods

The 3% deduction will remain in effect until a successor agreement is reached between the City and PSA

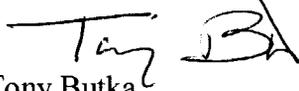
Existing 6% Compensation Reduction is in effect until the new agreement is approved by City Council

Members will be eligible to receive Snapback payments for FY 2012-13 under the same calculation as Management Confidential. PSA's portion of the Snapback is projected at \$25,384” **(Italic Emphasis added)**

The very language of the City's offer supports the Association's contention that the intent of the parties when they negotiated the reductions was to someday eliminate them.

Frankly, it is hoped that this case is true, and that the City will engage in early negotiations for a successor agreement with a goal of eliminating the reductions

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Tony Butka". The signature is stylized with a large, sweeping "T" and "B".

Tony Butka
Chair

Date: 1/29/2014

1 Brian Niehaus
City Employees Associates
2 2918 E. 7th Street
3 Long Beach, CA 90804

4 FACT FINDING HEARING

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IN THE MATTER OF FACT FINDING
BETWEEN THE REDONDO BEACH
PROFESSIONAL AND SUPERVISORY
EMPLOYEES' ASSOCIATION
AND
THE CITY OF REDONDO BEACH

OPINION -
CONCURRING IN PART,
DISSENTING IN PART

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Serving as a Fact Finding Panelist at the request of the REDONDO BEACH
PROFESSIONAL AND SUPERVISORY EMPLOYEES' ASSOCIATION, I hereby submit my
opinion, concurring in part and dissenting in part, to the recommendations of neutral Panelist
Tony Butka.

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ANALYSIS

I concur with Mr. Butka's findings that the City seems to want it both ways in regards to
the categorization of the City's proposed 3% restoration of wage cuts. As a summary, in July
2010 the Association agreed to a 6% reduction in pay when the City faced a decline in revenue.
This was not a permanent reduction in the salary schedule. It was clearly a temporary measure
agreed to by the Association, implemented as unpaid furlough time and a reduction in the

1 number of paid holidays, to assist the City in the temporary revenue down swing caused by the
2 larger global recession.

3 At the Fact Finding hearing the City touted its proposal to give the employees a 3%
4 compensation increase; while in its Last Best and Final offer it clearly recognized the adjustment
5 as a partial restoration of the recessionary 6% cuts.

6 What some may dismiss as mere semantics, whether the 3% bump is categorized as a
7 salary increase or merely a partial restoration of the 6% seems to be the source of much of the
8 dispute of the parties. This needs to be resolved if the parties hope to come to agreement in the
9 present impasse and possibly future negotiations. As such, the Panel's recommendation needs to
10 offer a way forward in resolving this categorization.

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12 I concur with Mr. Butka in the assessment that the City needs to pay more attention to
13 CPI in future negotiations. However, the Panel needs to apply the CPI data and City revenue to
14 the current dispute and include this in the Panel's final recommendations to the parties.

15 The Association provided clear facts at the hearing showing City revenue increased by
16 roughly 14% since the Association agreed to the 6% cuts in 2010. Furthermore, CPI increased
17 by 6% since 2010. So even if the City agrees to restore 3% of the 2010 cuts (as it currently
18 proposes), the employees will still suffer under a 9% wage loss in real dollars since 2010. Given
19 the City enjoyed a 14% jump in revenue, the Association seems reasonable, and fiscally
20 responsible, in proposing at least a restoration of the full 6%. Even with the 6% reduction, the
21 employees will still be 6% behind in real dollars from 2010.

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1 Finally, it needs to be highlighted that the parties did not reach impasse in 2010 when
2 agreement was reached on the 6% reduction in pay. In 2010, when City revenue suffered a real
3 decline caused by the larger recession, the Association agreed to a temporary cut in pay to assist
4 the City in a financial pinch. Now, when City revenue rebounds, the City refuses to reinstate
5 those cuts and forces the parties into impasse.

6 Inexplicably, at the Fact Finding hearing City representatives seemed to refuse to recognize
7 the sacrifice the employees made by agreeing to temporary cuts in 2010, and presented the 3%
8 restoration as a generous raise; ignoring the larger context for short-term expediency.

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10 RECOMMENDATION

11 Given the financial rebound of the City and the employee's loss of real wages, I recommend
12 the City restore the entire 6% cuts the employees originally agreed to as a temporary measure.

13 The Association stepped up and agreed to the temporary cuts the City proposed in 2010,
14 when the economy made it financially necessary. The City should step up and agree to the
15 restoration in 2014, when the City is now financially able.

16 At a minimum, the City should agree to restore 3% of the cuts retroactive to the first day of
17 the 2013/2014 fiscal year and restore the remaining 3% on the last day of the fiscal year, which
18 would coincide with the last day of the MOU. This would resolve the current impasse without
19 impacting the current fiscal year budget of the City. Furthermore, when the parties return to
20 negotiations for fiscal year 2014/2015 the dispute over how to categorize the 6% recessionary
21 cuts will be off the table. The parties can then return to the negotiating table without the baggage
22 of this current dispute, putting the parties in a much better position to reach agreement and avoid
23 future impasse.
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Dated: February 4, 2014

City Employees Associates

By: 

Brian Niehaus,
Field Representative

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8 FACT FINDING PROCEEDING PURSUANT TO MEYERS-MILIAS-BROWN ACT
9 CITY OF REDONDNO BEACH
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11 IN RE THE FACT FINDING PROCEEDING
12 BETWEEN THE REDONDO BEACH
13 PROFESSIONAL AND SUPERVISORY
14 EMPLOYEES ASSOCIATION

CONCURRING OPINION

15 AND

16 CITY OF REDONDO BEACH
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18 This concurring opinion follows a fact finding proceeding conducted on Monday
19 afternoon, January 27, 2014, at the City of Redondo Beach involving negotiations between the
20 Redondo Beach Professional and Supervisory Employees Association (PSA) and the City of
21 Redondo Beach (City). The fact finding panel consisted of neutral Tony Butka, PSA panelist
22 Brian Niehaus, and the undersigned as the City panelist. PSA was represented by its legal
23 counsel Jeffrey W. Natke and the City was represented by its legal counsel William G. Benz. The
24 fact finding proceeding was completed in one afternoon. Both PSA and the City were afforded
25 and exercised the opportunity to present both oral and documentary evidence, to question the
26 other side and to present argument in support of their respective positions. Panel Chair Butka
27 issued his recommendations in writing on Wednesday January 29, 2014. The undersigned
28 concurs in part with Mr. Butka's recommendations but writes separately to add the following.

As of this juncture, the impasse between the parties persists and, absent some last minute

1 development, the negotiations process will have come to a conclusion. Mr. Butka has chosen not
2 to make recommendations for the terms of a settlement between the parties; rather his
3 recommendations suggest a process which he hopes the parties will undertake in an effort to find
4 common ground for a subsequent settlement in one or more later fiscal years. This will leave the
5 City Council with the decision whether to implement its last, best and final offer on a unilateral
6 basis or simply to leave matters as they are. From a legal point of view, the City Council will
7 have no obligation to take any action whatsoever although the City advised at the fact finding the
8 belief that the City Council will likely implement. This is a policy decision totally within the
9 discretion of the City Council; the governing body has no obligation to take any action at all at
10 the conclusion of this process and could lawfully leave PSA with no change in terms and
11 conditions of employment for the balance of the current fiscal year (with only five months
12 remaining) subject only to future negotiations for the 2014-15 fiscal year and those beyond.

13 Based upon the information provided at the fact finding, my view is that PSA failed to
14 make a case for any change in their terms and conditions of employment. Frankly, were the City
15 Council to decide to take no action, such a resolution would seem justified based upon PSA's
16 total failure to justify any improvement in any subject within the scope of representation.

17 The City, on the other hand, offered an improvement in the employee economics to the
18 tune of three percent, regardless of whether characterized as a wage increase or a 50% restoration
19 of concessions agreed to by PSA during the economic downturn.

20 Based upon the City's presentation, and in the total absence of any credible information to
21 show otherwise, it must be concluded that the City's offer was and is imminently fair and bluntly
22 should have been accepted by PSA. PSA should not be heard to complain if they now receive
23 by unilateral action an improvement in their compensation which they rejected by majority vote.

24 I do have some concerns with some of Mr. Butka's recommendations but not to the point
25 where I need to dissent. For example, while I agree the parties would be well served if they could
26 agree on comparator agencies, my experience is that parties tend to look for agencies whose data
27 helps them make the case they want to make. PSA's selection of seven cities here proves that
28 proposition. They presented no credible reasons why those seven should be reviewed while 80

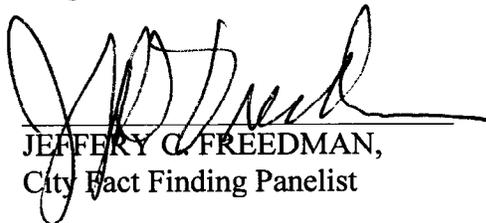
1 others in the County should not. On the other hand, using all the cities in Los Angeles County
2 may also not provide meaningful information and itself may be arbitrary. For example, while the
3 metropolitan area is delimited in two directions by ocean and mountains, that is not the case for
4 the east and the south. Indeed, why are not some Orange County cities at least as relevant as cities
5 in the Antelope and San Gabriel Valleys? Is Huntington Beach, in Orange County, further away
6 than Lancaster, Palmdale and Pomona, all in Los Angeles County? Employment opportunities do
7 not necessary stop at the County line; people do commute. The overriding criterion, of course, is
8 that cities should pay only what they can afford, regardless of what other jurisdictions pay,
9 tempered by the willingness and ability of the populace to pay levels of compensation that are
10 competitive with other agencies to attract and retain good employees. Based on the evidence
11 presented at the fact finding, the City's offer appears fair and market based. Also, the City's
12 ability to improve employee compensation, even if City revenues improve, may be overwhelmed
13 by huge increases in the City's obligations to CalPERS in pension costs.

14 In summary, while I have no quarrel with Mr. Butka's suggestion, as it would not hurt, I
15 wonder whether it truly would help. Nonetheless, this is one of the statutory criteria that would
16 need to be examined in any future fact finding between these parties, and this information should
17 be sought by collaboration if for that reason alone.

18 Where I primarily part company with Mr. Butka is in the final paragraphs of his report. He
19 asserts the City is trying to "have it both ways" by using the so-called "snapback" concept to
20 restore portions of the previously agreed upon concessions while at the same time refusing to call
21 their three percent offer a restoration. This is nothing more than semantics. The City has simply
22 offered what it believes it can afford. In the City's calculus, it's three percent, and the City does
23 not believe it can afford six at this time. However, the snapback concept holds out the possibility
24 that additional compensation could become available on a "look back" basis at the end of the
25 fiscal year if actual revenues exceed actual expenses. Although this may be a unique concept in
26 the field of municipal finance, it seems, at least to me, to be a very clever idea. Accordingly, I
27 disagree with Mr. Butka that the City is trying to have it "both ways." Rather, I see the City trying
28 to be fair with the employees while at the same time being responsible to the populace with the

1 money the City has available. Based upon the financial data presented at the fact finding, the City
2 should be commended for its willingness to “stretch” to offer PSA the additional compensation in
3 its final offer.

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5 Respectfully submitted

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7 JEFFERY C. FREEDMAN,
8 City Fact Finding Panelist

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DATED: January 31, 2014