

IN THE FACTFINDING PROCEEDINGS
PURSUANT TO THE MEYERS-MILIAS-BROWN ACT

PLACENTIA POLICE AND FIRE
MANAGEMENT ASSOCIATION

Association,

&

CITY OF PLACENTIA,

Employer

Case No.: LA-IM-336-M

FACTFINDING REPORT AND
RECOMMENDATIONS FOR
SETTLEMENT

Chairperson: Najeeb N. Khoury
Employer Panel Member: Steven Berliner, Liebert Cassidy Whitmore
Association Panel Member: Stacie Casabian, Mastagni Holstedt
Hearing Date: April 3, 2024

BACKGROUND

The Placentia Police and Fire Management Association (“Association”) represents Police Sergeants, Lieutenants, Captains, and Fire Battalion Chiefs in the City of Placentia (“Employer” or “City”). There are approximately 18 individuals in the bargaining unit.

The parties have been bargaining for a two-year successor contract which will cover the July 1, 2023-June 30, 2025 time period. The parties engaged in ten bargaining sessions. Many issues were resolved through bargaining, including cost of living (COLA) adjustments. The parties, however, could not reach agreement on the following issues: when the first COLA increase should go into effect (retroactively to July 1, 2023 or after ratification of an agreement);

whether there should be an added step to the salary range to address compaction issues with the rank and file police bargaining unit; whether there should be enhancements to longevity pay; and how compensatory leave banks should be handled. The parties reached impasse on these issues and were unable to reach resolution through mediation. Consequently, I was appointed as the factfinding panel chair on February 1, 2024. The factfinding hearing occurred on April 3, 2024 at Placentia City Hall. At the factfinding hearing, both parties advocated for their positions through verbal presentations and supporting documents.

ANALYTICAL FRAMEWORK

Unlike interest arbitration, where a third-party neutral sets the terms of a new contract, a third-party neutral chair in a Meyers-Milias-Brown Act (MMBA) factfinding simply provides recommendations. In essence, this makes factfinding an extension of bargaining. Ultimately, the parties must persuade one another of their positions, and the neutral factfinder simply provides an outside perspective to help the parties along.

As set forth in California Government Code Section 3505.4(d), the MMBA requires factfinders to “consider, weigh, and be guided” by the following criteria:

1. State and federal laws that are applicable to the employer.
2. Local rules, regulations, or ordinances.
3. Stipulation 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 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 and traditionally taken into consideration in making the findings and recommendations.

Neutral factfinders have typically required the party seeking a change to the status quo to carry the burden of persuasion, and I will follow that convention.

ISSUES AND RECOMMENDATIONS

Issue: Implementation Date

The parties have agreed on the COLAs for this MOU. However, the parties disagree about when the first increase should go into effect. The City notes that it has a no retroactivity practice and therefore proposes that the effective date be the pay period after the City Council has approved a new contract. The City Council believes the no retroactivity policy encourages bargaining units to reach agreements promptly.

The Union responds that it should not be placed in a worse situation than other bargaining units simply because it has chosen to engage in statutorily mandated impasse procedures. The Union notes that the City has already budgeted the increase, and implementing the increase retroactively will not, therefore, negatively impact the City's budget. The Association also asserts that the City was responsible for some of the delays in this process.

In making my recommendation, I must consider "state and federal laws that are applicable to the employer." I note that post-impasse mediation and factfinding are statutorily

created and protected.¹ The purpose of impasse procedures is to ensure that parties have exhausted all avenues for reaching a deal. Therefore, I do not believe that the Association should receive a lesser deal (no retroactivity) because it chose to utilize its statutory rights, which are naturally and inevitably time-consuming.

With this said, and understanding that factfinding is an extension of bargaining, I will make a recommendation that I believe the City should seriously consider despite its views on retroactivity. The parties should agree to a one-time payment to help bridge the gap between their positions. The impact on no retroactivity is about 5%, and so I recommend that the parties meet in the middle and agree to a signing bonus equivalent to 2.5% of base wages.

Issue: Extra Step and Longevity Pay

The Association seeks to add a Step F on the salary scale for each position in the bargaining unit. The additional step would allow an employee who is at Step E (the current top step) to increase his/her base wages by 5.4%. The Association also seeks to add longevity pay for the Battalion Fire Chief classification, which currently has no longevity pay. The Police Managers currently are eligible for 2.5% longevity pay at fifteen years, and the City is willing to provide this same benefit to the Fire Battalion Chief classification. However, the Association notes that the Placentia Fire Department is relatively new, and no incumbent is close to qualifying for longevity at fifteen years. Therefore, the Association proposes that the Battalion Chief classification receive a longevity pay of 4% at five years and 5% at fifteen years, for a cumulative amount of 9%.

¹ They are protected as it is an unfair labor practice for a party to refuse to engage in the impasse procedures.
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The Association seeks the additional step because it notes that there is a compaction issue, especially between police officers and sergeants. The City acknowledges that this issue exists. Indeed, when someone promotes to sergeant, his/her pay may not increase substantially due to losing certain specialty pay to which officers are entitled. The City notes that it is proposing that the sergeants receive the same COLAs as police officers; however, the Association responds that receiving the same COLA will not address the compaction issue.

To help address the compaction issue, I recommend that the parties agree to add 2.5% longevity pay at 7 years. This would be in addition to the current 2.5% at 15 years so that a bargaining unit member with seven years experience will receive 2.5% in longevity pay and a bargaining unit member with fifteen years experience would receive another 2.5% for a total of 5% in longevity pay. I note that most individuals promoting up to this bargaining unit will have close to seven years of service and so this addition will help with the compaction issue without the need for adding a new step to the salary schedule.

I acknowledge that the longevity proposal may not be as valuable to the Battalion Fire Chief classification, as that is a relatively new classification in the City. In order to provide the Battalion Fire Chief classification something of additional immediate value, I recommend that the City provide the Battalion Chief classification the ability to receive an additional \$245 a month for a second certification.²

² The City has already agree to pay \$245 a month for an initial certification.
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Issue: CTO/Holiday

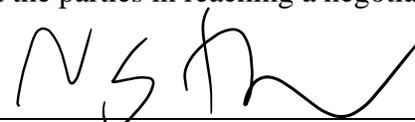
Currently, the management police classifications have a cap on non-FLSA comp time at 400 hours, and the fire classification has no cap. The City proposes reducing the police classification cap to 360 hours and separating 120 hours of holiday leave accrual into a separate holiday bank. It also proposes creating a comp time cap of ninety-six hours for the fire classification and creating a separate holiday leave bank for that classification as well.

The Association is willing to agree to the 360-hour cap for all classifications in the unit but does not want to separate holiday leave into a separate bank. The Association states that it wants to help the City be fiscally responsible, which is why it is agreeing to a reduced cap, but that holiday accruals are a key way in which the unit members accrue comp time and separating out holiday accruals would seriously hamper their ability to accrue time.

I recommend the following: the holiday hours should not be separated out into their own banks but the cap should be 360 hours for police classifications and 216 hours for fire classifications. This will help lower the leave liabilities for the City while not radically changing the status quo.

I discussed the issues that the parties focused on at the hearing. I recommend that the status quo remain for any other issues on which the parties have not reached agreement. I sincerely hope that these recommendations assist the parties in reaching a negotiated settlement.

Date: April 26, 2024



Najeeb N. Khoury

IN THE FACTFINDING PROCEEDINGS
PURSUANT TO THE MEYERS-MILIAS-BROWN ACT

PLACENTIA POLICE AND FIRE
MANAGEMENT ASSOCIATION,

Association,

v.

CITY OF PLACENTIA,

Employer.

Case No.: LA-IM-366-M

**DISSENT TO FACTFINDER'S REPORT AND
RECOMMENDATIONS FOR SETTLEMENT
BY STEVEN M. BERLINER, CITY OF
PLACENTIA'S APPOINTEE TO THE
FACTFINDING PANEL**

I. SUMMARY OF DISSENT

I was appointed by the City Placentia ("City") to serve as the City's representative on the factfinding panel in this impasse between the City and the Placentia Police and Fire Management Association ("PPFMA")¹. I dissent to the Factfinder's Report and Recommendations for Settlement ("Report") for the following reasons:

First, the recommendations in the Report do not fully take into account the City's financial conditions, sources of income and restrictions on spending placed on those sources of income. The City has a limited tax base and very few options to grow that base. The 2018 sales tax initiative, Measure U, has allowed the City to offer increases in wages and benefits to the PPFMA. However, the City's Last, Best and Final Offer ("LBFO") will require that it draw General Fund reserves down to the minimum required under its policies. If the City were to follow the recommendations in the Report, General Fund reserves would fall below the prudent levels required by City policy.

The City's financial condition is expected to deteriorate further. Since the hearing, the City has been actively working on its Fiscal Year ("FY") 24-25 preliminary operating budget. The City is facing a preliminary operating budget deficit for FY 24-25 of approximately \$3,400,000. The deficit is in part due to the increase in the City's expenses, with CalPERS seeking a payment of \$447,000 for its unfunded liability and \$1,300,000 in negotiated compensation increases, among other costs. Much of the preliminary operating budget deficit, however, is due to continued reductions in sales tax revenue projections. The City is already working on reducing that projected deficit by reducing operating expenses. For example, all City departments must reduce their budget by 5% and non-safety hiring will be restricted. Despite these efforts, the City will likely have to use its reserves to balance its budget in FY 24-25. The

¹ The City and PPFMA may be referred to individually as a "Party" or collectively as the "Parties".

recommendations in the Report will exacerbate the City's structural deficit, and are therefore not in the best interest of the City, its residents, or its employees.

Second, the recommendations in the Report does not fully take into account the history of bargaining between Parties that preceded the current impasse. The City made it clear from the outset that there would be no retroactivity in its proposals and never waived from that position. Further, the City made numerous efforts to bridge the gap between the Parties' positions and to address the main issue of compaction with the classifications in the POA. The City revised its LBFO upward after studying the compaction issue. The City wanted to share that information with the PPFMA but PPFMA did not engage with the City to discuss the City's efforts to alleviate compaction.

II. THE CITY OFFERED SIGNIFICANT COMPENSATION INCREASES IN ITS LBFO BUT SEVERAL ISSUES REMAIN IN DISPUTE

The Parties had a long and largely successful bargaining process for a two (2) year Memorandum of Understanding ("MOU"). Numerous tentative agreements ("TA") were reached, including on key compensation issues. The main issues in dispute in this impasse are:

SALARY INCREASES

Police Sergeants: Year 1: 8%; Year 2: 6%

Police Lieutenants: Year 1: 4%; Year 2: 4%

Police Captains: Year 1: 5%; Year 2: 4%

Fire Battalion Chiefs: Year 1: 6%; Year 2: 4%

DISPUTE :

The Parties agree on the amount of the salary increases. The issue in dispute is the effective date of the increase. The City has proposed throughout the bargaining process that they take effect prospectively after Council adoption of an MOU. PPFMA seeks retroactivity to July 1, 2023.

STEP F:

PPFMA proposed adding a new step to the salary schedule, which would give each classification a top step that is 5.4% higher than the salary range after the negotiated increases are factored in.

The City did not accept that proposal. The City studied the compaction issue and contends its revised salary proposal addresses those concerns.

LONGEVITY PAY

The City proposed to give Battalion Chiefs the same longevity pay received by the Police classifications in the unit: 2.5% at 15 years.

PPFMA requests 4% at 5 years and another 5% at 15 years, for a maximum of 9% for Battalion Chiefs.

COMPENSATORY TIME

The Parties agreed that the non-FLSA compensatory time off (“CTO”) bank would be capped at 360 hours for Police classifications.

The City proposed a cap of 96 hours for Battalion Chiefs (which currently do not accrue CTO). Employees at the cap would be paid for overtime worked after the cap is reached.

III. THE RECOMMENDATIONS IN THE REPORT DO NOT FULLY ADDRESS THE CITY’S FINANCIAL CONDITION, SOURCES OF INCOME, AND RESTRICTIONS ON SPENDING THAT INCOME

The Report is primarily recommendations as to how the Parties can come to agreement. It does not address the relative merits of each Party’s position on the disputed issues. The City would also like to reach agreement, and for that reason, it studied the compaction issue and increased its proposals to address the PPFMA’s concerns. However, the recommendations in the Report would result in significantly greater costs to the City than its LBFO that are simply unsustainable based on the evidence presented at the hearing. Moreover, since the hearing, the City has learned that its financial position is even more precarious with a preliminary operating budget deficit for FY 24-25 of approximately \$3,400,000. The new financial information and the City’s plan to address the projected shortfall are described in the summary to this dissent. These developments further support the City not following the recommendations in the Report.

PROPERTY TAX

The evidence presented by the City at the hearing showed that the City has limited sources of revenue. The City is primarily residential. It is built out with no room for commercial growth. 7 out of 10 of its top property taxpayers were residential as opposed to commercial or industrial. In 2022, its property tax revenues were significantly lower than neighboring cities. 2023 median home values in the City were down 2.84% from 2022, bucking all recent trends.

SALES TAX

The City also has limited sources of sales tax revenue. Its sales tax revenues are decreasing and that trend is expected to continue. Sales tax revenues are a fraction of what neighboring cities receive. It has no “big box” stores like Walmart or Costco to generate significant sales tax revenues. Aside from two car dealerships, most of the City’s top sales tax

generators are gas stations, grocery stores and other small retail stores. The City has no large industrial complexes.

The City's sales tax revenues decreased 11.2% in the July-September 2023 period compared with the same period in 2022. This drop was significantly higher than the County's decrease of 1.1% and the State's decrease of 1.6% over the same period. FY 23-24 sales tax revenues are currently expected to be 5.6% lower than for FY 22-23. Sales tax revenues are projected to drop even more as the City has lost one of its top 25 sales tax generators as well as two additional consistent sales tax generators.

MEASURE U AND POLICY NO. 460

Measure U was approved by voters in 2018 and increases the sales tax rate in the City by 1%. Measure U has no expiration date, but can be terminated at any time by the citizens in an election. Measure U has a Citizens Oversight Committee, which reviews Measure U fund expenditure plans. The City developed Policy No. 460 to ensure that the City maintained a 25% General Fund Reserve and to control how Measure U funds are spent.

The City projects that in Fiscal year 2023-2024, the General Fund balance will decrease by \$6,890,572 to \$12,939,460. This calculation includes the City's LBFO and would leave the General Fund Reserve balance at 25.28%, just barely satisfying the Policy No. 460 requirement of a 25% reserve. The recommendations in the Report would result in the City violating Policy No. 460 and putting future Measure U revenues at risk.

The recommendations in the Report would be unsustainable given that the City has suffered significant reductions in revenues and General Fund Reserves, despite Measure U. There is simply no room for the City to grow out of this problem. The City's LBFO reduces its General Fund Balance to the minimum allowed by Policy No. 460. Paying any more than the LBFO will result in the City violating Policy No. 460 and put the City's financial future at risk.

IV. THE RECOMMENDATIONS IN THE REPORT DO NOT TAKE INTO ACCOUNT THE PARTIES' BARGAINING HISTORY

The recommendations in the Report may seem reasonable in a vacuum, but not when considered in light of the Parties' bargaining up to impasse.

RETROACTIVITY OF SALARY INCREASES

The Report recommends that the City provide a signing bonus of 2.5% to each PPFMA bargaining unit member to compensate them for a portion of the retroactive salary increases that they will not receive. The rationale is that the PPFMA should not receive a lesser deal because they exercised their statutory rights to bargain.

The City was consistent throughout the many months of negotiations that its economic proposals were to be prospective only and that the City would not entertain retroactive increases. Despite that clear statement, PPFMA knowingly continued to seek better terms from the City after the prior MOU expired. In one way, that strategy worked in that the LBFO provided

greater increases to PPFMA than the City had proposed previously. However, PPFMA was offered those increases subject to the City's condition that they not be retroactive. PPFMA took the risk that by continuing to bargain for greater salary increases, they would not receive retroactivity. They are not, as suggested in the Report, getting a lesser deal. The City has proposed that the increases in its proposal be prospective only, as the City has consistently proposed throughout this process.

COMPACTION ISSUES

The Report recommends that the compaction issues and the longevity pay issues be addressed together in the form of increased longevity pay of 2.5% at 7 years and another 2.5%, for a total of 5% at 15 years. This recommendation is significantly higher than what PPFMA currently receives and well above what the City proposed. In addition, the recommendation is that Battalion Chiefs receive the opportunity to receive \$245 per month in certificate pay for a second certificate, bringing their potential certificate pay to \$490 per month (The Parties had already agreed that Battalion Chiefs can earn up to \$245 per month for 1 certificate). This recommendation was stated as a solution to the fact that current Battalion Chiefs may not be eligible for longevity pay for a few years.

The Parties already negotiated and reached agreement on certificate pay. Moreover, longevity pay is intended to reward longevity. Specialty pays are designed to incentivize employees to obtain skills, take on duties and/or receive education that the Parties determined are required or desired in order for the employees to better serve the community. They are not interchangeable widgets.

PPFMA agreed to certificate pay for one certificate. There has been no analysis as to whether payment for a second certificate is necessary or even desired by the Fire Department. Since the City's LBFO already brings the General Fund reserves to the minimum required by Policy No. 460, simply throwing money at this issue is not an appropriate use of City funds. It intends to solve a problem related to certificates and certificate pay that may not even exist.

Similarly, there has been no analysis done as to whether the increases in longevity pay recommended in the Report are needed or will even be helpful in retaining long term employees. Therefore, it would also be an inappropriate use of City resources.

CTO

The recommendation in the Report is that the Parties agree to PPFMA's proposal that holiday pay continue to be placed in the CTO bank for all PPFMA classifications and that the CTO limit for Battalion Chiefs be raised to 216 hours. (The Parties agreed to a 360 hour cap for Police classifications).

The recommendation ignores the rationale behind the Parties' proposals. The City proposed a CTO bank of 96 hours for Battalion Chiefs since they currently cannot accrue any CTO. Also, PPFMA stated that its proposal to maintain holiday hours in the CTO bank was to ensure that paid time be available for their use if an extended leave is required. However, the City provides holiday time and pay to compensate employees for the inconvenience of working on a holiday or to ensure that an employee can take a holiday off with pay. It is not intended to

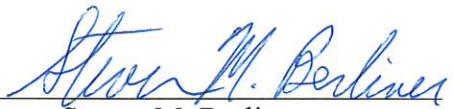
be a source of long term or short-term disability or for time off for reasons other than a holiday. There are numerous sources for these employees to receive pay if extended leave is necessary, including vacation, sick leave and Labor Code section 4850 benefits for work related injuries.

The City's proposal allows employees to be paid yearly for any holiday pay accrued and not used while the City is able to reduce the long term liabilities associated with CTO balances that carry over from year to year.

V. CONCLUSION

For all the above reasons, I dissent to the Report.

Dated: April 25, 2024



Steven M. Berliner
City of Placentia's Appointee to
the Factfinding Panel

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April 25, 2024

Sent Via Electronic Mail ONLY

Najeeb N. Khoury
nkhouryadr@gmail.com

Re: Placentia Police and Fire Management Association Response to Factfinding Report and Recommendations for Settlement

Dear Mr. Khoury:

This letter is in response to the draft Factfinding Report and Recommendations for Settlement on behalf of the Placentia Police and Fire Management Association.

Regarding the issue of the implementation date and retroactivity, the Chairperson recommendation consists of a lump sum signing bonus equivalent to 2.5% of base wage. The language is vague; however, because this is a recommendation to address the issue of retroactivity, this payment should be a lump sum payment equivalent to 2.5% of base pay for the time period between July 1, 2023, and implementation of this recommendation. The Chairperson provides a summary explaining the intent of splitting the Association's requested percentage of 5% to create a fair recommendation for the parties. The Chairperson indicated "I do not believe the Association should receive a lessor deal (no retroactivity) because it chose to utilize its statutory rights." However, this recommendation is a non-pensionable bonus, which results in a better benefit to the employer and does harm the Association members. This recommendation does not truly split the benefit or harm between the Employer and the Association. Therefore, this recommendation results in a lessor deal for the Association, which is a direct contradiction of the Chairperson's stated intent.

Regarding the issue of adding Step F to the salary scale the Chairperson recommendation consists of an implementation of an additional longevity step of 2.5% at seven years of service. This recommendation does not address the compaction issue faced by the employees in the Placentia Police and Fire Management Association. Employees in the lower classifications receive greater longevity benefits, which they lose when promoting to this bargaining unit. While providing a 2.5% longevity will slightly reduce the compaction issue for members who qualify for longevity, it will not address the compaction issue for those who do not qualify. Additionally, employees promoting into this group will still need to be brought into the unit at a higher step in the salary matrix to comply with promotional pay requirements. This limits employees ability to

grow through the pay scale in the manner in which it was designed. This can contribute to recruitment and retention issues in the bargaining group.

During the Factfinding hearing, the parties provided statements agreeing there is compaction issue for the Placentia Police and Fire Management Association. The Association acknowledges the remedies its seeking does not resolve. Rather, these remedies will reduce the issue and create a more manageable situation to address in future contract negotiations.

Sincerely,

MASTAGNI HOLSTEDT, APC



Stacie Casabian
Senior Labor Relations Consultant