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FINDINGS AND RECOMMENDATIONS
PURSUANT TO
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between)	
Oakland Housing Authority)	
Employer)	
and)	Collective Bargaining Impasse
SEIU Local 1021)	Factfinding
Union)	PERB Case No: SF-IM-161-M

APPEARANCES:

For the Employer: Daniel S. Maroon, Attorney
Goldfarb Lipman
1300 Clay St., Eleventh Floor
Oakland, CA 94612

For the Union: Robert Szykowny, Attorney
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FACTFINDING PANEL:

Appointed by the Employer: James T. Diamond, Attorney
Goldfarb Lipman

Appointed by the Union: Dana MacPherson, Area Field Director
Service Employees International Union Local 1021

Neutral Chairperson: Paul D. Roose, Arbitrator and Mediator
Golden Gate Dispute Resolution

STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND

Under amendments to the Meyers-Miliias-Brown Act that went into effect on January 1, 2012, and as amended again on January 1, 2013, local government employers (cities, counties, and special districts) and unions in California have access to factfinding in the event they are unable to resolve contract negotiations. At the request of the exclusive representative, the parties are required to go through a factfinding process prior to the employer implementing a last, best and final offer. In accordance with regulations put in place by the California Public Employment Relations Board (PERB), the exclusive representative can request factfinding either after mediation has failed to produce agreement or following the passage of thirty days after impasse has been declared. Each party appoints a member of the factfinding panel. A neutral chairperson is selected by PERB unless the parties have mutually agreed on a neutral chairperson.

Under the statute, the factfinding panel is required to consider, weigh and be guided by the following criteria in formulating its findings and recommendations:

- 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

Service Employees International Union Local 1021 is the exclusive representative for two bargaining units with the Oakland Housing Authority (OHA). One is the Assistant Property

Administrators and Housing Assistance Representatives unit (known as HAR/APA). The other is the Maintenance unit. The two units are covered under separate Memoranda of Understanding, but they bargained together for the purposes of the reopener that is the subject of this proceeding.

The parties have a collective bargaining agreement (CBA) in place. That agreement became effective July 1, 2013 and is set to expire June 30, 2016. Under the terms of that agreement, salary and health benefits were set for the first two years. The CBA includes a reopener clause on both salary (effective July 1, 2015) and the 2016 health insurance premium.

The Authority has two other unions represented bargaining units with CBA's: Office and Professional Employees Local 29, and the Building Trades Council of Alameda County. The Authority's total workforce is approximately 370 employees. The SEIU is the largest of the three unions at OHA, with a total of about 90 unit members.

The parties conducted at least nine negotiating sessions between February 2015 and July 2015. No agreement was reached. The parties sought the assistance of the California State Mediation and Conciliation Service, and mediator Tom Ruiz was assigned. Mediation efforts proved unsuccessful, and the parties proceeded to factfinding under the auspices of PERB.

On November 2, 2015, PERB notified the undersigned that the parties had selected him to be the chair of the factfinding panel in this matter pursuant to Government Code 3505. A hearing was set by mutual agreement to be held on December 8, 2015.

The panel convened on that date in Oakland and took on-the-record evidence and argument from both sides concerning the matter in dispute. The parties also requested that the neutral factfinder act as a mediator in assisting the parties in off-the-record discussions to attempt resolution of the matter. Accordingly, confidential mediation was also conducted on that date. Mediation efforts proved unsuccessful. The parties then went back on the record and submitted their final proposals and oral argument for the panel's consideration.

BACKGROUND TO THE DISPUTE

OHA is located in Oakland, CA. Its primary mission is to provide affordable housing within the city. It provides subsidized housing to approximately 16,500 families. Its funding comes primarily from the federal government's department of Housing and Urban Development (HUD). It has an annual general fund budget of about \$249 million, with additional capital expenditures budgeted at \$12 million.

The parties signed the current CBA on February 6, 2014. The agreement includes a 1% across the board salary increase for all unit members effective December 1, 2013, and an additional 1% across the board salary increase for all unit members effective July 1, 2014. In addition, unit members received a lump sum payment equal to 1% of their salary for the period July 2013 through November 2013 (in effect, providing retroactive pay back to the beginning date of the CBA).¹

Prior to the current agreement, unit members received salary increases of 1%, 1.5%, and 2.5% in the years 2010, 2011, and 2012. In addition, equity adjustments per classification up to a maximum of 7% were negotiated for maintenance classifications in 2012.

The Employer asserted that the other OHA bargaining units settled for a 3% COLA for July 2015, and that 3% has also been provided to non-represented OHA employees. The Employer asserted that me-too clauses exist in the other two non-SEIU contracts that would require OHA to provide additional raises if it agreed to anything higher than 3% for SEIU.

The CBA's also provide for a maximum health insurance contribution for unit members. In the current agreement, that maximum was raised from \$1,657.30 per month to \$1,840.30 per month on January 1, 2014. On January 1, 2015, the agreement adjusted the contribution by the equivalent of 90% of the increase to the Kaiser family rate. That agreement maintained the Employer's contribution at \$1,840.30 per month.

Entering the factfinding process, the parties were in dispute over salary and health benefits. However, as part of its final proposal in factfinding, the Union agreed to the Employer's last offer on health insurance of a maximum monthly contribution of \$1,865.00 per month. According to the Employer's presentation at hearing, not disputed by the Union, this new contribution rate results in 59% of unit members making no premium contribution. 31% of unit members will pay \$75.82 for Kaiser family coverage. The remaining 10% of unit members have selected more expensive health plans or have opted out of health coverage in exchange for receiving a cash reimbursement.²

The sole remaining issue in dispute is the percentage of a salary adjustment for July, 2015.

Both Parties Presented Evidence on Cost of Living: The parties cited the federal Bureau of Labor Statistics Consumer Price Index for Urban Wage Earners (CPI-U) for the San Francisco Bay Area

¹ The lump sum language is contained in the Maintenance MOU, but not evident in the HAR / APA agreement. From testimony at hearing, it appears that the lump sum was provided to those unit members as well.

² The amount of the in-lieu payment was not evident from the record.

as the relevant measuring stick for cost of living. However, the Union began its analysis in the year 2009 and ended in 2014, while the employer chose to examine changes in CPI from 2012 - 2015.

By the Union's calculation, the cost of living rose has risen over 12% since 2009. By the Employer's accounting, the index rose 8.1% from June 2012 through August 2015. The Employer noted that nearly all six-month CPI increase during this period had been less than 3%.

The CPI-U for the San Francisco Bay Area increase between April 2014 and April 2015 was just over 2%.

Both Parties Presented Evidence on Compensation in Comparable Jurisdictions: The parties did not agree on the relevant jurisdictions to be used for comparison purposes. The Employer used the following: Alameda County Housing Authority, Alameda County, Contra Costa Housing Authority, Marin County Housing Authority, Sacramento Housing and Redevelopment Agency, San Francisco Housing Authority, San Mateo Housing Authority, Santa Clara County, and the Santa Clara County Housing Authority.

The Union chose to look at just two employers – San Francisco Housing Authority (included in the Employer's list) and the Berkeley Housing Authority (not included in the Employer's list).

The parties also used a different way to make the comparison. The Employer looked at recent salary increases or decreases in the examined agencies in related bargaining units. The Employer's analysis concluded that no housing authority increases exceeded 3% in 2014 or 2015.

The Union looked at the salary scales for comparable classifications in the two measured housing authorities. The information included in the record was the wage scales of the represented classes at OHA. Also in the record were wage scales of represented classifications at the two other housing authorities. It should be noted that none of the classifications represented by SEIU at OHA have the same job titles as the employees at the other two authorities.

The Parties Presented Evidence on OHA's Financial Condition: The Employer published a budget for fiscal year 2015-2016 that projected an \$18 million deficit. This deficit includes a \$16 million projected capital expense. The Union, as part of the bargaining process, did an analysis of the Employer's budgets versus actual financial performance over the past six years. Using the published budget and the final financial statement, the Union concluded that in each of the six years, the year-end accounting showed a surplus in years where a deficit was projected, and a larger surplus in years where a smaller surplus was projected.

The Employer’s Chief Financial Officer Tracy Stabler testified that the Union’s analysis was faulty. She stated that the budget looks at the finances from one angle, and the financial statement from another. She stated that the year-end financial statement, from which the Union derived large surplus figures, did not include large capital expenditures made each year.

Ms. Stabler also testified that HUD closely scrutinizes OHA’s proposed administrative expenditures and has the power to approve or disapprove an OHA budget. No documentary evidence was provided to the panel (or presumably to the Union at the bargaining table) to support this assertion.

RELEVANT CONTRACT PROVISIONS

The existing agreements between the parties contains several sections that are relevant to this dispute and provide context for the parties’ negotiations over this issue. The Maintenance unit provisions will be cited, with the understanding that parallel agreements exist in the HAR/APA unit.

Memorandum of Understanding OHA and SEIU Local 1021

Section XIV – Salary

A. Cost-of- Living Adjustment

4. Effective March 2015, Section XIV A shall be reopened for purposes of meeting and conferring regarding pay for July 1, 2015.

SIDE LETTER – SALARY SURVEY

The authority will conduct a salary and benefits survey prior to the expiration of the MOU. The Authority shall pay for the cost of the survey. The Authority shall use no less than seven (7) jurisdictions in the survey. The Authority will provide a copy of the survey to the Union no later than February 1, 2016.

POSITIONS AND CLOSING ARGUMENTS OF THE PARTIES

The Union

The Union modified its proposal at the opening of the factfinding hearing, moving off of its proposal for a 5% wage increase. The Union accepts the Employer’s last offer on health benefits of \$1,865.00 maximum employer monthly contribution. The Union asks the panel to support its salary proposal of a 4% salary increase for the bargaining units, effective July 1, 2015.

The Union argues that there is nothing in the statute that prohibits the panel to take into account prior years of CPI increases, and prior salary increases, in applying the cost-of-living factor.

The Union asserts that the Authority has not made the case that it does not have the ability to pay for the Union’s proposal, and has presented no evidence that HUD funding will decline or that HUD would disapprove a budget that included a 4% increase.

The Union contends that a 4% increase would “just barely” allow its units to keep up with nearby agencies in Berkeley and San Francisco.

The me-too clauses and non-represented pay, the Union argues, are irrelevant to this dispute. The \$73,000 annual cost of the Union’s proposed additional 1% is minimal relative to the entire OHA budget. The Union asks the panel to adopt its proposal as the panel’s recommendation.

The Employer

The Employer proposes a 3% salary increase for the bargaining unit, effective July 1, 2015.

The Employer contends that its proposal is in line with the relevant statutory factors. There is no basis in the statute allowing the panel to examine cumulative CPI increases in applying the cost-of-living factor.

The Employer asserts that its witnesses have refuted the financial analysis presented by the Union. The Authority prudently manages its finances.

All other employees at OHA, represented and non-represented alike, have already received a 3% salary increase effective July 1, 2015. The Employer asks that the panel not disrupt this pattern. The Employer asks the panel to adopt its proposal as the panel’s recommendation.

PANEL FINDINGS

Due to the diligent and persistent efforts of the parties, they find themselves with a relatively small gap to close at this juncture. The panel appreciates the movement of the Union at the outset of the hearing – to accept the Employer’s health benefits proposal and come down to 4% in its wage proposal. That movement bodes well for a successful settlement of this re-opener dispute.

The parties homed in on several of the key factors in the MMBA during their presentations. The panel will look at and comment on each of those factors in this analysis.

The Interests and Welfare of the Public and Financial Ability of the Public Agency: The Employer did not assert an inability to pay the additional cost of the Union’s proposal. Rather, it put forward a case that there are other competing demands on agency funds, and that the agency is closely monitored by the federal government. The Union, for its part, relied on its analysis purporting to show that the Authority routinely underestimates its revenue and overstates its projected expenses with the result of offering inadequate compensation.

The panel was puzzled by the Authority’s financial presentation. Its witness made a case why the Union’s analysis was incorrect, plausibly pointing out that the Union was deriving one set of figures from one document (the budget) and another from a second document (the financial statement). But that witness failed to point the panel toward a more realistic way to view the agency’s financial condition.

Also lacking was any documentation of an important Employer assertion: that HUD has a heavy influence over budgets and, by extension, what pay increases can be offered. Witness testimony on this issue was very general. No specific examples were offered, no policies or regulations were introduced, and no documents were placed in the record that illustrated this federal control over agency finances.

Solid labor relations are grounded in good communication between management and union. In unionized public agencies, in particular, financial information is publicly available. Accurate, transparent, and timely transmittal of information from the Employer to the Union is a bedrock of a healthy bargaining relationship. In the present case, such communication appears to be lacking.

The panel was not persuaded by the Employer’s attempt to conflate the current dispute with potential higher costs for employees outside of the Union’s bargaining units. There was no documentary evidence in the record of any “me-too” clauses in other CBA’s. And, should the Employer make a decision to offer non-represented employees an additional raise after granting that to SEIU’s bargaining units, that would be a unilateral move not subject to any collective bargaining requirements. It would be inappropriate to ascribe those potential non-represented costs to the SEIU bargaining.

Ultimately, the panel does not draw a conclusion on the financial condition of the Employer in this case, one way or the other. As noted below, other factors will be determinative in forming the panel’s recommendation on the specific salary dispute. However, the panel does suggest that the parties meet to discuss how to have a more productive exchange of Authority financial information for the purpose of making future bargaining more productive.

Comparison of Wages and Benefits with Other Agencies: In the area of comparability, the data presented by both sides was insufficient to allow the panel to make a determination.

The Employer’s chart of recent pay increases at various housing and non-housing agencies was interesting and somewhat relevant. But it was deficient in several ways.

- 1) The Employer made a strong case that housing agencies are unique in the universe of public agencies since their funding derives primarily from the federal government. Yet included in the salary and benefits chart were counties presumably not subject to the same funding parameters. The Employer did not explain the basis for their inclusion.
- 2) Showing recent pay increases in other agencies is tangentially relevant. But it does not speak to the heart of the statutory factor, which is the actual pay and benefits offered by those other agencies.
- 3) The statute refers to “employees performing similar services.” There was nothing in the Employer’s chart that showed whether the compared increases were for such employees.

The Union’s comparability presentation also fell short of being persuasive.

- 1) The Union did appropriately focus on housing agencies. However, conclusions cannot be reasonably drawn from a sample consisting of only two agencies. The side letter in the parties’ MOU should provide some guidance in this regard, in that it calls for a survey of at least seven agencies.
- 2) The Union did not help the panel “connect the dots” between the compared agencies and OHA. Given that none of the job titles of the other agencies matched those of OHA, there was no way even to begin to make a reasoned analysis.

For these reasons, the panel is unable to draw any conclusions about comparability from the data presented.

The Consumer Price Index: Both parties made concerted efforts to present and analyze CPI data. The panel was encouraged by the fact that both sides were looking at the same index. However, each side used a different starting and ending date for analysis. Neither side explained why it chose to begin its analysis in 2009 (in the case of the Union) and in 2012 (in the case of the Employer).

It also was not clear to the panel why the Employer focused on percentage increases in the CPI over six-month intervals, in that the bargaining proposals each involved a single annual increase.

The heart of the parties' dispute is whether the panel can look at past shortfalls in salary increases compared to CPI increases as a relevant factor in formulating its recommendation about a salary increase in the current year.

The panel does view past salary modifications and CPI fluctuations as relevant to the current year dispute. In fact, the panel would have preferred that the parties go back even further, perhaps ten years, in summarizing salary increases and CPI increases. This would have been helpful in allowing the panel to view the broad sweep of the parties' bargaining history and could have assisted the panel in determining a recommendation going forward.

The panel's view is that the parties should strive to keep compensation increases consistent with CPI increases over time. However, the panel also believes that it is unrealistic to think that deficiencies in past mutually-agreed to contracts can be overcome in a single reopener. It will normally take several years of increases above the current CPI in order to catch up.

The Employer is on point when it highlights that few if any of the recent increases afforded employees in nearby agencies exceeded 3%. Certainly there was no evidence that OHA increases had ever exceeded 3%.

The most traditional measurement for a CPI-based July salary increase would be to examine the increase in the relevant index for the twelve-month period leading up to April of that year. This would allow the parties time to review the data and for the Employer to implement the required adjustment in a timely manner. The relevant index increased by 2% during that April 2014 to April 2015 time frame leading up to the reopener date.

The panel concludes that the Employer's proposal of 3% for a single year increase does exceed the relevant year CPI increase. The Employer's proposal thus makes a reasonable effort at keeping unit members' compensation in line with inflation.

Based on this CPI analysis, the panel credits the Employer's proposal on the cost-of-living factor.

The Panel Concludes that the Employer's Proposal Most Closely Conforms to the Statutory Criteria: Arguably both the Union's and the Employer's proposals are consistent with the statutory factors. There remains a relatively small gap between the proposals. The evidence presented on the financial ability factor and the comparability factor in this case gave insufficient guidance to the panel. The CPI factor, for the reasons noted above, tips in favor of the Employer's proposal.

The panel’s formal recommendation is based strictly on the on-the-record proposals made by the parties. This recommendation should not be read as a comment on any off-the-record proposals that might have been exchanged by the parties. For the sake of sound labor relations, it goes without saying that any ultimate settlement of this matter should not involve retreating from earlier informal proposals.

PANEL RECOMMENDATION

The factfinding panel recommends that the parties adopt the Employer’s proposal of a 3% salary increase retroactive to July 1, 2015.



Paul D. Roose, Neutral Chairperson

Date: January 11, 2016

/s/ _____

Dana MacPherson, Union-appointed Panel Member

Date: January 11, 2016

I concur with the Recommendations

I dissent from the Recommendations (see attached explanation)

/s/ _____

James T. Diamond, Employer-appointed Panel Member

Date: January 11, 2016

I concur with the Recommendations (see attached explanation)

I dissent from the Recommendations (see attached explanation)