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FINDINGS AND RECOMMENDATIONS  
PURSUANT TO  
CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Controversy Between	)	
<b>City of Marina</b>	)	
Employer	)	
and	)	Collective Bargaining Impasse
<b>Marina Public Safety Officers Association</b>	)	Factfinding
Association	)	PERB Case No: SF-IM-169-M

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APPEARANCES:

For the Employer: Richard C. Bolanos, Attorney  
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For the Association: Larry Alan Katz, Attorney  
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**STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND**

Under amendments to the Meyers-Milias-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

The Marina Public Safety Officers Association (Association) is the exclusive representative for a bargaining unit representing police officers, corporals, and sergeants employed by the City of Marina (Employer). The bargaining unit has a unique history, in that it originally consisted of “public safety officers” (combination police officer / firefighters). This configuration, relatively rare in the state of California, prevailed until 2007. At that time, the City’s Department of Public Safety was dissolved. Separate fire and police departments were created, and dedicated firefighters were hired. The existing public safety officers transitioned to police-only duties. Individuals hired into the police department after 2007 were brought on as police officers.

The parties have a collective bargaining agreement (CBA) that expired in June 2013. The parties have been operating under the status quo since that date while negotiations took place. The expiring agreement was in the form of a side letter extension that went into effect on January 1, 2012. The last full negotiations took place in 2003. A series of amendments bridged the gap between 2003 and 2013.

In this round of bargaining, the parties went to impasse after six or seven bargaining sessions. The Association requested mediation, the City declined, and the Association then filed for factfinding with PERB under the state statute. The undersigned was mutually selected by the parties to be the neutral factfinder, pursuant to Government Code 3505. The parties agreed to waive the provision in the statute to appoint party panel members. Therefore, the chairperson is the sole factfinder.

On December 30, 2015, PERB notified the undersigned that the parties had selected him to be the chair of the factfinding panel in this matter. A hearing was set by mutual agreement to be held on February 12, 2016.

In addition to the criteria mandated by the state statute for MMBA factfinding proceedings, the parties posited additional criteria by stipulation. Those are:

- A) Maintaining appropriate compensation relationships between classifications and positions within the City;
- B) Other legislatively determined and projected demands on agency resources (i.e., budgetary priorities as established by the City Council);
- C) Allowance for equitable compensation increases for other employees and employee groups for the corresponding fiscal period(s);

- D) Revenue projections not to exceed currently authorized tax and fee rates for the relevant fiscal year(s);
- E) Assurance of sufficient and sound budgetary reserves;
- F) Constitutional, statutory, and local limitations on the level and use of revenues and expenditures

The panel convened on February 12, 2016 in Marina, California 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 arguments for the panel's consideration.

### **BACKGROUND TO THE DISPUTE**

The City of Marina is located in Monterey County, California. With a population of about 20,000, Marina is situated on the Monterey Bay. It has an annual general fund budget of about \$18 million. The City employs 127 FTE, with 25 of those in the police bargaining unit.

The Employer has four other bargaining units. The largest, the Marina Employees Association, has reached a tentative agreement with the City on an agreement through June 30, 2017. As of the hearing date, the City Council had yet to vote on that agreement. The Management Employees Association, the Police Management Association, and the firefighters' union have not completed negotiations.

In January 2016, the City Council approved salary range adjustments for eleven City classifications. Most of those classifications are in represented bargaining units. The adjustments ranged from 4% to 12% and were based on comparisons to similar classifications in a selected group of California cities. Those cities are the same ones selected by the Association in its compensation survey.

Marina police officers are 5.15% below the median salary of the comparator cities, and 2.5% below the mean (average).

In the negotiations leading up to the November 2015 impasse, the Employer and the Association made significant progress. They agreed on a term of agreement through June 30, 2017. They agreed to across the board pay increases of 1% on 1/1/15 and 2% on 7/1/16. They agreed to increases to the City's contribution to health benefits, effective January 2016 and January 2017.

The parties agreed to an exchange of city-paid retirement contributions for a salary increase. The result will be that the employees will pay the remainder of their share of PERS retirement and will have

their base salaries increased by 4.5%. This agreement will increase city costs because higher base salaries will have roll-up cost implications beyond the savings engendered from employees paying an additional 4.5% PERS share.

The parties also reached agreement on an improvement in the bilingual pay provision, and language on lunch schedule flexibility for detectives.

At the hearing, City Manager Layne Long explained revenue challenges facing the City. He also summarized the compensation gains already provided to the police officers in the tentatively agreed-to contract provisions, and their associated costs. He emphasized the need for the City to go forward in a “cautious” and “prudent” manner in its labor negotiations.

The two remaining disputed issues are Public Safety Officers Skills Pay and Specialty Pay. Those issues will be explored in further detail below.

### **THE DISPUTED ISSUES**

**Public Safety Officer Skills Pay:** The current CBA provides for a \$250 per month bonus for qualifying unit members. According to the CBA, eligible unit members must pass an annual “Police and Fire Skills Test” and maintain a Firefighter I Certificate. However, the City ceased administering this exam during the transition from the “public safety” model to police-only duty assignments.

The CBA states that those receiving the bonus will continue to do so, even if the City does not schedule a test. Those receiving the bonus were, in essence, grandfathered in and continue to receive it.

Edmundo Rodriguez was hired as the City’s first police chief in 2006, and continues in that capacity today. He stated that the skills bonus test was never administered during his tenure. According to the chief, police officers continued to provide back-up for medical calls through 2009. Public safety officers did receive first responder medical training during this time period. Beginning in 2011, the police chief advocated for the elimination of the skills bonus through negotiation with the Association.

Currently, nine of the twenty-five unit members receive the skills bonus pay. The Association presented no evidence that other agencies pay for police officers who have firefighter skills.

**Specialty Pay:** It is typical for police departments in California to provide various forms of specialty pay for officers and other sworn department personnel who perform specialized functions.

Common specialty pay assignments include canine officers and detectives. The current CBA between the parties does not provide for any form of specialty pay, unless one counts the skills bonus as specialty pay.

In the hearing, the Association provided excerpts from police CBAs at comparable agencies. The Association used a list of fourteen comparable cities, plus one county. Since eleven of those cities were drawn from a list that is utilized by the Employer in making salary comparisons, that is the list that this analysis focuses on. The Employer did not dispute the validity of the comparison CBAs.<sup>1</sup>

What follows next is a specialty pay chart constructed by the factfinder, summarizing relevant information from the eleven comparator MOUs. These CBA sections are complex. Variables negotiated are provisions such as length of service requirements, restrictions on pyramiding of differentials, duration of specialty assignments, and other eligibility requirements for receiving specialty pay. Some cities, such as Gilroy and San Luis Obispo, have Master Officer designations that subsume specialty pay. Some of the MOUs specify which classifications (e.g. officer, sergeant, corporal) are eligible for which differential.

Therefore, judgment was exercised in deciding what information to include in the chart and what to leave out. The chart focuses on the five areas proposed by the Association for special compensation (detailed in the Association’s position below), and leaves out other differentials that other jurisdictions have negotiated. For the most part, eligibility requirements and provisions on position duration are omitted. However, the undersigned strongly encourages the parties to review these provisions in detail in the event that the parties choose to enter into negotiations over implementing specialty pay.

The following chart indicates that some form of specialty pay is evident at ten of the eleven cities that the Employer uses as compensation comparators.

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<sup>1</sup> Due to discrepancies and ambiguities in the data provided by the Association, the undersigned did fact-checking in a few instances by reviewing the MOUs publicly available on the websites of the listed cities. That information is reflected in the chart.

<b>Specialty Pay at Comparable Cities</b>	<b>Canine</b>	<b>Detective</b>	<b>Field Training Officer</b>	<b>Motorcycle</b>	<b>School Resource Officer</b>
<b>Gilroy</b>	Master Officer 5% of base differential, in lieu of specialty pay – ten years at GPD – at least one year in 3 specialties	Master Officer 5% of base differential, in lieu of specialty pay – ten years at GPD – at least one year in 3 specialties	Master Officer 5% of base differential, in lieu of specialty pay – ten years at GPD – at least one year in 3 specialties	(Traffic) Master Officer 5% of base differential, in lieu of specialty pay – ten years at GPD – at least one year in 3 specialties	Master Officer 5% of base differential, in lieu of specialty pay – ten years at GPD – at least one year in 3 specialties
<b>Hollister</b>	No	4.88% over base	3% for all hours worked in assignment	2.89% over base	No
<b>Monterey</b>	5% over base	7.5% over base	5% over base	5% over base for Traffic Officer – 10% over base for Sr. Traffic Officer	5% over base
<b>Morgan Hill</b>	\$250 per PP (5% of base grandfathered for those assigned before 7/1/15)	\$250 per PP (5% of base grandfathered for those assigned before 7/1/15)	No	Traffic (must complete Motor School)  \$250 per PP (5% of base grandfathered for those assigned before 7/1/15)	\$250 per PP (5% of base grandfathered for those assigned before 7/1/15)
<b>Pacific Grove</b>	No	Investigator – 5% of base	No	5% of base	5% of base

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<b>Paso Robles</b>	No	No	No	No	No
<b>Salinas</b>	5% above base	5% above base	5% above base	5% above base	5% above base
<b>San Luis Obispo</b>	Master Police Officer – Salary Step 9 (5.2% above step 8) – eight years minimum at specialty assignments, plus advanced POST	Master Police Officer – Salary Step 9 (5.2% above step 8) – eight years minimum at specialty assignments, plus advanced POST	Master Police Officer – Salary Step 9 (5.2% above step 8) – eight years minimum at specialty assignments, plus advanced POST	Master Police Officer – Salary Step 9 (5.2% above step 8) – eight years minimum at specialty assignments, plus advanced POST	Master Police Officer – Salary Step 9 (5.2% above step 8) – eight years minimum at specialty assignments, plus advanced POST
<b>Santa Cruz</b>	No	Investigations Premium Pay – 5% of base	7 patrol full-time at 5% - others as needed at 5% when used as FTO	5% of base pay	No
<b>Seaside</b>	5% above base	Investigator - 5% above base	No	5% above base	5% above base
<b>Watsonville</b>	2 hours overtime pay per week (also qualifies for Master Officer program – 5% after completing 3 specialty assignments)	5% of base (also qualifies for Master Officer program – 5% after completing 3 specialty assignments, in lieu of detective pay)	5% only when assigned (also qualifies for Master Officer program – 5% after completing 3 specialty assignments – no pyramiding)	\$125 per month (also qualifies for Master Officer program – 5% after completing 3 specialty assignments, in lieu of \$125)	Qualifies for Master Officer program – 5% after completing 3 specialty assignments

The following is a summary of key points from the chart:

- 1) Five of the eleven cities (Gilroy, Monterey, Salinas, San Luis Obispo and Watsonville) provide at least a 5% differential for each of the five specialties proposed by the Association.
- 2) Two of the eleven cities (Morgan Hill and Seaside) provide at least a 5% differential for four of the five specialties proposed by the Association.
- 3) Three of the eleven cities (Hollister, Pacific Grove and Santa Cruz) provide a differential for three of the five specialties proposed by the Association. Hollister's range from 2.89% to 4.88%, while Pacific Grove and Santa Cruz pay 5%.
- 4) One of the eleven cities (Paso Robles) apparently provides no differentials for any of the five specialties proposed by the Association.

It should also be noted that six of the eleven comparable jurisdictions provide specialty pay for field training officers for all hours worked. One pays the differential for hours worked as an FTO only. Some of these have some combination of full-time FTO assignments and as-needed additional personnel. Four of the eleven appear to have no provision for FTO pay in their MOUs.

## **POSITIONS AND ARGUMENTS OF THE PARTIES**

### **The Association**

On the issue of the skills bonus, the Association proposes to eliminate it and add a longevity step at fifteen years for anyone hired prior to July 1, 2001. The Association argues that the skills bonus is a long-held benefit. The Association acknowledges that the particular benefit is obsolete. But to delete it without an adequate substitute would penalize the most senior members of the department. The Association would like to keep the new longevity step cost-neutral in relation to the current benefit.

The Association modified its proposal on specialty pay at the conclusion of the factfinding hearing. It moved off its original proposal in order to put forward a less costly proposal. The Association eliminated three of the eight assignments that had been in its original proposal. Its final proposal was a 5% differential for field training, detective, motorcycle, school resource officer, and canine assignments. The differential for field training officer would only be paid for the hours actually serving in that capacity. Specialty pay differentials would go into effect upon the implementation of the contract.

The Association proposal prohibits compounding of differentials. Each individual would be eligible for only one 5% differential even if he or she was working more than one specialty assignment.

The Association argues that specialty pay is "standard practice" in the industry. Not having it causes Marina to fall further behind. The Association's analysis shows that Marina police officers are

already behind their market. The recent equity increases granted by the City to many classifications is evidence that the Employer has sufficient funds to pay for the Association’s proposals.

### **The Employer**

The Employer proposes to eliminate the skills pay prospectively, as of July 1, 2016. The Employer contends that there is no rational basis for its continuation. It costs the City between 3 and 3.5% for each unit member who receives it.

The Employer rejects the Association’s proposal for new specialty pay. While acknowledging that many cities have it, the Employer argues that many jurisdictions are resisting any expansion of it. Unit members do the current specialty assignments on a voluntary basis, and compete for the assignments. These assignments already add value for the unit member because they can be a positive element in promotion decisions.

The Employer is not making an argument that the City does not have the ability to pay for the proposals being made by the Association. However, the City is still “digging out of a hole” that exists from prior to the great recession. The Employer has already tentatively agreed to compensation items in this round of negotiations that will significantly increase its costs. In particular, the medical benefit enhancement is costly. The placing of 4.5% on schedule due to elimination of EPMC will add pension and overtime costs.

The City notes that the recent equity adjustments granted by the City were all based on market surveys. The police officers are not as far out of market as these other classes. The Association has failed to show that there is a recruitment and retention problem for police officers.

## **FINDINGS**

**Public Safety Officer Skills Pay Should Be Deleted from the CBA:** This dispute arises from the unique history of the City of Marina’s police and fire services. The City initially established a single classification of public safety officer employed in a department of public safety. These combined police officer / firefighters performed all of the usual duties associated with the separate classifications.

The City’s decision in the mid-2000s to end this long-time arrangement and separate fire from police services had consequences for the parties’ labor relations. For newly-hired firefighters and police officers, the City established affordable and competitive compensation going forward. For “legacy” police officers, however, compensation vestiges of prior duty assignments remained in place.

The Association concedes that the skills pay bonus is for skills no longer deployed by its members. Where the disagreement arises is that the Association proposes an alternative compensation model, in the form of a longevity step, that would make the nine “legacy” employees whole. The City rejects this, arguing that the salary and benefits paid by the City are competitive overall.

The problem with the Association’s position on this is that the its proposal for a longevity step was not sufficiently specified or justified. Exactly how it would be cost-neutral was not spelled out. And how the resulting step system would compare to comparable agencies was not explained.

Finally, and most significantly, the original skills bonus was exactly that – a bonus for demonstrated skills beyond that of other employees. A longevity step would not be tied to skills or performance in any way. For this reason, the undersigned supports the Employer’s proposal to prospectively eliminate the skills bonus. For reasons identified in the next section, the Association’s other proposal for specialty pay is in reality the more appropriate alternative to the current skills bonus.

Based primarily on criteria five in the Government Code (external comparability), it is the finding of the undersigned that the City’s proposal on specialty pay most closely conforms to the statutory factors.

**Specialty Pay Should Be Added to the CBA:** The Association has made a strong case for the addition of specialty pay to the collective bargaining agreement. There is compelling evidence that specialty pay is a market standard. Relying solely on cities already used by the City in its own compensation studies, ten of eleven jurisdictions have some form of specialty pay for police officers.

The Employer argued that jurisdictions are resisting the implementation of new specialty pay provisions, or even attempting to roll back existing provisions. There was little evidence of this trend in the record.<sup>2</sup>

The Association has made a reasonable effort to dial back its original specialty pay proposal to focus on core specialty pay functions. As noted above, the negotiated provisions in the comparator jurisdictions have a wide range. But the trend is clear – most comparable cities pay 5% (more or less) for the special assignments identified by the Association.

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<sup>2</sup> The City of Morgan Hill, according to its CBA, apparently converted a percentage specialty pay to a flat dollar amount in 2015. The background for this change was not evident from the record.

The Employer has made a strong case that the compensation package already offered to the Association is a generous one, given the uncertainties facing the City on the revenue side of the balance sheet. However, the Employer has not made the case that the specialty pay provision proposed by the Association, coupled with the termination of the skills bonus pay, would add significant costs.

Ultimately, the Employer controls the quantity and types of specialty assignments. The Association is not proposing a required number of specialty assignments. It is only proposing that those unit members who are assigned by the department to perform these functions be compensated at a rate that is typical in the industry.

Based primarily on criteria five in the Government Code (external comparability), it is the finding of the undersigned that the Association's proposal on specialty pay most closely conforms to the statutory factors.

**The Parties Have a Unique Opportunity to Transition to Specialty Pay Relevant to the Current Marina Police Department:** Doing away with a long-held benefit, even one that is obsolete, is a challenge in contract bargaining. It becomes particularly difficult when that takeaway would impact only a portion of the workforce. The difficulty is magnified when those harmed are the most senior employees.

The skills pay bonus falls into this category. Overall, the City is proposing a contract agreement that makes advances for police officers, corporals, and sergeants. For a subset of long-time employees, those advances would be seriously undermined were the City to prevail in its current proposal.

The other side of the coin is that it is always difficult to institute a new benefit, even one that is based on a prevailing industry standard. There are costs to such a new benefit that are ongoing. Typically, a move into an area such as specialty pay would occur gradually over time, so as not to acutely impact the department's budget.

The confluence of the City's proposal to do away with the skills bonus and the Association's proposal to implement specialty pay presents an opportunity to the parties. It creates the potential for a smooth transition from, in essence, one form of specialty pay to another.

The undersigned is convinced, after having met with the parties, that they have the will and the creativity to solve this problem. Neither side appeared to be interested in "moving the goalposts" in this round of bargaining. Many tentative agreements had been reached, and the City was comfortable with the additional costs associated with what they had already agreed to.

The City’s primary motivation for elimination of the skills pay bonus appears to be the desire to create a pay system in alignment with the current reality of police department operations. It does not appear that cost-saving was the key driver of its proposal. The Association, for its part, was not looking to make substantial new gains beyond what had already been negotiated. It was most concerned about avoiding a concession that would harm its most senior members.

The contract provisions contained in the agreements from the comparator jurisdictions reveal possible clues to the resolution of this dispute. Those cities and their police associations have devised many ways to implement and administer specialty pay. The factfinder believes that the City and the Association, learning from their peers, could devise a way to phase out the skills bonus pay and phase in specialty pay. They could do so in a manner that would prevent the erosion of compensation for the most senior unit members, while at the same time avoid adding significant new costs to the City.

The City’s police department already utilizes the specialty assignments that are identified in the Association’s proposal. Clearly, management values the special skills that those assigned officers bring to police operations. The parties have an opportunity to move forward with a plan to reward employees for those skills, phase out obsolete pay categories, and keep the city within its budget.

**FACTFINDER RECOMMENDATIONS**

**Skills Pay Bonus:** The City’s proposal to eliminate this provision should be adopted.

**Specialty Pay:** The Association’s proposal to add this provision should be adopted.



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Paul D. Roose, Factfinder

Date: February 24, 2016