FACTFINDING DIRECTED BY THE PUBLIC EMPLOYMENT RELATIONS BOARD

In the Matter of a Bargaining Impasse

South Coast Air Quality Management District,
Employer

and

South Coast Professional Employees Association,
Employee Organization

Re: Telework Policy Bargaining Impasse; PERB CASE NO. LA-IM-342-M

Factfinding Panel

Laura Drottz Kalty – Employer Member

Adam Stern – Employee Organization Member

Carol A. Vendrillo – Neutral Member

December 20, 2024

Appearances:

For the Employer:

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Liebert Cassidy Whitmore
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For the Employee Organization:

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INTRODUCTION

The South Coast Air Quality Management District (South Coast AQMD or District) and the South Coast Professional Employees Association (PEA or Association) have reached a bargaining impasse concerning the District's telework program. The parties initiated this factfinding process pursuant to the Meyers-Milias Brown Act, Government Code Section 3505.4 and the District's Employee Relations Resolution, Section 11 (District Exhibit 1).

On November 26, 2024, a meeting was convened by the Panel during which persons with knowledge about the bargaining history shared information and concerns about the District's proposal to alter its telework program. The parties introduced documentary evidence that was considered in making their recommendations.

ISSUE

Does the position advanced by the District or the Association better conform to the criteria set forth in Section 3505.4 and Section 11 of the District's Employee Relations Resolution?

FACTUAL SUMMARY

The District and the Association are parties to a Memorandum of Understanding (MOU) which runs from January 1, 2024, to December 31, 2027 (Employer Exhibit 6). That document, at Article 48, provides for the maintenance of a telework program that gives employees options to telework while performing their job duties. It also recognizes the existence of a joint labor-management committee tasked with addressing the telework program. Section 2 of Article 48 requires management to provide at least six months written notice to employees prior to implementation of any changes that would reduce telework options.

District employees impacted by this dispute work a 4/10 schedule. They work four ten-hour days. In 2017, the District adopted a telecommuting pilot project that allowed a small group of 35 employees to work from home 30 hours a month at the discretion of their supervisor (District Slide 11). In 2019, the District adopted a policy whereby employees could work off-site one day a week with their supervisors' approval (District Slide 12). When the COVID pandemic intervened in 2020, the policy was expanded, and employees were directed to work from home "to the maximum extent possible." (District Slide 13.)

As part of its administrative policies and procedures post-COVID, the District has adjusted the telework program in Policy Number 46.0. It created a hybrid work environment. The version that took effect on April 13, 2022, required employees to work in the office four days a week. However, guided by the District's "operational needs," the policy gave employees three schedule options to work from home – a two-day telework schedule, a three-day schedule, and a 4-day schedule. The two- and three-day options required approve of the deputy executive officer (DEO). The four-day option required approval of the executive officer.

The criteria for approval were spelled out in the policy. Employees were required to submit a telework application to their DEO two weeks prior to the proposed modification. Employees could appeal the DEO's denial of a telework request to their chief operating officer. Employees were required to designate a workspace within the telework location and allow the District's human resources staff to make on-site visits with reasonable advance notice (District Exhibit 2). In practice, the DEOs were regularly approving the three-day telework schedule so that employees were required to work in the office one day a week only.

In 2023, the District advised the Association that it wished to change the telework program to effectively require that employees come into the office two days a week. The parties discussed this at meetings of the telework committee on several occasions in 2023 and 2024. The telework committee's discussion were on a parallel track with negotiations. Eventually, the proposed telework policy change was discussed at the bargaining table. When parties reached agreement on a comprehensive MOU, it did not incorporate the complete telecomputing Policy No. 46.

The District formulated its last, best and final offer on September 17, 2024 (District Exhibit 4). PEA President Brian Vlasich rejected the District's final offer on September 24, 2024 (District Exhibit 5). The District then declared impasse on September 25, 2024 (District Exhibit 5).

The District's last, best, and final offer expanded the policy statement and the operational needs language to include employee engagement, collaboration, and mentoring. The new schedule set out in Policy No. 46.0 permits up to two telework days a week with the approval of the DEO or designee and up to three telework days a week with the approval of the chief operating officer. The four-day telework option still requires the approval of the executive officer.

The District has announced it intends to implement this version of the policy on April 1, 2025.

PARTIES POSITIONS

The Association position. The Association seeks to maintain the status quo that requires employees to report to the office for in-person work one of their four workdays. PEA conducted an anonymous worker survey of its members in May 2024 (Association Exhibit 3). The surveys showed many employees made decisions about where to work and live based on a telework policy that allowed them to work from home three of the four days a week. The survey revealed that employees would terminate their employment with the District if the telework policy changed. Of those surveyed, 98 percent said they wanted the telework policy to stay the same or be expanded. People have adjusted to the schedule and like it.

The Association also seeks to have the telework policy made part of the MOU and be subject to the contractual grievance procedure. Alternatively, it seeks to have the denial of a telecommuting schedule announced by the supervisor or manager within a 14-day period, with the reasons for the denial articulated. It also seeks to have a denied telework request be appealable.

PEA also objects to the District's right to inspect an employee's home office. It wants advance pre-notification of such visits and the names of the persons who will be conducting the visits.

PEA is critical of the District's assertion that a return to on-site work will build the organization's culture. There is no plan in place to make that occur, the Association claims. Training sessions are conducted using Zoom, with employees participating from their cubicles.

PEA is opposed to the six-month notice of a change in the telework policy. PEA is seeking a commitment from the District that it will not further impinge on the telework policy or eliminate it entirely. The District's verbal commitment that they will not change policy is contrary to six-month notice language.

Many studies show the benefits of telework. It provides a reasonable work/life balance, reduces commute times, encourages interactions with family members, and is less stressful. Telework also has economic benefits. It reduces transportation and parking costs. And by boosting morale, increases productivity (Association Exhibits F, G, H, I, and J). For these reasons, PEA objects to additional language in "operational needs" language.

The Association objects to having the deputy executive officer grant approval of the two-day telework schedule. It asserts that approval should be made by an employee's supervisor or manager who is most familiar with the work.

PEA is seeking limitations on the inspections of home offices. They desire advance written notice and the names of the staff members who will be conducting visit.

The policy change sought by the District of requiring in-office work two days a week is stricter than comparable agencies. In support of that position, the Association refers to telecommuting policies at other public entities. It points to the Bay Area Air Quality Management District as the most similar. In that agency, the number of days an employee may work from home is at the discretion of the division director (Association Exhibit K). That MOU allows an employee and his or her supervisor to agree on "core days and hours during which the employee will be working remotely." It does not require any days in the office.

The Sacramento Air Quality Management District's telework policy allows the employee and his or her immediate supervisor to evaluate the suitability of telework (Association Exhibit M). It requires employees to work in the office as least one day a week (Association Exhibit N). The telework policy for Los Angeles County requires approval by the employee's supervisor of the request to telework (Association Exhibit P).

District's position. The requirement that employees return to on-site work two days a week will achieve an appropriate work/life balance. It will help rebuild agency culture through more in-person interaction and increase professional development opportunities. Requiring two days in the office reflects the value of personal interactions and a team environment. It also will increase institutional history. An on-site presence is critical for training and building work relationships. This is critical to the District because 78 percent of employee have been in their position five years or less (District Slide 9).

District's operational needs are primary. Two-days in the office offers more opportunity for growth, personal interaction, more on the job training, and mentorship.

The District's telework policy, when compared to other similar agencies, is highly competitive, especially for those working a four/ten schedule: San Joaquin and Los Angeles require days on-site; Ventura's 4/10 personnel are allowed only one day at home. Butte and Santa Barbara require two days on-site.

RECOMMENDATION

Both Government Code Section 3505.4 and the District's Employee Relations Resolution at Section 11 set out the criteria for selecting between the parties' positions. In this case, Subsections (4) and (5) seem most relevant. They concern the welfare of the public and the conditions of employment at comparable jurisdictions. The District's local rules impose the same instructions.

The parties' positions on the proposed new telework policy address a number of aspects of Policy 46. Each is discussed separately.

(1) Number of days required to be on-site. With one exception, all of the telework policies adopted by comparable agencies present a mixture of time working from home and time working in the office. No clear picture emerges as to how best to divide these two work assignments. No "best practice" emerges.

However, among those jurisdictions where employees work four ten-hour shifts and only are on site four days a week, two jurisdictions require employes to report to the office two days a week (San Joaquin and Los Angeles). In one jurisdiction with a four/ten schedule (Ventura), employees only are allowed to work from home one of their four workdays. There is no jurisdiction where employees who work a four/ten schedule are allowed to be at the office only one day a week.

These four/ten agencies are the most comparable to the South Coast AQMD. They require employees to spend two days in the office and allow them to work from home on two days. This same fifty/fifty split as used in other four/ten agencies is reasonable for South Coast AQMD and conforms to the comparability criteria set out in the statute and the local rule.

(2) Level of management approval needed. On its face, the District's final offer requires that a schedule allowing for two days of telework obtain approval from the DEO. However, the language adds the DEO's "designee," which the District asserts is intended to include the employee's manager. In other words, an employee's manager may sign off

on an employee's request to telework for two days. If that is what the District intends, the language of the final offer should so state. Otherwise, the requirement of approval of the DEO for a two-day telework schedule is out of step with the practice in comparable agencies.

The same cannot be said of the proposal that approval of a three-day telework schedule – with an employee only working in the office on one of his or her four workdays. Having the chief operations officer make that determination is not unreasonable given the potential broad-based impact on operations.

(3) Statement of reasons for denial of telework schedule. The individual denying a telework request should be required to articulate the reasons for such a denial.

(4) Grievable as part of MOU or right to appeal. The parties' recently ratified successor MOU addresses the telework policy at Article 48. Therefore, violations or misapplication of the telework policy is not currently subject to the contractual grievance procedure. To make the denial of a telework application grievable would require a re-opener of the MOU. However, nothing prevents Policy No. 46 itself from providing a right to appeal the denial of telework request. How burdensome this would be is unknown without a record of the number of denials issued by management.

(5) Inspection of Home Office. PEA's desire to have some constraints placed on the home inspection process – advance notice of the home visit and identification of who will be conducting it – is reasonable and can easily be accomplished.

(6) Six-month notice of change. Many of the telework policies promulgated by comparable agencies make clear that a telework option is "not an entitlement or a District-wide benefit." (Association Exhibit M; Sac Metro Air District.) Telework is a

"management option, not a universal employee benefit." (Association Exhibit O; Los Angeles County.) The same is true of the South Coast AQMD. The District is not required to provide employees with a telework option. It is an adjustment or an alternative to an employee's regular work hours. Therefore, the District can elect to alter Policy 46 as it sees fit, as it did when COVID sent people home in droves because of the public health crisis brought about by the pandemic. Given that, it is not tenable for the Association to object to the District's proposal to provide six-months' notice of a change in the telework policy.

(7) Broadly worded policy statement language. PEA objects to the language in the policy statement that views the hybrid schedule as recognizing "the benefits of in-person interaction to establish and maintain work relationships, collaboration, learning, teamwork, and trust throughout the agency." While the Association may disagree that on-site work brings about those results, the policy statement is no more than a preamble that requires no "buy in" from the PEA.

RECOMMENDATION

For the reasons expressed above, the Neutral Member of the Factfinding Panel urges the Board to adopt a revised Policy No. 46 that comports with the recommendations outlined above.

Dated: December 20, 2024

/s/Carol A. Vendrillo
CAROL A. VENDRILLO, ESQ.
Arbitrator

SCAQMD CONCURRING OPINION

I was appointed by the South Coast Air Quality Management District to serve as the District's representative on the factfinding panel in this impasse between the District and the South Coast Air Quality Management District Professional Employees Association as to Administrative Policies and Procedures, Policy Number 46.0 – Telework Program. **I concur with the Factfinder's Report and Recommendations**. The District concurs as to Issue (1), that there should be two days required to be on-site.

As to Issue (2), level of management approval needed, the District clarifies that what is meant by DEO or "designee" approval is to allow for greater discretion among various departments of various sizes and nature of operations, and that the decision on teleworking could be made by the Deputy Executive Officer, or designee which could include an Assistant DEO, a Director, a manager or even a supervisor – but the Departments should have the discretion to make the decision on up to two days of teleworking.

As to Issue (3), statement of reasons for denial of telework schedule, the District concurs and refers to Section 46.5.2.b of the Telework Program.

As to Issue (4), grievable as part of MOU or right to appeal, the District notes there is a right to appeal set forth in Sections 46.5.1.a and b and 46.5.2.b of the Telework Program.

As to Issue (5), inspection of home office, the District concurs and refers to Section 46.5.3.b of the Telework Program.

And as to Issue (6), six-month notice of change and (7), broadly worded policy statement language, the District concurs.

For the reasons expressed herein, the District's Last, Best and Final Offer, dated September 17, 2024, mirrors the recommendations of this Factfinding Report, and the District hopes this will allow the parties to reach agreement on Policy No. 46.0. However, in the event the parties are still not in agreement, staff will recommend that the Board impose the terms of the District's Last Best and Final Offer following the Public Hearing on the matter of the impasse.

Dated: December 20, 2024

/s/Laura Drottz Kalty
Liebert Cassidy Whitmore
SCAQMD Panel Member

SOUTH COAST PROFESSIONAL EMPLOYEES' ASSOCIATION:

Association Panel Member Adam Stern expressed disagreement with the Panel's recommendation but submitted no dissenting opinion.