

RENÉE MAYNE
 Labor-ADR
 Arbitrator, Mediator
 Post Office Box 1008
 Grass Valley, California 95945
 530-802-0980

PERB CASE NO. LA-IM-248-M
 FACTFINDER CASE NO. 17-09-09FF
 File No. 17-05

FACTFINDING PROCEEDINGS PURSUANT TO
 THE MEYERS-MILIAS-BROWN ACT

CITY OF CORONA
 and
 CORONA GENERAL EMPLOYEES ASSOCIATION

Issue: 2017 Successor MOU Negotiations Impasse

NEUTRAL FACTFINDER
 PANEL CHAIR
 RECOMMENDATIONS

October 27, 2017

FACTFINDING PANEL

Factfinder for the Union:

Ronald P. Ackerman
 Attorney
 Law Offices of
 Ronald P. Ackerman

Factfinder for the City:

Jeffrey C. Freedman
 Attorney
 Liebert Cassidy Whitmore

Neutral Factfinder Panel Chair:

Renée Mayne
 Arbitrator, Mediator

APPEARANCES

For the Union:

Oshea Orchid
 Attorney
 Law Offices of Ronald P. Ackerman

For the City:

Daphne M. Anneet
 Attorney
 Burke, Williams & Sorensen, LLP

INTRODUCTION

This factfinding arose due to an impasse in collective bargaining under the State of California Meyers-Milias-Brown Act Government Code §3505.4 between the Corona General Employees Association (Union) and the City of Corona (Employer, City).

Under the procedures of the California Public Employment Relations Board (PERB), Renée Mayne was selected by the parties to serve as the Neutral Factfinder Panel Chair. The parties agreed all procedural requirements of the impasse had been met, and the matter was properly before the Factfinding Panel to issue a recommendation to resolve the collective bargaining dispute.

The factfinding hearing was held on October 3, 2017, at the Corona City Hall, 400 South Vicentia Avenue, Corona, California. The parties had full opportunity to present and submit relevant exhibits and evidence, and to discuss and argue the issues in dispute. After the conclusion of the hearing, the factfinding record was officially closed and the dispute was deemed submitted for the Factfinding Panel's review and recommendations.

ISSUES AT IMPASSE

The City of Corona and the Corona General Employees Association stated the parties were at impasse over the following issues: (Employer p.2; Union Ex.2)

1. Eliminate Compensatory Time – Article VIII. Section 8.2
2. Adopt FLSA Definition of Overtime – Article VIII. Section 8.1
3. Cap Medical Allowance – Article IV. Section 4.4.1
4. Cap Tier II Medical Difference – Article IV. Section 4.4.1(B)
5. Increase Medical Insurance Opt Out Benefit – Article IV. Section 4.4.2
6. Create a Tier IV
7. Eliminate Flex Spending – Article IV. Section 4.3
8. Restructure Spanish Pay – Article XI. Section 11.3
9. Restructure Assignment Pay – Article XI. Section 11.4
10. Restructure Certificate Pay – Article XI. Section 11.5
11. Cap Tuition Reimbursement – Article IV. Section 4.8
12. Annual Leave Buy-Back Calculated on Base Hourly Rate Only – Article VII. Section 7.2.11
13. Standby Pay Vehicle Use
14. Holiday Pay Ten Hours
15. Work Schedule Approved by Department Head
16. Annual Leave Usage
17. Cost of Living Adjustment and Term of Agreement

GOVERNING STATUTE

The Meyers-Miliias-Brown Act Government Code §3505.4(d) sets forth the criteria to be used in the factfinding process.

In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all the following criteria:

- (1) State and federal laws that are applicable to the employer.
- (2) Local rules, regulations or ordinances.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

FACTUAL BACKGROUND

The City of Corona and the Corona General Employees Association began negotiating a successor Memorandum of Understanding (MOU) in April 2016. The parties had seven negotiation sessions through August 2016, and formal proposals were exchanged in July and August 2016. In the fall 2016, the City held informational meetings with the unions to present information about the structural financial deficit the City was projecting. The City and Union resumed negotiations on March 14, 2017, at which time the City made its second proposal with an extensive list of employee concessions. After three more negotiation sessions, the City issued its last, best and final offer on August 3, 2017. The City declared impasse on August 17, 2017.

POSITION OF THE UNION

The Corona General Employees Association agrees that the City has a potential future structural budget deficit, but the Union said the current fiscal health of the City is not indicative of a decline. The Union also concurs with the City that employees have extraordinary benefits and some are very costly to the City. The Union asserted that the employees had forgone raises in salary to negotiate the rich benefit package they have today.

The Union began successor MOU negotiations with the City in April 2016, with a proposed 5% cost of living increase in each year of a three-year agreement. The employees had not received a cost of living increase in 10 years. The Union's proposal also included an increase in longevity pay, and modest increases in employee benefits. The City responded on July 7, 2016 with its first proposal. The City rejected the Union's proposal in its entirety, proposing instead to eliminate compensatory time, reduce overtime, significantly reduce the City's contribution to health insurance, and reduce the employees' cafeteria plan benefits. The City also proposed that employees pay the employer portion of CalPERS costs, eliminate longevity pay and certification pay, cap tuition reimbursement, end the City-paid Medicare contribution, and other cuts. The two-year contract proposed by the City had no cost of living increase. The City discussed a possible one-time payment to employees but did not propose an amount that would even modestly offset the substantial takeaways proposed.

The Union submitted a second proposal to the City on August 16, 2016. This proposal scaled back the Union's cost of living increase proposal to 3% each year of a two-year agreement. The Union proposal included rollbacks in benefits including elimination of longevity pay for new hires, tuition reimbursement caps for all employees, and Medicare to be paid by the employee. The City rejected it in its entirety. The City suspended negotiations in order to educate the unions about increased personnel costs and unfunded liabilities, and its projected structural deficit. To the Union, the City's financial position appeared stable with tax revenues rising.

Negotiations resumed in March 2017 and the City presented its proposal with further employee salary and benefit cuts. The Union rejected that proposal but the Union made another proposal with more concessions, and no cost of living increase. The City rejected that proposal and made its third proposal, with extensive proposed employee pay and benefit cuts that could result in employees' take-home pay reduced by as much as 25%.

On July 26, 2017, the Union met with the City to discuss the City's last proposal. The Union then presented its fourth proposal, which included their agreement with several of the City proposed concessions, including modifying assignment pay from a percentage to a flat rate, and scaling back City contributions toward employee health insurance contributions. On August 3, 2017, the City made its last, best and final offer to the Union, which included a 1% pay increase. The Union took the City's offer to its members and they rejected it. The City then declared impasse. (Union Ex.1)

During the factfinding hearing on October 3, 2017, the Union said it was willing to agree to many of the City's demands for employee benefits and pay concessions, but that the concessions should be phased in over two years to lessen the financial impact on employees. Additionally, the Union had its own proposals. (Nos.13-16 p.6 of Factfinding Report) The following is a summary of the Union's position on the issues.

1. Eliminate Compensatory Time – Union agreed. (Union Ex. 2, p.2)
2. Adopt FLSA Definition of Overtime – Union rejected. (Union Ex.2, pg.2)
3. Cap Medical Allowance – Union counter proposal: Tier City contribution, and City–Employee future 50–50 cost share. (Union Ex.2, pg.3)
4. Cap Tier II Medical Difference – Union counter proposal: Reduce medical difference over time; provide Tier II employees cash payments to offset. (Union Exhibit 2, pg.3)
5. Increase Medical Insurance Opt Out Benefit – Union agreed. (Union Ex.2, pg.3)
6. Create a Tier IV – Union rejected. (Union Ex.2, pg.4)
7. Eliminate Flex Spending – Union agreed (Union Ex.2, pg.4)

8. Restructure Spanish Pay – Union agreed. (Union Ex.2, pg.5)
9. Restructure Assignment Pay – Union agreed. (Union Ex.2, pg.5)
10. Restructure Certificate Pay – Union agreed. (Union Ex.2, pg.5)
11. Cap Tuition Reimbursement – Union counter proposal: Grandfather in current employees with an approved education plan; Cap individual employee tuition reimbursement at \$30,000; Maintain the reimbursement rate at the California State University tuition rate plus books. (Union Ex.2, p.6)
12. Annual Leave Buy-Back Calculated on Base Hourly Rate Only – Union rejected. (Union Ex.2, pg.7)
13. Standby Pay Vehicle Use – The Union proposed employees on standby duty have access to a city vehicle to take home, and to be provided a paid lunch for standby and call back duty.
14. Holiday Pay Ten Hours – The Union proposed that employees regularly assigned a 10-hour shift receive 10 hours of holiday pay.
15. Work Schedule Approved by Department Head – The Union proposed that an employee's work schedule be approved by their department head rather than the City Manager.
16. Annual Leave Usage – The Union proposed that employees have the option to extend their employment service credit with the use of annual leave.
17. 2% COLA Year 1, and Two-year agreement – Union counter proposal: 3% pay increase upon signing agreement, and 2.5% pay increase effective July 1, 2018. Three-year contract term. (Union Ex.2, pg.7)

At the factfinding hearing, the Union called a witness, Timothy Reilly, CPA as its financial expert who had on February 21, 2017 issued his report that analyzed the City's financial health. (Union Ex.5) His assessment was based upon the City's audited annual financial report, the Comprehensive Annual Financial Report (CAFR), which the City prepares. Mr. Reilly's overall conclusion from analyzing the City of Corona's CAFR and other information is that the City's financial health is very strong and growing stronger. In summary, Mr. Reilly's 27-page report concluded that the City's total revenue increased 8.83% in 2016, with most of the growth occurring in tax revenues and intergovernmental revenues.

Mr. Reilly's report stated the City's tax revenues are improving. The report pointed to property taxes that have rebounded from the Great Recession and should continue to grow as the City's housing values continue to increase.

The report stated that the City's sales tax revenues increased significantly from \$26.5 million in 2010 to \$39.7 million in 2016. Sales tax revenues increased 4.9% for the third quarter ending September 30, 2016. Mr. Reilly said this portends continued growth for the fiscal year ending June 30, 2017, and that other revenues showed growth.

Mr. Reilly stated the City's cash and investments have been exceedingly strong for five years. He said the General Fund's unrestricted fund balance to revenue ratios and the unrestricted balance to expenditures ratios have been extremely strong.

Other conclusions Mr. Reilly reached were that current services revenues grew in five of the six years from 2011 to 2016, and licenses, fees and permits, a sign of a growing local economy, showed continued overall growth.

The Union's position on the issues at impasse is that they are willing to work with the City to reduce personnel costs, but that the cuts should be implemented over a period of two to three years, rather than in one fiscal year. The Union does not agree with all the cuts proposed by the City, but it is willing to work with the City on most of the cuts, as summarized on pages 5 and 6 of this Factfinding Report.

POSITION OF THE CITY

The City's position is that, faced with a large and growing structural deficit, they will have an inability to pay the demands made by the Union in successor MOU negotiations. The City stated the current 2017-18 budget was adopted with expenses exceeding revenue, and reserve funds were used to balance the budget. The City said this deficit is forecasted to be ongoing with no end in the foreseeable future. The City showed how revenues are flat and not

keeping up with growing expenses. Personnel costs continue to rise, especially CalPERS retirement costs and medical insurance. The City stated it is on the path to insolvency. (City pp.5-7) The gap between revenue and expenditures is expected to be \$1.9 million in fiscal year 2017-18, and is forecasted to grow to \$15.5 million by 2021-22. (City p.8)

The City has an emergency contingency fund of \$30 million. The City's presentation cited the figure of \$32.25 million as 90 days of operating costs. The current reserves fall short of the City's reserve policy and the Government Financial Officers Association best practice recommendation of 90 days reserve.

The City has a budget balancing reserve to maintain critical services that may be impacted by sudden economic or legislative changes and adversely impact City revenues. The City's budget balancing reserve was \$19.4 million on June 30, 2016.

The City forecasted that in 2017-18 it will use \$1.9 million in reserves to balance the budget, and the budget gap will grow in 2018-19 to require \$6.7 million from reserves. The City further forecasted that in 2019-20 the budget will be \$14.5 million short and require that amount to be transferred from reserves, when the budget balancing reserve will be depleted. The City expects in 2020-21 the budget gap will be \$14.4 million, and in 2021-22 the City expects to become insolvent when the budget gap requires \$15.5 million from the reserves and the emergency contingency will have been depleted. (City p.13)

The City said the structural deficit began with the State of California's dissolution of the City's Redevelopment Agency. Further, shoppers' behavior has changed and sales tax revenue is flat. Personnel costs comprise 70% of the City's operating budget, with the CalPERS retirement costs and medical insurance continues to rise. The new Fair Labor Standards Act (FLSA) decision¹ has increased overtime cost. The City of Corona is a full-service city with only 26% of

¹ Flores vs. City of San Gabriel (9th Cir. 2016) The court concluded the City's payment of unused health benefits must be used to calculate the regular rate of pay.

revenue available for service and supply costs. Deferring maintenance and repairs will become more expensive in the future. (City p.14)

The City's forecasting is based upon its largest sources of income: sales tax, property tax and charges for services. Sales tax is the largest of the three, and it is affected by shoppers choosing online purchases, fluctuations in fuel prices, building and construction activity and the unemployment rate. (City p.18)

Personnel costs represent the City's largest expense. Major factors impacting personnel costs are the underperformance of CalPERS investments, its mortality rate assumptions, the change in investment rate of return, and investment policy and strategy. The City-required contributions to CalPERS are estimated to be \$38.3 million in 2022-23, a \$16.5 million increase from 2016-17. (City p.22)

The City explained there are personnel costs that are not in the City's control: CalPERS retirement, health insurance premiums, and workers compensation. These costs have increased over 15 years: CalPERS 304%, Health Insurance 95%, and Workers Compensation 100%. (City p.23) In fiscal year 2017-18, the City must pay CalPERS \$.42 on every payroll dollar, and that is scheduled to rise to \$.48 in 2018-19. (City p.26) The City's CalPERS funded liability ratio for employees in the Union is 60%. (City p.36)

The City sees its future with increased CalPERS contributions, continuous increase in health insurance, the inability to pay CalPERS annual contributions in future years, a decline in the CalPERS funded liability, an impact to the current City credit rating of AA-, and the inability to maintain the City's infrastructure. (City p.32) The City had already sold unused land parcels and equipment, eliminated employee positions, eliminated fleet vehicles, consolidated departments, refinanced debt, implemented zero based budgeting, and implemented personnel vacancy rate into the budget. (City p.38) Since 2006-07, the City has reduced its workforce 28%. (City p.43) In this negotiation with the Union, the City emphasized transparency, and sought to

restructure salary and benefits toward the overall need for cost saving. (City p.55) The City proposed to the Union the following:

1. Eliminate Compensatory Time – Article VIII. Section 8.2
2. Adopt FLSA Definition of Overtime – Article VIII. Section 8.1
3. Cap Medical Allowance – Article IV. Section 4.4.1
4. Cap Tier II Medical Difference – Article IV. Section 4.4.1(B)
5. Increase Medical Insurance Opt Out Benefit – Article IV. Section 4.4.2
6. Create a Tier IV
7. Eliminate Flex Spending – Article IV. Section 4.3
8. Restructure Spanish Pay – Article XI. Section 11.3
9. Restructure Assignment Pay – Article XI. Section 11.4
10. Restructure Certificate Pay – Article XI. Section 11.5
11. Cap Tuition Reimbursement – Article IV. Section 4.8
12. Annual Leave Buy-Back Calculated on Base Hourly Rate Only – Article VII. Section 7.2.11
13. Cost of Living Adjustment 2% Year One, and Two-Year Agreement

NEUTRAL FACTFINDER PANEL CHAIR DISCUSSION

Eliminate Compensatory Time – The Union agreed to the City’s proposal to eliminate compensatory time. Based upon the criteria contained in MMBA Government Code §3504(d)(3), the Neutral Factfinder Panel Chair recommends the City’s proposal.

Adopt FLSA Definition of Overtime – The Union rejected this proposal, and the City has set this as a priority in this negotiation. If this proposal is implemented, it would result in paid time off such as vacation, sick leave and compensatory time not being included in the calculation of overtime. Since granting or directing overtime is a management decision, it should be a controllable cost to manage and budget. The Neutral Factfinder Panel Chair finds the City did not show why this proposal was fiscally necessary. Based upon the criteria contained in MMBA Government Code §3504(d)(8), the Neutral Factfinder Panel Chair does not recommend the City’s proposal.

Cap Medical Allowance – The City proposes to cap its annual maximum medical insurance contribution at \$18,764 for Family, \$14,434 for Employee + One, and \$7,217 for Employee-Only. The Union proposed effective January 1, 2018, the City's annual contribution be \$22,000 for Family, \$17,000 for Employee + One, and \$8,600 for Employee-Only. The Union also proposed future increases be shared 50-50 between the City and employees.

The cost of medical insurance is one of the major drivers of the City's forecast of future fiscal insolvency. Based upon the criteria contained in MMBA Government Code §3504(d)(4), the Neutral Factfinder Panel Chair recommends the City's proposal, effective January 1, 2019. This date is recommended because the open enrollment period has passed, and employees need to know what their out of pocket cost would be.

Cap Tier II Medical Difference – The City has three tiers of health benefits options based upon year of hire. Tier II employees have the option of cashing out the difference between their health insurance premium allowance and the cost of the plan they select. The City proposal is to cap the annual medical difference cash out at \$11,400 for Family, \$8,400 for Employee +1 and \$4,200 for Employee-Only. The Union would agree with the City's proposal, provided that employees receive an offset due to the loss of income. The Union's proposed offset is: \$4,500 January 1, 2018; \$3,000 January 1, 2019; and \$1,500 January 1, 2020. Based upon the criteria contained in MMBA Government Code §3504(d)(4) and (7), the Neutral Factfinder Panel Chair recommends the City proposal, with two offset payments to eligible employees. The Panel Chair recommends for Tier II employees who received in calendar year 2017 up to \$4,500 in medical difference cash out, that the employee will receive as an offset the amount equal to the medical difference, not to exceed \$4,500, paid in the same manner medical difference is currently paid by the City to Tier II employees. The same methodology would be applied to the second and last offset, of \$3,000 in 2019 to eligible employees.

Increase Medical Insurance Opt Out Benefit – The Union agreed to the City’s proposal to increase the annual medical insurance opt out to \$12,000 for Family, \$9,000 for Employee + One, and \$5,400 for Employee-Only. Based upon the criteria contained in MMBA Government Code §3504(d)(3) and (4), the Neutral Factfinder Panel Chair recommends the City’s proposal.

Create a Tier IV – The Union rejected this proposal. The City has three tiers of health benefits options based upon year of hire, and this proposal would create a fourth tier. The Neutral Factfinder Panel Chair finds the City did not demonstrate how the addition of a fourth tier would significantly contribute to the fiscal solutions. Based upon the criteria contained in MMBA Government Code §3504(d)(8), the Panel Chair does not recommend this proposal.

Eliminate Flex Spending – The Union agreed to the City’s proposal to eliminate the Flex Spending benefit. Based upon the criteria contained in MMBA Government Code §3504(d)(3) and (4), the Neutral Factfinder Panel Chair recommends the City’s proposal.

Restructure Spanish Pay – The Union agreed to the City’s proposal to eliminate the pay as 4% of salary and establish a flat dollar pay of \$2,275 per year, and rename the pay to “Bilingual Pay”. Based upon the criteria contained in MMBA Government Code §3504(d)(3) and (4), the Neutral Factfinder Panel Chair recommends the City’s proposal.

Restructure Assignment Pay – The Union agreed to the City’s proposal to eliminate the pay as a percentage of salary and establish a flat dollar amount paid per year. The change would be 2.5% to \$1,450 per year for Community Services Training Officer; 5% to \$2,630 per year for Lead Animal Control Officer; and 10% to \$5,810 per year for Relief Dispatch Supervisor. Based upon the criteria contained in MMBA Government Code §3504(d)(3) and (4), the Neutral Factfinder Panel Chair recommends the City’s proposal.

Restructure Certificate Pay – The Union agreed to the City’s proposal to eliminate the pay as a percentage of salary and establish a flat dollar amount paid per year. The change would be 5% to \$2,905 per year for Emergency Medical Dispatch certificate; 7.5% to \$5,685 per year for Grade 4 certificate, and an additional \$5,785 per year for Grade 5 certificate. Based upon the criteria contained in MMBA Government Code §3504(d)(3) and (4), the Neutral Factfinder Panel Chair recommends the City’s proposal.

Cap Tuition Reimbursement – The City proposal was to cap annual tuition reimbursement at \$2,500 per year, with a lifetime maximum benefit of \$10,000. The City said it would agree to grandfather-in current employees with an approved education plan. The Union’s proposal was also to grandfather-in current employees with an approved education plan; to cap individual employee tuition reimbursement at \$30,000; plus maintain the reimbursement rate at the California State University tuition rate, plus books. The City’s proposal is more reasonable based upon the financial uncertainty at the City. Based upon the criteria contained in MMBA Government Code §3504(d)(4), the Neutral Factfinder Panel Chair recommends the City’s proposal.

Annual Leave Buy-Back Calculated on Base Hourly Rate Only – The Union rejected this proposal. Annual leave taken is paid at the regular rate of pay. Cashing out leave at the hourly rate, as proposed by the City, would still a benefit for employees who accrue more time than they choose to use for leave. Based upon the criteria contained in MMBA Government Code §3504(d)(4), the Neutral Factfinder Panel Chair recommends the City’s proposal.

Standby Pay Vehicle Use – The Union proposed that employees on standby duty have access to a city vehicle to take home, and be provided a paid lunch for standby and call back duty. These two proposals would be a new benefit for employees and a new cost for the City.

The City's financial uncertainty does not make these proposals prudent to adopt as this time. Based upon the criteria contained in MMBA Government Code §3504(d)(8), the Neutral Factfinder Panel Chair does not recommend the Union's proposal.

Holiday Pay Ten Hours – The Union proposed that employees regularly assigned a 10-hour shift receive holiday for 10 hours per holiday. While this would be an added cost to the City, it is a matter of fairness that employees who are assigned by management to a regular 10 hours, 4-day schedule, would have to use annual leave to receive a full paycheck on the weeks there are City paid holidays. Therefore, based upon the criteria contained in MMBA Government Code §3504(d)(8), the Neutral Factfinder Panel Chair recommends the Union's proposal.

Work Schedule Approved by Department Head – The Union proposed that employees' work schedule be approved by their department head rather than the City Manager. The Neutral Factfinder Panel Chair finds work schedule approvals are the business of managing an organization. Based upon the criteria contained in MMBA Government Code §3504(d)(8), the Neutral Factfinder Panel Chair does not recommend the Union's proposal.

Annual Leave Usage – The Union proposed employees be able to extend their employment service credit with the use of annual leave. This could be a significant long term new cost for the City, and the Neutral Factfinder Panel Chair does not find this proposal to be prudent. Based upon the criteria contained in MMBA Government Code §3504(d)(4), the Neutral Factfinder Panel Chair does not recommend the Union's proposal.

COLA and Term of Agreement – The City proposed a two-year agreement with a 2% increase on July 1, 2017, with a contract expiration of June 30, 2019. The Union counter proposed a 3% pay increase upon signing agreement, and 2.5% pay increase effective July 1, 2018, with a three-year contract term.

Based upon the criteria contained in MMBA Government Code §3504(d)(7), the Neutral Factfinder Panel Chair recommends employees in Tier II receive 1.5% pay retroactive to July 1, 2017 that is off the salary schedule and not base-pay building, and another 1.5% pay effective July 1, 2018 with the same terms, and thereafter, the total 3% off-salary schedule pay shall continue to be paid the same as Tier I employees. The Neutral Factfinding Panel Chair recommends a two-year agreement, expiring on June 30, 2019.

NEUTRAL FACTFINDER PANEL CHAIR RECOMMENDATIONS

1. Eliminate Compensatory Time Article VIII. Section 8.2 – The Panel Chair recommends the City’s proposal.
2. Adopt FLSA Definition of Overtime Article VIII. Section 8.1 – The Panel Chair does not recommend the City’s proposal.
3. Cap Medical Allowance Article IV. Section 4.4.1 – The Panel Chair recommends the City’s proposal effective January 1, 2019.
4. Cap Tier II Medical Difference Article IV. Section 4.4.1(B) – The Panel Chair recommends the City’s proposal, with two offset payments to eligible employees. The Panel Chair recommends for Tier II employees who received in calendar year 2017 up to \$4,500 in medical difference cash out, that the employee will receive as an offset the amount equal to the medical difference, not to exceed \$4,500, paid in the same manner medical difference is currently paid by the City to Tier II employees. The same methodology would be applied to the second and last offset, of \$3,000 in 2019 to eligible employees.
5. Increase Medical Insurance Opt Out Benefit Article IV. Section 4.4.2 – The Panel Chair recommends the City’s proposal.
6. Create a Tier IV – The Panel Chair does not recommend the City’s proposal.
7. Eliminate Flex Spending Article IV. Section 4.3 – The Panel Chair recommends the City’s proposal.
8. Restructure Spanish Pay Article XI. Section 11.3 – The Panel Chair recommends the City’s proposal.
9. Restructure Assignment Pay Article XI. Section 11.4 – The Panel Chair recommends the City’s proposal.
10. Restructure Certificate Pay Article XI. Section 11.5 – The Panel Chair recommends the City’s proposal.
11. Cap Tuition Reimbursement Article IV. Section 4.8 – The Panel Chair recommends the City’s proposal.
12. Annual Leave Buy-Back Calculated on Base Hourly Rate Only Article VII. Section 7.2.11 – The Panel Chair recommends the City’s proposal.

13. Standby Pay Vehicle Use – The Panel Chair does not recommend the Union's proposal.
14. Holiday Pay Ten Hours – The Panel Chair recommends the Union's proposal.
15. Work Schedule Approved by Department Head – The Panel Chair does not recommend the Union's proposal.
16. Annual Leave Usage – The Panel Chair does not recommend the Union's proposal.
17. Cost of Living Adjustment and Term of Agreement – The Panel Chair recommends employees in Tier II receive 1.5% pay retroactive to July 1, 2017 that is off the salary schedule and not base-pay building, and another 1.5% pay effective July 1, 2018 with the same terms, and thereafter, the total 3% off-salary schedule pay shall continue to be paid the same as Tier I employees. The Panel Chair recommends a two-year agreement, expiring on June 30, 2019.


RENÉE MAYNE
Neutral Factfinder Panel Chair


Date

Factfinder for the Union: Ronald P. Ackerman, Attorney, Law of Offices of Ronald P. Ackerman, provided the attached letter with his concurrences and dissents of the Neutral Factfinder Panel Chair's recommendations.

Factfinder for the City: Jeffrey C. Freedman, Attorney, Liebert Cassidy Whitmore, provided the attached letter with his concurrences and dissents of the Neutral Factfinder Panel Chair's recommendations.

Law Offices of Ronald P. Ackerman

400 Corporate Pointe, Suite 560~Culver City, CA 90230
Phone (310) 649-5300 ~ Fax (310) 649-4045

October 27, 2017

RENÉE MAYNE
Labor-ADR Arbitrator
Mediator Post Office Box 1008
Grass Valley, California 95945

CGEA Input to Final Report

Ms. Mayne,

The Union submits the following items showing support/dissent to your Final Report. Specifically, the Union dissents in part and concurs in part as follows:

Eliminate Compensatory Time-The Union continues to agree to the City's proposal to eliminate compensatory time.

Adopt FLSA Definition of Overtime-The Union **concurs** with the recommendation that the FLSA definition of overtime be implemented.

Cap Medical Allowance-The Union **dissents** to this proposal in that the rates were calculated based on Kaiser 2017. The City set the cap with the idea that employees should be able to get a Kaiser plan. As such the cap should be based on the 2018 Kaiser rates.

Cap Tier II Medical Difference-The Union **concurs** with this proposal.

Increase Medical Insurance Opt Out Benefit-The Union concurs with this proposal.

Create a Tier IV-The Union **concurs** with this proposal.

Eliminate Flex Spending-The Union **concurs** with this proposal

Restructure Spanish Pay-The Union **concurs** with this proposal

Restructure Assignment Pay-The Union **concurs** with this proposal.

Restructure Certificate Pay-The Union **concurs** with this proposal

Cap Tuition Reimbursement-The Union **dissents** from this Proposal. The amount of employees who choose to take advantage of this benefit are minimal but this proposal could prevent them from being able to cover the cost of a degree.

Annual Leave Buy-Back Calculated on Base Hourly Rate Only-The Union **concurs** with this proposal.

Standby Pay Vehicle Use-The Union **concurs** with this proposal.

Holiday Pay Ten Hours-The Union **concurs** with this proposal

Work Schedule Approved by Department Head-The Union **concurs** with this proposal.

Annual Leave Usage-The Union **concurs** with this proposal

COLA and Term of Agreement-The City proposed a two-year agreement with a with a contract expiration of June 30, 2019. The Union countered and proposed a 3% pay increase upon signing the agreement, and a 2.5% pay increase effective July 1, 2018, with a three-year contract term.

The Union **dissents** from the Panel Chair recommendation that employees in Tier II receive 1.5% pay retroactive to July 1, 2017 that is off the salary schedule and not base-pay building, and another 1.5% pay effective July 1, 2018 with the same terms, and thereafter, the total 3% off-salary schedule pay shall continue to be paid the same as Tier I employees. All the proposals exchanged included a COLA for all CGEA members. It does not make sense to give a COLA only to Tier II.

Very truly yours,

_____/ s /_____
Ronald P. Ackerman
Attorney at Law

Jeffrey C. Freedman
Liebert Cassidy Whitmore
6033 W. Century Blvd 5th floor
Los Angeles CA 90045
310-981-2000

FACT FINDING PROCEEDINGS
CITY OF CORONA & CORONA GENERAL EMPLOYEES ASS'N

CITY OF CORONA

PERB case# LA-IM-248-M

And

fact finding case #17-09 FF

CORONA CITY EMPLOYEES ASS'N

Issue: 2017 successor MOU negotiations impasse

**PARTIAL DISSENT/PARTIAL
CONCURRENCE**

As the fact finding panel member appointed by the City of Corona (City) I submit the following in response to the recommendations issued by panel chair Renee Mayne. In so doing I dissent in part and concur in part as explained below.

I concur with Ms. Mayne's recommendations on these issues: 1) elimination of compensatory time; 5) medical insurance opt out benefit; 7) flex spending; 8) Spanish pay; 9) assignment pay; 10) certificate pay; 11) tuition reimbursement; 12) annual leave buy back; 13) standby vehicle use; 14) holiday pay hours; 15) work schedule approval; 16) annual leave usage; and 17) as to term of agreement only.

I dissent in whole or in part as to these issues: 2) FLSA overtime definition; 3) medical allowance; 4) medical difference; 6) creation of Tier IV; and 17) cost of living adjustment.

The City made a persuasive showing of its difficult financial straits. The City's financial difficulties are not new: in recent years the City has significantly reduced the size of its work force—resulting in layoffs along with elimination of vacant positions, and

has cut other expenses outside of personnel costs. These actions have allowed the City to have balanced budgets without dipping into reserves—until now. The City's ability to enhance its revenue sources is limited by the nature of the City itself, primarily a residential community without major facilities that could contribute to the tax base: tourist attractions, shopping malls, major hotels, theme parks, etc. Additionally, major costs out of City control have significantly increased expense obligations, and are anticipated to keep rising. Two of the most significant are employee health insurance premiums and assessments for the employee pension system, known as CalPERS. The latter is a defined benefit annuity system administered by a department of the State. As a defined benefit system, the State is obligated to raise sufficient revenue to fund current and future annuity payments based only on a retiree's age at retirement, number of years of service credits in the system, and the benefit formula either adopted by the employing agency (e.g. 2.7% at 55) or as dictated by statute (2% at 62 for so-called "new members" first hired into the system on or after January 1, 2013.) CalPERS has only two sources of money: growth in its investments (I have read that CalPERS is among the largest investors on Wall Street) and contributions from state and local agencies who contract with PERS to provide pension benefits to employees. In recent years, as CalPERS investments have not done well, the amount demanded from public employers has increased dramatically, even in light of the 2013 pension reform act (known as "PEPRA"; Gov. Code section 7522 et seq.) which was supposed to reduce pension costs. In any case, the City MUST pay whatever CalPERS demands; there are no negotiations with Sacramento on this issue. Currently, the City is required to pay 42 cents to CalPERS for every dollar of employee payroll for CGEA members. The percentage for safety employees (police and fire) is even higher. Despite these large and rapidly increasing contribution rates (through no fault of the City) the pension plans for the City's employees are substantially underfunded – to the tune of over a quarter billion dollars. The funded ratio for the plan for non-sworn employees is only 60.1%, which is among the lowest in the state.

The City had wisely set up two reserve accounts, one for budget balancing purposes and another for emergencies such as natural disasters. However, due to the financial problems discussed, the City has now needed to tap into its reserves to cover shortfalls in revenues in light of expenses. Indeed, the budget for the current fiscal year (2017-2018) anticipates needing \$1.9 million from the budget balancing reserve to close the expected gap between money coming in and money going out. Those deficits are projected to grow to \$6.7 million in 2018-2019, and to \$14 million or more in each of the following several years. As personnel costs are always the overwhelming majority of costs of operating a public agency (over 70% in Corona's case) any effort to reduce expenses must by necessity look at ways to reduce labor costs. As the City is at the mercy of CalPERS as to amounts it must pay into the pension system, the City must look at other employment related costs in any effort to reduce expenses.

The City forecasts total depletion by 2022 not only of the budget balancing reserve, but also of the emergency reserve. The City is facing a bill for a recent fire that partially invaded the City. This is the type of expense this reserve account is intended for. What will happen after this reserve is depleted should there be more fires, a major earthquake or some other natural disaster?

In light of the above, as well as other considerations presented at the hearing in this matter, my partial dissent follows.

FLSA definition of overtime. The Fair Labor Standards Act ("FLSA": 29 U.S.C. sec. 201 et seq.) requires payment of time and one-half an employee's hourly rate to non-exempt employees for all hours worked in excess of 40 in any week. For reasons not disclosed, the City and CGEA agreed in the now expired MOU to include in determining eligibility for overtime all hours in paid status. Thus, if an employee took off one day in a week using accrued vacation, or if a paid holiday fell in a particular week, and the same employee worked some additional hours in that week in excess of her or his regular schedule, the vacation hours taken or the holiday hours would be treated as if the employee had worked on that day in determining whether the employee is entitled to overtime pay for those additional hours.

The City now seeks to change the process so that overtime will only be paid for hours actually "worked" in excess of 40 hours in a week. There are several reasons advanced in support of this proposal. First, there would be a cost savings. The materials presented by the City showed an annual cost of about \$77,000.00, or \$154,000 for two years. Second, there are concerns about transparency and public accountability. To the citizens and voters in the City, who almost certainly do not receive this sort of benefit in their jobs, this looks like what it is—a method to put money into City employee pockets behind a disguise.

The only reason for maintaining the status quo on this matter is to continue a practice that never should have begun. Accordingly, I dissent from the panel chair's recommendation; the City's proposal should be implemented.

Medical allowance. My only disagreement with the panel chair's recommendation is that the City's proposal should be implemented January 1, 2018, rather than in 2019. Deferring the implementation by twelve months sends the City's budget deficit even higher and will require a greater invasion of City reserves.

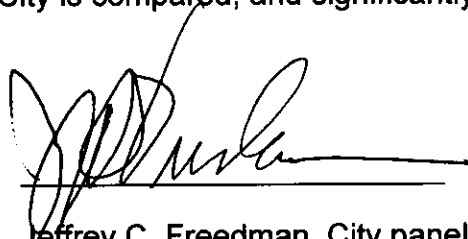
Medical differential. My comment above about transparency and public accountability is even more true here, where some of the so-called Tier II employees (those hired between 1999 and 2012) receive as much as \$18,000.00 per year in additional cash. This is a scandal waiting to happen. I appreciate the panel chair's concern about "easing" Tier II employees off of medical difference by payments in 2018

and 2019 of their 2017 amount received up to maxima of \$4500.00 and \$3000.00. However, the fact is simply that these payments would vastly increase the deficit and increase the amount that will need to be withdrawn from the reserve account. In 2018, 131 employees would receive the full \$4500, for a total of \$589,000, and in 2019 those same employees would receive the full \$3000 for a total of \$393,000, and thus a two year total of \$982,000. The City simply cannot afford these amounts. Thus, while I concur that the medical difference should end December 31, 2017, I cannot concur with the recommendation for the two payments,

Tier IV creation. This City proposal should be implemented; I dissent from the recommendation to the contrary. This proposal would not apply to any incumbent CGEA employees; it would only be applicable to future hires. It would provide additional savings to the City, and the City demonstrated that, even with Tier IV, the total compensation of new CGEA employees will be competitive with the cities with whom Corona is compared.

COLA. Finally, the City proposed an across the board pay increase of two percent. The panel chair recommends increases of 1.5% in year one and another 1.5% in year two, but only for Tier II employees. Tiers I and III would get nothing. It seems obvious that an increase for all members of the unit, rather than for only some (recognizing that Tier II is about 60% of the unit) would make more sense. It should be noted that CGEA members are already well compensated: the median CGEA member receives total annual compensation and benefits which are second only to Anaheim among the cities with whom the City is compared, and significantly higher than median household income in Corona.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey C. Freedman', written over a horizontal line.

Jeffrey C. Freedman, City panel member

Dated: October 25, 2017

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: **6033 West Century Boulevard, 5th Floor, Los Angeles, California 90045.**

On **October 26, 2017**, I served the foregoing document(s) described as **PARTIAL DISSENT/PARTIAL CONCURRENCE** in the manner checked below on all interested parties in this action addressed as follows:

Renee Mayne, Arbitrator, Mediator
Labor-ADR
P.O. Box 1008
Grass Valley, CA 95945
Mayne.adr@gmail.com

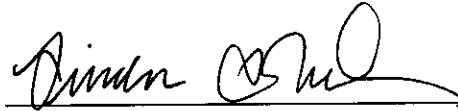
Ronald P. Ackerman
Law Offices of Ronald P. Ackerman, P.C.
400 Corporate Pointe, Ste. 560
Culver City, CA 90230
rpalawoffice@gmail.com

- ☐ **(BY U.S. MAIL)** I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.
- ☐ **(BY FACSIMILE)** I am personally and readily familiar with the business practice of Liebert Cassidy Whitmore for collection and processing of document(s) to be transmitted by facsimile. I arranged for the above-entitled document(s) to be sent by facsimile from facsimile number 310.337.0837 to the facsimile number(s) listed above. The facsimile machine I used complied with the applicable rules of court. Pursuant to the applicable rules, I caused the machine to print a transmission record of the transmission, to the above facsimile number(s) and no error was reported by the machine. A copy of this transmission is attached hereto.
- ☐ **(BY OVERNIGHT MAIL)** By overnight courier, I arranged for the above-referenced document(s) to be delivered to an authorized overnight courier service, FedEx, for delivery to the addressee(s) above, in an envelope or package designated by the overnight courier service with delivery fees paid or provided for.

- 1 ☒ **(BY ELECTRONIC SERVICE)** By electronically mailing a true and correct copy
2 through Liebert Cassidy Whitmore's electronic mail system from
3 ltokubo@lcwlegal.com to the email address(es) set forth above. I did not receive,
4 ☐ **(BY PERSONAL DELIVERY)** I delivered the above document(s) by hand to the
5 addressee listed above.

6 Executed on **October 26, 2017**, at Los Angeles, California.

7 I declare under penalty of perjury under the laws of the State of California that the
8 foregoing is true and correct.

9 
10 Linda Tokubo