

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

CITY OF BEVERLY HILLS,

Employer,

&

BEVERLY HILLS MANAGEMENT AND
PROFESSIONAL EMPLOYEES'
ASSOCIATION,

Association

Case No.: LA-IM-346-M

FACTFINDING REPORT AND
RECOMMENDATIONS FOR
SETTLEMENT

Chairperson: Najeeb N. Khoury
Employer Panel Member: Peter Brown, Liebert Cassidy Whitmore
Association Panel Member: Robert Wexler, Rains, Lucia & Stern
Hearing Date: July 09, 2025

BACKGROUND

The Beverly Hills Management and Professional Employees' Association ("Association") represents management and professional employees at the City of Beverly Hills ("Employer" or "City").

The parties' relationship is currently governed by an MOU that runs from October 7, 2023 to October 2, 2026. The MOU has a reopener clause covering performance evaluations and a corresponding pay for performance plan ("PFP"). The parties reopened the MOU on those subjects and reached conceptual agreements on changes to the performance evaluations as well as the transition period to using the new evaluations. However, they could not reach agreement

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1 on the criteria needed for employees to qualify for the PFP. During bargaining, each side made
2 movement from their original positions; however, this did not resolve the parties' differences.
3 The City's final proposal required that employees receive "Exceeds Expectations" on four (4) of
4 the eight (8) categories on the new Performance Evaluation plan in order to be eligible for the
5 PFP, and the Association countered that an employee must receive "Exceeds Expectations" on
6 three (3) of the eight (8) categories to be eligible and cannot receive a "Needs Improvement"
7 rating in any category on the Performance Evaluation.
8

9 The City declared impasse on March 17, 2025 on the sole issue of the PFP criteria, and
10 the Association made a factfinding request to the Public Employment Relations Board (PERB)
11 on April 14, 2025. The parties selected me to serve as the neutral factfinding panel chair. The
12 factfinding hearing occurred on July 9, 2025, via Zoom.
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14 ANALYTICAL FRAMEWORK

15 Unlike interest arbitration, where a third-party neutral sets the terms of a new contract, a
16 third-party neutral chair in a Meyers-Milias-Brown Act (MMBA) factfinding simply provides
17 recommendations. In essence, this makes factfinding an extension of bargaining. Ultimately,
18 the parties must persuade one another of their positions, and the neutral factfinder simply
19 provides an outside perspective to help the parties along.
20

21 As set forth in California Government Code Section 3505.4(d), the MMBA requires
22 factfinders to "consider, weigh, and be guided" by the following criteria:
23

- 24 1. State and federal laws that are applicable to the employer.
- 25 2. Local rules, regulations, or ordinances.
- 26 3. Stipulation of the parties.
- 27 4. The interests and welfare of the public and the financial ability of the public agency.
- 28

an unsatisfactory rating in any of the ten (10) categories on the performance evaluation. Even if an employee becomes eligible, the employee's respective Department Head determines the value of the PFP award and has the discretion not to award a lump sum to an eligible employee.

CITY'S POSITION

The City proposes changing the performance evaluation to contain eight categories instead of ten. The City's proposed eight categories are:

1. Core employee responsibilities, with sub-factors of job knowledge, performance of job duties, consistency, and contribution.
2. Consumer service, with sub-factors of customer communication, responsiveness and follow-up, professionalism, and following city/department expectations.
3. Communication skills, with sub-factors of listening, facilitation, conflict resolution, and written and verbal communications.
4. Teamwork, with sub-factors of collaboration, accountability, conflict resolution, and fostering an inclusive work environment.
5. Safety protocol, with sub-factors of following safety protocols/procedures and reporting hazards.
6. Judgement and decision-making skills, with sub-factors of performance research/due diligence, considering and applying known facts and/or information in exercising judgement, providing updates to supervisors and managers, and learning from mistakes and drawing upon previous experiences in exercising judgement.
7. Management of People and Projects/Programs, with two sub-categories accompanied by relevant sub-factors:

1 a. Management of People, with sub-factors of motivating others/goal setting,
2 approachability, interpersonal skills, and performance evaluations.

3 b. Management of Projects/Programs, with sub-factors of organizational skills,
4 deadlines, prioritization, and budget and contract management.
5

6 8. Initiative and Innovation, with sub-factors of proactivity, adaptability, and innovation.

7 In addition to changing the ratings categories, the City proposes changing the point
8 system, with a new four-level point system whereby “Exceeds Expectations” would be worth one
9 point, “Meets Expectations” would be worth zero points, “Needs Improvement” would be worth
10 zero points, and an “Unsatisfactory” would be worth zero points.
11

12 The City also wants to change the eligibility requirements for the PFP such that an
13 employee must receive an “Exceeds Expectations” rating on at least four (4) of the eight (8)
14 ratings categories and must not receive more than one (1) “Needs Improvement” score across all
15 ratings categories to qualify for the PFP program. Under the new system (like the old), an
16 employee’s respective Department Head would still determine the value of the PFP award and
17 would have the discretion not to award a lump sum to an eligible employee.
18

19 The City asserts that its new system is more equitable as some of the ratings factors in the
20 current evaluation do not apply to all members of the Association, making it harder for those
21 employees to accumulate the necessary points. It also argues that its proposed ratings system has
22 an explanation for each rating system factor, which enables the rater to better assess the
23 employee.
24

25 ASSOCIATION’S POSITION

26 The Association conceptually agrees with the new performance evaluation categories and
27 the new ratings categories. However, it does not agree with the new proposed requirements for
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1 becoming eligible for the PFP program, and argues that they are more onerous than under the
2 previous system.

3 Specifically, the Association notes that under the current performance evaluation system,
4 employees receive points for both Exceeds Standards Often (2 points) and Exceeds Standards
5 Sometimes (1 point), whereas under the proposed system, employees will only receive points for
6 Exceeds Expectations (1 point). Additionally, the number of potential points one can receive in
7 the current system is twenty but will only be eight in the proposed system.
8

9 The Association further points out that an employee under the proposed system needs to
10 receive an Exceeds Standards on 50% of the performance evaluation categories to become
11 eligible for the PFP, whereas under the current system, an employee can be eligible for the PFP
12 without receiving the highest rating in any category as the second highest rating category is also
13 awarded a point. For these reasons, the Association sees the City's proposal as making it more
14 difficult to become eligible for the PFP.
15

16 The City responds that its goal is not to make qualification for the PFP more restrictive,
17 and it plans on budgeting the same number of dollars for the program. Rather, it is attempting to
18 clarify the process and make it more equitable.
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20 RECOMMENDATION

21 As mentioned above, neutral factfinders have typically required the party seeking a
22 change to the status quo to carry the burden of persuasion, and I will follow that convention in
23 this case. Here, the City seeks two changes from the status quo.
24

25 First, it seeks to change the performance evaluation system. Specifically, it seeks to use
26 eight criteria instead of ten in evaluating employees. The City has attempted to design the eight
27 criteria to apply to all bargaining unit members, whereas the old system often had factors that
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1 were inapplicable to some bargaining unit members. The City also seeks to provide raters with
2 greater clarity on how they should rate employees. The Association agrees that these updates are
3 needed and has conceptually agreed to these changes. I, therefore, recommend that the parties
4 adopt the new performance evaluation system.
5

6 Second, the City seeks to change the point system for how employees qualify for the
7 PFP. The City insists that only employees who receive four or more Exceeds Standards out of
8 eight categories should be eligible for the PFP program. The Association counters that
9 employees who receive three or more Exceeds Standards and do not receive any “Needs
10 Improvement” ratings should qualify for the PFP program.
11

12 The Association fears that the City’s proposal will make it more onerous to qualify for
13 the PFP; the City states that is not the intent of its proposal.
14

15 I recommend adopting the City’s proposal for one year with the following caveat. Given
16 that the main concerns are whether fewer bargaining unit members will qualify for the PFP and
17 whether the same amount of funds will be spent on the program, I recommend that at the end of
18 the first year of implementing the City’s proposal, the parties analyze the data to determine
19 whether there has been a significant drop in the number of employees qualifying for the PFP and
20 whether there has been a significant drop in the total amount of money paid to bargaining unit
21 members under the PFP.
22

23 If there has not been a significant drop in either category, then the City’s proposal should
24 continue to be implemented as is. If there has been a significant drop, then the parties should
25 bargain over recalibrating how qualifications and payouts should have worked for that first year
26 of the new PFP process. The parties should then retroactively implement the recalibrated figures
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1 to eliminate any significant statistical variations that occurred during the first year, and those
2 changes should carry on into future years.

3 I sincerely hope that this recommendation assists the parties in reaching a negotiated
4 settlement.

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6 Date: August 4, 2025



Najeeb N. Khoury