

DANIEL R. SALING, ESQ.
Arbitrator • Mediator

August 25, 2014

Steve Sandefer, President
Hemet Fire Fighters Association
P.O. Box 1407
Hemet, CA 92546

Wally Hill, City Manager
City of Hemet
445 E. Florida Ave.
Hemet, CA 92543-4209

RE: City of Hemet and Hemet Fire Fighters Association
Case No. LA-IM-164-M

Messrs. Sandefer & Hill:

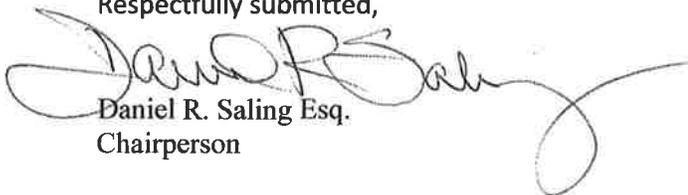
On July 28, 29 & 30, 2014, a factfinding hearing was held in the above captioned matter in Hemet, California. Attached you will find a copy of the factfinding panel's finding of facts and recommendations and the dissenting opinions.

The California Government Code places upon the parties certain obligations and requirements regarding the making of the factfinding report public and the ability of the parties to continue with mediation following the issuance of the report.

Please be advised that under California Government Code section 3540 et sec, any findings of fact and recommended terms of settlement must be submitted in writing to the parties privately before they are made public. The public employer shall make such findings public within ten (10) days after their receipt. Please refer to PERB rules and requirements regarding the manner in which the report is to be made public.

The issuance of this report concludes the factfinding panel's assignment with regard to this matter.

Respectfully submitted,



Daniel R. Saling Esq.
Chairperson

Encl.

cc. PERB Headquarters
City Panel Member
Union Panel Member

In the Matter of the Impasse Between)

CITY OF HEMET)

Employer)

- and-)

**HEMET FIRE FIGHTERS
ASSOCIATION, (HFFA)**)

Exclusive Representative)

**FACTFINDING REPORT
AND RECOMMENDED
TERMS OF SETTLEMENT**

PERB CASE NO. LA-IM-164-M

**REPORT ISSUED
August 25, 2014**

Hearing Held on July 28, 29 & 30, 2014

COMPOSITION OF THE FACTFINDING PANEL:

Impartial Chairperson:

Daniel R. Saling Esq.
Arbitrator/Factfinder
33192 Ocean Hill Drive
Dana Point, CA 92629

City Member:

Eric S. Vail Esq.
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071

Union Member:

Robert M. Wexler Esq.
Silver, Hadden, Silver, Wexler & Levine
1428 Second Street, Suite 200
Santa Monica, CA 9404-2161

MAKING PRESENTATIONS TO THE FACTFINDING PANEL:

For the City:

Daphne M. Anneet Esq.
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071

For the Union:

Christopher D. Nissen Esq.
Nissen Law Firm
1419 Peerless Place, #113
Los Angeles, CA 90035

Also Present for the City:

Wally Hill, Hemet City Manager
Laura Ireland, Hemet Human Resources

Also Present for the Union:

Steve Sandefer, HFFA President
Jeff Retmier, HFFA Vice President

BACKGROUND AND PROCEDURAL HISTORY

The City of Hemet (City) is a general law city, incorporated in 1910. Hemet is a city in the San Jacinto Valley in Riverside County, California, United States. It covers a total area of 27.847 square miles (72 km²), about half of the valley, which it shares with the neighboring City of San Jacinto. The population was 78,657 at the 2010 census.

The Hemet City Council consists of five members elected from the city at large, who serve four-year staggered terms. Annually, the City Council appoints a mayor and a vice mayor from its own membership to serve a one-year term.

The mayor is responsible for presiding over City Council meetings, representing the City Council at various business and ceremonial events, and executing all city ordinances, resolutions, and contracts. The Mayor Pro Tem performs these duties in the absence of the mayor.

The City Council is the legislative body and is responsible for the enactment of local laws / ordinances, the adoption of the annual city budget and capital improvement program, and the review and adoption of proposed policies, agreements, contracts, and other city business items. The City Council appoints the city manager and city attorney, as well as the members of the various citizen advisory boards, commissions, and ad hoc committees.

The City employs a number of employees, 43 of which are employed by the City's Fire Department. The employees working in the Fire Department are represented in their collective bargaining with the City by the Hemet Fire Fighters Association (HFFA).

The City's projected general fund revenues for the fiscal year (FY) 2014-2015 are \$39,530,960. The projected structural deficit (difference between ongoing revenues and expenditures) will be approximately \$1.4 million. The City Management suggested that the City Council use some of the General Fund reserves to cover the remaining structural deficit. The beginning reserves in the General Fund (including the Refuse Fund) were projected to be \$15.2 million. Additionally, City Management suggested the Council establish a reserve for potential Fire Services severance and legal costs, covering the estimated deficit, and allow for a one-time capital project, which would reduce the reserves to approximately \$11.3 million.

The impasse and factfinding proceedings at issue arose from the negotiations between the City and the Union on a successor agreement. The City proposed to eliminate the Hemet Fire Department and enter into a cooperative agreement with the Riverside County Fire/Cal Fire, hereinafter referred to as the "RCF," to provide fire services to the City of Hemet.

BARGAINING HISTORY

The City and Union were parties to a Collective Bargaining Agreement, the ("Agreement") that expired on October 31, 2013. The parties were unable to agree to a successor agreement and on May 14, 2014, the City declared impasse and HFFA requested that fact finding under the Meyer-Milias Brown Act (MMBA) be conducted.

On May 23, 2014, the City rejected the HFFA's third proposal for a successor MOU and issued a Last Best and Final Offer ("LBFO") on the Decision and Effects of Contracting Out. On May 8, 2014, HFFA rejected the City's LBFO and presented a fourth proposal for a successor MOU, which proposed that the City not contract out its fire services.

During their meet and confer sessions, a number of tentative settlements were reached but no tentative agreements (TA's) were signed. During the factfinding process, discussions were held on items where tentative agreement had not been reached during the bargaining process and the

parties agreed that all items that were tentatively agreed to but not placed in writing would be honored by the parties. The factfinding panel was asked to address only those issues that remained unresolved.

On July 1, 2013, Daniel R. Saling was chosen and appointed by PERB to serve as the neutral chairperson of the factfinding panel. The City and Union designated Eric Vail and Robert Wexler to serve as their respective members of the panel. The City refused to waive statutory time limits for the holding of a hearing and for the issuance of the panel's report.

The panel is statutorily authorized to meet with representatives of the parties through investigation and/or hearing and, if an agreement settling all issues cannot be reached, to make a factual finding based on the evidence presented as well as to recommend terms of settlement. To initiate those quasi-legislative responsibilities, a hearing was held on July 28, 29 & 30, 2014, in Hemet, California, during which time the City and Union were given full opportunity to present evidence on the outstanding issues. Following the presentations of the bargaining parties, an effort was made to attempt to resolve the impasse through mediation. The panel members met with their respective groups and then met together with the neutral chairperson to attempt to resolve the impasse. Following an effort to mediate, it was determined that while the parties had made concessions and moved from their impasse positions, there would not be a negotiated settlement reached as of July 30, 2014. The factfinding panel in their executive session discussed the parties' presentations and the process they would use to reach a consensus with regard to the issuance of a factfinding report.

At the conclusion of the executive discussions of the panel, the chairperson indicated that he would prepare a draft of the factfinding report and recommendation. A copy of the proposed factfinding report was emailed and/or faxed to the partisan members of the panel for their comments and/or suggestions. The partisan members of the panel were made aware of their right to either concur or dissent on all or part of the majority opinion. The chairperson prepared the final copy of this report and recommendations which were provided to the partisan panel members for their official signature.

RELEVANT FACTORS

Government Code Subsection 3548.2 (b) states as follows:

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

- (1) State and federal laws that are applicable to the employer.
- (2) Stipulations of the parties.

- (3) The interests and welfare of the public and the financial ability of the public employer.
- (4) 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 and with other employees generally in public school employment in comparable communities.
- (5) The consumer price index for goods and services, commonly known as the cost of living.
- (6) 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.
- (7) Any other facts, not confined to those specified in paragraphs (1) to (6), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

Any criterion which has not been relied upon by the parties has not been considered in arriving at the findings and recommendations made herein.

The first duty of the panel is to address the City's desire to subcontract out the City's fire services and thereby eliminate the Hemet Fire Department and terminate its employment relationship with the HFFA members. The City claims that the purpose of subcontracting out the fire services is to provide the highest quality of services to the residence of Hemet and to ensure that such services can be fiscally sustained.

Both the City and Union put forth arguments regarding the City's ability to pay for and maintain the services provided by the Hemet Fire Department. The City projects that its future financing will be substantially reduced and that it will have to make further reductions and expenditures of existing reserves. The Union pointed out that it had made concessions because of the financial crisis that the City faced and now is being told that members of the Hemet Fire Department will possibly be laid off and that vested rights in retirement medical benefits may be lost if the City decides to subcontract out its fire services to the RCF.

The factfinding panel was presented significant evidence about the merits and deficiencies of out-sourcing the city's fire service verses maintaining the Hemet Fire Department. This question is not the type of question that can be addressed by the provisions of Government Code Subsection 3548.2 (b). The determination of contracting out services does not fall under a

mandatory subject of bargaining and is a policy decision that must be answered by those individuals that are elected to make policy decisions. The City Council is the legislative body and is responsible for the enactment of local laws / ordinances, the adoption of the annual city budget and capital improvement program, and the review and adoption of proposed policies, agreements, contracts, and other city business items. Therefore, the factfinding panel is without authority to recommend whether the Hemet fire services should or should not be subcontracted out to Riverside County/Cal Fire Service. It is the duty and responsibility of the City Council to make the decision as to how best to provide fire services to the citizens of Hemet.

Substantial investigation and research has been done by the parties of interest. An outside consulting firm, Citygate Associates, was employed by the City to render its findings as to whether a local fire department or a county-wide fire department would provide the best possible service at the best possible price. Both the Hemet Fire Department and the Riverside County/Cal Fire Services have provided the Council with proposals, cost analysis and projected cost savings. The Council has heard from City officials throughout the counties that have closed their city fire departments and have gone with Riverside County/Cal Fire. Additionally, the Council has heard concerns from local residents with regard to their desired to maintain the Hemet Fire Department.

It is clear that the City Council has the authority and right to subcontract out city services to other public agencies and/or to private concerns. The City and HFFA bargained the decision whether to outsource, the impacts and effects of any outsourcing and, in the alternative, the terms for a successor MOU to impasse.

During the factfinding, the factfinding panel was presented with the City's and HFFA's proposals on the impact of having the City of Hemet's Fire Services transferred to RCF. The following findings represent the panel's findings on the impact bargaining proposals:

CITY'S GENERAL IMPASSE POSITION

It is the position of the City, that because of California's financial crisis and the decline in revenues, the City must reduce expenditures and that it cannot continue to deficit spend its reserves. The City believes that it has to either eliminate or reduce services by making cuts in expenditures that have the least effect upon the delivery of City services to the citizens of Hemet. The City made significant cuts in most other categories of the City budget. However, there is now a need to look to the staff to find reductions that will help balance the budget.

The City indicated that it had experienced a significant downturn in revenues over the past several years and at the same time personnel costs and health costs have significantly increased. Additionally, the City expressed the opinion that by contracting out the fire services to RCF that

there would be a substantial financial savings and that the City residents will be provided better fire coverage, a paramedic program and an improved Emergency Medical Dispatch (EMD) service.

UNION'S GENERAL IMPASSE POSITION

The Union contends that it has made substantial contributions to the City by reducing staff compensation and other benefits. After having made concessions to the City, the fire fighters are being told that their services are no longer needed and that the Hemet Fire Department needs to be disbanded and the City's fire services need to be transferred to RCF.

The members of the Hemet Fire Department have provided fire protection to the residents of Hemet over many years. The Department has been reduced in staffing and one of its fire stations was closed. Through the efforts of the professional Hemet Fire Fighters, the level of service has remained high with fewer staff and a much higher workload.

The HFFA contends that its proposal to the Council provides better service at a lower cost than the RCF proposal. Further, by having a Hemet Fire Department, the Council maintains local control and has more control over future cost escalations. Additionally, the Hemet Fire Fighters have been dedicated to the needs of the Hemet community and believe that Council should consider the effect of contracting out on those individuals that have given so very much to the City.

The Union and its membership realize that the City has faced some economic uncertainty but does not believe that the members of the bargaining unit should be denied contracted and vested benefits and continued employment. The Union has indicated a willingness to meet the City's desired goals and has made proposals that provide the City with services and the ability to continue to have local control over the Hemet Fire Department.

SUMMARY OF BARGAINING PARTIES' POSITIONS

The City has requested its staff to investigate the feasibility of contracting out fire services to the RCF program through a cooperative agreement. While the staff has done its investigation and sought the assistance of an outside consulting firm, the Council has yet to make its decision to either go with RCF or to maintain the Hemet Fire Department for fire services. Many of the questions with regard to the rights of Hemet Fire Fighters to be transferred from the Hemet Fire Department to the RCF system have not been answered because Cal Fire will not provide answers until the cooperative agreement is signed and the City has committed to the RCF program.

While the Union has attempted to show the benefits and cost savings of maintaining the Hemet Fire Department, there have also been discussions as to the rights of HFFA members, should the Council enter into a cooperative agreement with RCF.

ANALYSIS AND RECOMMENDATIONS

The factfinding panel was asked to address both the impact on the HFFA bargaining unit if the City decides to outsource its fire services and close the Hemet Fire Department and what a successor MOU would contain if outsourcing does not take place. This report will first address the impact and effect on the HFFA bargaining unit if outsourcing occurs and secondly, will address a successor MOU if outsourcing does not occur.

The rights of individuals fall into three general categories: (1) employees who transfer to RCF, (2) employees who retire and (3) employees who do not transfer to RCF Services. While there are issues that affect each of the three categories, each category will be treated as a lone entity and each contractual issue that affects that type of employee will be addressed under the category.

FACTFINDING PANELS FINDINGS AND RECOMMENDATIONS

I. EMPLOYEES WHO TRANSFER TO RIVERSIDE COUNTY/CAL FIRE SERVICES:

1. Employee will receive 100% of cash out accrued vacation.
2. 66 2/3% of sick leave transferred to RCF and 33 1/3% of sick leave paid at the current rate of pay.
3. No severance pay.
4. Full payment of Retiree Medical at age 50 for those employees who have 15 or more years of service, once they are retired from RCF.
5. Employees who transition to RCF will not be Y-rated and will not receive compensation for such a rating from the City.
6. Employees, who transition to RCF, while on probation, will be required to serve one year of probation with their new employer.

7. The State Civil Service Commission will determine classification and employees will transfer at regular rank and not at their acting rank.
8. The City will enter into discussions with RCF vices to attempt to allow HFFA members to remain in their Hemet assignment.
9. The City shall implement its paramedic program to obtain full accreditation for those employees who are currently certified paramedics.
10. The City will pay each HFFA member a sum of \$750 as a uniform allowance for use with RCF.
11. All other non-economic benefits listed in the City's Last Best and Final Offer, for which there is no dispute, shall be implemented.
12. The City will make every effort to work with RCF to gain employment and paramedic training for those employees not currently credentialed.

II. EMPLOYEES WHO RETIRE:

1. Employee will receive 100% of cash out accrued vacation.
2. Employees will receive 75% of their sick leave paid at their current rate of pay.
3. No severance pay.
4. Retirees who retire prior to the effective date of the transfer of service will receive retiree medical coverage per the Medical Retirement Policy.

III. EMPLOYEES WHO DO NOT TRANSFER TO RIVERSIDE COUNTY/CAL FIRE SERVICES:

1. Employee will receive 100% of cash out accrued vacation.
2. Employees will receive 75% for their sick leave paid at current rate of pay.
3. One month severance pay for each three years of service (i.e., 0 – 3 years = one month, 3 - 6 years = two months, 6 – 9 years = three months, etc.)

FACTFINDING PANELS FINDINGS AND RECOMMENDATIONS
REGARDING A SUCCESSOR MOU

Term:

1. Five year agreement, effective November 1, 2013 through October 31, 2018.

Salary:

1. There shall be no across the board base salary increase during the term of this agreement.
2. Either party may reopen on the issue of base salary 2 times during the term of the agreement, provided, however any modifications may only be achieved by agreement of the parties (no unilateral imposition, fact finding or impasse).

Retirement:

1. Effective the first full pay period following ratification, each unit member shall pay 5% of the employer's contribution to CalPERS per G.C. section 20516(a).
2. The total employee contribution for retirement shall be 14%.

Paramedic:

1. In the event the City implements a paramedic program during the terms of the agreement, the differential paid to paramedics shall be 5%.

Insurance:

1. During the term of the agreement, the City's contributions towards employees' insurance benefits shall be as set forth in the existing agreement.
2. In the event the City provides a greater contribution towards the insurance benefits of another employee organization, during the term of the agreement, HFA bargaining unit members shall be provided such greater contributions(s).

Vacation:

1. The new vacation policy will be based on an average daily basis (i.e., average of 2 vacation leaves per shift).

All Other Issues:

1. All other existing wages, hours and other terms and conditions of employment shall remain in full force and effect, unless subsequently modified in writing by the parties.

CONCLUSION

3548.3. Findings of fact and recommendation of terms of settlement; submission; costs:

(a) If the dispute is not settled within 30 days after the appointment of the panel, or, upon agreement by both parties, within a longer period, the panel shall make findings of fact and recommend terms of settlement, in which recommendations shall be advisory only. Any findings of fact and recommended terms of settlement shall be submitted in writing to the parties privately before they are made public. The public school employer shall make such findings and recommendations public within 10 days after their receipt.

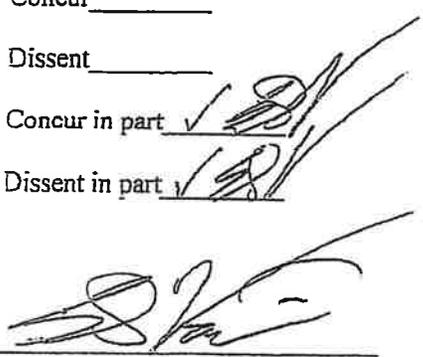
This report regarding the legal and jurisdictional requirement of Government Code 3548 et. seq, as referenced above, has been met. This Factfinding proceeding was concluded as required by law within the thirty (30) day requirement of the law but the parties had agreed to a timeline that exceeded the thirty (30) day requirement.

Concur _____

Dissent _____

Concur in part

Dissent in part


Eric S. Vail Esq.
City Panel Member

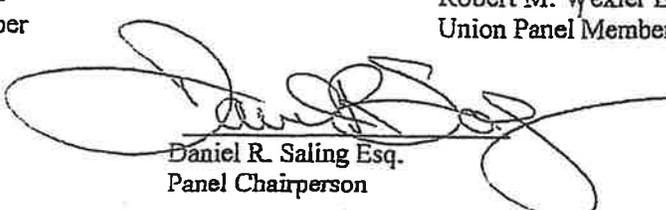
Concur _____

Dissent _____

Concur in part

Dissent in part


Robert M. Wexler Esq.
Union Panel Member


Daniel R. Saling Esq.
Panel Chairperson

Report Issued: August 25, 2014
Dana Point, California

Attachments:

The City and Union dissents are attached hereto and made a part of this factfinding report.

In the Matter of the Impasse Between

CITY OF HEMET,
Employer,

and

HEMET FIRE FIGHTERS
ASSOCIATION (HFFA),
Exclusive Representative

**CITY OF HEMET'S PARTIAL DISSENT
TO FACTFINDING REPORT**

PERB CASE NO. LA-IM-164-M

REPORT ISSUED
August 25, 2014

City Member: Eric S. Vail, Esq.
Burke, Williams & Sorensen, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071

All headings and page references are to the Final Fact Finding Report issued August 25, 2014.

Bargaining History

(Bottom of page 3) The Report should note that: (1) the City provided a copy of the draft Request for Proposal to the HFFA and solicited input and comment prior to issuing the RFP; and (2) that the City and HFFA met and conferred either informally or formally on August 28, 2013, November 4, 2013, December 9, 2013, January 13th and 22nd, 2014, February 5th, March 5th, 19th, and 31st, 2014, and April 21, 2014, during which they discussed and bargained all issues before the parties, including the City's potential decision to contract with RCF for services, the effects of such a decision on HFFA members, and, in the alternative, the terms of a successor MOU with HFFA.

(Middle of page 4) Although the parties attempted to resolve the impasse during the fact finding process, an agreement was not reached on a mediated package. Since the parties did not reach agreement on the mediated package, the parties return to their prior offers, which for the City is the City's LBFO.

Relevant Factors

(Bottom of page 6) The Report should note that the City bargained all issues between the parties to impasse, including the City's potential decision to contract with RCF for services. On April 23, 2014, the City rejected HFFA's third proposal for a successor MOU and issued its Last, Best, and Final Offer (LBFO) on the Decision and Effects of Contracting with RCF for Service. On May 8, 2014, the HFFA rejected the City's LBFO and issued its fourth proposal for a successor MOU and did not address the City's LBFO. On May 14, 2014, the City rejected HFFA's fourth proposal and declared impasse pursuant to Government Code section 3505.4. The reasons for declaring impasse are set forth in detail in City's Exhibit 15 "The City of Hemet's Declaration of Impasse in its Negotiations with the Hemet Fire Fighter's Association." Dated May 14, 2014.

City's General Impasse Position

(Top of page 7) The City's impasse position is set forth in more detail in City's Exhibit 15 "The City of Hemet's Declaration of Impasse in its Negotiations with the Hemet Fire Fighter's Association." Dated May 14, 2014.

Summary of Bargaining Parties Positions

(Top of page 8) The City would like to clarify that members of the HFFA do not have a "right" to be transferred from the Hemet Fire Department to RCF in the event that the City makes a decision to contract with RCF for services. Eligibility for employment with RCF is based on determinations made by the State Civil Service Commission.

Factfinding Panel's Findings and Recommendations

I. Employees Who Transfer to Riverside County Fire / Cal Fire Services:

2. Carryover of sick leave balance to RCF for employees transferring to RCF will be governed by Cal Fire's existing applicable rules, policies and procedures. Payout of sick leave, if any, for employees transferring to RCF will be governed by City's existing applicable rules, policies and procedures.

4. The City dissents to the Report's recommendation that full payment of retiree medical benefits be made to employees transferring to RCF at age 50 with 15 years of service. The City's applicable policies require that full retiree medical benefits be paid when the employee has satisfied three conditions: (i) achieved 15 years of service with the City; (ii) has reached age 50; and (iii) retires from the City. If the City decides to contract with RCF, under the circumstances presented, certain individuals may not meet all three qualifications at the time they cease to be City employees and therefore would not remain eligible under the City's applicable policies. The City argues that such employees do not have a vested right to retiree medical benefits under the applicable policies unless all three conditions are satisfied.

8. The City reserves the right to have its legislative body determine the extent to which it is appropriate for the City to negotiate this recommendation with RCF.

9. The City reserves the right to have its legislative body determine the extent to which it is appropriate for the City to negotiate this recommendation with RCF.

10. The City dissents to the Report's recommendation to pay each transferring employee an initial uniform allowance of \$750. The City's position articulated in its LBFO is equitable.

12. The City reserves the right to have its legislative body determine the extent to which it is appropriate for the City to negotiate this recommendation with RCF.

II. Employees Who Retire:

2. Payout of sick leave, if any, for employees transferring to RCF will be governed by City's existing applicable rules, policies and procedures.

4. The City's applicable policies require that full retiree medical benefits be paid when the employee has satisfied three conditions: (i) achieved 15 years of service with the City; (ii) has reached age 50; and (iii) retires from the City. Members of HFFA who meet the requirements of the City's applicable policies and who retire, as defined in CalPERS regulations, while still an employee of the City, would receive the retiree medical benefit for which they qualify under the City's applicable policies.

III. Employees Who Do Not Transfer to Riverside County / Cal Fire:

2. Payout of sick leave, if any, for employees transferring to RCF will be governed by City's existing applicable rules, policies and procedures.

3. The City dissents to the Report's recommendation to pay each non-transferring, non-retiring employee a severance payment as stated in the Report. The City's position articulated in its LBFO is equitable.

Respectfully Submitted

By: Eric S. Vail

Eric S. Vail
City of Hemet
Representative of Hemet on the Factfinding

Panel

In the Matter of the Impasse Between)	
)	
CITY OF HEMET)	OPINION OF FACTFINDING
)	PANEL MEMBER
Employer)	ROBERT M. WEXLER
)	CONCURRING IN PART AND
)	DISSENTING IN PART
)	
- and-)	
)	PERB CASE NO. LA-IM-164-M
)	
HEMET FIRE FIGHTERS)	
ASSOCIATION, (HFFA))	
)	
)	
Exclusive Representative)	
_____)	

I concur in part and dissent in part with the majority opinion.

The most significant and fundamental point of dissention is with the majority's refusal to address whether or not the City should subcontract out its fire services or maintain an independent City of Hemet Fire Department, as it has since 1908. The majority held this question is not the type that can be addressed by the provisions of Government Code Subsection 3548.2 (b) and, therefore, the factfinding panel is without authority to recommend whether Hemet fire services should or should not be subcontracted out to Riverside County/CalFire. I disagree.

The duty and obligation of the factfinding panel is to meet with the parties and ascertain their positions with regard to *all* outstanding issues over which they bargained to impasse and, through investigation and/or hearing, make findings of fact and render proposed terms of resolution/settlement. In the instant matter the parties bargained exhaustively over the fundamental decision whether the City should outsource fire protection services to Riverside County/CalFire. The parties consistently exchanged proposals throughout the duration of bargaining; HFFA's calling primarily for a successor contract with its members providing firefighting services and the City's dealing primarily with the impacts and effects should the City outsource firefighting services. The bargaining meetings themselves focused almost exclusively on issues germane to which entity was best able to

provide firefighting services, with considerable time and efforts spent analyzing the CalFire and HFFA competing proposals for service, participating in the CityGate study and tracking the City's fire suppression needs. No agreement was ultimately reached.

Following the City's declaration of impasse, the parties exchanged last best and final proposals -- HFFA's for a 5 years successor agreement that contemplated its members as the provider of firefighting services and City's effectively seeking outsourcing of services by offering proposals that dealt with the impacts and effects of such outsourcing, only.

Again at the 3-day factfinding hearing the City and HFFA, both given an unfettered ability to present evidence on whatever issues each wanted, focused exclusively on the issue whether HFFA or CalFire should provide firefighting services. This, I believe, was not in error but rather the product of two diametrically opposite positions, each with competing proposals, whose point of divergence is the basic question of whether the citizens of Hemet are best served by having firefighting services provided by HFFA or an outside contractor. For the panel to make findings of fact and a recommendation that ignores this fundamental question is side-stepping the very issue over which the parties were at an impasse and for which the factfinding panel was selected.

Furthermore, the criterion in Section 3505.4(d) specifically contemplates the factfinding panel addressing the issue of whether the City should outsource firefighting services. Subsection (3) provides for the panel to consider, weigh and be guided by "*the interests and welfare of the public* and the financial ability of the public agency." There is no question more basic in assessing the *interests* and *welfare* of the when it comes to firefighting services than which entity can best provide such services. Moreover, the financial ability of the City of Hemet to pay for firefighting services, all parties agree, is a significant issue that is directly impacted by the decision whether to outsource or keep services in-house where greater control can be exerted.

For these reasons above I dissent from this part of the decision and reach the conclusion that HFFA should provide firefighting services within the City, for the following reasons:

- **5- Years of Costs Control Favors Keeping Firefighting Services in House:**
HFFA's proposal calls for a 5% reduction in employee compensation and largely guarantees that labor costs will be fixed at that lower amount for 5 years by offering to pay 5% of the employer costs of retirement with no corresponding base salary increases over the proposed term of the agreement. HFFA has also proposed there be

no increases to employees' medical, dental and vision insurance benefits. CalFire, in contrast, offers no guarantee regarding labor costs. Its proposal passes all cost increase on to the residents of Hemet and provides CalFire can unilaterally reduce service levels if the City does not agree to increased costs within thirty (30) days. In a period of one week alone during the negotiations process, CalFire increased its bid by nearly \$500,000.00. Moreover, CalFire is presently in negotiations with its firefighter union and its charges to the residents of Hemet will likely increase again shortly due to base salary increases now being negotiated with CalFire.

- **HFFA Can Provide Better Service, Lower Cost:** The City's own accounting shows HFFA's proposal will cost roughly \$400,000.00 per year less on an on-going basis than CalFire's proposal. Moreover, only HFFA's proposal includes a dedicated fire chief, three dedicated battalion chiefs, a full-time Hemet-focused truck company and retains the dedicated employees that make up the Hemet Fire Department, which has served the community since 1908. CalFire's proposal offers none of these benefits.
- **HFFA Proposal Better Insures No Decrease in Service Levels Versus:** HFFA's proposal helps insure that the level of service is not decreased by generally fixing labor costs for 5 years and the City retains local control over its costs, levels of service, etc. Conversely, CalFire's proposal calls for the City to blindly agree to whatever charges CalFire passes through, or face having the County unilaterally select which services to reduce or cut altogether. Hemet residents stand a much better chance of maintaining a defined level of services by retaining full control over that level of service and the corresponding costs.
- **HFFA Proposal Provides Better Local Control:** Under HFFA's proposal, Hemet's own elected officials and fire department management personnel make the important decisions that directly affect the delivery of fire service to the community. CalFire's proposal vests that authority with County officials, who are charged with balancing the interests of San Jacinto, West San Jacinto, Sage, Winchester, Little Lake, Valla Vista and the other State/County lands CalFire protects with those of Hemet's residents. The penultimate issue is about providing the best level of service to Hemet residents and only HFFA's proposal focuses on that singular issue.

- **HFFA's Proposal is Superior Because it Provides Residents With a Full-Time, Dedicated Fire Chief:** By retaining the Hemet Fire Department citizens will benefit from a full-time, dedicated Fire Chief uniquely concerned with the issues affecting Hemet residents. The Hemet community is large enough and unique enough to merit a Fire Chief whose sole focus is Hemet, not the myriad of surrounding jurisdictions with their individual issues, attributes and focuses. Hemet's calls for service rival those of cities twice as large and a full time fire chief is needed to adequately deliver the highest level of service to the community.
- **HFFA's Proposal is Superior Because it Provides Residents With Three Full-Time, Dedicated Battalion Chiefs:** CalFire's proposal calls for the battalion chiefs to share their attention among San Jacinto [Station #25], West San Jacinto [Station #78], Little Lake [Station #26], Sage [Station #28], Winchester [Station #34], Valla Vista [Station #72], and Hemet Stations [Stations #1, #2, #3, #4]. Only the HFFA proposal calls for three dedicated, full-time battalion chiefs, with one on each shift. Hemet residents need a dedicated battalion chief to supervise just the calls from Hemet's 4 stations, rather than one that also supervises the calls from these 6 other territories, many of which are miles away and could cause the battalion chief to have a greatly elevated response time.
- **Truck Company dedicated to City of Hemet:** Only HFFA's proposal includes a truck company dedicated to serving Hemet. CalFire's proposal calls for one truck company to be shared by San Jacinto, West San Jacinto, Sage, Winchester, Little Lake, Valla Vista, Hemet and other areas CalFire currently protects, with Hemet residents picking up 50% of the cost. Moreover, CalFire's proposal calls for the City to maintain liability for the truck even though it will operate outside the City half the time. Hemet's call volume is such that its citizen's need and deserve a dedicated, Hemet-focused truck company, which is provided only through HFFA's proposal.
- **Quicker response times:** The County's dispatch system delays response times. Under CalFire's proposal, 911 calls are answered first by Hemet Police Department's dispatchers, who then transfer the caller to a centralized dispatch center where callers request for service wait on queue until handled by an available crew. Under HFFA's proposal, Hemet's dispatchers field calls directly and dispatch emergency responders promptly without need for callers to be transferred or placed on queue. Hemet's

residents' interests and welfare are best served by having their life or death emergencies handled as quickly as possible.

- **CalFire's Proposal Calls for Wasted Resources on Partial EMD:** CalFire's proposal calls for Hemet residents to pay for EMD dispatching, which the City's consultant (CityGate) has said is largely a waste. It concluded EMD "would result in all new costs, with no significant cost off-sets... [And] it would not place a high priority on securing EMD..." More importantly, Citygate could identify not benefits to EMD given the County's manner of operation. Under HFFA's proposal all medic calls would continue to have trained, experienced personnel sent to the scene of every emergency and Hemet's scarce resources would be wasted as under CalFire's proposal.
- **HFFA's Proposal Keeps Valuable Equipment The Property of Hemet:** CalFire's proposal calls for the City to hand over valuable equipment and trucks paid for by the residents of Hemet, without any assurances that equipment or vehicles would be used in the City. Further, CalFire would then charge the City for the maintenance and replacement of that equipment and those vehicles; despite the fact they have useful remaining life expectancy. In effect CalFire Charge Hemet residents to use the equipment Hemet purchased and gave over to the County free of charge. HFFA's proposal would see Hemet residents benefit from the equipment and vehicles they purchased and that equipment would be used within the City.
- **HFFA's Proposal Benefits The City by Keeping Hemet-Dedicated Employees:** The testimony universally revealed that HFFA personnel have done a remarkable job, with limited resources, under difficult circumstances, for many years as the City struggled financially. Only under HFFA's proposal is the community assured that its existing firefighters will continue to serve the community and there will remain a Hemet-focused workforce. HFFA's members have consistently done "more with less" than any other agency, yet the employees remain focused on the singular goal of maximizing the safety of all residents of Hemet. Under CalFire's proposal Hemet will be merely an assignment, not a career-long destination and it has not guaranteed employment to a single existing firefighter. Hemet are best protected by a consistent group of dedicated employees, not employees who work in Hemet for a few months or until they get promoted and move on. HFFA's proposal assures that a continuous and dedicated core of employees is present to deliver fire related services.

I also dissent from the majority opinion in the following 2 respects:

1. I would award severance to HFFA members that retire rather than transition, in an amount equal to that provided to HFFA members that are left unemployed. The fact an employee retires does not mean he or she did so according to the timetable he or she had planned. Many of these prospective retirees are leaving public service years early, costing them years of service credit and corresponding increases in their pensions. For this reason I would award them severance, as well.
2. For employees that transition to CalFire, I would Y-rate them at their current base hourly rates of pay if is higher than that of CalFire for a period of 60 months.

Respectfully Submitted,

Robert M. Wexler

PROOF OF SERVICE

I declare that I am a resident or employed in the County of Orange, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is 33192 Ocean Hill Drive, Dana Point, California 92629.

On August 25, 2014, I served the Factfinding Panel's Finding and Recommendations regarding Case No. LA-IM—133-M on the parties listed below by

placing a true copy thereof enclosed in a sealed envelope for collection and delivery by the United States Postal Services or private delivery service following ordinary business practices with postage or other cost prepaid.

personal delivery

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I declare under penalty of perjury that the forgoing is true and correct and that this declaration was executed on August 25, 2014 at Dana Point, California.

Kathy B. Saling

(Type or print name)

Kathy B. Saling

(Signature)