

STAFF REPORT

DATE: December 17, 2013

TO: City Council

FROM: Tim Yeung, Lead City Negotiator (Renne, Sloan, Holtzman, Sakai LLP)
Steve Pinkerton, City Manager

SUBJECT: Imposition of Terms on Davis Professional Firefighters (Local 3494)

Recommendation

Staff recommends Council approval of the attached resolution imposing terms and conditions of employment on the Davis Professional Firefighters (Local 3494) pursuant to Government Code Section 3505.7 with an effective date of December 23, 2013.

Fiscal Impact

Imposing the recommended terms and conditions of employment will bring the costs of the Davis Professional Firefighters union in line with the approved amount budgeted for fiscal year 2013/14. It costs the City approximately \$28,000 per month each month an agreement is not reached with the Davis Professional Firefighters Local 3494.

Background and Analysis

The City's agreement with the Davis Professional Firefighters expired on June 30, 2012. Bargaining for a new contract began in February 2012. Since then, several other bargaining groups - representing a majority of the City's employees - have reached agreement on contracts with the City containing much-needed economic concessions. On November 19, 2013, the City imposed its last, best, final offer on the Davis City Employees Association. The Davis Professional Firefighters is the final labor organization without a contract or imposed terms and conditions of employment.

Since the beginning of these negotiations, the City communicated its need for long-term structural budget changes in compensation costs, particularly pension and medical costs. The City's negotiation team conveyed the expected increases in CalPERS retirement contributions and in the City's retiree medical liability. In addition, the City's budget deficits have been communicated to Davis Professional Firefighters at the bargaining table and through numerous public meetings, reports, and budget documents. In response, Davis Professional Firefighters expressed concern that the structural changes were too severe economically. The Davis Professional Firefighters also initially expressed a fundamental opposition to a two-tier retiree health benefits plan where new employees would receive different benefits from current employees.

Over the course of negotiations, both sides moved and came close to agreement on several key issues. However, the parties could not bridge some significant economic issues. For example, while the Davis Professional Firefighters was willing to make some changes to retiree health benefits, the changes were minimal and fell far short of the savings necessary to fund the salary

increases that were contingent on changes to retiree health benefits. On April 18, 2013, the City sent its written declaration of impasse since it was clear at that point that further negotiations would be futile. After completing a round of mediation on June 11, 2013, Davis Professional Firefighters submitted its request for factfinding to PERB pursuant to Government Code section 3505.4 on June 12, 2013.

On June 20, 2013, PERB appointed Charles Askin as the factfinder for the bargaining dispute between the parties. Although the law requiring factfinding sets forth a thirty-day timeline for the issuance of recommendations after a panel is appointed, the City agreed to a longer timeline. Two days of factfinding were held on August 14 and 16, 2013. Following closing briefing, the Mr. Askin submitted the written "Factfinder's Report and Recommendations" to the parties on November 26, 2013.

The factfinder recommended many, if not most, of the proposals submitted by the City. Overall, the City is pleased that the factfinder agreed with the City's proposed structural changes. However, the factfinder did not adopt all of the City's proposals. For example, the factfinder recommended a limited approach to health insurance cost sharing and also recommended an additional salary increase not proposed by the City.

Significantly, the factfinder recommended the adoption of the City's retiree health proposal. This proposal would reduce retiree health benefits for new employees, resulting in an immediate reduction of the City's Annual Required Contribution (ARC) towards its retiree health costs. Currently, the ARC is an additional 20% of the City's payroll. Because of the immediate savings to the ARC, the City was able to offer other employee groups salary increase contingent upon the retiree health changes. The factfinder recommended similar salary increases for the Davis Professional Firefighters if it accepts the City's retiree health proposal.

Unfortunately, the Davis Professional Firefighters has indicated that it is unwilling to accept the City's proposal on retiree health benefits. Without acceptance of that proposal, the City cannot fund the salary increases offered to the Davis Professional Firefighters. And without the salary increases, the parties remain far apart in negotiations. Notably, the City cannot impose its proposal on retiree health benefits because of concerns that such benefits may be vested. However, the Davis Professional Firefighters is unwilling to accept the remainder of the City's proposals without some salary increases; and again, those salary increases are contingent upon the retiree health proposal. Accordingly, the parties remain at impasse.

Given the continuing impasse, Staff is recommending that the Council adopt the attached resolution implementing terms and conditions of employment on the Davis Professional Firefighters consistent with the City's proposals at impasse. Government Code section 3505.7 authorizes the City to implement terms and conditions of employment. Section 3505.7 provides:

After any applicable mediation and factfinding procedures have been exhausted, but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5, a public agency that is not required to proceed to interest arbitration may, after holding a public hearing regarding the impasse, implement its last, best, and final offer, but shall not implement a Memorandum of Understanding. The unilateral implementation of a public agency's last, best, and final offer shall not deprive a recognized employee organization

of the right each year to meet and confer on -matters within the scope of representation, whether or not those matters are included in the unilateral implementation, prior to the adoption by the public agency of its annual budget, or as otherwise required by law.

Also pertinent here, Section XVII 2(d) (4) of the City's employee relations resolution states:

The fact-finder(s) shall make written findings of fact and recommendations for the resolution of the unresolved issues, which shall be presented in terms of the standards specified in (3) above. The fact-finder or chairman of the fact-finding panel shall serve such findings and recommendations on the Employee Relations Officer and the designated representative of the recognized employee organization. If these parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, and in no event later than ten (10) days prior to the final date set by law for fixing of the tax rate, the fact-finder or the chairman of the factfinding panel shall make them public by submitting them to the City Clerk for consideration by the City Council in connection with the Council's legislative determination of the issues.

Due to concerns about the City's authority to impose proposed changes to the retiree medical benefit, staff recommends Council impose only what is listed Attachment A. This imposition will not and cannot establish a new contract, but rather, will change some of the terms and conditions of employment under which the parties are currently operating. The City will, of course, then conduct new negotiations with the Davis Professional Firefighters to try to reach agreement on a new Memorandum of Understanding for the following year or years.

Attachments

- A. Elements of Terms and Conditions of Employment
- B. Terms and Conditions of Employment presented to the Davis Professional Firefighters
- C. Resolution to Impose the Terms and Conditions of Employment with the Davis Professional Firefighters
- D. Fact Finding Report (Dated November 26, 2013)

ATTACHMENT A

ELEMENTS OF TERMS AND CONDITIONS OF EMPLOYMENT FOR PROPOSED IMPOSITION

- **COMPENSATION**
 - Eliminate compensation study language
 - Uniform allowance reduced from \$2,000.00 to \$1,000.00. The City has been improperly adding 9% to all Uniform Allowance pay, this practice will cease effective immediately

- **RETIREMENT**
 - 3% salary reduction in lieu of additional 3% employee contribution towards retirement costs.

- **HOURS OF WORK, OVERTIME AND SCHEDULING**
 -
 - Conform overtime to FLSA: Employees will be paid hourly only for hours worked. Only hours worked by the employee shall count for overtime purposes.

- **BENEFITS**
 - Cap at \$500 the amount of Section B City §125 Benefit Contribution that all employees may take as cash in lieu of taking benefits. \$500 Cap effective immediately for all new employees.
 - Three Year Phase-in, in four increments, of above for current employees according to timeline below:
 - Effective November 1, 2012 the cap is reduced to \$1200.00
 - Effective July 1, 2013 the cap is reduced to \$1000.00
 - Effective July 1, 2014 the cap is reduced to \$750.00
 - Effective June 30, 2015 the cap is reduced to \$500.00
 - Apply a cost-sharing model for health benefits contribution (City first 3%, employee next 3%, 50/50 above 6%), through all years of contract. This formula would be applied retroactively to 2009 rates solely for purpose of establishing a base rate for new contract. No retroactive payments.

City → Fire
10/24/12

**2012
City of Davis Negotiations
Fire**

Date: 10/24/12

Issue: **Multiple Economic**

Proposed By: **City**

CITY'S PROPOSAL FOR ALTERNATIVE ONE YEAR CONTRACT

- **DURATION OF CONTRACT**
 - Contract Term: November 1, 2012 – October 31, 2013.

- **COMPENSATION**
 - Eliminate compensation study language
 - Salary: 3% salary decrease off current (July 1, 2012) hour rate, effective December 1, 2012. If agreement is reached after December 1, 2012, the percentage of salary decrease will be increased until June 30, 2013 in an amount sufficient to obtain the equivalent savings had an agreement been reached on December 1, 2012.
 - Uniform allowance reduced from \$2,000.00 to \$1,000.00. The City has been improperly adding 9% to all Uniform Allowance pay, this practice will cease effective immediately

- **RETIREMENT**
 - Employee agreement to pick up 3% of current employer cost. Or take equivalent salary reduction

- **HOURS OF WORK, OVERTIME AND SCHEDULING**
 - Eliminate 'prepaid' overtime.
 - Conform overtime to FLSA: Employees will be paid hourly only hours worked shall count as hours worked by the employee for overtime purposes.

- **BENEFITS**
 - Cap at \$500 the amount of Section B City §125 Benefit Contribution that all employees may take as cash in lieu of taking benefits. \$500 Cap effective immediately for all new employees.
 - Three Year Phase-in, in four increments, of above for current employees according to timeline below:
 - Effective November 1, 2012 the cap is reduced to \$1200.00
 - Effective July 1, 2013 the cap is reduced to \$1000.00
 - Effective July 1, 2014 the cap is reduced to \$750.00
 - Effective June 30, 2015 the cap is reduced to \$500.00
 - Apply a cost-sharing model for health benefits contribution (City first 3%, employee next 3%, 50/50 above 6%), through all years of contract. This formula would be applied retroactively to 2009 rates solely for purpose of establishing a base rate for new contract. No retroactive payments.
 - Those retiring after 12/31/12: City pays up to the Supplemented/Managed Medicare Monthly Rate for employee and one dependent set to CalPERS Bay Area Kaiser rate for coverage elected instead of up to non-Medicare family rate. Effective January 1, 2013, the amount paid by the City will be a maximum of \$576.74. Any unused portion will not be returned to the employee. City will eliminate vesting period contract language.

TA by City: _____ Date: _____

TA by DCEA: _____ Date: _____

**2012
City of Davis Negotiations
Fire**

Date: 2/8/13
Issue: **Multiple Economic**
Proposed By: **City**

• **DURATION OF CONTRACT**

- ~~Contract Term: November 1, 2012–March 1, 2013– October 31–December 31, 2015.~~

• **COMPENSATION**

- Eliminate compensation study language
- Salary: 3% salary decrease off current (July 1, 2012) hour rate, effective ~~December 1, 2013–through December 31, 2015.~~ If agreement is reached after ~~March~~ December 1, 2013, the percentage of salary decrease will be increased until June 30, 2013 in an amount sufficient to obtain the equivalent savings had an agreement been reached on ~~December–March 1, 2013.~~
- Uniform allowance reduced from \$2,000.00 to \$1,000.00. The City has been improperly adding 9% to all Uniform Allowance pay, this practice will cease effective immediately

• **RETIREMENT**

- Employee agreement to pick up 3% of current employer cost. Or take equivalent salary reduction

• **HOURS OF WORK, OVERTIME AND SCHEDULING**

- Eliminate 'prepaid' overtime.
- Conform overtime to FLSA: Employees will be paid hourly only hours worked shall count as hours worked by the employee for overtime purposes.

• **HEALTH INSURANCE BENEFITS**

- Cap at \$500 the amount of Section B City §125 Benefit Contribution that all employees may take as cash in lieu of taking benefits. \$500 Cap effective immediately for all new employees.
- A lower "cash out" cap shall apply to new employees hired after the effective date of this agreement. If the employee uses any portion of the health and/or dental insurance benefit, then the difference between the actual premium paid on behalf of the employee and \$500 can be cashed-out each month, provided a proper election has been made. If the employee has outside health/dental insurance coverage, such as through a spouse, domestic partner or alternative plan, the employee can cash-out a maximum of \$500 per month, provided a proper election has been made. For example, if an employee elects a health or dental benefit of \$150 then the maximum cash out amount would be \$350. If an employee elects benefits over the \$500 maximum amount, then the employee would receive no cash out benefit.

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TA by DCEA: _____ Date: _____

**2012
City of Davis Negotiations
Fire**

- o Three Year Phase-in, in four increments, of above for current employees according to timeline below:
 - Effective ~~March 1~~~~November 1, 2013~~ the cap is reduced to \$1200.00
 - Effective ~~January 1~~~~July 1, 2014~~ the cap is reduced to \$1000.00
 - Effective ~~July~~~~January 1, 2015~~ the cap is reduced to \$750.00
 - Effective ~~June~~~~December 31, 2015~~ the cap is reduced to \$500.00
- o Apply a cost-sharing model for health benefits contribution (City first 3%, employee next 3%, 50/50 above 6%), through all years of contract. This formula would be applied retroactively to 2009 rates solely for purpose of establishing a base rate for new contract. No retroactive payments.
- o ~~Those retiring after 12/31/12: City pays up to the Supplemented/Managed Medicare Monthly Rate for employee and one dependent set to CalPERS Bay Area Kaiser rate for coverage elected instead of up to non-Medicare family rate. Effective January 1, 2013, the amount paid by the City will be a maximum of \$576.74. Any unused portion will not be returned to the employee. City will eliminate vesting period contract language.~~

o **RETIREE HEALTH INSURANCE BENEFITS**

OPTION 1

- o For employees who retire from the City on or before December 31, 2015, the City shall continue to contribute to eligible retirees an amount equal to 100% of the premium for the group health insurance plan available from Kaiser-Bay Area for a retired employee and two or more dependents sponsored by the CITY through CalPERS.
- o For employees who retire after December 31, 2015, but on or before December 31, 2025, the City shall contribute to eligible retirees an amount equal to 100% of the premium for the group health insurance plan available from Kaiser-Bay Area for a retired employee and two or more dependents sponsored by the CITY through CalPERS. Once the employee has transferred to a Medicare plan, the City will pay the Medicare Supplemented/Managed Medicare monthly rate based on the CalPERS Kaiser Bay Area rate for employee plus two or more dependents.
- o For employees hired on or after January 1, 2013, the City shall contribute to eligible retirees an amount equal to the Medicare Supplemented/Managed Medicare monthly rate based on the CalPERS Kaiser Bay Area rate for employee plus one dependent based on status.

o OPTION 2

- o All employees shall contribute an equal percentage of salary towards the retiree medical unfunded liability sufficient to keep the City's annual required contribution (ARC) for the fire fighter bargaining unit at 15%.

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TA by DCEA: _____ Date: _____

2012
City of Davis Negotiations
Fire

This percentage shall be updated annually based on an actuarial valuation.

- For example, based on the City's most recent actuarial valuation of retiree health benefits, ARC for the fire fighter bargaining unit is 20.2% (6.6% is the normal cost; 13.6% is the unfunded actuarial accrued liability). Therefore, when this contract takes effect, employees will contribute 5.2% of salary towards the retiree medical unfunded liability for the fire fighter bargaining unit. This percentage will be undated once the City receives its next annual actuarial report.

TA by City: _____ Date: _____
TA by DCEA: _____ Date: _____

RESOLUTION NO. 13-XXX, SERIES 2013

**RESOLUTION TO IMPOSE
TERMS AND CONDITIONS OF EMPLOYMENT WITH
DAVIS PROFESSIONAL FIREFIGHTERS LOCAL 3494**

WHEREAS, the City of Davis and the Davis Professional Firefighters Local 3494 have a Memorandum of Understanding ("MOU") governing the wages, hours and terms and conditions of work for members of the Professional Firefighters Local 3494, and

WHEREAS, this MOU expired June 30, 2012; and

WHEREAS, the negotiations reached impasse in April 2013; and

WHEREAS, the impasse meeting was unsuccessful in bringing the parties to agreement; and

WHEREAS, a round of mediation, held on June 11, 2013, was unsuccessful in bringing the parties to agreement; and

WHEREAS, Professional Firefighters Local 3494 requested that the bargaining dispute be submitted to factfinding, which was held on August 14 and 16, 2013; and

WHEREAS, the Factfinder submitted his advisory "Factfinder's Report and Recommendations" to the parties on November 26, 2013; and

WHEREAS, the Factfinder's recommendations were received by the City on December 2, 2013 and made available to the public as of December 5, 2013; and

WHEREAS, following factfinding there has been no break in the parties; impasse; and

WHEREAS, the City Council has now held a public hearing and considered the Factfinder's Recommendations dated November 26, 2013 in order to make a legislative determination of the issues; and

WHEREAS, the City Council rejects the Factfinding Panel's recommendations as insufficient to address the structural changes necessary.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Davis hereby approves the following:

SECTION 1: The City of Davis hereby imposes the elements of its last, best, and final offer, communicated to Davis Professional Firefighters Local 3494 in late 2012 (listed below), insofar as it alters the terms of the previous MOU. To the extent the last, best, and final offer does not alter the terms of the previous MOU, the unaltered terms shall remain in effect.

- **COMPENSATION**
 - Eliminate compensation study language
 - Uniform allowance reduced from \$2,000.00 to \$1,000.00. The City has been improperly adding 9% to all Uniform Allowance pay, this practice will cease effective immediately

- **RETIREMENT**
 - 3% salary reduction in lieu of additional 3% employee contribution towards retirement costs.

- **HOURS OF WORK, OVERTIME AND SCHEDULING**
 -
 - Conform overtime to FLSA: Employees will be paid hourly only for hours worked. Only hours worked by the employee shall count for overtime purposes.

- **BENEFITS**
 - Cap at \$500 the amount of Section B City §125 Benefit Contribution that all employees may take as cash in lieu of taking benefits. \$500 Cap effective immediately for all new employees.
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 - Effective November 1, 2012 the cap is reduced to \$1200.00
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 - Effective July 1, 2014 the cap is reduced to \$750.00
 - Effective June 30, 2015 the cap is reduced to \$500.00
 - Apply a cost-sharing model for health benefits contribution (City first 3%, employee next 3%, 50/50 above 6%), through all years of contract. This formula would be applied retroactively to 2009 rates solely for purpose of establishing a base rate for new contract. No retroactive payments.

SECTION 2: The City Council hereby resolves and affirms that the imposition of this last, best, and final offer in no way signals any unwillingness on the part of the City to meet and confer with Davis Professional Firefighters regarding a successor agreement. The City Council hereby directs City staff to initiate a new meet and confer process as soon as possible with the goal of reaching an equitable long-term agreement consistent with City budgetary restrictions and long-term goals.

PASSED AND ADOPTED by the City Council of the City of Davis this 17th day of December, 2013, by the following vote:

AYES:
NOES:

Joseph F. Krovoza
Mayor

ATTEST:

Zoe S. Mirabile, CMC
City Clerk

1 **CHARLES A. ASKIN**
2 **31 LOMA VISTA**
3 **WALNUT CREEK, CA 94597**

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IN FACTFINDING PROCEEDINGS

9

PURSUANT TO THE MEYERS-MILLIAS-BROWN ACT

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In the Matter of a Controversy

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Between

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CITY OF DAVIS,

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City

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and

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DAVIS FIREFIGHTERS LOCAL 3494,

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Union

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Involving bargaining impasse for successor
18 contract after June 30, 2012 contract expired.

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**FACTFINDER'S REPORT AND
RECOMMENDATIONS
PERB Case No. SA-IM-129-M**

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This is a factfinding proceeding conducted pursuant to the Meyers-Millias-Brown Act,
21 Government Code § 3500 *et seq.* between the City of Davis (City) and and Firefighters Local 3494
22 (Union). On June 21, 2013, the parties notified the Public Employment Relations Board that they
23 had selected the undersigned Factfinder to serve as the sole Factfinder in this bargaining impasse.

24

A hearing was held in Davis, California, on August 14, 2013 and on August 16, 2013 in
25 Sacramento, California. During the course of the hearing, the parties were given full opportunity to
26 present relevant exhibits and explain their respective positions. Both parties submitted post-hearing
27 written briefs which were filed on October 18, 2013. The matter was deemed submitted upon the
28 Factfinder's receipt of the parties' briefs on October 18, 2013.

1 APPEARANCES:

2 On Behalf of the Union:

3 Gary M. Messing, Esq. and Jason H. Jasmine, Esq.
4 Carroll, Burdick & McDonough, LLP
5 980 9th Street, Suite 380
6 Sacramento, CA 95814

7 On Behalf of the City:

8 Timothy G. Yeung, Esq. and Ivan Delventhal, Esq.
9 Renne Sloan Holtzman Sakai, LLP
10 428 J Street, Suite 400
11 Sacramento, CA 95814

12 ***Background***

13 The City of Davis is a general law city with approximately 65,000 residents which is located
14 in a University-oriented community west of Sacramento County. The City has a Council-Manager
15 form of local government, with a five-member City Council, each of whom are elected on a citywide,
16 or at-large, basis. The City Manager is appointed by the City Council, and serves as the City's chief
17 administrator charged with implementing the policies adopted by the Council. The City employs
18 about 350 employees in seven different bargaining units, the largest of which (PASEA) is an
19 administrative and support unit with about 100 employees. All of the other units, including the
20 Davis Police Officers Association (DPOA), have negotiated current collective bargaining contracts,
21 except the Davis City Employees Association (DCEA) and the Union.

22 The City Council adopted what it refers to as Guiding Principles on Employee Compensation
23 and Goals for Labor Negotiations with all of its multiple employee-represented organizations, and
24 the City seeks multiple compensation concessions. Three key elements of the City's bargaining
25 objectives are 1) modification of the City's cafeteria health-plan "cash-out" provision for employees
26 with alternative health insurance coverage; 2) negotiation of larger employee contributions to their
27 retirement plan; and 3) reducing the City's long-term liability for retiree medical costs while still
28 providing for a progressive benefit. In nearly all of the other bargaining units, the City succeeded
in achieving a phased-in reduction (to \$500) of the amount employees may receive in cash in lieu
of health benefits, a cap on the City's contribution to the cafeteria plan, a sharing of the cost of
increased premiums between employees and the City, and a more affordable retiree benefit.

1 The Union represents some 36 employees in two classifications: firefighter and fire captain.
2 In February of 2012 – when there were 45 employees in the Firefighters unit – about two-thirds of
3 those employees lived within 36 miles of the City. Like most municipal (and other) employers, the
4 City has experienced more difficult economic difficulties since the onset of the “Great Recession”
5 that commenced in this country in the fall of 2008. For example, the City’s beginning unreserved
6 fund balance has dropped from more than \$8.5 million in FY 04/05 and FY 05/06 to about \$5
7 million in FY 10/11, 11/12, and 12/13. The City’s projected beginning unreserved fund balance for
8 FY 13/14 is projected to be even lower (less than \$3.5 million). The Union adduced evidence and
9 argues that the City’s financial condition is much better than the City’s “conservative” estimates.
10 In any case, there is no claim by the City of an inability to pay defense in this proceeding.

11 The last MOU between the City and the Union expired on June 30, 2012. The parties
12 commenced negotiations for a successor contract on February 2, 2012, and thereafter conducted 12
13 more bargaining sessions for almost 14 months (the last session occurred on March 29, 2013). On
14 April 18, 2013, the City sent a letter to the Union declaring that the parties were at impasse. The
15 parties met with an appointed mediator on one occasion on June 11, 2013, and the following day the
16 Union submitted a request for factfinding to PERB. By letter the same day, the City advised PERB
17 that it had no objection to the Union’s factfinding request. On June 20, 2013, the parties notified
18 PERB that they had selected the undersigned to serve as the sole Factfinder in this dispute.¹

19 **ISSUES IN DISPUTE**

- 20 1. Inclusion of Compensation Survey in Contract.
- 21 2. Cafeteria Cash Out Cap for Health Insurance Benefits.
- 22 3. Cost-Sharing of Increased Health Benefit Premiums.
- 23 4. Employees’ 3% Contribution to City’s Share of Pension Contribution.
- 24 5. Retiree Health Benefits.

25 _____
26 ¹ At hearing and again in its brief, the Union asserts that there is an issue as to whether a legal impasse has
27 occurred and requests that this issue also be addressed by the Factfinder. In view of the parties’ conduct – specifically,
28 the request by the Union for the appointment of a Factfinder and the City’s acquiescence to that request, and in the
circumstances of the parties’ mutual selection of the undersigned to serve as the Factfinder, it is concluded that the
parties’ are best served by a Report that is focused on the bargaining issues in dispute.

- 1 6. Modification of Uniform Allowance Benefit.
- 2 7. Overtime – Conformance with FLSA (Only hours worked for overtime).²
- 3 8. Salary compensation.
- 4 9. Arbitration clauses for grievances (binding) and discipline (advisory).
- 5 10. Duration of contract.³

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10 ² At hearing, the City made a single-sentence presentation in support of a contract proposal for calculating overtime pay entitlement based on “productive” hours, i.e., hours worked, and not counting sick leave and vacation hours towards overtime (Tr. 88). The Union did not assert any confusion or objection to this proposal at the hearing when it was presented, and thereafter did not present any formal response or counter-argument to this proposal at the hearing. Based on these facts, this issue is deemed to be properly before the Factfinder in this proceeding.

13 Immediately before the above proposal was presented, the City asserted that a second overtime issue – involving its proposal to eliminate what was characterized as “pre-paid” overtime – was an issue in dispute for submission to the Factfinder. In the course of presenting the City’s explanation of this proposal, Union counsel repeated stated at the hearing that he did not understand the proposal, as explained. The City acknowledged that no formal written proposal had been submitted (Tr. 79). The Factfinder expressed the need for more detailed, documentary evidence in order to understand the City’s pre-paid overtime proposal, including pertinent evidence supporting the City’s factual claims of the practice, and “problem,” that the proposal was ostensibly intended to address (Tr. 79-81). The Factfinder specifically requested that such evidence be presented on the second hearing date, Friday, August 16 (Tr. 80). However, no such evidence was presented at the hearing, nor was there any request to submit such evidence at a later time. The Union did not respond to a proposal that it asserted that it did not understand, in the circumstances of the Factfinder’s specific direction to the City of the need to present more detailed, written substantiation of the City’s unwritten proposal.

19 When the briefs were filed on October 18, the City attached documentation of its so-called pre-paid proposal to its post-hearing brief, the first time the Factfinder – and apparently the Union – was aware of this information. The Union objected to the attachment of the post-hearing evidence and argument in support of this proposal when, in the Union’s view, the proposal appeared to be abandoned when the City failed to provide the documentation requested by the Factfinder on the first hearing day. Since the Union had no opportunity to review the post-hearing document in support of this proposal, or question City representatives at the hearing about its contents or the proposal generally, consideration of this evidence – and the proposal itself – would present serious concerns about due process. For these reasons, it is the view of the Factfinder that the City’s pre-paid overtime proposal is not properly before this Factfinder in this proceeding, in the specific circumstances described above. Accordingly, the City’s Attachment C exhibit filed with its post-hearing brief will not be considered and the City’s pre-paid overtime proposal itself will not be addressed.

25 ³ In its post-hearing brief, the Union argued that two additional proposals (for the creation of a Health Savings Account and for an increase in the employees’ life insurance benefit) were issues submitted for consideration by the Factfinder. Similar to the paucity of evidence presented in support of the City’s pre-paid overtime proposal as discussed in footnote 2, the Union did not present evidence, argument, or make any formal presentation specifically identifying these proposal as issues that remained in dispute at the hearing on August 14 and August 16. Not surprisingly, the City did not address either proposal, either at the hearing or in its post-hearing brief. Accordingly, like the ruling made above in footnote 2, it is concluded that these two proposals are not properly before the Factfinder and that there is insufficient evidence in the hearing record for the Factfinder to address these proposals, consistent with due process.

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1. Inclusion of Compensation Survey in Contract

Positions of the Parties

The City proposes the elimination of existing contract language that provides a list of other municipal jurisdictions for use in compensation studies because, it contends, that the existing compensation study provisions are flawed. The City conducted its own compensation surveys, which it relied upon in the current negotiations, and contends that the parties should have the ability to rely upon their separate surveys in this, and future, negotiations without an applicable contractual standard. The Union contends that the best evidence of which municipalities are comparable to the City is the language negotiated by the parties for their subsequent contract negotiations for the past three decades, and that the City’s displeasure with the results of the surveys based on the current language is not a sufficient basis to justify a change in this long-standing method. The Union also argues that, if a change was warranted, it should be applied only on a prospective basis – not for the bargaining of this contract for which the existing language was intended and agreed upon.

Pertinent Factual Findings

The parties’ expired MOU contains a contract section entitled “Wages and Benefits Survey” which states that, in conducting “any” survey, “Firefighter I shall be compared to ‘Firefighter’ in comparable agencies.” Ten comparison agencies are specifically listed in the same section; in the expired contract those agencies included seven cities (Fairfield, Napa, Roseville, Sacramento, West Sacramento, Vacaville, and Woodland), two fire districts (Sacramento County Fire District and the El Dorado Hills Protection District), plus the University of California at Davis. It appears that such language (with periodic modifications of the comparison agencies) has been included in the prior collective bargaining agreements for unit for at least nearly thirty 30 years. Union President Bobby Weist testified, without contradiction, that these contractually-agreed upon comparison agencies have been used by the parties for the “next” round of bargaining for at least 27 years. The expired contract contained separate language regarding the components to be used for “total” compensation:

The CITY and the UNION have agreed that the following components have been used and will be used in the future in determining total compensation: top step salary, retirement, vacation..., in-lieu of holiday pay, sick leave, bereavement leave, health, dental, life insurance, long term disability, uniform allowance, paramedic pay, vision insurance, longevity, educational incentive, deferred compensation, bi-lingual pay, and...other items...

1 The City’s proposal to eliminate the compensation study provisions in the MOU is based on
2 its contention that the model provided in the MOU is flawed. Its primary illustration of this claim
3 is the inclusion of the City of Napa as one of the ten comparison agencies, which has a top salary
4 step wage rate well in excess of any of the other listed agencies. The City contends that this higher
5 wage is attributed, at least in part, to the fact that the other agencies employ two classifications –
6 Firefighter I and Firefighter II, of which only the former is pertinent – while Napa has just one
7 position, which is the “higher” Firefighter II classification. The Union presented testimony that the
8 employees in both classifications have similar, even nearly identical job duties – including the basic
9 duty of driving fire engines.

10 A threshold issue is presented in this case as to whether it is appropriate for either party to
11 insist upon a different compensation survey than the model specified in the expired contract that,
12 based on the parties’ prior bargain, “will be used in the future in determining total compensation.”
13 In the bargaining at issue here, the City initiated and paid for a labor survey that recommended a
14 different model of 11 comparison agencies; the proposed alternative model eliminated the two fire
15 districts contained in the prior MOU, and added three new cities (Folsom, Lincoln, and Rocklin).
16 The City also prepared a compensation study utilizing all of the contractually-agreed upon agencies,
17 *except* Napa, and repeatedly relied upon that modified model in its discussion of compensation
18 comparability both during bargaining, as well as in this Factfinding proceeding.

19 The Union’s initial compensation survey (in March, 2012), based on the comparison criteria
20 in the expired contract, indicates that the Firefighters’ “total” compensation is 17.08% below the
21 “mean” (average) of the total compensation for firefighters in the comparison agencies. In July,
22 2012, an updated survey conducted by the Union indicated the unit employees were 17.58% below
23 the mean. The City’s study using the prior contract criteria, *except* the City of Napa (omitted for the
24 reason discussed above), revealed that the “total” compensation for unit firefighters is 11.9% below
25 the mean and 9.4% below the median of the comparison agencies (except Napa). (The City argues
26 that the median is the superior comparison point, in contrast to the Union’s reliance upon the mean.
27 The contract language does not expressly address that issue, but it appears that the practice in the
28 past has been to use the “mean” comparison calculation preferred by the Union).

1 In view of the City’s primary bargaining objectives of seeking compensation concessions
2 with respect to various benefits that are part of the “total” compensation calculations in the MOUs,
3 the City contends that the more relevant comparison criterion in any comparison study for this round
4 of bargaining is the monthly base salary rate (rather than the “total” of all compensation components,
5 certain of which the City is striving to reduce). Based on the City’s study (excluding the highest
6 salary paid to the Napa firefighters), the monthly salary rates of the unit employees is 4.7% above
7 the mean monthly wage rate and 3.8% above the median rate (excluding Davis itself). The Union’s
8 calculation of the mean top salary rate (which includes the City’s monthly salary as part of the mean)
9 is 3.32% lower than the City’s firefighters’ monthly salary rate. Thus, it is clear that viewing the
10 wage rates as a single point of comparison, the City’s wages are higher than the mean provided in
11 the previously-agreed upon comparison model.

12 *Recommendations on Comparison Survey Inclusion in the Contract*

13 As noted above, the City proposes to eliminate the compensation study language in the
14 contract because it is “flawed” in favor of allowing the parties to conduct their own comparability
15 studies for negotiations. The City’s position is not persuasive and is viewed by the Factfinder as one
16 that would hamper, not improve, the parties’ ability to conduct successful negotiations, particularly
17 on the most vexing issues of compensation. Where, as here, the parties have agreed upon a sample
18 of other jurisdictions that are a representative comparative sample, the parties can compile the
19 appropriate data and focus their discussions upon measuring compensation proposals against that
20 agreed-upon standard (and in the context of other criteria besides comparability, where warranted).
21 What is likely, if the City’s proposal is adopted, is that both parties will rely upon their preferred
22 study, and the compensation negotiations will be conducted in two entirely different universes and
23 different assumptions, with less inclination by either party to compromise – much like what
24 happened in these negotiations. Accordingly, the Factfinder recommends – strongly – that the parties
25 continue their longstanding practice of including in this contract an agreed-upon group of entities
26 and components for compensation studies for use in the next, “future” negotiations.

27 The fact that the City’s effort to eliminate the compensation contract clause in its entirety
28 does not mean that it is inappropriate to modify the list of agreed-upon jurisdictions. In the view of

1 the Factfinder, the City has made a plausible argument that the inclusion of the City of Napa – an
2 municipality that is arguably more appropriate for inclusion in a Bay-area comparison model than
3 the Sacramento/Central Valley region – appears to be an outlier with respect to its compensation
4 practices as compared to the other entities previously agreed to, which may or may not be related to
5 the Firefighter II issues raised by the City. It is the Factfinder’s view that the importance of retaining
6 the survey compensation provision would be best served by the Union’s agreement to substitute one
7 of the Sacramento-area cities listed in the City’s survey – specifically, either Rocklin or Folsom –
8 in lieu of the City of Napa in the next contract. Both of these cities, like Davis, are located very near
9 the City of Sacramento, in the central valley, and both (unlike the City of Lincoln) are more
10 proximate to the size of the City of Davis.

11 Finally, in view of the fact that the parties did not themselves modify the composition of the
12 comparison model from the last contract, the Factfinder finds that the appropriate model to be used
13 in this round of negotiations is the model that was bargained, and agreed to, by both parties for the
14 “future” negotiations at issue herein. The City’s exclusion of one of the contractually-agreed upon
15 agencies in the preparation of a complete compensation survey for these negotiations was
16 inconsistent with the parties’ prior contract, the bargain that was struck in the last negotiations, and
17 the parties’ practice of using the “last” contract model for the “next” negotiations.

18 2. Cafeteria Cash Out Cap for Health Insurance Benefits

19 *Positions of the Parties*

20 The City proposes that the current 80% cap on cash-out entitlements for current employees
21 whose medical coverage is covered by a spouse who works for a different employer should be
22 reduced in four stages to an ultimate “hard” cap of \$500 per month; for new employees, the \$500
23 cap would be effective immediately. The Union proposes that the cash-out be reduced from 80%
24 to 62% (\$1,077.83), then 44% (\$764.91), then 26% (\$451.99), and then back up to a “final” cash-out
25 rate of 50% as of January 1, 2016.

26 *Pertinent Factual Findings*

27 Prior contracts have provided that the monthly amount of the City’s contributions to be used
28 by employees in the cafeteria plans for their health benefits could be taken as cash-in-lieu in certain

1 circumstances, e.g., if the employee receives medical coverage through a spouse working elsewhere.
 2 In the prior contract, the Union agreed to a limit on this cash-out of 80% of the monthly contribution
 3 paid by the City, which is currently \$1,390.75 (which is 80% of the current monthly contribution of
 4 \$1,738.44). It appears that this 80% cash-out was the lowest cash-out received by employees in all
 5 of the City's bargaining units under the prior contracts.

6 The City contends that this cash-out benefit of nearly \$1,400/month is overly generous, and
 7 the goal of significantly reducing that benefit was one of the major, if not the major, goal of the City
 8 in its negotiations with all represented units (Tr. 32). The City believes it has formulated a proposal
 9 that 1) encourages employees to take health insurance available to them in another jurisdiction, with
 10 a cash-out, but 2) with a cap on this generous benefit that was "just enough" to encourage employees
 11 to do so – which the City believes is \$500/month. Other employee-s represented organizations have
 12 agreed to this \$500 cap and the City contends that for reasons of internal equity – and the cost of this
 13 benefit – that the Union should agree to the same cap. The City proposes that the reduction of this
 14 existing benefit (\$1,390.75/month) be phased in for current employees in the following manner:

<u>Date</u>	<u>Cafeteria Cash-out Cap</u>
Upon agreement for a new contract	\$1,200.00
January 1, 2014	\$1,000.00
January 1, 2015	\$ 750.00
December 31, 2015	\$ 500.00

20 The ultimate cap of \$500 would be effective immediately for all newly-hired employees.

21 As stated in the summary of the parties' positions on page 8 above, the Union has agreed to
 22 further concessions with regard to this benefit but proposes both a different rate of implementation
 23 and a higher "final" cap. The Union's proposal is summarized as follows:

<u>Date</u>	<u>Reduction Pct.</u>	<u>Cash-out Cap</u>
Upon ratification	62%	\$1,077.83
January 1, 2014	44%	\$ 764.91
January 1, 2015	26%	\$ 451.99
January 1, 2016	50%	\$869.22

1 The Union notes, correctly, that its proposal saves more money for the City in the first three stages
2 of implementation, and still would take several years for the Union’s proposal to “break even.”

3 *Recommendation on the Cafeteria Cash Out Cap*

4 There is widespread recognition that the existing cash-out benefit for cafeteria health benefits
5 is a very generous. Both this Union, and all of the other employee-represented organizations with
6 whom the City negotiates, agree that this generous and costly benefit should be reduced,
7 significantly. The City’s proposal of a final \$500 cap is more consistent with the principle of internal
8 equity based on the negotiations in other units; moreover, it is a more financially sound proposal that
9 contemplates a “final” lower cap, consistent with the recognition of both parties (and the Factfinder)
10 that this very generous benefit should be curtailed in the current (and likely future) economic climate.
11 Therefore, the Factfinder recommends adoption of the City’s proposal.

12 3. Cost-Sharing of Increased Health Benefit Contributions

13 *Positions of the Parties*

14 The City proposes that future increases, if any, in the cost of premiums for the medical
15 benefits of active employees (using the 2009 Kaiser family rate as the base) should be shared by the
16 City and unit employees. It proposes that the first 3% of any future increases in premiums would
17 be paid the by the City; up to the next 3% of increased future premiums would be borne by unit
18 employees; and all increases in excess of 6% of the baseline premiums would be shared equally by
19 the City and unit employees on a 50% – 50% basis. The Union objects to this proposal on the basis
20 that it reduces the employees’ total compensation entitlements and that the economic issues posed
21 by this proposal should instead be addressed as part of the parties’ larger total compensation offers.

22 *Pertinent Factual Findings*

23 Health insurance costs have increased at a rate of more than 6% per year since 2009. It is
24 expected that further increases, at rate higher than the rate of inflation, will be required in the next
25 several years. In 2013, the City has paid the full family monthly Kaiser premium of \$1,738.44,
26 which was 9 percent higher than the rate the year before; the 2014 rate is expected to increase
27 another 11%. The Union and DCEA are the only units that do not contain a cost-sharing provision.
28 The City’s proposal is “retroactive” in that it seeks to set the rate “back” to 2009 (like other units).

1 *Recommendation on Cost-Sharing Proposal for Increased Benefit Contributions*

2 In view of the widely-recognized fact that medical insurance costs are increasing at rather
3 high rates, the proposal that the employees bear the responsibility for (expected) future increases
4 above an existing base rate is prudent, equitable, and consistent with the principle of internal equity
5 in view of the acceptance of such clauses in nearly all of the other City bargaining units; thus, the
6 Factfinder recommends that the Union join with its sister bargaining units and accept the proposed
7 cost-sharing concept. However, the portion of the proposal that seeks adoption of the “base” rate
8 back to the premiums paid in 2009 amounts to an indirect modification of the bargain struck by the
9 parties in the prior contract. Thus, the premium costs paid by the City in the prior contract
10 constituted a portion of the negotiated “total” package in that prior contract, and the City’s proposal
11 amounts to a costly current concession to employees in this unit when there was no contemporaneous
12 agreement for this unit to accept a cost-sharing arrangement based on the 2009 base rate.

13 The Factfinder proposes that the parties adopt a modified proposal as follows: 1) generally,
14 future increases, if any, in the cost of premiums using the current (2013) Kaiser family rate will be
15 shared by the City and unit employees; and 2) the first 3% of any future increases in premiums
16 above the 2013 Kaiser family rate will be paid the by the City; the next 3% of increased future
17 premiums above the 2013 rate will be borne by unit employees; and all increases in excess of 6%
18 above current premiums will be shared equally by the City and unit employees.

19 4. Employees’ Contribution to City’s Share of Pension Contributions

20 *Positions of the Parties*

21 The City proposes that unit members begin to pay 3% of the City’s share of pension costs,
22 or accept an equivalent salary reduction. The Union is amenable to the principle of employees
23 paying 3% of the City’s share, but rather than starting that entire increase upon ratification (as sought
24 by the City) the Union proposes that the employees’ payment of this portion of the City’s share be
25 phased in at 1% per year for three years for a total of 12% or 50% of normal cost, whichever is less.

26 *Pertinent Factual Findings*

27 Historically, the City paid for virtually all of the pension contributions for its employees,
28 including the pensions for safety (police and fire) employees. In recent years, the City – like most

1 other public jurisdictions throughout the state – has arranged for employees to pay their own shares.
2 However, the costs of pension contributions is continuing to rise at a rapid rate, particularly for
3 safety employees. It is expected that employer pension contributions for safety employees will
4 increase by nearly forty percent in the next five years. Accordingly, the City has persuaded some
5 bargaining unit members to undertake the cost of a part of the Employer’s share of this benefit
6 which, unlike health care premium costs, result in a specific long-term benefit to employees in
7 retirement. It is noted that when the police and fire units agreed to pay all of the employees’ shares,
8 the City agreed to pay raises to help pay for that concession and the greater costs to employees.

9 The evidence further shows that in 2009, the sworn membership of DPOA began paying a
10 3% percentage of the City’s share of the pension costs, and further agreed to continue doing that in
11 the current (2012 - 2015 MOU). Accordingly, while the police component of the City’s safety
12 employees have been, and are continuing, to pay 12% toward their own pensions, the Firefighters
13 are still paying only 9%. At the hearing, the City cited this proposal (along with the cafeteria cash-
14 out concession discussed above and the retire health benefits concession discussed below as one of
15 the City’s greatest priorities in the current contract negotiations (Tr. 32, 38).

16 *Recommendation for Employees’ Contributions to City’s Share of Pension Costs*

17 It is clear, and recognized by both parties, that the dramatic increase in the cost of pensions,
18 especially for safety employees, resulted in a wide-spread recognition that employees are expected
19 to take more responsibility for the security and benefit levels of the pensions they will earn and
20 receive upon retirement. Both parties accept the concept that the Firefighters should begin, as the
21 police unit is already doing, to pay 3% of the City’s share of these costs. In view of the fact that the
22 police unit began paying for the 3% additional contribution for the duration of the last contract (and
23 the current contract), the Union’s proposal to phase-in the increase at a slower pace is not persuasive.
24 The Factfinder recommends that the parties adopt the City’s pension-sharing contribution, subject
25 to the City’s agreement to grant the pay raises recommended below.

26 ///

27 ///

28 ///

1 5. Retiree Health Benefits

2 *Positions of the Parties*

3 The City's last, best, and final offer presented the Union with two options intended to
4 "reform" the cost problems of retiree medical benefits. Option 1 is to create a "second-tier" of
5 retiree health benefits for new employees. For employees hired on or after January 1, 2013, the City
6 will contribute to eligible employees an amount equal to the Medicare/Managed Monthly rate based
7 on the CalPERS Kaiser Bay Area rate for employee, plus two or more dependants. Option 2 would
8 require employees to contribute approximately 5% of their salary toward the retired medical
9 unfunded liability for the bargaining unit.

10 The Union initially opposed both options, strenuously. However, in its last, best, and final
11 offer, the Union accepted the two-tier concept, albeit with a much higher coverage within the second
12 tier. Eligible retirees hired after ratification of the contract would receive a health contribution equal
13 to 100% of the premium for the Kaiser-Bay Area group health insurance plan for a retired employee,
14 plus one dependant.

15 *Pertinent Factual Findings*

16 The parties are in agreement that the dispute over the City's retire health benefit proposal was
17 the most difficult of the entire negotiations for a successor contract.

18 Currently, retired employees receive the Kaiser family rate for health care insurance (100%
19 of the premium for a retired employee, plus two or more dependants), which is similar to what the
20 active employees receive (Tr. 48). The cost of the basic Kaiser-Bay Area premium in 2012 was
21 \$1,587.14. Retired employees currently receive the \$1,587 rate when they retire before they reach
22 Medicare age; then, upon reaching age 65 they (rationally) use that benefit to pick a PERS Choice
23 plan that costs \$1,297. The City's proposal is, rather than providing new hires the pre-Medicare
24 family rate (of \$1,587), to instead provide newly hired employees with the Kaiser Medicare retiree
25 benefit at age 65, which the evidence shows costs \$833.43 (Tr. 58).

26 The Union's proposal accepts the concept of "two-tiers" in principle, but for two benefits that
27 are quite similar – i.e., both the current employees, and the retired employees would still receive the
28 100% premium for the basic Kaiser family rate, not the much lower Medicare rate.

1 *Recommendation on Retiree Health Benefit Proposal*

2 It is implicit in the Union’s (very reluctant) concession on the principle of a two-tier retiree
3 benefit that both parties recognize and acknowledge that the rising costs of retiree health benefits is
4 a vexing issue that requires the “strong” response of a two-tiered system, with different entitlements,
5 especially because of the legal impediments of making changes for currently retired employees and
6 the equity considerations of not implementing significant reductions in benefits for current
7 employees who, understandably, have come to rely upon their expectations of the current benefit
8 structure. Having accepted the need – and importance – of beginning a long-term solution to the cost
9 crisis that is emerging in the retire medical care area, it is clear that the City’s proposal provides
10 significantly greater savings than the Union’s modest change in the benefit entitlement for new hires
11 when they retire and reach the age 65. Accordingly, the Factfinder recommends that the parties
12 adopt the City’s proposed Option 1 for retire health benefits of new employees hired after the
13 ratification of the next contract (not, as proposed, on January 1, 2013).

14 6. Modifications of the Uniform Allowance Benefit

15 *Positions of the Parties*

16 The City proposes a reduction in the annual reimbursement payment to Firefighters for
17 uniform replacement from \$2,000 to \$1,000. It further proposes the elimination of a nine percent
18 payment by the City of the employees’ share of PERS payment for the uniform compensation that
19 is calculated as income for employees’ pensions. It appears that the Union opposes the reduction
20 of the annual allowance amount, and it did not respond to the nine percent payment proposal.

21 *Pertinent Factual Findings*

22 Using the Union’s comparative compensation survey in accordance with the expired contract,
23 it is clear that the uniform allowance is more generous – indeed, far more generous – than every
24 other agency in the survey. The monthly compensation for unit members is \$167; the next highest
25 monthly allowance is \$100, the third highest is \$75, and the “mean” compensation for the uniform
26 allowance for all agreed-upon comparative jurisdictions is \$62.

27 The City adduced evidence that the nine percent payment of the employees’ required payment
28 for pension contributions is a recently discovered “mistake.” This evidence was not refuted.

1 *Recommendations on Modifications of the Uniform Allowance Benefit*

- 2 • Since it is undisputed that employees are required to pay 9% of their income
3 compensation towards their pensions and that the City has been paying that
4 9% share of the uniform allowance that is calculated as income, apparently
5 by mistake, the parties should agree to correct this mistake and adopt that
6 portion of the City’s proposal.

- 7 • It is equally clear that the cost of the uniform allowance benefit far exceeds
8 the cost of that benefit in the survey of comparative jurisdictions; therefore,
9 standing alone, a significant reduction of the benefit would be warranted.
10 However, if the parties adopt most, or all, of the recommendations in this
11 Report by the Factfinder, the “total” compensation calculation for this unit
12 will be reduced by multiple concessions sought by the City – and
13 recommended by the Factfinder. Since the total compensation estimate for
14 this unit (based on the contract-specified survey) is approximately 17% *below*
15 the mean for the comparative jurisdictions – a deficit that is likely to be
16 exacerbated by the recommended reductions discussed herein, the Factfinder
17 recommends that the inevitable reduction of this overly-generous benefit be
18 postponed for future (subsequent) MOU negotiations in the interest of
19 protecting in-pocket, current income for unit members in the circumstances
20 of the multiple, and significant concessions recommended herein.⁴

13 7. Overtime FLSA Conformance

14 *Positions of the Parties*

15 The City proposes that the calculation of overtime should be based on hours worked (and
16 exclude sick leave and vacation time) in accordance with the law (FLSA). The Union did not
17 respond to this issue at the hearing or in its brief.

18 *Pertinent Factual Findings & Recommendation*

19 The City’s one-sentence presentation at the hearing proposes that the City pay overtime based
20 only on “productive time” (hours worked), and that sick leave and vacation hours should not be used
21 to calculate overtime. This proposal is reasonable, appropriate, and recommended.

23 ⁴ It is the intention of the Factfinder that this recommendation may be subject to potential tweaking by the
24 parties, in accordance with the recommendation below on the salary compensation issue. As discussed therein, the
25 Factfinder recommends that the Union’s compensation proposal be adopted in the percentages and years contained in
26 the Union’s final offer, but only for the *salary* entitlements (as opposed to the proposed increases in *total* compensation).
27 The Factfinder is not in a position to formulate an accurate calculation of the impact of the (reduced) non-salary benefit
28 recommendations, in conjunction with the (increased) salary recommendations, to determine whether the “new” total
compensation calculations will result in a further diminution of the current 17% discrepancy in total compensation, or
whether the salary increases will out-weigh the reduced compensation of the other benefits. The recommendation that
the uniform allowance benefit should be retained for *this* next contract is premised upon the view that the new total
compensation calculation should either reduce the current 17% deficit or, at least, not make it worse. Thus, some
tweaking may be warranted by the parties after they calculate the new total compensation survey comparison.

1 8. Salary Compensation

2 *Positions of the Parties*

3 The City proposes that the salary for the firefighters should be reduced by three percent, back
4 to a prior decreased rate that was terminated upon expiration of the predecessor contract. The City
5 further proposes that this proposed reduction be implemented retroactively, to March 1, 2013,
6 because this reduction was not negotiated and agreed to at this time. The Union proposes multiple,
7 sequential raises to unit employees in four stages of 2%, 2%, 1%, and 4%, the last of which would
8 be effective on January 1, 2016. Unlike the City's proposal that is limited to employees' salaries,
9 the percentage increases sought by the Union encompass percentage increases of *total* compensation,
10 and not just salary compensation, in accordance with the standard for total compensation included
11 in the parties' expired contract (see p. 5, lines 26-30 of this Report).

12 *Pertinent Factual Findings*

13 During the prior (2009) negotiations, the City and most of its employee-represented units
14 agreed to furloughs at a time of particular financial duress. Furloughs were not a viable option in
15 the firefighters unit because fire service must be scheduled, and covered, 24 hours a day.
16 Accordingly, in lieu of the furloughs experienced by other bargaining units, these parties agreed to
17 successive annual decreases of 6%, 4%, and 3% over the course of the 2009-2012 MOU. These
18 percentages were intended to be equivalent to the lost income suffered by the employees who took
19 furloughs instead. Upon the expiration of the prior contract, the last of these reductions expired; thus,
20 unit employees since have been paid a salary 3% higher than the salary that which was in effect prior
21 to the expiration of the 2009-2012 MOU.

22 The City contends that the proposed decreases are supported by the principle of internal
23 equity. In this regard, the City notes that, while the majority of other units received modest increases
24 in their 2012-2015 contracts, those increases were granted in the context of significant concessions,
25 particularly with respect to changes in retire health benefits and reductions in the cafeteria cash-out
26 amount. The City further argues that the comparability data from the compensation surveys –
27 including the Union's own survey – show that Local 3494 members are paid at least 3.43% above
28 the salary mean and as much as 4.8% above the mean (depending on which survey is considered).

1 Finally, the City contends that its expenses are rising faster than its revenues, and that without
2 additional corrective action the City's General Fund reserve balance will continue to deteriorate.

3 As noted above, the Union's proposal is not only considerably different in the "direction" of
4 proposed raises (four consecutive raises, as opposed to the City's proposal for a 3% decrease – to
5 be applied retroactively), but the scope of its financial package is likewise substantially greater.
6 Thus, the Union's proposal contemplates compensation increases for the employees' entire *total*
7 compensation, and not just the employees' salaries, which it argues is justified by the evidence from
8 the contractually-agreed upon comparison survey that shows that the total compensation calculation
9 for unit firefighters is 17% below the mean of the comparison jurisdictions. Accordingly, the
10 Union's final proposal provides for "total" compensation increases (salary, retirement, dental, health
11 care, and other costs) be provided as follows:

12	July 1, 2013	2%
13	January 1, 2014	2%
14	January 1, 2015	1%
15	January 1, 2016	4%

16 The increases in this final Union proposal represent increases that are slightly higher (in years 1 and
17 2) in view of the Union's willingness to accept certain concessions in non-salary compensation that
18 the Union had not previously been willing to accept. The Union notes, accurately, that these
19 proposed raises will still not close the 17% deficit in the firefighters total compensation based on the
20 comparative survey data.

21 *Recommendations for Salary Compensation*

22 The parties' presentation and arguments with respect to the salary component of this impasse
23 is a classic "apples-and-oranges," difference universes disagreement. The Union's strong argument
24 for consideration of salaries as part of the larger "total compensation" context is understandable in
25 view of the "total compensation standard" defined in the prior MOU. Its position is even more
26 understandable in view of the clear evidence that, based on the contractually-approved standard and
27 model for comparative surveys, unit employees are currently 17% below the mean of fighters in the
28 comparable agencies. However, it was apparent from the City's presentation at the hearing – and

1 reinforced by the arguments in its post-hearing brief – that the City’s primary objectives in the
2 negotiation of this contract were to achieve significant concessions with respect to non-salary
3 compensation benefits, and for multiple benefits as well, many of which had been achieved with
4 other bargaining units with whom the City has labor contracts. In these circumstances, the Factfinder
5 determined that it was necessary to address the City’s proposals on a “stand-alone” basis to assess
6 their weight and propriety on their separate “merits.”

7 The City advised that its three highest priorities in these negotiations were its proposals for
8 a cap on the cash-out provision of the cafeteria health plan benefit, a concession that the firefighters
9 pay 3% of the City’s share of the employees’ pension contributions, and a “reform” of the retiree
10 health benefit in the form of both a new two-tier system and a very significant reduction in the cost
11 of the retiree benefit for new hires. As indicated by the recommendations and findings above, the
12 Factfinder has recommended that each of these priority concessions be adopted, either in whole as
13 proposed, or with minor recommended modifications. In addition, the Factfinder has recommended
14 the adoption of the City’s proposal for cost-sharing of increased health benefit contributions during
15 the life of the contract, and a diminution of employee income in the form of calculating overtime
16 based only on productive hours –two further financial concessions sought by the District. Based on
17 these multiple recommendations, it is difficult for the Factfinder to now apply a “total compensation”
18 standard, as argued by the Union.

19 The Factfinder notes – and the City has acknowledged – that other bargaining units have
20 received salary increases in the context of (and in exchange for) concessions by other bargaining
21 representatives even on some of the same subjects addressed in this Report. Here, it is recommended
22 that the parties adopt virtually all of the “priority” concessions sought by the City, plus at least two
23 other economic concessions. In these circumstances, the City’s proposal to reduce salaries by 3%
24 (and make the reduction retroactive) is not appropriate in the event the Union agrees to all (or even
25 most) of the above recommendations. Assuming that the Union agrees to these recommendations,
26 it is the Factfinder’s view that the City must step to the plate and “pay” for some of these concessions
27 in the form of higher salaries in the circumstances of significant further lost “total” compensation
28 to be borne by the unit employees.

1 It is recognized that the recommendation to increase salary compensation, when the unit
2 employees are above the mean for salary compensation, and recommend reductions in non-salary
3 compensation when the “total compensation” data shows that unit employee receive 17% less in total
4 compensation seems counter-intuitive (or worse). However, the Factfinder is persuaded that the City
5 has made a persuasive case with respect to the particular compensation concessions which have been
6 recommended for adoption. If the Union accepts these recommendations, in satisfaction of the
7 City’s highest priority objectives for these negotiations, the Factfinder is persuaded that the parties
8 should also adopt the Union’s final percentage increases *for salary compensation* in an effort to
9 recoup the compensation losses attributed to the other recommendations – and more importantly, to
10 insure that the firefighters total compensation deficit in the comparability survey (after these salary
11 increases, plus the retained uniform allowance is include) does not exacerbate the 17% discrepancy
12 in total compensation for the unit employees. Accordingly, it is recommend that the parties adopt
13 a salary increase of 2% to be retroactive to July 1, 2013; another salary increase of 2% to be effective
14 on January 1, 2014; a 1% salary increase to be effective on January 1, 2015; and a final salary
15 increase of 4% to be effective on January 1, 2016.

16 9. Arbitration provisions for grievance and discipline

17 *Positions of the Parties*

18 The Union proposes that the parties agree that grievances involving interpretation of the
19 parties’ MOU would be resolved through binding arbitration, and that disciplinary appeals be subject
20 to an option for advisory arbitration (if requested by the affected employee, and authorized by the
21 Union). The costs of such arbitrations would be divided equally between the City and the Union.
22 The City has not agreed to either proposal, and has not made a counter-proposal.

23 *Pertinent Factual Findings*

24 Currently, contract interpretation disputes are submitted to the City Manager, whose decision
25 is not final and binding. The Union may challenge such a decision by filing a writ in court, which
26 can result in extensive delays and significant legal costs to both parties. Disciplinary appeals are
27 heard by a individuals appointed by the City to its Personnel Board, and this process can result in
28 large back pay liability in some instances.

1 *Recommendations on an Arbitration Procedure*

2 The Union's proposal is a reasonable, even modest and conservative, proposal for the
3 resolution of disputes in the modern labor environment, especially in a progressive area like the City
4 of Davis (and the Northern California region). It will provide for the final resolution of at least
5 contract interpretation disputes in a more expeditious manner, and may prove to be less costly (at
6 least to the City). The Factfinder recommends the adoption of both proposals, especially in the
7 context of the substantial concessions by the Union that are recommended in this Report.

8 10. Duration of the Contract

9 Both parties appear to be agreeable to a three-year contract to be effective through June 30,
10 2016. In view of the fact that the parties spent 14 months in negotiations for a successor contract
11 without successfully resolving their impasse, and the fact that the parties have gone nearly 1 ½ years
12 without an MOU, it is hardly advisable that the parties accept a short-term contract, like one year,
13 which may well result in another longstanding dispute (without a contract) that will hardly improve
14 the parties' bargaining relationship. The Factfinder recommends that, upon acceptance of the
15 recommendations herein (or any mutual acceptance of any modifications of one or more of these
16 recommendations), the parties agree to a new contract with a term to expire on June 30, 2016.

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18 Respectfully submitted,

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20 DATED: November 26, 2013

CHARLES A. AS KIN, Factfinder

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