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FINDINGS AND RECOMMENDATIONS
PURSUANT TO CALIFORNIA GOVERNMENT CODE 3505.4

IN THE MATTER OF A CONTROVERSY
BETWEEN THE CITY OF SALINAS,

EMPLOYER

AND

SALINAS POLICE OFFICERS' ASSOCIATION

UNION

PERB CASE NO: SF-IM-215-M

COLLECTIVE BARGAINING IMPASSE

FACTFINDING PANEL MEMBER DISSENT TO
FINDINGS & RECOMMENDATIONS

I. OVERVIEW

Panel member Rockne A. Lucia, Jr. hereby offers the following dissent and concurrence to the Findings and Recommendations ("Findings") tendered by Paul D. Roose, the appointed neutral in the Matter of the City of Salinas and Salinas Police Officers' Association.

While the Findings appropriately reject the flawed and reckless recommendations of the "Salinas Plan", the Findings' omit relevant and essential portions of the factual record. More unsettling still is the failure to openly address the City's alliance with inconspicuous political activists that seek to influence our federal, state, and local government bodies through well-funded national attacks on public employees.

The record reflects that the City's bargaining strategy throughout these protracted negotiations was the result of the City Council's relationship with and reliance upon the National Resource Network, an organization quietly funded by Texas billionaire John Arnold who has reportedly spent

1 *hundreds of millions of dollars* in his effort to influence local politics through various political
2 contributions, donations, and pseudo-research projects. The curious decision to omit any reference to
3 the source of funding for this collaborative effort between the City and the National Resource Network
4 denies the public an opportunity to understand how deftly special interests can influence local
5 government. When considered for what it is – propaganda from a political extremist – the pervasive
6 and pernicious anti-public employee rhetoric set forth by the City begins to make sense.

7 The City’s actions have already immeasurably damaged the Salinas Police Department, as
8 these unnecessarily contentious negotiations were ultimately the result of false premises and
9 misinformation. As a result, the Salinas Police Department now faces an exodus of sworn personnel
10 who have been devalued, demoralized, and disenfranchised.

11 With 11 vacancies (and counting) in addition to 10 frozen positions, it is no wonder that the
12 City’s own consultants – the Center for Public Safety Management (“CPSM”) – offered the following
13 observation in its evaluation of the Salinas Police Department: “While a significant vacancy rate is the
14 primary driver of overtime costs, the impacts go beyond cost. Also affected are service delivery,
15 morale, fatigue, and productivity. Appropriate staffing must be attained to address each of these
16 conditions.”

17 The City of Salinas cannot continue to allow special interests to secretly influence the
18 direction of the City, particularly where its misguided course of action directly conflicts with the
19 interests of the citizens. There is ample evidence provided by the SPOA that the citizens of Salinas
20 affirmed their support of public safety and expressed their priorities in passing Measure G and
21 Measure E. The Findings appear content to allow the City to continue its efforts to conceal its
22 affiliation with the extremist views of John Arnold and serves to undermine local government by
23 perpetuating the silent influence of external forces.

24 **II. RESPONSE TO FINDINGS AND RECOMMENDATIONS**

25 With respect to the Findings on various economic issues, the recommendation to provide
26 modest wage enhancements acknowledges the undisputed need for the City to recruit and retain
27 qualified peace officers and keep pace with the increasing cost of living. Of great concern is the
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Findings' recommendations relating to work schedules, health benefits, holiday pay, shift differential, and compensatory time off as they undermine the stated need to correct a serious recruitment and retention problem.

A. Comparable Market Compensation Data

As with any negotiations, industry standards and comparable markets are of critical importance. While the Findings correctly note that the parties looked to the same California public agencies to determine external comparability, it fails to account for the discrepancies set forth in the parties' positions. While the Findings would suggest that the parties' methodologies produced conflicting results, the uncontested facts reveal an intellectually dishonest presentation on the part of the City. Curiously, the Findings fail to acknowledge that the City's survey methodology was premised upon the *one officer* in the City of Salinas that receives two 5% specialty pay premiums; a tactic adopted by the City to inflate its market position. Further, as noted during the factfinding proceeding, that officer's appointment to a second specialty assignment is the subject matter of a pending grievance by the SPOA. The City's reliance upon this one officer's compensation is particularly poignant given the City's conclusion that the total compensation is exactly 5% above market average.

The City's disingenuous representation of its own compensation data was further exacerbated when considering that its survey included at least eight (8) inaccuracies in reporting benchmark compensation data – all of which conveniently served to inflate the City's market position. The POA specifically identified each of these inaccuracies to the panel, and the Findings' omission of any reference to the City's misrepresentations is disheartening. The Findings' failure to consider the City's contorted and selective reasoning deprives the audience from understanding that the parties' varying survey methodologies actually produce the same result when using accurate market data: the POA ranks last in total compensation among its comparable jurisdictions.

B. The City's Inaccurate Costing

Although the Findings vaguely reference the parties' challenges with respect to costing various proposals, the omission of any reference to the City's repeated misrepresentation of a 1% wage increase – a critical piece of information in any negotiation forum – suggests a legitimate dispute of

1 fact, when the factual record demonstrates the City's consistent pattern of providing misleading
2 information, always to the detriment of labor. Specifically, at the outset of negotiations, the City
3 represented that the cost of a 1% wage increase was equivalent to \$255,852. When challenged by the
4 POA, the City reversed course, and asserted that a 1% wage increase was equivalent to \$247,561.
5 When further pressed to justify its calculation, the City waited until after it declared impasse to
6 acknowledge that a 1% wage increase was really equivalent to \$208,152. Simply translated, the City
7 inflated its costs by approximately 23%, thereby undermining its credibility on all costing-related
8 matters.

9 **C. Health Benefits**

10 The Findings' do not adequately reflect the parties' competing proposals on health benefits, as
11 there are two undisputed facts that were presented to the panel during the proceedings:

- 12 1. The City of Salinas pays less for police officer health care than it does for any other City
13 employee.
- 14 2. The City's proposal seeks to further erode police officer benefits in order to establish a new
15 health benefit structure that will set a new precedent heading into negotiations with the
16 City's other labor unions.

17 The City's proposal is premised upon the City's speculative projection that health premiums
18 will increase at a rate of five percent (5%) per year for the next 10 years. Given that health premiums
19 are decreasing in 2020, the SPOA proposal sought to capture those savings, and then cap the City's
20 future exposure at 4.25% per year; a strategy that would quickly provide annual seven figure savings if
21 the City were to apply universally to all of its employees.

22 Instead of ensuring that the City would never experience the inflated health costs projected by
23 its staff, the Findings recommend the City's proposal which literally does nothing to limit the City's
24 exposure to medical inflation. As a result, the Findings all but ensure that no actual savings will be
25 realized.

26 Perhaps most disconcerting is the Findings assertion that it favors the City's proposal because it
27 "[i]s simpler to administer one consistent health benefit arrangement across all city bargaining units"
28 and "[i]t promotes internal harmony across city bargaining units". These conclusions are contrary to

1 the undisputed facts which reveal that every other represented employee enjoys significantly greater
2 health benefits contributions than the City's police officers, and will contribute significantly less for
3 their benefits. Moreover, the Findings' failure to acknowledge that the POA's proposal would have
4 merely required the City to contribute the same amount for police officer health care as it does for
5 every City employee deprives the audience from understanding that the POA merely sought internal
6 parity.

7 Given the Findings recognition that "[t]he City, in its factfinding presentation, stated that it was
8 not asserting that the City could not afford the POA's proposals", it is all the more alarming that it
9 recommends the City's proposal, which will only create a framework for labor strife in the City of
10 Salinas.

11 **D. Patrol Work Schedule**

12 While the Findings recommendation is appropriately critical of the Salinas Police Department's
13 inaction in responding to its ineffective deployment of an already understaffed patrol division, the
14 Findings are far too deferential to the Chief of Police (who never testified), and effectively serves to
15 reward the City for its indecisiveness and procrastination ("[t]he statutory factors do not support a
16 panel recommendation for a detailed schedule modification absent the support of the command staff").

17 In the past year, the City has commissioned two independent reports, both of which have
18 harshly criticized the Salinas Police Department's existing patrol work schedule. As demonstrated
19 during the first day of factfinding, this was a problem identified by the SPOA more than three years
20 ago, and the record is quite clear that the City's only response is to give the Chief more power despite
21 the fact that the Department has *never* presented a plan of action to respond to the problems everyone
22 seems to recognize with the status quo.

23 Further, the Findings failure to reference the historical background that gave rise to this matter
24 of dispute is bothersome at the least. Specifically, the record unequivocally demonstrates that prior to
25 the commencement of these negotiations, the Chief of Police *approved* the Association's proposed
26 4/11 patrol work schedule, but was denied the opportunity to implement the Association's plan by the
27 *Police Management Association*. In short, the Findings penalizes the SPOA for taking a leadership
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1 position on a critical issue by stripping the Association of one of the most important working
2 conditions of any employee organization – its work schedule.

3 While the Findings suggest that “[t]he 4/11 schedule proposed by the Association is not the
4 most typical one in the comparison cities”, it fails to account for the fact that the schedule was vetted
5 and at one time supported by the Chief of Police. The Findings now leave the scheduling issue in a
6 state of uncertainty.

7 **E. Shift Differential**

8 The Findings’ recommendation to reject the POA’s proposal on shift differential is troubling
9 both because of its omission of relevant information and more importantly, because the ultimate
10 recommendation does not adequately reflect the POA position. While the Findings correctly note that
11 the POA proposed converting the shift differential premium from \$10 per shift or \$20 per shift
12 (depending on experience) to 3.75% of base pay, it fails to acknowledge that the current \$20 per shift
13 benefit translates to 3.75% of base pay. In short, the POA’s proposal effectively sought merely to
14 enhance the benefit for employees with less than 10 years of experience, which encompasses both
15 prospective employees who might consider Salinas as a prospective employer, and newer employees
16 who are most likely to consider leaving for better career opportunities.

17 Further, the Findings’ citation to factual matters vis-à-vis comparable agencies seems to be in
18 conflict with the record. Specifically, on page 16, the Findings state:

19 Of the six city comparable agencies, a review of the CBAs found only two with shift
20 differential pay for police officers. One (Monterey) has a 2.5% and a 5% shift
21 differential, depending on the assignment hours. The other (Santa Cruz) has a 2.5%
22 shift differential.

23 As the POA provided the panel with a copy of the collective bargaining agreement for every
24 benchmark agency, the Findings simply err in reporting the number of comparable agencies with shift
25 differential pay. A cursory review of the referenced agencies reveals that the panel recognized the shift
26 differential premium provided to members of the Santa Cruz Police Officers’ Association, but failed to
27 account for Section 21.2 of the Santa Cruz Deputy Sheriffs’ Association, which provides a 5% shift
28 differential premium for eligible employees. Accordingly, exactly half of the benchmarks provide
shift differential pay, and none differentiate among the represented employees on the basis of their

1 experience with the employer – a rather significant difference when the Findings rely upon *external*
2 *comparability* as the basis for its recommendations.

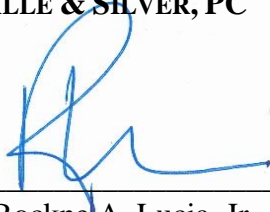
3 **III. CONCLUSION**

4 The fundamental challenge with the Findings is that it does little to improve the ability of the
5 Salinas Police Department to deliver services to the community it serves. A local agency's ability to
6 provide police services is predicated on staffing, and the ability to staff starts with an employer's
7 ability to attract qualified personnel. Although the record and Findings acknowledge that the national
8 police staffing crisis is particularly acute in Salinas, it fails to recommend the changes necessary to
9 give the Department even the opportunity to compete as it continues to lose out on qualified candidates
10 and its experienced personnel seek better opportunities. The consequence of the City's inaction will be
11 a further degradation of the Salinas Police Department, as the proposed modest wage increases are
12 insufficient to make Salinas competitive in the market. Finally, the Findings will do little prevent the
13 erosion of benefits and working conditions, but will serve to erode morale and fuel contentious labor
14 relations.

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16 Dated: September 3, 2019

Respectfully submitted,

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18 **RAINS LUCIA STERN**
ST. PHALLE & SILVER, PC

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21 By: 
22 Rockne A. Lucia, Jr.
23 Factfinding Panel Member
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27
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1 **PROOF OF SERVICE**

2 I am employed in the City of Pleasant Hill, State of California. I am over 18 years of age and
3 not a party to this action. My business address is Rains Lucia Stern St. Phalle & Silver, PC, 2300
4 Contra Costa Blvd., Suite 500, Pleasant Hill, California 94523.

5 On the date below I served a true copy of the following document(s):

6 **FACTFINDING PANEL MEMBER DISSENT TO FINDINGS & RECOMMENDATIONS**
7 **FOR PERB CASE NO: SF-IM-215-M**

8 on the interested parties to said action by the following means:

- 9 ☒ **(BY MAIL)** By placing a true copy of the above, enclosed in a sealed envelope with
10 appropriate postage, for collection and mailing following our ordinary business
11 practices. I am readily familiar with this business's practice for collecting and
12 processing correspondence for mailing. On the same day that the correspondence is
13 placed for collection and mailing, it is deposited in the ordinary course of business with
14 the United States Postal Service, in a sealed envelope with postage fully prepaid.
- 15 ☐ **(BY OVERNIGHT DELIVERY)** By placing a true copy of the above, enclosed in a
16 sealed envelope with delivery charges to be billed to Rains Lucia Stern, P.C., for
17 delivery by On Trac overnight delivery service to the address(es) shown below.
- 18 ☐ **(BY FACSIMILE TRANSMISSION)** By transmitting a true copy of the above by
19 facsimile transmission from facsimile number (925) 609-1690 to the attorney(s) or
20 party(ies) shown below.
- 21 ☐ **(BY MESSENGER)** By placing a true copy of the above in a sealed envelope and by
22 giving said envelope to an employee of First Legal for guaranteed, same-day delivery to
23 the address(es) shown below.
- 24 ☐ **(BY HAND DELIVERY)** By personal delivery of a true copy of the above to the
25 attorneys or parties shown below
- 26 ☒ **(BY E-MAIL or ELECTRONIC TRANSMISSION)** Based on a court order or an
27 agreement of the parties to accept service by e-mail or electronic transmission, I caused
28 the documents to be sent to the persons at the e-mail addresses listed below. I did not
receive, within a reasonable period of time, after the transmission, any electronic
message or other indication that the transmission was unsuccessful.

Paul Roose
Arbitrator
Golden Gate Dispute Resolution
1300 Clay Street, Suite 600
Oakland, CA 94612

Donna Williamson
Liebert Cassidy Whitmore
135 Main Street, 7th Floor
San Francisco, CA 94105

29 I declare under penalty of perjury under the law of the State of California that the foregoing is
30 true and correct.

31 DATED: September 3, 2019


32 _____
33 Melanie Yabut