FACTFINDING REPORT AND RECOMMENDATIONS

In the Matter of Factfinding:	)	
	)	
CITY OF TULARE	)	
	)	PERB IMPASSE
Employer,	)	No. SA-IM-159-M
	)	
and	)	DATE ISSUED:
	)	
TULARE POLICE OFFICERS UNION (TPOU)	)	November 23, 2016
	)	
	)	
Union.	)	

Factfinding Panel:

Impartial Chairperson:

Walter F. Daugherty
Arbitrator/Factfinder

Employer Member:
Kenneth W. Caves
Management Consultant
Caves & Associates

Union Member:
James Kelly
President
TPOU

Appearances:

For the Employer:
Dan Dorman
City Manager
City of Tulare

For the Union:
Roger D. Wilson
Attorney at Law
Rains Lucia Stern, PC

BACKGROUND AND PROCEDURAL HISTORY

The City of Tulare ("City") is an incorporated city in the San Joaquin Valley. The City is primarily an agricultural community with associated food processing and distributing operations. The City has some 345 employees, including 58 police officers represented by the Tulare Police Officers Union ("TPOU" or "Union"), which, among other things, negotiates collective bargaining agreements with the City for its represented employees. The City's General Fund Budget is about $40 million. It is undisputed that the City is a "public agency" within the meaning of Section 3501 (c) of the Meyers-Milias Brown Act ("MMBA") and that the TPOU is a "recognized employee organization" pursuant to MMBA Section 3501 (b).

Regarding the genesis of the dispute before the Factfinding Panel ("Panel"), the prior MOU was in effect from July 1, 2012 through June 30, 2014 (U. Ex., MOU, C. Ex. II.VII.B).[1] On November 8, 2013, the parties executed a "Sideletter of Agreement" ("Sideletter") extending the MOU to June 30, 2015 (U. Ex. MOU). Pursuant to this Sideletter, bargaining unit employees received a $450 bonus in November 2013 and a 3 percent Cost of Living Adjustment effective the first full pay period in July 2014.

The parties began negotiations on a successor MOU in April 2015 and met some 14 times. Following a November 25, 2015 negotiation session, TPOU held a general membership meeting regarding a possible impasse and resort to the factfinding process. Based on the membership's decision to notify the City of TPOU's intent to declare impasse, TPOU submitted its last best and final offer to the City Manager on January 13, 2016 (C. Ex. 1.I.A). Thereafter,

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[1]Union and City exhibits will be referenced as "U. Ex. (tab label)" and "C. Ex. (binder and tab)," respectively. Since the parties submitted various duplicate exhibits, references to such duplicate exhibits may only by made to one source.

TPOU delivered its declaration of impasse letter to the City Manager on January 21, 2016 (U. Ex., Impasse Documents)). The TPOU elected to bypass mediation and on January 31, 2016 submitted its Factfinding Request to the California Public Employee Relations Board ("PERB"). By letter dated February 8, 2016 from the PERB, the undersigned was advised that he had been selected by the parties to chair the Factfinding Panel. Kenneth Caves was designated as the City's Panel Member and the Union selected Officer James Kelly as its Panel Member.

At the request of the Chairperson, the parties waived the statutory time limits for the hearing and the completion of the factfinding process. A hearing was held on July 18, 2016 at the City's administrative center in Tulare, California. Both parties appeared and were afforded full opportunity to present relevant evidence, examine and cross-examine witnesses, and offer argument. The record was closed with the receipt of the parties' post-hearing briefs on August 31, 2016.

Executive sessions were conducted by conference calls on September 29 and October 19, 2016. On November 7, 2016, the Chairperson by e-mail forwarded copies of his draft Report and Recommendations to the Panel Members for their review. The Panel Members were given 15 calendar days from receipt of this draft by which to submit any concurring and/or dissenting opinions. Any such opinions timely submitted are attached.

RELEVANT STATUTORY PROVISIONS

With respect to the Panel's deliberations, the Meyers-Milias-Brown Act at §3505.4. (d) states:

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

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances.

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

(6) The consumer price index for goods and services, commonly known as the cost of living.

(7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

ISSUES AND RECOMMENDATIONS

At the outset, the Chairperson notes the City's citation to a recent appellate court decision in *County of Riverside v. PERB* (2016) for the proposition that factfinding is designed to provide a public agency additional information and recommendations prior to the agency making a decision to impose its last, best, and final offer. Notwithstanding the court's holding, it is generally acknowledged that factfinding is an extension of the collective bargaining process and that factfinding recommendations are intended to provide a framework for the parties to settle their dispute and reach an agreement. This latter premise will serve as a general guideline in regard to the following discussion and recommendations of the Chairperson.

Three financial issues remained open and unresolved when impasse was reached and were presented during the factfinding hearing. These were: 1) salary increases, 2) education incentives, and 3) personal days off. These will be addressed sequentially with the understanding that all three issues involve economic concerns, albeit with some disagreement noted regarding the fiscal impact, if any, of the personal days off proposals. Rather than detailing the positions of

the parties and their respective proposals advanced during negotiations, this information will be provided in a summary fashion as it specifically relates to each disputed issue.

Salaries

The City's last, best, and final ("LBFO") salary offer of February 2, 2016 provided the following: 3.0 percent salary increase effective the second payroll period of January 2016, 3.0 percent increase effective the second payroll period of January 2017, and a 4.75 percent increase effective the first payroll period of January 2018 with employees contributing an additional 3.0 percent PERS share. This proposal included a reopener in March 2017 for a possible additional increase in fiscal year 2017-2018 (C. Ex. 2.V.A. p. 3). It appears that subsequent to impasse the City on May 4, 2016 offered a 5.0 percent increase effective in July 2016 with a one-year term for the MOU (U. Ex., City Proposals). At the factfinding hearing and in its brief, the City asserted that the passage of time and adoption of the fiscal year 2016-2017 budget had rendered its multi-year salary offer "nugatory" and proposed a one year alternative as follows: Effective the first pay period after ratification by the City Council, a CPI (Consumer Price Index) adjustment equal to the previous twelve month period available when ratification takes place based on the Los Angeles-Riverside-Orange County CPI Index (C. Ex. 2.V.C).[2]

The Union's LBFO was as follows: 5.0 percent salary increase retroactive to July 1, 2015, 5.0 percent salary increase beginning July 1, 2016, and a 6.0 percent increase beginning July 1, 2017 with employees contributing an additional 3.0 percent toward their PERS contribution commencing January 1, 2018 (C. Ex. 1.III.A).

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[2]This offer was tendered by the City on October 9, 2015 as an alternative to its multi-year offer (C. Ex.2.V.C).

As to the parameters of the City's last, best, and final salary offer, the City as noted above has now limited or defined its LBFO as that of a one-year pay increase equivalent to the annual rise in the CPI effective upon ratification. While the bases for this salary offer are acknowledged, the Chairperson believes the probability that this offer would comprise a framework for settlement is remote at best. Further, this offer places the police officers unit at a distinct disadvantage with respect to the other represented City employees, for as emphasized by the City during its presentation, these employees had settled on salary terms consistent with the multi-year salary proposal made to the police officers. Thus, for purposes of discussion and the Chairperson's recommendations the City's multi-year salary proposal will serve as the City's LBFO in such regard.

In brief, the City asserts that acceding to the Union's salary demands requires it to ignore the projected declines in City revenue, disturbs the City's financial balance, ignores the careful and considered planning employed to arrive at the City's salary offer in view of the budget considerations and constraints, and would subject the City to "whipsaw" bargaining tactics as its other represented employees have settled their labor agreements with salary increases less than proposed by the Union here. The Union, in its turn and again in brief, argues that the City has the financial resources to meet its salary demands, that the salaries of its members lag far behind those paid by comparable agencies, that CPI increases have eroded the salaries paid to bargaining unit employees, and that these employees have received only a 3.0 percent salary increase over the last some seven years.

Turning first to the City's fiscal situation, it is noted that the City has not raised an inability to pay argument as that term is traditionally used in collective negotiations. Rather, the

City's position manifests more of an unwillingness to meet the Union's salary demands because of its concerns regarding future budget and fiscal uncertainties, its belief about where its limited budget resources should be allocated, and concerns as to the impact on upcoming negotiations with its other represented employees should it accede to the Union's demands.

The parties also view the City's fiscal standing through different prisms. Distilled, the City focuses on projected budgetary matters, such as the projected decrease in the general sales tax and Measure I revenue for fiscal year 2016-2017, noting that sales tax revenue can, and historically has, fluctuated significantly. On the other hand, the Union points to the City's budget history, which it argues shows a historical pattern of underestimating revenue while overestimating expenditures. The parties also differ on the appropriateness of the City's adopted General Fund target reserve of 25 percent of operating expenditures net of debt service, with the City asserting that its target reserve is a reasonable standard while the Union's budget expert stating that a reserve of 5 to 7 percent comprises a reasonable benchmark.

The Chairperson first acknowledges that the parties' competing views of the City's budgetary picture comprise a deep and broad chasm and that it is questionable if these views can successfully be accommodated let alone resolved in the factfinding process. However, the Factfinding Panel is charged with making findings and recommendations designed to break and resolve the parties' negotiation impasse.

The Chairperson notes that the City's projected budget summary forecasts a some $500,000 cumulative deficit for the period fiscal year 2016-2017 through fiscal year 2020-2021 and a $1.7 million deficit for fiscal year 2015-2016 (C. Ex. 1.1.A). Although various techniques have been developed to improve and quantify the budgeting process, budget forecasting is not an

exact science and projected budgets are not immutable documents. In such regard, it is noted that historically the City's adopted budgets have underestimated actual revenues while overestimating actual expenditures (U. Ex., Reilly Report, p. 60). It is noted further that in the analysis done by CPA Timothy Reilly, the Union's budget expert, his review of the City's Comprehensive Annual Financial Reports ("CAFR") shows that for the fiscal years ending 2014 and 2015 the City's General Fund balance had increased in both years (U. Ex., Reilly Report, p. 65).[3] Further, the City's target reserve of 25 percent is more than ample to ensure a favorable bond and credit rating standard and a slight reduction in the reserve amount would not appear to jeopardize the City's standings in such regard (C. Ex. 1, I.G., pp. 4-5). Again, while the projected declines in sales tax revenue are noted, the historical financial data showing that revenue has often been underestimated while expenses overestimated and the City's ample reserve fund suggests that the City has sufficient funds to provide the peace officer unit with a larger salary increase than provided by its LBFO without jeopardizing its fiscal standing or the interests and welfare of the public it serves.[4]

However, the interests and welfare of the public and the financial ability of the City is not the sole statutory criterion that the Factfinding Panel is to consider, for the MMBA, among other things, also contemplates compensation comparisons with comparable public agencies and

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[3]The Chairperson acknowledges, as pointed out by the City, that Reilly has been almost exclusively retained by employee organizations to prepare budget analyses for factfinding and similar proceedings. However, these increases noted in the General Fund balance do not appear to be disputed.

[4]A 1.0 percent reduction in the City's reserve fund would appear to free up some $357,000 that ostensibly could be used to fund additional salary increases for the peace officers union. (C. Ex. 1, II.E, p. 5).

consideration of other facts "normally or traditionally taken into consideration in making the [Panel's] findings and recommendations."

Regarding the "comparability" question, the Union points to its 2015 Total Compensation Survey demonstrating that the compensation package, including salaries, for the City's police officers is substantially lower than that offered by comparable agencies (Union Compensation Survey). The City proffered some 12 reasons why the Union's compensation survey should be given no weight in this proceeding, including that the Union had with other bargaining units induced the City to cancel its own funded compensation survey, that it did not follow acceptable standards for such surveys, that the survey consultant's qualifications are deficient, and that the survey failed to include significant elements in its definition of total compensation.

Notwithstanding the City's objections to the use of the Union's survey, comparison of this survey with the "Final Report" of the classification survey done by Koff & Associates in 2008 under contract with the City shows that similar methodologies were employed (C. Ex. 1.IV.D.1). Excluding the City of Dinuba, the Union's survey included the same comparable cities surveyed by Koff & Associates and identified in the parties' most recent MOU as the agencies to be used for compensation comparisons (July 1, 2012 through June 30, 2014 MOU, pp. 5-6). Further, both surveys employed the top step of the salary range for salary comparison purposes and included retirement, health insurance, uniform allowance, and longevity pay in calculating total compensation.

Excluding the City of Dinuba, the Union's survey shows that as of December 2015 bargaining unit top step salary was some 11.2 percent lower than that paid by the eight comparable cities. Again, excluding the City of Dinuba, this survey shows that the total

compensation package received by the bargaining unit employees was about 27.9 percent lower than that offered by the eight comparable cities. Further, the City presented no evidence that other additional compensation elements provided by the City were so more lucrative than those afforded by the comparable agencies as to change the outcome of the Union's study or the conclusions that should be drawn from it. In such regard, the Union's survey reveals that City police officers ranked seventh in maximum salary and ninth in total compensation as of December 2015 as persuasively demonstrated by this survey.

The City raises the specter of potential "whipsaw bargaining " if it were to give the peace officers unit a more generous multi-year settlement package than that offered and accepted by all its other bargaining units. The Chairperson acknowledges this is a distinct possibility and that public agencies with multiple bargaining units prefer to have uniformity and consistency in the compensation packages afforded its represented employees. The tension between this preference or practice and the compensation studies in evidence that show a significant lag in the compensation paid by the City to its police officers is noted. However, MMBA Section 3505.4. (d) is clear in its prescription that factfinders are to consider, weigh, and be guided by, *inter alia*, relevant comparative data regarding wages of the employees involved in the factfinding and those of similar employees in comparable public agencies. As discussed above, the salary survey data shows a not insignificant comparability gap between the wages and total compensation received by the bargaining unit employees here with that received by police officers in comparable agencies. What is not known is whether a similar comparability gap exists for those City bargaining unit employees that reached agreement on the same multi-year offer as included in the City's LBFO made to the police officers unit.

As to the CPI data and its place and weight in the Chairperson's salary recommendations, the efficacy of this data often turns on the particular period considered. As pointed out by the Union, the cumulative CPI has increased some 15.4 percent for the eight years between 2007 and 2014 (U. Ex., POU Proposals, tab 24). However, as the City notes, the CPI has increased less than 2.0 percent subsequent to when unit employees were given a 3.0 percent raise in July 2014. The CPI therefore affords little guidance in the Chairperson's salary recommendations. Although the low turnover of police officers as reported by the City ostensibly suggests that officers are not unsatisfied with their current compensation package, many factors other than compensation influence and affect employee turnover. In any event, the comparative compensation data as discussed above outweighs the low turnover among bargaining unit personnel in making the following salary recommendations, particularly under the relevant statutory criteria in such regard.

On balance, and after full consideration of the salary data and budget information presented during the factfinding hearing, the Chairperson makes the following recommendations regarding a multi-year salary package. In such regard, a salary increase retroactive to July 1, 2015 as requested by the Union is not recommended. For no evidence was found that the parties have historically agreed to retroactive increases going back some 17 months and such retroactive increase would impose a some $400,000 additional liability to the City's current fiscal year budget.[5] As such, the Chairperson recommends that the parties agree to the following salary adjustments:

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[5]It is undisputed that each one percent salary increase represents an additional compensation cost of some $63,100 for each fiscal year.

1) A **3.0 percent increase** retroactive to the second payroll period of January 2016.

2) A **4.0 percent increase** effective the second payroll period of January 2017.

3) A **5.75 percent increase** effective the first payroll period of January 2018 with employees then contributing an additional 3.0 percent toward their PERS contribution.

It is acknowledged that the above recommended increases do not fully close the comparability gap as discussed above. However, the Chairperson believes that these salary recommendations comprise a positive first step in addressing this issue.

Education Incentives

The MOU currently provides the following education incentive program for sworn non-probationary police officers:

1. A payment of $37.50 per month shall be granted with the completion of 30 units of acceptable college credit (20 units in Police Science) and two years of police service or an Intermediate POST certificate.

2. A payment of $75.00 per month shall be granted with the completion of 60 units of acceptable college credit (20 units in Police Science) and three years of police service or an Advance POST certificate.

3. A payment of $150.00 per month shall be granted for a Bachelors Degree in Public Administration, Criminal Justice Administration, Business Management or related field with a minor in Police Science and four years of police service.

The Union has proposed that the monthly payments of $37.50, $75.00, and $150.00 be increased to 1.5 percent, 2.5 percent, and 5.0 percent of the police officer's monthly salary, respectively (C. Ex. 2.V.D.). The Union's proposal, if accepted by the City, would give its peace officers the same educational incentives received by its fire fighters. The City has proposed no change in the current incentives.

According to the City, TPOU's proposed changes to the contractual Education Incentive program would increase its annual costs for bargaining unit employees at the current participation rate by about $29,440 each year. (C. Ex.1.I.D., p. 11).[6] This increase based on current utilization rates does not appear to impose a significant cost liability to the City, representing less than a 0.5 percent increase in annual bargaining unit compensation. The Chairperson acknowledges that no information was presented as to any compromises or tradeoffs that the firefighter unit may have had to make to secure its more favorable educational incentive program. However, it cannot be gainsaid that a better educated police force is an asset to the City and the community served by its Police Department. As such, and again noting the relatively minor budgetary impact, the Chairperson recommends that the parties agree to the Union's Education Incentive reimbursement amounts as proposed in its LBFO.

Personal Days Off

The TPOU has proposed that unit employees be given two personal days off in each fiscal year, consisting of eight-hour days or twelve-hour days depending on shift assignment. It further proposed that these personal days shall be put in a separate leave bank, shall have no cash value, and are to be used prior to the last full pay period of each fiscal year covered by the MOU under negotiations (C. Ex. 2, V.D.). The City has proposed one personal day each year.

At one time bargaining unit employees were provided two personal days off each year (MOU, Article XXI, Section P), this benefit terminating in 2014. The parties are in dispute as to

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[6]It was estimated that if police officers utilization rate was the same as the fire fighters the Union's education incentive proposal would increase costs some $60,000 each year (C. Ex.1.I.D., p. 11). Whether an increase in the education incentives would increase its utilization rate to that of the fire fighters is largely speculative.

the propriety of the elimination of this benefit, with the City asserting that these personal days ended according to the terms of the prior MOU and the Union alleging that they were unilaterally taken away by the City. Resolution of this dispute, however, is not within the jurisdiction of the statutory factfinding procedures or the authority conferred on this Panel. It is sufficient for the Panel's purposes that unit employees were previously provided with two personal days each year, that they no longer receive these days, and that the Union has proposed two such personal days each year while the City has proposed that unit employees receive one such personal day off each year.

Since the personal days off as contemplated by the Union's, and ostensibly the City's, respective proposals cannot be cashed out each year or carried over and cashed out when a peace officer leaves City service, the personal days do not directly increase the bargaining unit's overall payroll costs. However, as reflected in the City's computations, an added cost to the City accrues when officers are assigned overtime to provide coverage for officers off work on personal days. The City's computations, which assume a one-for-one hours replacement at the overtime rate plus Medicare and Worker's Compensation costs, show that the Union's proposed two personal days would cost some $54,570 each year (C. Ex. 1.III.B.). Thus, the Union's proposal would cost the City about $27,250 more each fiscal year than the City's proposed one personal day. When viewed in isolation, this is not a substantial difference. However, in light of the above recommendations regarding the salary increases and recommended increases to the educational incentives for unit employees, the Chairperson does not believe that the City should be required to absorb this additional cost increase. As such, it is recommended that the parties agree to the City's proposal to provide unit employees one personal day off in each fiscal year with their use

to be as set forth in the Union's proposal as summarized above. In such regard, it is observed that the recommended one personal day off each year serves as a contractual base or footing upon which the Union in future negotiations might secure additional personal days off through the give and take of the negotiation process.

Based on the Recommendations of the Chairperson the Panel Members concur or dissent as follows:

For the Employer:

_____Concur

_____Dissent

_____Concur in Part

_____Dissent in Part

Report Attached: _____

_____
Kenneth W. Caves
Employer Panel Member

For the Union:

_____Concur

_____Dissent

_____Concur in Part

_____Dissent in Part

Report Attached: _____

_____
James Kelly
Union Panel Member

_____
Walter F. Daugherty
Chairperson

Based on the Recommendations of the Chairperson the Panel Members concur or dissent as follows:

For the Employer:

_____Concur

_____Dissent

_____Concur in Part

_____Dissent in Part

Report Attached: _____

For the Union:

_____Concur

_____Dissent

__✓__Concur in Part

_____Dissent in Part

Report Attached: ✓

Kenneth W. Caves
Employer Panel Member

James Kelly
Union Panel Member

Walter F. Daugherty
Chairperson

Concurring and dissenting opinion of the union fact finding panel member James Kelly to the impartial Chairperson's fact findings report and recommendations completed by Walter Daugherty

As the union appointed fact finding member, I hereby concur with some of the Chairperson's findings and recommendations but dissent from others as explained below.

1. I concur with Chairperson's statements that impasse was the result of three financial issues which were salary increases, education incentives and two personal days off. Additionally I concur with the Chairperson that the City of Tulare has sufficient funding to offer the Tulare Police Officers a larger salary increase than the city offered.
    a. I do want to make a note regarding some of the facts listed in the Chairperson's report regarding the City of Tulare offers to the Tulare Police Officer's Union. First, when you look at the City's offers in chronological order which are listed in the report, you have the following offers:
        1. Oct 9, 2015, CPI for one year
        2. Feb 2, 2016, 3% Jan 2016, 3% Jan 2017, 4.75% Jan 2018 (-3% employee PERS contribution)
        3. Mar 4, 2016, 5% July 2016 for one year
2. As I have stated before, I do concur with the Chairperson on the ability of the city to offer a larger salary increase but I do dissent with the salary increase he proposed. The fact finding panel was held on July 18, 2016 where City Manager Don Dorman made statements the City of Tulare could only afford to increase the police officers' salary based upon CPI due to the fluctuation of the sales tax. My argument is based upon the city's chronological offers as they do not reflect his statements

nor did the facts. All parties agree the 1% salary cost to be $63,100 which would cause an increase to the city of $315,500 for the union proposal of 5%. Don Dorman reported the city's target reserve amount is 25% which 1% is equal to $357,000 (total target reserve then would be $8,925,000). Now there were differing opinions to the size of the target reserve with the low end being 5% to 7% in order to maintain high credit scores. It is my opinion the facts support the ability of the city to pay the 5% increase in pay which is less than 1% of the target reserve.

Additionally regarding the "whipsaw" effects or the lack of a salary survey regarding other bargaining units within the city, it is my opinion neither of those issues should have an impact on the end result of this fact finding panel. This is due to the fact as Don Dorman stated all other bargaining units accepted the city's offer and no other bargaining unit obtained a salary survey. Regarding the city funded survey, the city never utilized the survey completed in 2008, which Don Dorman confirmed, nor have they attempted to complete an additional updated survey.

It is my opinion the City of Tulare has the ability to accept the 5% salary increases proposed by the union and the pay increases should occur on July 2015, July 2016 and 6% on July 2017 (-3% employee PERS contribution). Don Dorman explained how the city has closed the "books" for 2015 and how the city only included CPI in the budget for 2016. Where did the money go for the 2015 and 2016 fiscal years? Based upon witness' statements, at the end of fiscal 2015 the city reserve had a substantial increase. I do not agree nor do I think anyone would agree with the statement that the City of Tulare cannot access funds in the reserve from a prior year, otherwise why does the city place money in the reserve. The funds the city saved from not paying increases in salaries or benefits did not simple vanish and have been added to the reserve amount which the city can still access. The city has

the ability to fund the $315,000 salary cost for 2015 from the $26,000,000 reserve.

3. I concur the City of Tulare should provide the same education incentives as they provide to the Fire Department and the city should accept the education incentives the union proposed.
4. I dissent Chairperson's opinion regarding the two personal days off. First the city provided those two personal days off each year in lieu of a salary increase due to budget concerns as those days off caused "zero" impact to the city budget. Per the Chief of Police, the two personal days were just taken without any negotiations which I agree this issue is outside the jurisdiction of this fact finding panel. However, now the city is attempting to state every time an employee uses their time off, the city is forced to pay overtime and somehow now there is an added expense ($54,570). The personal time off does not have the same requirement by law as comp time, as such, the department frequently denied the requested time off if it impacted shift strength and required overtime to be paid. Second, Don Dorman agreed there has been no salary increases recently. It is my opinion the $54,570 is not an accurate true cost to the city and the two personal days off should be given to the employees.

Based upon the above mentioned facts, this panel member opinion is the City of Tulare has the ability to fund all of the Tulare Police Officers' Union proposals set forth in this fact finding.

Respectfully submitted, Dated: 11/22/2016

James Kelly

Based on the Recommendations of the Chairperson the Panel Members concur or dissent as follows:

For the Employer:

_____Concur

_____Dissent

__✓__Concur in Part

__✓__Dissent in Part

Report Attached: __✓__

Kenneth W. Caves
Employer Panel Member

For the Union:

_____Concur

_____Dissent

_____Concur in Part

_____Dissent in Part

Report Attached: _____

James Kelly
Union Panel Member

Walter F. Daugherty
Chairperson

City of Tulare and Tulare Police Officers Union (TPOU)

PERB Case No. SA-IM-159-M

City of Tulare's Concurring and Dissenting Opinion to the Factfinding Report and Recommended Terms of Settlement

City of Tulare's Representative to the Factfinding Panel

Kenneth W. Caves

As the City's of Tulare's representative to the Factfinding Panel, I concur in part, and respectfully dissent in part, to the Factfinding Report and Recommended Terms of Settlement issues by Chairperson Walter F. Daugherty.

- **Issue: SALARY**

  The chair recommends a multi-year salary package.

  1) A 3.0% increase retroactive to the second payroll period of January 2016.
  2) A 4.0% increase effective the second payroll period of January 2017.
  3) A 5.75% increase effective the first payroll period of January 2018 with employees then contributing an additional 3.0% toward their PERS contribution.

  I dissent to the Chairperson's recommendation. While the timeframes of increases match one of the City's proposal, the amounts exceed what the City has offered and has been accepted by other bargaining units and in particular the Police Management Unit. Any percentage increase greater than that received by the Police Management Unit would result in compaction of salaries within the Department. The City has informally attempted to resolve the compensation issue with the TPOU since impasse was declared without success. As the representative of the City, I could support a multi-year salary package that includes the following:

  1) A 3% increase effective the first payroll period in November 2016.

  2) A 3% increase effective the second pay period in January 2017.
  In addition the parties agree to meet and confer regarding salary during the 2017-2018 fiscal year.

  3) 4.75% increase effective the first pay period in January 2018.
  Employee share to Public Employee Retirement System (PERS)
  Effective January 2018 bargaining unit employees shall pay, in addition to the 9% currently paid by Classic employees, and the amount set by CalPERS for PEPRA employees, an additional 3% of the CalPERS premium currently paid by the City.

- Issue **EDUCATION AND CERTIFICATION INCENTIVE PROGRAM**

The chair recommends that the parties agree to the Union's Education Incentive Reimbursement amount as proposed in the TPOU Last, Best, and Final Offer.

That offer would be as follows:

One and one-half percent (1 1/2%) of monthly salary for 30 college units (20 units in Police Science) and three (3) years of police service or an Intermediate POST Certificate.

Two and one-half percent (2 1/2%) of monthly salary for 60 college units (20 in Police Science) and three (3) years of police service or an Advanced POST Certificate.

Five percent (5%) of monthly salary for a BA or BS in Public Administration, Criminal Justice Administration, Business Management or related field with four (4) years of police service.

I dissent with the Chair's recommendation to increase the Education and Certification Incentive at this time but would recommend that this item be included in the salary reopener during the spring of 2017 for possible implementation during the 2017/2018 fiscal year.

- Issue **PERSONAL DAYS OFF**

The chair recommends that the parties agree to the City's proposal to provide unit employees one (1) personal day off in each fiscal year and indicate that as part of the MOU between the parties.

I concur with the Chair's recommendation if implemented starting December 1, 2016 for the 2016/2017 fiscal year and continuing at the one (1) day rate each fiscal year thereafter and would also recommend that one additional day for a a total of two (2) days be granted each fiscal year starting December 1, 2016 in lieu of accepting the Chairman's recommendation for enhancement of the Education and Certification Incentive at this time.

Respectfully Submitted,

Kenneth W. Caves

Kenneth W. Caves
CAVES & ASSOCIATES
City of Tulare's Member of the Factfinding Panel