

1 Najeeb N. Khoury
2 P.O. Box 67
3 Montrose, CA 91021
4 213-304-5286
5 nkhouryadr@gmail.com

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

8 EL SEGUNDO FIREFIGHTERS'
9 ASSOCIATION, IAFF, LOCAL 3682

10 Association,

11 &

12 CITY OF EL SEGUNDO,

13 Employer

Case No.: LA-IM-311-M

FACTFINDING REPORT AND
RECOMMENDATIONS FOR
SETTLEMENT

14
15 Chairperson: Najeeb N. Khoury
16 Employer Panel Member: Steven Berliner, Liebert Cassidy Whitmore
17 Association Panel Member: Robert Wexler, Rains, Lucia & Stern
18 Lead Advocate For the Association: Jacob A. Kalinski, Rains, Lucia & Stern
19 Lead Advocate For the Employer: Irma Rodriguez Moisa, Atkinson, Andelson, Loya, Rudd &
20 Romo
21 Hearing Date: June 8, 2022
22

23 BACKGROUND

24 El Segundo Firefighters' Association, IAFF, Local 3682 ("Association") represents
25 firefighters, engineers and captains employed by the City of El Segundo ("Employer" or "City").
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1 El Segundo is a city located near Los Angeles International Airport (“LAX”). The cost of a 1%
2 salary increase for this unit is \$97,900.

3 The parties have been bargaining for a successor contract, but, to date, have been unable
4 to reach an agreement. A declaration of impasse was made on March 21, 2022, and the
5 Association made a factfinding request to the Public Employment Relations Board (PERB) on
6 April 5, 2022. The parties selected me to serve as the factfinding panel chair. The factfinding
7 hearing occurred on June 8, 2022 at El Segundo’s City Hall. Both parties presented through their
8 designated advocates and provided documents supporting their respective positions.
9

10 ANALYTICAL FRAMEWORK

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

17 As set forth in California Government Code Section 3505.4(d), the MMBA requires
18 factfinders to “consider, weigh, and be guided” by the following criteria:
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- 20 1. State and federal laws that are applicable to the employer.
- 21 2. Local rules, regulations, or ordinances.
- 22 3. Stipulation of the parties.
- 23 4. The interests and welfare of the public and the financial ability of the public agency.
- 24 5. Comparison of the wages, hours, and conditions of employment of the employees
25 involved in the factfinding proceeding with the wages, hours, and conditions of other
26 employees performing similar services in comparable public agencies.
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1 administration of claims and seeks to manage the risk of “run away” jury verdicts; and that this
2 provision already exists in the City’s non-safety MOUs. The Association vehemently opposes
3 this proposal. It notes that no other public sector agency has such a clause; that the City should
4 focus on eliminating bad employment practices rather than limiting the rights of employees to
5 bring claims; that the City is seeking to have the Association waive rights that are statutorily
6 created and not created by the MOU; and that the City cannot legally impose this proposal.

8 Recommendation:

9 I do not recommend the City’s proposal with regards to having employment related
10 claims be subject to mandatory arbitration. There are three reasons for my recommendation.

11 First, a criterion that the MMBA requires me to consider is a “comparison of the wages,
12 hours, and conditions of employment of the employees involved in the factfinding proceeding
13 with the wages, hours, and conditions of employment of other employees performing similar
14 services in comparable public agencies.” (*emphasis added*). The City can point to no other fire
15 agency in the state that requires employees to submit non-MOU related claims to binding
16 arbitration. This requested change in the status quo is unprecedented among fire agencies, which
17 weighs strongly against recommending it.

18 Second, it simply makes no logical sense to require a union to bargain away statutory or
19 common law rights that do not arise from the collective bargaining process. There is a long
20 practice and history of arbitration being required for workplace disciplinary actions and disputes
21 arising from collectively bargained agreements. This widespread practice makes logical sense.
22 In the private sector, it is the collectively bargained agreement that normally turns an at will
23 employment situation into a just cause one; therefore, it is proper for a contractually created
24 process—arbitration—to decide whether just cause exists for discipline in a unionized context.
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1 In the public sector, arbitration for discipline arises when the parties have negotiated arbitration
2 as the method for deciding just cause discipline in lieu of using a civil service or other hearing
3 officer model. Similarly, it makes sense for non-disciplinary related contractually created rights
4 to be decided through a contractually created arbitration process. Put differently, because it is
5 the union and employer that negotiate the disciplinary process and the collectively bargained
6 contractual rights, the union and employer logically negotiate the method for adjudicating those
7 issues—namely, arbitration. A union, on the other hand, does not negotiate statutory or common
8 law tort rights for the employees it represents. And while it is true that arbitration seeks to
9 change the forum for deciding disputes but does not extinguish claims, the right to a jury trial is
10 not an insignificant right. Moreover, the Association rightly points out that many of these
11 statutory claims are brought by lawyers on a contingency basis, and pushing these claims into the
12 arbitration forum may effectively, if not legally, prevent them from being pursued.
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14

15 Finally, California, through AB 51, has expressed a public policy preference against
16 allowing employers to condition employment on employees entering into mandatory arbitration
17 agreements. While AB 51 continues to be litigated with complex preemption questions at play,
18 the state has clearly expressed its displeasure with employers requiring employees, as a condition
19 of employment, to submit claims to arbitration.
20

21 For these reasons, I recommend not accepting the City’s proposal of requiring the
22 Association to waive its members’ rights to jury trials for employment related claims.
23

24 I do recommend that the parties adopt the City’s proposal regarding disciplinary appeals
25 being decided through arbitration rather than through the Los Angeles County Civil Service
26 Commission. It is unusual for a different jurisdiction’s civil service commission to decide
27 disciplinary appeals for an employer. Moreover, it is very common for public sector disciplinary
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1 appeals to be decided through the arbitration process. The Association provided no reason why
2 this change should not occur.

3 Issue 2: Residency Requirement

4
5 The City proposes a residency requirement with a 100-mile radius for 1) current members
6 who already reside within 100 miles; and 2) those hired after the adoption of the provision. The
7 City argues employees who live over 100 miles away are less likely to respond to the City when
8 someone gets injured or calls in sick, and that this places a greater burden on employees who live
9 closer to El Segundo. The City posits that this change in the status quo advances its interest of
10 maintaining the safety of residents and businesses by ensuring employees are not overworked
11 and have a proper opportunity to rest on their days off.

12
13 The Association responds that this proposal is unduly restrictive, that the cost-of-living
14 within 100 miles of El Segundo is high, that its members are not complaining about any alleged
15 uneven distribution of overtime, that no other agency in the list of comparable agencies used by
16 the parties has a residency requirement, and that the City provides no specific incident of a
17 bargaining unit member failing to timely respond to an emergency.
18

19 Recommendation

20 I do not recommend that the parties accept this provision as proposed, although I strongly
21 recommend that the parties consider the concept if it were to be limited only to future employees.

22
23 First, one compelling factor against the proposal is that no other jurisdiction in the list of
24 comparable jurisdictions has such a residency requirement.

25
26 Nevertheless, the City raises some legitimate concerns about wanting employees to be
27 available for unexpected work shifts, and some other fire agencies do have residency
28 requirements. However, given that the City is proposing a change in the status quo, I believe

1 more specific examples need to be presented of bargaining unit employees failing to respond to
2 overtime directives before a firm recommendation is made to implement such a restrictive
3 provision.

4
5 If the City had presented concrete examples, I still would have limited my
6 recommendation so that the residency requirement applies only to prospective employees. A
7 current employee who lives within a 100-mile radius should still be able to move outside that
8 radius, and should not have to choose between his/her job and moving outside a 100-mile radius
9 when there was no such limitation when he/she took the job. This concern would not exist for
10 new employees who, upon accepting offers of employment, would already be aware of the
11 residency requirement.
12

13 While I am not recommending this proposal, the Association should be willing to
14 seriously consider further discussions on such a provision for future employees, as it may lessen
15 the load on the current membership and would help address a legitimate concern raised by the
16 City.
17

18 Issue 3: Across-The-Board Salary Increases

19 The parties have been negotiating a three-year contract that would have a term from
20 October 2021-July 2023. The City proposes a zero percent increase for October 2021-June 2022,
21 a 3% increase for July 2022-June 2023,¹ and a 3% increase for July 2023-June 2024. The
22 Association proposes a zero percent increase for October 2021-June 2022, a 5% increase for July
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27 ¹ The City proposes that any raises would not go into effect until a deal is reach. However, it is common for raises
28 to be retroactively applied when an agreement is reached after the start of a fiscal year. I, therefore, recommend that
any negotiated increases start on July 1, 2022 even if the agreement is reached after July 1, 2022. I do this mainly
because the Association has already agreed to a 0% increase for the current fiscal year.

1 2022-June 2023, and a 5% increase for July 2023-June 2024. The Association further seeks
2 additional contingent increases dependent on City revenue.

3 The parties agree on a list of comparable agencies to be used in looking at salaries. The
4 list includes Los Angeles City, Los Angeles County, Manhattan Beach, Redondo Beach,
5 Torrance, Culver City and Santa Monica.

6 The Association's survey of the comparable agencies concluded that El Segundo
7 firefighters are 24.4% below the mean, that El Segundo engineers are 11.1% below the mean,
8 and the El Segundo captains are 9.8% below the mean. The City's survey presented at the
9 hearing showed that El Segundo firefighters are 3.65% above the mean, that El Segundo
10 engineers are 5.5% above the mean, and that El Segundo captains are 3.7% above the mean.
11 However, on June 27, 2022, the City submitted a revised study showing that El Segundo
12 firefighters are 2.68% below the mean, that El Segundo engineers are 4.76% below the mean,
13 and that El Segundo captains are 4.83% below the mean. On July 1, 2022, the City indicated that
14 the June 27, 2022 submission had errors and provided a corrected study that showed firefighters
15 are 3.99% above the mean, that El Segundo engineers are 6.26% above the mean, and that
16 firefighter captains are 4.37% above the mean.

17 There are multiple reasons for the different figures between the City and the Association.
18 The Association argues that even applying the City's methodology shows that firefighters are
19 7.87% below the mean when one utilizes a Tier 2 employee, expresses the percentage as a
20 percentage of El Segundo compensation required to reach the mean, and corrects for various
21 issues in the City's study.

22 The Association notes that the Los Angeles Area CPI-U was 7.9% as of April 2022 and
23 has only increased. The Association also points to the City's healthy General Fund Reserve. The
24

1 Association believes that the City historically has over budgeted expenses and under budgeted
2 revenues.

3 The City responds that its long-term economic forecast is troubling. The City depends
4 heavily on hotel tax revenue, and most El Segundo hotels cater to business travelers. Unlike
5 tourist travel, business travel is still significantly down from pre-pandemic levels. The City also
6 notes that in Fiscal Year 2021-2022, the City's operations and revenues were impacted by the
7 pandemic, that the CARES act funding helped balance the 2021-2022 budget, but that the
8 CARES Act funding is one-time revenue and was used in part to address related pandemic
9 expenses. Moreover, while revenues have increased from the pandemic lows, the City is still
10 worse off in its projected revenues compared to its pre-pandemic expectations. While the City
11 maintains a healthy general fund balance, that balance is projected to decreased through the year
12 2031. This is because the City projects appropriations exceeding revenues in the foreseeable
13 future. For these reasons, the City argues it is constrained in what economic enhancements it can
14 offer and has already stretched itself to offer a 6% increase during the life of the agreement.

18 Recommendation

19 I recommend a zero percent increase for October 2021-June 2022, a 4.5% increase for
20 July 2022-June 2023, and a 4.5% increase for July 2023-June 2024. I make this recommendation
21 for several reasons. First, the MMBA requires me to consider CPI. The CPI has increased at an
22 extremely high pace in the past twelve months. Indeed, inflation at its current pace outpaces
23 even the Association's proposal. Also, the MMBA requires me to compare El Segundo
24 firefighters to firefighters in other jurisdictions. The data supports finding that the highest paid
25 firefighters in other jurisdictions are paid more than Tier 2 firefighters in El Segundo, and most
26 firefighters in El Segundo are Tier 2 employees. The Association posits that even accepting the
27

1 City's methodology but adjusting for some of its errors shows that the El Segundo firefighters
2 are 7.87% below the mean. The City acknowledges that unit members are below the mean but
3 disagrees with the Association's numbers. My recommendation would have El Segundo
4 firefighters approach and possibly surpass the mean (depending on what the comparable
5 jurisdiction do in terms of pay during the term of this Agreement and on which parties' numbers
6 are relied upon) by providing a 9% raise over the life of the contract. I also believe it makes
7 sense to concentrate the most dollars into across-the-board increases.
8

9 However, I also recognize the City's financial concerns. CARES funding is one-time
10 money and that City faces an uncertain economic future post pandemic. The City rightly wants
11 some stability in budgeting its expenses. Therefore, I am not recommending that the City
12 provide additional compensation increases based on the City's future revenues. Moreover, as
13 discussed below, I am not recommending any other economic enhancements outside of increases
14 to health insurance, optical, dental and life insurance contributions. My recommendation against
15 other economic enhancements is driven in large part by the City's concern that it will have future
16 budget deficits that will lessen its reserves.
17
18

19 Issue 4: Health Insurance Increases

20 The City proposes increasing its contribution to health insurance costs to \$1,725 a month
21 starting on January 1, 2023 and \$1,775 a month starting on January 1, 2024. The Association
22 proposes a contribution rate of \$1,800 starting on January 1, 2023 and \$1,850 starting on January
23 1, 2024. The City points out that this bargaining unit receives higher health insurance amounts
24 than other units, and the City wants to level out the amounts it pays across units. The
25 Association argues that the mean contribution from the comparable jurisdictions is over \$1,800;
26 the Association also notes that it did not receive an increase in the contribution rate for 2022.
27
28

1 The City responds that the data used by the Association includes dental and vision contributions,
2 which are disaggregated in El Segundo. The City did not provide figures for how much health
3 insurance costs are projected to increase 0in 2023 and 2024.

4
5 Recommendation:

6 I recommend that the contribution rate be \$1,775 for January 1, 2023 and \$1,800 for
7 January 1, 2024. I make this recommendation to both get the Association closer to the mean
8 level but to also account for the fact that the City disaggregates its dental and vision
9 contributions, which suggests that the real figure to get the Association to the mean is lower than
10 \$1,850.

11
12 Issue 5: Increases In Maximum Contribution to Optical, Dental & Life Insurance

13 The parties agree on the dollar figure of \$184.25 for this issue. The disagreement is over
14 whether the new figure will be implemented on January 1, 2022 (retroactively) or July 1, 2022.

15 Recommendation

16 I recommend an implementation date of July 1, 2022. I do this mainly for administrative
17 ease.

18
19 Issues 6 & 7: Elimination of Educational Pay in Exchange for an Across-The-Board Increase of
20 \$1,059.02 per month and Reimbursement for Educational Expenses.

21 The contract currently has two tiers for educational pay. Employees hired before
22 November 28, 2015 receive between \$211.36 per month to \$1,059.02 per month of pensionable
23 pay depending on their educational level and classification; employees hired after November 28,
24 2015 receive either \$500 per month if they have a BA or \$900 per month if they have an MA of
25 non-pensionable pay. The Association wants to eliminate this disparity and proposes to
26 eliminate the educational pay in exchange for an across-the-board increase of \$1,059.02 a month.
27
28

1 This proposal has a yearly cost of \$219,901.22 or the cost equivalent of a roughly 2.25% across-
2 the-board salary increase ($\$219,901.22/\$97,900$). The proposal would raise the starting salary in
3 excess of the across-the-board economic impact as it would have a larger impact on new
4 employees which would help attract firefighters to El Segundo. The City responds that it wants
5 to concentrate dollars on base wages and it cannot afford a salary increase on top of the across-
6 the-board increases that are being negotiated. The Association also proposes allowing for a
7 \$2,000 a year reimbursement for educational costs from an accredited institution for course work
8 taken toward a BA or MA degree. The Association proposes this in conjunction with its
9 proposal to eliminate the educational pay as a way to continue encouraging unit members to
10 pursue educational opportunities.
11

12
13 Recommendation:

14 I recommend maintaining the status quo. As discussed above, I recommended a figure
15 closer to the Association's proposal on across-the-board raises in hopes of getting the El
16 Segundo firefighters closer to the mean for the comparable group. I noted that the City does have
17 legitimate financial concerns and that I would not recommend significant economic
18 enhancements over and above the across-the-board raises. Because I do not recommend
19 eliminating the educational pay, I also do not recommend the reimbursement proposal as that
20 was tied to the elimination of the educational pay.
21

22
23 Issue 8: Leaves of Absence Hours Counted As Hours Worked for Overtime Purposes

24 In a previous bargaining cycle, the parties bargained for language that excluded leave
25 time from being counted as hours worked for overtime purposes. The Association points out that
26 none of the comparable jurisdictions has such a provision. In Manhattan Beach, vacation, holiday
27 and IOD are counted as hours worked and in Redondo Beach all paid leave except sick time is
28

1 counted as hours worked. There was some confusion at the factfinding hearing as to whether El
2 Segundo's practice is to only preclude counting sick time from being counted as hours work for
3 overtime purposes.

4
5 Recommendation:

6 I recommend clarifying that only sick time should be excluded from being counted as
7 hours worked for purposes of triggering overtime. Individuals who are asked to work extra
8 hours during periods when they have pre-planned vacations or when there are holidays should
9 not be paid less for the inconvenience of having to work outside their normal shifts. This would
10 also place El Segundo in line with some of the comparable jurisdictions on this point.

11
12 Issue 9: Length of Time Needed to Be In Acting Shift To Receive Acting Pay

13 The parties have agreed that employees who are assigned to work in higher
14 positions/classifications on a temporary basis shall receive 5% acting pay. The dispute is over
15 how long the employee must be acting to receive the pay. The Association proposes an
16 employee in the position for four hours receives the pay; the City responds that the pay should
17 only be triggered if an employee is assigned the higher work for a full shift. The Association
18 argues that all work should be paid; the City responds that logistically it would be difficult to
19 track and pay for work that occurs for only a few hours.

20
21 Recommendation:

22 First, I note that it is unlikely that individuals would be assigned higher duties for less
23 than a shift and so this should not be an issue that arises frequently. Second, it is important to
24 note that shifts are usually twenty-four hours in length. I can see how tracking assignments for a
25 few hours could be a logistical challenge. However, it should not be as much of a challenge to
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1 track assignments that last at least twelve hours. For this reason, I recommend that employees be
2 paid the acting pay when they are assigned the work for at least twelve hours.

3 Issue 10: Require Promotional Testing At Least Once Every Two Years

4
5 The Association proposes that the City commence a testing process for the ranks of Fire
6 Paramedic, Fire Engineer, Fire Captain, and Battalion Chief at least once every two years
7 regardless of available positions. The Association states that this will ensure that there are
8 always active promotional lists, and it will make the promotional process more efficient. The
9 City counters that this would create unnecessary work when there are no vacancies to fill.

10 Recommendation

11
12 Given the minimum cost of this proposal and the importance of the issue to employees, I
13 recommend adopting this proposal.

14 Issue 11: Team Assignment and Special Assignment Pay

15
16 The Association proposes team assignment and special assignment pay for multiple
17 assignments. The City opposes these cost items, as it wants to focus on across-the-board
18 increases.

19 Recommendation:

20 I do not recommend accepting these proposals. As explained above, I believe the parties
21 should focus on across-the-board increases, which is why I recommend the 4.5% across-the-
22 board increases for each of the next two fiscal years.

23
24 I note that the parties have indicated that there is cleanup language on which they are
25 principally in agreement. I encourage the parties to continue to work on those language issues.

1 I sincerely hope that these recommendations assist the parties in reaching a negotiated
2 settlement.

3 Date: July 15 , 2022

4 
5 _____
6 Najeeb N. Khoury

1 Steven M. Berliner, Bar No. 142835
sberliner@lcwlegal.com
2 LIEBERT CASSIDY WHITMORE
A Professional Law Corporation
3 6033 West Century Boulevard, 5th Floor
Los Angeles, California 90045
4 Telephone: 310.981.2000
Facsimile: 310.337.0837

5 Attorneys for Employer CITY OF EL SEGUNDO
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8 IN THE FACTFINDING PROCEEDINGS
9 PURSUANT TO THE MEYERS-MILIAS-BROWN ACT

10 EL SEGUNDO FIREFIGHTERS'
ASSOCIATION, IAFF, LOCAL 3682,
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13
14 CITY OF EL SEGUNDO,
Employer.
15

Case No.: LA-IM-311-M

**CITY OF EL SEGUNDO FACT FINDING
PANEL REPRESENTATIVE STEVEN M.
BERLINER CONCURRENCE AND DISSENT
TO THE FACT FINDER'S REPORT AND
RECOMMENDATIONS FOR SETTLEMENT**

16 **OVERVIEW**

17 I am the City El Segundo's ("City") appointee to the Fact Finding panel in this matter. I
18 attended the fact finding hearing, participated in all fact finding panel post-hearing discussions
19 and have reviewed Fact Finder Najceb Khoury's Report and Recommendations for Settlement
20 ("Report"). I concur to portions of the Report and dissent to others, as set out below:

21 **CONCUR**

22 I concur with the Report on Issues 5, 6, 7, 8, 10 and 11.

23 **DISSENT**

24 I dissent with the Report on Issues 1, 2, 3, 4 and 9 both as to the recommendation and the
25 rationale behind it. The reasons for my dissent follow:
26

27 **Issue 1: Mandatory Arbitration of Employment Related Claims**

28 The City proposed MOU language that would require that Association represented

1 employees submit any and all disputes related to their employment with the City to binding
2 arbitration rather than using other venues, such as legal action in court. The proposal also
3 provided that if the above provision was agreeable, the City would also agree to binding
4 arbitration of disciplinary proceedings as a package proposal. The Association opposed
5 arbitration for all claims except for disciplinary matters.

6 The Fact Finder recommends binding arbitration for discipline matters only.

7 **Dissent**

8 The City made a package proposal and never offered binding arbitration for discipline on
9 its own. The Report recommends a new proposal never contemplated by the City. If binding
10 arbitration is unacceptable for some matters, then binding arbitration for discipline is withdrawn
11 pursuant to the plain language of the City's proposal.

12 The City's interest in binding arbitration for employee legal claims is justifiable. The cost
13 of defending against litigation, and the staff time litigation requires, can be very detrimental to the
14 City's finances and its ability to provide services to the community. Moreover, the other
15 employee associations in the City have all agreed to the City's proposal.

16 Despite the above, the City recognizes that it may not legally impose this proposal, even
17 after fact finding is concluded, so the Report renders the issue moot.

18 **Issue 2: Residency Requirement**

19 The City proposes a residency requirement with a 100-mile radius of the City for 1)
20 current members who already reside within 100 miles; and 2) those hired after the adoption of the
21 provision. The Association opposes the proposal in its entirety. The Fact Finder does not
22 recommend adoption of the proposal, but instead strongly recommends that the Association
23 consider the proposal as to future employees.

24 **Dissent**

25 The City's proposal is justifiable in its entirety. The Fire Department is subject to
26 constant manning requirements, which means that a certain number of employees must be on duty
27 at any given time. If a scheduled employee cannot work, whether due to sickness or some other
28 reason, another employee must take his or her place. Often, that requires that another employee

1 be forced to work, usually at overtime rates.

2 Evidence was presented that several of the Association members live outside of
3 California. When they are home, they are generally unavailable to quickly return to work to fill
4 in for others. The result is that those employees that do live closer to the City must work a higher
5 percentage of these inevitable overtime shifts. This can result in more injuries and burnout. The
6 Fact Finder makes much of the lack of specific evidence that individual employees are harmed or
7 have complained about having to work a larger percentage of overtime shifts than would
8 otherwise be required. However, common sense suggests it is very unlikely that individual
9 Association members would testify against the Association position in bargaining. The Fact
10 Finder's rationale for not making a recommendation of the City's proposal should be heavily
11 discounted.

12 Finally, the City's proposal grandfathers in those employees already living in excess of
13 100 miles from the City. None are faced with the choice of moving or keeping their job.
14 However, it is not in the public's best interest for current employees to move beyond the 100 mile
15 radius. That would just exacerbate the problem. There is no impact on current employees' job
16 expectations by a requirement to continue to reside within the 100 mile radius if they already do
17 so.

18 **Issue 3: Across-The-Board Salary Increases**

19 The parties have been negotiating a three-year contract that would have a term from
20 October 2021-July 2023. The City proposes a zero percent increase for October 2021-June 2022,
21 a 3% increase for July 2022-June 2023, and a 3% increase for July 2023-June 2024. The
22 Association proposes a zero percent increase for October 2021-June 2022, a 5% increase for July
23 2022-June 2023, and a 5% increase for July 2023-June 2024. The Association further seeks
24 additional contingent increases dependent on City revenue.

25 The Fact Finder recommends a zero percent increase for October 2021-June 2022, a 4.5%
26 increase for July 2022-June 2023, and a 4.5% increase for July 2023-June 2024. His
27 recommendation is closer to the Associations' proposal than to the City's proposal in years 2 and
28 3 of the term. The recommendation was made in part based on inflation data, the fact that there

1 was no increase for the first 9 months of the term and that data suggests that the City is behind the
2 relevant comparable agencies. The Fact Finder admits that his recommendation will bring
3 Association employees close to, if not greater than, the salaries of comparable agencies.

4 **Dissent**

5 The City presented evidence of a troubling long term financial picture. The City has
6 traditionally relied heavily on hotel taxes (TOT). However, most El Segundo hotels cater to
7 business travelers, and business travel has not rebounded like leisure travel and the outlook
8 remains uncertain. Moreover, the City submitted evidence that in fiscal year 2021-2022, it had to
9 rely on one-time federal COVID relief funds to balance its budget.

10 Nonetheless, the Fact Finder recommends the higher salary increases. The City does not
11 have a better balance sheet or financial future because the economy is in an inflationary cycle. In
12 fact, all the things that City buys goes up in cost just as the personal purchases its employees
13 make go up in cost. The MMBA does list CPI as a factor to consider. However, it is just one of
14 many factors, and does not justify the higher salary recommendation given the City's financial
15 forecasts.

16 **Issue 4: Health Insurance Increases**

17 The City proposes increasing its contribution to health insurance premiums to \$1,725 a
18 month starting on January 1, 2023 and \$1,775 a month starting on January 1, 2024. The
19 Association proposes a contribution rate of \$1,800 starting on January 1, 2023 and \$1,850 starting
20 on January 1, 2024.

21 The Fact Finder recommended that the contribution rate be \$1,775 for January 1, 2023
22 and \$1,800 for January 1, 2024.

23 **Dissent**

24 The Fact Finder's recommendation does not fully take into account that health insurance
25 contribution figures for comparable agencies include their dental and optical insurance
26 contributions, while the City's dental and optical insurance contributions are accounted for
27 separately. Article 8.04 of the current MOU provides up to \$135 per month for an employee's
28 vision, optical and life insurance. If it is assumed roughly \$100 of that \$135 per month would

1 apply to dental and optical insurance, the City's proposal is sufficient to maintain the Association
2 members' market position on the health insurance benefit.

3 **Issue 9: Length of Time Needed to Be In Acting Shift In Order To Receive Acting Pay**

4 The parties disagreed over how long the employee must be acting to receive acting pay of
5 5%. The Association proposed a 4 hour minimum. The City countered with a full shift (24 hour)
6 minimum.

7 The Factfinder recommended a 12 hour minimum on the basis that a 4 hour minimum
8 might be administratively difficult while a 12 hour minimum may not be as burdensome to
9 administer.

10 **Dissent**

11 There was no evidence presented that a 12 hour threshold was any less administratively
12 burdensome than a 4 hour minimum, given that a shift is generally 24 hours. Moreover, the
13 City's 24 hour threshold was a significant improvement over the current MOU, which requires
14 many days of out of class work to trigger the 5% pay. Consequently, the Association did not
15 meet its burden to prove that the City's proposal is inappropriate.

16 **Issue 10: Require Promotional Testing At Least Once Every Two Years**

17 The Association proposed that the City commence a testing process for the ranks of Fire
18 Paramedic, Fire Engineer, Fire Captain, and Battalion Chief at least once every two years
19 regardless of available positions. The City opposed this proposal as unnecessary when there are
20 no vacancies to fill.

21 The Fact Finder recommends adopting the Association proposal on the basis that it is
22 important to the employees and it has minimum cost.

23 **Dissent**

24 No evidence was presented as to the cost of or administrative burden resulting from
25 conducting promotional testing on a fixed schedule regardless of the circumstances. The
26 Association did not meet its burden to prove such testing is necessary. The Fact Finder also
27 references the Association's desire for this proposal as a basis to recommend it. That is not a
28 factor to be considered under the MMBA. The City should not be saddled with unnecessary

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administrative tasks.

Dated: July 14, 2022

LIEBERT CASSIDY WHITMORE

By:



Steven M. Berliner
Attorneys for Employer CITY OF EL
SEGUNDO

RLS RAINS LUCIA STERN ST. PHALLE & SILVER, PC

Robert M. Wexler
Attorney at Law
RWexler@RLSlawyers.com

July 14, 2022

VIA EMAIL

Najeeb N. Khoury, Esq.
P.O. Box 67
Montrose, CA 91021
NKhouryADR@gmail.com

Steven M. Berliner, Esq.
Liebert Cassidy Whitmore
6033 W. Century Boulevard, 5th Floor
Los Angeles, CA 90045
SBerliner@lcwlegal.com

Re: El Segundo Firefighters Association – Factfinding Report.

Dear Mr. Khoury and Mr. Berliner,

The El Segundo Firefighters' Association has received and reviewed the factfinding report by Mr. Khoury dated July 2, 2022. Although ESFA believes in the merits of its position on each disputed item as articulated during the factfinding hearing, it is prepared to accept the factfinder's recommendations and thus declines to file a dissenting opinion.

Very truly yours,

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



Robert M. Wexler

RMW:me