CITY OF LONG BEACH
AND
ASSOCIATION OF LONG BEACH EMPLOYEES
(Case No. LA-IM-278-M)

FINDINGS OF FACT AND
RECOMMENDED TERMS OF SETTLEMENT

July 25, 2019

FACTFINDING PANEL

Impartial Chairperson                  David G. Miller
Association Representative             Ralph Royds
City Representative                    Dana L. Anderson

REPRESENTATIVES

For the City                            Irma Rodriguez Moisa
                                          Eric Riss
                                          Atkinson, Andelson, Loya, Ruud
                                          & Romo

For the Association                    Wendell Phillips
                                          Phillips & Rickards

HEARING DATES:                          June 3, 4, 18, 26, 2019
                                          Long Beach, California

INTRODUCTION AND BACKGROUND

The parties to the impasse and, therefore, this procedure are the City of Long
Beach ("City" or "Employer") and the Association of Long Beach Employees
("Association" or "ALBE"). The impasse arises out of negotiations for a
Memorandum of Understanding for 2018 and one (1) to four (4) years beyond.
The City of Long Beach is the second largest city in Los Angeles County behind only the City of Los Angeles and the third largest city in Southern California behind only Los Angeles and the City of San Diego. The City includes the Port of Long Beach one of the country’s busiest ports. The City’s population is around 470,000 and the City covers over fifty (50) square miles. The City employs approximately 5,567 FTE’s.

In 2016 ALBE decertified the International Association of Machinists (IAM) from a portion of a large bargaining unit and now represents employees in what is described as the Skilled and General Basic (SGB) bargaining unit;\(^1\) currently ALBE represents approximately 585 employees across 11 City departments.

ALBE and the City reached impasse over the terms and conditions of an initial Memorandum of Understanding (MOU) and ALBE voluntarily waived factfinding\(^2\); thereafter, on October 3, 2017 the City Council unilaterally adopted the City’s Last Best Final Offer which included a 2% wage increase effective October 1, 2016 and a 2% wage increase October 1, 2017, the last time ALBE received an across the board wage adjustment. Accordingly there has not been an MOU in effect for ALBE and the City.

However, for many of the language issues, the Panel may refer to the MOU between the City and IAM for the period October 1, 2016 to September 30, 2019.

In the absence of stipulations the Panel nonetheless finds:

1. The City is a public agency within the meaning of Government Code section 3501, subdivision (c) of Meyers-Milias-Brown. The City deals with 12 employee associations (unions) in 23 bargaining units. Long Beach is a charter city and, pursuant to the charter, utilizes a Civil

\(^1\) In turn, the Refuse portion of the bargaining unit decertified ALBE in March 2019.

\(^2\) Apparently notwithstanding Government Code §3505.4(c)
Service Commission for examining and certifying eligibility lists, creating classifications and for hearing disciplinary matters.

2. ALBE is a recognized employee organization within the meaning of Government Code section 3501, subdivision (b) of Meyers-Milius-Brown; and is the exclusive bargaining representative for a unit described as the Skilled-Basic General Unit.


4. During negotiations the parties reached tentative agreements in the areas of Dues Deductions, Boot Allowance, Grievances (timing for appeals and ALBE right to appeal to arbitration).

5. The factfinding process was properly and timely requested under Government Code Section 3505.4(a) after mediation failed to produce agreement. The parties waived the statutory timelines in connection with the factfinding process. The City has no local rule providing for final and binding arbitration following impasse.

6. Pursuant to Government Code section 3505.4, subdivision (d), the panel is required to consider, weigh and be guided by all the following:

   (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 wages 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; and
(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.

DISCUSSION AND RECOMMENDATIONS

Term of Agreement

Discussion: The proposals for term of the agreement have changed throughout negotiations influenced, no doubt, by the length of time consumed by the process. Both parties’ proposals were for an agreement beginning October 1, 2018. Please note: The City’s fiscal year runs from October 1 to September 30.

ALBE has consistently proposed a multi-year agreement. ALBE’s March 4, 2019 proposal was for an agreement running from October 2018 to September 30, 2021.

All along the City has been proposing a term to September 20, 2020. The City’s Last Best Final Offer (LBFO) was dated March 5, 2019 and included the
following proposal: “The term of agreement will commence upon adoption by the City Council and terminate within one-year. The MOU provisions shall become effective the first day of the first full pay period following Council adoption of the MOU, unless otherwise specified.” The Panel Chair had a problem deciphering this particular language but Counsel for the City assures me that the intent was for a one year agreement or through September 30, 2020.

ALBE is still looking for its first MOU after the initial round of negotiations ended with the City’s October 2017 unilateral adoption. The City and the Association are still trying to establish the parameters of their relationship and these latest negotiations have been marked by a certain level of hostility. If the parties can successfully negotiate a comprehensive MOU they will need time to work on their relationship; I find that constant negotiating is not the best way to establish mutually acceptable labor relations. Accordingly, the Chair finds that a multi-year agreement will better serve the parties’ employer-employee relations environment.

Over the last ten years there have been a few one year agreements, but the bulk of negotiated MOUs have been of 3 to 5 years” duration. The most recent IAM agreement is for three years—2016-2019.

The recommended term of agreement is consistent with the Panel’s wage recommendation in the next section.

**Recommendation:** A three year agreement running from October 1, 2019 through September 30, 2022.

**Wages**

**Discussion:**

**General Wages** --The Association proposes raises which purport to address two areas: (1) A COLA increase plus (2) Equity adjustments to bring employees’
wages closer to those in comparable jurisdictions. The Association’s LBFO of March 4, 2019 proposed COLA and Equity increases as follows:

2018 COLA – 2.0% COLA retroactive to 10-01-2018
2019 COLA – COLA effective 10-01-2019 (based on LA-Long Beach-Anaheim CPI-U)
2020 COLA – COLA effective 10-01-20 (based on LA-Long Beach-Anaheim CPI-U)

Equity Increases – 7.5% effective March 31, 2019 plus an additional 2.5% for Water Utility Mechanic I, II and III.³

7.5% effective October 1, 2019 plus an additional 2.5% for Water Utility Mechanic I, II and III.

7.5% effective October 1, 2020.

The City’s LBFO proposed a 2% general wage increase retroactive to October 1, 2018; the City also proposed a 10% increase for the Water Utility Mechanic I, II and III effective the pay period following ratification.

From ALBE’s standpoint the extent to which wages have fallen too far behind comparable jurisdictions justifies a major push to narrow the gaps. From the City’s standpoint future risks, current city settlements and, I believe, favored nations clauses with other city unions all signal caution.

ALBE introduced a compensation study (A.Ex.M) which it commissioned in 2018. The study used the following agencies for comparisons: City of Anaheim, City of Glendale, City of Huntington Beach, City of Los Angeles, County of Los Angeles, County of Orange, City of Pasadena, City of Santa Ana, City of Santa Monica and City of Torrance; these ten agencies (eight cities, two counties) have been identified as the “Standard 10” -- meaning they had been referenced in past Long Beach negotiations; this was confirmed by testimony from City Human

³ We will discuss the Water Utility Mechanic separately.
Resources employees; the identical list also appears in the appendix to the City’s 2008-2013 MOU with the Firefighters’ Association. They are also listed in a Letter of Understanding between the City and IAM appended to their 2007-12 MOU. There may be slight differences in agencies in some contexts but the Panel Chair has accepted the above list as the Standard 10 and it may be properly referenced for wage comparisons. This view is confirmed by an e-mail from Dana Anderson, the City’s Labor Relations Manager, to ALBE dated May 23, 2018 confirming that the listed agencies are indeed the standard 10 for market comparison. (A.Ex.A).

The study looks at 13 different journey-level classifications. The study compares wages at the minimum, midpoint and maximum ranges for the classification. City wages for the 13 classifications at the maximum range appear on average to be about 14% below the comparable agencies—the disparities range from 29.46% below (for Gas Construction Worker I) to 0.82% below (for Traffic Signal Technician I).

The City also submitted a Compensation Survey (C.Ex.19) covering 6 classifications. The two surveys are difficult to compare because the City looked to total compensation while ALBE looked only to base salary. Nonetheless, the City’s survey which also used the Standard 10 ranked Long Beach 10th (lowest) in 3 classifications, 9th in one classification and 5th in the other two classifications.\(^4\) Notwithstanding some differences in the respective surveys the City has conceded that many ALBE classifications are below market pay levels; the City argues that the negative difference is not as large as ALBE portrays.

The record establishes that many ALBE classifications are paid at levels significantly below those in comparable jurisdictions. ALBE proposes “Equity increases” in an effort to try to close these gaps. With the exception of the Water

\(^4\) One of these, Refuse Operator, is no longer part of the ALBE bargaining unit.
Utility Mechanic classification the City has not shown any interest in such equity adjustments.

The Los Angeles area CPI for the preceding twelve months has increased at the rate of 3.3%.

The City’s recent pattern of raises has been at the 2% level for general employees and 3% for Police and Fire. Indeed, here, ALBE has characterized the City’s proposed raise of 2% retroactive to October 1, 2018 as “inevitable.”

The City’s overall budget is in the $3 billion range. The City has a number of specialized or enterprise funds along with its General Fund. This latter fund has been the primary focus of negotiating discussions. The General Fund has about $499 million and represents about 17% of city programs operating costs for fiscal 2019. The General Fund’s reserves are at $44.5 million for emergencies and $10 million for operating reserve. Stated otherwise, the City’s General Fund has healthy reserves which, I believe, can be designated or redesignated for use by the City Council. The other funds did not receive much scrutiny during the process—indeed some funds show a profit.

A 1% increase for ALBE costs approximately $504,000 from all funds. The General Fund provides 23% of ALBE’s support; 16% comes from the Water Fund and 17% from the Gas Fund with the balance spread among other funds. It is estimated that a 1% raise for ALBE costs $115,000 in general fund monies.

The City has not argued inability to pay. However the Chair does not consider that the end of inquiry; other factors mitigate against such position being the equivalent of a blank check. In addition to comparing wages with those in other jurisdictions, it is appropriate in a large agency, such as this one, to look at the wage adjustments applicable to the City’s 5,000 other employees—as earlier stated, those adjustments run in the 2-3% range. The CPI is at 3.3%.
The City forecasts budget shortfalls in 2020 and 2021 because its rate of revenue growth is slowing and it can’t raise revenue to keep pace and because of increased pension costs. The City has relied on a sales tax increase (Measure A) to fund certain public safety priorities. Measure A provided a 1% increase for six years, reducing to 0.5% increase for the next four years and then sunsetting in 2027. Over the last two fiscal years Measure A generated $101 million and is projected to produce an average of $60 million per year through 2022 and $31 million thereafter when it drops to 0.5% before expiring in 2027. On July 2 the City Council declared a fiscal emergency primarily for the purpose of placing an extension of Measure A on the March 2020 ballot. While the City is not currently in a fiscal emergency, the declaration reflects some of the considerations mentioned above which require caution in connection with future budgeting and spending. That’s on the one hand; on the other hand current revenues plus healthy reserves will enable the City to support the recommendations which follow.

**Water Utility Mechanic** – Based on a department study it was determined that Water Utility Mechanic I, II and III are substantially below their counterparts in other jurisdictions. At one time in negotiations the City offered a 20% increase over two years to this classification and reduced it to 10% for a one year agreement. This matches ALBE’s one year position but our recommendation will cover two years.

**Skill Pay** – The City has proposed to eliminate the $0.25 per hour skill pay applicable to the classifications of Water Treatment Operator III and IV and to fold the $0.25 per hour into each applicable pay step. This represents no decrease in pay and no increase in costs. ALBE will accept this proposal provided all other matters are acceptable.

**Recommendations:** The Panel recognizes that ALBE has established a need for catchup; the Panel also recognizes that the City has expressed legitimate
concerns for maintaining a balanced budget. With that in mind we recommend the following:

Effective October 1, 2019 wages shall be increased by four percent (4%) across the board.

Effective October 1, 2019 wages for Water Utility Mechanic I, II and III shall be increased by ten percent (10%).

Effective October 1, 2020 wages shall be increased by two percent (2%) across the board.

Effective October 1, 2020 wages for Water Utility Mechanic I, II and III shall be increased by ten percent (10%).

Effective April 1, 2021 wages shall be increase by one percent (1%) across the board.

Effective October 1, 2021 wages shall be increased by two percent (2%) across the board.

Effective April 1, 2022 wages shall be increased by one percent (1%) across the board.

Effective the second full pay period following Council ratification the skill pay of $0.25 per hour shall be eliminated for Water Treatment Operator III and IV and, at the same time, a $0.25 per hour increase shall be applied to the applicable pay steps.

**Electrical and Instrumentation Technician**

**Discussion:** The City, working through processes which ultimately involve both the Civil Service Commission and the City Council, in response to Water Department needs is establishing a new classification series—Electrical and Instrumentation Technician. The classification requires a new certification and will
perform the type of work frequently done by employees currently classified as Telemetering Instrument Technician.

ALBE raises two major objections: (1) Insufficient salary and (2) current employees having done the involved work should not have to apply for the position but, instead, should be directly appointed.

However, the Association’s objection to salary placement does not appear to suggest specific alternatives. Without such guidance the Panel will not make a salary recommendation.

The newly created classifications must secure a valid CWEA Electrical Instrumentation Technologist certificate. The City insists that affected incumbents must apply for the newly created positions. The proposed job description states that this requirement for obtaining the Grade I certificate must be fulfilled within one (1) year of appointment.

The City also proposes (See C.Ex.12) that incumbents who already possess the certificate shall be appointed to the position. If the employee does not have the certificate at time of application, the employee nonetheless shall be appointed and provided six months to obtain the certification.\(^5\) If unsuccessful the employee reverts back to prior position. The City further proposed that a current employee who later obtains the Grade 2 certification shall be appointed to the Tech II position subject to having served in the Tech I position for six months and achieved an “Exceeds” evaluation.

In light of the CWEA certificate requirement, the City’s proposal appears to balance its own staffing needs while recognizing the service of current employees performing substantially similar functions.

\(^5\) This seems inconsistent with the one year period provided in the job description which is attached to C.Ex. 12.
Recommendation: The Panel was not provided sufficient information to make a salary recommendation. Accordingly, it is recommended that range placement as reflected in the City’s proposed letter agreement of February 2019 be accepted, with ALBE reserving the right to revisit the issue when salaries are reopened.

As to current incumbent employees the Panel recommends acceptance of the City’s proposal referenced above except that the grace period for an appointed incumbent is synchronized with the job description and provide for the one year period.

Call Back

Discussion: The clause at issue here relates to situations when an employee has finished a regular shift, left the work location and is then called back into work. The clause basically provides that in such a situation the employee will be guaranteed the greater of three (3) hours pay at the rate of time and one-half or time actually worked at the rate of time and one-half.

The only remaining dispute relates to the portion of the City proposal (Par.A.3) which eliminates the three hour guarantee when the return to work occurs within two (2) hours prior to the established starting time of the employee’s next shift. ALBE is willing to accept the City’s proposal except for this limitation. No doubt the City argues that a call back within two hours of shift start does not create the inconvenience of an earlier call and, therefore, does not warrant the guarantee; additionally a three hour guarantee might create a difficult to calculate wage rate once regular shift begins.

Note: The City pays regular overtime only on the FLSA basis of exceeding forty hours per week and does not otherwise provide overtime for hours in excess of a daily amount.
**Recommendation:** The Chair recognizes a rationale for not providing a three hour guarantee when, because of the two hour window, there may be an overlap of pay rates once shift begins. But the employee called in two hours or an hour before shift start may experience some inconvenience along with the interruption of what is otherwise time off.

The Panel recommends that the City’s proposal be accepted provided paragraph A.3 is amended to read as follows: “Such return to work occurs within more than two (2) hours prior to the established starting time of the employee’s next shift. If such return to work occurs within two hours (2) prior to the established starting time of the employee’s next shift, actual work within the two hours shall be compensated at one and one-half times the employee’s regular rate of pay until the starting time of regularly scheduled shift at which time pay will revert to the regular rate.”

**Work Access and Notice**

**Discussion:** This clause governs issues relating to Association access to work locations in order to communicate with unit employees, to investigate grievances or other issues, to hold meetings with employees; the clause also covers distribution of Association notices and other information in written form.

ALBE pointed to instances where access may not have been easily achieved or where it became difficult for an Association representative timely to secure time off, or where the particular location sought by the Association was denied to it. However, as demonstrated below, ALBE appears to have accepted the City’s proposal with one exception.

The City made a comprehensive proposal but the instant disagreement focuses on the following language in the City’s proposal: “The distribution of any written or printed notices, cards, pamphlets, or literature of any kind by the
Association at City workstations or premises is prohibited without the prior permission of the City Manager or the Human Resources Director. Any Association written information to be distributed to employees must be furnished to management.” ALBE consider this language a ‘prior restraint’ of the Association’s communications with its members. The language also appears in City MOUs including ones with Engineers and with IAM. ALBE did not present any specific instance of a requested distribution being denied.

**Recommendation:** This recommendation is based upon the assumption that language applies designating adequate bulletin board space for Association postings. If not, the Panel recommends retention of such language. Accordingly, in an effort to balance the City’s and ALBE’s respective interests in this issue the Chair recommends the following language in place of City’s H.6.:

“The Association will not distribute on City premises or at City work sites information which Association representatives know to be or have reason to believe is false or defamatory. City management shall have the right, upon notice to the Association, immediately to remove such information from circulation or posting. At the time of distribution the Association shall provide a copy of the information to the Human Resources Director or designee.”

**Sealing of Disciplinary Records**

**Discussion:** ALBE proposes that all disciplinary memoranda for minor offenses up to and including suspensions of two days or less, and all tardy slips and notes regarding absenteeism, shall be automatically sealed two (2) years from the date first served upon the employee and thereafter cannot be used for any personnel purpose.

The City disagrees suggesting that the proposal is counter to good personnel practices, which it is, and that there are problems with future EEO compliance, but
without any elaboration. The record is sealed, not destroyed. Accordingly, certain legal requirements may mandate access to such information in limited settings.

ALBE’s primary argument centers on having the benefit of this clause under its prior (IAM) agreement and that the City retrieved this benefit through unilateral imposition in 2017. The sealing language still appears in the IAM MOU as well as the Engineers MOU.

The IAM sealing language also refers to sealing “…all tardy slips and notes of absenteeism…” However in the same MOU section the parties agree that “Tardy slips and notes of absenteeism are not considered to be disciplinary statements.” This concept shall be reflected in the recommendation.

The Chair feels compelled to make a recommendation which reflects the current state of the facts, rather than follow his own predilection which strongly objects to language which may amount to a rewriting of history.

**Recommendation:** The parties agree to language reading substantially as follows:

“At the employee’s written request all disciplinary memoranda for minor offenses, including suspensions not to exceed two (2) days, shall be sealed and shall not thereafter be used against the employee if no further disciplinary action directly relating to the original memoranda has been taken against the employee within two years after its placement in the personnel file. The employee must submit his/her request no earlier than the beginning of the 3rd year after placement and no later than the end of the 3rd year following placement. This clause shall automatically sunset and be of no further force or effect as of October 1, 2022 except as to items placed in the file during the term of this MOU.”

**Overtime/Evergreen List/Seniority**

We review these three areas together because they are tightly interrelated.
ALBE proposes a three (3) hour minimum guarantee of overtime pay for all compulsory overtime. The Association also proposes establishing an evergreen list of volunteers for holdover overtime so that no employees will be required to stay past the end of shift unless no volunteers are available. Voluntary overtime is to be assigned by seniority; involuntary overtime to be assigned on the basis of reverse seniority. ALBE would apply the same conditions to Standby and On Call assignments. Additionally, ALBE proposes that all paid hours count as qualifying for overtime. Such hours are excluded from the FLSA calculation.

ALBE proposes a union-wide seniority system based upon the employee’s start date with the City whether as a permanent or as a Non-Career employee. Ties will be broken on the basis of time in the particular Department; if ties remain, then time in the classification shall be the tie-breaker.

The City disagrees citing the costs of a three hour guaranteed minimum overtime and the operational difficulties of both union wide seniority and evergreen lists.

On overtime/evergreen the City points out that ALBE is present in at least 11 different departments and, because the City covers over 50 square miles, and because departmental needs differ, a city-wide system would prove unworkable. Much overtime is assigned by crew which may already be working on the assignment but if a crew member’s seniority does not fit then the affected Department would have to break up the crew. This seems inefficient and time-wasting.

An ALBE witness testified that the City’s Gas, Water and Harbor Departments utilize voluntary overtime and that the Gas Department uses an evergreen list.
As to seniority the City argues that it should adhere to Civil Service Commission Rules which, for purposes of layoff, rely first on time in classification after permanent appointment and then time in all former classifications. For ALBE this creates the dilemma of a long time City employee recently promoted to a higher classification being laid off while a City employee who has substantially less time in the City, but more in the classification, avoids layoff.

The Panel recognizes that the City has an interest in controlling overtime and its costs as well as getting necessary work done when needed. The Association has an interest in fairly distributed overtime assignments as well as recognizing that employees may have compelling reasons, either one time or longstanding, for not wanting overtime work.

**Recommendation:** To avoid for the moment unnecessarily adding to overtime costs the Panel is not recommending changing from the FLSA basis for defining overtime or time worked. We recognize that other jurisdictions may have done so, but Long Beach citywide has not and we were not presented with a factual basis for recommending such change.

The Chair finds the three hour guarantee and the requirement that all overtime initially be by volunteer to be overly restrictive and not conducive to efficient operations. Similarly we were not presented with any compelling evidence that a uniform seniority policy based upon date of hire works citywide for all occasions when seniority may be invoked. However we recommend that the City and ALBE encourage individual major departments to meet with the Association and develop systems as have Gas, Water and Harbor for overtime assignments (including seniority) which work best within that particular department.
Maintenance of Membership

Discussion: ALBE proposed a Maintenance of Membership clause; the City’s opposition is primarily based upon the potential that current cases filed in light of Janus v. AFSCME may determine that Maintenance of Membership is unlawful.

In its closing brief the City requests the panel to recommend that the parties address the issue in subsequent negotiations “…with the benefit of intervening judicial guidance and resolution of the issue.” In its closing brief ALBE states it is “…willing to accept a reopen when appellate cases are finally decided or the law changes.”

Recommendation: In light of the parties’ current respective positions and the proposed three year MOU the Panel recommends the following language: “Maintenance of Membership: Since Janus, serious questions have been raised over the lawfulness of such clauses. Accordingly the parties agree that ALBE may re-open the agreement on this issue following a final decision on the merits by a court of competent jurisdiction, inclusive of appeals, if any.”

Economic Boom/Crisis Reopener/Zipper Clause

Discussion: The Association has proposed an economic re-opener which calls for reopeners in the event the US GDP either decreases by 1% or increases by 2%. The ostensible purpose is to discuss alternatives to layoffs or furloughs in the event of a decrease and to discuss enhancements in the event of an increase.

The City opposes this re-opener.

Contrarily the Association has proposed a generalized zipper clause because, it argues, the City has a need for almost year-round negotiations on issues relating to personnel and the Association always finds itself on the short end of such
situations. The City opposes the clause because of its stated need to innovate or change matters which may require negotiations throughout the year.

**Recommendation:** The Panel urges the parties to find a better way than constant negotiations. Perhaps a standing Labor-Management Committee with at least monthly meetings would help point out problems or conditions which may lead to future problems and then work on possible solutions.

There have been enough negotiations. Accordingly the panel is recommending against the Economic/Boom Reopener and is recommending inclusion of a minimal zipper clause reading substantially as follows:

“The City and the Association agree that for the term of this agreement each party waives its rights and each party agrees that the other party shall not be obligated to meet and confer with respect to any subject or matter pertaining to or covered by the agreement, except as otherwise specifically provided herein, and except as to meeting and conferring over the renewal or continuation of this Memorandum of Understanding at its expiration date. As to such matters not part of this MOU the City agrees that absent an emergency it will not change matters within the scope of representation without first notifying the Association and providing it an opportunity to meet and confer; any emergency changes shall be limited to the duration of the emergency.”

**Release Time**

**Discussion:**

With regard to this issue it is appropriate to be reminded of a little history. Prior to 2016 current ALBE unit members were represented by IAM in a much larger unit. The unit then consisted of approximately 3500 employees. ALBE’s current unit consists of approximately 585 employees.
In its unilateral imposition of 2017 the City reduced Release Time for general Association business from 1,000 hours annually to 350; previously the union could carry over unused time; the City’s imposition limited the carryover to 100 hours so that maximum banked hours do not exceed 450. The main thrust of ALBE’s proposal is that the City restore the 1,000 bankable hours per year.

The City rejects this proposal arguing that the reduced size of the unit reduced the potential occasions for needing release time and, therefore, warranted the reduction in association business hours. The City produced a chart showing the size of respective bargaining units and the number of release time hours applicable to them. Except for Police with 1000 hours for 880 employees and Fire with 1000 hours for 383 employees, the balance of hours’ allocations supports the City’s argument; as does the fact that ALBE has used only 99 hours so far this fiscal year; however circumstances can vary from year to year requiring different levels of attention.

The Chair believes that ALBE is motivated not so much by the practical need for such hours as by the sting of having this reduction unilaterally imposed. Indeed ALBE filed an unfair practice charge with PERB about the issue. On July 2, 2019 PERB issued a Complaint in Association of Long Beach Employees v. City of Long Beach (Case No. LA-CE-1294-M) alleging that the reduction violated the Government Code.

By making a recommendation here, the Chair is not commenting factually or editorially on the merits or lack thereof of the PERB complaint and our discussion and recommendation are based upon an independent record and should not be interpreted as applying to or reflecting upon the PERB matter.

It is hoped that this process will result in a comprehensive MOU between ALBE and the City. In order for ALBE properly to administer, enforce and explain
the Agreement, in light of the number of departments ALBE represents and in light of the distances demanded for City coverage the Chair believes that a temporary increase is appropriate.

**Recommendation:** The parties agree as follows: “In fiscal years 2019-20 and 2020-21 the Association shall receive a bank of five hundred (500) hours to be used for general Association business. Beginning with the 2021-22 fiscal year and thereafter the bank shall be at three hundred fifty (350) hours. The Association or President shall provide the HR Director with a monthly accounting of how this time is being used listing name, department, date, and work hours used, rounded off to 12-minute increments. Up to 100 hours of unused time shall be carried over to future fiscal years. Employees using this Association time must give notice and receive prior approval. Approval will not be unreasonably withheld subject to operational demands. Sufficient advance notice is required if the request for time off exceeds one workday.”

**Me-Too (Favored Nations) Clause**

**Discussion:** Because IAM and Police have such language ALBE is proposing that such language be incorporated into its MOU. The City opposes such language.

The City’s main argument focuses on its view that the agreement will only be in effect for a short duration before the parties return to the table. The Panel is looking at a longer term agreement as evidenced by our Term of Agreement recommendation above. The City further points to nine of its bargaining units which all received the same raise thereby obviating the need for a “me-too” clause. However all those units’ MOUs expire September 30, 2019 so while the City is correct for fiscal 2018-19, the level of increases beyond that date and, hopefully into the period covered by the ALBE MOU is unknown.
Typically a “me-too” is called for by a Union which settles somewhat easily and early in the negotiations cycle but does not then want to see other bargaining units benefit from waiting by receiving larger compensation packages. Such a condition is hopelessly absent from this situation and the benefit the City would otherwise receive from an early settlement is lacking.

Additionally, the Chair believes that such language has unnecessarily interfered with City negotiations by arising to a prominent factor in limiting wage increases for ALBE and, probably, other units as well. This deprives an affected bargaining unit of negotiations based upon its own terms and conditions, relative compensation placement, history of increases, CPI, etc., and forces it, instead, to accept something only because another unit has placed cost consequences upon its good faith negotiations.

**Recommendation:** The Panel recommends against the inclusion of Me-Too language.
CONCLUSION

In addition to the above recommendations the Chair is recommending that all previously reached tentative agreements be incorporated into the MOU. Because ALBE and the City do not yet have a comprehensive MOU and because some standard language (Recognition, City Rights and Obligations, No-Strike, etc) were not presented to the Panel, the Chair recommends that sometime in the Fall the parties sit down either face to face or with the aid of Mr. Bechely or another mediator to work out language finalizing a comprehensive MOU.

Dated: July 25, 2019

Respectfully Submitted

David G. Miller, Chair

Ralph Royds
Association Representative
Concur (✓); Dissent ( )
Concur in part; dissent in part ( )

Dana Anderson
City Representative
Concur ( ); Dissent ( )
Concur in part; dissent in part (✓)
CONCLUSION

In addition to the above recommendations the Chair is recommending that all previously reached tentative agreements be incorporated into the MOU. Because ALBE and the City do not yet have a comprehensive MOU and because some standard language (Recognition, City Rights and Obligations, No-Strike, etc) were not presented to the Panel, the Chair recommends that sometime in the Fall the parties sit down either face to face or with the aid of Mr. Bechely or another mediator to work out language finalizing a comprehensive MOU.

Dated: July 6, 2019

Respectfully Submitted

____________________________________
David G. Miller, Chair

Ralph Royds Association Representative
Concur (X); Dissent ( )
Concur in part; dissent in part ( )

Dana Anderson City Representative
Concur ( ); Dissent ( )
Concur in part; dissent in part ( )
City of Long Beach's Partial Concurrence with & Dissent from the Recommendations of the Factfinding Panel Pursuant to California Government Code Sections 3505.4 and 3505.5

As the City of Long Beach's ("City") representative to the factfinding panel, the City respectfully concurs in part with, and dissents in part from, the Recommendations within the Factfinding Report issued by impartial chair David Miller.

The Factfinding Report includes findings and recommendations for each of the 16 issues on which the parties remain in impasse. Given that the Factfinding Report recommends that the City's position be adopted for several of these items, the City concurs with the Panel with respect to the following issues:

- Elimination of Water Skill Pay;
- Wage Increase for Water Utility Mechanic classification, in part;
- Creation of Electrical & Instrumentation Technician position;
- Call-Back Pay, in part;
- Work Access and Notice;
- Overtime/Evergreen Volunteer Lists;
- Seniority;
- Maintenance of Membership Clause;
- Economic Boom/Crisis Reopener Clause, in part;
- Me-Too Clause.

The parties presented evidence at hearing and stated positions in their respective closing briefs on several additional subjects, including: medical insurance; the disciplinary process (binding arbitration and disciplinary review); and on-call personnel for the Parks and Recreation Department. During deliberations, ALBE withdrew its objection with respect to the disciplinary process (binding arbitration and disciplinary review) and medical insurance. The members of the Factfinding Panel did not address the dispute concerning on-call personnel for the Parks and Recreation Department during its deliberations, nor does the Factfinding Report discuss it. Given this oversight, I contend that the City's position concerning on-call personnel for the Parks and Recreation Department (not an issue properly before the Factfinding Panel) be adopted.

Finally, I dissent from the Recommendations of the Factfinding Panel on the remaining issues for the following reasons.
1. Term

The Factfinding Report recommends that the parties reach a three-year agreement, from October 1, 2019 to September 30, 2021. I dissent from this recommendation.

I recognize the Panel's interest in advancing labor peace and certainty over the next three years. However, given the status of the City's financial condition starting in FY 21, it would not be prudent for the City to agree to a term beyond September 30, 2020. Therefore, I agree with the recommendation that the term of the Agreement commence on October 1, 2019, but recommend that the Agreement be in effect for one year. The City engaged in negotiations with ALBE in good faith with the express intent to reach mutual agreement and execute a binding MOU, and the City's initial offers did include a proposal for both FY 19 and FY 20. However, the parties failed to do so, resulting in the need to engage in the present Factfinding process. Given this context and bargaining history, a term lasting longer than one year is not pragmatic or feasible under the terms being proposed.

2. General Wages

The Factfinding Report recommends that the parties provide a 10% net general wage increase over 3 years to bargaining unit members. Specifically, the Report recommends: (i) a 4% increase effective October 1, 2019; (ii) a 2% increase effective October 1, 2020; (iii) a 1% increase effective April 1, 2021; (iv) a 2% increase effective October 1, 2021; and (v) a 1% increase effective April 1, 2022. The Report primarily relies upon salary surveys conducted by both parties, finding that several unit classifications receive compensation below the market median and are in "need for catchup."

I cannot agree with this recommendation, given that it minimizes the fiscal constraints and budgetary concerns impacted by a general wage increase of this magnitude. In spite of the salary survey data underlying the recommended 10% net increase, the City bases its position on data outlining its own fiscal outlook and condition. This internal fiscal information suggests that the City faces fiscal challenges in the upcoming years, including rising pension and general personnel costs. These rising expenses are growing at a faster pace than revenues.

These realities impact the City's ability to offer compensation increases above what the City is proposing for the next three years. Any economic increases that drive personnel costs higher will impact the City's ability to maintain current services. The City cannot disregard the consequences that negotiations have on its long-term financial condition.

I contend that the Panel discounted the importance of the City's fiscal outlook on the feasibility of higher general wage increases for ALBE members. The Panel reasoned that the City had sufficient funds to support its recommended wage increases, based in part on its "healthy reserves" ($44.5 million for emergencies and $10 million for operating reserves). However, this rationale ignores that emergency and operating reserves are not intended to support ongoing personnel costs, and that diverting these funds deprives the City of using these funds for their stated purpose. Additionally, given that these
reserves currently lie at "mandatory minimum" levels, the Panel's recommendation would push these reserves below this mark. In sum, the Panel either underplays or misconstrues the fiscal limits and concerns faced by the City, in attempting to justify its proposed general wage increase.

Given the above, I dissent from the Panel's recommendation for a 10% net general wage increase over three years. However, consistent with my proposal regarding term, and in an effort to address the concerns raised by the salary surveys and highlighted by the Panel, I propose that unit members receive a 4% general wage increase effective October 1, 2019 for a one year term.

3. Water Utility Mechanic Wages

The Factfinding Panel recommends that the parties provide the following wage increase to incumbents in the Water Utility Mechanic position: 10% on October 1, 2019, and 10% on October 1, 2020. I concur with the Panel's first recommendation on this issue, that incumbent unit members receive a 10% wage increase on October 1, 2019. However, given that the City dissents from the Panel's recommendation for a 3-year agreement, it necessarily dissents from a recommendation that these individuals receive a second 10% wage increase in FY 20. However, if the Panel recommends a second 10% increase effective April 1, 2020, the City can agree to this proposal. The City maintains that the parties can revisit this issue during successor negotiations.

4. Call Back Pay

The Factfinding Panel recommends that a three hour guarantee may be eliminated from the "call back" procedures applicable to ALBE members. I concur in part with this recommendation. However, the Panel also recommends that the parties adopt a revised version of the City's proposal, in which employees will earn call back pay when "return to work" occurs "within two hours prior to the established starting time of the employee's next shift." I dissent from this portion of the Report's recommendations, given that it is unclear how this change in call back procedure would function if adopted by the parties. The City's proposal is based on a discernible rationale, that employees endure more inconvenience if called back to work more than 2 hours before the starting time of a work shift. The Panel recognizes this reason, but does not explain its recommendation or how it would function. Given this, I must dissent in part.

5. Automatic Sealing of Disciplinary Records

The Factfinding Panel recommends that the City automatically seal any past disciplinary documentation for "minor discipline", including suspensions of 2 days or less, if the underlying disciplinary action is more than 2 years old. The City maintains that the parties should follow the Civil Service system for discipline, in which any past disciplinary records may be reviewed or considered in subsequent personnel decisions. The City may encounter issues with EEO enforcement, including attempts to address complaints of sexual harassment, harassment and discrimination in the workplace, if it cannot consider disciplinary records which are more than two years old. To the extent that the Panel's
recommendation is based on concerns over undue reliance on stale and old disciplinary action, ALBE unit members may contest the weight placed on such prior discipline under the current system's appeal process.

Given these concerns, I must dissent from the Panel's recommendation that certain past disciplinary records be automatically sealed.

6. Economic Crisis/Boom Reopener/Zipper Clause

The Factfinding Panel recommends against including an Economic Boom/Crisis Reopener. I concur with this part of the Panel's Report.

However, the Panel also recommends that the parties adopt a zipper clause. The Panel describes this clause as "minimal", yet it generally precludes the right to negotiate during the term of the agreement absent mutual agreement with only two exceptions. First, either party may demand to bargain "over the renewal or continuation" of an MOU at its expiration date. Second, for "matters not part" of an MOU, the City "will not change matters within the scope of representation without first notifying [ALBE] and providing it an opportunity to meet and confer... absent an emergency." In the event of an emergency, the City may make "emergency changes" to subjects not covered by the MOU, but those changes "shall be limited to the duration of an emergency."

I dissent from the inclusion of any zipper clause in an agreement reached by the parties. As the City explained during the hearing and in its closing brief, ALBE members work in several City departments, and these departments will face unexpected and complex operational issues during the term of any MOU. It is unreasonable to preclude the City from proposing to make changes to any negotiable subjects, based solely on a general intent to avoid the negotiations process.

I also disagree with the Panel's conclusion that the parties have engaged in perpetual negotiations that never end. ALBE did not establish this point during the hearing, and the Report does not explain why it reached this conclusion. Regardless, I cannot agree with this position, as it assumes that the parties cannot or will not reach mutual agreement. The City approaches each negotiations session in good faith, and seeks to reach agreement. The Panel's conclusion also suggests that frequent negotiations are counterproductive or corrosive to labor relations. I disagree. The City places great weight in collaborating with ALBE and other unions on proposed changes, as negotiations frequently result in better solutions to workplace challenges or problems. I cannot join a recommendation that suggests that more harm than good results from collective bargaining.

Finally, I do not believe that the different standards in the Panel's recommended zipper clause are effective or enforceable. For example, the Panel proposes that the City may take action in the event of an "emergency." This term is not defined, and is likely to result in disagreement between the parties over its scope and application. Given that the parties would need to discuss — that is, negotiate — in order to determine when an "emergency"
exists, it appears that the parties would need to engage in the meet and confer process even if it followed this exception.

Additionally, I am not convinced that the parties can use a different standard for subjects not covered by the MOU. Specifically, I interpret the Panel as proposing that the zipper clause does prevent the parties from negotiating about subjects which are not covered by the MOU, and that the City may make changes after such negotiations. In my view, several PERB decisions conflict with the Panel’s recommended exception. The Board has concluded that zipper clauses prevent either party from demanding to negotiate or make changes following exhaustion of the bargaining process, even if the MOU is silent and does not expressly cover a particular subject. (See Los Rios Community College District (1988) PERB Decision No. 684, p. 15; County of Tulare (2015) PERB Decision No. 2414-M, p. 30.) If the parties adopt the Panel’s recommended zipper clause, including the exceptions noted here, the City would risk trigger an unfair practice charge if it were to demand to bargain on subjects not covered by the express terms of the MOU.

7. Release Time

The Factfinding Panel recommends that ALBE receive a temporary increase in its release time bank to 500 hours for fiscal year 2019-2020 and 2020-2021, and revert to its prior bank of 350 hours for fiscal year 2021-2022. The Panel based its proposal on its recommended 3-year term. I do not object to a temporary increase in the release bank for ALBE to 500 hours, but contend that this increase should cover only one year. I propose instead that the release bank increase to 500 hours for fiscal year 2019-2020, and revert to 350 hours thereafter. Given this, I dissent from the Panel’s recommendation on this subject.

Respectfully Submitted,

Dated: 7/24/19

[Signature]

Dana Anderson