

City of Long Beach and International Association of Machinists, District Lodge 947, PERB Case LA-IM-269-M

Factfinding Report and Recommendations

Background

As far back as 2015, the City of Long Beach announced their intention to reorganize SSO Officers represented by the IAM at the Long Beach Airport into the Long Beach Police Department as an Airport Security Division. The new Division would place these employees under the table of organization and span of control of the Police Department.

The parties intermittently met over the proposed changes, seriously starting in 2016, with the City finally declaring a formal impasse October 2018. The IAM filed for Factfinding, PERB certified the matter, and ultimately the parties selected Tony Butka as the Factfinding Chair for the dispute by letter of December 13, 2018.

The City designated Ken Walker as their Panel member, and the Union designated Salvador Vasquez as the Union's member. A hearing was held on February 8, 2019 at Long Beach City Hall, where all parties were represented by counsel and afforded an opportunity to introduce evidence, testimony, and argument as to their respective positions. A number of stipulations were agreed to at hearing, and post-hearing briefs were submitted by both parties.

The Issues

The final changes that the City intends to implement are contained in City Exhibit 10, a "Proposed Scope of Service" dated 6/16/18. That document, which is 18 pages long, lays out in detail how the integration of the SSO's at the Long Beach Airport is to work as they become a part of the Airport Security Division of the Long Beach Police Department.

The dispute is one of classic "Effects" bargaining, where the employer has the right to make decisions and changes as to how they manage their workforce, while the effects of those changes are subject to bargaining as to the impact they will have on represented employees.

The parties agreed that there are two core issues in dispute, and the Union raised an additional issue at hearing regarding badges, which we will address:

- 1) Level of Training for armed SSO III's and IV's assigned to the Airport. Specifically, whether or not they would continue to receive POST Level 1 training, or the more limited training referred to in the City's Proposed Scope of Service dated 6/16/18; and
- 2) Whether The affected SSO's would continue to exercise traffic patrol duties in City owned patrol vehicles within the Airport referred to as Traffic Patrol Duties, or Red Light-Equipped Vehicles, and

3) The Union believes there is a third issue, having to do changes being made to the badges worn by the SSOs.

Training

The crux of the training issue revolves mainly around POST Training for the SSO's as opposed to a more limited regimen of trainings after the organizational changes into the Long Beach Police Departments Airport Security Division.

Generally, POST Training refers to a full-time 888-hour course for becoming a Regular Police Officer. Here the City has decided to no longer provide full POST certification, and has proposed in lieu thereof to provide a course of instruction which is significantly less than the full POST course, but enough to allow the SSO's to be peace officers within the scope of their revised duties. A list of the new training protocols are listed at page 16 of the proposed Scope of Services for SSOs.

As a practical matter the real issue has to do here with the clear lessening of the scope of duties for currently employed SSOs, many of whom have already completed POST Training as was the Airports historic practice. These changes are further exacerbated by an unfortunate situation whereby the Long Beach Police Department made a request for review to the Statewide POST Commission.

As detailed in a July 2018 letter from the Commission on Peace Officer Standards and Training, evidently "staff" from the Long Beach Police Department reached out to the POST Commission to inquire how the integration of SSOs from the Airport with POST Certificates would work as they moved under the control of the LBPD. (City Exhibit 15).

The result of this inquiry was that the POST Commission revoked the certificates of four SSOs employed at the Airport, and their first knowledge of this was when they got official Notice of Revocation from the POST Commission. This is validated by Union Exhibit 18, a copy of the "Certificate Issued in Error" letter dated May 11, 2018 to Adam Jensen from the POST Commission.

Such an unforced error clearly made it more difficult to have a positive experience during the effects bargaining.

The Union also raised an issue regarding 24/7 coverage by Long Beach Police Officers not being needed between the hours of 2300 and 0530 hours, which by implication argues that POST Certified SSOs should be used during these hours.

At hearing it appears that during these hours the airport is closed to traffic, and the integration plan provides for PD Officer staffing on an as needed basis should there be an emergency. Absent a statutory prohibition, the City is within their rights to assign staff at the Airport.

Statutory Issues

Obliquely the IAM is arguing that the City's Proposed Scope of Agreement would have CSOs violating the law if they don't get POST Training. See Union's Post Hearing Brief p.4, referring to a 2000 Memorandum with the City, and a reference to FAA Regulations.

The core of the Union's assertion for POST training is at page 12 of their brief, where they argue that the elimination of POST Training violates State and Federal law. They point to such areas as Homeland Security, FAA Regulations, and a host of statutes. For a partial list, see Unions Exhibits 28 thru 32. We will not go into detail here, because in each instance the Union is claiming that the statute is or will be somehow violated by implementation of the City's proposed Scope of Service.

As I am sure counsel for the Union is aware, factfinding is not the arena to obtain a decision as to whether or not the City is proposing to violate the law. Both parties are represented by able counsel, and I have no doubt they are familiar with the judicial system.

Traffic Patrol Duties and Red Light-Equipped Vehicles

At the risk of oversimplifying, it appears that the City intends to have LBPD Officers replace SSOs in the performance of these functions inside the airport, thereby eliminating the need for certain training modules to be completed by the SSO's.

. It is, as a practical matter, another lessening of the SSOs range of duties, so it is understandable that the SSOs would resist the change, particularly as it directly relates to the training required to perform the duties. However, absent some compelling reason, this seems clearly within the purview of the City's authority to assign and direct their workforce.

Recommendations

Looking at other agencies (see City Exhibit 22), it is clear that a majority of other California Airports do not use SSOs, instead relying on Police Department or Sheriff's Department personnel to provide the function. Sometimes it appears that these employees are in fact retired police officers, and occasionally as in the instance of the LA World Airport they are full on police officers who are a part of LA City's Safety Retirement System. Again the evidence shows that there is no indication that the City's proposal flies in the face of any prevailing practices elsewhere.

As a result, the recommendation is necessarily that the City of Long Beach is within their rights to implement the final proposal contained in City Exhibit 10, a "Proposed Scope of Service" dated 6/16/18.

This recommendation comes with a suggestion. The first is that it would go a long way to demonstrate 'good faith' if something could be done for the four SSOs who had their POST Certificates revoked. For example, after the implementation of the new Scope of Services & their integration into the Long Beach Police Department, it might be possible

to allow these officers to request that the LBPB revisit the issue of their status with the POST Commission.

The suggestion has to do with timing. As I understand it, the collective bargaining agreement between the parties expires sometime towards the end of 2019. If you think about it, should the City implement their final offer, this would allow for some time to determine what the changes actually are as a practical matter, and to see what could be done better.

Since scope of duties are obviously a proper subject of bargaining, there is nothing to preclude the Union from making proposals which would expand the scope of training for SSOs within the ranks of the Long Beach Police Department.

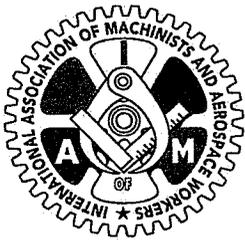
Submitted March 5, 2019:

By

A handwritten signature in black ink that reads "Tony Butka". The signature is written in a cursive style with a large, sweeping "T" and "B".

Tony Butka, Chair
Ken Walker, City Panel Member, Concurring

Sal Vasquez, IAM Panel Member, Dissent Attached



International Association of Machinists and Aerospace Workers

DISTRICT LODGE 947

March 5, 2019

Tony Butka
4286 Verdugo View Drive
Los Angeles, California 90062

Re: Union's Dissent To Fact Finding Panel's Recommendation
City of Long Beach and International Association of Machinists, & Aerospace Workers
Local Lodge 1930, District Lodge 947
Case No. LA-IM-269-M

Dear Mr. Butka:

As you know, I am the fact finding panel member appointed by the International Association of Machinists & Aerospace Workers, Local Lodge 1930, District Lodge 947 ("Union"). By way of this letter, I respectfully dissent to a portion of the fact finding panel's recommendation in the above captioned matter for the reasons set forth herein.

The Union agrees with the final portion of the fact finding panel's recommendation which encourages the City of Long Beach ("City") to work with the Union on reinstating certifications for Special Services Officers ("SSOs") that have been provided by the City through the California Commission on Peace Officers Standards and Training ("POST") since 2007. However, this recommendation alone does not resolve the core issues that have prevented the Union and the City from reaching an agreement over the proposed plan to integrate the SSOs into the Airport Security Division ("Integration Plan") of the Long Beach Police Department ("LBPD").

The Union dissents from the fact-finding panel's conclusion in so much as it suggests this process is not the proper venue to address potentially unlawful aspects of Integration Plan. This process is governed by Section 3505.4 of the California Government Code, which specifically states:

In arriving at their findings and recommendations, the factfinders shall consider, weigh, **and be guided by** all of the following criteria: (1) State and **federal laws that are applicable to the employer.**

The fact finding panel cannot make legal findings. However, they are to be guided by what the law requires. To date, the City has not provided the Union or the fact finding panel with any proof that the three disputed areas of their proposed integration plan comply with various state and federal laws regulating the manner in which LGB must be operated by the City. These disputed changes are inconsistent with Sections 1542.215 and 1542.217 of Title 9 of the United States Code of Federal Regulations which require the City to ensure the following:

1. That there are a sufficient number of law enforcement personnel "available and committed to respond" to a security incident reported by an aircraft operator¹, and;
2. All law enforcement personnel employed at the airport for this purpose, must meet the following qualifications²:
 - A) Have arrest authority
 - B) Are identifiable by appropriate indicia of authority;
 - C) Are armed with a firearm and authorized to use it; and
 - D) Have completed a training program that is the equivalent to the training provided by "*the local jurisdiction in which the airport is located [to] law enforcement performing comparable functions.*"³
3. The required training must also include any other subjects required by the Department of Homeland Security, Transportation Security Administration.

1. Elimination of POST certification training may violate the federal regulation requiring provision of "equivalent" training.

The clear language of the above federal regulation requires that all law enforcement personnel working at LGB (which includes SSOs) receive training that is the equivalent of training provided to by the local jurisdiction to law enforcement officers performing comparable functions.

The City's proposed integration plan will have SSOs at LGB performing functions that are comparable to those performed by officers of the LCPD. As a result, the training provided to SSOs must be the equivalent of the training provided to LCPD officers. This has historically been the level of training provided, and the ability for this training to comply with the above federal regulation has never been questioned by Homeland Security or the Federal Aviation Administration.

The City's drastically reduced training program will eliminate many essential training modules historically provided by POST to peace officers working at California airports. The elimination of some of these modules will expose the City to increased legal liability, such as the modules pertaining to "Cultural Diversity/Discrimination" and "People With Disabilities."

2. Revocation of SSO arrest authority may violate the federal regulation requiring that law enforcement be "available and committed" to the airport.

The City's last-best-final offer revokes any and all arrest authority from the SSOs by eliminating their ability to conduct vehicle stops. They have held this authority since, at least, 1991. This is problematic in so much as the roadways leading in and out of the LGB terminal areas are open 24 hours, seven days per week. The City intends to staff LGB only with SSOs between the hours of 2200 and 0500. By revoking SSO arrest authority, this leaves the roadways and all other areas of the airport vulnerable to vehicular and other crimes during these hours.

¹ 29 C.F.R. §§ 1542.217(a)-(b)

² *Id.* at § 1542.215(a)

³ *Id.* at § 1542.215(c)

This vulnerability is not only problematic from a common-sense perspective. This is also contrary to the above federal regulations require that law enforcement officers be "available and committed" to respond to security incidents occurring at the airport, without regard to the time of day.

Under the City's proposed integration plan, **there will be no "committed" law enforcement assigned to LGB between 2200 and 0500** once the City eliminates the SSOs' historic arrest powers. The City's response to this concern is simply that SSOs can call "911" and request that a LBPD officer working somewhere near the airport respond to a security incident. This isn't just a likely violation of federal law – it is an irresponsible way to operate what is likely the largest terrorism target in Long Beach.

3. Proposed modifications to the peace officer identification card may violate federal law requiring that law enforcement be "identifiable by appropriate indicia of authority."

Since at least 2007, the City has been providing SSOs with an identification card that is worn on the outer vestige of their uniform. This card has always displayed the phrase "Peace Officer" on the front of the card, so that it is visible to LGB employees and the traveling public.

SSOs will remain peace officers under California law, even after the integration is complete. Despite this, the City's last-best-final proposal would cause this phrase to be moved to the back (non-visible) side of the identification card. This would remove their "appropriate indicia of authority" and will cause confusion among employees and the traveling public.

Conclusion

The above reasons are only a partial list of the concerns the Union holds with respect to the City's last-best-final proposal. The Union implores those who are considering this recommendation to review the Union's full post-fact-finding brief which raises a host of other concerns about the City's last-best-final offer, as well as the City's overall course of conduct throughout these negotiations.

Sincerely,

A handwritten signature in black ink, appearing to read "Sal Vasquez" followed by a stylized flourish or initials.

Sal Vasquez