

**State of California  
Public Employee Relations Board**

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*In the Matter of*

**Case No. SA-IM-216-M**

**City of Coalinga**

*and*

**Coalinga Police Officers' Association**

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**Report and Recommendations of Factfinding Panel  
Following Hearing Under California Government Code §3505.4**

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Chairperson:	Joseph F. Frankl, Arbitrator/Mediator
Employer Panel Member:	Sean Brewer
Union Panel Member:	Chris Montoya
Hearing date:	January 25, 2021
For Employer:	Megan Dodd, Esq., Hanford CA
For Union:	Roger Wilson, Esq., Fresno CA

**Introduction**

By letter dated September 21, 2020, the California Public Employee Relations Board (PERB), acting pursuant to the Meyers-Milias-Brown Act, Government Code § 3500 *et seq.* (MMBA or Act), and applicable regulations, notified the undersigned of his selection by the parties to chair a fact finding panel to hear and report on a dispute involving a bargaining unit of police officers and related classifications, employed by the City of Coalinga (the City), and represented by the

Coalinga Police Officers Association, (POA or the Union) The dispute concerns certain terms and conditions of employment unilaterally imposed by the City in January 2020.

By agreement of the parties, a hearing was held on January 25, 2021 at City Hall of Coalinga, with the undersigned and at least one witness participating by video conferencing platform. Each party submitted documentary evidence and made an oral presentation, in addition to calling one or more witnesses, who testified under oath before a certified reporter. Parties had the opportunity to cross examine witnesses, and the Panel members asked several questions.

### **Background and History of Dispute**

This dispute arises from the City's unilateral imposition of certain terms and conditions of employment for its police officers in 2020. Previously, such terms had been established by a memorandum of understanding (MOU) that expired on June 30, 2017. Following a period of bargaining, the City, in a memorandum dated December 12, 2019, from City Manager Marissa Trejo, presented the POA with an offer that included a 2 percent pay raise and adjustments to other terms that had not been raised during bargaining.<sup>1</sup> The City does not dispute that it did not propose the specific terms encompassed within the LBFO, but states that generally it was seeking to respond to what it viewed as the POA's extravagant pay demands and to cap its total outlay for police officer compensation.

The POA countered the City's LBFO with a proposal for a 2% COLA and the maintenance of all other terms of the expired MOU throughout the proposed term of the offer, *i.e.*, to June 30, 2021. By letter dated January 14, 2020, the City declared impasse and proceeded to implement its LBFO effective February 17, 2020. The POA did not, at that time or thereafter, file any unfair labor practice or equivalent legal challenge to the City's unilateral action.

On July 21, 2020, after it had retained new counsel, the POA sent the City a letter declaring that the parties were at impasse and tendering its own "last, best and final offer," which included:

- New MOU to expire June 30, 2021;
- 5% salary increase effective at beginning of July;

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<sup>1</sup> The memorandum, Union Exhibit 8, summarizes the course of bargaining beginning in the autumn of 2018.

- Restoration of matching contributions for deferred compensation plan;
- Overtime to be compensated per FLSA standards, with 7(k) exemption abolished;
- Health insurance contributions on par with city employees other than fire fighters; and
- City to provide administrative assistance to employees wishing to participate in CalPERS.

By letter dated September 1, 2020, the Union advised the City that it would not seek mediation, and wished to proceed to fact finding under the MMBA. Sometime thereafter, the City Council approved a 5% salary increase for POA members, which took effect in early December. Meanwhile, on November 4, the POA advised the City that the POA had voted to accept the City's offered 5% pay increase and accordingly struck that item from its list of impasse issues.

### **Findings of Fact**

**Items in Dispute:** As of the date of the fact finding hearing and thereafter, the POA has maintained its position that the City should restore the *status quo ante* that existed before it imposed its LBFO: specifically, that it should reinstate matching contributions for the deferred compensation plan; pay overtime based on FLSA standards; make health insurance contributions on the same basis as other city employees; and “assist Union members with time buyback for purposes of CalPERS retirement.”<sup>2</sup> The City's position is that, since the previous MOU expired in 2017, it has granted series of salary increases, totaling 21 percent, to the POA-represented employees; that undoing the changes would be administratively burdensome; and that it is unable to meet the POA's demands because it has allocated a substantial portion of the City's recently-enlarged revenue stream to a “reserve fund.”

**Applicable Legal Standards:** The Act provides (Code § 3505.4(d)) that the Panel be guided by eight (8) criteria, summarized as follows:

1. Applicable state and federal laws;
2. Local rules, regulations, or ordinances;
3. The parties' stipulations;

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<sup>2</sup> The POA does not oppose an expiration date of June 30, 2021. Regarding CalPERS, the POA is seeking administrative assistance but no financial contribution toward any buyback payments determined to be owing.

4. The public interest and welfare and the employer's financial ability;
5. Wages, hours, and conditions of employees performing comparable work in comparable public agencies;
6. Cost of living;
7. Employees' present overall compensation; and
8. Any other relevant facts normally considered in such proceedings.

**Findings:**

1. **Applicable law (Code § 3504.4(d)(1)):** As the City is a public municipality, the National Labor Relations Act is inapplicable. The federal Fair Labor Standards Act may apply insofar as it affects the computation of overtime under the POA's proposal.

At the state level, the MMBA applies. In particular the following provisions are relevant:

Sec. 3505	"Meet and confer in good faith" means that a public agency, or such representatives as it may designate, and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation <b>prior to the adoption by the public agency of its final budget for the ensuing year</b> (emphasis added).
Sec. 3505.7	After any applicable mediation and factfinding procedures have been exhausted but no earlier than 10 days after the factfinders' written findings of fact and recommended terms of settlement have been submitted to the parties pursuant to Section 3505.5 a public agency that is not required to proceed to interest arbitration may <b>after holding a public hearing regarding the impasse implement its last best and final offer but shall not implement a memorandum of understanding</b> (emphasis added).
Sec 3506.5	A public agency shall not do any of the following: . . .  (c) Refuse or fail to meet and negotiate in good faith with a recognized employee organization. For purposes of this subdivision, knowingly providing a recognized employee organization with inaccurate information regarding the financial resources of the public employer, whether or not in response to a request for information, constitutes a refusal or failure to meet and negotiate in good faith.

2. **Applicable Rules, Regulations, etc. (Code § 3504.4(d)(2)):** The City contends that it is bound by a City Council resolution, adopted in January 2020, that established a “reserve policy” that had the effect of sequestering 50 percent of the city’s fiscal resources—currently targeted at close to \$4,500,000—that might otherwise be available to meet the POA’s pay and benefit demands.
3. **Stipulations (Code § 3504.4(d)(3)):** The parties have entered into no stipulations.
4. **Public Interest (Code § 3504.4(d)(4)):** The City asserts that the public welfare is best served by its maintenance of the reserve fund, which would be unduly compromised by granting the POA’s demands, in the event of another economic downturn. The POA argues that general welfare of the City’s residents is best served by an adequately compensated police force, and that the City is unreasonably placing off limits funds that could be tapped to meet officers’ needs for fair compensation.
5. **Comparable Public Agencies (Code § 3504.4(d)(5)):** The City contends that the cumulative 21 percent pay increase that POA members have received since 2017 more than compensates for any added costs of living they have incurred as a result of the LBFO implementation. It also points out that the health insurance cost increases are not borne equally by all employees because some have dependents and others do not. The Union argues that this criterion, as well as (6), is inapplicable because it is merely seeking a restoration of the *status quo ante*.<sup>3</sup>
6. **Cost of Living, Overall Compensation (Code §3504.4(d)(6)):** Both the City and POA state that no COL factor is relevant to this matter.
7. **Employees’ Present Compensation (Code §3504.4(d)(7)):** Again, the City notes that it has granted salary increases amounting to 21 percent, and argues that restoration of the *status quo ante*, without revoking those raises, would amount to a windfall for POA members. The POA takes no position apart from what it has expressed elsewhere.

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<sup>3</sup> Although both parties, in 2018, conducted pay surveys of neighboring municipalities, neither party currently seeks to have the Panel consider these or more current pay comparisons.

- 8. Other Relevant Facts (Code §3504.4(d)(8)):** The City contends that the POA's effort to compare its members to City fire fighters amounts to comparing apples and oranges, and that the POA failed to use its opportunity to participate in public discussion of the uses to which a forthcoming tax increase would be put. The POA notes that there are fewer sworn officers on the City payroll now than there were in 2015.

### **Discussion and Recommendations of Panel**

The POA seeks a restoration of the *status quo* that existed when the previous MOU expired in 2017, along with a pledge of assistance to its members who wish to resume participating in PERS. The difficulty with doing this is has several components. First, the POA never formally challenged the City's imposition of its LBFO in late 2019/early 2020, notwithstanding that the City imposed a number of concessionary terms (health insurance, overtime calculation, and deferred compensation), which it had not previously sought from the POA. In addition, the City granted a series of pay increases, amounting to about 21 percent, in which the POA acquiesced. For the City to unwind these changes at this time, with the expiration of the MOU term imminent, would appear to be a cumbersome and not necessarily beneficial exercise.

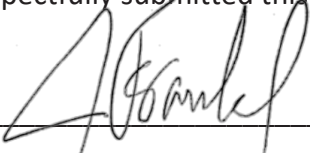
On the other hand, the City's objections to the POA's demands are not reasonable. However well-intentioned it was in terms of fiscal stability, the City's decision to sequester fully 50 percent of its annual budget in a "reserve fund," thereby placing it off limits to the POA's lawful bargaining demands, would appear to contravene the literal wording of §3505 as well as the essence of collective bargaining. The City's finance director testified at the hearing that the normal benchmark for a reserve fund, according to the Government Finance Officers Association, is 30 percent, but that "uncertain times" call for a higher set-aside. She went on to explain why, in her view, the higher amount was warranted. As matters currently stand, the reserve fund is almost fully funded—only about \$10,000 short of a target amount of nearly \$4,500,000.

Apart from City officials' speculation, there is no evidence, and little likelihood, that a small reduction in the reserve fund's balance—either as an absolute amount or as a percentage of the City's budget—would substantially imperil the City's fiscal stability.

Therefore, based on the foregoing, the Panel recommends as follows:

1. The City should not be required to alter the current terms and conditions for POA members before June 30, 2021, in the absence of agreement with the POA;
2. The parties should forthwith resume bargaining for a new MOU, to be effective on or after July 1, 2021, or sooner if the parties agree;
3. Such bargaining should take place with the understanding that the City will reduce its budgeted reserve funding level from 50 percent to 40 percent of its overall budget; and
4. The POA and the City's fiscal administrators will recommend to the City Council that it adopt a budget or budgets consistent with these recommendations for the term of the next MOU.

Respectfully submitted this 9th day of April, 2021:



Joseph F. Frankl, Chair

**Joseph Frankl Dispute Resolution**  
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Concur: \_\_\_\_\_

Concur in part: X \_\_\_\_\_

Dissent: \_\_\_\_\_



Sean Brewer, Employer Panel Member

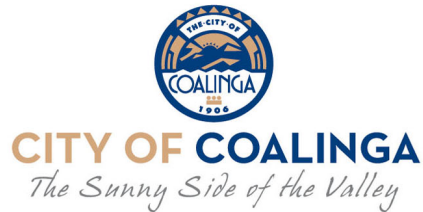
Concur: \_\_\_\_\_

Concur in part: \_\_\_\_\_

Dissent: X \_\_\_\_\_



Chris Montoya, Union Panel Member



April 7, 2021

**SENT VIA EMAIL**

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Re: Case No. SA-IM-216-M (Report and Recommendations of Factfinding Panel Following Hearing Under California Government Code §3505.4) – Employer Response to Report and Recommendations

Joseph:

This is my response to the report of fact finding received on April 4, 2021. I have acknowledged on the report that I “concur in part” as the facts provided in the report are accurate to the best of my knowledge from the hearing, however, I do not concur with the recommendations nor wish to affirm the identified recommendations identified in the report that directs actions to be taken by the City. I feel that the City shall make its own decision as to next steps based on the facts provided.

Please attach this as my dissent/back up as to why I concur in part.

Sincerely,

Sean Brewer, Employer Panel Member



## UNION'S DISSENTING VIEWS

On page two of the Report and Recommendation of Factfinding Panel under the heading Background and History of Dispute it does not state the actual date of event but only the year. The actual date of the incident is January 20, 2020 regarding the date of the dispute which arose.

On page three of the report under the heading "Finding of Fact" the Coalinga POA did not receive 21% in raises, but rather we received 14%. This was due to an officer leaving and elimination of the Animal Control position.

On Page 4 of the report, it states the city's target reserve policy was to target \$500,000 which in fact finance director, Bains stated the reserve the city was trying to establish was \$4,494,828.50 and not just \$500,000.

On page 5 of the report under section 5, it states the city had provided the CPOA members of total of 21% in raises, but CPOA members were also paying 40% higher in insurance compared to other members of the city who have the same exact insurance. Under section 7 of page 5 of the report the CPOA received 21 % in salary increases while the Coalinga Fire Department received 48% in salary increases which is twice the amount the CPOA had received in salary increases.

On page 6 of the report, it states that the city imposed a number of concessionary terms (health insurance, overtime calculations, and deferred compensation), which had not previously sought from the POA. For the city to unwind these changes at this time which the expiration of the MOU term imminent, would appear to be cumbersome and not necessarily beneficial exercise. There is no evidence that this would be the case. Later down the page it states there would be a shortage of \$10,000 by the city for their target amount of \$5000,000, the actual total amount is \$4,494,000 (Four million, four hundred ninety-four thousand dollars). Finally, on the bottom of page 6 it states that the city should not be required to alter the current terms and conditions for POA members before June 30, 2021 in the absence of agreement with the POA and the parties should forthwith resume bargaining for a new MOU, to be effective on or after July 1, 2021 or sooner if the parties agree. Overall, this is not a solution to the issues the city and POA are having as both parties cannot come to a collusion to negotiations.

In order to support the information, I have listed above may I direct your attention to page 21 and 22, of the Fact-Finding Transcripts dated January 25, 2021 in which the city stated that during 2017 there were no money for raises for the POA due to budget issues by the city, but that the POA gave up certain things in order to help out the city with their budget issues.

## **UNION'S DISSENTING VIEWS**

On page 24 of the transcripts the city stated that they did not negotiate the elimination of the POA's deferred comp contribution, the city did not negotiate the increase health insurance premiums that the POA had to pay. The city did not negotiate the change in calculation for overtime, the 7k exemption.

On page 26 of the transcripts Sergeant Diaz of the CPOA stated that the Coalinga Fire Department received a 48% salary raise and the CPOA requested a 37% salary raise which was a fair amount as the fire department received a 48% raise.

On page 28 of the transcripts, Sergeant Diaz of the CPOA stated again that the fire department received a 48% raise so the CPOA asked for a high raise to be in line with the fire department.

On page 29 of the transcripts Sergeant Diaz of the CPOA stated that after Officer Eschan left the department the CPOA members received a 7% raise after agreeing to either having another officer position to replace Officer Eschan who left to another agency or a 7% raise. The CPOA elected for the 7% raise due to the cost of living increasing over the years and the CPOA had not received cost of living or raises in some time. This occurred in 2018. The Coalinga Fire Department received their 40vplus percent raise on December 6, 2018.

On page 30 of the transcripts, Roger Wilson referred to the Coalinga Fire Department MOU where in section 7.01 it states the Coalinga Fire Department received several raises which included a 5% retroactive to July 1, 2018. A second 5% raise contingent upon Measure J. A third raise given to the Coalinga Fire Department on December 6, 2018 for an increase of 32%. A raise of 6% effective July 1, 2019. A raise of 5% effective July 1, 2020.

On page 37 and 41 of the transcripts, Sergeant Boulos talks about the buyback of PERS years from classic members was discussed in which the employers would spend 100% of the buy back and the fact the CPOA would not only have to not fill the position of the leaving officer, but also take on their duties in order to obtain the 7% salary increase from the city.

On page 43 and 55 of the transcripts there is a discussion of the leaving officer with a 7% raise to sworn only and not the sworn officers.

On page 74 of the transcripts, the city's annual budget is mentioned as being about \$8,000,000 (eight million dollars).

## **UNION'S DISSENTING VIEWS**

On page 84 86 of the transcripts the city states how the CPOA members pay higher than any other city employee.

On page 103 of the transcripts the city states they have established a reserve of 50% of their entire budget, but they would be short of that reserve mark. The shortage was estimated to be a few thousand dollars. On page 121 of the transcripts, Finance Director Bains states that the city will miss their reserve mark by \$10,000 and that their reserve balance they wish to carry is \$4,494,828.50 (four million, four hundred ninety-four thousand, eight hundred twenty-eight dollars and fifty cents). This amount was as of June 30, 2020.

On page 124 and 127 of the transcripts Finance Director Bains states there was no reserve balance because they have unaudited numbers, but that the unaudited numbers for the reserve for June 30, 2020 is 4.484 million dollars.