The City Council, with certain statutory exceptions, can only take action upon properly posted and listed agenda items. Any writings or documents given to a majority of the City Council regarding any matter on this agenda that the City received after issuing the agenda packet, are available for public inspection in the City Clerk’s office during normal business hours. Such Documents may also be posted on the City’s website at www.elsegundo.org and additional copies will be available at the City Council meeting.

Unless otherwise noted in the Agenda, the Public can only comment on City-related business that is within the jurisdiction of the City Council and/or items listed on the Agenda during the Public Communications portions of the Meeting. Additionally, the Public can comment on any Public Hearing item on the Agenda during the Public Hearing portion of such item. The time limit for comments is five (5) minutes per person.

Before speaking to the City Council, please come to the podium and state: Your name and residence and the organization you represent, if desired. Please respect the time limits.

Members of the Public may place items on the Agenda by submitting a Written Request to the City Clerk or City Manager’s Office at least six days prior to the City Council Meeting (by 2:00 p.m. the prior Tuesday). The request must include a brief general description of the business to be transacted or discussed at the meeting. Playing of video tapes or use of visual aids may be permitted during meetings if they are submitted to the City Clerk two (2) working days prior to the meeting and they do not exceed five (5) minutes in length.

In compliance with the Americans with Disabilities Act, if you need special assistance to participate in this meeting, please contact City Clerk, 524-2305. Notification 48 hours prior to the meeting will enable the City to make reasonable arrangements to ensure accessibility to this meeting.

SPECIAL MEETING OF THE EL SEGUNDO CITY COUNCIL
TUESDAY, MAY 9, 2017 - 7:00 P.M. PACIFIC STANDARD TIME

7:00 P.M. PACIFIC STANDARD TIME SESSION

CALL TO ORDER

INVOCATION – City Clerk, Tracy Weaver

PLEDGE OF ALLEGIANCE – Council Member Pirsztuk
ROLL CALL

PUBLIC COMMUNICATIONS – (Related to City Business Only – 5 minute limit per person, 30 minute limit total) Individuals who have received value of $50 or more to communicate to the City Council on behalf of another, and employees speaking on behalf of their employer, must so identify themselves prior to addressing the City Council. Failure to do so shall be a misdemeanor and punishable by a fine of $250. While all comments are welcome, the Brown Act does not allow Council to take action on any item not on the agenda. The Council will respond to comments after Public Communications is closed.

SPECIAL ORDERS OF BUSINESS

Consideration and possible action regarding approval of a Resolution implementing the City’s 1-Year Last, Best and Final Offer to the City Employees Association (CEA) bargaining unit. Fiscal Impact: (Savings $58,400.00).

Recommendation – 1) Approve the attached Resolution Unilaterally Implementing Terms and Conditions of the City of El Segundo’s One (1) Year Last, Best and Final Offer to the El Segundo City Employees Association (CEA); 2) Adopt the Resolution for the Employer Paid Member Contribution for CEA; 3) Adopt the Resolution updating the Employer’s monthly medical contribution for CEA; and/or 4) Alternatively discuss and take other action related to this item.

CLOSED SESSION

The City Council may move into a closed session pursuant to applicable law, including the Brown Act (Government Code Section §54960, et seq.) for the purposes of conferring with the City’s Real Property Negotiator; and/or conferring with the City Attorney on potential and/or existing litigation; and/or discussing matters covered under Government Code Section §54957 (Personnel); and/or conferring with the City’s Labor Negotiators.

REPORT OF ACTION TAKEN IN CLOSED SESSION (if required)

ADJOURNMENT

POSTED:

DATE: 05-03-17
TIME: 03:10 PM
NAME:
EL SEGUNDO CITY COUNCIL

AGENDA STATEMENT

MEETING DATE: May 9, 2017

AGENDA HEADING: Special Order of Business

AGENDA DESCRIPTION:

Consideration and possible action regarding approval of a Resolution implementing the City’s 1-Year Last, Best and Final Offer to the City Employees Association (CEA) bargaining unit. Fiscal Impact: (Savings $58,400.00).

RECOMMENDED COUNCIL ACTION:

1. Approve the attached Resolution Unilaterally Implementing Terms and Conditions of the City of El Segundo’s One (1) Year Last, Best and Final Offer to the El Segundo City Employees Association (CEA).
2. Adopt the Resolution for the Employer Paid Member Contribution for CEA.
3. Adopt the Resolution updating the Employer’s monthly medical contribution for CEA.
4. Alternatively discuss and take other action related to this item.

ATTACHED SUPPORTING DOCUMENTS:

1. Resolution with Exhibit A “Terms and conditions of the City of El Segundo’s one (1) year last best and final offer to the El Segundo City Employees Association”
2. Resolution for the Employer Paid Member Contribution for CEA
3. Resolution updating the Employer’s monthly medical contribution for CEA
4. City’s Last, Best and Final Offers
5. Mediation Chart, March 14, 2016
6. Fact Finding Report
7. City Manager’s Letter to CEA employees, April 27, 2017

FISCAL IMPACT:

Total Fiscal Impact: (Savings $58,400.00) Cost Savings

Amount Budgeted:

Additional Appropriation: None

Account Number(s):

ORIGINATED BY: Lynn Lindberg, Human Resources Director

REVIEWED BY: Lynn Lindberg, Human Resources Director

APPROVED BY: Greg Carpenter, City Manager

BACKGROUND AND DISCUSSION

Beginning August 24, 2014, the City of El Segundo began the meet and confer process for Memorandum of Understanding (MOU) negotiations. After eleven (11) meet and confer sessions the City presented its Last, Best, and Final Offer on December 9, 2015 consisting of a three (3) year offer and an alternative (1) year offer. The El Segundo City Employees Association (CEA) rejected the City’s Last, Best and Final Offers (attached). Consequently, the City declared impasse on January 13, 2016 and initiated the City’s impasse procedures in accordance with the City’s Employer-Employee Relations Ordinance.
Both parties agreed to participate in a mediation process in an attempt to reach agreement. Mediation was scheduled and conducted on March 14, 2016, March 28, 2016, and April 12, 2016. Despite these three separate mediation meetings the CEA and the City of El Segundo were unable to reach agreement. Attached is a chart utilized at mediation to illustrate the respective positions of the parties.

The final step of the impasse procedure is to engage in the Fact Finding process if requested by the union. CEA filed its petition with the Public Employment Relations Board (PERB) and as a result, a hearing was conducted on June 21, 2016. The Fact Finding three-member hearing panel consisted of a neutral arbitrator, assigned by PERB, and a panel representative selected by CEA and a representative selected by the City. The resulting non-binding Fact Finding Report was received on November 5, 2016 and promptly filed with the City Clerk’s Office and made publicly available by posting it on the City’s website.

City representatives informed CEA, through their attorney, that the matter would be presented to the City Council for resolution at a special meeting on May 9, 2017. City representatives informed CEA that a recommendation would be made for the City Council to implement the terms of the City’s 1-Year Last, Best and Final Offer to the CEA bargaining unit. On April 27, 2017, the City Manager issued a written memorandum to members of the CEA bargaining unit to make them aware of the status of the negotiations and in a last effort, attempt to bring this matter to a conclusion by coming to an agreement (see attached). Staff were informed that the CEA membership would be meeting the afternoon of May 4, 2017 but as of this writing, City representatives have not received word that CEA has accepted the City’s three-year Last, Best and Final Offer.

RECOMMENDATION

In conclusion, after meeting and conferring in good faith for fourteen (14) months with the CEA and exhausting the impasse procedure, it is apparent that an agreement cannot be reached. Staff recommends that the City Council approve the attached Resolution implementing terms and conditions of employment comprehended in the City’s one-year last, best and final offer.
RESOLUTION NO. _____

A RESOLUTION UNILATERALLY IMPLEMENTING TERMS AND CONDITIONS OF THE CITY OF EL SEGUNDO’S ONE (1) YEAR LAST, BEST AND FINAL OFFER TO THE EL SEGUNDO CITY EMPLOYEES ASSOCIATION

The City Council of the City of El Segundo does resolve as follows:

SECTION 1: Recitals:

A. The Memorandum of Understanding between the City of El Segundo and the El Segundo City Employees Association expired on September 30, 2014;

B. In accordance with the Meyers-Milias-Brown Act governing labor-management relationships in California local governments, the parties have met and conferred in good faith beginning on August 24, 2014;

C. The City, after eleven (11) meet and confer sessions, presented its Last, Best and Final Offer on December 9, 2015;

D. The Last, Best and Final Offer contained a three (3) year offer and a one (1) year offer;

E. The Last, Best and Final Offer was rejected by the El Segundo City Employees Association;

F. Mediation was conducted on March 14, 2016, March 28, 2016, and April 12, 2016;

G. Fact Finding was conducted on June 21, 2016;

H. The Advisory Fact Finding Report was issued on November 5, 2016;

I. The City Council has final and binding determination on all issues at impasse; and

J. The City Council has determined that it is appropriate to implement the City’s last, best and final offer for a one-year term.

SECTION 2: Adoption. The City Council adopts the terms and conditions of employment for the El Segundo City Employees Association, attached as Exhibit A to this resolution and incorporated herein by this reference.

SECTION 3: The City Clerk is directed to certify the adoption of this Resolution; record this Resolution in the book of the City’s original resolutions; and make a minute of the
adoption of the Resolution in the City Council's records and minutes of this meeting.

SECTION 4: This Resolution will become effective immediately upon adoption and remain effective unless superseded by a subsequent resolution.

PASSED, APPROVED AND ADOPTED this ____ day of May, 2017.

_____________________________
Suzanne Fuentes, Mayor

ATTEST:

STATE OF CALIFORNIA   )
COUNTY OF LOS ANGELES  )    SS
CITY OF EL SEGUNDO      )

I, Tracy Weaver, City Clerk of the City of El Segundo, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Resolution No. ____ was duly passed, approved and adopted by said City Council at a regular meeting held on the ____ day of May, 2017, approved and signed by the Mayor, and attested to by the City Clerk, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____________________________
Tracy Weaver, City Clerk

APPROVED AS TO FORM:

_____________________________
Mark D. Hensley, City Attorney
EXHIBIT “A”

TERMS AND CONDITIONS OF THE CITY OF EL SEGUNDO’S ONE (1) YEAR LAST, BEST, AND FINAL OFFER TO THE EL SEGUNDO CITY EMPLOYEES ASSOCIATION.

1. Clarify approval procedures for release time and membership meeting attendance as follows:

Upon timely request and for suitable reasons, the City Manager or designee may authorize release of the Association President or his/her authorized representative from normal duties to assist in personnel matters involving Association members and for which union representation is allowable by law. The Association President or his/her authorized representative shall inform their immediate supervisor, with as much advance notice as possible, of approval to engage in such matters during work hours to ensure minimal operational impact.

2. Overtime Calculation.

An employee who is required to work more than forty (40) hours during any given work week shall be compensated at the rate of one and one-half times his/her regular rate of pay.

Any paid leave time taken shall not count as hours worked for purposes of time and one-half overtime (Paid Leave Exclusions)

The City does not pay the employee’s seven percent (7%) PERS member contribution and consequently the employer paid member contribution of seven (7%) does not apply to this bargaining unit and is not to be calculated as part of the regular rate of pay nor shall it be applied to any leave payouts.

Rate of pay for all leave payouts (Sick, Vacation, Termination) shall be at base salary hourly rate of pay and 7% EMPC shall not apply.

Regular Rate of Pay is defined in 29 CFR 778.108 et seq. The definition used in this Resolution is for general reference and does not override the specific definitions set forth in the Fair Labor Standards Act (FLSA). Therefore, as used in this Resolution, the “regular rate of pay” is the total inclusive compensation paid to or on behalf of the employee except gifts, travel expenses, other reimbursable expenses, payments not mandated by the former MOU or other rules/regulations, retirement and insurance contributions by the City, overtime and holiday pay. These are examples only and not intended to be an all-inclusive definition of the “regular rate of pay.” Applicable statutes/case law shall prevail over any definitions inconsistent with statutes/case law.
3. The Settlement Agreement and Side Letter dated September 17, 2013 between the City of El Segundo and the El Segundo City Employees Association is incorporated as a term and condition of employment.

4. Family Emergency Care Sick Leave Utilization to be updated as follows to reflect “Kin Care” and AB1522, Paid Sick Leave Law:

   The City shall comply with the Federal and State regulations of the Family and Medical Leave Act, California Family Rights Act, Healthy Workplaces, Healthy Families Act of 2014 (“Paid Sick Leave Law” -AB1522) and other applicable family leave laws. Affected employees shall be entitled to utilize accumulated sick leave for providing family medical necessity-related care. Depending upon the applicable leave law, “family member” may be defined as including but not limited to children, parents (of employee, spouse, or registered domestic partner), spouse, registered domestic partner, siblings, grandchildren, or grandparents.

   Utilization of said sick leave shall be contingent upon the employee making application for sick leave use in accordance with the City’s policies and providing the required documentation evidencing that the sick leave is to be distributed because of a family member receiving medical attention by any type of health care provider.

5. The City’s contribution for medical insurance will be as follows:

   a. $1115.67 for full-time members and $557.84 for permanent part-time members. Contribution will be used for medical premiums only; $9.52 EAP will not be deducted. City will provide mental health benefit at a basic level and at City cost. Enrollment in EAP Outpatient Tier is voluntary. Replaces former MOU Article 2.06 (C) in its entirety.

   b. Eliminate language in former MOU Article 2.06 reflecting maximum future health contribution.

6. Three percent (3%) base salary increase and employees pay full seven percent (7%) PERS Members Share.

   a. The City’s one-year Last, Best and Final Offer presented on December 7, 2015 stated in part:

   “6. Year 2 – 3% base salary increase and employees pay full 7% PERS Member Share (EPMC = 0%).

   The reference to Year 2 is a typographical error; it should read “Year 1”. The City recognizes that it can only implement a one (1) year offer. Pursuant to Government Code Section 3505.7, the unilateral implementation of a one year offer does “not deprive a recognized employee organization of the right each year to meet and confer...”
b. The retroactive calculation of the 7% EMPC owed far exceeds the value of the 3% salary increase. Rather than retroactively recapture this overage, the 3% salary increase and the 7% EPMC contribution will be implemented on a “going forward” basis, starting with the pay period beginning May 13, 2017.

7. Permanent part-time employees shall accrue 48 hours sick leave per year; 1.85 hours per pay period.

8. Step Advancement, Class Series Classifications – Modify former MOU language to reflect “incumbent must meet minimum requirements posted on class specification, in addition to listed criteria, to be eligible for advancement to Level II.”

9. Floating Holidays, delete former MOU Article 2.16 4(b) related to obsolete 2011 holiday schedule one-time event.

10. Memorialize current vacation practice that permanent part-time employees receive vacation accrual at 50% of the established full-time vacation schedule.


12. Memorialize current longevity practice that permanent part-time employees receive longevity pay at 50% equivalent to the longevity pay amounts applicable to permanent full-time employees. Eliminate longevity pay for future employees hired on or on after May 10, 2017.

13. Add Facilities Systems Mechanic classification to list eligible to receive $50.00 monthly stipend for possessing a Class “B” license and subject to Department of Transportation (DOT) requirements.

Revise Facilities Systems Mechanic Class Specification to reflect Class “B” license requirement.

14. Work schedule will change to 9/80 work week with every other Friday dark/closed.

15. Termination pay shall be made at the base salary hourly rate and 7% EPMC shall not be calculated into the payout rate.

16. “No Layoffs” language to be removed from former MOU Article 3.21.

17. OTHER:
   a. Institute a voluntary rotation program in the Public Works Department for certain classes.
   b. Police Cadet classification removed from unit
c. The currently vacant Network Assistant classification will be upgraded to
Information Systems Specialist and removed from CEA bargaining unit and
placed in the Supervisory and Professional Employees Bargaining Unit.

18. CLEAN UP LANGUAGE:
   a. Remove Cost of Living Adjustment, former MOU Article 2.01
   b. Remove Wellness Program, former MOU Article 2.05
   c. Add PEPRA Retirement language, former MOU Article 2.07

   (b) Tier II – The City has amended its contract with the California Public
       Employees’ Retirement System (CalPERS) to implement the 2%@60
       retirement formula in accordance with Government Code Section 21353.
       This formula applies to all employees hired on or after December 30, 2012
       who are already members of CalPERS.

       Tier I and Tier II participants will have their final compensation based upon
       the “single highest year” pursuant to Government Code Section 20042.

   (c) Tier III – Members of this bargaining unit who are first employed by the
       City on or after January 1, 2013, and are “new employees” and/or “new
       members” as defined by AB 340 (Public Employees Pension Reform Act)
       shall be provided with the 2%@62 retirement formula. Members shall be
       subject to all other statutory requirements established by AB340, which
       includes paying 50% of the normal cost as determined by CalPERS.
       Members’ final compensation shall be based on the highest annual average
       compensation earnable during the 36 consecutive months immediately
       preceding the effective date of retirement, or some other 36 consecutive
       month period designated by the member.

   d. Correct Sick leave reference to “one-half” to correctly reflect 100% payment of
      over-accrual, former MOU Article 2.10(3)
   e. Update to reflect current benefit is in place for Health Care and Dependent Care
      Spending Accounts, former MOU Article 2.11
   f. Move former MOU Article 2.14, Minimum Service with City of El Segundo to
      Receive Pay for a Designated Percentage of Accumulated Sick Leave to former
      MOU Article 2.10, Sick Leave
   g. Convert Vacation days to hours accrued each pay period, former MOU Article
      2.18 to meet EDEN system setup structure.
   h. Revise Vacation Time Accumulation and Sale language to reflect approval by the
      City Manager or “designee”, former MOU Article 2.19

19. Effective Dates.

As set forth in paragraph 6(b) above, the value of retroactive monies an employee
owes far exceeds the value of new monies owed by the City. To calculate these
imposed terms on a two and half (2 ½) year retroactive basis would be incredibly time
consuming. Rather than retroactively recapturing these overages, all issues set forth
above will be implemented on a “going forward” basis, starting with the pay period beginning May 13, 2017.
RESOLUTION NO._____

A RESOLUTION FOR EMPLOYER PAID MEMBER CONTRIBUTIONS (EPMC) FOR THE EL SEGUNDO CITY EMPLOYEES ASSOCIATION (CEA)

The City Council of the City of El Segundo does resolve as follows:

Section 1: The City Council finds and declares as follows:

A. The City Council of the City of El Segundo has the authority to implement Government Code Section 20691;

B. The City of El Segundo has a written labor policy or agreement which specifically provides for the normal member contributions to not be paid by the employer;

C. One of the steps in the procedures to implement Section 20691 is the adoption by the City Council of the City of El Segundo of a Resolution to commence said Employer Paid Member Contributions (EPMC);

D. The City Council of the City of El Segundo has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all “Classic” employees of the El Segundo City Employees Association

- This benefit shall consist of Employer paying 0% of the normal member contributions as EPMC

- The Employee will pay 7% of the normal member contributions

- The effective date of this Resolution shall be the pay period beginning May 13, 2017.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of El Segundo elects to pay EPMC, as set forth above.

Section 2: The City Clerk is directed to certify the adoption of this Resolution; record this Resolution in the book of the City’s original resolutions; and make a minute of the adoption of the Resolution in the City Council’s records and the minutes of this meeting.

Section 3: This Resolution will become effective immediately upon adoption.
PASSED AND ADOPTED this 9th day of May, 2017.

Suzanne Fuentes,
Mayor

CERTIFICATION

STATE OF CALIFORNIA )
COUNTY OF LOS ANGELES ) SS
CITY OF EL SEGUNDO )

I, Tracy Weaver, City Clerk of the City of El Segundo, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Resolution No. ______ was duly passed and adopted by said City Council, approved and signed by the Mayor, and attested to by the City Clerk, all at a regular meeting of said Council held on the 9th day of May, 2017, and the same was so passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

NOT PARTICIPATING:

WITNESS MY HAND THE OFFICIAL SEAL OF SAID CITY this 9th day of May, 2017.

Tracy Weaver, City Clerk
of the City of El Segundo,
California
(SEAL)

APPROVED AS TO FORM:
Mark D. Hensley, City Attorney

By: __________________________
    Karl H. Berger
    Assistant City Attorney
RESOLUTION NO. _______
A RESOLUTION FIXING THE EMPLOYER'S CONTRIBUTION UNDER THE PUBLIC EMPLOYEES' MEDICAL AND HOSPITAL CARE ACT FOR THE EL SEGUNDO CITY EMPLOYEES ASSOCIATION (CEA)

WHEREAS, (1) The City of El Segundo is a contracting agency under Government Code Section 22920 and subject to the Public Employees’ Medical and Hospital Care Act (the “Act”) for participation by members of the City Employees Association.

WHEREAS, (2) Government Code Section 22892(a) provides that a contracting agency subject to Act shall fix the amount of the employer contribution by resolution; and

WHEREAS, (3) Government Code Section 22892(b) provides that the employer contribution shall be an equal amount for both employees and annuitants, but may not be less than the amount prescribed by Section 22892(b) of the Act; and

RESOLVED, (a) That the employer contribution for each employee or annuitant shall be the amount necessary to pay the full cost of his/her enrollment, including the enrollment of family members, in a health benefits plan up to a maximum of $1,115.67 per month for full-time members and $557.94 for permanent part-time members, plus administrative fees and Contingency Reserve Fund assessments; and be it further

RESOLVED, (b) The City of El Segundo has fully complied with any and all applicable provisions of Government Code Section 7507 in electing the benefits set forth above; and be it further

RESOLVED, (c) That the participation of the employees and annuitants of The City of El Segundo shall be subject to determination of its status as an “agency or instrumentality of the state or political subdivision of a State” that is eligible to participate in a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code, upon publication of final Regulations pursuant to such Section. If it is determined that the City of El Segundo would not qualify as an agency or instrumentality of the state or political subdivision of a State under such final Regulations, CalPERS may be obligated, and reserves the right to terminate the health coverage of all participants of the employer.

RESOLVED, (d) That the executive body appoint and direct, and it does hereby appoint and direct the City Clerk to file with the Board a verified copy of this resolution, and to perform on behalf of the City of El Segundo all functions required of it under the Act.

RESOLVED, (e) Under Government Code Section 22892, this Resolution will become effective April 9, 2017 and will remain effective unless repealed or superseded.
Resolution No. ______PASSED, APPROVED AND ADOPTED this 9th day of May, 2017.

______________________________
Suzanne Fuentes, Mayor

ATTEST:

___________________________
Tracey Weaver, City Clerk

APPROVED AS TO FORM:

___________________________
Mark D. Hensley, City Attorney
CERTIFICATION

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
CITY OF EL SEGUNDO

I, Tracy Weaver, City Clerk of the City of El Segundo, California, do hereby certify that the whole number of members of the City Council of said City is five; that the foregoing Resolution No. _____ was duly passed and adopted by said City Council, approved and signed by the Mayor, and attested to by the City Clerk all at a regular meeting of said Council held on the 9th day of May, 2017, and the same was so passed and adopted by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

NOT PARTICIPATING:

WITNESS MY HAND THE OFFICIAL SEAL OF SAID CITY this 9th day of May, 2017.

____________________________________
Tracy Weaver, City Clerk
of the City of El Segundo,
California
1. Article 1.02, Conclusions and Term of Agreement
   a. 3 years, October 1, 2014 – September 30, 2017 (Tentative Agreement 9/23/15)

The following proposals to become effective October 1, 2014:

2. Article 1.11, Stewards Time – Clarify approval procedures for release time and membership meeting attendance. (Handout by City on 4/29/15)

3. Article 2.02, Overtime/Compensatory Time
   b. Rate of pay for all leave payouts (Sick, Vacation, Termination) shall be at base salary hourly rate of pay. 7% EPMC shall not be calculated into payout rate.
   c. Any paid leave time taken shall not count as hours worked for purposes of time and one-half Overtime (Paid Leave Exclusions).
   d. Define Regular Rate of Pay (City to provide language)

4. Article 2.03, Family Emergency Care Sick Leave Utilization – Update language to reflect "Kin Care" and AB1522, Paid Sick Leave Law. (Tentative Agreement; City to provide language) (Tentative Agreement 9/23/15)

5. Article 2.06 (1), Employee Group Health Insurance Program, Medical – Freeze monthly contribution at $1160.71 for full-time members; $580.36 for permanent part-time members effective the date of ratification.
   a. Contribution will be used for medical premiums only; $9.52 for EAP will not be deducted. City will provide mental health benefit at a basic level and at City cost. Enrollment in EAP Outpatient Tier voluntary.
   b. Article 2.06 1(E) – Eliminate language reflecting maximum future health contribution.

6. Article 2.07, Retirement
   a. Year 2 of contract – members pay seven percent (7%) of PERS Member Share offset by a seven percent (7%) base salary increase effective date of ratification.
   b. Year 3 of contract – three percent (3%) base salary increase.

7. Article 2.10, (1), Sick Leave, Sick Leave Accumulation – include permanent part-time employees accrue 48 hours per year; 1.85 hours per pay period. (4/29 – CEA, "Shouldn't be a problem"). Tentative Agreement 8/20/15

8. Article 2.13 (2), Step Advancement, Class Series Classifications – Add that incumbent must meet minimum requirements posted on class specification, in addition to listed criteria, to be eligible for advancement to Level II. (Handout by City on 4/29/15)

9. Article 2.16 (4), Holiday Schedule, Floating Holidays – remove 4(b) which was a one-time event.
10. Article 2.18, Vacation – include vacation accruals applicable to permanent part-time employees. Tentative Agreement 8/20/15


13. Article 2.27, Class A and Class B Driver License Pay
   a. Add Facilities Systems Mechanic classification to list eligible to receive $50 monthly stipend for possessing Class “B” license and be subject to DOT requirements. (Tentative Agreement)
   b. Revise Facilities Systems Mechanic Class Specification to reflect Class “B” requirement. (Tentative Agreement)


15. Article 3.08, Alternative Work Schedules – Work Schedule change to 9/80, every other Friday dark.

16. Article 3.13, Termination Pay – Payment shall be made at the base salary hourly rate. 7% EPMC shall not be calculated into payout rate.

17. Article 3.21, No Layoffs -- remove language

**OTHER**
- Institute a voluntary rotation program in the Public Works Department for certain classes. Tentative Agreement 8/20/15
- Police Cadet -- remove classification from unit.
- Classification Issues in Library (1 position) Tentative Agreement 8/20/15 and Police Department (1 position)

**Clean-up language:**
- Article 2.01, Cost of Living Adjustment -- remove
- Article 2.05, Wellness Program -- remove
- Article 2.07, Retirement -- add PEPRA language
- Article 2.10 (3), Sick Leave – delete “one-half” to correctly reflect 100% payment of overaccrual
- Article 2.11 – modify to reflect current benefit is in place (Health Care and Dependent Care Spending Accounts)
- Article 2.14, Minimum Service with City of El Segundo to Receive Pay for a Designated Percentage of Accumulated Sick Leave – move to Article 2.10, Sick Leave.
- Article 2.18, Vacation – convert days to hours accrued each pay period to reflect the EDEN payroll system.
- Article 2.19, Vacation Time Accumulation and Sale – revise to reflect approval by the City Manager or "designee".
### MARCH 14, 2016 MEDIATION
SUCCESSOR MOU NEGOTIATIONS – CITY EMPLOYEES' ASSOCIATION
CEA'S AREAS AT ISSUE VS. CITY’S BEST POSITION
MAY 17, 2016 CLOSED SESSION

<table>
<thead>
<tr>
<th>ITEM</th>
<th>CEA’S 1/19/2016 RESPONSE – WHY RATIFICATION FAILED ALMOST “UNANIMOUSLY”</th>
<th>CITY’S BEST POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Steward’s Time</td>
<td>• NEW: Requesting additional language, “said Association requests for release time shall not be unreasonably denied” in order to TA</td>
<td>• New Proposal; had not been discussed at the table. City proposed language on 4/29/15.</td>
</tr>
</tbody>
</table>
| Overtime                  | • Rate of Pay - continue to be at “regular rate of Pay”. EPMC Exchange calculated into rate.  
                            • Paid Leave Exclusions – no change, SL to continue to be only leave time taken not counted towards hours worked. | • Payout for SL, Vac, Termination at base salary hourly rate of pay. EPMC NOT to be included in pay.  
                            • If agreement, only vacation and sick leave would not count towards hours worked for Voluntary OT; Emergency OT not subject to Paid Leave Exclusions. |
| Health Insurance          | • Increase and freeze at $1400/monthly for FT and $700/monthly for perm. PT.  
                            • NEW: Maintain current $1600 cap –and-compute annual increase by using previous formula and increasing City’s cost from 50% to 75%.  
                            • Maximum future health contribution – limit to $1400 for FT and $700 for PT | • Freeze at $1160.71 from current $1096.36. and freeze at $580.36 for perm. PT.  
                            • New Proposal – no previous discussion  
                            • SUPPOOSAL – City willing to increase contribution to $1200/month; $600 for perm. P/T. |
| Retirement                | • Upon ratification, employees pay 7% EPMC with 7% salary offset | • Tentative Agreement 12/9/15. Unclear what issue is. |
| Salary Increase           | • Upon ratification 7%  
                            • 10/1/16 – 3% | • City’s 3-yr LBFO 12/9/15 proposed 3% year 3 of contract. Unclear what issue is. |
| Sick Leave Accumulation    | • Perm PT accrue 48 hours per year, 1.85 per pay period | • Tentative Agreement 8/20/15. Unclear what issue is. |
| Step Advancement          | • Incumbents meet MQ’s as of 9/30/14. NEW: Future changes to Class Specs subject to Meet & Confer | • City provided language on 4/23/15. Unclear what issue is.  
                            • NEW Proposal – no previous discussion. |
| Education Incentive Pay    | • Retain 10/15/2000 date  
                            • NEW: Add Fire Mechanic and Equipment Mechanic II (no details provided) | • Removal based on PERS Audit Report  
                            • CEA was to provide list of specific Certs that would qualify; City never received.  
                            • Eliminate pay for future employees |
<table>
<thead>
<tr>
<th>ITEM</th>
<th>CEA'S 1/19/2016 RESPONSE – WHY RATIFICATION FAILED ALMOST &quot;UNANIMOUSLY&quot;</th>
<th>CITY'S BEST POSITION</th>
</tr>
</thead>
<tbody>
<tr>
<td>Longevity Pay</td>
<td>• Include Longevity Pay amounts to permanent PT</td>
<td>• City’s LBFO proposed including pay amounts in MOU for perm PT; unclear what issue is.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Eliminate for future employees</td>
</tr>
<tr>
<td>Class A &amp; B CLD Pay</td>
<td>• NEW: Facilities Systems Mechanic to receive $50 monthly stipend for Class &quot;B&quot; but not required to participate in DOT Random Drug Testing.</td>
<td>• Tentative Agreement was previously reached.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• NEW Proposal not discussed at the table.</td>
</tr>
<tr>
<td>Work Schedule</td>
<td>• Keep 4/10</td>
<td>• Work Schedule Change to 9/80 every other Friday dark.</td>
</tr>
<tr>
<td>Termination Pay</td>
<td>• Payout at “regular rate of pay”</td>
<td>• Payout at “base salary hourly rate”.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>EPMC NOT calculated into payrate</td>
</tr>
<tr>
<td>Guaranteed No Layoff Language</td>
<td>• Keep language</td>
<td>• Remove language</td>
</tr>
<tr>
<td>Rotation Program</td>
<td>• TA on proposed PW program. NEW: Would not be “opposed” to program in Recreation &amp; Parks</td>
<td>• Tentative Agreement reached. New proposal had not been presented and therefore no discussion at the table.</td>
</tr>
<tr>
<td>Classification Issues</td>
<td>• Does not agree to upgrade Network Assistant class to IS Developer and remove from bargaining unit.</td>
<td>• Upgrade Network Assistant to IS Developer and remove from unit (IS Developer is represented by SPEA)</td>
</tr>
<tr>
<td>Boot Allowance</td>
<td>• Increase as agreed from $100 to $250</td>
<td>• Tentative Agreement on 12/9/15; not sure what problem is.</td>
</tr>
</tbody>
</table>
In the Matter of the Impasse Between
CITY OF EL SEGUNDO
Public Employer
- and -
EL SEGUNDO CITY EMPLOYEES ASSN.
Exclusive Representative

FACTFINDING PANEL REPORT
PERB Case No. LA-IM-200-M

COMPOSITION OF THE FACTFINDING PANEL:

Neutral Chairman: ROBERT BERGESON, Arbitrator/Factfinder
13351-D Riverside Drive #142
Sherman Oaks, CA 91423

City Member: LAURA KALTY, Esq., Liebert Cassidy Whitmore
6033 W. Century Blvd, 5th Floor
Los Angeles, CA 90045

Association Member: RALPH ROYDS, President
Public Labor Advisors, Inc.
6285 W. Spring Street, Suite 355
Long Beach, CA 90808

PRESENTING EVIDENCE/ARGUMENT TO THE PANEL:

On Behalf of the City: Steve A. Filarsky, Esq., Filarsky & Watt
Greg Carpenter, City Manager
Martina Dijkstra, Human Resources Director

On Behalf of the Association: Wendell Phillips, Chief Counsel, Phillips & Rickards
Nick Petrevski, Engineering Technician
Ron Griffin, Fire Equipment Mechanic
Mike McKinley, Water Maintenance Worker
James Amezquita, Revenue Inspector
BACKGROUND AND PROCEDURAL HISTORY

The City of El Segundo (City) bargains with five employee groups. In addition to police, represented by the El Segundo Police Officers Association (POA) and firefighters, represented by El Segundo Firefighters Association (ESFA), the city meets and confers with the Police Support Services Association (PSSA), which is represented by the International Brotherhood of Teamsters, El Segundo Supervisor/Professional Association, the El Segundo Police Managers Association (PMA) and the El Segundo City Employees Association (ESCEA or Association). A successor memorandum of understanding (MOU) with the Association, which represents the largest bargaining unit in the City consisting of about 65 employees, is at issue.

In fiscal year 2003-2004, employees represented by the Association began a biweekly work schedule of nine days with a total of 80 hours during which facilities employing Association-represented employees were closed on alternate Fridays, with employees working an extra one and a half hours every other Friday. Prior to the beginning of fiscal year 2011-2012, the City proposed a 4-day per week, 10-hour per day schedule including furloughs of four hours per week. The City’s rationale for that 36-hour workweek was a need to reduce salaries by some 10 percent. The Association successfully opposed that idea and employees it represents have since been working a biweekly 4/10 schedule.

The aforementioned two-year MOU was extended through September 30, 2014. In anticipation of expiration thereof, on August 26, 2014, the parties began to meet and confer over a successor contract. The City and the Association do not agree on the exact number of face-to-face negotiating sessions they have had but the Association presented its “final” offer to the City on December 9, 2015 and the City presented its “last, best and final” offer (or LBFO) at about that same time. The City’s LBFO was rejected overwhelmingly by the Association’s membership and the parties then agreed they had reached an impasse.

A number of sessions with a representative of the State Mediation and Conciliation Service proved to be unsuccessful in reaching agreement on a successor MOU and in April of 2016, the Association requested that the state Public Employment Relations Board (PERB) submit to the parties a list of names from which they could select the neutral member of a factfinding panel. The...
person ultimately selected was Arbitrator/Factfinder Robert Bergeson. The City selected Attorney Laura Kalty of the law firm of Liebert Cassidy Whitmore to be its panel member, with the Association designating Ralph Royds, president of Janis Labor Advisors, to be its representative.

On June 21, 2016, a hearing was held at El Segundo City Hall in which the City and the Association were offered a full opportunity to present evidence to the panel in support of their respective positions on each issue. Although with the concurrence of the parties the panel then attempted some post-hearing mediation, as the state mediator had been, they were unsuccessful in assisting the parties to reach a resolution of their dispute. Accordingly, it was agreed the panel should write the present report summarizing the parties' positions and opinning as to how the parties should resolve the remaining issues. In that regard, Chairman Bergeson drafted the present report for review by partisan panel members Kalty and Royds and the instant copy is the result of their collective efforts.

**RELEVANT FACTORS**

Subsection 3505.4(d) of the Government Code provides as follows:

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

1. State and federal laws that are applicable to the employer.
2. Local rules, regulations, or ordinances.
4. The interests and welfare of the public and the financial ability of the public agency.
5. Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
6. The consumer price index for goods and services, commonly known as the cost of living.
7. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
person ultimately selected was Arbitrator/Factfinder Robert Bergeson. The City selected Attorney Laura Kalty of the law firm of Liebert Cassidy Whitmore to be its panel member, with the Association designating Ralph Royds, president of Janis Labor Advisors, to be its representative.

On June 21, 2016, a hearing was held at El Segundo City Hall in which the City and the Association were offered a full opportunity to present evidence to the panel in support of their respective positions on each issue. Although with the concurrence of the parties the panel then attempted some post-hearing mediation, as the state mediator had been, they were unsuccessful in assisting the parties to reach a resolution of their dispute. Accordingly, it was agreed the panel should write the present report summarizing the parties’ positions and opining as to how the parties should resolve the remaining issues. In that regard, Chairman Bergeson drafted the present report for review by partisan panel members Kalty and Royds and the instant copy is the result of their collective efforts.

**RELEVANT FACTORS**

Subsection 3505.4(d) of the Government Code provides as follows:

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

1. State and federal laws that are applicable to the employer.
2. Local rules, regulations, or ordinances.
4. The interests and welfare of the public and the financial ability of the public agency.
5. Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
6. The consumer price index for goods and services, commonly known as the cost of living.
7. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
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.

Any criterion which has not been relied upon by the parties has not been considered in arriving at the findings and recommendations made herein.

ISSUES

As stated by panel Chairman Bergeson during the factfinding hearing, because this process is not quasi-judicial as is true of arbitration but rather quasi-legislative, there is no burden of proof as that concept is known under civil procedure. There is nevertheless a burden of persuasion in the sense that the party advocating a change from the status quo should be expected to provide solid rationale for the change sought. As will be seen, one key argument advanced by the City with regard to several proposals in its LBFO fails to meet that standard.

EXCLUSION OF PAID LEAVES AND EMPLOYER PAID MEMBER CONTRIBUTION FROM OVERTIME CALCULATION

Association’s Position

Although the MOU currently provides for inclusion of overtime, holiday and vacation pay and compensatory time in calculating the 40 hours necessary each week to trigger the paying of overtime, specifically excluded from that calculation hours are attributed to sick leave. Although that approach is typical of Southern California cities, including sick leave usage toward the 40 hours is the norm in Northern California and the relevant paragraph in Article 2.02 of the MOU should be changed to reflect that more equitable provision. Instead, the City has proposed adding to exclusions vacation usage.

City’s Position

Not only has the Association failed to present persuasive evidence to support including sick leave usage in calculating the 40 hours needed to trigger overtime compensation, a number of months ago the City agreed to a new three-year MOU with ESFA which will exclude most, if not
all, sick leave usage in computing the hours necessary to qualify for overtime. These parties’ MOU should come into compliance with that of the City and ESFA.

**Recommendation**

See below.

**EDUCATIONAL INCENTIVE PAY**

**City’s Position**

The MOU currently provides for payment of a stipend to employees holding a job not requiring a bachelor’s degree who obtain such a degree in public administration, business administration or another “job-related major . . . approved by the department head.” This provision has been in the MOU since prior to October 2000 yet only five bargaining unit members have availed themselves of it. It therefore appears to be unnecessary and although the unit members who have qualified for the incentive should continue to receive it and current unit members should be grandfathered in so that any courses completed in anticipation of qualification will not have been for naught, the provision should be eliminated for employees hired after the successor MOU has been agreed upon. Moreover, the City’s agreement with ESFA does not contain such a provision.

**Association’s Position**

The educational incentive should remain without modification.

**Recommendation**

See below.

**LONGEVITY PAY**

**City’s Position**

Although longevity pay has long been a benefit available to Association-represented employees, no such provision exists in the City’s MOUs with ESFA and the POA. In order to make this bargaining unit consistent with those, the provision should be eliminated.

**Association’s Position**

Employees represented by the Association are clearly not firefighters or police officers. That is abundantly clear when one compares their paychecks. Particularly by virtue of passage of the
recent transient occupancy tax (Measure B), this City which once contemplated implementing
furloughs in order to balance its budget no longer has such a problem. Indeed, never once during
negotiations has the City argued ability to pay. Accordingly, incentive to stay with the City should
remain in the MOU.
Recommendation
See below.

NO LAYOFFS

City’s Position
ESFA recently agreed to delete from its MOU a provision prohibiting the City from laying
off employees during its term. The Association should follow ESFA’s lead and agree to do the same.

Association’s Position
The no-layoff provision was obtained by the Association as a quid pro quo for concessions
made in prior negotiations. The City has provided no evidence the provision has been detrimental
in any manner and it should accordingly remain in the parties’ agreement.

Recommendation
See below.

HEALTH INSURANCE

City’s Position
The City’s contribution to premiums for group medical insurance should be capped at
$1160.71 per month for full-time employees and half that amount for permanent part-timers.

Association’s Position
The City expects Association members to agree to a cap of less than $1,200 per month yet
the City recently agreed with ESFA that the cap for firefighters will be $1,425 per month.
Particularly considering how much more firefighters earn than miscellaneous employees represented
by ESCEA, that proposal is greatly unfair.

The Association will agree to maintain the current cap of $1,600 if the City would agree to
pay at least 75% of unit members’ medical premiums notwithstanding the amount to which it might
rise. Alternatively, caps of $1,400 and $700 would be acceptable if the status quo is maintained with regard to other issues on the table.

Recommendation

See below.

Recommendation Concerning OVERTIME, EDUCATIONAL INCENTIVE, LONGEVITY PAY, LAYOFFS and HEALTH INSURANCE

These issues are interrelated by virtue of the parties’ positions concerning them. On the one hand, the City advocates elimination of educational incentive and longevity pay because firefighters do not have such a benefit, elimination of the no layoff provision because EGFA so conceded during its most recent negotiations and exclusion of EPMC in calculating the overtime rate because the firefighters have never had it. Notwithstanding that rationale for its position on those issues, in its LBFO the City expects this Association to accept a limit on the amount the City will contribute toward ESCEA-represented employees’ medical premiums which would be considerably lower than that EGFA has agreed to. As the Association argues, particularly because its members earn less than considerably less than firefighters, to require general employees to potentially pay $265 more per month than firefighters would be patently unfair. More than that, it would be illogical since the two classes of employees are members of the same medical groups so the cost of insurance to firefighters and Association-represented employees is the same and the City provided no evidence to support such a patent inequity.

Parenthetically, there is some evidentiary support for the City’s position on certain of the other items now addressed. For example, educational incentive pay is a standard part of collective bargaining agreements in certain industries, particularly K-12 school districts and community college districts. Because of the nature of the services they provide, that is true even for employees holding non-faculty positions. However, it is not so common for employees such as those represented by the Association and it goes without saying that although this educational incentive provision was obviously of importance to some employees 16 years ago, it has been of no value to the great majority of the bargaining unit. Similarly, although the City’s survey indicates general employees of the cities of Culver City, Hawthorne, Redondo Beach and Torrance have MOUs containing a
longevity pay provision, that is not so of MOUs covering like employees of Gardena, Hermosa Beach, Inglewood, Los Angeles, Manhattan Beach and Santa Monica nor of employees of the County of Los Angeles.

Based upon the above, it is the opinion of Chairman Bergeson that the City and ESCEA should agree to one of two alternatives for these five issues. The City should concede to the Association’s position on the first four items with the Association agreeing to cap the amount the City pays toward monthly medical insurance caps at $1,160.71 and $580.36 as advocated by the City or the parties should agree to the position taken by the City in its last, best and final offer on the first four issues and agree to City-paid medical insurance at the same $1,425 per month the firefighters will pay. As the Association has said, the City has provided no evidence of an inability to pay that additional amount and insofar as unanticipated financial problems may occur in the future, elimination of longevity pay, educational incentive pay and the prohibition against layoffs should far more than cover them.

LEAVE PAYOUTS
City’s Position

Article 3.13 of the MOU entitled Termination Pay should be changed from “Payment shall be made based on the definition of ‘regular rate of pay’” to “Payment shall be made at the base salary hourly rate.”

Association’s Position

The City has presented no evidence nor even any rationale for advocating alteration of Article 3.13 and it should be retained as written.

Recommendation

Because the City has provided no persuasive argument to support the proposed change to Article 3.13, Chairman Bergeson sees no need for a change like this which would impact everyone in the bargaining unit and he therefore recommends that the article remain as presently written.

WORK SCHEDULE
City’s Position
The work schedule for these employees should be returned to the 9/80 principle which existed until about five years ago. So doing will allow for greater convenience to citizens by having services fully available on Friday. During pre-impasse negotiations the Association discussed the possibility that if there was a return to a 9/80 schedule that there could be a collection of data as to the extent to which the public utilized City services each Friday versus other weekdays. The City has no objection to such an approach.

**Association’s Position**

The Association was initially opposed to creation of a 4/10 schedule. However, bargaining unit members have adjusted to it and particularly because of child care responsibilities, desire that it be maintained. The City has made no study itself which would support returning to a 9/80 schedule much less contracting with a neutral outside entity to perform such a study. Indeed, the only rationale presented was the unsupported assertion that members of the public have been inconvenienced by having City Hall closed on Fridays. The City offered no explanation for why that would require compelling bargaining unit members who do not work at City Hall to return to a 9/80 schedule.

Because the City has not even considered such a middle ground, it is almost a certainty that imposition of a 9/80 schedule for all ESCEA-represented employees would be perceived to be a hostile act.

**Recommendation**

The Association’s point about the City having only cited City Hall employees is not entirely accurate. Although it did so only in passing and provided no evidentiary support for the assertion during the factfinding hearing, the City expressed a concern that some supervisors work out of City Hall whose employees are assigned elsewhere. If that is accurate, it would cast doubt on the feasibility of ESCEA’s tacit assertion that many members of the bargaining unit could easily remain on a 4/10 schedule while others worked a 9/80 without inconvenience to City operations. Moreover, in the opinion of the panel chairman, creating disparate schedules for bargaining unit employees has the same potential for a negative affect on morale as the City’s proposal to treat all Association-represented employees as second class citizens vis-a-vis firefighters with regard to medical insurance premiums. It is therefore the opinion of Chairman Bergeson that all unit members should revert to the former 9/80 schedule. However, that recommendation is not without qualification.
Perhaps the Association is correct that only a small number of citizens have been inconvenienced by having City Hall closed each Friday. If so, tabulating information about Friday usage following reopening City Hall on such days could conceivably be compared to Mondays through Thursdays or perhaps to the amount of citizen visits to City Hall on Fridays during the 2003-2004 through 2004-2011 period. Based on the paucity of evidence presented to the panel no specific metric(s) will be recommended. Instead, it is suggested the parties agree to creation of a committee composed of an equal number of management representatives and representatives of the Association to arrive at a plan for assessing the need for the 9/80 schedule. Following the passage of a reasonable period of time, say 12 months, the committee would summarize the data received and recommend continuation or modification of such 9/80 schedule.

Panel Chairman Bergeson having so opined, the concurring and dissenting opinions of partisan panel members Kalty and Royds follow hereafter.

DATED: October 31, 2016

Respectfully submitted,

[Signature]
Robert Bergeson
Panel Chairman

Partisan panel members Kalty and Royds concurrences and dissents begin on page 11 below.
City of El Segundo and the El Segundo City Employees Association  
PERB Case No. LA-IM-200-M  

El Segundo City Employees Association Concurrence in Part and Dissent in Part  
to the Fact-finding Panel's Findings, Conclusions and Recommendations  

El Segundo City Employees Association Association Representative to the Fact-finding Panel  
Ralph Royds  

As the El Segundo City Employees Association ("ESCEA") representative to the Fact-finding Panel, I concur in part, and dissent in part to the Fact-finding Panel Chair's Findings, Conclusions and Recommendations in the above referenced matter and add the following facts in support thereof:  

I. Exclusion of Paid Leave Time Overtime Calculation  

City's Exhibit #25 represents its Last, Best, Final Offer (LBFO). The LBFO refers to "base salary hourly rate of pay" and "regular rate of pay" in modifying Article 2.02 as proposed and also states the City would provide the definition of the term "regular rate of pay." The City did not provide during bargaining or the fact-finding hearing the definition for these terms. During the hearing the ESCEA stated the "regular rate of pay" definition must be compliant with state and federal law. The City and the ESCEA have yet to agree on how to define this term. Both the Firefighters and Police Officers Association MOU's (City Exhibit 30, Section 2.04 for the ESFA; Section 2.02 of the ESPOA MOU found online at the City's website) define the regular rate of pay as it is defined by federal law under the Fair Labor Standards Act, specifically 29 CFR 778.108. No explanation was offered by the City regarding their refusal to define the terms they chose to use as part of their demands/offers.  

II. Alternative Work Schedule  

The City's LBFO identifies MOU Article 3.08 as the operative section to require the ESCEA to change to the 9/80 work schedule from the current 4/10 schedule with "every other Friday dark." The 4/10 schedule is contained in Article 3.19 "Work Schedules" and not Article 3.08. The language of Article 3.08 is clearly intended to permit an individual employee to request a schedule change, and with the agreement of management, make such a change. Article 3.08 does not apply to the entire bargaining group represented by ESCEA. Aside from this factual error by the City, nowhere in the bargaining history provided by the City's exhibits, the ESCEA exhibits, or statements of the parties during fact-finding is there to be found a procedural framework for the implementation of the 9/80 work schedule. Additionally, there's no agreement or even a discussion on how the implementation of the 9/80 work schedule changes the other mandatory (and interdependent) items of negotiation in the MOU.  

The City admitted during fact-finding it did not conduct, nor did it contract for an evaluation of the service or operational impacts of implementing the 9/80 work schedule. Such an evaluation is a requirement of Article 3.19, subsection 1.A.b in order
for the City to agree to a reduced workweek schedule of *not less than 9 hours per day* in a 36 hour workweek. The industry standard for a 9/80 work schedule is composed of one workweek of 36 hours (9 hour days x 4 days) followed by a workweek of 44 hours hours (9 hours x 4 days + 8 hours usually on a Friday). Without an evaluation of the service and operational impacts of a 9/80 schedule having been made prior to an imposition of it by the City, an unfair practice charge against the City is likely. Multiple terms and conditions of employment addressed in the ESCEA MOU are arguably changed by the 9/80 schedule, yet they were not bargained for or discussed according to the fact-finding record. Some of them include:

- Article 3.07 "Breaks" - when breaks are scheduled during a 9/80 workday is different than a 4/10 workday and thus negotiable;
- Article 2.28 "Paid Family Leave" - how is this benefit calculated under the 9/80?;
- Article 2.24 "Standby Duty" - how is this daily pay term/condition of employment affected by an additional workday every pay period? If it was 8 days of pay on the 4/10 schedule, is it 9 days on the 9/80 schedule?;
- Article 2.18 to 2.20 "Vacation" - accrual, usage and sale are substantially and materially changed by the added number of work days the 9/80 schedule requires. The increased number of workdays on the 9/80 schedule, without a commensurate increase in the accrual rate, results in a vacation compensation *decrease*. An example - 12 days of vacation earned per year on either the Original or Alternative Accrual Schedule is equal to 3 work weeks vacation compensation on the 4/10 schedule, but on the standard 9/80 schedule the same 3 work weeks of vacation will require 13 vacation days. Furthermore, this section defines a "day" for the purposes of vacation as 8 hours, not 9 (or even the current 10 hour workday).
- Article 2.16 - "Holidays" - the Friday after Thanksgiving was removed in 2011 unless it is a regularly scheduled workday. Depending on the cycle chosen, it may need to be added as an enumerated holiday. The 11 agreed upon paid holidays in Section 1 is compensation equal to 110 hours of pay on the 4/10 schedule. According to Section 3 (the first one) holiday pay will never be more than 9 hours per holiday on the 9/80 schedule which is at least a 10% reduction in holiday compensation. The same argument, an overall compensation reduction, applies to Section 4 on "Floating Holidays" and the second Section 3 on "Personal Leave/Floating Holiday."
- Article 2.02 - Compensatory Time usage is limited to 40 hours, currently equal to one work week on the 4/10 schedule. To obtain the same benefit of one work week of usage on the standard 9/80 schedule an employee covered by this MOU would be limited to selecting a work week of only 36 hours (9 work hours x 4 days); a 50% reduction in the choice of work weeks to to utilize this limited negotiated right.
- Article 2.08 "Differential Pay" - this hourly rate of pay increase is dependent upon the number of hours worked between 5:00 pm and 6:00 am. The shorter workday required by the 9/80 schedule, either 9 hours or 8 hours, will result in a change in compensation from the current 10 hour workday depending on the actual start and end times of the workday. What will the "new" workday hours actually be?
Recommendations

The ESCEA proposed several findings of fact in its presentation. Essential among them were:

- the City was not claiming an "inability to pay" argument for the contract impasse;
- the bargaining unit represented by ESCEA is the largest group in the City and represents the lower paid classifications of city workers;
- Health insurance premiums are the same for all non-sworn city workers, including department heads and the City Council;
- the ESCEA represented full-time employees are paid the least for health insurance premium reimbursement, and their monthly amount is not included as part of their compensation earnable for computing the CalPers retirement benefits;
- ESCEA retirees receive the lowest monthly medical premium reimbursement of any group of full-time city employees. ESCEA represented employees were not included in the recent plan whereby some city employees, including Council members, were given the option to either include monthly health insurance premium reimbursements as part of compensation earnable or were paid the greater majority of their monthly benefit in cash;
- The elimination of a formula for cost sharing regarding future increases in health insurance premiums for ESCEA represented employees virtually guarantees that 100% of any increased costs for health insurance premiums will be borne by workers;
- There is no data available regarding any need to shift from the current 4/10 schedule currently in place for ESCEA members;
- There is no bargaining data available regarding any need to exclude EPMC "buy-back" from the definition of "regular rate of pay," and the city has yet to define that term.

The City admitted during fact-finding it was not claiming an inability to pay. The Panel Chair also noted this fact in his conclusions. The parties did not dispute that ESCEA represents the largest group in the city, and the data provided during fact-finding confirmed these employees are in the lowest paid classifications of city workers. There was no dispute on the issue that health insurance premiums are the same for all non-sworn city workers including department heads and the City Council Members, and the Panel Chair also noted this fact in his conclusions. The data provided confirmed that ESCEA represented full-time employees are paid the least for health insurance premium reimbursement and their monthly amount is not included as part of their compensation earnable for computing their CalPers retirement benefits. The data provided also confirms that ESCEA retirees receive the lowest monthly medical premium reimbursement of any group of full-time city employees (because their monthly benefit is limited based on the amount received by active employees); City exhibit #31 demonstrates this fact. The data provided proves that the elimination of the formula for cost-sharing regarding future increases in health insurance premiums for ESCEA represented employees virtually guarantees that 100% of any increased cost for health insurance premiums will be born by these employees. The city admitted during fact-finding they were unable to produce any data demonstrating an need to shift from the
current 4/10 schedule currently in place for ESCEA represented employees. The city did not provide during fact-finding any data regarding their desire to exclude EPMC from the definition of "regular rate of pay" and did not provide the definition for that disputed term.

One of the primary goals of fact-finding is to assist the parties in achieving a negotiated settlement. The Panel Chair indicated during fact-finding a willingness to assist the parties, if requested to do so, in mediating settlement discussions. I concur with that position and remain willing to do so if called upon.

I concur with the Panel Chair's conclusions with regard to the issue of Leave Payouts in Article 3.13, the City did not offer any persuasive evidence to make that change. The City also wanted to exclude "any paid leave time taken" from hours worked for the purposes of calculating overtime. The City did mention during the fact-finding hearing it wanted to achieve consistency between the various MOU's in the city. A review of the firefighters MOU and the Police Association MOU show that if that if consistency is the City's goal, they have selected the ESCEA as the standard-bearer for the race to the bottom. Neither the firefighters or the POA have such a draconian term in their MOU's which destroys the City's argument they are trying to achieve consistency.

I concur with the recommendations made by the Panel Chair with regard to the elimination of the provisions concerning longevity pay and educational incentive pay for those employees hired after the date of ratification of a successor MOU, and also removal of the "no layoffs clause" as both reasonable and prudent as part of the give-and-take process to get an agreement. In return, however, my recommendation for the City is to provide the ESCEA with the same monthly health benefit premium reimbursement already agreed to with the Firefighters. As the Panel Chair has correctly analyzed, there is no difference in the premiums for these groups and the Firefighters are compensated substantially higher than the ESCEA members. That disparity results in the lower paid classifications paying more for the same benefit as the higher paying classifications. The items the ESCEA and the City have already indicated tentative agreement for or tacit approval of on their final positions in fact-finding should also be agreed to in this final solution.

With regard to the issue of imposing the 9/80 work schedule, the analysis above indicates I do not concur with the Panel Chair or the City's Panel Representative. To state the City's position on this is not well thought out would be a significant understatement. Frankly, I would be embarrassed to put my name to such a poorly supported policy proposal unless creating ill-will among the affected employees is the ultimate goal. To threaten to impose wholesale work schedule changes upon the largest employee group in the city with the only justification being some vague and unsupported notion of providing more service is certain to create hostility in the workforce and an invitation to litigation. If the City had conducted a credible analysis and evaluation of the impact of this schedule change, the merits of the proposal would at least be defined. But here, the City has done nothing to justify its position.
For example, in 2015 the City expended considerable time, energy and cost on the Wiseburn USD Aquatic Center Study. One of the primary goals of this study was to assure the taxpayers the City could be responsible for managing the facility and paying the operating costs of the facility without an increase in overall Aquatic and Public Works operating costs. The point here is not whether or not the City’s policy goal was the correct one, but that the City had defined what its goal would be in advance and conducted research to determine if it could achieve that goal. In the instant case, the City has done exactly the opposite. To use an analogy, the City will be firing first and aiming later. The ESCEA has the right and the opportunity to demand bargaining on a successor MOU as of October 1, 2016. Even if the City imposed the new schedule immediately, it would have to propose bargaining on the numerous problem areas I’ve identified above related to that schedule change. It is doubtful the ESCEA would agree to engage in what could be considered piecemeal bargaining with the City and would instead initiate PERB complaints.

Finally, the City is married to the language and intent of its LBFO. Obviously intended as “leverage” to induce an agreement with ESCEA with the multi-year offer for a successor MOU, the LBFO clearly states that in “Year 2 - 3% Base salary increase and employees pay full 7% PERS Member Share (EPMC=0%) along with “all of the remaining items are the same.” There is no such thing as a Year 2 as part of a legally enforceable impasse resolution that results in an employer’s imposition of terms and conditions of employment. The Public Employment Relations Board has ample precedent to show that impasse can not be used to create multi-year conditions of employment. PERB Decision No. 2308-M would be instructive on this issue.

Respectfully Submitted,

Ralph Royds
ESCEA Panel Member
September 9, 2016
City of El Segundo and El Segundo City Employees Association (ESCEA)  
PERB Case No. LA-JM-200-M

City of El Segundo’s Concurring and Dissenting Opinion to the Factfinding Report

City of El Segundo’s Representative to Factfinding Panel  
Laura J. Katty

As the City of El Segundo’s representative to the Factfinding Panel, I concur in part, and respectfully dissent in part, to the Factfinding Report issued by Chairperson Robert Bergeson.

I. Background and Procedural History

The City of El Segundo bargains with six employee groups, including the Police Support Services Employees Association (PSSEA) and the Supervisor Professional Employees Association (SPEA). With a 9/80 schedule, employees work 9 hour days, with alternating Fridays off; on the working Friday, employees work 8 hours, not 10.5 hours.

II. Exclusion of Paid Leaves and Employer Paid Member Contribution (“EPMC”) from Overtime Calculation

Chairperson Bergeson does not specifically analyze the City or ESCEA’s position as to paid leave exclusions, or make any express recommendation as to the exclusion of paid leaves and EPMC from overtime calculations. Rather, Chairperson Bergeson analyzes five issues cumulatively, and recommends that if ESCEA agrees to the City’s position on health, then the City should agree to ESCEA’s position on the other four issues; if ESCEA does not agree to the City’s position on health, then ESCEA should agree to the City’s position on the other four issues.

I therefore respectfully dissent to Chairperson Bergeson’s recommendation, and will address the substance of the City’s position as to excluding EPMC and paid leaves from the calculation of overtime. First, as to EPMC, the City and ESCEA tentatively agreed to eliminate any employer paid member contributions, with the members agreeing to pay their 7% EPMC upon ratification, in exchange for a 7% salary offset. Accordingly, with EPMC being eliminated, there is no substantive dispute – there will not be any EPMC to include in overtime calculations going forward, and any future agreement between the parties should simply confirm this reality.¹

Second, as to paid leave exclusions, the City’s position is that employees should be paid consistent with what the federal overtime laws require; and not more generously: Under the Fair Labor Standards Act (“FLSA”), only hours actually worked are included for purposes of calculating overtime. Overtime is calculated once an employee has actually worked in excess of 40 hours in a seven day work period. When overtime is paid, it is typically paid at time and one half. Under the current MOU, when employees are off work – either due to vacation or sick time

¹It should also be noted that the factfinding report incorrectly states that the Fire group never had EPMC calculated as part of the overtime rate of pay. The Fire group previously had EPMC calculated as part of the overtime rate of pay, however, this was eliminated in the last round of MOU negotiations.
– and using their leave accruals so that they are paid their full salary, these employees are able to nonetheless count these same hours off work – related to paid vacation or sick time – toward the 40 hour overtime threshold. Thus, if an employee called off sick 3 days of his/her current 4 day week, but then picked up an additional shift, that additional shift would be paid at an overtime rate – because the 30 hours of sick time would be counted toward the overtime threshold. Both the Fire and PSSEA employee groups agreed with the City to correct this issue and exclude vacation and sick leave from any overtime calculations, and the POA has agreed with the City to exclude sick leave from any overtime calculations. ESCEA employees should not be treated any differently, as a matter of fairness within the City of El Segundo, and as a matter of law pursuant to the FLSA. Moreover, the City’s position is that these paid leave exclusions would only apply in cases of voluntary overtime, and not in cases of emergency overtime.

III. Educational Incentive Pay

Chairperson Bergeson does not specifically analyze the City or ESCEA’s position as to Educational Incentive Pay, or make any express recommendation. Rather, Chairperson Bergeson analyzes five issues cumulatively, and recommends that if ESCEA agrees to the City’s position on health, then the City should agree to ESCEA’s position on the other four issues; if ESCEA does not agree to the City’s position on health, then ESCEA should agree to the City’s position on the other four issues.

I therefore respectfully dissent to Chairperson Bergeson’s recommendation, and will address the substance of the City’s position as to Educational Incentive Pay. As noted by Chairperson Bergeson, the MOU currently provides for payment of a stipend to employees holding a job not requiring a bachelor’s degree who obtain such a degree in public administration, business administration or another “job-related major . . . approved by the department head.” This provision has been in the MOU since prior to October 2000, yet only five bargaining unit members have availed themselves of it. It therefore appears to be unnecessary. The City never sought to eliminate educational incentive pay for current employees, but rather to eliminate this specialty pay for future employees. Fire, PSSEA and POA employees all agreed to limits on educational incentive pay, and ESCEA employees should do the same. Specifically, unit members who qualify for the incentive should continue to receive it, but otherwise the provision should be eliminated for future employees.

IV. Longevity Pay

Chairperson Bergeson does not specifically analyze the City or ESCEA’s position as to Longevity Pay, or make any express recommendation. Rather, Chairperson Bergeson analyzes five issues cumulatively, and recommends that if ESCEA agrees to the City’s position on health, then the City should agree to ESCEA’s position on the other four issues; if ESCEA does not agree to the City’s position on health, then ESCEA should agree to the City’s position on the other four issues.

I therefore respectfully dissent to Chairperson Bergeson’s recommendation, and will address the substance of the City’s position as to Longevity Pay. As a matter of economic efficiency and prudence, the City sought to minimize overtime and specialty pays consistently in its
negotiations with all of the applicable bargaining groups. Longevity pay did exist in both the Fire and POA MOUs. The Fire and PSSEA groups agreed to eliminate longevity pay for future employees, and the POA agreed to decrease the levels of longevity pay for future employees. ESCEA employees should do the same, and eliminate longevity pay for future employees.

V. No Layoffs

Chairperson Bergeson does not specifically analyze the City or ESCEA’s position as to the “no layoffs” language in the current MOU, or make any express recommendation. Rather, Chairperson Bergeson analyzes five issues cumulatively, and recommends that if ESCEA agrees to the City’s position on health, then the City should agree to ESCEA’s position on the other four issues; if ESCEA does not agree to the City’s position on health, then ESCEA should agree to the City’s position on the other four issues.

I therefore respectfully dissent to Chairperson Bergeson’s recommendation, and will address the substance of the City’s position as to the current “no layoffs” language in the MOU. At some point during the economic recession, and when employees were making other concessions, the City agreed to the language in Article 3.21 that there would be no layoffs during the term of the MOU. As the concessions have been restored, the City is now seeking to eliminate the guarantee that there will never be any layoffs. The City does not anticipate any layoffs; however, this is a management right the City wishes to preserve in the event it becomes necessary. The Fire and PSSEA groups agreed to remove this language from their MOUs, and so should ESCEA.

VI. Health Insurance

Chairperson Bergeson does not specifically analyze the City or ESCEA’s position as to Health Insurance, or make any express recommendation. Rather, Chairperson Bergeson analyzes five issues cumulatively, and recommends that if ESCEA agrees to the City’s position on health, then the City should agree to ESCEA’s position on the other four issues; if ESCEA does not agree to the City’s position on health, then ESCEA should agree to the City’s position on the other four issues.

I therefore respectfully dissent to Chairperson Bergeson’s recommendation, and will address the substance of the City’s position as to Health Insurance. For all of the employee groups at the City, health insurance benefits are calculated based on a formula. The specific formulas and the dollar amount of health benefits provided differs among the groups given the long history of negotiating individually with the groups, and based on what each group considered to be its priorities—whereas one group may have focused on salary, another group may have focused on health benefits. Thus, the groups have different levels and amounts of health benefits; and the City has not sought to equalize all of these benefits, and it would not be fair to do so now. What the City did seek to do was to put an end to the ever-increasing amount of health benefits based on the formula-method of calculating health benefits. And for all of the groups, based on what they had negotiated over the years, to freeze the formula and corresponding health benefits as of a particular date. The Fire and POA groups agreed to freeze their level of health benefits based on the rate in effect as of January 1, 2016. Above and beyond this, the City offered to PSSEA and ESCEA employees contributions at the rate of $1,200/per month. The City’s contributions
April 27, 2017

Good Morning,

I am reaching out to the members of the City Employees Association (CEA) to make you aware of a critically important issue. The City and the CEA have been in discussions regarding a new labor contract since 2014. The City's objectives in this process include:

- Creating a financially predictable cost structure for the City where future expenses can be accurately forecasted.
- Having the employees take on a greater share of the increasing retirement and health insurance costs and offset those impacts with an increase in salaries.
- Creating consistency, where possible, between groups with respect to how special compensations (such as education pay and longevity pay) are addressed, and how overtime is calculated.
- Increasing the number of days per week that citizens and businesses can access city services by reopening on Fridays.
- Seeking to maintain/provide for a motivated, productive workforce by offering a competitive salary and benefit package for current and future employees.

This has been a long process and I understand that everyone involved would like for this issue to be concluded. The parties have met approximately 20 times and despite that effort by both sides, the City has declared an impasse. This means the City and the CEA have been unable to reach a common agreement on the terms of a new contract. The parties have used an outside mediator and that person was unable to get the two parties to agree. Finally, we have gone through the fact-finding process with a fact-finder who analyzed the issues, took input from representatives of the CEA and the City, and made a non-binding recommendation. The fact-finding report can be found on the City's website at:

Letter to CEA Members
April 27, 2017
Page 2 of 3

The next step in the process is for the City Council to weigh the recommendation of the fact-finding panel and decide on a path forward. The options include implementing the recommendation of the fact-finder or voting to impose a set of terms upon the group. The City proposed two very different sets of terms to the CEA, a multi-year offer that provides for an overall increase in compensation (salary and benefits) for the employees or, a single year offer that results in an overall decrease in compensation. This split approach was taken for two reasons. First, the City wished to achieve a multi-year agreement with the CEA and all the other groups. Second, the City is only able to impose a one year set of terms, so this approach encourages the parties to reach a multi-year agreement and avoid imposing terms. We have reached the point where imposing the one-year set of terms upon the CEA is one of the options that the City Council will be considering at a special meeting scheduled for May 9 at 7:00 pm.

In a last effort to bring this matter to an end without a special meeting, the City Council asked me to have a discussion with the CEA representatives about the possibility of coming to agreement with some changes to the terms previously proposed. We laid out the changes in an email to the CEA representative and asked to meet so we could hopefully reach an agreement. We were told that, even with the changes, we would likely not be able to reach agreement and, that the CEA would only meet with us if we were willing to agree that this revised proposal would trigger a new round of mediation and fact-finding. From the City’s perspective, we’ve already gone through mediation and fact-finding, and are being told by the CEA that since the offer probably won’t work, we will then need to go through several more months of expense and effort without any guarantee that there is going to be a different result at the end. Additionally, the City has already proposed increases in salary and benefits to the CEA and the longer it takes to resolve this issue, the longer it will be before the CEA members benefit from these increases.

Back to the point of this letter, I feel it’s important to make you aware of the status of the negotiations from the City’s perspective. As mentioned in the beginning of this letter, one of the City’s objectives is to achieve consistency between groups. The City Council recently approved an MOU with the PSSEA that included the following major points:

- An 11% increase in base salaries, effective the pay period after the agreement was approved by the City Council.
- Employees began contributing 7% of their salary towards their retirement cost – this change does not impact employees hired after January 1, 2013 who already contribute a similar amount towards their retirement. (There are currently 21 such employees in the CEA.)
- The monthly medical contribution to members increased to $1,200 for full-time members effective about a month after City Council approval. CALPERS takes 1-2 months to increase medical contributions after cities notify them of the increase.
- The term of the agreement is until September 30, 2018.
Letter to CEA Members
April 27, 2017
Page 3 of 3

- Other – Education pay and longevity pay no longer apply to future members of the PSSEA and the 7% EPMC (employees' share of retirement) no longer applies to overtime and leave pays.

The one year offer to the CEA, if imposed, provides a 3% increase in base salary in return for 7% EPMC payment by the employees. The monthly health contribution would be $1,115.67 and the work schedule would shift from a 4/10 to the 9/80.

I know this is a long message, but this is an important issue that is now at a critical point and I wanted you to understand the City's position. The City recognizes the service and dedication that you provide and has offered an increase in compensation. Both parties have worked very hard during these negotiations and have had to move from their original positions – that's the nature of negotiations. I remain hopeful that we can reach a resolution.

Sincerely,

Greg Carpenter
City Manager