**IN FACT-FINDING PROCEEDINGS PURSUANT TO**

**THE MEYERS-MILIAS-BROWN ACT**

In the Matter Between

**City of Vallejo,**
**Employer,**

and

**Vallejo Police Officers Association,**
**Employee Organization**

**Re: Fact-finding**

**Fact-finding Panel**

**Carol A. Vendrillo, Esq., Neutral**
**Craig Whittom, Assistant City Manager, for the City**
**Mat Mustard, President VPOA, for the Association**

**November 30, 2013**

*Appearances:*

*For the City*

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## INTRODUCTION

The Vallejo Police Officers Association is the exclusive representative of the bargaining unit comprised of police officers who work for the City of Vallejo. The parties' prior memorandum of understanding, set to expire in June 2012, was rolled over for one additional year. The parties began the bargaining process in May 2012; they engaged in formal bargaining sessions over a successor MOU beginning in January 2013. Over the course of seven months, they met on 11 occasions; the last formal session occurred on July 18, 2013. Members of the bargaining team engaged in "off the record" discussions both before January 2013 and after July 18, 2013.

On September 19, 2013, the City tendered it last best and final offer to the VPOA (Union Exhibit 5). The VPOA responded by letter dated October 1, 2013, asserting that, in its view, the City had prematurely declared impasse (Union Exhibit 29). On October 15, 2013, the VPOA filed a Writ of Mandate in Solano County Superior Court in which it charged the City with several unlawful actions, including allegations that the City had declared impasse prematurely and that certain terms of the City's last best and final offer impinged on the vested rights of individual members as well as the rights of the Union itself (Union Exhibit 13).

On November 1, 2013, the Public Employment Relations Board selected Carol Vendrillo to serve as the third-party neutral member of a fact-finding panel convened under the Meyers-Milias-Brown Act, provisions of which are set in California Government Code Section 3505.4. The City selected Craig Whittom, Assistant City Manager, to serve as its panel member; VPOA President Mat Mustard was selected to serve as the Association's panel member.

On November 5, 2013, the three members of the fact-finding panel met in Vallejo, California, to discuss the manner in which the fact-finding process would proceed. On November 14 and 15, 2013, the fact-finding panel met with the parties' attorneys and members of both bargaining teams. In addition, other individuals were invited by the panel to share their views on the parties' bargaining history; the City's recent bankruptcy filing; the economic factors impacting bargaining; working conditions within the Vallejo Police Department; general economic trends; OPEB and PERS rate growth; and other matters as set forth in Government Code Section 3505.4(d), listed below.

Both the City and VPOA made comprehensive presentations to the panel explaining their positions on the issue about which the parties have been unable to reach agreement. Exhibits were marked and made part of the record and extensive back-up material was provided to the panel members by the City and the VPOA.

On November 16, 2013, members of the fact-finding panel met and discussed the issues in dispute. By agreement of the parties, on November 22, 2013, the panel chairperson provided Mr. Whittom and Sergeant Mustard with a written draft of the recommendations to be submitted to the governing body. What follows are the fact-finding panel's recommendations, with concurring and dissenting opinions of the City and the VPOA attached.

## PARTIES POSITIONS[1]

[1] The parties' positions on each of the issues that remain in dispute are set forth below in the discussion section. Here, the panel has set out what it understands to be the City's and the VPOA's position as it relates generally to the factors contributing to the bargaining impasse. The accuracy of certain statements in the parties' positions are challenged below in the concurring and dissenting opinions.

*The City's position.* The City of Vallejo is one of only four incorporated California cities to be found eligible for Chapter 9 bankruptcy protection. It filed for bankruptcy in May 2008 and in June 2008, moved to reject all of its labor contracts.[2]

In January 2009, the City and VPOA reached an agreement with the VPOA which included a number of concessions that addressed the City's structural deficit. Thereafter, however, the economic recession caused the City's general fund revenues to fall precipitously, causing its financial condition to further deteriorate (City Slide 19). As a result, the collective bargaining agreement entered into by the City with IAFF in March 2010 and with IBEW in December 2010 included greater economic concessions.[3] Notably, these groups agreed to a $300 cap on the City's monthly contribution for retiree medical premiums; a health benefits cap of the City's contribution to active employees' medical coverage limited to 75 percent of the Kaiser Bay Area premium; increases in employees' retirement contributions; wage reductions; and the elimination of longevity pay (City Slides 24, 28, and 29).

Because the VPOA reached agreement with the City in January 2009 – before the full impact of the recession was felt and greater concessions were gained from IAFF and IBEW – there are internal disparities between the groups that need to be addressed in this contract. The City's last best and final offer seeks to achieve internal equity among the four bargaining units that make up the City's workforce.

The City's last best and final offer also is driven by the cost of health benefits. To achieve the needed savings that, in part, form the basis of the City's five-year business

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[2] In addition to VPOA, the City recognizes three other entities as the exclusive representative of City employees. These are IAFF, which represents City firefighters; IBEW, which represents the miscellaneous unit; and CAMP, which represents management employees

[3] The City reached an agreement with CAMP in February 2009. It is currently at the table with CAMP on the terms of a successor agreement.

plan, the City seeks to cap monthly retirement health benefits at $300 for both active employees and retirees. This is a key component of the City's final offer.

*The VPOA's position.* The Association made considerable concessions in the aftermath of the City's bankruptcy declaration. The 2009 Supplemental Agreement achieved $6 million in general fund savings over the term of the contract and reduced salaries that were in the parties' MOU by more than 18 percent (Union Exhibits 7 and 9). City voters enacted a one cent sales tax in 2011. This has garnered the City more than $10 million in additional annual revenue.

The VPOA's position is that data shows the City is emerging from the recent recession. City revenue from property taxes has risen as the value of homes in Vallejo has increased by 41 percent; an increase of 36 percent has been reported in Solano County (Timothy Reilly, Bachecki, Crom & Co.) Sales taxes also have returned to pre-bankruptcy levels (Analysis of Bradley Burns Sales Tax Receipts). The City's unrestricted fund balance has grown significantly; it exceeds the City's projection as set forth in the City's five-year business plan. The VPOA asserts the City is now fiscally sound and improving each year. While it maintains a *budget* deficit, in reality, the City has experienced – and will continue to experience – annual budget *surpluses* as it continues to overstate expected expenditures (e.g., by budgeting for 106 officers when it will not exceed 90 sworn officers under optimal circumstances) and conservatively projecting revenues.

The VPOA asserts that the sworn staffing level in Vallejo – down to 80 positions from 145 as of 2007 – leaves City residents vulnerable to increased levels of crime and places officers physically and mentally at risk (Union Exhibits 12 and 13). Through

November 2013, police officers have logged more than 18,000 hours of overtime. The City employs 0.68 officers per 1,000 of population (Union Exhibits B and C). The economic impact of the City's last best and final offer will cut the annual compensation of Vallejo police officers from between $13,000 to $44,000. As a result, the City will be unable to recruit or retain qualified law enforcement officers.

**DISCUSSION**

At Government Code Section 3505.4(d), the Meyers-Milias-Brown Act sets forth criteria the fact-finding panel must consider, weight, and be guided by in determining the recommendation it will make to the governing body of the City. These are:

(1) State and federal laws that are applicable to the employer.

(2) Local rules, regulations, or ordinances

(3) Stipulations of the parties.

(4) The interests and welfare of the public and the financial ability of the public agency.

(5) Comparison of the wages, hours, and conditions of employment of the employees involved in the fact-finding 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.

(8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

The panel has considered these factors as they relate to each of the issues in dispute and presents the following recommendation to the City Council.[4]

**Wages.** The City has proposed a 5 percent wage reduction. To achieve internal equity, it asserts that the VPOA members should accept the same wage reduction as IAFF and IBEW members have agreed to. The City also argues that, when viewed in light of appropriate comparable jurisdictions,[5] the VPOA members are paid above the median (City Slides 78 and 79). In addition, the City refers to its five-year business plan and seeks to "reset wages to a sustainable level." (City Slide 82.) In so doing, it will achieve cost savings for FY 2013-2014 of $908,000, a full-year estimate.

The VPOA's proposal would have employees hired after ratification of this agreement subject to a new entry-level step that is 5 percent below the current entry level step, for a total of six steps. The time to achieve the top step would be increased from three to five years, with one year required in each step.

The panel recommends that the City Council adopt the 5 percent wage reduction.

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[4] In formulating these recommendations, the panel members have deliberated and exchanged their views on each of the outstanding issues. For purposes of the following discussion, "the panel's recommendation" refers to the opinion of the panel's neutral chair. In attachments that follow, the City's panel member has indicated where he concurs and dissents from the chair's view; the VPOA's panel member has done the same. In total, these documents comprise the fact-finding panel's recommendation.

[5] The dispute regarding comparable jurisdictions is discussed separately below.

**Supplemental pay.** Under the current MOU, officers receive a 1 percent premium for bilingual service; 2.5 percent hazard pay for motorcycle duty; and 1 percent hazard pay for SWAT assignments. The City's last best and final offer would convert all three pay premiums as calculated based on a percentage of pay into flat dollar amounts. Officers would receive $75 a month as bilingual pay, $200 a month for motorcycle duty, and $80 a month for SWAT duty. The City's rationale is that supplemental compensation should not be tied to a percentage of salary, but should be a flat amount.

The VPOA seeks to maintain the status quo.

In the aggregate, based on individuals who have been receiving these supplemental pay amounts, conversion from the current percentage formula to a flat dollar amount will result in an annual savings of approximately $9,000.[6] There were 13 individuals earning bilingual pay; 8 of these employees would see a reduction $121 per year; 3 would see an annual reduction of $192. There were 19 individuals receiving hazard pay for either motorcycle assignments or SWAT duties. For 13 of these individual, the conversion to a flat rate would reduce their annual salary by less than $200

Because the financial impact on individual employees is minimal, the panel recommends that the premium pay for bilingual services, motorcycle duty, and SWAT duty be converted to the flat rates reflected in the City's last best and final offer, thereby achieving a modest savings for the City.

**Educational incentive pay.** Under the terms of the current MOU, officers receive an additional 3 percent of salary for an intermediate POST certificate and 5 percent for

[6] The VPOA panel member asserts that some of the individuals receiving this supplemental pay have separated their employment with the City. Thus, the actual savings achieved by these reductions is less than this projection.

advanced POST certification. The City, in its last best and final offer, proposes to eliminate the educational incentive pay for employee hired on or after January 1, 2014.

The VPOA seeks to maintain the status quo.

The panel believes that most law enforcement organizations in California pay its officers a POST premium to create an incentive for further education. Elimination of this commonly provided benefit will set the City apart as an outlier and hinder the City's ability to competitively recruit from the statewide pool of applicants. Thus, the panel recommends that this benefit be maintained.

**Comparable jurisdictions.** The parties are in dispute as to the appropriate universe of comparable jurisdictions. The City seeks to remove from the 2009 supplemental agreement reference to the seven cities agreed to by the parties from the San Francisco-Oakland-Hayward Metropolitan Statistical Area and not include any universe of comparable jurisdictions in the agreement. These are Alameda, Berkeley, Daly City, Hayward, Oakland Richmond, and San Leandro. The City utilized the Vallejo-Fairfield Metropolitan Statistical Area as a reference to its presentation to the panel. Relying on data from the U.S. Bureau of Labor Statistics and the U.S. Census Bureau, the City asserts that Vallejo falls within the Vallejo-Fairfield MSA in terms of per capita income, median household income, median owner-occupied monthly housing costs, median home value, and population change (City Slide 17). The City also notes that the average annual wage in the Vallejo-Fairfield MSA is 22 percent lower than in the San Francisco-Oakland-Hayward MSA (City Slide 18). The City supports its position based on where Vallejo police officers reside (City Slides 65 and 66).

The VPOA seeks to retain the jurisdictions as are included in the 2009 agreement.

The statute directs fact-finding panels to assess the parties' divergent positions on issues in dispute by looking at comparable jurisdictions. It is not uncommon for the parties to disagree on the appropriate comparability universe. Several ways to measure comparability typically are presented, like population, per capita income, unemployment rates, home values, property taxes, sales taxes, commuting distances of employees, residences of job applicants as it relates to the relevant labor market, to a name a few.

The panel does not believe that the City has conclusively made the case that the list of comparable cities to which the parties reached agreement in 2009 should be jettisoned. Under these circumstances, where the VPOA is seeking no wage increase, there is little to be gained in this round of negotiations in removing the reference to the list of comparable jurisdictions from the agreement without further discussion.

**Dental benefits.** The VPOA's proposal seeks to maintain the status quo whereby the City shall maintain the existing dental plan. The City's last best and final offer seeks the ability to select a plan that is "substantially similar" to the one now in effect, presumably hoping to reduce costs. The VPOA is not opposed to a change in dental benefit providers, but has concerns that the "substantially similar" language is ambiguous and could alter the level and/or quality of dental services now available to VPOA members.

The panel agrees that an effort to identify a less costly dental plan which provides the same services is a worthwhile goal. To address the VPOA's concerns, the panel recommends that the City share with the VPOA information concerning possible alternative dental care providers and, prior to changing providers, meet and confer with the VPOA in good faith as to the substantial similarity of the plan(s) under consideration.

**Longevity pay.** The parties' current MOU provides 5 percent longevity pay after 20 years of service and 10 percent of longevity pay after 25 years of service. The City, in its last best and final offer, seeks to eliminate longevity pay. The City asserts that while longevity pay adds to the cost of current employee salaries, the more burdensome aspect of longevity pay is its impact on retiree benefits. Longevity pay earned toward the end of an officer's career increases the final level of compensation and the dollar amount of a retiree's benefits in perpetuity.

The VPOA seeks to retain this benefit.

There is no consistent pattern among law enforcement agencies with regard to negotiated longevity provisions (City Slide 58). Within the City of Vallejo, no group of new employees except the VPOA receives longevity pay. Based on principles of internal equity and because of the considerable cost savings that will be realized going forward, the panel recommends that the City eliminate longevity pay for future employees. In light of the 5 percent annual wage reduction and concerns about retention, the panel recommends that longevity pay be maintained for current employees, however.

**Retirement contributions.** In terms of the retirement formula, the parties are in agreement that consistent with PEPRA, the retirement formula for "classic" employees will be 3 percent at 50. For new members, the formula will be 2 percent at 50 with a maximum of 2.7 percent at age 57.

The parties are not in agreement, however, on the appropriate retirement contribution. The City's last best and final offer asks all bargaining unit employees to contribute an additional 3.4 percent toward their PERS retirement benefit. Employees now are paying 9 percent. In the event that the parties cannot agree to this additional contribution and because the City recognizes it cannot unilaterally impose this contribution under PEPRA, it proposes that all bargaining unit members will have their salaries reduced by an additional 3.4 percent.

The VPOA's proposal would have all bargaining unit members paying 3 percent of the employer's share of the PERS contribution.

The panel believes that, given the other salary reductions included in its recommendation, the VPOA's proposal of an additional 3 percent retirement contribution strikes the right balance and reflects common ground.

**Sick leave.** Under existing contract language, certain bargaining unit employees currently accrue 10 hours of sick leave a month that can be cashed out. Alternatively, individual employees can opt to freeze their existing sick leave accrual account and increase their sick leave accrual to 15 hours a month, which cannot be cashed out, but carries a service credit upon retirement.

The City's last best and final offer is to leave in place all sick leave earned to date in the cash out benefit bank and the service credit benefit bank. Going forward, the City seeks to reduce sick leave accrual for all employees to 8 hours a month, with no cash value. The City's five-year plan approved as it exited bankruptcy protection emphasized that control of compensated leave was critical to its financial sustainability (City Slide 60).

The VPOA's proposal would allow for a reduction in the accrual rate to 10 hours for employees hired after January 1, 2014, and to maintain the status quo regarding the sick leave cash out provision.

The panel recommends that, going forward, the cash-valued sick leave benefit be eliminated. Consistent with the City's proposal, however, all sick leave that currently is held by employees in cash-valued sick leave accounts should remain in place. VPOA members now accrue 15 hours of sick leave a month, which has no cash value, but carries a service credit. The panel believes that a reduction from 15 to 10 hours, rather than from 15 to 8 hours, is the appropriate balance to strike in these negotiations. This will impact all employees, not only new hires. With these new terms in place, VPOA members will no longer have the annual option of electing for the accrual of 10 hours of cash-valued sick leave or 15 hours of service-credit sick leave.

**Promotions.** The VPOA has offered a proposal that would require the City promote to the rank of captain from within the police force. The panel understands that the two individuals currently serving as captains both were promoted from with the Vallejo Police Department. The VPOA also seeks to have the selection of future captains be made based on the "rule of five." Currently, anyone on the list can be selected. The VPOA also proposes the Chief and the VPOA establish a new promotional testing procedure.

The City proposes that the status quo be maintained.

Absent any evidence that the current promotional process has been implemented in a way that negatively impacts members of the Vallejo Police Department from advancing to the rank of captain or that the selecting official has used the "rule of the list" to select unqualified applicants, the panel recommends that the Council adopt the City's proposal and maintain the status quo.

**Telephone expenses.** The City's final offer seeks to eliminate the telephone expense provision of the parties' MOU.

The VPOA proposal would permit bargaining unit members to choose either to receive a cell phone issued by the City or to receive $75 a month as reimbursement for cell phone expenses, consistent with the City's administrative rule that addresses cell phones.

The panel recommends that the Council adopt the VPOA's proposal and extend to all police officers the option of using either a City-issued cell phone or receiving a fixed $75 a month reimbursement.

**Out-of-town expenses.** The City has developed a new travel policy it wishes to apply to all City employees. By all accounts, however, the new policy is lengthy, contradictory, and confusing. In VPOA's view, the travel policy that exists in the Police Department functions well and urges that it remain in place. The new policy includes a reimbursement chart that could be inserted into the MOU. This is the panel's recommendation.

**"Existing benefits" clause.** Section 33 of the current MOU reads: "All existing benefits presently enjoyed by employees within the unit represented by the Association shall remain in full force and effect during the life of this Agreement, except as they may be amended by this Agreement."

The City seeks to eliminate this language from the contract; it asserts that the term "existing benefits enjoyed by employees" is vague, overbroad, and unnecessarily handcuffs the Department.

The VPOA wishes to maintain the language in the MOU; it asserts that there is no evidence that this language has been problematic.

In the panel's view, this language closely reflects a basic principle of labor law. The employer is required to maintain the terms and conditions of employment that are set out in the memorandum of understanding as well as all established past practices. To be an established past practice, the employment term must be clear, long-standing, well-established, accepted or condoned by both parties, stable, and not at variance with any written provision included in the MOU. A binding past practice must be unequivocal, clearly enunciated and acted upon, and readily ascertainable over a reasonable period of time as a fixed, and established practice accepted by both parties. A binding practice requires clarity, consistency, and acceptability.[7] In addition, the prohibition against unilateral changes does not preclude an employer from altering a past practice that is consistent with a prior unenforced agreement in its MOU. And, a unilateral change is not unlawful unless it alters a policy that has a generalized effect or continuing impact on terms and conditions of employment for bargaining unit members.[8]

In light of these commonly recognized principles of labor law, the panel recommends that this term remain in the parties" MOU.

**Term of the agreement.** The City's last best and final offer seeks a contract with a one-year term. The VPOA seeks a three-year term. The panel believes that the one-year term will find the parties back at the bargaining table with little chance for the new terms and conditions of employment to become settled. The three-year term, on the other hand,

[7] See, Elkouri and Elkouri, *How Arbitration Works*, Chapter 12, Custom and Past Practice, pp. 605-630.
[8] *California Public Sector Labor Relations*, LexisNexis, Chapter 10, Duty to Bargain, Section 10.06.

will cement terms in evolving economic circumstances. For these reasons, the panel recommends a two-year MOU.

**"Entire agreement" clause.** The City seeks to add a clause indicating that the MOU reflects the parties' entire agreement. The VPOA is opposed to its inclusion.

A clause which states that the agreement reflects all understandings of the parties, often called a "zipper clause," is often included in an MOU to foreclose further requests to negotiate during the life of the agreement. In this case, however, there is considerable ambiguity as to what constitutes the parties' agreement.

The VPOA asserts that the labor agreement consists of the contract that was negotiated in 2000 together with subsequently bargained MOUs deemed to be supplements.

The panel believes that every effort should be made to distill these documents into a single memorandum that reflects the parties' understanding of the terms and conditions of employment as they have evolved over the last 13 years. The addition of an "entire agreement" clause before this task is accomplished would, obviously, be premature prior to the development of a consolidated document.

**Health premiums for active employees.** The City currently pays 100 percent of the Kaiser Bay Area premium. The City's last best and final offer would reduce the City's contribution to active employee medical premiums from 100 percent of the Kaiser plan to $300 a month contribution to PEMHCA plus a cafeteria-style flexible spending account, for a total of 75 percent of the Kaiser plan. This is the agreement the City currently has with IBEW and IAFF. The City estimates that this will result in savings for FY 2013-2014 of $478,000 (full-year estimate) (City Slide 40).

There appears to be "common ground" between the City and the VPOA's proposals on medical benefits for active employees. The VPOA proposes that its members pay 25 percent of the Kaiser monthly rate. Calculated using the family rate[9] for 106 members,[10] the VPOA projects the 2014 savings to be $614,080 (Union Exhibit F).

Thus, the panel believes that the parties have reached agreement on this issue.

**Retiree medical benefits.** By far, the most difficult issue facing the fact-finding panel and the parties concerns the retiree medical benefits. Historically, the City has contributed an amount towards eligible retirees' PEMHCA premiums that is sufficient to cover the cost of the retirees' premiums; when these negotiations commenced, the City was paying 100 percent of the Kaiser Bay Area premium for eligible VPOA retirees and active employees. As the result of negotiations with IAFF and IBEW in 2010, the City now pays a monthly $300 PEMCHA contribution towards retirees' medical premiums, with a payment of 75 percent of the Kaiser premium for pre-3 percent at 50 IAFF retirees. In its last best and final offer, the City seeks to achieve internal equity by offering VPOA retirees the same $300 a month PEMHCA contribution.[11]

Complicating the City's proposal regarding retiree health benefits is the VPOA lawsuit challenging the City's authority to tamper with its members' vested rights to retirement medical benefits. While the merits of the VPOA's legal arguments are beyond the scope of the fact-finding panel's statutory grant of authority, the risks and uncertainty associated with the on-going litigation between the City and VPOA and the potential cost

[9] The Kaiser monthly family rate is $1,931.07.
[10] Although the City is budgeted for 106 to 110 sworn personnel, current staffing is approximately 80 sworn individuals.
[11] Currently, retiree medical under the CAMP agreement remains at 80 percent of Kaiser.

associated with the litigation should not be ignored when the Council considers acting on retiree health care.

As an alternative to the City's retiree medical proposal, the VPOA proposal contemplates that active employees contribute 3.5 percent of their salary into an irrevocable trust and the City contributes the remainder of the annual required contribution. These funds would then be invested in an irrevocable OPEB trust. City Manager Dan Keen informed the panel that the City has set aside approximately $7 million to pre-fund an OPEB trust. While the rate of return depends on how the money in the trust is invested, the VPOA's 7 percent figure, according to John Bartel, the City's expert, is "an absolutely reasonable assumption." (Union Slide page 46).

According to the City's salary and benefit assumptions for FY 2013-2014, the current percentage of payroll necessary to fund the OPEB obligation for current active employees and retirees is 40.4 percent of payroll (City Slide 38). Under the VPOA proposal, this amount would be reduced. The City's establishment of an OPEB trust also would reduce the ARC. The VPOA estimates that both of these actions would reduce the City's OPEB contribution to approximately 20 percent of payroll.

The parties' projections of actual cost savings are difficult to compare. The City's actuarial analysis refers to all active City employees and all City retirees (City Slide 39). The VPOA's actuary, Ira Summer, evaluated cost savings that would result in changes to the benefits and funding mechanism as they relate to VPOA members (Union Slides at pages 47 and 48). The costs associated with the VPOA's proposal derive from reduced benefits and employee contributions; additional saving will result in pre-funding an OPEB trust, which is not unique to the VPOA proposal, but nonetheless is a component of projected savings. Thus, for FY 2013-2014, the VPOA proposal will result in total annual cost savings of $2.35 million if implemented as of July 1, 2013; this savings is projected to increase to $2.55 million in FY 2014-2015 and reach $2.75 million in FY 2015-2016.[12]

The panel views the VPOA proposal as a reasonable approach to addressing the City's OPEB liability. Depending on the implementation date,[13] the VPOA projects its proposal, in addition to funding the OPEB trust, will result in cost savings in the first two fiscal years of $4.9 million and will reduce the ARC by one-half. For that reason, and in light of the other significant concessions noted above, the panel recommends implementation of the VPOA's comprehensive retiree medical proposal.

## CONCLUSIONS

Guided by the factors delineated in Government Code Section 3505.4(d), the panel has attempted to understand and assess the City's last best and final offer to the VPOA and the proposals the Association has made in response. It believes that as a comprehensive package of proposals, these recommendations strike the appropriate balance.

## RECOMMENDATIONS

The statute directs the fact-finding panel to present a recommendation for consideration by the governing body. For the reasons expressed above, it is this panel's

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[12] These annual estimates include the additional cost of a 1.5 percent VEBA contribution for new employees. The parties are in agreement that this will reduce future OPEB costs. The parties describe new hires differently; the City identifies new hires as those hired after January 1, 2014, while the VPOA proposal defines them as those hired after ratification of the MOU. The panel recommends the date certain as proposed by the City. The City's proposal also calls for the 1.5 percent contribution to be made immediately upon hire; the VPOA proposal calls for new hires to receive the benefit after completion of the one-year probation period. The panel recommends the VPOA's proposal be adopted.

[13] As with the VEBA, there is some dispute as to the effective date of this proposal, however, the projected cost savings to the City, going forward, are sound.

recommendation that (1) wages be reduced by 5 percent; (2) supplement pay for bilingual service and hazard pay for motorcycle and SWAT assignments be converted from a percentage formula to a fixed cash amount as reflected above; (3) educational incentive pay be retained; (4) the agreed upon universe of comparable jurisdictions as they appear in the 2009 supplemental agreement shall be maintained; (5) the City be permitted to identify less costly dental plans and to meet and confer with the VPOA before changing plans; (6) longevity pay for current employees be maintained but eliminated for future employees; (7) the employees' retirement contribution be increased by 3 percent; (8) the cash-out sick leave benefit be eliminated going forward, the accrual rate be reduced to 10 hours a month, and all sick leave currently held by employees in cash-value sick-leave accounts remain in place; (9) the City maintain the status quo on promotions; (10) the City adopt the VPOA's proposal on telephone expenses; (11) the City's proposal to alter the out-of-town expense procedures be rejected and that a new reimbursement chart be inserted into the MOU; (12) the "existing benefits" clause be maintained in the MOU; (13) the term of the MOU be two years; (14) the "entire agreement" clause should be considered for inclusion in the parties' MOU only after a document that reflects the entire agreement is formulated by the City and the VPOA; (15) the City's contribution to active employees' medical premiums be limited to 75 percent of the Kaiser Bay Area plan; and (16) the VPOA's proposal concerning retiree medical be adopted.

Dated: November 30, 2013

Carol A. Vendrillo

**CAROL A. VENDRILLO, ESQ.**
Panel Chair

Craig Whittom,
Assistant City Manager, City Member

Mat Mustard,
VPOA President, Union Member

The City's dissenting and concurring opinion begins on the following page. The VPOA's dissenting and concurring opinion begins thereafter.

As the City of Vallejo's ("City's") representative on the fact-finding panel, I dissent to the panel chair's (the "Chair") November 30, 2013 recommendations on the following items: retiree health benefits; maintaining longevity pay for current employees; maintaining the existing benefits clause in the contract between the City and the Vallejo Police Officers' Association (the "VPOA"); and exclusion of an integration clause in the contract. However, my primary concern is that the panel Chair's recommendation regarding retiree health benefits is unfair to other City workers, places a premium on post-employment medical benefits at the expense of the City's ability to provide services to the community, and fails to address a critical economic and structural problem: growing long-term retiree benefit obligations. Failure to address this problem would defy the lessons of bankruptcy, and, ultimately, imperil the City's attempts to restore critical services and gain lasting financial stability. The City has a promising future -- but only if it can stick to the fiscal discipline that was forged in the crucible of bankruptcy.

## I. Background

The City sought bankruptcy protection in May 2008 and emerged in November 2011. As a condition to exiting bankruptcy, the City developed a five-year business plan (the "Five Year Plan"), which was approved by the City Council and later filed with the bankruptcy court as part of the Plan of Adjustment. One of the pillars of the Five Year Plan was a commitment to reduce the City's contribution to retiree health benefits for all bargaining units to a flat rate of $300 per month. Through concessions during its bankruptcy case, the City achieved this goal with employees represented by IAFF and IBEW. During its recent negotiations with the VPOA and the City's remaining bargaining unit, CAMP, the City proposed the same reduction in retiree health benefits.

While the Five Year Plan filed with the bankruptcy court is not binding, the City remains committed to achieving its benchmarks for fiscal sustainability. The VPOA's proposal on retiree health, which would require the City to pay the greater of 100% of the premium of the least expensive health plan offered by CalPERS and 66.67% of the Kaiser Bay Area premium, does not accomplish the centerpiece of the Five Year Plan – a dramatic and necessary reduction in the City's OPEB liability.

Why is the City so concerned about its OPEB liability? Because it represents a huge outstanding liability on the City's books that is likely to continue growing well into the future. If the City does not take steps to control this liability now, it risks backsliding into financial instability.

OPEB stands for "other post-employment benefits" and includes all benefits received by employees after retirement, other than pension. In the case of the City, its OPEB obligations are primarily retiree health benefits. Governmental accounting standards require the City to record and account for the liability associated with its OPEB. Because of these accounting requirements, the City carries its OPEB obligations on its books as an expense, as opposed to a deferred liability. The City does this by accounting for and reporting its annual required contribution (the "ARC") for OPEB in the same way it reports the ARC for pension contributions. Recently, the City has committed to paying its full ARC in order to better manage these expenses and mitigate the growth of its unfunded OPEB liability.

The concessions by other unions in bankruptcy reduced the City's OPEB liability from $135.4 million to $81.2 million, as of June 30, 2009. Since then, the City's OPEB liability has grown to $106.6 million as of June 30, 2012. *The VPOA alone accounts for approximately $65 million of the City's remaining liability.* The cost of funding the OPEB liability attributable to VPOA members and retirees *exceeds 40% of payroll.* When combined with the City's liability for pension benefits, the City is paying nearly an additional 100% of police payroll annually for retirement benefits. In other words, for every dollar of salary, the City is paying almost a dollar for retirement benefits. Worse, the cost of pension benefits is projected by CalPERS to rise steeply over the next six years, meaning the City may soon be paying more for retirement benefits than for active employee salaries. This cost structure is simply not sustainable.

The City's proposal would lower its ARC for retirement health benefits to approximately 7% of payroll annually from its current 40%. This burden would be shared by the City's employees and retirees, through reduced benefits, and the City's residents -- through a commitment to fund the remaining OPEB liability. While the VPOA's proposal would reduce the City's ARC to about 24% of payroll, almost half of that savings is solely attributable to the City's commitment to pre-fund the benefit. Especially in light of the rising cost of pension benefits, that savings is simply not enough to make ends meet for the City in the long run and to ensure that Measure B funds continue to fund restoration of some essential services in the short run.

## II. Discussion

### a. *Application of AB 646 Criteria*

AB 646 requires that the fact finder consider the following criteria in reaching its recommendation:

1. State & federal laws applicable to employer
2. Local rules, regulations, or ordinances
3. Stipulations by parties
4. Public interest & welfare, and public agency's financial ability
5. Comparability of employment conditions with those in other agencies
6. Cost of living

7. Overall employee compensation
8. Other facts normally taken into consideration

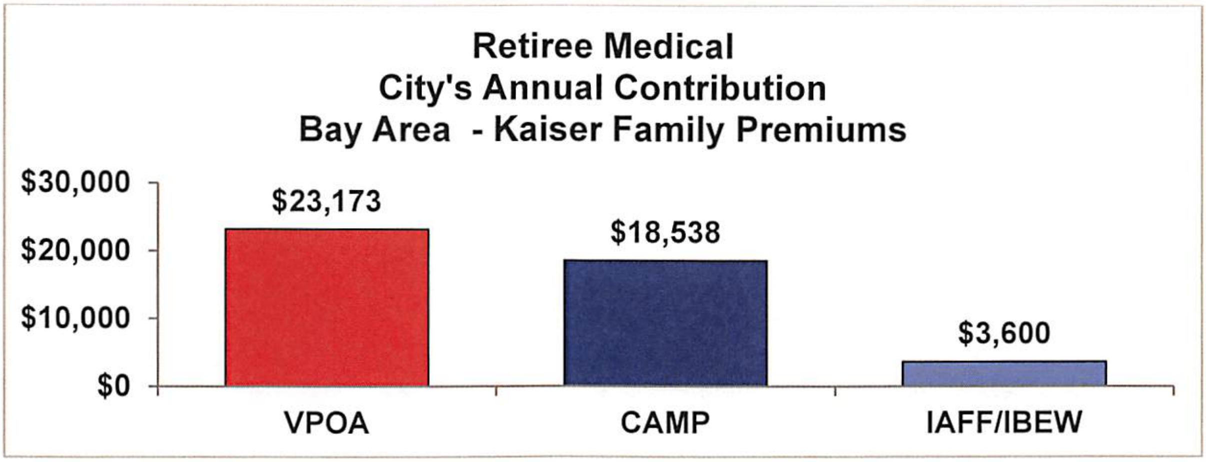
These factors strongly support the City's proposal with respect to retiree health contributions.

*i. Internal Equity*

The state's fact-finding scheme has much in common with advisory interest arbitration. Historically, most arbitrators agree that one of the most potent interest arbitration considerations is "internal equity" – i.e. treating employees equally. This factor is especially important when considering issues such as health benefits, as the employer's obligations in this area are typically the same across bargaining units.

In the City's case, two of its four bargaining units, IAFF and IBEW, agreed to a $300 cap on retiree health contributions in 2010.[14] A reduction in retiree health contributions will bring the VPOA in line with these employees, who along with VPOA members comprise a majority of the City's workforce. To its credit, the VPOA reached an early agreement with the City in bankruptcy. Unfortunately, both the bankruptcy and the VPOA agreement preceded the then-unanticipated effects of the great recession. When the recession hit the City, revenues plunged. As a result, the agreements with IAFF and IBEW were reached in an entirely different, and much worse, economic environment. Stemming from its changed circumstances, the City negotiated more significant concessions with these two labor groups. These concessions included (i) a reduction in retiree health care contributions to $300 per month, (ii) a reduction in active employee health care contributions to 75% of the Kaiser Bay Area premium, (iii) an increased contribution to employee pension costs and (iv) salary reductions of 2% for IAFF and 10% for IBEW. The extreme disparity in retiree health contributions among the City's four bargaining units is illustrated in the following chart:

[14] The City pays a separate "supplemental pension" contribution equivalent to 75% of the Kaiser Bay Area premium for pre-2000 IAFF retirees. The City intends to provide a similar benefit to POA retirees who retired under the older, less advantageous pension formula.

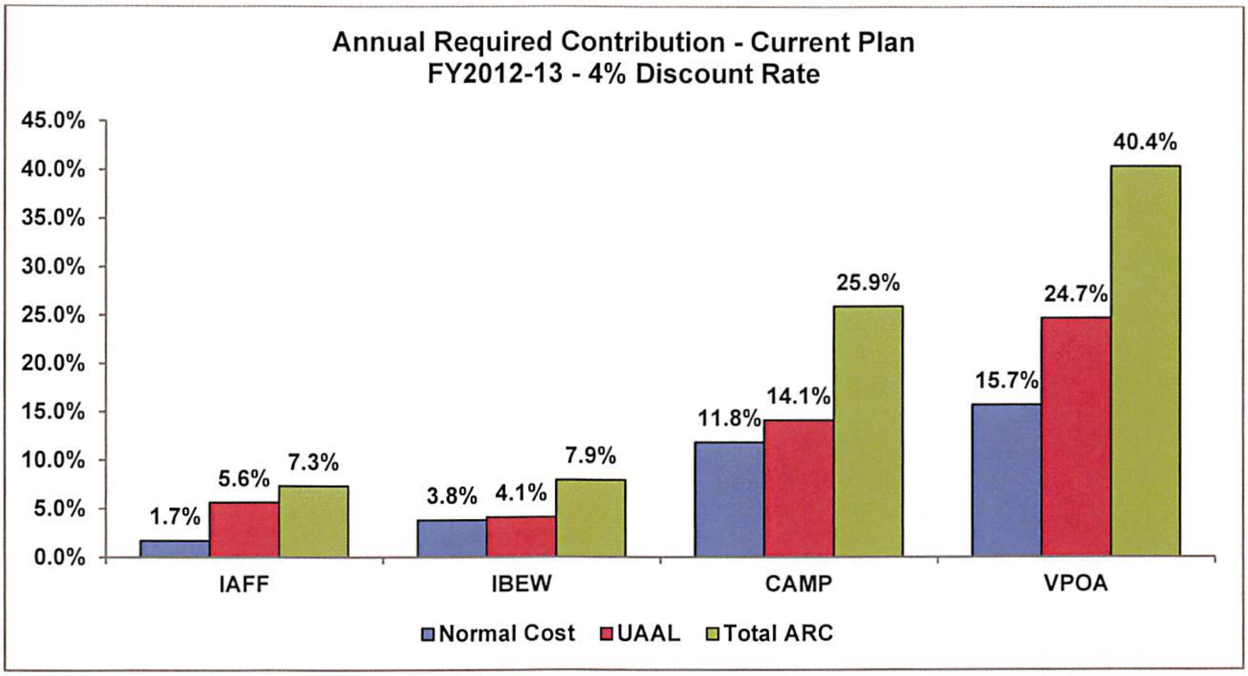



The City's significant decline in revenue after it sought bankruptcy protection is a critical piece of the City's story. While VPOA and CAMP employees made real sacrifices in bankruptcy, the sacrifices made by IAFF and IBEW were far greater. In addition to avoiding the more substantial cuts to health benefits and wages accepted by IAFF and IBEW, the VPOA agreement allowed for wage increases during its term. By the end of the agreement, police officers received an aggregate 6.4% across-the board salary increase *after* the City entered bankruptcy. IAFF and IBEW members did not receive any across-the-board wage increase.

The City made the decision to reduce retiree health benefits during its bankruptcy case, in part to be able to preserve its employees' pension benefits. The agreements with IAFF and IBEW to reduce retiree health contributions effectively represent a trade-off of these benefits. The VPOA benefitted from the City's decision but was not required to make the same sacrifices with respect to retiree health benefits in return. This strikes me as unfair to the City's other employees and I believe the City's proposal would fix this inequality.

*ii. Financial Ability*

Although the City has seen an uptick in its revenues since it emerged from bankruptcy, it cannot sustain its increasing OPEB liabilities at the same time as it hires additional police officers and sees its pension expenses rise steeply. A reduction in the City's contribution towards retiree health benefits will result in significant savings, both short-term and long-term. As of June 30, 2012, the City's total OPEB actuarial liability was $106.6 million. VPOA members are responsible for well more than half of that liability. Because the current benefit plan is so generous, the City's ARC on account of VPOA members is equal to 40.4% of payroll, which, as shown in the following chart, far exceeds the ARC attributable to every other bargaining unit.


Annual Required Contribution - Current Plan
FY2012-13 - 4% Discount Rate
45.0%
40.0%
35.0%
30.0%
25.0%
20.0%
15.0%
10.0%
5.0%
0.0%
1.7%
5.6%
7.3%
3.8%
4.1%
7.9%
11.8%
14.1%
25.9%
15.7%
24.7%
40.4%
IAFF
IBEW
CAMP
VPOA
Normal Cost
UAAL
Total ARC

The ARC is comprised of the normal cost of retiree health benefits and the City's unfunded accrued actuarial liability. This is the amount the City should be paying annually to fund future retiree health benefits. At current levels, in a database established by the City's actuary, the City's ARC attributable to VPOA members places it in the 98th percentile of other retiree health plans for safety employees.

| | Safety Plans | |
|---|---|---|
| | Normal Cost | ARC |
| 95th Percentile | 21.6% | 37.0% |
| 75th Percentile | 12.7% | 22.6% |
| 50th Percentile | 5.5% | 9.4% |
| 25th Percentile | 2.6% | 4.2% |
| 5th Percentile | 1.4% | 2.1% |
| **VPOA** | **15.7%** | **40.4%** |
| **Percentile** | **84%** | **98%** |

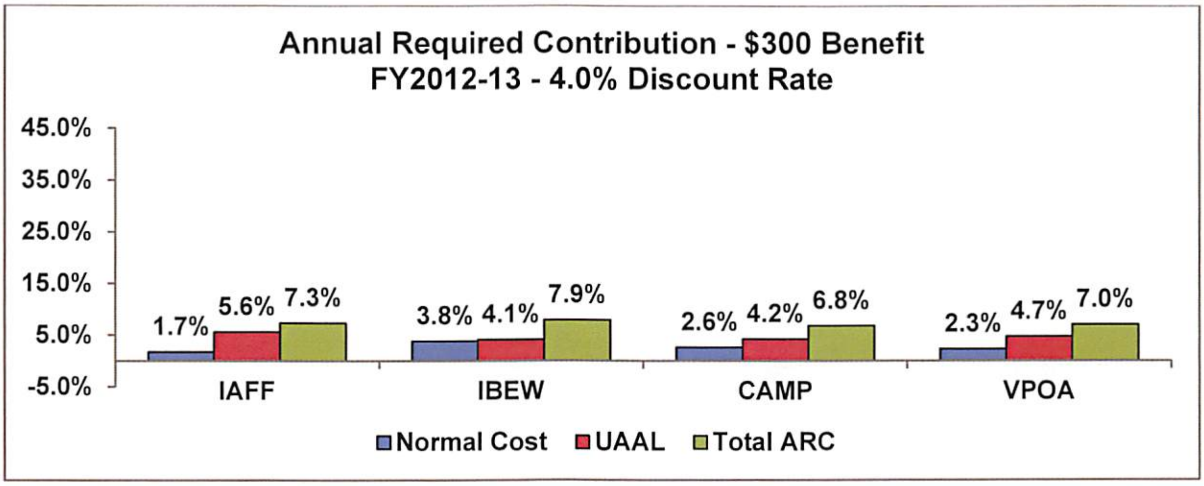
Based on an analysis by the City's actuary, the City's OPEB liability was approximately $135.4 million prior to its bankruptcy filing. Through reductions in retiree health benefits, the City brought this liability down to $81.2 million as of June 30, 2009. In the years since, however, the City's OPEB liability has grown to $106.6 million as of June 30, 2012. Without a change in the retiree health benefit offered to VPOA members, the City's OPEB liability will continue to increase, erasing the savings achieved through the reduction of benefits to the City's other employees.

It is important to understand the way in which the City's OPEB liabilities have grown since its bankruptcy filing. VPOA and CAMP are the only City bargaining units that are not subject to a to a flat rate retiree health contribution. As shown below, the VPOA's OPEB liability has grown from $46.1 million as of June 30, 2010 to $65 million as of June 30, 2012, which is an increase of 41% in just 2 years. By contrast, the OPEB liability on account of IAFF and IBEW are growing at a much less rapid rate, 10.6% and 11.7% respectively.

City of Vallejo

| | | | | Actuarial Accrued Liability (000's) | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|
| Retiree Medical Benefit | Valuation Date | BA Report Date | Discount Rate | Council | Exec | CAMP | IBEW | IAFF | VPOA | Total |
| Pre-Bankruptcy | 6/30/2008 | 1/15/2009 | 4.50% | $ 576 | $ 2,054 | $13,769 | $38,817 | $31,732 | $48,452 | $135,400 |
| Change VPOA to 100% Kaiser non-Medicare premium, CAMP to 80% Kaiser non-Medicare premium | 6/30/2009 | 12/22/2009 | 4.50% | 494 | 4,559 | 12,417 | 37,749 | 32,567 | 47,879 | 135,665 |
| Change Council, Executives, IAFF, IBEW to $300 effective 2/1/10, not less than PEMHCA minimum | 6/30/2009 | 12/7/2010 | 4.50% | 184 | 1,276 | 12,417 | 11,651 | 7,819 | 47,879 | 81,224 |
| Change IAFF to 75% Kaiser non-Medicare premium for pre-3%@50 PERS | 6/30/2010 | 4/12/2011 | 4.50% | 178 | 1,120 | 12,221 | 11,809 | 10,629 | 46,095 | 82,052 |
| No change | 6/30/2012 | 5/10/2013 | 4.00% | 138 | 1,348 | 15,198 | 13,190 | 11,755 | 65,000 | 106,628 |
| Study change CAMP, IAFF, VPOA to $300 per month, not less than PEMHCA minimum | 6/30/2012 | 4/15/2013 | 4.00% | 138 | 1,348 | 4,553 | 13,190 | 8,338 | 12,406 | 39,968 |

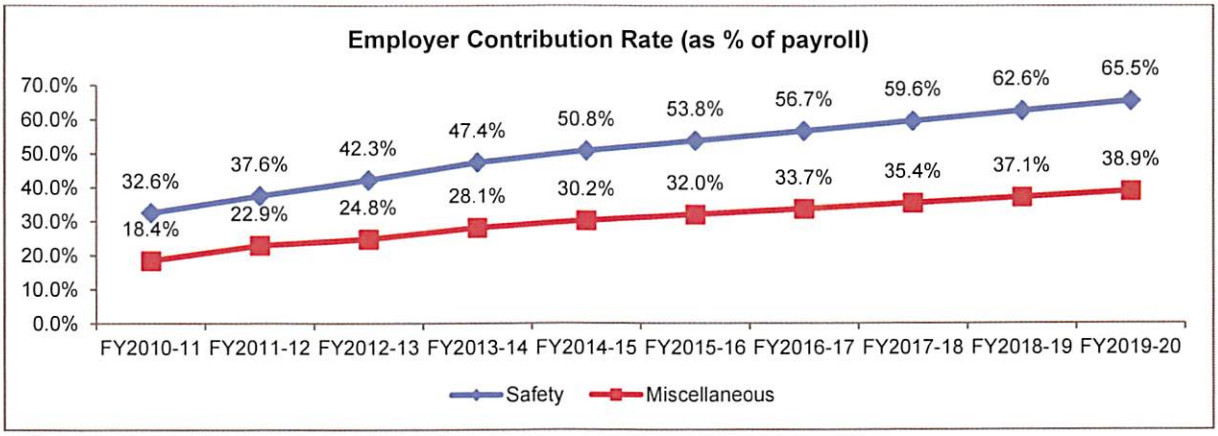
Converting VPOA retiree health contributions to a flat rate will limit the potential future growth of the City's OPEB liabilities. By reducing its retiree health contributions on behalf of VPOA retirees to $300 per month, the City estimates that its unfunded OPEB actuarial liability will drop by $66.6 million to $40 million total. The VPOA's share of the unfunded OPEB actuarial liability will decrease by $52.6 million and its share of the ARC will be reduced to 7.0% of payroll in FY2013-14, rather than the projected 40.4%.




During this same fiscal year, the City would achieve actual cash savings of approximately $4.3 million. In comparison, the Chair's recommendation would result in approximately $1.9 million in savings in FY2013-14 and a reduction of the VPOA's share of the ARC to 24% of payroll during this same period. This is less than half of the savings of the City's proposal in FY2013-14. In addition, the Chair's recommendation does nothing to control future growth of the City's OPEB liability, a benefit of the City's proposal that may be more valuable to the City than any short term cash savings.

The City's proposal on retiree health is further supported by CalPERS' October 2013 valuation of the City's safety pension plan. This report states that the City's safety employees who have been retired for less than five years have an average service-based annuity of over $101,000. Safety employees who retired in the past five to nine years receive an average service-based annuity of approximately $84,000 and safety employees who retired in the past ten to fourteen years receive an average service-based annuity of approximately $71,000. In other words, for safety employees who retired since the implementation of the 3%@50 pension enhancement, these amounts average approximately $93,000 per service retiree. By contrast, the average annuity for retirees who have been retired more than 15 years is approximately $48,000. However, because most of these retirees are now Medicare eligible, their premiums are far lower than more recent retirees.[15] In short, the City's proposal falls most heavily on retirees with six-figure pensions - those who can best afford it.

The City's proposal is supported not only by CalPERS data regarding pension income but also by the skyrocketing pension costs anticipated by CalPERS. Based on CalPERS most recent valuation, the City expects its safety pension costs to rise to at least 65.5% of payroll by FY2019-20. As illustrated in the below graph, this represents 15% increase from the current fiscal year.




Because the City is part of the CalPERS system, it has no control over the contribution rates set by CalPERS, meaning that its ability to manage these costs is very limited. In contrast, the City has the ability to control its OPEB liabilities and by doing so can mitigate the impact of increased pension costs.

Although the Chair also recommended an 8% aggregate reduction in wages, this savings, when combined with her retiree health recommendation, still falls short of the City's savings needs for FY2013-14. Further, the Chair's recommendation falls most heavily on current employees, potentially impacting recruitment and retention, while preserving retirement benefits which are significantly richer than those in the broader labor market. Moreover, absent a decrease in its unfunded OPEB liability and related long-term debt obligations, the City will remain on unstable financial ground, wasting the chance for sustained recovery offered by its bankruptcy filing.

*iii. Public Interest*

One issue upon which the City and the VPOA agree is that the City needs to attract and retain new police officers in order to restore services to City residents. Since the City's

[15] In addition, the City is exploring the possibility of providing a supplemental pension benefit similar to that provided for IAFF to these retirees.

bankruptcy filing, the police force has been reduced by nearly 50%. As set forth in the below table, the City's other safety services were similarly impaired.

| | FY2003-04 Authorized Staffing | FY2010-11 Authorized Staffing | FY2003-04 to FY2010-11 % Change | FY2013-14 Authorized Staffing | FY2013-14 Authorized Staffing (w/Measure B) |
|---|---|---|---|---|---|
| Police | 228 | 121 | -47% | 130 | 143 |
| *VPOA* | *155* | *89* | *-43%* | *93* | *106* |
| Fire | 122 | 71 | -42% | 92 | 93 |
| All Other | 145 | 121 | -17% | 140 | 147 |
| Total | 495 | 313 | -37% | 362 | 383 |

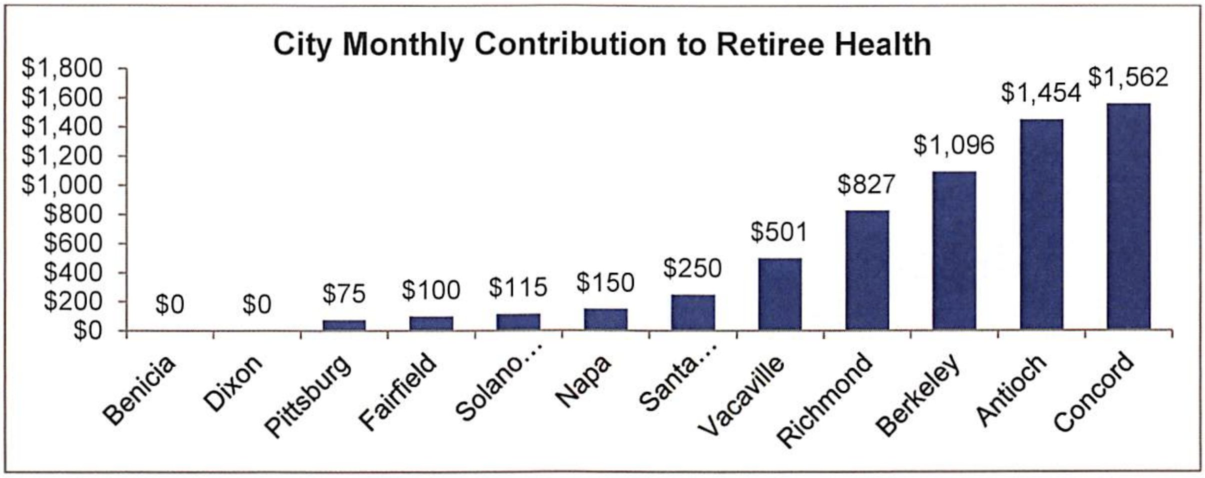
The City plans to use a portion of Measure B revenues to fund positions in the police department. Measure B, a tax measure that was approved by a margin of 50.4% to 49.6%, temporarily added 1% to the City's sales tax to help address unmet needs in the community. In approving Measure B, the City's residents accepted an increased financial burden in order to begin restoring the services that were decimated during the City's bankruptcy. These funds were not meant to be used to increase compensation for current employees but instead to enhance funding for additional officers and safety services. All of the parties to this fact-finding recognize the need to increase police staffing. The City's proposal with respect to retiree health benefits is the best available option to achieve the savings needed to pay for additional police staffing.

*iv. Local Rules, Regulations, Or Ordinances*

State law requires the fact-finding panel to defer to local rules and policies. One such local policy is the Five Year Plan and updated five year financial forecasts that remain central to the City's budgeting process, which remain a roadmap to fiscal stability for the City. Prior to its filing with the bankruptcy court, the Five Year Plan was adopted by the City Council on November 30, 2010. Since the bankruptcy court approved the Plan of Adjustment and allowed the City to emerge from bankruptcy, the City has shown a commitment to achieving the benchmarks set out in the Five Year Plan. An important piece of the Five Year Plan is the City's goal of reducing retiree health benefits to $300 per month for all employees. Although the City is on the road to recovery, I believe that diverting from this key provision of the Five Year Plan could derail the sacrifices the City's residents and its employees have made to secure the City's financial future.

*v. External Comparability*

Based on the evidence submitted by the City, there does not appear to be a market rate for retiree health benefits. The City's information establishes that certain jurisdictions make no contribution to retiree health benefits while others cover 100% of the applicable premiums. The below chart illustrates this differential:




Because there is no clear market rate for retiree health contributions, a reduction in these benefits should not have a significant impact on the City's ability to recruit and retain police officers. To the extent there is an identifiable market, the City's proposal would place it squarely in the middle of these comparator jurisdictions, meaning the City's proposed reduction should not place it at a competitive disadvantage in recruiting.

*b. Chair's Concerns Regarding Vested Nature of Retiree Health Benefit*

It appears that instead of considering these statutory factors, the Chair based her recommendations on concerns about the legality of the City's proposal on retiree health. In fact, the VPOA has filed a lawsuit in Solano County Superior Court assert that the City's proposal violates the vested rights doctrine. However, filing a lawsuit and filing a *meritorious* lawsuit are two different things.

I believe that the proper vehicle to address the VPOA's vested rights argument is the VPOA's pending lawsuit. However, because the VPOA raised the issue in the fact-finding, the City submitted a detailed response outlining its analysis of this vested rights issue. The response demonstrates that, to the extent current and former VPOA members have any vested right in any retiree health benefits, the scope of that right is limited to the same PEMHCA contribution as the City makes on behalf of active employees and not to a specific dollar contribution.

No one wants to engage in costly litigation if it can be avoided. However, the simple fact is that the VPOA has not accepted the same concessions made by other groups, and the value of the retirement health issue alone for VPOA is $60 million over time, or $4 million annually. No matter how you slice it, that is the biggest single issue facing the City economically.

## III. Conclusion

The City's proposals to VPOA attempt to balance two competing goals: (i) the need to stay the course towards fiscal health and (ii) the need to restore essential services to residents, including the addition of police officers to the City's depleted police ranks. Simply put, the City cannot afford to offer the current level of benefits to the members of the VPOA and at the same time hire over twenty new officers, as authorized under the City's most recent budget. A balance must be struck and the City believes this is most appropriately done by reducing its contribution to retiree health benefits.

The City's proposal will effectively save 33% of payroll based on a reduction in the City's ARC attributable to the VPOA. The Chair's recommendation would result in a 16.4% savings in the ARC – about half of the City's proposal. It is simply not realistic to think the City could save an equivalent amount through salary reductions while remaining competitive in the labor market. The City's proposal on retiree health is the best of a series of poor alternatives. The City will realize meaningful short-term and long-term savings while having as little impact on its ability to recruit as possible. For these reasons, I believe the City's proposal regarding retiree health is a more appropriate choice than the Chair's recommendation.

**SF-IM-130-M: VALLEJO POLICE OFFICERS ASSN. AND CITY OF VALLEJO**

***Vallejo Police Officers Association Statement Concurring in Part and Dissenting in Part***

This panel has been charged with the unenviable task of establishing an appropriate level of compensation and benefits for police officers in the City of Vallejo. Despite the public's common misperception of public sector labor unions, this is a charge the Vallejo Police Officers Association ("VPOA") takes quite seriously, as evidenced by its proposal to reduce labor costs in excess of $3 million per year. While the panel has clearly sought to establish a compromised recommendation, it fails to account for the City's overstating its financial condition, as well as the devastating impacts of the City's Last, Best and Final Offer ("LBFO").[1] As the VPOA established over the course of the proceedings before the panel, its factfinding proposal constitutes a compromised position that would allow the City to move forward from its 2009 bankruptcy, and restore the essential City services.

[1] The City's conduct and positions on numerous issues in the collective bargaining and impasse procedures are subject to multiple legal challenges. Notably, the City effectively conceded the merits of several of the VPOA's pending legal challenges by withdrawing one of its proposals on the eve of the first day of the hearing (settlement payment), and substantially revising another on the morning of the second day (sick leave). Given that the VPOA has adamantly asserted that the parties are not at impasse, these modifications provide further evidence that the hearing itself should not have gone forward so that the parties could return to the bargaining table.

[2] Retired Chief Robert Nichelini noted that in 2012, Vallejo's Part I Crimes per Officer was 63.7. Significantly, this was based upon an FY 11/12 *budgeted* staffing levels where the Department was authorized 93 sworn officers. This number would sharply increase using today's *actual* staffing levels (80 sworn officers). Nonetheless, Vallejo's 63.7 ranked the highest among a broad spectrum of agencies across the state: e.g., Richmond (30.8), Oakland (35.0), Stockton (59.1), Salinas (37.0), Berkeley (37.9), San Francisco (16.9) (Union Exhibit A).

Although the City continuously cites to its economic past to rationalize its ill-conceived plan of action for the future, it cannot refute the simple fact that the Vallejo Police Department is already unable to recruit and retain qualified law enforcement personnel. Whereas the City has historically relied upon recruiting lateral employees with significant work experience from comparable agencies (essentially allowing other employers to bear the expense of training the Vallejo Police Department's workforce), the Department now struggles to attract inexperienced academy graduates and lateral employees from suburban police agencies that are unaccustomed to the challenges posed by an urban environment like the City of Vallejo.[2] Notably, the Department has even lowered the educational standards for police cadets in order to broaden the pool of qualified applicants. Despite these desperate efforts, staffing continues to precipitously decline, as the Department is now comprised of an alarming 80 sworn officers (including the Chief of Police). The City itself recognized the dangers of this precarious situation (City Slide 91). In light of these circumstances, it is simply unfathomable that the City of Vallejo could expect to survive in the highly competitive market for qualified police officers – even after lowering its minimum qualifications to expand the pool of potential applicants. If the panel's recommended terms of settlement were implemented, the City would not be in a position to provide its citizens with an acceptable level of safety or crime prevention.

With respect to the City's economic concerns, all of the available financial information plainly establishes that Vallejo has not only emerged from bankruptcy, it is more financially sound than it has been in decades. Notably, this has occurred without any further reductions in the salaries and benefits of Vallejo police officers beyond the $6 million in General Fund savings initially provided by the VPOA following the City's petition for bankruptcy protections (Union Exhibit 9 at p. 4). Indeed, while the City's five year business plan targeted a 4.1% General Fund Reserve in FY 13/14 (Joint Exhibit F at p. B-2), as noted in the City Manager's economic update to the City's labor unions in February 2013, the last audited financial report (CAFR) showed the City concluding FY 11/12 with reserves of 11.7% - nearly *triple* what the five-year business plan hoped to achieve. (Union Exhibit 23 at Slide 14). While austerity measures were certainly necessary in 2008 and 2009, the time for such action has ended; it is time for the City to move forward.

Despite the City's now stable and improving economic condition, the City continues to provide questionable information related to the City's actual financial condition, and the scope of City services. As noted in City's presentation of evidence, the citizens of Vallejo passed Measure B on November 8, 2011, levying a 1% sales tax on themselves in order to, among other things, "enhance emergency response and police patrols" (City Slide 92). While the City placates the public each year by *budgeting* for more police officers (Joint Exhibit J at p. J-19), the Department's *actual* staffing levels continues to erode, and are now at the lowest levels in modern history (Union Exhibits 25-26). Simply stated, the citizens of Vallejo agreed to increase taxes in order to improve public safety, and the City has not spent a single dollar to actually *maintain*, much less enhance, that very service.

Prior to the hearing before the panel, the City conceded the fallacy of its budgeted staffing levels on October 8, 2013, when, recognizing that the City could not possibly fill the then-23 vacancies in the Vallejo Police Department,[3] the City Council redirected $2.5 million from police salaries and benefits to help pave the City's streets (Union Exhibit 4). Despite experiencing budget surpluses year after year, the City's elected officials have perpetually *reduced* police services to the citizens of Vallejo, while falsely asserting that services are somehow *increasing*. As a result, Vallejo has observed its ratio of Part I Crimes per Officer rise to incomprehensible levels, while the number of officers per population is significantly worse than that of nearly every other jurisdiction, including Stockton, Oakland, Antioch, and Richmond (Union Exhibit C).

Significantly, none of these challenges are addressed – much less resolved – by unnecessarily slashing the salaries and benefits provided to sworn personnel. While the City can try to justify its position on the principle on achieving some distorted notion of "equity" with its other labor union[4] – its citizens will continue to suffer the consequences of an understaffed and underfunded police department.

3 As previously noted, the number of vacancies has since increased to 26.

4 It appears that only the represented employees are subject to the City's continuing austerity measures. While the VPOA currently ranks in the middle of its benchmark agencies on the basis of salary (the VPOA ranks third among its seven benchmark agencies on the basis of total compensation), it has not gone unnoticed that the salaries of City Manager Dan Keen and Chief Joseph Kreins each rank *second* among their peers at those same agencies. If the panel's recommended settlement were to be implemented, active members' salaries would rank *sixth* among their benchmark agencies (the VPOA would rank *seventh* in total compensation).

5 The VPOA believes the panel should have found the City's proposal to constitute an illegal violation of the Contracts Clause of the California Constitution, but is nonetheless pleased that the panel recommended the VPOA comprehensive proposal.

Although the VPOA concurs with the panel's recommendations relative to the City's proposed changes to POST Pay, Comparable Jurisdictions, Dental Benefits, Telephone Expenses, Out of Town Expenses, the "Existing Benefits" Clause, the Term of Agreement, the "Entire Agreement" Clause, and Health Premiums for Actives, and Retiree Medical Benefits[5], the panel's recommended terms of settlement must be viewed as a package. In that regard, even though the panel has recommended the VPOA's proposed terms relative to Retirement Contributions, Retiree Medical Benefits, and Health Premiums for Actives, the VPOA's proposal was offered as part of an annual $3 million concession package. The VPOA has continuously asserted that any further reductions are not sustainable, as they will irreparably impair the City's ability to recruit and retain qualified personnel. As the panel heard, several VPOA members are prepared to retire or seek alternative employment opportunities should the City implement its proposed economic package – terms that the panel has recommended in significant part. Given these circumstances, if implemented, the panel's recommended terms are likely to have an immediate detrimental impact.

Accordingly, even though the panel has recommended the VPOA's offer to have employees contribute 6.5% of their salaries to help reduce the City's liabilities (an additional 3% retirement contribution[6], and a 3.5% OPEB contribution), the VPOA dissents as to the panel's recommendation of the City's 5% wage reduction, the reduced incentives offered for collateral duties ("supplemental pay")[7], and the prospective elimination of longevity pay. Not only does the panel's recommendation cause the creation of competing interests between active members and future employees,[8] when implemented as a whole, the panel's recommended terms will inarguably preclude the Vallejo Police Department from offering competitive wages and compensation packages. As a result of the panel's recommendation, the average VPOA member stands to lose in excess of $1,400 per month;[9] members of higher rank and employees receiving incentives for collateral duties ("supplemental pay") stand to lose even more. With respect to new employees, the prospective elimination of longevity pay achieves no cost-savings for the City whatsoever, while eliminating a form of compensation that is standard in the industry,[10] thus further impairing the Department's ability to recruit qualified personnel. Ironically, it was this same analysis and rationale that persuaded the panel to recommend the VPOA's proposal relative to POST Pay.

6 VPOA members already pay 9% toward the cost of their retirement benefits, thus bringing the total to 12% for classic employees, and roughly 15% for "new members".

7 The VPOA does not necessarily oppose the City's proposal to set compensation for these collateral duties at a fixed dollar amount rather than a percentage of base salary, however, the City's representatives incorrectly stated at the hearing that the proposed fixed dollar amounts were consistent with the current pay provided for these additional services. As members assuming collateral assignments stand to suffer the greatest losses, the VPOA dissents from the panel's recommendation of the City's proposed term.

8 As the parties have already agreed to a reduced retirement medical benefit for future employees, the prospective elimination of longevity pay creates substandard compensation for new members both in terms of pay and benefits.

9 $425/month salary reduction; $434/month healthcare contributions (Kaiser family); $20/month reduced education premiums; $525/month retirement and OPEB contributions;

10 Of the VPOA's seven benchmark agencies, only Hayward does not provide some form of longevity pay (Union Exhibit 10).

11 As the panel noted, the VPOA's comprehensive retiree medical proposal would cut the City's liabilities in half.

Although the panel's recommendation is premised upon a spirit of compromise, it should be noted that the VPOA has offered a viable alternative. As previously stated, the union has offered to have each member contribute an additional 3% of salary to help reduce retirement costs, as well as an additional 3.5% of salary to prefund retirement medical benefits and significantly reduce the City's OPEB liability.[11] When viewed in conjunction with the VPOA's proposal to cap the City's healthcare contributions for active employees at 75% of the Kaiser rate, these proposals reduce officer compensation by nearly $1,000 per month. Perhaps the most disconcerting aspect of the panel's analysis arises from its failure to recognize the significant cost savings to be realized as a result of the VPOA's proposed reconfiguration of the salary schedule, whereby new employees commence their employment at a new salary step (5% below the current entry level salary step), and proceed through the various salary steps over the course of five years (as opposed to the current three year progression). As the Vallejo Police Department already suffers from 26 vacancies – *vacancies that, by themselves, will provide the City with close to $7 million in* *cost-savings* (Joint Exhibit J at J-27) – the VPOA's proposed reconfiguration will provide the City with its proposed 5% salary reduction for a significant portion of the budgeted sworn positions of Vallejo Police Department. Further, given the extended period of time until new members will reach top step, these savings would continue beyond the term of the proposed contract and temporarily *increase* during periods of time where members' salaries would be two steps below the value they would enjoy under the status quo terms of employment. Most importantly, this proposal would have a negligible impact on recruitment (and no impact whatsoever on retention), as applicants' attention to the salary component of compensation traditionally focuses on top-step salary; a value that would remain unchanged. The panel has missed the opportunity to take advantage of the unique circumstances found in the City of Vallejo whereby the City could enjoy significant budget savings, without deteriorating its ability to recruit and retain qualified personnel.

Finally, while the City significantly modified its proposal relative to the sick leave benefits provided to VPOA members (as compared to the terms set forth in the City's LBFO), the its proposal (and the panel's recommendation), continue to violate the rights of VPOA members. The City and individual VPOA members hired prior to February 1, 2009, have entered into an irrevocable agreement governing the manner in which employees are to accrue sick leave benefits. This "non-revocable" agreement was negotiated as part of the bankruptcy settlement between the parties and is not subject to future modification by the City.

Dated: November 27, 2013 Mat Mustard, Panel Member