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Mediator and Factfinder  
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April 28, 2023

FINDINGS AND RECOMMENDATIONS  
PURSUANT TO  
GOVERNMENT CODE SECTION 3505.4, et seq. (MMBA)

CITY OF ORANGE COVE,  
Employer

vs.

INTERNATIONAL UNION OF  
OPERATING ENGINEERS,  
STATIONARY ENGINEERS LOCAL 39,  
Union

PERB CASE NO. SA-IM-243-M

REPORT AND RECOMMENDATIONS OF  
THE FACTFINDING PANEL

Neutral Factfinding Panel Chair:  
City-Appointed Panel Member:  
Union-Appointed Panel Member:

Loretta van der Pol  
Megan Dodd, City Attorney  
Griswold, LaSalle, Cobb, Dowd & Gin  
Laura LeSieur, District Representative  
IUOE Stationary Engineers, Local 39

Hearing Date: April 24, 2023

APPEARANCES:

For the Employer: Shelline Bennett, Liebert Cassidy Whitmore, Nuria (Ellie) Velicescue,  
Director of Finance

For the Association: Katie McDonagh and Hugo Garcia, Weinberg, Roger & Rosenfeld,  
Jennifer Osborn, IUOE Local 39, Juan Rivera, City of Orange Cove

## BACKGROUND

The City of Orange Cove is located in Fresno County, California and has a population of 9,619 according to the July 1, 2021 figures posted by the U.S. Census Bureau.<sup>1</sup> The local economy is primarily rural/agricultural, with a median household income of \$28,626. Nearly 49% of the population lives below the poverty line.<sup>2</sup>

There are two bargaining units in the City's organization – the Orange Cove Police Officers Association (POA) and the International Union of Operating Engineers, Stationary Engineers Local 39 (IUOE Local 39 or Union). IUOE Local 39 represents fifteen (15) employees in a bargaining unit consisting of a wide range of classifications, including at least three (3) lead and supervisory classifications. See Exhibit A.

Until recently, there was an Interim City Manager who also served as the City's Director of Finance. Activities related to the collective bargaining that led to this factfinding occurred during his tenure. The City now has a new City Manager and a new Director of Finance.

The most recent Memorandum of Understanding (MOU or Contract) for IUOE Local 39 was for the term of July 1, 2019 through June 30, 2022. Language in the contract provided for general wage increases in percentages and under economic conditions that are currently the subjects of a dispute that is in arbitration. See Exhibit B (MOU cover and relevant contract language).

On July 27, 2022, the City approved a 3.5% general wage increase (COLA) for the POA, retroactive to 2021. (See Exhibit C) A similar Side Letter was presented to the Union in June, 2022, but was rejected and subsequently not included in the City's comprehensive proposal on November 18, 2022 when the parties met in negotiations. (See Exhibits D and E)

Budget documents and presentations indicate that the City is struggling financially due to local and statewide changes in the economy, and the unforeseen need to adhere to a state law governing how publicly-owned land can be sold. This combination of factors is being projected to cause a shortfall of more than \$400,000. (See Exhibits F and G) There is also a parcel tax that is set to expire in the next fiscal year. In at least the recent past it has been the City's practice to fund COLAs from one-time money derived from land sales and other sources. The last two parcels thought to be available for sale, with the proceeds built into the budget, have been withdrawn from availability to private developers.

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<sup>1</sup> <https://www.census.gov/quickfacts/fact/table/orangecovecitycalifornia/PST040222>

<sup>2</sup> Ibid.

## FINDINGS OF FACT

The negotiations history for a new MOU included the following:

- On February 1, 2022, the Union provided notice to the City to begin negotiations on a new MOU.
- On March 23, 2022, the Union submitted a request for information to the City for its use in preparing for negotiations.
- In April, 2022, the Union sent the City a request for dates and a second request for information (no information was received from the March 23 request).
- In June 2022, the City proposed a Side Letter agreement to provide a 3% general salary increase for FY 2021, with a rollover of the expiring MOU.
- The City presented a comprehensive proposal on November 18, 2022. The Union took the comprehensive proposal out for a vote and its members rejected the proposal.
- The Union declared the impasse on January 17, 2023 and requested mediation on January 26, 2023. (See Exhibit H)
- The parties engaged in a mediation effort on February 16, 2023, which was not successful.
- The Union requested factfinding and the Public Employment Relations Board (PERB) confirmed the appointment of a factfinder on March 14, 2023.

The parties mutually agreed to waive the statutory timelines and met in factfinding on April 24, 2023.

The City of Orange Cove has a budget deficit.

## STATEMENT OF THE ISSUES

The parties agreed that they were at an impasse on the following issues: Wages, Standby Pay, Uniform Allowance and Term of the Agreement.

## FACTFINDING CRITERIA

This Factfinding is governed by the provisions of the MMBA, which provide in Government Code Section 3505.4 that 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.
- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the public agency.
- (5) Comparison of the wages, hours, and conditions of employment of the employees

involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct 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.
- (e) The procedural right of an employee organization to request a factfinding panel cannot be expressly or voluntarily waived.

### SCOPE OF FACTFINDING

This factfinding report and recommendations address the following issues at impasse: Wages, Standby Pay, Uniform Allowance and Term of the Agreement.

There was discussion about an arbitration hearing recently conducted involving grievances related to compensation and classification in the MOU that expired on June 30, 2022. Acknowledging that the arbitration decision, which is still pending, may or may not directly significantly impact the City's financial circumstances, those issues are not within the scope of this factfinding. Any reference to the arbitration in this report is limited to the following: 1) serving as an example as to whether or not there was Union awareness of the City's financial situation; and 2) as a factor further complicating the City's financial circumstances should it not prevail.

#### Position of the Union:

The Union has never been notified of the City's financial hardship.

The City was unresponsive to the Union's requests to begin bargaining and requests for information. Negotiations did not begin until August, 2022, after the contract had expired on June 30, 2022.

Employees have not received a general salary increase (COLA) for several years, and most of the employees in the bargaining unit are at Step E, making them ineligible for any in-class salary movement.

Employees are earning much less than their counterparts in comparable classifications in other cities, even as those cities are paying COLAs every year.

The rising costs of required uniforms and boots are not covered by the current uniform and boot allowances, causing employees to either cover costs out of their own pockets or risk health and hygiene problems.

The City should agree to the Union's proposal to provide employees with a 4% COLA retroactive to July 1, 2022, and as presented in writing on January 17, 2023: a) increase Standby Pay to \$2.50 per hour from \$2.25 per hour; b) increase the uniform allowance to fully cover the costs for non-Police Department employees to a total of one clean uniform per employee per day, and to \$900 per year for those working in the Police Department, and 3) increase the boot allowance from \$275 per year to \$300.

The Union has no interest in discussing a contract term without negotiating economic provisions.

Position of the Employer:

The City is experiencing significant financial difficulties. Due to changes in its economic circumstances, it has an inability to provide increases in compensation (both salary and other forms of compensation) beyond what it proposed in November, 2022. The City's finances are likely to deteriorate further, to the extent that it may need to make cutbacks, or worse.

The Union should have been aware of the City's deteriorating finances through various communications.

The Union should agree to the City's comprehensive proposal presented on November 18, 2022, which includes the oral Tentative Agreement on Article 4. ACCESS, including the Employee Opt-Out form presented to the Union prior to negotiations on November 18, 2022. (See Exhibit I) The proposals include a 3% wage increase to be effective the first full pay period following City Council approval and a one-year term.

DISCUSSION

The Union presented a salary survey comparing its bargaining unit classifications to similar positions in ten other cities with similar rural economies. (See Exhibit J) The parties do not have an established, mutually agreed-upon comparison list. The Union explained that its list was partly derived from one the City used to compare lease of facilities rates for community centers in a recent survey.

The City disputed the validity of the comparisons in the Union's survey group because the size, proximity and demographics of the cities surveyed were not similar to Orange Cove. The sampling the City performed was for a different purpose than determining employee compensation. Additionally, the City pays 100% of the Health and Welfare benefits for its

employees, which was not factored into the compensation paid to the employees of the other cities to adjust them.

There was discussion about whether or not the City had an obligation under the MMBA to conduct a salary survey. The language is not permissive, but applies to the responsibility of the factfinder to consider the listed criteria, not the employer or union. Employers and unions may present their factfinding position(s) on just one or more of the criteria listed.

The Union's witness, Maintenance Worker Juan Rivera, provided testimony on behalf of the bargaining unit's members specific to the Union's proposals. His testimony included the difficulties of working Standby approximately every six weeks, an assignment that involves mandatory overtime, extra assigned duties, and availability for emergencies during rest and meal periods and regular days off. Standby work often requires performing tasks outside of his regular classification, including water system and animal control work.

Mr. Rivera testified in greater detail on issues created by insufficient uniform (and boot) allowances, providing background on the evolution of the current provisions and practices from a time that uniforms were provided by a service that regularly provided clean ones and collected the soiled uniforms, for laundering. Issues raised included the following:

- The employees' need to maintain a sufficient number of clean uniforms to cover a week's worth of work causes a hardship in trying to launder them frequently enough, especially when assigned to Standby duty, and/or when the work being performed itself is dirty (such as dirt, feces, sewage, animal control).
- The employees assigned to work in the Police Department are required to wear the same higher-cost uniforms that department employees wear, but do not have the same uniform allowance.
- Uniforms for female employees are more expensive than those for male employees, and large sizes are also more expensive, adding to the hardship of maintaining a sufficient number of clean uniforms.
- The purchase of new uniforms includes having to have the City's identifying patch, or logo, attached.
- Some employees are unable to cover the additional out of pocket costs of new boots and either purchase the lower-cost, lower quality boots, maintaining them with duct tape or other repairs.
- Based on the type of work performed, boots often need to be replaced within the year or the employees can develop fungus infections or other health or safety problems.
- The City's own Personnel Rules require that employees maintain a clean and hygienic appearance. (See Exhibit K)

The Union raised questions about the condition of the City's finances around the recent hiring of both a new City Manager and new Finance Director, as well as a consultant, the building of a new playground structure, and the numbers and types of events the City sponsors for residents.

The City's responses to the Union's concerns about spending included that:

- The former Interim City Manager was functioning in both positions (City Manager and Finance Director) and was collecting two salaries. The combined salaries of the two new incumbents is less than what he was earning.
- The playground structure is funded through a Proposition 68 grant.
- The City-sponsored events (Toy Drive, various holidays' festivities) are funded mostly through private donations.

The City was not previously aware of the requirement to make land that it intends to sell available to the State to purchase first. That process includes not only a posting period, but a negotiation timeframe, as well, requiring a minimum of about five months' time. The City can't anticipate that it would yield the purchase prices originally estimated as revenue in the current adopted budget. Influences include higher interest rates and a likely lowered appetite for private developers to build on the parcels. Once the two parcels are sold, whether to the State or to developers, there is no more land to sell.

The City is exploring ways to resolve the budget shortfall, including borrowing to improve the cash flow to the extent it can access grant funds, but anticipates the need to start making cuts. As of the date of this factfinding hearing, the City had a zero balance in reserves and only had enough cash on hand to operate for another fifty-one (51) days. Ms. Velicescu, the new Director of Finance has also identified that the City has an liability of approximately \$300k for accrued vacation leave balances that have been allowed to exceed accrual ceilings, as well as uncollected balances of approximately \$720k in its water enterprise fund. Unless extended by the voters, the Measure O parcel tax will expire in 2024 and will add another \$200k to the deficit. The City believes that bankruptcy is a possibility.

## FINDINGS AND RECOMMENDATIONS

The members of the IUOE Local 39 bargaining unit are the unfortunate victims of terrible timing and circumstances out of their control. It is reasonable to expect that collectively-bargained wage increases and other provisions will be available as negotiated, but this is not always possible.

The City was communicating to the public and the Union about the City's deteriorating financial circumstances. This information was being publicly-posted as Agenda and Information items for the City Council and Mayor and was available without the need for a Public Information Request or other onerous process. The City also communicated directly to the Union that there was a problem, by way of electronic mail (see Exhibit L) and in the recent arbitration.<sup>3</sup> There may have been other conversations mentioning this issue at the time around the City's proposed side letter in June, 2022.

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<sup>3</sup> Language from the closing briefs is not provided in this report.

The City of Orange Cove has a serious budget deficit that it may or may not be able to resolve, but at this time, there is no money available for long-term commitments that drive other costs, such as pension obligations and increases in statutory benefits.

It was not indicated in factfinding that the City was withdrawing its November 18, 2022 proposal, so unless changing circumstances require additional negotiation, the Chair recommends that the parties agree to the City's proposed 3% general wage increase, retroactive to the date the City Council would have taken action when it was initially proposed, with a one-year term of agreement expiring on June 30, 2023.

The Chair also recommends the following, because of the compelling testimony on hygiene and the relatively low cost increase to the City:

Increase the uniform and boot allowances as proposed by the Union (Union's language italicized) with a clarification, as noted.<sup>4</sup> The proposed language reads, with the Chair's recommendation inserted as bolded text:

Article 11. Certification and Pay Allowances

C. UNIFORM ALLOWANCE

a. Uniform Allowance

Each employee in the Public Works Department shall be eligible to receive new uniforms annually purchased by the City of Orange Cove, ~~in an amount not to exceed \$300~~. Employees will be eligible to ~~purchase~~ receive a safety jacket not to exceed \$150. Employees hired prior to January 1, 2014, will have the amount reported to CalPERS. *In accordance with the City Personnel Rules, employees in the Public Works Department shall have uniforms furnished to them, up to one clean City-prescribed uniform per workday per employee, and the City shall assume the entire uniform cost, not to exceed five uniforms per year.*

*Regular full-time employees covered under this Memorandum of Understanding employed at the Police Department shall receive a uniform allowance of \$900. per year.*

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<sup>4</sup> There is a possible issue in union's proposed language that may require investigation before a change to 'City-provided' from 'City-reimbursed' which is the language referencing that the reimbursements made to employees hired prior to January 1, 2014, will be reported to CalPERS. If the City's contract with CalPERS establishes that the uniform allowances must be reported as income for purposes of retirement calculations and does not allow a structural change without also modifying that contract, restructuring the reimbursement to a City-provided benefit might be difficult.



b. Safety Equipment Allowance

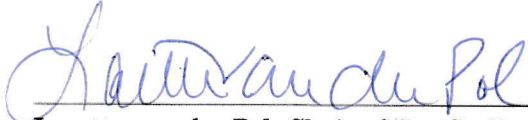
Each employee in the Public Works Department shall be eligible for an allowance of ~~\$275~~ \$300 per year for required safety footwear as a safety equipment allowance. Safety footwear is required. ~~The \$275 allowance will be paid directly to the employee.~~

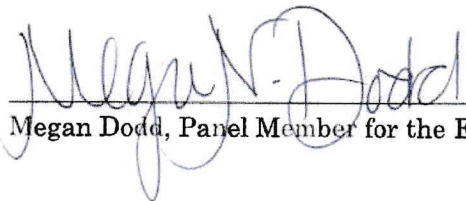
As the witness Mr. Rivera testified, there are six (6) employees who are in the Standby rotation, each of whom is assigned the Standby Duty every six (6) weeks, so City-provided uniforms for seven (7) day workweeks every six weeks should not be necessary for purposes of maintaining clean, professional and hygienic appearances.

CONCLUSION

The Chair is hopeful that this recommendation does not impede or impair the ability of the parties to have productive negotiations going forward.

Respectfully submitted April 28, 2023,

  
\_\_\_\_\_  
Loretta van der Pol, Chair of Factfinding Panel

  
\_\_\_\_\_  
Megan Dodd, Panel Member for the Employer

Concur  
 Dissent (Attached)

\_\_\_\_\_  
Laura LeSieur, Panel Member for the Union

Concur  
 Dissent (Attached)

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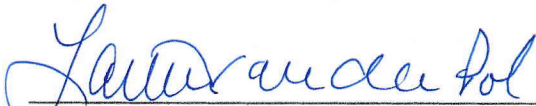
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CONCLUSION

The Chair is hopeful that this recommendation does not impede or impair the ability of the parties to have productive negotiations going forward.

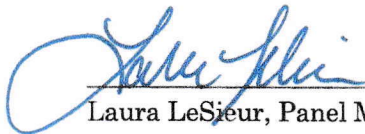
Respectfully submitted April 28, 2023,



Loretta van der Pol, Chair of Factfinding Panel

\_\_\_\_\_  
Megan Dodd, Panel Member for the Employer

\_\_\_\_ Concur  
\_\_\_\_ Dissent (Attached)



Laura LeSieur, Panel Member for the Union

\_\_\_\_ Concur  
 Dissent (Attached)

## **EXHIBITS**

EXHIBIT A

Job Classification	Salary Step	Hrly Calc	Curent Monthly	Hr. Rate w/ 3% Increase	New Monthly	Difference In Monthly Salary	Current Annual Salary	Annual Salary w/ 4% Increase
Public Works Supervisor	Step E	\$29.70	\$5,148.00	\$30.59	\$5,302.44	\$154.44	\$61,776.00	\$63,629.28
City Clerk Executive Assistant	Step E	\$33.76	\$5,851.73	\$34.77	\$6,027.29	\$175.55	\$70,220.80	\$72,327.42
Maintenance Worker	Step A	\$15.80	\$2,738.67	\$16.27	\$2,820.83	\$82.16	\$32,864.00	\$33,849.92
Record Clerk I	Step E	\$22.54	\$3,906.93	\$23.22	\$4,024.14	\$117.21	\$46,883.20	\$48,289.70
Accounting Technician III	Step E	\$25.00	\$4,333.33	\$25.75	\$4,463.33	\$130.00	\$52,000.00	\$53,560.00
Maintenance Worker	Step C	\$17.42	\$3,019.47	\$17.94	\$3,110.05	\$90.58	\$36,233.60	\$37,320.61
Maintenance Worker	Step E	\$19.94	\$3,456.27	\$20.54	\$3,559.95	\$103.69	\$41,475.20	\$42,719.46
Records Clerk I	Step A	\$16.83	\$2,917.20	\$17.33	\$3,004.72	\$87.52	\$35,006.40	\$36,056.59
Maintenance Worker	Step E	\$19.94	\$3,456.27	\$20.54	\$3,559.95	\$103.69	\$41,475.20	\$42,719.46
Account Clerk I	Step D	\$18.79	\$3,256.93	\$19.35	\$3,354.64	\$97.71	\$39,083.20	\$40,255.70
Maintenance Worker	Step E	\$19.94	\$3,456.27	\$20.54	\$3,559.95	\$103.69	\$41,475.20	\$42,719.46
Senior Accounting Technician	Step C	\$25.64	\$4,444.27	\$26.41	\$4,577.59	\$133.33	\$53,331.20	\$54,931.14
Chief Water Operator	Step E	\$36.08	\$6,253.87	\$37.16	\$6,441.48	\$187.62	\$75,046.40	\$77,297.79
Waste Water Operator II	Step E	\$28.60	\$4,957.33	\$29.46	\$5,106.05	\$148.72	\$59,488.00	\$61,272.64
*Street Sweeper	Step B	\$21.09	\$3,655.60	\$21.72	\$3,765.27	\$109.67	\$43,867.20	\$45,183.22
						<b>\$1,825.56</b>	<b>\$730,225.60</b>	<b>\$752,132.37</b>
								<b>\$21,906.77</b>

**EXHIBIT B**

# MEMORANDUM OF UNDERSTANDING

**By and Between**

**The City of Orange Cove**

**And**

**THE INTERNATIONAL UNION OF  
OPERATING ENGINEERS  
STATIONARY ENGINEERS, LOCAL 39**



**2019 - 2022**

19. Waiver.

An employee who chooses not to exercise his/her right to appeal a Final Notice of Discipline imposing Significant Discipline consistent with the terms and conditions of this Section 14 shall be barred from appealing the imposition of such discipline in superior or district court for failure to exhaust administrative remedies. This shall include any employee who chooses to prematurely terminate appeal proceedings before the Hearing Officer has issued the Notice of Decision.

20. Written Reprimands

Written reprimands may be appealed to the City Manager, in a meeting with the employee and, if requested by the employee, Union representative. The City Manager's decision will be given in writing and will be final.

21. AWOL Terminations

An employee terminated for an absence without leave pursuant to the Personnel Rules has the right to appeal the termination through the appeal procedure set forth above.

**ARTICLE 6**  
**SALARIES**

**A. SALARIES**

Salary ranges for bargaining unit employees will be listed in a salary schedule to be attached as Appendix A. Effective July 1, 2019 there will be a 2 % cost of living increase.

The City agrees to meet with the Union no later than May 1, 2020, to review and implement a salary increase of not less than three percent (3%) and not more than five percent (5%). The Union acknowledges that salary increases will be subject to the City's budget.

Effective July 1, 2020, the City will add a Maintenance Worker III (Step A will start at Step C of the Maintenance Worker II). The recruitment will be competitive.

On or about March 2020, the City and Union will meet to review the possible salary restructuring for all Maintenance classifications. Change will be subject to the City's budget.

However, in the last pay period of each fiscal year any unused CTO which is not carried over to the next fiscal year will be cashed out by the City at the employee's base rate of pay.

2. The employee may accrue a CTO balance not to exceed eighty (80) hours. Employees may carry over a maximum of eighty (80) hours of their CTO balance to the next fiscal year, and the employee will not be allowed to accrue any additional CTO until the carried over balance is below eighty (80) hours. A request for carry over of hours, including the number of hours to be carried over, must be submitted in writing to the department/division no later than May 30 of each year.
3. Employees who have reached the maximum eighty (80) hour accrual shall be given cash payment for additional overtime hours worked until such balance has been reduced below the maximum allowable amount of eighty (80) hours.
4. CTO shall be accumulated at the applicable straight time, time and one-half, or double time rate for the time worked.
5. The use of accumulated CTO shall be requested, and subject to approval, the same as is vacation.

#### **D. STANDBY PAY**

Employees may be assigned standby duty on a rotating basis at the discretion of management. An employee assigned standby duty will be required to carry a pager or City cell phone and shall refrain from consuming alcohol or taking any substance which may impair the employee's ability to perform all required duties. Employees on standby duty are required to respond, and shall report to the work site within one hour of being paged. Standby pay shall be \$2.25 per hour.

Time spent on standby duty shall not be considered hours worked, and standby pay shall not be included in the calculation of an employee's regular rate of pay under the Fair Labor Standards Act. In the event an employee on standby duty is required, and does report to the work site after leaving the assigned work area for the day, the employee will be compensated as provided in the Call Back section of this Agreement.

In the event an employee on standby duty responds to a telephone call regarding City work, but does not report to the work site, the employee shall be compensated as provided in the Telephone Call section of this Agreement and not pursuant to the Call Back section.

2. **Definitions:** For the purpose of this Section, the term "certification" means a diploma or other document (certificate) issued by an agency acceptable to the City Manager stating that the person to whom the certificate was issued has successfully completed the course of study and has demonstrated the knowledge and skills necessary to perform the work described in the certificate.

**C. UNIFORM ALLOWANCE**

**a. Uniform Allowance**

Each employee in the Public Works Department shall be eligible to receive new uniforms annually purchased by the City of Orange Cove, in an amount not to exceed \$300. Employees will be eligible to purchase/receive a safety jacket not to exceed \$150. Employees hired prior to January 1, 2014, will have the amount received reported to CalPERS.

**b. Safety Equipment Allowance**

Each employee in the Public Works Department shall be eligible for an allowance of \$275 per year for required safety footwear as a safety equipment allowance. Safety footwear is required. The \$275 allowance will be paid directly to the vendor.

**ARTICLE 12  
JOB DESCRIPTIONS**

**A. NEW OR REVISED JOB DESCRIPTIONS**

It is recognized that the establishment of new or revised job classifications within the Unit covered by this Agreement may be warranted because of changes in job content or services offered by the City. Under such circumstances, the City shall prepare and submit to the Union the proposed descriptions and proposed appropriate rate ranges for such job classifications as will have been determined to be within the Unit covered by this Agreement. Upon request of the Union and where legally required, the Union and the City will meet and confer over the job descriptions and/or proposed salary changes.



# EXHIBIT C

For the Meeting of July 27, 2022



## CITY OF ORANGE COVE REPORT TO THE CITY COUNCIL

**To:** Orange Cove City Council  
**From:** Megan Dodd, City Attorney  
**Subject:** 3.5% COLA for OCPOA  
**Attachments:** Acceptance Email from OCPOA

### RECOMMENDATION:

Staff recommends that City Council approve the 3.5% Cost-of-Living Adjustment (COLA) for members of the Orange Cove Police Officers Association (OCPOA).

### BACKGROUND:

The Memorandum of Understanding with the Orange Cove Police Officers Association called for a 3-6% COLA in 2021, if budgeting permits. City staff is recommending that the Council approve a 3.5% COLA retroactive to 2021 for the OCPOA. OCPOA has already agreed (as indicated in the attached email) to the 3.5% COLA.

### FISCAL IMPACT:

Annual fiscal impact is \$34,657.

### CONFLICT OF INTEREST:

None.

Prepared by: City Attorney \_\_\_\_\_

Approved by: Megan Dodd \_\_\_\_\_

REVIEW: City Manager:  \_\_\_\_\_

Finance: \_\_\_\_\_

City Attorney: \_\_\_\_\_

TYPE OF ITEM:	COUNCIL ACTION:	APPROVED	DENIED	NO ACTION
<input type="checkbox"/> Consent				<input type="checkbox"/> Public Hearing
<input type="checkbox"/> Info Item				<input type="checkbox"/> Matter Initiated by a Council Member
<input checked="" type="checkbox"/> Action Item				<input type="checkbox"/> Other
<input type="checkbox"/> Department Report				<input type="checkbox"/> Continued to: _____
<input type="checkbox"/> Redevelopment Agency				

# EXHIBIT D

## SIDE LETTER AGREEMENT

BETWEEN

LOCAL 39

AND

THE CITY OF ORANGE COVE

For the July 1, 2019 to June 30, 2022 MOU

The City of Orange Cove ("City") and the International Union of Operating Engineers Stationary Engineers, Local 39 ("Local 39") hereby enter into this Side Agreement to amend the Memorandum of Understanding ("MOU") between the City and Local 39.

### Article 6. Salaries

The City will provide a Cost of Living Adjustment to Local 39 salaries of 3%, effective July 1, 2021.

Except as amended herein, each and every term and condition of the MOU shall remain in full force and effect, and this Side Letter Agreement shall be incorporated into the MOU as adopted.

Agreed this \_\_ day of June, 2022.

For the City:

\_\_\_\_\_  
Megan Dodd, City Attorney

\_\_\_\_\_  
Rudy Hernandez, City Manager

For Local 39:

\_\_\_\_\_

## **EXHIBIT E**

### **City of Orange Cove ("City") Proposal Local 39 Negotiations November 18, 2022**

Some portions of this proposal are in concept format; final language will be drafted as appropriate. This proposal is a comprehensive package/proposal. The provisions contained herein are not separate proposals, but are part of a package, which ultimately for final approval by the City Council, must be accepted in its entirety or it shall be deemed rejected. MOU language not changed in this comprehensive proposal shall remain unchanged; however, language that has sunset will be deleted. This proposal is not retroactive and is effective on a go forward basis.

1. Salaries - 3% base wage increase effective the first full pay period following City Council approval of the new MOU.
2. Term- one year from and following City Council approval of the new MOU.
3. Access - List of New Employees:  
If on file in the City's payroll system and if the employee has not opted out pursuant to the attached opt out form, the City will supply the Union, in electronic format, with the names, job titles, departments, work locations, work, home, and personal cellular telephone numbers, home addresses, and personal email addresses of each new employee within 30 days of hiring the employee, and once quarterly for all employees in the bargaining unit.

## EXHIBIT F



**Date:** March 8, 2023  
**To:** Mayor and City Council  
**From:** Rudy Hernandez, Interim City Manager  
**Subject:** Status on FY 2023-24 and FY 2024-25 General Fund Budgets  
**Attachments:** None

### BACKGROUND:

Staff has started working on the FY 2023-24 budget and sees a potential financial crisis ahead which must be dealt with as part of the FY 2023-24 budget process.

General Fund Financial Deficit Beginning FY 2023-24: (\$400,101)

At the end of the FY 2022-23 Budget process, staff's projected General Fund Financial Deficit for FY 2023-24 is **(\$400,101)**.

### Contributing Factors:

- A. No More Land Sales – Over the past several years, the City's General Fund was balanced on Land Sales.
- B. No Future Grants – Past Budgets also used grants to address General Fund Financial Deficits. Currently, there are no grants available to help address the General Fund Financial Deficits.
- C. Housing Market – At the end of calendar year 2021, the housing market looked promising which was going to bring in new housing to the City of Orange Cove. Projected New General Revenues were somewhere between \$400,000 – 450,000 (Parcel Taxes, Property Taxes, Building Permits, and Plan Check Fees). Unfortunately, over the past year, mortgage rates have doubled going from 3.5% to 7% which has resulting in some developers not building homes. Reason: With mortgage rates at 7%, it might be difficult to sell homes.
- D. Inflation – Cost of Operating Expenses has increased substantially such as electricity, gasoline, and other supplies and services.
- E. Over the past year, health insurance expenses have risen substantially and are expected to continue rising.
- F. Lack of Commercial development – In order to expand its revenue base, the City needs to pursue economic development such big grocery store, gas stations, pharmacy, and other retail stores.
- G. Failed Parcel and Utility Tax Measures – The City has attempted to raise it revenues base by increasing its parcel and user taxes. Unfortunately, all 3 recent tax ballot measures have failed.

General Fund Financial Deficit Ending FY 2023-24: (\$550,000 -650,000)

Contributing Factors:

- A. Mandatory Payment of Cost-of-Living Adjustments (COLA's) over several years - Projected cost is \$150,000 (This assumes we lose arbitration).
- B. Potential Litigation - \$100,000 (This is only an estimate but could be a lot higher).

General Fund Financial Deficit Ending FY 2024-25: (\$800,000 -1,000,000)

Contributing Factors:

- A. Cost of Living Adjustments (COLA's) are not one-time expenditures, they are reoccurring. The estimated cost for the General Fund is \$150,000.
- B. Measure O Parcel Tax will expire at the end of FY 2023-24. The City will attempt to ask voters to vote on continuing this public safety tax revenue. If this new parcel tax measure fails, the General Fund deficit will grow by \$200,000.

MITIGATING (ADDRESSING GENERAL FUND FINANCIAL DEFICITS):

- A. Eliminate or reduce discretionary spending as shown below:
  - Cancel all future travel/conferences unless grant reimbursable.
  - Cancel all Capital Improvement Projects that are funded by General Fund.
  - Consider reducing office hours to reduce the cost of utilities.
  - Implement a voluntary or involuntary work furlough program.(Might be a meet and confer item with the union).
  - Reduce or eliminate overtime.
  - Health insurance plan cost have recently gone up. It is time to reevaluate health insurance plans that are less costly.
  - Reduce or eliminate EDIS plan that pays employee annual health insurance deductibles. Very few cities offer this health insurance benefit.
- B. Continue trying to raise revenue by increasing utility users' tax or Parcel Taxes.
- C. Aggressively continue to bring in commercial developments.
- D. Form an Ad Hoc Committee (Budget Committee) to come up with options to address the General Fund Financial Deficits.
- E. Consider a Cannabis store to increase revenues.
- F. Review personnel staffing levels (May be a meet and confer item).
- G. Consider outsourcing services.
- H. Put everything on the Table.

RECOMMENDATION:

The City Council provide staff with direction.

Prepared by: Rudy Hernandez

Approved by: 

REVIEW: City Manager: \_\_\_\_\_

Finance: \_\_\_\_\_

City Attorney: \_\_\_\_\_

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TYPE OF ITEM:	COUNCIL ACTION:	APPROVED	DENIED	NO ACTION
<input type="checkbox"/> Consent	<input type="checkbox"/> Public Hearing			
<input type="checkbox"/> Info Item	<input type="checkbox"/> Matter Initiated by a Council Member			
<input checked="" type="checkbox"/> Action Item	<input type="checkbox"/> Other			
<input type="checkbox"/> Department Report	<input type="checkbox"/> Continued to: _____			



**RESOLUTION NO. 2023-12**

**A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF ORANGE COVE ADOPTING BUDGET AMENDMENT NO.1 AMENDING THE FY 2022-23 GENERAL  
FUND ADOPTED BUDGET.**

WHEREAS, the City Council of the City of Orange Cove has reviewed the anticipated revenues and the proposed expenditures for the 2022-23 fiscal year; and

WHEREAS, the City Council of the City of Orange Cove has, as a result of the review, identified those programs and expenditures, which would be most beneficial to the needs of the City of Orange Cove.

WHEREAS, the City Council of the City of Orange Cove has determined that due to unforeseen circumstances projected land sales of \$347,000 will not be received in FY 2022-23 and wishes to reduce projected General Fund revenues by \$347,000.

NOW, THEREFORE BE IT RESOLVED, by the City Council of the City of Orange Cove that the FY 2022-23 General Fund Revenue Budget be reduced by the amount of \$347,000 for fiscal year 2022-23 and is hereby approved as shown in attachment A.

This Resolution was adopted by the City Council of the City of Orange Cove at a meeting held on March 22, 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

\_\_\_\_\_  
Diane Guerra Silva, Mayor

ATTEST:

APPROVED AS TO FORM

\_\_\_\_\_  
June Bracamontes, City Clerk

\_\_\_\_\_  
Megan Dodd, City Attorney

## EXHIBIT H

# Stationary Engineers, Local 39

INTERNATIONAL UNION OF OPERATING ENGINEERS AFL-CIO



**BART FLORENCE**  
BUSINESS MANAGER-RECORDING SECRETARY

January 17, 2023

*Sent via U.S. Certified Mail  
# 7022 1670 0001 2526 1356  
and via email: rudy@cityoforangecove.com*

Rudy Hernandez, City Manager  
City of Orange Cove  
633 Sixth Street  
Orange Cove, CA 93646

Re: Notice of Impasse

Dear Mr. Hernandez:

The International Union of Operating Engineers, Stationary Engineers Local 39, is declaring that negotiations over a successor Memorandum of Understanding (MOU) are at impasse. The remaining unresolved issues for Local 39 are as follows:

### **Article 6. Salaries**

The Union maintains the City's proposal is below market as well as below comparable agencies.

### **Article 9. D. Standby Pay**

Increase from two dollars and twenty-five cents (\$2.25) to two dollars and fifty cents per hour.

### **Article 11. C. Uniform Allowance**

In accordance with the City Personnel Rules employees in the Public Works Department shall have uniforms furnished to them, up to one clean City-prescribed uniform per workday per employee, and the City shall assume the entire uniform cost.

Regular full-time employees covered under this Memorandum of Understanding employed at the Police Department shall receive a uniform allowance of \$900 per year.

Boot Allowance increase from two hundred and seventy-five dollars (\$275) to three hundred dollars (\$300) per year.



**18. Term**

The term of the agreement is dependent on the economics of the agreement.

Local 39 requests to schedule this meeting as soon as possible. Please provide dates the City is available to meet.

Sincerely,

A handwritten signature in blue ink that reads "Jennifer Osborn". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Jennifer Osborn  
Business Representative

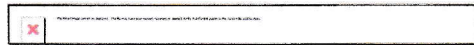
cc: Brandy Johnson, Director of Public Employees, Local 39  
Laura LeSieur, District Representative, Local 39  
Shelline Bennett, City Attorney

**From:** Shelline K. Bennett <sbennett@lcwlegal.com>  
**Sent:** Monday, April 24, 2023 11:38 AM  
**To:** Shelline K. Bennett  
**Subject:** FW: Proposed Opt Out Form  
**Attachments:** 047 Union Employee Information Form.pdf

**From:** Shelline K. Bennett <sbennett@lcwlegal.com>  
**Sent:** Tuesday, November 1, 2022 10:32 AM  
**To:** josborn@local39.org  
**Cc:** rudy@cityoforangecove.com; jvb@cityoforangecove.com  
**Subject:** Proposed Opt Out Form

Jennifer – June assisted with modifying the sample I sent you for Orange Cove. Please see attached. We can discuss at our next meeting. Shelline

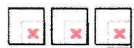
Shelline K. Bennett | Partner



5250 North Palm Avenue, Suite 310  
 Fresno, CA 93704

tel: 559.256.7800 | dir: 559.256.7810  
 fax: 559.449.4535

sbennett@lcwlegal.com | vCard | Bio | Website



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# CITY OF ORANGE COVE

## Union Information Form

The City is required by law to provide exclusive employee organizations, and/or any labor organization seeking representation rights, with the name, job title, department, work location, work phone, home phone, personal cell phone, personal email address and home address of newly hired employees within 30 days of hire or by the first pay period of the month, and for all employees in the bargaining unit at least every 120 days. (Gov. Code § 3555 to 3559)

Union/Association: \_\_\_\_\_

### EMPLOYEE EMPLOYMENT INFORMATION

Name: \_\_\_\_\_

Position/Title \_\_\_\_\_

Department/ Division: \_\_\_\_\_

Work Phone: \_\_\_\_\_

### EMPLOYEE PERSONAL CONTACT INFORMATION

An employee may request in writing that certain information (home address, home telephone number, personal cell phone, personal email address, or birth date) not be disclosed to the employees' Union, observing an employee's right to privacy in compliance with California Public Records Act. (Gov. Code Section 6253.2 and 6243.3) **If you wish to opt out of the Union disclosure as described, via written request, please indicate so by checking this box.**

**If you wish to disclose the following personal contact information, please complete the following section:**

Home Address: \_\_\_\_\_

Home Phone: \_\_\_\_\_ Personal Cell Phone: \_\_\_\_\_

Personal Email: \_\_\_\_\_ Date of Birth: \_\_\_\_\_

Employee Signature \_\_\_\_\_ Date: \_\_\_\_\_

City of Orange Cove  
 Overview of Competitiveness Within the Labor Market  
 Above, Below, Competitive

JOB TITLE	Orange Cove Salary	Market Median Salary	Orange Cove to Market Median %	Top Step to the Median of Market
Account Clerk I	\$3,417.54	\$4,014.00	-14.87%	Below
Accounting Clerk II	\$3,767.61	\$4,392.00	-14.22%	Below
Accounting Technician III/Deputy City Clerk	\$4,333.37	\$6,016.00	-27.97%	Below
Senior Accounting Technician	\$4,899.13	\$5,594.00	-12.43%	Below
Building Official	\$4,690.50	\$5,544.00	-15.39%	Below
City Clerk/Executive Assistant	\$5,852.08	\$7,384.00	-20.75%	Below
Maintenance Worker I	\$3,456.44	\$4,107.00	-15.85%	Below
Maintenance Worker II	\$3,837.60	\$4,475.00	-14.25%	Below
Police Record Clerk I	\$3,546.61	\$3,857.00	-8.05%	Below
Police Record Clerk II	\$3,907.28	\$4,178.00	-6.48%	Below
Public Works Superintendent	\$8,298.99	\$8,210.00	-1.08%	Competitive
Public Works Supervisor	\$4,902.66	\$6,925.00	-29.20%	Below
Water Operator I	\$4,498.00	\$4,396.00	2.32%	Competitive
Water Operator II	\$4,957.33	\$4,887.00	1.44%	Competitive
Water Operator III	\$5,465.20	\$5,521.00	-1.01%	Competitive
Water/Wastewater Chief Plant Operator	\$6,252.13	\$6,104.00	2.43%	Competitive
Wastewater Treatment Plant Operator I	\$4,498.00	\$4,372.00	2.87%	Competitive
Wastewater Treatment Plant Operator II	\$4,957.33	\$4,826.00	2.73%	Competitive
Wastewater Treatment Plant Operator III	\$5,465.20	\$5,193.00	5.25%	Above
Wastewater Treatment Plant OIT	\$3,499.60	\$3,840.00	-8.86%	Below

EXHIBIT J

## **EXHIBIT K**

Tokens of appreciation or modest gifts given in appreciation for services rendered such as flowers, candy, homemade foods and similar items may be accepted on behalf of the entire affected City Department subject to the employee immediately notifying his/her supervisor and placing the item in a common area of the employee's Department to be shared and/or appreciated by all Department employees.

### **3.10 Personal Conduct**

Employees may not engage in off-duty conduct which violates the Conflicts of Interest/Outside Employment Policy in these Personnel Rules, undermines the employee's or the City's credibility with the public, or impacts the employee's job performance.

### **3.11 Smoking**

Smoking shall not be permitted inside any workplace, meeting room, classroom, or restroom of any City facility, or within twenty (20) feet of main entrances, exits, and operable windows of any City building. Smoking shall not be permitted in any City vehicle.

### **3.12 Dress and Grooming Standards**

The professional atmosphere and the image of the City is maintained, in part, by the image that employees present to the public. Employees of the City are required to dress appropriately for the jobs they are performing. Failure to follow the dress standards contained in this section shall be grounds for discipline.

1. All clothing must be neat, clean and in good repair.
2. Prescribed uniforms and safety equipment must be worn when required.
3. Footwear must be appropriate for the work environment and functions or duties being performed.
4. Hair must be neat, clean and well groomed.
5. Beards, mustaches and sideburns must be maintained in a neat and well-groomed fashion.
6. Reasonably-sized jewelry is acceptable except in areas where it constitutes a health or safety hazard.
7. Good personal hygiene is required.
8. Dress must be appropriate to the work setting, particularly if the employee deals with the public.

# EXHIBIT L

Isvanderpol@outlook.com

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**From:** Shelline K. Bennett <sbennett@lcwlegal.com>  
**Sent:** Monday, April 24, 2023 11:16 AM  
**To:** Shelline K. Bennett  
**Subject:** FW: Negotiations

**From:** Shelline K. Bennett <sbennett@lcwlegal.com>  
**Sent:** Thursday, January 12, 2023 9:41 AM  
**To:** josborn@local39.org  
**Cc:** rudy@cityoforangecove.com  
**Subject:** Negotiations

Hi Jennifer – I just tried to call you, but the only number I have for you is 233-0896, and it only rang – no voicemail.

I wanted to update you on where we are at with negotiations. The Council meeting went very late last night. The Council was updated with negotiations and Local 39's most recent proposal. Our direction remains the same as reflected in the City's most recent proposal of 11/18/22.

Of note, the City is very concerned about the financial uncertainties that are looming, including the sunset of Measure O; the Governor's recent budget announcement of an estimated budget deficit of \$22.5 billion; and the prospect of developers building new homes in the area as decreased significantly, especially with the significant increases in interest rates over the last year.

I will assume for now our meeting today at 10:00 is off calendar, and we will wait to hear how Local 39 would like to proceed.

Thank you. Shelline

Shelline K. Bennett | Partner



5250 North Palm Avenue, Suite 310  
Fresno, CA 93704

tel: 559.256.7800

fax: 559.449.4535

[sbennett@lcwlegal.com](mailto:sbennett@lcwlegal.com) | [vCard](#) | [Bio](#) | [Website](#)



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EXHIBIT M

IUOE, Stationary Engineers Local 39  
and  
City of Orange Cove

Article 11. Certifications and Pay Allowances

C. UNIFORM ALLOWANCE

a. Uniform Allowance

Each employee in the Public Works Department shall be eligible to receive new uniforms annually purchased by the City of Orange Cove, ~~in an amount not to exceed \$300.~~ Employees will be eligible to ~~purchase~~ receive a safety jacket not to exceed \$150. Employees hired prior to January 1, 2014, will have the amount received reported to CalPERS. In accordance with the City Personnel Rules employees in the Public Works Department shall have uniforms furnished to them, up to one clean City-prescribed uniform per workday per employee, and the City shall assume the entire uniform cost.

Regular full-time employees covered under this Memorandum of Understanding employed at the Police Department shall receive a uniform allowance of \$900 per year.

b. Safety Equipment Allowance

Each employee in the Public Works Department shall be eligible for an allowance of ~~\$275~~ \$300 per year for required safety footwear as a safety equipment allowance. Safety footwear is required. ~~The \$275 allowance will be paid directly to the vendor.~~

TENTATIVE AGREEMENT

Employer

Union

\_\_\_\_\_

\_\_\_\_\_

Date

Date

The Union reserves the right to alter, amend, modify, add to or subtract from the foregoing proposals as may be required during the course of negotiations

In the Matter of the Impasse Between

CITY OF ORANGE COVE,  
Employer

vs.

INTERNATIONAL UNION OF  
OPERATING ENGINEERS,  
STATIONARY ENGINEERS LOCAL 39,  
Union

PERB CASE NO. SA-IM-243-M

DISSENT IN PART OF PANEL MEMBER  
LAURA LESIEUR TO THE REPORT AND  
RECOMMENDATIONS OF  
THE FACTFINDING PANEL

DISSENT ISSUED APRIL 28, 2023

The undersigned concurs with the recommendations for uniform allowance, footwear allowance, and term, but respectfully dissents to the recommendations for wage increases, retroactive wage, and standby pay. We further dissent from facts that we do not believe are accurate in the recommendation including:

- That the June 2022 side letter was part of bargaining for a successor MOU;
- That the June 2022 side letter offered a rollover of the prior MOU;
- That the Union's position regard term of agreement was not made clear in the Union's proposal or during the hearing; and,
- The inclusion of Government Code section 3505.4(e) as criteria that factfinders shall consider in their decision making.

The City claimed during the factfinding hearing that it has a potential budgetary deficit, however, the Union believes that the City does have the money to pay employees in the Unit a 4% wage increase as proposed. Historically, the City has sold land to cover their General Fund obligations, but it withdrew these land sales in December 2022 causing a temporary delay in the sale, which coincided with mediation and factfinding for successor MOU negotiations, and may have caused a temporary, potential budget deficit.

In addition, the City testified that it had reserved in its budget a six percent (6%) wage increase, with three percent (3%) retro to July 2020 and three percent (3%) retro to July 2021, in case it lost at arbitration over grievances the Union filed. The arbitration decision recently awarded the Union three percent (3%) wage increases back to July 2021, leaving the City with the additional three percent (3%) wage increases plus retro wages in its reserves which would be an unexpected surplus in its budget.

Further, the Union asked on multiple occasions for the City to come to the bargaining table and negotiate in good faith for a successor MOU before the expiration of the prior MOU, the date of which was June 30, 2022. The City blatantly refused to negotiate in good faith with the Union. The first and only proposal the employer ever passed to the Union in negotiations happened in November 2022, and was for a 3% wage increase effective upon



City Council approval, with no retroactivity to the expiration of the previous agreement. This was clearly a calculated, bad faith delay in negotiations of over five (5) months.

Additionally, the Police Officers Association was given a 3.5% increase with retroactive wages for thirteen (13) months (Exhibit C). If the City can afford a 3.5% increase for employees who make higher wages than Local 39 members and provide retroactivity for over a year, then the Union sees no reason that we should not be given at least the same offer for our members.

The Union must dissent from the Factfinder's Recommendation regarding the wage increase and retroactivity to the date that the employer's one (1) and only proposal would have been adopted, as these terms have already been soundly rejected by the Union's membership. Further, the Union proposed, and testified to at factfinding, to a one (1) year term from July 1, 2022, to June 30 2023, with wages retroactive to July 1, 2022. The City refused to come to the table and negotiate in good faith which caused an unnecessary delay in negotiations. Any delay in negotiating a successor MOU was not the fault of the Union or its members.

We also dissent from the Factfinder's Recommendation that the June 2022 side letter was part of negotiations for a successor MOU. The side letter (Exhibit D) clearly states it is an offer of a 3% wage increase effective July 1, 2021, to be added to the MOU with the term of July 1, 2019 to June 30, 2022, with no proposed rollover of the prior MOU. To state that this was an offer made by the City in successor negotiations and that this offer included a proposed rollover of one year is simply not true.

The Union also dissents from the Factfinder's Recommendation regarding the Union's proposal for standby pay. The Union feels that the City should increase standby pay for our members as they are a small unit, the City has added additional duties for these workers to perform while they are on standby, and they are required to be available twenty-four (24) hours per day for seven days (7) every six (6) weeks. This impedes members' ability to leave town for any reason or be unavailable for any reason during their mandated week which rotates through only six (6) employees. We feel increasing the standby pay by \$0.25 is warranted and within the budget of the City.

Due to the above, the Union dissents from the Factfinder's Recommendation for wage increases of three percent (3%) retroactive to the original date of City Council approval and no increase to standby pay. Therefore, the City should at least provide what was provided to other employees and give Local 39 Union members a minimum of a three and a half percent (3.5%) wage increase retroactive to July 1, 2022, and an increase of \$0.25 in standby pay, in addition to, the recommendation made by the Factfinder to uniform, boot allowance and term of agreement.

Respectfully submitted:



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Laura LeSieur, Panel Member for the Union