

Lompoc City Council Agenda Item



City Council Meeting Date: August 20, 2013

TO: Laurel M. Barcelona, City Administrator

FROM: Beth Flamm-Overby, Human Resources Manager
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SUBJECT: Approval of Lompoc Police Officers' Association Settlement Agreement and Associated Appropriations (Case Nos. LA-CO-100-M; LA-CE-555-M; LA-CE-564-M; LA-CE-585-M)

Recommendation:

Staff recommends the City Council approve Resolution No. 5868(13) authorizing (i) the Settlement Agreement ("Agreement") between the Lompoc Police Officers' Association ("LPOA") and the City of Lompoc ("City") related to Case Numbers: LA-CO-100-M; LA-CE-555-M; LA-CE-564-M; LA-CE-585-M and (ii) the supplemental appropriations as necessary for that settlement.

Background:

During the years 2009 and 2010, the LPOA and City filed a total of four unfair labor practice charges against each other and the Public Employment Relations Board ("PERB") issued complaints on all four charges. Subsequently, a consolidated hearing was held in February 2011.

In May 2011, an Administrative Law Judge ("ALJ") issued a proposed decision to dismiss all the charges between the parties, except for the LPOA's claims set forth in the Unfair Practice Charge LA-CE-585-M that the City violated the Meyers-Milias-Brown Act ("MMBA"), Government Code sections 3503, 3506, and 3509(b), by unilaterally implementing a salary reduction without negotiating the salary reduction methodology with the LPOA.

The ALJ found although a "make whole" remedy was appropriate in light of its finding the City had violated the MMBA, the "make whole" remedy was limited to the non-sworn unit members and did not extend to the sworn unit members because they were excluded from PERB's jurisdiction under Government Code section 3511.

As a result, each party filed exceptions to the ALJ's proposed decision, and the LPOA requested oral argument. On May 2, 2013, PERB granted LPOA's request for oral argument and it was heard on June 13, 2013, directed at the following limited issue:

In light of Government Code section 3511, does PERB have the authority to issue a remedial order applicable to a (mixed) bargaining unit that includes non-peace officer and peace officer classifications? If so, what is the source and scope of PERB's authority; and what is the relevance of the peace officer exclusion as set forth in Government Code section 3511 as it applies to mixed units?

A final decision is pending.

Discussion:

Following the oral argument, the City and LPOA entered into a settlement agreement. The Agreement does not constitute an admission of wrongdoing, contract or statutory violation, or liability on the part of either party and is intended to be a compromise settlement of the matters set forth in the above referenced PERB charges. The following is a paraphrased outline of the consideration for the Agreement:

- The parties will withdraw their charges and appeals with prejudice, as well as their request for oral argument.
- The City will pay to each of the 65 affected LPOA unit members, back wages in an amount equal to 62.5 percent of the total 10.769 percent amount deducted from their paychecks during the period January 2010 to June 2010. (The total dollar amount deducted was equal to \$122,636.43.)
- The City will pay directly to each of the 65 affected LPOA unit members an additional payment of \$115.38 for attorney fees reimbursement.
- The City will pay a total of \$42,500 for attorneys' fees to "Lackie, Dammeir, McGill & Ethir, APC Client Trust Account."

Fiscal Impact:

The total dollar amount related to the settlement is \$238,056.13. This total includes \$130,136.13 payable to 65 members of the LPOA bargaining unit. The payment of the settlement is considered compensation for purposes of Federal Income Tax, State Income Tax and California Public Employee Retirement System (PERS) contribution purposes. As such, all deductions, taxes, and City-provided benefits attributable to compensation such as Worker's Compensation, Medicare, PERS employer and employee contributions will be charged as appropriate at the time the settlement payments are generated at rates in effect at the time of payment under the Agreement. The total costs of benefits and insurance other than costs directly related to the settlement are approximately \$65,420. Attorneys' fees of \$42,500 are not

compensation and the FY 2013-15 Budget has appropriations available for such costs. The funding source for the remaining appropriations is from General Fund Reserves. Resolution No. 5868(13) provides for the supplemental appropriations as necessary for this settlement.

Conclusion:

In the interest of promoting harmonious labor relations between LPOA and the City, and to avoid uncertainty, inconvenience, and expense of litigation, and in consideration of the mutual promises and releases contained in the Agreement, the City and LPOA want to settle this matter as described in the Agreement, subject to final approval by City Council.

Respectfully submitted,

Beth Flamm-Overby, Human Resources Manager

APPROVED FOR SUBMITTAL TO THE CITY COUNCIL:

Laurel M. Barcelona, City Administrator

- Attachments: 1) [State of California Public Employment Relations Board Lompoc Police Officers' Association v. City of Lompoc Case Nos. LA-CO-100-M; LA-CE-555-M; LA-CE-564-M; LA-CE-585-M - Settlement Agreement](#)
2) [Resolution No. 5868\(13\)](#)