

STATE OF CALIFORNIA
PUBLIC EMPLOYMENT RELATIONS BOARD



LOMPOC POLICE OFFICERS' ASSOCIATION,

Appellant,

v.

CITY OF LOMPOC,

Respondent.

Case Nos. LA-CO-100-M; LA-CE-555-M; LA-CE-564-M; LA-CE-585-M

SETTLEMENT AGREEMENT

This Mutual Release and Settlement Agreement ("AGREEMENT") is made and entered into between the Lompoc Police Officers' Association ("POA") and the City of Lompoc ("CITY"), collectively referred to herein as the PARTIES.

WHEREAS, the POA is the exclusive representative (within the meaning of the Meyers-Milias-Brown Act ("MMBA"), Government Code section 3500, et seq.) for both certain sworn and certain non-sworn employees assigned to work in the City's Police Department;

WHEREAS, the PARTIES each filed a total of four unfair practice charges against each other in 2009 and 2010 (*i.e.*, LA-CO-100-M, LA-CE-555-M, LA-CE-564-M, and LA-CE-585-M);

WHEREAS, the Public Employment Relations Board ("PERB") issued complaints on all four charges;

WHEREAS, PERB consolidated the cases for purposes of hearing, and a hearing was held on all four cases over three days in February 2011;

WHEREAS, an administrative law judge ("ALJ") issued a proposed decision in May 2011 that dismissed all the charges between the PARTIES, except for the POA's claim set forth in Unfair Practice Charge LA-CE-585-M that the CITY violated the MMBA, Government Code sections 3503, 3506, and 3509(b), by unilaterally implementing a salary reduction without negotiating the salary reduction methodology with the LPOA;

WHEREAS, the ALJ found that although a "make whole" remedy was appropriate in light of his finding that 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;

WHEREAS, the PARTIES each filed exceptions to the ALJ's proposed decision, and the POA requested oral argument;

WHEREAS, on May 2, 2013, PERB granted the POA's request for oral argument, set oral argument for June 13, 2013, and directed oral argument on 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?

WHEREAS, on June 13, 2013, PERB heard oral argument on the above issue, with a final decision pending;

NOW THEREFORE, in the interest of promoting harmonious labor relations between the PARTIES and to avoid the uncertainty, inconvenience, and expense of litigation, and in consideration of the mutual promises and releases contained herein and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the PARTIES agree as follows:

1. This AGREEMENT does not constitute an admission of wrongdoing, contract or statutory violation, or liability on the part of any party to this AGREEMENT.
2. This AGREEMENT is intended to be a compromise settlement of the matters set forth in the above referenced PERB charges.
3. In consideration for this AGREEMENT, and upon execution of this AGREEMENT, the POA agrees to the following:
 - a. The POA will withdraw with prejudice Unfair Practice Charge Nos. LA-CE-555-M, LA-CE-564-M, and LA-CE-585-M, and will notify PERB and the City via email of its withdrawals;
 - b. The POA will withdraw with prejudice its appeal of the ALJ's Proposed Decision, and notify PERB and the City via email of its withdrawal;
 - c. The POA will withdraw its request for oral argument, and notify PERB and the CITY via email of its withdrawal within twenty-four (24) hours of the PARTIES' execution of this AGREEMENT;

- d. The POA will not file any complaints or lawsuits based on the allegations set forth in any of the above-referenced matters. Should any such complaints or lawsuits already be filed, the POA will dismiss them with prejudice.
4. In consideration for this AGREEMENT, and upon execution of this AGREEMENT, the CITY agrees to the following:
 - a. The CITY will withdraw with prejudice Unfair Practice Charge No. LA-CO-100-M, and will notify PERB and the LPOA via email of its withdrawal;
 - b. The CITY will withdraw with prejudice its appeal of the ALJ's Proposed Decision, and notify PERB and the LPOA via email of this withdrawal.
 5. In further consideration for this AGREEMENT, the CITY agrees to pay the following, within thirty (30) days of the final approval of this AGREEMENT by the City Council:
 - a. To each of the sixty-five (65) affected POA unit members, back wages in an amount equal to 62.5% of the total 10.769% amount they had deducted from their paychecks during the period of January 2010 to June 2010. Each affected POA unit member will receive an individual amount equal to the specific amount deducted from their individual paychecks during the relevant period. The total amount deducted from the affected POA unit members as a whole amounts to one-hundred twenty-two, six-hundred thirty-six thousand dollars and forty-three cents (\$122, 636.43). In connection with this payment, the CITY shall deduct all required payroll deductions, including applicable federal, state, and local taxes, and the necessary PERS member contributions. The CITY shall also make its required PERS contribution; and
 - b. To each of the sixty-five (65) affected POA unit members, an additional payment of one-hundred fifteen dollars and thirty-eight cents (\$115.38). This payment to each affected POA unit member is in addition to the back wages described above in Section 5.a. This additional payment amounts to seven-thousand five-hundred dollars (\$7,500) in total. In connection with this payment, the CITY shall deduct all required payroll deductions, including applicable federal, state, and local taxes, and the necessary PERS member contributions. The CITY shall also make its required PERS contribution;
 - c. To the POA, a total of forty-two thousand five-hundred dollars (\$42,500) for attorneys' fees, which shall be paid as a lump sum in a check or warrant made payable to "Lackie, Dammeier, McGill & Ethir, APC Client Trust Account."
 6. This AGREEMENT represents a full and complete resolution of the claims and disputes between the parties based upon the above-referenced matters.

7. In the event that any of the PARTIES breach any of their obligations under this AGREEMENT, the PARTIES shall be entitled to pursue all remedies provided by law or equity. In such event, the PARTIES shall be responsible for their own attorneys' fees.

8. It is expressly understood and agreed that there are no claims or promises not expressed in this AGREEMENT and that the terms and conditions shall not be construed or deemed as an admission of liability on the part of the PARTIES released.

9. The undersigned affirm and acknowledge that they have read and understood the foregoing AGREEMENT.

10. No waiver by either the POA or the CITY of any breach of any term or provision of this AGREEMENT shall be construed to be, nor shall be, a waiver of any preceding, concurrent or succeeding breach of the same or any other term or provision of this AGREEMENT.

11. This AGREEMENT is executed and delivered in the State of California and the rights and obligations of the PARTIES hereunder shall be construed and enforced in accordance with the laws of the State of California. Any action or proceeding to enforce the agreement shall be commenced and maintained in Santa Barbara County, California.

12. This AGREEMENT is deemed to have been drafted jointly by the PARTIES. Any uncertainty or ambiguity shall not be construed for or against the PARTIES based upon attribution of drafting to either the POA or the CITY.

13. The PARTIES hereby agree to execute all such other documents and to take all such other action as may be reasonably necessary to effect the purposes of the AGREEMENT.

14. The undersigned PARTIES represent that they have read and understand the terms of this settlement and that they are authorized to execute this AGREEMENT on behalf of their principals.

15. The POA understands and agrees that this AGREEMENT shall bind and benefit its members, affiliates, agents, attorneys, representatives and assigns.

16. The POA represents that it has thoroughly discussed aspects of this AGREEMENT with appropriate representatives, that it has carefully read and fully understands all of the provisions of this AGREEMENT, and that it is voluntarily entering into this AGREEMENT and without coercion. No promise, inducement, or agreement not expressed herein has been made to the POA in connection with this AGREEMENT.

17. This AGREEMENT may be executed in counterparts. All executed copies are duplicate originals and are equally admissible in evidence.

For Appellant:

For Respondent:

Charles Strange, President
Lompoc Police Officers' Association



Laurel Barcelona
City Administrator


Date

8/13/13

Date

Approved as to Form and Content

Michael A. McGill
Lackie, Dammeier, McGill & Ethir APC
Attorneys for Appellant




Adrianna E. Guzman
Liebert, Cassidy Whitmore
Attorneys for Respondent

Date

8-12-13

Date

For Appellant:



Charles Strange, President
Lompoc Police Officers' Association

7-31-2013

Date

For Respondent:

Laurel Barcelona
City Administrator

Date

Approved as to Form and Content

Michael A. McGill
Lackie, Dammeier, McGill & Ethir APC
Attorneys for Appellant

Date

Adrianna E. Guzman
Liebert Cassidy Whitmore
Attorneys for Respondent

Date

For Appellant:

For Respondent:


Charles Strange, President
Lompoc Police Officers' Association

Laurel Barcelona
City Administrator

Date

Date

Approved as to Form and Content



Michael A. McGill
Lackie, Dammeier, McGill & Ethir APC
Attorneys for Appellant

Adrianna E. Guzman
Liebert Cassidy Whitmore
Attorneys for Respondent

8/12/13

Date

Date