FACTFINDING PROCEEDINGS
PURSUANT TO THE MEYER-MILIAS-BROWN ACT

CITY OF FREMONT, Public Agency, and FREMONT POLICE ASSOCIATION, Exclusive Representative.	PERB CASE NO. SF-IM-276-M FACTFINDING REPORT AND RECOMMENDATIONS FOR SETTLEMENT (December 1, 2025)

Chairperson:	Shawn P. Cloughesy, Arbitrator
Public Agency Panel Member:	David M. Persselin, Finance Director City of Fremont
Exclusive Representative: Panel Member:	Joe Higby, Labor Representative Fremont Police Association Rains Lucia Stern St. Phalle & Silver, PC
Representative for the Public Agency:	Charles D. Sakai, Attorney Sloan Sakai Yeung & Wong, LLP
Representative for the Exclusive Representative:	Peter A. Hoffmann, Attorney Rains Lucia Stern St. Phalle & Silver, PC

PROCEDURAL BACKGROUND

On September 29, 2025, the Fremont Police Association (Association) filed a Meyers-Milias-Brown Act (MMBA) Factfinding Request regarding its successor agreement negotiations with the City of Fremont (City) with the Public Employment Relations Board (PERB or Board). The request included the Association's August 12, 2025 Declaration of Impasse which, in effect, stated that the City's Last, Best and

Final Offer (LBFO) was inadequate. Specifically, the declaration stated in pertinent part:

> "[T]he City's proposal failed to make the compensation afforded to Fremont police officers competitive in the regional labor market, all but ensuring that the Department would continue to suffer from consistent turnover of experienced personnel."[1]

On October 1, 2025, PERB approved the factfinding request. On October 7, 2025, the parties notified PERB that they had selected the undersigned arbitrator as the factfinding panel chair (Chair). On October 8, 2025, the parties selected their factfinding panel members and on October 9, 2025, PERB notified the undersigned arbitrator that he had been selected as the Chair.

On October 17, 2025, the Chair held an organizational meeting where the agenda of the factfinding hearing was discussed and the factfinding hearing dates, briefing dates and factfinding report and recommendations for settlement (factfinding report) issuance date were finalized. The factfinding hearing was scheduled for November 6 and 7, 2025; the briefs were due on November 21, 2025; and the factfinding report would be issued on December 1, 2025. On October 20, 2025, the parties signed a written agreement to extend the statutory time frames found in Government Code sections 3505.4 and 3505.5 to accommodate this agreed schedule.

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[1] This section of the impasse request is quoted as it succinctly summarizes the overall argument of the Association in this matter.

The factfinding hearing was held and concluded on November 6, 2025. Both parties presented and submitted exhibits and evidence and discussed the issues in dispute. The parties agreed to augment the record on November 17, 2025.[2]

On November 21, 2025, the parties submitted their briefs to the Chair and the panel for their consideration.

STATEMENT OF THE ISSUE(S)

The parties presented eight negotiated subjects as issues in this matter which were part of their LBFOs: duration of the agreement, salary, salary survey for market adjustment formula, longevity pay, educational/certification incentive pay, double-time for overtime pay, shift differential, and lead worker premium.[3]

STATUTORY CRITERIA

Government Code Section 3505.4, subdivision (d) sets forth the statutory criteria that factfinders shall "consider, weigh, and be guided by" in arriving at findings and recommendations and provides:

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[2] Specifically, the City requested to add two exclusive representatives to the list of those who had accepted the same salary proposal set forth in the LBFO presented to the Association: Fremont Professional Firefighters, International Association of Firefighters, Local 1689; and the Battalion Chiefs, International Association of Firefighters, Local 1689. The Association requested that the number of vacancies of police officers be increased by one additional officer vacancy to reflect a recent officer's exit from the Fremont Police Department (FPD).

[3] The Health Benefit Allowance (HBA) increase of $100 on January 1, 2025 and $100 on January 1, 2026 was initially an issue of dispute because it was part of a package deal with the duration and salary increase proposal in the City's LBFO. Individually, the Association does not object to such proposal. As both the City and Association are in agreement to this proposal, it will not be considered as part of this factfinding report.

"(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 other 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 parties agree that the statutory criteria found in Government Code section 3505.4, subdivisions (d)(1), (2) and (3) are not applicable to this matter.

FINDINGS OF FACT

Background

The City of Fremont has a population of approximately 230,000 and is located in the southern portion of Alameda County. Alameda County is located between

San Mateo County to the north and Santa Clara County to the south. San Francisco County is to the west of Alameda County.

The Association exclusively represents a bargaining unit of employees with the classifications of police officer, police sergeant and police officer trainee. For the purposes of this factfinding report, the Chair will focus on the classifications of police officer (officer) and sergeant.

A. Police Officer Vacancy Issue

The FPD has approximately 160 officers and 31 sergeant positions authorized in its budget. Of those 160 officer positions, 122 positions are assigned to Patrol Operations, and 35 positions are assigned to Special Operations. There are 15 FPD officers within its field training program being trained by field training officers and 18 police trainees going through the police academy. Currently, there are 15 officer vacancies within FPD.[4]

Both the City and the Association find themselves in a labor market where there is greater demand for officers than a supply. As a result, some of the Bay Area law enforcement agencies compete for the same labor market pool of sworn personnel. When a law enforcement agency has a large number of vacancies in its sworn

[4] One of the exhibits submitted at the hearing was a March 31, 2023 memo from Fremont Police Chief Sean Washington (Chief Washington). In the memo, Chief Washington stated that the department had an officer vacancy rate of 10-12% over the last two years, and the impact of those vacancies was significant. The current number of vacancies, 15 officer positions, is a vacancy rate of 9.3% – a slight improvement from the prior years. The Association, however, claims that beyond the officer vacancies, additional officers are off work for workers compensation injuries – which compounds the officer vacancy rate problem further.

personnel ranks, the existing labor force of sworn officers has to work more shifts (overtime) to cover the minimum staffing needed to provide necessary law enforcement services to the public. Working extra shifts not only affects the City's general funds by the payment of overtime, but officers are placed under greater physical and psychological strain, which can lead to needless officer injuries which takes officers off work and compounds the vacancy cycle. This is the position that the City of Fremont and the Association find themselves in at least since 2021, if not earlier.

In the past five years, 21 officers have left FPD and were hired by other law enforcement agencies. Five of those police officers were hired by the San Francisco Police Department (SFPD), which boasts of its aggressive recruitment to hire lateral transfer officer candidates.

B. The Budget and Expected Revenues

FPD receives its funding through the City's general fund.[5] Of the City's general fund, 75% is spent on personnel costs. The City's general fund revenues are the City's discretionary funding capability. For example, the City budgets that it saves approximately $20 million from its general fund expenditure primarily by not filling vacant positions. The City does not allocate these savings for ongoing expenditures (such as salaries and benefits), but for one-time expenditures.

[5] Other departments that are funded by the City's general fund are the Fire Department and the Maintenance Operations Department, which maintains the City's streets, buildings and parks.

The City Council has established fiscal sustainability as a budgetary principle to limit compensation and benefit increases to levels that can be supported through the City's ongoing revenues. The City maintains two types of budgetary reserves—the General Fund Contingency Reserve and the Budget Uncertainty Reserve. In each fiscal year budget, the City sets aside 16.7% of the budget funds for the General Fund Contingency Reserve, which is the minimal percentage recommended by the Government Finance Officers Association. The General Fund Contingency Reserve is to provide immediate community assistance and ensure the continuity of services in the face of a major disaster. The Budget Uncertainty Reserve is set apart to deal with cyclic economic downturns and changes in the City's cost structure. By the end of May 2025, the amount of funds in the Budget Uncertainty Reserve fund had been reduced to $4.3 million.[6]

The City's general fund receives 80% of its revenue through property and sales tax. However, the City is limited by Proposition 13 in its collection of property taxes to only 2% of the assessed value of the property, unless there is a change in ownership or new construction. Over the last number of years, high interest rates have reduced the number of property sales, so the change in ownership of properties has been reduced. In fiscal year 2025-2026, the Alameda County Assessor estimated the change in ownership as to only 2.5% of properties within the City. The estimated 0.25% increase in the amount of property tax collected by new construction reflected

[6] At the end of fiscal year 2024-2025, the City had $6.7 million in its Budget Uncertainty Reserve which was reduced to $4.3 million due to higher than expected expenditures at the fiscal year-end.

the declining level of property development within the City. In July 2025, the Alameda County Auditor projected only a 5% increase in the net taxable assessed value of properties which was consistent with the City's projection of a budgeted 4.6% revenue growth from incoming property taxes.

Alameda County charges a 10.25% sales tax for transactions within the county (locally and over the internet). The City receives about 0.95% of the sales tax collected by the county. Of the sale tax, 33% is derived from the sales of automobiles/ transportation, 25% from business-to-business transactions and 25% from the purchase of consumer goods.

While the City collected larger amount of sales tax revenue in earlier fiscal years, the State of California (State) later determined that the City was provided a surplusage of sales tax revenue. As a result, the City had to dip into its Budget Uncertainty Reserve to repay the State. This, in part, helped drastically reduce the City Budget Uncertainty Reserve to $4.3 million by fiscal year 2025-2026. Prior to bargaining for successor memorandum of understandings (MOUs) for fiscal year 2025-2026,[7] the City estimated that its sales tax revenue forecast at a little over a 3% increase. As discussed later in this report, when bargaining began, those revenue projections decreased.

[7] All nine bargaining units MOUs, including the Association's MOU, expired on June 30, 2025.

Current/Expiring MOU (2022-2025) and Pertinent Bargaining History

In order to understand what the status quo was prior to the Association and the City beginning bargaining for a successor MOU, pertinent sections of the current/expiring MOU will be set forth:

A. Duration and Salary

The City and the Association are parties to an MOU with a duration term of July 1, 2022 through June 30, 2025. Prior to this MOU, however, the duration of most MOUs lasted two fiscal years in duration.

Under the 2022-2025 MOU, the officers/sergeants received general salary increases of 6% in July 2022; 6% in July 2023; and 5% in July 2024.

B. Appendix B: Formula for Possible Market Adjustment

Prior to 2007, the City and the Association agreed that the salaries of its bargaining unit employees would be determined by a salary survey of 11 cities: Alameda, Berkeley, Concord, Hayward, Milpitas, Palo Alto, Pleasanton, San Jose, San Mateo, Santa Clara and Vallejo. The salaries were determined by the average of the five top highest paying law enforcement agencies, excluding Santa Clara. In computing the base salary of the 11 city police departments, the survey would include any payment made by the municipality on behalf of the employee's 9% employee contribution to CalPERS.[8] This MOU article was part of MOU Article 2 Salaries and Other Compensation.

[8] California Public Employees Retirement System.

Since 2007 and forward to the 2022-2025 MOU, the City and the Association agreed to use a salary survey on a voluntary basis. The agreement was memorialized as Appendix B to the MOU and entitled, "Appendix B: Formula for Possible Market Adjustment." In that appendix, if the City and the Association agreed, they were to conduct a salary survey for a possible market adjustment and agreed to use the same 11 cities to be subject to the survey. When the survey was completed, the average of the five highest paying municipal law enforcement agencies, excluding the City of Santa Clara, would determine the salaries. In addition, any contribution of the municipality toward the employee's CalPERS contribution was counted as part of the base salary.

While the MOU language specifically states that the "average" of the five highest paying law enforcement agencies has been used for determining salaries, the City states that it has usually relied on a median of the five highest paying municipal law enforcement agencies, including the City of Santa Clara, in determining an appropriate salary level for FPD officers/sergeants. The Association seems to argue in its presentation that the average applies and not the median.

C. Longevity Pay

The MOU's longevity pay structure (MOU Article 2, section 12) bifurcates longevity pay between those officers/sergeants hired before and after July 1, 2015. For those officers/sergeants hired before July 1, 2015, the officers/sergeants receive an additional salary percentage of different increments[9] at their 19th, 24th, 26th, 27th

[9] These salary percentages range between 1.2% to 4.6%.

and 28th years of service. For those officers/sergeants hired after July 1, 2015, the officers/sergeants receive an additional salary percentage of different increments[10] at their 19th and 24th years.

In addition to these longevity pay provisions, the MOU section allows the City Manager to credit up to 10 years of continuous law enforcement experience from outside the City for the purpose of qualifying for this benefit. This discretionary provision was to allow officers/sergeants who laterally transferred from another law enforcement agency to participate in this benefit rather than be discouraged from transferring to FPD and be deprived of the benefit.

D. Education/Certification Incentive Pay

The MOU provides for an Educational Incentive Pay (MOU Article 2, section 18) which is a salary percentage addition to the officers/sergeants base salary for bargaining unit employees with three or more years of continuous years of service for educational degrees obtained (associate's, bachelor's or master's degree), number of units completed, or a POST Intermediate or POST Advanced Certificate awarded.[11]

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[10] These salary percentages range between 2.3% to 2.5%.

[11] POST stands for the Commission on Peace Officer Standards and Training. POST regulates police officer's training and sets forth various levels of POST certificates such as a POST Intermediate Certificate and POST Advanced Certificate. (Penal Code, § 13510.1; Cal. Code of Reg., tit. 11, § 1202.)

The Education/Certification Incentive Pay was not cumulative and was set forth as follows:

Education or POST Certificate	Salary Percentage Augmentation
Associate's Degree or 60 Semester Units	2.5%
POST Intermediate Certificate[12]	2.5%
Bachelor's/Master's Degree or 120 Semester Units	5%
POST Advanced Certificate	5%

Three Letters of Agreement in December 2024

In order to address issues surrounding the difficulties in recruiting officer applicants to fill officer vacancies within FPD, the City and the Association reopened the MOU to make changes which would impact those areas. As a result, the parties agreed to three Letters of Agreement (LOA) in December 2024.

The first LOA provided additional compensation to bargaining unit employees through an additional 2% increase in salary and double-time pay for working overtime hours for certain mandatory patrol overtime assignments. The double-time agreement explicitly sunset on June 30, 2025.

The second LOA established an earlier step of a 2.5% increase in salary as longevity pay after eight years of service to both sets of employees who were hired before and after July 1, 2015. As this new first step of longevity pay was 2.5%, the

[12] A POST Intermediate Certificate can be obtained as early as 2 years and as late as 8 years from initial employment depending on the education, experience and training of the applicant. A POST Advanced Certificate can be obtained as early as 4 years from and as late as twelve years from initial employment depending on the education, experience and training of the applicant. (Cal. Code of Reg., tit. 11, § 1202, subd. (c)(5) and (6).)

subsequent steps of longevity pay were likewise cumulatively increased by 2.5%. The second LOA also changed the Education Incentive Pay to POST Certificate Pay so that a bargaining unit employee who possessed a POST Intermediate Certificate received an additional 2.5% increase in base salary and those employees who possessed a POST Advanced Certificate received an additional 5% increase in their base salary. If an officer/sergeant had both POST Intermediate and Advanced Certificates, the increase in salary was non-cumulative. The second LOA eliminated the eligibility condition of three years of continuous FPD service.

The third LOA gave a successful lateral transfer officer hired by FPD up to a $100,000 as a signing bonus. The bonus was limited to 10 lateral transfer officers hired by the City.

Successor Agreement Bargaining

The City and the Association started successor agreement bargaining in March/April 2025. Ultimately, the parties were unsuccessful in arriving at a successor agreement. The LBFO for the City was passed on July 2, 2025. The LBFO for the Association was passed on August 21, 2025. Each LBFO proposal and its terms will be set forth individually.

A. The City's LBFO—Duration of One-Year and 1.3% Salary Increase

The City's LBFO was brief. It offered a one-year duration for the MOU, and a 1.3% general salary increase to all classifications within the bargaining unit. The 1.3% salary increase was based upon the current Consumer Price Index (CPI) that the City

was aware of when it made its LBFO.[13] The salary increase contained a "me too" clause where if another bargaining unit bargained for a greater salary increase that the salary increase would be extended to the Association's bargaining unit employees. The LBFO also included an increase in the HBA. The intent of this proposal was to act as a bridge or transition to the 2026-2027 fiscal year where the City could more carefully evaluate the conditions of an uncertain economy and how that economy would impact its revenue intake.

When bargaining began in March/April 2025, the City had concerns that the national economy was projected to slow down. These concerns were based upon the proposed and actual presidential tariffs (and the responding retaliatory tariffs). As a result of the tariff activity, the City expected prices to increase as well as reduce consumer and business activity—especially as to the impact that such reduction in activity would affect sales tax revenue. While there was some projected increase in sales tax revenue expected from local consumers who would be taking advantage of the expiring income tax credit for purchasing electric automobiles, those sales were expected to decline after the income tax credit expired. In addition to the tariffs, inflation had increased from the mid 2% to 3%, which would cause a further damper on consumer spending. Finally, in regard to property tax revenue, the Federal Reserve had not lowered its interest rate until recently, and it was not a "foregone conclusion" that it would do so again. Because of these factors, the City was also

[13] The CPI later increased to 1.5% in June 2025 and then to 2.5% in August 2025.

concerned that there would be a weak real estate market, which would negatively affect property taxes.

As a result of these concerns regarding tariffs and a weak real estate market, the City forecasted an annual growth in revenues of 3%. In September 2025, however, the City learned that the State was again investigating potential overpayments of sales tax to the City, which the State would recover during the 2025-2026 fiscal year.[14] The City adjusted its forecast for the growth of revenue to a smaller than expected 1.1% increase of the prior year's revenue.

In spite of the decrease in the estimation of revenue to the City's general fund, the City anticipated that its revenues were going to be lower than its expenditures.[15] Including the labor costs from the 1.3% salary increase to the bargaining units, the City would have to balance its budget by reducing ongoing maintenance expenditures by $3.2 million.

The Association, in contrast to the City's argument of austerity, argued that the City had $180 million dollars in "unrestricted funds," meaning that the City could decide whatever they wanted to do with these funds, and direct them from one program, capital improvement, or vehicle or equipment replacement fund to pay for officer/sergeant compensation.

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[14] The City's estimation of the overpayment which it received was $2 to $3 million dollars.

[15] This projection that expenditures would be higher than revenues included the $20 million in Citywide savings from salary savings of unfilled positions.

B. The Association's LBFO

The Association's LBFO had many proposals. All of these proposals were to, in some way, ensure that: (1) the City could provide a compensation package which would make it more attractive to recruit and hire to fill its officer vacancies; (2) the City could provide a compensation package which would discourage its officers from leaving the City to go to another Bay Area law enforcement agency, such as SFPD; (3) the City could provide a compensation package to attract lateral transfer officers; and (4) lead workers could be fairly compensated for the extra administrative responsibilities which they performed and therefore be encouraged to continue in these positions. The proposals which supported these goals will be viewed individually.

1. Duration and Salary Increase

The Association's LBFO offered a proposed two-year MOU which expired on June 30, 2026. Its salary proposal was that its bargaining unit employees receive a general salary increase of 7.85% effective July 2025 and 4% effective July 2026.

In opposition to the Association, the City cited that the economic outlook of the revenue stream to the City was uncertain, which merited a one-year duration and a lower-level salary increase.

2. Appendix B: Formula for Possible Market Adjustment

The Association proposed to changed its Appendix B (formula for possible market adjustment) in four ways: (1) eliminate the city of Vallejo; (2) add the cities of San Francisco and Redwood City; (3) include the city of Santa Clara to its cities in determining the average salary of the five highest paying law enforcement agencies,

and (4) eliminate the requirement that the cities' payment of the employees 9% employee contribution made to CalPERS be included in the officer/sergeant base monthly salary.

The Association argues that the City of Vallejo be eliminated from the 11 survey cities for two reasons: (1) Vallejo is separated from Alameda County by another county, and (2) Vallejo contracts with the Solano County Sheriff's Office to help police its streets for approximately $11 million dollars.

The Association also contends that the City of San Francisco and the City of Redwood City should be included in the survey cities as the cities are only 36 and 18 miles away from Fremont, respectively. The City of San Francisco should especially be included as it has hired five officers away from the City of Fremont. Lastly, the Association argues that the City of Santa Clara should be included in those cities for determining the average of a base salary as the only reason it was not included was that it paid its officers the highest compensation of all survey cities.

The City argues that the inclusion of a salary survey modification in a factfinding proceeding is inappropriate as the subject matter for a factfinding proceeding and that the 11 cities in the comparability metric is more appropriate and consistent with Government Code section 3505.4, subdivisions (d)(5) and (7). The City also contends that the salary model proposed in the survey excluding the employee's contribution to CalPERS is contrary to the parties focus on total compensation in Government Code section 3505.4, subdivision (d)(7). Lastly, the City contends that as the City of Santa Clara is eligible for median measurement of officer salary, the use of the City of Santa Clara is already being exercised and therefore is not excluded for consideration.

3. Longevity Pay

The Association proposed in its LBFO that its structure for its longevity pay for both officers/sergeants hired before and after July 1, 2015 be unified into one structure where the officers/sergeants received increments of longevity pay at years 8, 12, 16, 20, 24[16] instead of 8, 19, 24, 26 and 27.

The Association contends that the City's longevity pay is behind SFPD, which starts at a 5% increment at five years which then increases at approximately 3% at the 7th, 8th, 10th, 15th, 20th, and 25th years. The Association has argued that SFPD has used longevity pay in its recruitment even though SFPD pays a lower base salary than other police departments.[17]

The City argues against the new longevity pay structure as the City has already added on to the longevity pay provision in 2024 by adding an 8-year step. The City also emphasizes that only five of the 11 comparable survey cities have longevity pay and only two of the 11 cities have an 8-year step.

4. POST Certificate Pay

The Association's proposal sought to increase the POST Certificate pay from the December 2024 LOA from 2.5% to 5% for POST Intermediate Certificate and from 5% to 10% for a POST Advanced Certificate.

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[16] This was the time structure which officers/sergeant received longevity pay if they were hired before July 1, 2015.

[17] On January 1, 2026, the base salary for an officer with SFPD is $12,189 a month, significantly lower than the FPD's current officer pay of $13,514 a month. SFPD's Educational/POST Pay is also less than the top five highest paying law enforcement agencies in the survey.

The Association states that the POST Certificate Pay is a way in which the City can attract highly qualified lateral transfer candidates and that the City offers the lowest differential amount of all 11 agencies surveyed.

The City admits that the market median for the differential pay for a POST Intermediate Certificate Pay is 5% of the base salary and 7.5% percent of pay for the POST Advanced Certificate, however, the proposal is too expensive for the uncertainty of the revenue intake.

5. Double-Time Premium for Overtime Work

The Association also proposed in its LBFO to make the pilot program of double-time set forth in the December 2024 LOA a permanent provision of the MOU. The Association contends that while the double-time provision was active, all officers shared the overtime burden.

The City argues that this proposal was meant to be temporary and sunset on June 30, 2025, and that no other law enforcement agency in the surveyed 11 cities had such a benefit.

6. Shift Differential

The Association proposed a shift differential of 2.5% of base salary for those employees who worked swing shift and 5% of base salary for those employees who worked the midnight/graveyard shift. This was a new provision which was not previously in the 2022-2025 MOU. The Association explained that this provision would be helpful in attracting more senior lateral transfer officer candidates as they would not have shift seniority when they transferred but at least would be compensated for working the swing or grave shifts. The shift differential would also

encourage more seasoned officers to work alongside new officers who are usually assigned to the swing or grave shifts.

The City contends that only five of the 11 surveyed cities had a shift differential benefit and therefore the benefit is not comparable with the 11 law enforcement agencies.

7. Lead worker Premium

As part of its LBFO, the Association proposed that those officers who were a lead worker over one of the 11 programs (field training, special weapons and tactics, hostage negotiations, tactical emergency medicine support, sniper, emergency vehicle operations and control, etc.) receive an additional 2.5% premium as a result of the increased work and administrative duties that the lead workers performed. This differential was to compensate the lead workers for their administrative duties.

The City contended that an operational need for such a differential was not demonstrated and that such an issue should be reserved for subsequent MOU bargaining.

Other Bargaining Units

The City has 9 bargaining units who are represented by exclusive representatives. Of those 9 bargaining units, all of them were offered the one-year duration proposal with a 1.3% general salary increase and a "me too" agreement that if another bargaining unit received a greater salary increase that the bargaining unit would also receive that greater salary increase. Six of the exclusive representatives have agreed to this offer. Those exclusive representatives are: Fremont Association of Management Employees; Operating Engineers, Local Union 3; Professional

Engineers and Technicians Association; City of Fremont Employee Association; Fremont Professional Firefighters, International Association of Firefighters, Local 1689; and the Battalion Chiefs, International Association of Firefighters, Local 1689.

APPLICATION OF STATUTORY CRITERIA and RECOMMENDATIONS

Unlike interest arbitration, where a third-party neutral sets the terms of a new agreement, a third-party neutral in an MMBA factfinding simply provides recommendations. In essence, this makes factfinding an extension of bargaining. Ultimately, the parties must persuade one another of their positions, and the neutral factfinder simply provides an outside perspective to assist the parties possibly to come to a bargaining agreement.

Neutral factfinders have typically required the party seeking a change to the status quo to carry the burden of persuasion.

After carefully studying the record as a whole, the findings of fact, and the statutory criteria in Government Code section 3505.4, subdivision (d), the Chair applies the statutory criteria to those findings of fact, and recommends the following by issue:

A. Duration and Salary

In one sense, the City's proposal on duration is motivated by its proposal on salary—to gain time to assess the amount of incoming revenue to the City's general fund in an uncertain economy. The one-year MOU was to be a bridging transitional year to the next fiscal year. As such, the application of the statutory criteria and recommendation regarding the duration proposal will also drive the salary proposal.

While economic uncertainty can be a broad justification for a public agency to hide behind when bargaining with its exclusive representatives, in this case, the City provided specific financial detail as to its revenue streams, difficulties facing those revenue streams, and tangible current economic concerns as to its suspected small percentage of a 1.1% annual growth in revenue. These reasons laid the foundation for its proposal for a single-year bargaining agreement with a CPI cost of living adjustment.

Additionally, this request for a pause was not a request which was historically a part of the City and the Association's bargaining relationship, especially as the City gave general salary increases of 6% in July 2022; 6% in July 2023; and 5% in July 2024 in the 2022-2025 MOU, and a 2% increase in a December 2024 LOA. In addition, the City added an earlier step to the existing longevity structure in another LOA.

The current salary offered by the City and the Association's proposal and its comparison to the five highest paying law enforcement agencies are set forth as follows:

	Base Monthly Salary	Total Monthly Compensation[18]
Median salary of five cities	$13,979[19]	$17,047
Average salary of five cities	$13,903	$16,804
Range of salaries of five cities for median computation	$13,331 – $16,569	$16,546 – $19,944
Range of salary of five cities for average computation	$13,206 – $14,754	$16,266 – 17,131
Fremont Officer (with 1.3% salary increase)	$13,670	$16,306
Fremont Officer (with 7.85% salary increase)	$14,575	$17,159

With the 1.3% salary increase in the City's proposal, the officer's salary falls below both the median and average of the five highest paying law enforcement agencies in the survey. However, the City's proposal still falls within the range of the five highest paying cities for both the base monthly salary and the total monthly compensation. With the Association's proposal, the officer's salary is positioned to be above both the average and median of the five highest paying law enforcement agencies. However, the Association's proposal carries the added cost of the same salary percentage increase to be passed along to the six other bargaining units due to the "me too" parity clauses in their agreements.

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[18] This total compensation figure does not include longevity pay. As longevity pay is spread out over different increments over the years, it is probably difficult to compute as part of total compensation.

[19] While the City of Santa Clara is excluded from determining the average of the base salary under Appendix B, it is included for purposes of establishing the median of the base salary or total compensation, as stated by the City in its presentation.

Pursuant to Government Code section 3505.4, subdivision (d)(4) as to the financial ability of the public agency, due to the financial condition of the City and the multiplying effect that the increased general salary increase would have on the six other bargaining units with a "me too" parity clauses in their agreement, the Chair recommends the proposal of the City as to duration and salary.

Recommendations: The Chair recommends the City's proposal as to duration and salary as a proposal for settlement.

B. Appendix B: Formula for Possible Market Adjustment

Government Code section 3505.4, subdivision (d)(5) requires comparison of terms and conditions of employment with "other employees performing similar services in other comparable public agencies." The Association seeks a "refresh" of its survey list in order to more closely align itself with Government Code section 3505.4, subdivision (d)(5).

As the City of Vallejo no longer has an integrated municipal police force and has hired the Solano County Sheriff's Office to perform its law enforcement services, and the City of Vallejo is in Solano County, one county removed from Alameda County, it is no longer comparable to FPD. The City of Vallejo is recommended to be removed from the survey.

On the other hand, Fremont officers have left FPD employment to join SFPD—a city which is only 36 miles away. Because former FPD officers have compared their terms and conditions of employment with that of the SFPD and left to be employed there, the City of San Francisco is recommended to be added to the survey list.

The only tangible information provided by the Association about Redwood City is that it is 16 miles away. Not enough information has been provided by the Association to meet its burden that it should be added to the survey list and it will not be recommended to be added to the survey list.

The Association asks that the City of Santa Clara be added for purposes of determining the average of the five highest paying law enforcement agencies on the survey list. Other than the City of Santa Clara being included in the survey, and the highest paying law enforcement agency on the survey, the Association has not provided enough information for the Chair to make a determination as to whether it is comparable to the City for the purpose of averaging salaries with the other five highest paying law enforcement agencies. As such, the City of Santa Clara will not be included in a recommendation for inclusion into determination of the average salary of the five highest paying law enforcement agencies in the survey.

Lastly, the Association proposes that the survey exclude the 9% payment of an employee's contribution by a survey list city to CalPERS to be added to the officer's base monthly pay. No evidence was provided on this matter and therefore the Association has not met its burden that this payment be excluded.

Recommendations: The Chair recommends as a proposal for settlement the following regarding "Appendix B Formula for Possible Market Adjustment: (1) the exclusion of the City of Vallejo, (2) the inclusion of the City of San Francisco, (3) not adding the City of Redwood City, (4) not including the City of Santa Clara to compute the average pay of the five highest paying law enforcement agencies, and (5) not excluding

payments made by a survey city on behalf of the employee's contribution to CalPERS as added to the base monthly pay by that law enforcement agency on the survey list.

C. Longevity Pay

The vacancy percentage of police officers as compared to its authorized positions has only changed from 10-12% for the years 2021 and 2022 to 9.3% currently. According to Chief Washington, such an impact on FPD is "significant." While increasing the salary of the officer with all of the "me too" agreements is problematic and will adversely affect the financial condition of the City, the City must do something to lower the vacancy rate of the officers at FPD. If no further change is made to the MOU to enhance the benefits of an officer to convince them to remain, the City will have to wait until the next session of bargaining to do so. Waiting further will only continue to promote the downward spiral caused by an increased vacancy rate in the City and act as an impairment to its requirement to provide public safety services and to maintain officer safety and health.

To improve officer compensation in some way, even if incrementally, to reduce the vacancy rate is in the "interests and welfare of the public." (Gov. Code, § 3505.4, subd. (d)(4).) In this matter, it seems that an addition to the longevity pay structure would be helpful in reducing the vacancy rate, as it was helpful for the SFPD. In order to provide an incentive for officers not to leave FPD, a 2.5% increase of the employee's base salary within the longevity pay structure is recommended at a time period in which the Association and City agree will most likely impact an officer's decision to remain at FPD instead of seek employment at another law enforcement agency.

Recommendation: The Chair recommends as a proposal for settlement that a 2.5 % increase in an officer's current base pay be added to the structural continuum of longevity pay at a time when the police officer's tenure would most greatly be impacted to remain employed with FPD instead of seek employment elsewhere.

D. All other Issues (POST Certificate Pay, Double-Time Premium, Shift Differential and Lead Worker Premium)

The remaining proposals (POST Certificate Pay, Double-Time Premium, Shift Differential and Lead Worker Premium), while most likely helpful in some aspect to retaining an officer's employment or attracting officers to FPD, these proposals also carry an additional cost which would, at this time, more negatively impact the City's financial ability in an uncertain economic time and impact the City's financial ability to live within its principle of fiscal sustainability. (Gov. Code, § 3505.4, subd. (d)(4).)

Recommendation: The Chair recommends as a proposal for settlement that the remaining proposals of POST Certificate Pay, Double-Time Premium, Shift Differential and Lead Worker Premium remain in status quo.

CONCLUSION

The Chair is sincerely hopeful that these recommendations will assist the parties to have productive negotiations going forward and eventually come to resolution.

Shawn P. Cloughesy
Chairperson

David M. Persselin
Panel Member for Public Agency

X Concur (attached)
X Dissent (attached)

Joe Higby
Panel Member for Exclusive Representative

✓ Concur (attached)
✓ Dissent (attached)

IN FACTFINDING PROCEEDINGS

PURSUANT TO THE MEYERS-MILIAS-BROWN ACT (SECTION 3505.4)

Factfinding Between CITY OF FREMONT Employer, *and* FREMONT POLICE ASSOCIATION, Employee Organization.	PERB CASE NO. SF-IM-276-M <u>FACTFINDING PANEL</u> Before: Shawn Cloughesy, Chair David Persselin, City Board Member Joe Higby, FPA Board Member Hearing Date: November 6, 2025

CONCURRING AND DISSENTING OPINION
BY DAVID PERSSELIN, CITY PANEL MEMBER

I. INTRODUCTION

I appreciate the Chair's understanding and recitation of the City of Fremont's (City) financial condition and the impacts of the City's pattern of agreements with its other bargaining units. I CONCUR with the majority of the Chair's analysis and join in his recommendation on the issues of Duration, Wages, POST Certificate Pay, Double-Time Premium, Shift Differential and Lead Worker Premium.

I write separately to highlight my concerns with the Chair's recommended restructuring of the agreed-upon survey universe and with the recommended increase in Longevity Premiums. On both issues, I respectfully DISSENT.

The evidence presented at the factfinding hearing showed that the City of Fremont faces a number of economic factors materially constraining its fiscal capacity, justifying the Chair's recommendation on the issues of Duration and Wage, as well as other economic items. Although the City's agreements with six (6) of its nine (9) bargaining units to terms consistent with the Chair's recommendations on Duration and Wage will require the City to make additional reductions to maintain a balanced budget during Fiscal Year 2025-26, the Chair's recommendation on those issues represents a responsible package, recognizing both the City's financial constraints and the needs of the City's employee groups.

I differ with the Chair only on the issues of Appendix B and Longevity.

A. Appendix B: Formula for Possible Market Adjustment

Appendix B to the expired Memorandum of Understanding (MOU) between the City and the Fremont Police Association (FPA) outlines the terms of a salary survey to be performed upon mutual agreement. As demonstrated at the hearing, Appendix B has been in the FPA MOU since 2007. (C-X-3.) It was added after the Parties agreed to transition from a salary formula that utilized the same terms. (*Id.*) However, as evidenced by their current surveys, the Parties have moved away from the structure of the survey (which was limited to base wage and "any payments made by a survey city on behalf of the employee toward the 9% employee contribution

to PERS" (EPMC)). (*Id.*) Instead, both Parties have adopted a total compensation approach more consistent with the criteria in MMBA Section 35050.4.

On this issue, the FPA proposed to modify the survey agencies and limit the survey to base pay only.

1. Elements of Compensation

On the issue of compensation elements, the Chair recommends maintaining the current elements of compensation, which includes salary and EPMC.

Since EPMC is rarely used today and is not permitted for PEPRA members, I believe it would be more appropriate to recommend the total compensation model posited by Section 3505.4(d)(7), which requires consideration of "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." This utilization of total compensation as a metric is especially important in studying police compensation, where many premium/specialty pays have become what the FPA attorney referred to as "everyone pay" (i.e., another form of general wage increase).

2. Survey Agencies

The FPA proposed the elimination of the City of Vallejo from the salary survey and the addition of San Francisco and Redwood City. Here, the Chair would recommend a compromise with the elimination of Vallejo and the addition of San Francisco but without the addition of Redwood City. I do not believe any changes to the survey agencies are warranted.

The Chair's justification for eliminating Vallejo is that it "no longer has an integrated municipal police force and has hired the Solano County Sheriff's Office to perform its law enforcement services." (Chair's Recommendation at p. 24.) While I understand how the Chair could have come to this conclusion, it is not supported by the record. Instead, the Solano County Sheriff is providing additional resources to supplement services provided by the Vallejo Police

Department. The only evidence on this issue is an article from the Vallejo Sun which specifically indicates that "The City of Vallejo approved an $11 Million contract in June to have 17 full-time deputies police half of Vallejo beats in order to provide additional policing support for the understaffed Vallejo Police Department." (U-X-19 at p. 2 [emphasis added].) The article goes on to state that "The agreement stalled for months at the county level because of staffing concerns from the Deputy Sheriffs Association." (*Id.* [emphasis added].)

In other words, (1) Vallejo maintains a police department, understaffed as it may be, and (2) both Vallejo and Solano County have staffing concerns similar to those which are driving the proposals of the FPA. In summary, Vallejo is an appropriate comparator because it is a full-service Bay Area city that competes in the same regional labor market and provides similar 24/7 urban policing services as Fremont.

The Chair's second recommendation is the addition of San Francisco to the list of survey cities. However, that is also not justified. San Francisco is both a City and County, which makes it unique in both its funding sources and its expenditure requirements. It also operates both San Francisco International Airport and the Hetch Hetchy Reservoir, neither of which are located within the bounds of the City/County. According to publicly available records, San Francisco's 2025-26 budget has General Fund Revenues of more than $7 Billion, a staggering figure compared to Fremont's $278.8 Million General Fund. San Francisco is not truly comparable to any City or County in the Bay Area since it operates both a Police Department and a separate Sheriff's Department serving a far larger residential, commuter, and tourist population with fundamentally different service demands, staffing ratios, budgets, and cost-structure, which makes any comparison to Fremont's mid-size police operations misleading.

Given its size, unique characteristics, and distance from Fremont, I do not believe San Francisco is comparable to Fremont. I understand the Chair's concern over San Francisco's hiring of Fremont officers, but it is not clear whether that was motivated by San Francisco's total compensation or other factors, such as its independent pension system. In any event, I do not

believe San Francisco is a comparable agency for Fremont and would not recommend including it in the list of comparables.

3. Recommendation

Given the foregoing, I would not modify the long-accepted list of survey agencies to exclude Vallejo and include San Francisco. Instead, I would recommend either retaining Appendix B in its current form for historical purposes or eliminating it altogether. Alternatively, the Parties may continue discussions during the upcoming 2026 negotiations to develop a modernized total compensation methodology that aligns with best practices, complies with legal standards, and reflects the current workforce composition (including the higher proportion of PEPRA members) and other emerging operational and labor-market considerations.

B. Longevity

The issue of longevity is more complex and nuanced. While Fremont's Police Department has seen departures in recent years, the Parties negotiated a modification to the Longevity program in December 2024, adding a new tier at eight (8) years of service. (JT-X-2.B.) Since that change is not even a year old, it is not clear how or whether it will have an impact on recruitment and retention.

Moreover, the City does not rely on longevity alone as a retention tool. The City also has a Retiree Medical program, which should also act as an incentive for retention. While the longevity and retiree medical tiers do not line up precisely, Tier 2 employees receive either an increase to longevity or to retiree medical at 8, 15, 19, 20, and 24 years of service.

While FPA had proposed a substantial re-working of Longevity Pay by eliminating Tier 2 and significantly reducing the years of service required to achieve each level of longevity pay, the Chair recommends "a 2.5 % increase in an officer's current base pay be added to the structural continuum of longevity pay at a time when the police officer's tenure would most greatly be impacted to remain employed with FPD instead of seek employment elsewhere."

The Chair's recommendation has merit and I do believe that the Parties could reach agreement on changes to the Longevity program to better support retention. However, given the City's demonstrated financial condition, I would recommend that change be negotiated as part of the next MOU, covering FY 2026-27 and beyond.

II. CONCLUSION

For all of the foregoing reasons, I CONCUR with the Chair's Recommendation on the issues of Duration, Wages, POST Certificate Pay, Double-Time Premium, Shift Differential and Lead Worker Premium, and DISSENT on the issues of Appendix B and Longevity. Given that negotiations for the next MOU will begin in approximately four months, the City believes that Appendix B and Longevity can be more appropriately addressed as part of the FY 2026–27 and beyond successor contract, when there will be sufficient time to conduct deeper analysis, evaluate best practices, and ensure any revisions align with operational needs and legal standards.

Dated: December 1, 2025

By: 

DAVID PERSSELIN
CITY PANEL MEMBER

FACTFINDING PROCEEDINGS

PURSUANT TO THE MEYERS-MILIAS-BROWN ACT

CITY OF FREMONT,

Public Agency,

and

FREMONT POLICE ASSOCIATION,

Exclusive Representative.

PERB Case No. SF-IM-276-M

EXCLUSIVE REPRESENTATIVE PANEL MEMBER CONCURRING IN PART AND DISSENTING IN PART TO THE FACTFINDING REPORT AND RECOMMENDATIONS FOR SETTLEMENT

(December 1, 2025)

Chairperson:	Shawn P. Cloughesy, Arbitrator
Representative for the Exclusive Representative:	Joe Higby, Labor Representative
Representative for the Public Agency:	Dave Persselin, Finance Director

While I find that the factfinding panel chair has appropriately recommended material changes to longevity pay and the parties' comparable jurisdictions as sought by the Association (see Chair Recommendation at pp. 24-27), these changes do not go far enough to address the challenges confronting the Fremont Police Department.

This is not merely a matter of the Association seeking something more for its members, but an obvious truth founded upon four (4) facts noted by the Chair. Specifically, after hearing the evidence of the parties, the Chair found:

1. "Both the City and the Association find themselves in a labor market where there is greater demand for officers than a supply." (See Chair Recommendation at p. 5.)
2. "When a law enforcement agency has a large number of vacancies in its sworn personnel ranks, the existing labor force of sworn officers has to work more shifts (overtime) to cover the minimum staffing needed to provide necessary law enforcement services to the public. Working extra shifts not only affects the City's general funds by the payment of overtime, but officers are placed under greater physical and psychological strain, which can lead to needless officer injuries which takes officers off work and compounds the vacancy cycle. This is the position that the City of Fremont and the Association find themselves in at least since 2021, if not earlier." (See Chair Recommendation at p. 5-6.)
3. "In the past five years, 21 officers have left FPO and were hired by other law enforcement agencies. Five of those police officers were hired by the San Francisco Police Department (SFPD), which boasts of its aggressive recruitment to hire lateral transfer officer candidates." (See Chair Recommendation at p. 6.)
4. "The City budgets that it saves approximately $20 million from its general fund expenditure primarily by not filling vacant positions." (See Chair Recommendation at p. 6.)

Additionally, while not incorporated into the Chair's recommendation, it should be recognized that the City's previously efforts to bolster staffing levels – including offering

$100,000 hiring incentives to qualified lateral candidates, and significantly lowering hiring standards for new-hire applicants – have proven both ineffective and fiscally irresponsible.

While I do not necessarily object to the recommendation of a one-year term, as an experienced police officer that retired from one of the parties' comparable jurisdictions, I am confident that the other economic terms sought by the Association will have a far more material impact on recruitment and retention than the Chair appreciates. Specifically, while the Chair acknowledges that these proposals are "most likely helpful in some aspect to retaining an officer's employment or attracting officers to FPO," in reality, the absence of a shift differential premium for officers working nights and maintaining the *lowest* Education/POST Certificate incentive among comparable jurisdictions, puts the Fremont Police Departments at a distinct competitive disadvantage – particularly among experienced lateral candidates.

Simply stated, in order to meaningfully address the Fremont Police Department's critical staffing shortage, more is needed. At a time when competing jurisdictions offer greater salaries and benefits to retain experienced personnel and attract qualified applicants without compromising on their hiring standards, adding a modest 2.5% longevity pay enhancement to a package that the City described as a "minimal pay and benefits increase" will not change the current downward trajectory of the Fremont Police Department.

In conjunction with the changes recommended by the Chair, the inclusion of a POST Certificate increase and a reasonable shift differential incentive would provide a total compensation package that would at least put the City of Fremont in contention with its regional competitors.

Joe Higby
Exclusive Representative

12-1-2025
Date

PROOF OF SERVICE

I declare that I am a resident of or employed in the County of Yolo, California. I am over the age of 18 years and not a party to the within entitled cause. The name and address of my residence or business is Cloughesy Arbitration Services, P.O. Box 301, Davis, 95616.

On December 1, 2025, I served the Factfinding Report and Recommendations for Settlement and Panel Representatives' Responses in City of Fremont and Fremont Police Association, PERB Case No. SF-IM-276-M dated December 1, 2025 on the parties listed below by

_X_Electronic service (e-mail).

PUBLIC EMPLOYMENT RELATIONS BOARD

Public Employment Relations Board
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I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed on December 1, 2025, at Davis, California.

Shawn P. Cloughesy
(Type or print name)

(Signature)