

RESOLUTION NO. 2013-18

1
2 **RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN**
3 **BERNARDINO ADOPTING TERMS AND CONDITIONS OF EMPLOYMENT FOR**
4 **THE MID-MANAGEMENT UNIT EMPLOYEES REPRESENTED BY THE SAN**
5 **BERNARDINO PUBLIC EMPLOYEES ASSOCIATION (SBPEA), CONSISTENT**
6 **WITH CERTAIN PROVISIONS OF THE CITY'S PENDENCY PLAN, ADOPTED BY**
7 **THE MAYOR AND COMMON COUNCIL ON NOVEMBER 26, 2012 BY**
8 **RESOLUTION NO. 2012-27.**

9 WHEREAS, in meeting its commitments to the citizens of the City of San
10 Bernardino to maintain a safe and secure community while providing access to
11 cultural, recreational and governmental activities and institutions for all citizens, the
12 City has employed a workforce; and

13 WHEREAS, most City employees are entitled to collectively bargain with the
14 City regarding terms and conditions of employment; and

15 WHEREAS, as nearly two-thirds of the City's General Fund is tied directly to
16 the salaries and benefits paid to City employees, the City's labor costs for the 2012-
17 2013 Fiscal Year (FY) exceed the City's projected revenues; and

18 WHEREAS, despite cost savings measures previously taken by the City, the
19 City's financial situation is dire with no available cash to meet on-going operating
20 expenses, including payroll, and no revenue or other funding sources are available to
21 balance the City's budget and address prior years' deficits; and

22 WHEREAS, on July 18, 2012, the Mayor and Common Council directed the
23 filing of a Petition under Chapter 9 of the United States Bankruptcy Code following
24 the adoption of a Declaration of a Fiscal Emergency in the City of San Bernardino.
25 These actions were in response to findings that the financial state of the City is such
26 that the health, safety, and well-being of the residents of the City will be jeopardized
27 absent Chapter 9 bankruptcy protection; and

28 WHEREAS, on November 26, 2012, the Mayor and Common Council adopted
the Pendency Plan, Resolution 2012-27, which included the Fiscal Year 2012/13
General Fund Budget which incorporated by reference the Pre-Pendency Plan
including the 9-Point Adjustment Plan adopted on September 5, 2012, and the
revised Fire Department adjustments adopted on October 1, 2012 and contemplated
the same pendency plan reductions for FY2013/14 budget; and

1 WHEREAS, since the filing of the Declaration of Fiscal Emergency on July 18,
2 2012 and the filing of the Petition under Chapter 9 of the United States Bankruptcy
3 Code, the City's negotiating team has met twice with the SBPEA and has provided
4 bargaining proposals, financial and other information responsive to the SBPEA's
5 numerous requests in an attempt to meet and negotiate in good faith concerning
6 modifications to the terms and conditions of employment consistent with the
7 provisions in the Pendency Plan; and,

8 WHEREAS, the SBPEA had notified the City's Negotiating Team that they
9 would not attend the negotiation meeting scheduled to be held on January 8, 2013
10 unless and until the City provided documents and information, the majority of which
11 had been provided months earlier to the SBPEA's attorneys by the City's bankruptcy
12 attorneys in connection with the City's Chapter 9 bankruptcy case; and,

13 WHEREAS, despite the production of these documents responsive to the
14 SBPEA requests for information, the SBPEA Attorney refused to respond the City's
15 Bankruptcy Attorney's to further discuss the information demands; and,

16 WHEREAS, on January 7, 2013, the City provided additional information,
17 including financial information, responsive to their request; and,

18 WHEREAS, the SBPEA failed to appear on January 8, 2013 for the scheduled
19 negotiation meeting; and,

20 WHEREAS, between January 8 and January 15, 2013, the City made three (3)
21 further requests to the SBPEA to meet and negotiate and the SBPEA failed to
22 respond to these requests; and,

23 WHEREAS, on January 15, 2013, the City's Chief Negotiator sent a letter to
24 the Attorney for the SBPEA requesting a meeting to negotiate and informing the
25 SBPEA that as the City's Pendency Plan contemplated an implementation date of
26 January 1, 2013, the City's negotiating team would be recommending to the Common
27 Council that the following provisions of the City's Pendency Plan be timely
28 implemented: 1) 9.304% employee pick-up of the CalPERS normal benefit costs
[Pendency Plan #5]; 2) All vacation, sick leave, holiday paid time off payments (cash-
out and sell-back) be suspended through June 30, 2014 [Pendency Plan # 13]; 3)
limits on accrued sick leave of 1040 hours; and, 4) Elimination of retiree medical
benefits for all employees hired on or after January 1, 2013 [Pendency Plan #8]; and,

1 WHEREAS, on January 22, 2013, the City received a communication from the
2 SBPEA requesting additional information and further refusing to meet until the City
3 had responded to all document requests; and,

4 WHEREAS, despite extensive production of documents by the City's
5 negotiating team and the City's bankruptcy attorneys, the SBPEA continues to refuse
6 to meet and negotiate or respond to any of the City's proposals presented to them
7 during the two (2) previous meetings; and,

8 WHEREAS, it is apparent that any further efforts by the City to attempt to
9 schedule and meet with the SBPEA would be futile; and,

10 WHEREAS, as a result of the mediation proceedings, the City and the SBPEA
11 failed to reach agreement; and,

12 WHEREAS, the City must present a balanced financial plan, or Pendency
13 Plan, for the General Fund that allows the City to continue to provide effective
14 service, and the failure of the City and the SBPEA to reach agreement regarding the
15 implementation of certain Pendency Plan provisions necessary for the City to
16 continue to provide services, constitutes an emergency within the meaning of the
17 Meyers-Milias-Brown Act, Government Code section 3504.5; and,

18 WHEREAS, based upon the SBPEA's continual refusal to respond to or meet
19 with the City, and its refusal to respond to the City's January 15, 2013, letter
20 requesting to negotiate and providing notice that the City's negotiating team intended
21 to present to the Common Council for adoption specific Pendency Plan provisions,
22 the City may implement certain provisions of its Pendency Plan where further efforts
23 to negotiate would be impracticable;

24 **NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON
25 COUNCIL OF THE CITY OF SAN BERNARDINO AS FOLLOWS:**

26 SECTION 1. The following terms and conditions of employment for Mid
27 Management bargaining unit members represented by the SBPEA are adopted for
28 implementation effective February 1, 2013:

1. Cost Sharing of CalPERS Benefits: All bargaining unit employees represented by the SBPEA hired on or before 12/31/12 shall contribute 9.304% to the costs of the California Public Employee Retirement System

1 (CalPERS) benefit representing fifty-percent (50%) of the normal costs of
2 benefits as determined by CalPERS for the 2013-2014 fiscal year.
3 Employees hired on or after January 1, 2013, shall contribute 50% of the
4 normal contributions consistent with the provisions of the Public
5 Employees Pension Reform Act of 2013 (PEPRA). The provisions of
6 Section 414(h)(2) of the Internal Revenue Code (IRC) as implemented by
7 the Mayor and Common Council on September 22, 1999 by Resolution
8 No. 1999-235, are applicable to contributions designated as employee
9 contributions made by the City of San Bernardino to the CalPERS and are
hereby incorporated herein. [Pendency Plan # 5]

- 10 2. Deferral of Payments for Accrued Leaves: All payments for accrued sick
11 leave, holiday, and vacation leave to which employees may be entitled
12 prior to separation from employment (sell-backs) shall remain deferred in
13 accordance with the action of the Mayor and the Common Council on
14 August 6, 2012. All payments for cash-outs upon separation for accrued
15 sick, holiday, and vacation leave shall remain deferred in accordance with
16 the action of the Common Council on August 6, 2012. [Pendency Plan #
17 13]
- 18 3. Limits on Sick Leave Accruals and Cash-Outs: Bargaining unit members
19 shall only accrue a maximum of 1040 hours of sick leave with no cash-
20 outs at the time of separation. There shall be no cashouts of any sick
21 leave accruals in excess of the 1040 hours.
- 22 4. Salary Concessions: All salary concessions previously agreed to by the
23 City and the SBPEA shall be reversed and all bargaining unit employees
24 will resume working a forty (40) hour week.
- 25 5. Nothing in this Resolution is intended to or constitutes an assumption or
26 rejection (as those terms are used in the Bankruptcy Code) of any
27 agreement or Memorandum of Understanding (MOU), if any, between the
28 SBPEA and the City. The City reserves the right to take any such action
at any time in the future.

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 4 BERNARDINO PUBLIC EMPLOYEES ASSOCIATION (SBPEA), CONSISTENT
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 6 THE MAYOR AND COMMON COUNCIL ON NOVEMBER 26, 2012 BY
 7 RESOLUTION NO. 2012-27.

8 I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the Mayor
 9 and Common Council of the City of San Bernardino at a joint adjourned/special
 10 meeting
 11 thereof, held on the 28th day of January, 2013, by the following vote, to wit:

12 Council Members:	AYES	NAYS	ABSTAIN	ABSENT
13 MARQUEZ	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
14 JENKINS	<u> </u>	<u>X</u>	<u> </u>	<u> </u>
15 VALDIVIA	<u> </u>	<u>X</u>	<u> </u>	<u> </u>
16 SHORETT	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
17 KELLEY	<u> </u>	<u>X</u>	<u> </u>	<u> </u>
18 JOHNSON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
19 MCCAMMACK	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

20 
 21 Georgeann Hanna, City Clerk

22 The foregoing Resolution is hereby approved this 30th day of January, 2013.

23 
 24 Patrick J. Morris, Mayor
 25 City of San Bernardino

26 Approved as to form:
 27 JAMES F. PENMAN,
 28 City Attorney

By: 