

**Findings and Recommendations Pursuant to California Government Code
3505.4 and 3505.5
PERB Case # SA-IM-168-M**

In the Matter of an Impasse Between

Shasta County

And

United Public Employees of California, LIUNA Local 792

For the County:

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For the Union:

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Factfinding Panel:

Neutral Chair

David A. Weinberg
Arbitration Mediation and Conflict Resolution

Union Member

Steve Allen, UPEC Local 792

County Member

Gage Dungy, Liebert Cassidy Whitmore

PROCEDURAL BACKGROUND

On November 1, 2016, the Public Employment Relations Board (PERB) notified me that the County of Shasta and United Public Employees of California, Local 792 selected me to serve as the Neutral Chair of the Factfinding Panel, pursuant to the Meyers-Milias-Brown Act. The panel held a hearing on December 12, 2016, in Redding, CA. At this hearing the parties presented testimony and evidence to the panel. A pre-hearing conference call was held on November 10, 2016 to discuss the issues to be presented to the Panel.

RELEVANT STATUTORY PROVISIONS

This factfinding is governed by recent amendments to the Meyers-Milias-Brown Act¹. The sections of the amendments that are pertinent to this proceeding are as follows:

3505.4. Unable to effect settlement within 30 days of appointment; request for submission to factfinding panel; members; chairperson; powers; criteria for findings and recommendations

(a) The employee organization may request that the parties' differences be submitted to a factfinding panel not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator pursuant to the parties' agreement to mediate or a mediation process required by a public agency's local rules. If the dispute was not submitted to mediation, an employee organization may request that the parties' differences be submitted to a factfinding panel not later than 30 days following the date that either party provided the other with a written notice of a declaration of impasse. Within five days after receipt of the written request, each party shall select a person to serve as its member of the factfinding panel. The Public Employment Relations Board shall, within five days after the selection of panel members by the parties, select a chairperson of the factfinding panel.

(b) Within five days after the board selects a chairperson of the factfinding panel, the parties may mutually agree upon a person to serve as chairperson in lieu of the person selected by the board.

¹ AB646

(c) The panel shall, within 10 days after its appointment, meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate. For the purpose of the hearings, investigations, and inquiries, the panel shall have the power to issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence. Any state agency, as defined in Section 11000, the California State University, or any political subdivision of the state, including any board of education, shall furnish the panel, upon its request, with all records, papers, and information in their possession relating to any matter under investigation by or in issue before the panel.

(d) In arriving at their findings and recommendations, 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.

3505.5. Dispute not settled within 30 days after appointment of factfinding panel or upon agreement by parties; panel to make advisory findings of fact and

recommended terms of settlement; costs; exemptions

(a) If the dispute is not settled within 30 days after the appointment of the factfinding panel, or, upon agreement by both parties within a longer period, the panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. The factfinders shall submit, in writing, any findings of fact and recommended terms of settlement to the parties before they are made available to the public. The public agency shall make these findings and recommendations publicly available within 10 days after their receipt.

(b) The costs for the services of the panel chairperson selected by the board, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be equally divided between the parties.

(c) The costs for the services of the panel chairperson agreed upon by the parties shall be equally divided between the parties, and shall include per diem fees, if any, and actual and necessary travel and subsistence expenses. The per diem fees shall not exceed the per diem fees stated on the chairperson's résumé on file with the board. The chairperson's bill showing the amount payable by the parties shall accompany his or her final report to the parties and the board. The chairperson may submit interim bills to the parties in the course of the proceedings, and copies of the interim bills shall also be sent to the board. The parties shall make payment directly to the chairperson.

(d) Any other mutually incurred costs shall be borne equally by the public agency and the employee organization. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

(e) A charter city, charter county, or charter city and county with a charter that has a procedure that applies if an impasse has been reached between the public agency and a bargaining unit, and the procedure includes, at a minimum, a process for binding arbitration, is exempt from the requirements of this section and Section 3505.4 with regard to its negotiations with a bargaining unit to which the impasse procedure applies.

BACKGROUND AND RELEVANT FACTS AND FINDINGS

The County of Shasta is located at the northern end of Sacramento Valley and covers approximately 3,850 square miles. The County is the 30th most populous County in the State with a population of 179,000 as of January 2015. The City of Redding is the County seat. The County is a largely rural County with a dispersed population. The UPEC Local 792 Unit represents the largest bargaining unit in the County, with approximately 930 members on payroll as of January 15, 2016.

Shasta County has historically suffered a higher unemployment rate than the rest of the State ranging from over 16% in 2010, but steadily decreasing to less than 8% currently. This is a higher rate than the statewide rate of less than 6% during the same time frame. Shasta County like many other public jurisdictions in California has seen positive growth from the preceding historic recessionary period. The County CAFR cites for the fifth consecutive year positive economic trends. Property tax revenue has continued to grow with four years of consecutive growth since 2011, although the assessed values have not recovered from the 2006 levels. The General Fund's fund balance has increased from 58.9 million in 2010 to 96.6 million in 2015. Approximately 90% of the costs associated with this bargaining unit come from non-general fund revenues. The County stipulated that ability to pay is not being contested in these proceedings.

The parties did not present to this Factfinding Panel joint comparability studies. However, the Union did present their own comparability study that compared selected classifications in Shasta County with the 10 California counties closest in population (5 above and 5 below), which had in the past been used by the County, according to the Union.² This survey, which was based on the highest salary step for wages only as the comparable, showed that wages are below the average from 6%-55%.³ The County did not offer its own comparability study as evidence for the Panel to consider, although it did present evidence that Shasta County unlike most other jurisdictions during the recent past recessionary period did not furlough employees or cease merit increases.

² The County could not recall when they had in the past used such a comparability study.

³ It should be noted that this survey does not compare total compensation, nor did it examine the actual work requirements of the various classifications surveyed.

The current MOU expired on April 20, 2016. The parties engaged in multiple bargaining sessions in the first half of 2016 but were unable to reach a complete agreement. UPEC Local 792 submitted a request for an impasse meeting on August 23, 2016, and soon thereafter the parties mutually agreed upon the undersigned as the Neutral Factfinding Panel member.

POSITION OF THE PARTIES

At the time of impasse leading up to this factfinding, the party's last offers were as follows:

- 1) Cost of Living-Union position, 2016 3%, 2017 3%, 2018 3%. The County position, 2016 2%, 2017 0%, 2018 3%.
- 2) Market adjustment-Union position is for a market adjustment based on their classification survey, of 1% increase in 2016, 2017, and 2018. The County position is for no market adjustment beyond the COLA.
- 3) Retroactivity- Union position is that all economic terms should be retroactive to 5/1/16. The County position is for all economic terms to be effective upon full agreement by the parties.
- 4) Retiree Administrative Fee- Union position is to eliminate the \$26.40 per pay period payment for the retiree admin fee. The County position is to maintain the current \$26.40 per pay period retiree payment.
- 5) Stand by Rate- Union position is to increase the standby pay to \$3.00. The County position is for no change to payment, status quo.
- 6) Longevity Pay- Union position is for a 3% increase at 20 years of County service. The County position rejects this provision and wants to maintain the status quo.
- 7) Medical Opt-Out Payment- Union position is for a \$250 month opt-out payment. The County rejects this opt out payment.
- 8) Union Access to Outlook Calendars- The Union seeks access to be able to post meetings on the County outlook calendar. The County rejects this proposal for access.
- 9) 401 (a) Plan for new employees- The Union rejects this County proposed retirement plan for new employees. The County wants to implement this plan for new employees effective January 1, 2017.

- 10) Safety Issues- The Union wants to implement a number of safety issue such as secure parking, contracting of private security for after hours work, active shooter policies and other provisions to the MOU. The County rejects this provision but is agreeable to meeting in separate discussions apart from the MOU.
- 11) Compensability of Travel Time- The Union position is that all travel time should be compensable for all employees. The County position is to maintain the status quo of following the FLSA.
- 12) Union Time at Employee Orientation- The Union wants 15 minutes of time to address the new employee at their orientation. The County position rejects this provision but will hand out Union information to new hires at their orientation.

ISSUES PRESENTED TO THE PANEL

The parties stipulated that the twelve (12) above referenced issues are properly before this Factfinding Panel, for findings and recommendations according to the MMBA statute.

RECOMMENDATIONS

The Neutral Factfinder chosen by the parties believes that the statute under which this factfinding takes place is best viewed as an extension of the collective bargaining process. The best outcome of this factfinding process would be a negotiated agreement between the parties. The intent of these recommendations is to provide a framework for the parties to settle their dispute with an agreement. The statute lays out a set of criteria that is to guide the panel in making their findings. These criteria represent many of the basic factors that inform the parties when they are negotiating an agreement.

In this factfinding the Neutral Panel member is recommending the following proposal. This recommendation, taken as a package, attempts to balance the needs of the County, the public, and the employees, based on the criteria listed in the statute. These recommendations should be viewed as a package and not an individual resolution on each issue separate from the other. As noted in these recommendations the Neutral Factfinder believes that the best chance for a negotiated agreement would

be to consolidate the Union's economic enhancements to the County's last offer in one budget area only. While the Union has made a reasonable argument that the current wages of their members is on the lower end of the wage spectrum when compared to other jurisdictions in California, it is also true that this County has a lower cost of living when compared to other Counties in California. While the Union has presented evidence that the County can afford their proposals, which is not disputed, it also has not presented sufficient evidence of a recruitment and retention problem that would necessitate the full adoption of all of their economic proposals. Taken as a package this recommendation enhances the County's last offer in a reasonable and supported fashion, and also provides the County with a new retirement option that should help manage in the long run the County's pension Annual Required Contribution ("ARC"). These recommendations are being made after working with the parties to craft a contract settlement, and represents my attempt to help the parties fashion that agreement. The following represents my recommendations on each of the outstanding issues outlined earlier in this report, and should be viewed as a package proposal:

- 1) Cost of Living Adjustment: I recommend a three-year term effective May 1, 2016 and expiring on April 30, 2019. Upon ratification by the Association and adoption by the Board of Supervisors, a 3% increase (with an assumed date of 1/8/17), 5/1/17, a 3% increase, and 5/1/18, a 2% increase. This recommendation is consistent with settlements with other units in the County, and was informally discussed with this Union in prior discussions, and is supported by the criteria of the MMBA. It should be noted that the implementation of the wage increase in 2017 is not retroactive, and the reasons for this will be discussed later in this report.
- 2) Market Adjustments: At this time the Neutral Factfinder does **not** recommend the adoption of the Union proposal for a 1% increase in each year of the agreement, for the classifications in their salary survey that they found to be significantly undermarket. The Neutral Factfinder believes that putting additional money in the agreement is best done with the modified adoption of the Union proposal on the Retiree Administrative Fee, as opposed to this market adjustment where the parties are not in agreement on the comparable Counties and the method of survey. However, I do believe the parties would be best served by forming a joint committee at some point during this agreement to discuss and hopefully develop

a joint comparability survey based on total compensation. This can provide the basis for more productive negotiations in the future.

- 3) Retroactivity: As noted in the above, I recommend the adoption of the County position of **no** retroactivity in this agreement. The Neutral factfinder believes that it is important to maintain the parties historical practices unless there is compelling reason not to, and the recent record in Shasta County has been that the agreements have not included retro pay. There is also some truth to the effect that this system encourages timely resolution of contracts.
- 4) Retiree Administrative Fee: I recommend the Union proposal to eliminate this fee, however this should be amended to eliminate the Fee in 1/3 increments over the life of the agreement. The first 1/3rd reduction will be implemented on 1/8/17, the second 1/3rd on 1/8/18, and the final 1/3rd reduction on 1/8/19. This timeline insures that there is not a significant hit to the County General Fund in any one year. While this is certainly a cost to the County, the Neutral Factfinder believes that the County is able to afford this amount given their reserves and the projections for increasing financial stability in the near future. In addition this Fee has been removed in other County Units.
- 5) Increase Stand By Rate: **No increase**. As with other ancillary financial improvements proposed by the Union I believe additional money is best supported in the reduction of the Retiree Admin Fee, and not in this area.
- 6) Longevity Pay: **No**, for the same reasons as above.
- 7) Medical Opt Out Payment: **Not to be implemented**. For similar reasons related to the other ancillary financial improvements, and additionally no other County unit has this benefit.
- 8) Union Access to Outlook Calendar: **Not to be implemented**. The Union does not have a compelling argument for this proposal.
- 9) 401(a) Plan: As part of a complete agreement this County proposal should be **implemented**. The Union had previously indicated that as part of a complete agreement they would not be opposed to this proposal.
- 10) Union Safety Proposal: I recommend the parties set up a joint UPEC/County safety committee that would meet 3-4 times each year to discuss safety related issues and make recommendations for enhanced safety for employees, especially when they work in dangerous areas and during the evening.

11) Travel Time Compensable: **Not to be implemented.** Once again I believe that financial enhancements for employee compensation are best concentrated in the areas of COLA, and the reduction in the Retiree Admin Fee. The County's current FSLA compliant policy is sufficient.

12) Union Time at Employee Orientation: I recommend the **acceptance of the Union request for access during employee orientation.** However the access should be given on non-paid time for the employees. At the end of the orientation by the County of new employees, they will be told that if they want to attend a Union information meeting during their break time, they can meet with the Union representative. This should deal with the County concern of granting paid time for the Union, when other employee groups do not have it.

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.



Dated January 10, 2017 _____

David A. Weinberg: Neutral Chair, Factfinding Panel

I concur with recommendations:

I dissent with recommendations:

County Panel Member: _____

I concur with recommendations:

I dissent with recommendations:

Union Panel Member: _____

11) Travel Time Compensable: **Not to be implemented**. Once again I believe that financial enhancements for employee compensation are best concentrated in the areas of COLA, and the reduction in the Retiree Admin Fee. The County's current FSLA compliant policy is sufficient.

12) Union Time at Employee Orientation: I recommend the **acceptance of the Union request for access during employee orientation**. However the access should be given on non-paid time for the employees. At the end of the orientation by the County of new employees, they will be told that if they want to attend a Union information meeting during their break time, they can meet with the Union representative. This should deal with the County concern of granting paid time for the Union, when other employee groups do not have it.

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.

Dated January 10, 2017 

David A. Weinberg: Neutral Chair, Factfinding Panel

I concur with recommendations: 1, 2, 3, 5, 6, 7, 8, 9, 11

I dissent with recommendations: 4, 10, 12 (see attached)

County Panel Member: 

I concur with recommendations:

I dissent with recommendations:

Union Panel Member: _____

Shasta County and United Public Employees of California, LIUNA Local 792
Case No. SA-IM-168-M

Shasta County's Representative to Factfinding Panel
Gage C. Dungy

Concurring and Dissenting Opinion to Findings and Recommendations Pursuant to California Government Code 3505.4 and 3505.5:

As the representative for Shasta County ("County") to the Factfinding Panel, I concur with many portions of the Findings and Recommendations Pursuant to California Government Code 3505.4 and 3505.5 ("Report"). There are a few significant points, however, with which I disagree, and for that reason, I am providing this concurring and dissenting opinion.

I. CONCURRENCE

I concur with the recommendations of Panel Chairperson David A. Weinberg on the following matters:

1. Cost of Living Adjustment
2. Market Adjustments
3. Retroactivity
5. Increase Stand By Rate
6. Longevity Pay
7. Medical Opt Out Payment
8. Union Access to Outlook Calendar
9. 401(a) Plan
11. Travel Time Compensable

II. DISSENT

I respectfully dissent from the Report's recommendations regarding:

4. Retiree Administrative Fee
10. Union Safety Proposal
12. Union Time at Employee Orientation

Regarding the above recommendations of the Report that I dissent from, I find as follows:

4. Retiree Administrative Fee

I cannot agree with the Report recommendation that the County phase out the retiree administrative fee in 1/3 increments over a three year period. While such increments would not initially take as significant a hit on the County's General Fund as if the entire retiree administrative fee was eliminated at once (as proposed by the Union), the fact remains that this is not a one-time cost to the County, but rather an ongoing liability to the General Fund going forward with the entire cost absorbed by the County's General Fund. To note that absorbing this cost is fiscally responsible because the County has reserve funds and has projected that it will be more financially stable in the future is too speculative at this point where there remain a number of uncertainties regarding the County's revenue sources in the future amid the certainty of increased costs and expenditures. The use of reserve funds to offset this ongoing cost to the General Fund would not be fiscally responsible to the extent that the County's revenues would not eventually be able to absorb this cost.

Accordingly, I cannot recommend that the County phase out the retiree administrative fee in 1/3 increments for employees in this bargaining unit.

10. Union Safety Proposal

I cannot agree with the Report recommendation that the County set up a joint UPEC/County safety committee to meet 3-4 times/year to discuss safety-related issues. **To be clear, my objection here is not because I nor the County do not have a concern for the safety of County employees.** To the contrary, such safety concerns are paramount and the County remains committed to addressing any such safety concerns that may arise. Rather, my objection here is because the creation of such UPEC/County safety committee is unnecessary and overly duplicative of the existing safety reporting and review procedures at the County. The County's Injury and Illness Prevention Policy requires that each Department have a Safety Representative who works with the County's Safety Officer to address any such safety issues that may arise. In addition, the Safety Representatives from each Department already meet regularly on a quarterly basis as part of a Safety Committee to address any such issues. Adding an additional UPEC/County safety committee to this already existing structure is entirely unnecessary. Throughout these negotiations, the County has pointed out this existing process in response to the Union's proposal and the Support Services Director has also indicated that she is more than willing to address any issues/concerns that the Union may have that such process is not working. The County remains committed to addressing any safety issues that may arise and is confident that the existing procedures under the County's Injury and Illness Prevention Policy and the open door policy of the Director of Support Services to address any issues/concerns with such procedures will continue to do so.

Accordingly, I cannot recommend that the County set up a joint UPEC/County safety committee.

12. Union Time at Employee Orientation

I cannot agree with the Report recommendation that the County be required to provide the Union access at the end of employee orientation meetings. The Report's recommendation to allow such access on non-paid time for the employees at the end of such meetings (*e.g.*, unpaid break time, end of shift) is different than the Union's proposal that such access be done during employee paid time. While I appreciate and understand this distinction in the Report's recommendation, this is still based on the assumption that the scheduling of such employee orientation meetings will always border on such unpaid time for the affected employees. From an operational standpoint for the County, that is not always the case and it is not reasonable nor operationally feasible for the County to modify the scheduling of these orientation meetings to meet this guideline. In contrast, the Union currently has the ability to access its members during non-working hours both in and out of the workplace to communicate and interact with its members and will still be able to do so going forward.

Accordingly, I cannot recommend that the County provide the Union access at the end of its employee orientation meetings.



Gage C. Dungy, Shasta County Panel Member

1 / 13 / 17

Date

11) Travel Time Compensable: Not to be implemented. Once again I believe that financial enhancements for employee compensation are best concentrated in the areas of COLA, and the reduction in the Retiree Admin Fee. The County's current FSLA compliant policy is sufficient.

12) Union Time at Employee Orientation: I recommend the **acceptance of the Union request for access during employee orientation.** However the access should be given on non-paid time for the employees. At the end of the orientation by the County of new employees, they will be told that if they want to attend a Union information meeting during their break time, they can meet with the Union representative. This should deal with the County concern of granting paid time for the Union, when other employee groups do not have it.

The Neutral Member of this Panel agrees that these recommendations are in accord with California Government Code Sections 3505.4 and 3505.5, and endorses these recommendations.

Dated January 10, 2017 David A. Weinberg

David A. Weinberg: Neutral Chair, Factfinding Panel

I concur with recommendations:

I dissent with recommendations:

County Panel Member: _____

I concur with recommendations:

I dissent with recommendations:

Union Panel Member: [Signature]
1-10-16