

IN THE MATTER OF }
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 County of Riverside,)
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 Service Employees International Union,)
 Local 721)
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 PERB Case # LA-IM-252-M)
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REPORT AND
 RECOMMENDATIONS
 OF THE FACT-FINDING
 PANEL

Procedural Background

By letter of November 13, 2017, Tony Butka was appointed by PERB as Chair of a factfinding panel in the above captioned matter. Edward Zappia was designated as the Counties Panel Member, and Josie Mooney was designated as SEIU’s Panel Member.

Scheduling the Factfinding proved complicated, and necessitated a waiver of the statutory time limits for hearings and a Report and Recommendations. Ultimately, there were six (6) days of hearing.

While the date of February 7th was tentatively reserved, it did not work out. Based on the reality that there have been literally thousands of pages of documents produced during the hearings, a post hearing schedule was arrived at as follows:

Subsequent to the close of hearing the parties provided the Chair a Post-hearing process with briefs first due to the Chair, then a Draft by the Chair to Panel members for comments, and finally a Report and Recommendations from the Chair to the parties. Thereafter, the two other Panel members are free to agree with the Report, disagree with the Report, or take no action. It would, Of course, be lovely to have a unanimous Report, but not necessary. This Report and Recommendations represents the Final Report.

CRITERIA FOR FACT-FINDING UNDER THE MMBA

Prior to 2012, the only impasse resolution under the Meyers-Milias-Brown Act (the State law governing cities, counties, and special districts) was for voluntary mediation. However, in 2012 the State of California enacted **AB 646** (now Government Code Sections 3505.4 – 3505.7) which establishes a fact finding process and lays out a set of 8 criteria to be used by the fact finding panel. Those criteria are listed in Section 3505.4(d) and provide as follows:

“(d) In arriving at their findings and recommendations, the fact finders 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.”

Bargaining History

This is a Fact-finding Report and Recommendations for a successor MOU between the County of Riverside and SEIU, Local 721. The previous MOU had a term of March 1, 2012 through November 30, 2016. The parties have been in negotiations for a successor agreement since September, 2016, with various starts and stops. Of the 22,000 plus employees of the County, SEIU represents approximately 7300 employees in four bargaining units; Para-Professional, Professional, Registered Nurses, and a Supervisory Unit.

In terms of the relationship between the parties, there is little doubt that SEIU and the County of Riverside have a tumultuous history. As the Counties response to SEIU’s request for Fact-finding indicates (County Exhibit 1), there were something like 25 Charges in play with PERB during just the past year, even as the impasse moved forward. Just to be clear, external matters such as PERB Charges are beyond the scope of this Fact-finding, unless they have been made a part of this record. We are limited by the best evidence presented at hearing in our analysis and recommendations.

Subsequent to being organized sometime during the 2000s, SEIU and County negotiations fell apart and the County ultimately unilaterally implemented a last, best and final offer in 2012.

With this background, it is perhaps unsurprising that the parties were able to agree on very little during the course of negotiations. A review of County Exhibit 4 (Bargaining History) shows some 55 events, including cancellations for various reasons between September 2016 and August 3, 2017. Towards the end, the County presented SEIU with a Last, Best and Final Offer on July 19th, 2017.

Economics – A Tale of Two County’s

From the County of Riverside’s perspective, their first witness, Don Kent, Assistant CAO for Finance, and former Treasurer-Tax Collector, provided some of the core differences regarding the economics of Riverside County. The County had been growing rapidly in terms of housing, industry, and population up until the housing collapse and economic downturn in 2007/08. That event could have resulted with the County on the brink of insolvency, absent a

very hefty reserve fund to the tune of something like 400 Million Dollars, and the lesson learned left serious scars on the body politic.

Based on the history of how quickly revenues can drop, the CAO recommended and the Board adopted a policy of 25% Reserves for the County General Fund, which would be \$189 Million dollars. However, the Board, in terms of actual expenditures, shows some \$150 million dollars, which makes the CAO nervous in terms of any unanticipated expenditures or another downturn,

For those unfamiliar with how counties budget, it should be noted that the vast bulk of any county budget is going to be 'pass-thru' money, mostly from Federal and State sources. That money is not discretionary, and is linked to certain areas such as Public Health, Welfare, and the like. In the case of Riverside County, for example, the gross budget amount in question is some 5.5 Billion dollars, of which only 793 Million dollars is NCC (Net County Cost), also sometimes referred to as discretionary General Fund money over which the Board of Supervisors can exercise full control. For our purposes, we will be referring to NCC numbers in terms of the bargaining impasse between the parties.

Currently, in the years after the financial meltdown, the County has realized another surge in economic activity and population growth, as its neighboring County's such as LA/Orange County/San Diego County have become increasingly unaffordable to many workers, so population and housing has moved towards Riverside and other more geographically remote areas of Southern California.

The Ability to Pay

Generally, the ability to pay (MMBA Criteria 4) is not that significant in a factfinding, because most public employers argue "willingness to pay" as opposed to "ability to pay". In this case, however, the County of Riverside specifically argues their ability to pay as justification for their Last, Best and Final offer, and intent to implement.

In the private sector, employers avoid the stance because it willy nilly allows the union to audit the company books in detail, and to substitute their judgment for that of management in terms of how to slice up the pie for a contract settlement. In the public sector, and specifically under the auspices of a PERB factfinding, I am unaware of the issue having ever come up, which presents us with a conundrum.

On the one hand, the ability to pay is referenced as a criteria to be considered in Fact-finding. On the other hand, the Report and Recommendations of the Fact-finding Panel are only advisory, and the Board is ultimately free to unilaterally implement whatever they want, after going through some hoops.

In any event, the ability to pay issue cannot be avoided, especially as the County of Riverside has made it quite clear that their decision to engage is what is commonly referred to as "concession bargaining", is based on their ability to pay, as testified to by Mr. Kent. He stated that the County has a structural deficit in which expenditures exceed revenues, thus eating into the reserves (see County Exhibits 16 and 17).

This proposition is also demonstrated by the testimony of Clarissa Cacho (Principal HR Analyst), as she went over County Exhibit 5. a track-changed version of the County's Last, Best and Final Offer.

She testified that there was Board direction to:

- (1) reduce the amount between steps of the salary schedule by ½, so that it would take significantly longer for employees to move through the salary range,
- (2) eliminate 3rd Party Medical plans for reimbursement,
- (3) modify the 'cash back' provisions for benefits and eliminate subsidies, and
- (4) finally, refuse any Cost of living adjustments in a successor agreement.

Since these items are elimination of existing compensation (with the exception of COLA's), they are clear indicators of concession bargaining, as it is known in the trade. Also, in Union Exhibit 13, page 57 (a summary of 2016-17 negotiations), Eloy Alvarez testified that the County's LBFO was regressive:

- (1) no wage increases
- (2) reduce merit increases from 2 steps to 1 step
- (3) freeze reimbursement rates, and eliminate any premium subsidies for new hires
- (4) modify shift differentials so that a majority of the shift must be after 7pm (less employees would qualify)

I mention all this at some length because it has a direct impact on weighing three major areas of the County's budget challenged by SEIU -- (1) Reserves, (2) Special Funds, and (3) an extended term consulting contract between the County and a private consulting firm, KPMG in the cap amount of \$20 million dollars.

Comparable Jurisdictions

Fact-finding criteria #5 has to do with comparing the wages, hours and working conditions of 'other employees performing similar services in comparable public agencies.' Immediately we have a substantive difference between the parties as to what the market-basket of comparable jurisdictions consist of.

In the case of most California counties, there is a reasonably long history of bargaining between the employer and their employee organizations, with a mutual agreement as to which jurisdictions should be included in comparing compensation. Such is clearly not the case in Riverside County.

From the County's perspective, there are five (5) counties to look at; Los Angeles, Orange, San Bernardino, San Diego, and Ventura. From the Union's perspective, there are seven (7) counties to be considered; Los Angeles, Orange, Sacramento, San Bernardino, San Diego, Santa Clara, and Ventura.

The differences in the compensation numbers for benchmark classes is not trivial depending on who gets counted, and absent any agreement between the parties, obtaining an agreement on representative counties would normally have been resolved long ago, or at least been subject to meet and confer. In this case, I find no evidence that any agreement on this key issue ever took place.

Although to a lesser degree, the same lack of mutual agreement arises in determining which classifications are benchmark positions, and in deciding what is and is not to be examined as a part of "total compensation".

Generally, I can say with some certainty that each side has done a good job in cherry-picking their presentations to prove their point.

The Issue of Special Funds

Union Exhibit 4 is a list of the County funding codes, which includes around 170 plus special funds that the County of Riverside includes as a part of their General Fund budget. In its affirmative case, the County did not address the issue of Special Funds.

However, SEIU's Ryan Hudson provided evidence and testimony regarding these issues as a part of his presentation of Union Exhibit 2 – *Analysis of County Financials and Key Policy Points*. As Mr. Hudson testified, for whatever reason, Riverside County has elected to place these special funds within the General Fund portion of the budget.

The General Fund/Non-Discretionary breakdown of the Budget is important because the percentage listed as attributable to SEIU units as General Fund in fact includes a number of "use it or lose it" non-discretionary special funds.

This tends to give the impression that SEIU represented employees are funded to a larger extent by the General Fund than may be true. To non-finance types, you would think that SEIU represented employees take a higher percentage of discretionary County money than is actually the case.

In fact many of the enumerated special funds can only be used for specific purposes or they will be lost. Union Exhibit 2 provides the following examples:

- The budget shows Social Workers as being 100% funded through the General Fund, when in fact over 97% of Social work is specially funded;
- Mental Health workers show as 100% General Fund, while in fact around 95% of their work is specially funded; and
- Environmental Health Specialists show as 100% General Fund, while their work is 100% funded by licenses and charges for service.

I won't go on about this issue, since the County Assistant CAO Finance, Don Kent, vigorously disagreed with the Union's characterization. He maintains that the County's methodology of General Fund and the included sub-funds that include non-discretionary requirements are totally legitimate, and that the Union is all wet.

Given the importance of this dispute and the fact that there is no agreement as to how the monies should be characterized, it is impossible to make a finding in this proceeding as to

who is right or wrong. It is, however, a substantive issue that the parties might want to consider resolving in future.

The Issue of Reserves

In fact, the story of Riverside County is in many ways a tale of two very different visions of the 4th Largest County in California. Under the County's vision, Riverside was doing fine until the financial services industry crash of 2007-2008, during which time ordinary people were largely wiped out and the County's revenue plummeted. As the Assistant CAO testified, the County came close to having to take draconian actions to stay afloat, and were able to handle the transition only because of robust reserves.

The CAO wants to have a 25% on General Fund cushion, which would be about \$180 Million dollars. Of course the Board of Supervisors are a bit more flexible notwithstanding the policy, with current reserves more in the \$150 Million dollar range. For their part, the Union poked holes in the County position, noting that recommended reserves for counties is on the order of 15-17%. They do this citing the County's Exhibit 45 on recommended reserves by the Government Finance Officers Association.

Further, the Union's vision of the County is that subsequent to the crash, Riverside County has economically rebounded quite well, with a very positive outlook, and can certainly afford to provide their employees with wage and benefit increases.

Two very different visions of Riverside, and not ones that are likely to be resolved by this Factfinding effort.

Within the context of this dispute, it should be pointed out that the determination of what reserves the County should have is generally a policy question for the Board of Supervisors to set around budget time. However, in this case the County has argued an inability to pay, which puts the issue of reserves legitimately in play, recognizing that ultimately the Board of Supervisors may choose to ignore any recommendations by the fact-finding panel and unilaterally implement their last, best and final offer.

The Issue of the County Contract with KPMG

In the opinion of the Chair, the issue of the Board of Supervisors contract with KPMG for consulting services is outside of the scope of bargaining, and not conducive to obtaining agreement on a successor agreement. Clearly, the initial and subsequent agreement between the County and KPMG for around a \$40 million dollar cap amount was a political policy determination by a majority of the Board.

Absent some finding of illegality by a court of competent jurisdiction, the Board is within their rights to take this action, and I suspect that pointing out all of the question marks in that agreement is not going to aid the Union in getting that same Board to ratify a successor agreement with increases. Since it is an open ended agreement with a reasonable termination clause, a majority of the Board is free to reverse course at any time.

Registered Nurses

It is no shock to anyone that California faces a significant shortage of nursing personnel, and clearly Riverside County is no exception. It is true that the class/comp issues regarding the Nurses are substantially different than for other County employees. First, many counties have eliminated their Hospitals, and shifted them over to University Hospitals, such as UCI in the case of Orange County. Thus they are not a direct part of that market, while private entities such as Kaiser Permanente are a part of everyone's market.

Further, unlike regular County employees, some bargaining unit work is performed by Traveling or Registry Nurses via outside private contracts. Based on the evidence and testimony by Jen Cruickshank (the CEO of RUHS), there is agreement on two points.

First, it seems clear that RUHS is an entry level employer, where employees hone their skills through formal and on the job training. They then tend to go out into the world, with a downside for Riverside County. It is expensive to train staff, and if they then learn on your dime and go somewhere else for higher pay and better working conditions, it is not a good thing. Sort of the same as various County Sheriff Departments spending a bunch of money on POST Training, only to have the officers go to greener fields shortly thereafter.

Second, be they called Traveling Nurses or Registry Nurses, outside contracts for temporary nursing personnel are **expensive!** As CEO Cruickshank testified, she absolutely is looking for ways to use as few of these contract folks as possible. It's good business and good math. In this area there does not seem to be a dispute between the parties.

Therefore I feel comfortable making a suggestion regarding the County proposal to send whomever they want to, home, in the event of low census. It would seem logical that such a policy would favor staff employees, so long as they have the skills to perform the position or positions being sent home.

It also seems that providing an equity adjustment for RN's would be in order in an attempt to show that they are valued, and hopefully will stick around long enough for the County to offset their training costs.

The Bottom Line

Before getting buried in detail, it is important to recognize that the purpose of a factfinding panel is **not** to determine the facts. Facts abound, and this record is replete with a cornucopia of them. As we have seen, with no mutual agreement on which jurisdictions should be used for comparison, or even which the benchmark classes are, and disagreement even on the issue of what constitutes total compensation, these factors are all of little use in crafting a settlement recommendation.

Really, viewed as a whole, the post-impasse factfinding sections of the MMBA and the underlying rationale for this entire procedure is to try and bring the parties together towards a mutually acceptable contract settlement which blends the "interests and welfare of the public" with a contract that both the public agency and the employee organization can live with.

As a result I have tried to avoid writing an extensive item by item book of recommendations, which would be easy to do given the volumes of exhibits and testimony of a large number of people. This effort is designed to be as short as possible, with best efforts to provide a framework which might result in a successor agreement.

Given the history of these parties, that's a pretty neat trick. At the same time, all of the litigation, labor disputes, charges, and working without a contract take a toll on both the County and the Union. At the risk of offending my fellow Panel members, all this time, energy, and money, could be better spent if everyone could reach an agreement and simply get back to the business of taking care of the public.

First, a general observation about the expired 2012-2016 agreement. From an outside perspective, it seems that the County was doing what a lot of Cities and Counties were doing during that time period. With increasing pension rates, public employers wanted and needed the employees to pick up their full employee share of CalPERS pension costs.

Be it for a 2, 3, or even 4 year term, there was a pattern in California public agencies to have the employee absorb the employee contribution portion of the costs, and most employers did so by phasing in wage increases which offset the employee pension cost increases. It would seem a fair assessment that the expired agreement achieved this shift.

Given the fact that the parties in this dispute agree on very little, from jurisdictions to survey, to benchmark positions to what total compensation means, the data is not terribly useful in making recommendations that both sides are going to agree on and ratify. In that spirit, and recognizing that both sides seriously need a break from each other at the bargaining table, here is a recommendation for settlement:

(1) Term – December 1, 2016 – July 30, 2019. This would get the contract in sync with the County's fiscal year of July 1 – June 30th, and provide some time for everyone to heal their wounds. The proposal would also avoid any significant retroactivity issues.

(2) Wages -

(a) no increase for the period December 1, 2016 – December 30, 2017

(b) 2% across the board wage increases effective January 1, 2018 – June 30, 2018

(c) 2% across the board wage increases effective July 1, 2018 – June 30, 2019

(d) An additional 1% increase for employees in the RN bargain unit effective 1/1/18

(3) No changes in the County's Health and Welfare cap, with the provision that in the event that any other bargaining unit negotiates a better deal during the life of this agreement, such increases would automatically apply to the SEIU Units (commonly referred to as a 'me too' agreement).

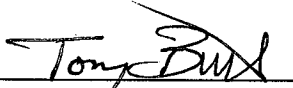
(4) With the exception of Health Insurance, elimination of all takeaways from the County's Last, Best and Final Offer. If the parties wish, a joint Union-Management Committee could be utilized to determine if any proposal in the Last, Best and Final Offer should be kept.

Regarding other issues in the County Last, Best and Final Offer, no recommendation. As we speak, the 2016-17 Fiscal Year is already behind us. Implementing the takeaways in the LBFO at this point would simply anger most employees for no significant gain. On the other

hand, the Chair makes no recommendation, given the parties propensity to spend any savings potentially gained by such takeaways in external litigation costs.

It should be noted that for Fiscal Years 2017 and 2018, most public sector agencies are granting wage/benefit increases.

Submitted

A handwritten signature in black ink, appearing to read "Tony Butka", written over a horizontal line.

Tony Butka
Factfinding Panel Chair

Dated: April 9, 2018