FACTFINDING REPORT and RECOMMENDATIONS
September 22, 2018

Public Employment Relations Board Case # LA-IM-263-M
County of San Luis Obispo and the San Luis Obispo Deputy Sheriffs Association
Factfinding Dates: July 17 & 18 plus August 22, 2018

Factfinding Panel Members:
Impartial Chair: Don Becker,  
Association Member: Peter Hoffmann  
County Member: Mike McDougall

Presenters:
Association: Damian Stafford, Labor Relations Representative, Rains Lucia Stern, PC
County: Jeff Sloan, Sloan Sakai, Attorneys at Law

Other Participants in the Factfinding:
L M Luther DSA  
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REPORT

Following is the analysis and recommendations of the chair plus the dissents by both the County and the Deputy Sheriff’s Association

BACKGROUND

County
The County of San Luis Obispo, incorporated in 1850, is located on the central coast of the State of California, midway between Los Angeles and San Francisco. The county currently occupies a
land area of 3,616 square miles and serves a population of 280,101 residents. Approximately 43% of the population resides in the unincorporated area. There are seven incorporated cities within the county.

A five-member County of Board of Supervisors is the legislative authority and governance for the County. The Board is responsible, among other things, for establishing ordinances, adopting the budget, appointing committees, and hiring the County Administrator and non-elected department heads. The County Administrator is responsible for carrying out the policies of the Board and overseeing the day-to-day operation of the County.

The County provides a full range of services, including public safety and fire protection, construction and maintenance of highways, streets, and other infrastructure; health and social programs that promote the well-being of the community, and recreational activities and cultural events.

**Bargaining Units at Issue**
The bargaining units that are the subject of this factfinding were found appropriate by the County pursuant to section 3500 et. Seq. of the California Government Code. The Deputy Sheriff’s Association was certified by the County as the exclusive representative of the units. The bargaining units are: Law Enforcement Unit, BU03; Supervisory Law Enforcement Unit, BU14; Non-Safety Law Enforcement Unit, BU21; and the Dispatcher Unit, BU22.

As of June, 2018, the Law Enforcement Unit, BU03, was comprised of two classifications, Sheriff’s Correctional Deputies and Sheriff’s Senior Correctional Deputy with a total of 125 full-time equivalent (FTE) employees. The Supervisory Law Enforcement Unit, BU14, was comprised of two classifications, Sheriff’s Correctional Sergeant and Sheriff’s Dispatcher Supervisor with 15 FTE. The Non-Safety Law Enforcement Unit, BU21, was comprised of five classifications, Sheriff’s Cadet, Sheriff’s Property Officer, Crime Prevention Specialist, Sheriff’s Forensic Specialist, and Sheriff’s Forensic Laboratory Specialist with a total of 14 FTE. The Dispatcher Unit, BU22, was comprised of two classifications, Sheriff’s Dispatcher and Sheriff’s Senior Dispatcher with 18 FTE.

**Negotiations and Impasse**
Prior to declaring impasse, the County and the Deputy Sheriffs Association held negotiation meetings in an effort to reach agreement on all issues under discussion. During those meetings the parties reached tentative agreements on all but eight topics. Tentative agreement essentially means that based on what has happened so far, these subjects are settled, but could change depending on subsequent negotiations. The topics that were still open at impasse were: (1) work schedules, (2) salaries, (3) market wage study, (4) health coverage and other benefits, (5) medical insurance opt out, (6) overtime, (7) uniform provisions, and (8) the deferred comp program. The parties reached impasse and subsequently held an impasse meeting as required by the County’s Employee Relations Policy.
Factfinding
Since total agreement was not reached at the impasse meeting, the Deputy Sheriffs Association petitioned the California Public Employment Relations Board to initiate a factfinding process. PERB sent a letter to me dated June 5, 2018, informing me that I had been selected by the parties as impartial chair of the factfinding panel. Meetings between the parties and the panel were held on July 17 and 18 plus August 22.

As part of the factfinding process, the parties agreed that the Impartial Panel Chair may also perform the role of mediator. During that mediation process, the parties reached agreement on all issues except salaries and health insurance.

Statutory Criteria
California Government Code Section 3505.4 (d) provides guidance for the factfinding panel and the parties:
(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.

ANALYSIS and DISCUSSION
Five (5) of the criteria listed above are relevant to this dispute: numbers (2), (4), (5), (6) and (8).

Criterion #2:
Local rules, regulations, or ordinances.
County of San Luis Obispo County Code Section 2.48.180 is a prevailing wage ordinance and was originally adopted by the County on January 3, 1973 and was amended to its current form on November 4, 1984.

The current Prevailing Wage Ordinance is included by reference in the 2015-2017 Collective Bargaining Agreement (colloquially, MOU) between the parties at Section 8.1.1 which provides:

The parties agree that the compensation set forth in Article 6, complies with the requirements of County Code Section 2.48.180.

The parties seem to have interpreted this to mean County compensation should be compared to other agencies to determine the County’s rank/position relative to whatever agencies are used. To that end, the County produced a salary survey typical of the type used to satisfy 3505.4(d) criterion 5, above. More on this survey later. This approach would have been correct for the language of the 1973 County Prevailing Wage Ordinance. That version provides in pertinent part:

In fixing compensation to be paid to persons in the County's employ, the Board of Supervisors … shall, in each instance, provide a salary or wage at least equal to the prevailing salary or wage for the same quality of service rendered to persons, governmental agencies, firms or corporations under similar employment, in case such prevailing salary or wage can be ascertained.

This language clearly tasks staff with providing the Board of Supervisors with data detailing how the County compensation compares with other governmental agencies, etc., i.e., what is our status in the market, and using that info during the collective bargaining process.

The revised Prevailing Wage Ordinance abandons that approach, and instead requires the County to examine how compensation has changed since the last survey. The new Prevailing Wage Ordinance provides in pertinent part,

In fixing compensation to be paid to persons in the county's employ, the board of supervisors and every other authority authorized to fix salaries or wages, shall provide a percentage change in compensation at least equal to the percentage change in compensation for the same quality of service rendered to persons, governmental agencies, firms or corporations under similar employment. *(Emphasis added.)*

When the Chair pointed out that there is no data showing the change in compensation of other agencies, the County agreed, but dismissed that requirement by emphasizing the next paragraph in the Ordinance which essentially provides that negotiations will determine prevailing wage.

Prevailing salaries or wages shall be determined by negotiations between the county's employer representatives and the recognized employee organization(s).

NOTE: This paragraph appears in both the 1973 and 1984 versions.

It is a long-recognized tenet of language construction, for both contractual and statutory provisions, that seemingly contradictory language must be reconciled to give meaning to all parts
of the contract or statute. It’s not reasonable to believe that the authors of the revised Prevailing Wage Ordinance would include clauses that they intended to have no effect. Consequently, the language of the first paragraph is not optional. The use of the word “shall” makes it mandatory. How the data is applied, when it is applied, over what term it is applied, to what form of compensation it is applied, what comparator agencies are to be used, are just a few examples of how the parties can give life to the second paragraph.

If either or both of the parties are unhappy with the requirement to measure market movement rather than market status, then there is a process for revising the ordinance, such as was used for the 1984 revisions.

Nevertheless, neither the County nor the Association provided data to address this aspect of the County’s Prevailing Wage Ordinance.

**Criterion # (4): The interests and welfare of the public and the financial ability of the public agency.**

The County did not assert an inability to pay. It did assert, however, there are reasons to be cautious going forward. The County cited the loss of the PG&E Diablo Canyon nuclear power plant, the largest property tax payer in the county with the loss of its 1500 jobs. The County also pointed to increasing pension funding requirements and the pressure to maintain mandated/critical services. On the other hand, County exhibits show that recently there has been a steady growth in property tax income, with this being bolstered by steady growth in the median home value in the county. County exhibits show that median home value has grown by more than 36% from 2011 to 2016. With the passage of SB1090, the County is assured of the mitigation payments negotiated with PG&E. This will dampen, though not entirely eliminate, the impact of Diablo Canyon’s closing. Another indicator that ability to pay is not an issue is the growth of staff over the last six years. County informed the Chair that its workforce grew by 348 employees over that period. According to County Tab 15, the 2018-19 Recommended Budget, page 45, the County has 2920 employees. That means over the last six years the County staff has grown by approximately 13.5%. But according to County Tab 17, the Comprehensive Annual Financial Report for the period ending June 30, 2017, at page 206, the County’s population grew by just under 4%.

**Criterion # (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.**

Unlike the County’s Prevailing Wage Ordinance, it is appropriate to ascertain the County’s position relative to other agencies (market status) to analyze this criterion. Each of the parties offer their own version of the appropriate list of comparator agencies to be used to determine the County’s market status. The Association offers five counties that have previously been used by the parties in past negotiations. The County objects since two of the counties, Marin and Monterey, use deputies to supervise the adult population of inmates. The Chair agrees that it is not appropriate to use those two counties. The Association objects to the inclusion of the County of Ventura on the County’s list since the “correctional officers” in that county do not have peace
officer status nor do they supervise the adult population. The Chair agrees that Ventura should be struck from the County of SLO list of comparator agencies.

The Association also objects to the County’s using the average of health insurance rather using the maximum each agency pays. The Association objects for two reasons. First, the County isn’t actually using a true average. The County combines the lowest rate, i.e., employee only, plus the highest rate, i.e., employee plus 2 or more, but ignores those agencies that also provide an employee plus one rate. The DSA asserts this would raise the median but the County objects and asserts that’s not necessarily so.

The Association’s second, and its major objection, is that it is industry practice to use the maximum rate, i.e., the employee plus 2 or more rate. This would definitely raise the median. The County argues that it isn’t fair to use that max rate since many employees take advantage of the opt-out provision of the County’s approach to health insurance. They argue that this inflates County cost beyond what most agencies have to pay. As the Chair understands the County argument, the cost per employee is higher in the County of SLO than most agencies, because of this opt-out feature. This may or may not be true, but the County offered no data to support this assertion. In any event, the Chair agrees with the Association that it is industry practice to use the maximum rate.

County points out that the current County health insurance contribution exceeds the cost of employee only insurance for each of the plans that are offered. The County asserts that increasing the contribution for employee only is merely a disguised salary increase and is not appropriate. The Chair agrees with that assertion.

During their factfinding presentation, County asserted that the employees’ retirement contribution should not be included in the survey, see County slide 39. Also, the County asserted that the County contribution to retirement should be added to the survey as a cost to the County and a benefit for the employees, see County slide 40. Nevertheless, in the County’s own survey they neither eliminated the employee contribution nor added the employer contribution. Furthermore, in the County’s initial proposal concerning a survey they would perform for 2018, neither of these points is included, see County Tab Section B, page 12. Consequently, the Chair will not be recommending these changes.

That leaves the County survey which was included at County Tab 7. The Chair’s notes don’t confirm this, but it seems this is the survey the parties used in the collective bargaining process. Regardless, it’s what was presented during the factfinding process. Using that survey, but deleting the County of Ventura as a comparator agency, for the reasons noted above, puts the correctional deputies at either 6% or 12% below the median, depending on whether we use health insurance average or health insurance maximum, contribution.

Another compelling impact of the health insurance and pension increases is the effect on take home pay of employees represented by the DSA. When considering the increases in compensation the County has proposed versus the cost increases for insurance and pension, employee take home pay will be approximately $400 a month less than at the beginning of the contract. It is important to take note of the fact that in her letter to the Board of Supervisors dated
September 20, 2016, the Human Resources Director cited this same problem, i.e., reduction in net take home pay, as one of the reasons for recommending an increase in compensation for unrepresented employees.

County slide 7, is titled, “County Associations Past Pattern.” It shows that when associations are “above market,” compensation increases are more modest than if the association is “below market.” The second bullet under “associations below market,” is the following: 7% over 2 years, with equity adjustments to those most out of market (2016-2018)/(2017-2019). This County pattern will influence the Chair’s recommendations.

The Chair has many reservations about the survey as presented. The Chair shares some of the concerns asserted by the parties, e.g., not including the County’s contribution to retirement; not using the max health insurance payment. But the Chair’s major concern is the use of a survey that measures market status rather than market change, as required by the County’s Prevailing Wage Ordinance. Focusing on market change will make agreeing to comparator agencies much easier than focusing on market status.

**Criterion #6:**
The consumer price index for goods and services, commonly known as the cost of living.

The Association used the Consumer Price Index for All Urban Consumer (CPI-U) for the West Region. The West Region covers thirteen western states, including California. The County raised no objections. The May 2017 to May 2018 change in this index was 3.5%. It is interesting to note that the changes in CPI in both the Los Angeles and San Francisco areas were over 4% for the month of June 2018.

**Criterion #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.

Under this criterion we look at internal comparisons. More than 80% of the employees represented by the Deputy Sheriff’s Association are safety employees. Consequently, it is appropriate to compare these employees with other safety employees rather than non-safety bargaining units. There are five safety employee bargaining groups: District Attorney Investigators Association, Sheriff’s Managers Association, Probation Peace Officers Association, Sworn Deputy Sheriffs Association and the Association under consideration in this factfinding, the Deputy Sheriff’s Association. County Tab #5 shows the changes in Salary, Cafeteria and Pension Charges from 2007/8 to 2018/19 for these five bargaining units. The median change for the other four units is 22.99% and the average change is 24.96%. The change for this bargaining unit, i.e., the Deputy Sheriff’s Association, is 18.69%. This shows that on average these folks fell over 33% behind the other safety bargaining units.

The County asserts that this unit was ahead of the market when it severed from the sworn deputy sheriffs. Consequently, it deserved smaller increases. The County offered no justification
that at this point these employees should fall even further behind the other safety bargaining units. If only one of the three forms of compensation is examined, e.g., salary, then the results will be different. However, the exhibit referenced above examines three forms of compensation. The Chair believes that for comparison purposes it is appropriate to use all three forms of compensation.

It is important to note that this shortfall is partially explained by the 3.5% July 2018 increases received by three of the other four units.

**FINDINGS and RECOMMENDATIONS**

Based on the analysis and discussion above, the Impartial Chair makes the following findings:

1. The parties incorrectly applied the County’s Prevailing Wage Ordinance;
2. The County has the ability to pay the compensation recommended below;
3. The employees represented by the Deputy Sheriff’s Association are significantly below the market as demonstrated by the County’s survey;
4. The consumer price index justifies an increase in compensation for the employees represented by the Deputy Sheriff’s Association; and
5. Internal comparison with other safety units justifies an increase in compensation for the employees represented by the Deputy Sheriff’s Association.

Based on the discussion and findings above, the Impartial Chair makes the following recommendations:

1. That all previously reached tentative agreements, both during the negotiations process and during the mediation portion of the factfinding process, should be included in the new collective bargaining agreement;
2. That a 3.0% salary increase be implemented effective July 1, 2018, for employees represented by the DSA;
3. That a 0.5% salary increase be implemented effective January 1, 2019, for employees represented by the DSA;
4. That the cafeteria contributions be increased for employee plus 1 to $1,025 and for employee plus 2 or more to $1,250 and that these changes be made prospectively as soon as administratively possible;
5. That a 2% pension cap apply, as TA’d by the parties, to the cost increase scheduled for July 2019; and
6. That the term of the Collective Bargaining Agreement be from January 1, 2018 to December 31, 2019.

Respectfully submitted,

Don Becker, Impartial Chair
PERB Case #LA-IM-263-M
INTRODUCTION

As I explain more fully below, the Chair’s findings and recommendations are based on fundamental analytic errors. Accordingly, I disagree with and dissent from the recommendations.

DISCUSSION

1. The Chair’s Recommendations Do Not Give Proper Weight and Consideration to the “Interests and Welfare of the Public”

The Majority Decision focuses on the technical issue of “ability to pay” and ignores the broader statutory requirement to consider “the interests and welfare of the public.” The County does not dispute it could pay for DSA’s proposals without going bankrupt – but that does not mean that doing so would be fiscally prudent or in the public’s best interest.

The County has provided extensive evidence and testimony regarding the volatile nature of tax revenues, negative impacts of the last recession, the strong likelihood of another recession in the relatively near future, and the significant challenges we face in maintaining IHSS funding as the State shifts costs to the Counties (an issue that impacts the most vulnerable segment of the County’s population). In my view, none of those issues has been given appropriate weight in the Chair’s analysis.

2. The Chair’s “Comparability” Analysis is Flawed and Misleading

The Chair’s recommendations are based on flawed analyses of how (1) the salary and benefits of DSA unit members compare to other workers performing similar work for other comparable employers, and (2) past increases given to DSA unit members have compared to those received by other County bargaining units. Specifically:

- The Chair’s finding that DSA unit members are significantly below market “as demonstrated by the County’s survey” is misleading at best. In fact, the Chair did not apply the County’s survey methodology to reach his conclusion. Instead, he unilaterally modified both the universe looked at (by deleting Ventura County) and the data points he evaluated (by modifying how he compared contributions to health insurance).

- The approach taken to comparing health insurance contributions is particularly troubling. The Chair has compared only maximum contributions, summarily declaring that this is the “industry standard.” He ignores the County’s unique approach (taken with the agreement of its bargaining units) of overfunding “employee-only” coverage so that employees get “cash back” to supplement their take-home pay. The flipside of that overfunding is that the County’s “maximum contribution” towards family coverage is relatively lower. To create a fair comparison, the County’s survey averaged contributions towards employee-only and family coverage. The approach taken by the Chair, in contrast, makes the County’s market position appear significantly worse than it really is for employees not enrolled in family coverage.
• The Chair incorrectly states that even if the County’s approach to health insurance is used its survey (without Ventura County) shows Correctional Deputies are more than 6% below median. That number, however, is based on including the value of Educational Incentives for other jurisdictions but leaving out increases the County has already agreed to make to Education Incentive for DSA unit members. If those increases are added into the analysis, DSA is only 3.4% below median.

• The Chair wrongly accepts at face value DSA’s claim that its unit members would lose $400 per month in take-home pay under the County’s proposals. Impacts on take-home pay would depend on choice of health coverage – and an employee enrolled in the new, less expensive health plan offered under Anthem Select would actually see their take home pay increased by up to $382 per month under the County’s proposal.

• The Chair’s decision to limit internal comparison to other County “safety” units is unjustified. It is more appropriate to look at how past increases have compared to all other County employee groups.

• As the County showed at hearing, DSA unit members have received greater wage increases over the past 10 years than all but one of the other County bargaining units, safety or non-safety. The Chair’s decision to evaluate salary increases by looking at a combination of total changes to salary, cafeteria contributions and pension contributions is inappropriate. On a wage-only basis, internal comparability does not support the recommended increase.

Conclusion

I disagree with the Chair’s recommendations for the reasons set forth above. The Majority Decision is not supported by the facts and does not provide any basis for the parties to bridge their disagreements or find common ground. Accordingly, I dissent from the Majority Decision and all recommendations made therein.

Submitted by:

[Signature]

Michael J. McDougall

Date

10/12/18
UNION PANEL MEMBER’S RECOMMENDATION
2018 DSA FACTFINDING RECOMMENDATIONS

Public Employment Relations Board Case # LA-IM-263-M
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In addition to the County of San Luis Obispo’s violation of the Prevailing Wage Ordinance, its efforts to artificially suppress the compensation of its public safety employees will result in continued challenges recruiting and retaining qualified personnel. As demonstrated during the hearing, since 2013, the take-home pay of a Correctional Deputy has decreased by more than $100 per month. When coupled with the rapid increase in the cost of living in the County of San Luis Obispo, a career in public service is no longer possible. As a result, represented employees are already working an alarming number of overtime hours to meet minimum staffing levels. With the County’s reliance on overtime to meet minimum staffing levels increasing each year, the County’s elected officials are unnecessarily placing the County in a perilous situation.

The County’s consistent challenges in providing even minimal public safety service levels at a time of unprecedented economic growth is a result of political dysfunction rather than economic constraints. Indeed, as noted in the Factfinding Report and Recommendations, while the members of the Deputy Sheriffs’ Association continue to work an unsustainable number of overtime hours, the County’s overall staffing levels have bloated by more than 13% over the last six (6) years. Simply stated, public safety is not a priority in the County of San Luis Obispo.

While the Union appreciates that the neutral panel member has recognized the County’s elaborate efforts to suppress the wages of its employees, the Factfinding Report and Recommendations do not go far enough in correcting the compensation disparity suffered by members of the Deputy Sheriffs’ Association. As the neutral noted, “[t]he employees represented by the Deputy Sheriff’s Association are significantly below the market as demonstrated by the County’s survey”. Specifically, when the indisputable flaws in the County’s survey are corrected, the neutral notes that represented employees are approximately 12% behind market. Accordingly, the rather modest wage increases and extended term recommended by the neutral do not sufficiently close the gap to make the compensation afforded to represented classifications competitive with the market. Demonstrating just how dire the situation has become, should the County immediately adopt the terms recommended by the neutral, employees in the Correction Deputy classification would continue to be at least 3.2% behind the market median even when using the County’s manipulated survey methodology.

While the County has avoided discussion with respect to its manipulated survey methodology – which it once touted as the “rational universe” – this factfinding process would be incomplete without scrutinizing the methodology utilized by the County in unilaterally determining the competitive market.
Since approximately 2010, the County of San Luis Obispo has sought to change the benchmark agencies that have traditionally been used to determine compensation of County employees. With a clear emphasis on driving down the wages and benefits of employees, the County adopted an elaborate 11 point evaluation wherein it attempted to determine which employers were similarly situated. Under the County’s “rational universe” methodology, competing employers could receive one (1) point in each of the following categories if the County deemed the competitor to be similarly situated in the specified criteria: (1) Miles from San Luis Obispo; (2) Cost of Living Index; (3) Population; (4) Unincorporated Population; (5) Median Household Income; (6) Median Home Value; (7) Taxable Sales per Capita; (8) Assessed Value per Capita; (9) Total Taxes per Capita; (10) Percentage of Population with BA or Higher; and (11) Median Age. The cumulative number of points awarded to each employer would then determine if the employer was truly similarly situated. If we accept the County’s point methodology as having any merit, it seems that we should at least follow what their results suggest. Instead, the neutral panel member has allowed the County to selectively include the County of Fresno and the County of Kern into the market survey, even though the County’s elaborate point system suggests that neither is comparable to San Luis Obispo County. Specifically, Fresno receives only two (2) of 11 possible points, while Kern gets only four (4) of 11 possible points. No other County benchmark has less than five (5) points.

If the parties were to only consider agencies with five points as being statistically relevant/comparable to San Luis Obispo, the “rational universe” would include the following county employers: Placer (8 points); Santa Barbara (7 points); Sonoma (7 points); Santa Cruz (7 points); El Dorado (6 points); Napa (5 points); and Santa Clara (5 points). In addition to including two statistically irrelevant benchmarks (Fresno and Kern), the County of San Luis Obispo’s market survey conveniently omits two benchmarks that its point systems suggests should be included: the County of Santa Clara and the County of Napa.

Submitted by:

[Signature]

Peter Hoffmann

Date

10/22/2018