In the Matter of Factfinding

– between –

THE COUNTY OF SAN LUIS OBISPO

– and –

THE SAN LUIS OBISPO COUNTY EMPLOYEES ASSOCIATION.

California Public Employment Relations Board Case No. LA-IM-260-M.

FACTFINDING REPORT & RECOMMENDATIONS

REPORT ISSUED JULY 31, 2018

FACTFINDING PANEL:

Impartial Chairman: *R. DOUGLAS COLLINS*, Arbitrator
703 Pier Avenue, Suite B #805
Hermosa Beach, California 90254-3943

Association Member: *JIM MALLON*, Supervising Appraiser
San Luis Obispo County Assessor's Office
6565 Capistrano Avenue
San Luis Obispo, California 93422

County Member: *MICHAEL J. McDOUGALL*, Consultant
Sloan Sakai Young & Wong, LLP
1220 Seventh Street, Suite 300
Berkeley, California 94710

APPEARANCES:

For the County: *JEFFREY SLOAN*, Attorney
Sloan Sakai Young & Wong, LLP
1220 Seventh Street, Suite 300
Berkeley, California 94710

For the Union: *DENNIS J. HAYES*, Attorney
Hayes, Ortega & Sanchez, LLP
3625 Ruffin Road, Suite 300
San Diego, California 92123

ALSO PRESENT:

For the Association: Barbara Bridge, Angela McCormick, Pat McNamara, Julian Metcalf, John Rogers, Erin Stich, Theresa Schultz

For the County: Russ Branson, Tami Douglas-Schatz, Megan Fisher, Michael Hobbs, Doug Johnson

BACKGROUND AND PROCEDURAL HISTORY

Pursuant to the terms of the current Memorandum of Understanding ("MOU" or "Agreement") between the *COUNTY OF SAN LUIS OBISPO* ("County" or "Employer") and the *SAN LUIS OBISPO COUNTY EMPLOYEES ASSOCIATION* ("SLOCEA" or "Association"), and in accordance with §3505.4 of the Meyers-Milias-Brown Act ("MMBA," §3500 – §3511, Chapter 10, Division 4, Title 1, California Government Code), the County and SLOCEA agreed to mediation and factfinding to resolve their disagreements over the terms of a successor MOU. I was jointly selected by the parties to serve as the neutral chairman of the factfinding panel. The Union named Supervising Appraiser *JIM MALLON* and the County designated Consultant *MICHAEL J. McDOUGALL* as the partisan members of the tripartite panel.

The evidentiary hearing was held May 22 and May 23, 2018, at the County's offices in San Luis Obispo, California. The parties were afforded a full and adequate opportunity to present documentary evidence, testimony, and argument on each of the issues in dispute. Each party submitted a post-hearing brief, which I received as e-mail attachments on June 19, 2018; after I had received both briefs, I forwarded a copy of the opposing party's brief to counsel for the County and the Association. I then prepared a draft of this decision, which was provided to the partisan panel members for their comment on July 17, 2018. Any concurring or dissenting opinions submitted by the partisan members of the factfinding panel are attached to the final report.

RELEVANT PROVISIONS OF LAW

California Government Code §3505.4

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.

. . .

(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.

. . .

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.

FINDINGS & RECOMMENDATIONS

ISSUE 1. TERM OF AGREEMENT

Positions of the Parties: The County and the Association are in agreement that their new MOU should remain in effect through June 30, 2019, a term of one year.

Opinion & Recommendation. As both parties concur that their successor MOU be effective through June 30, 2019, it is recommended that they implement that agreement.

ISSUE 2. SUCCESSOR AGREEMENT NEGOTIATIONS

Positions of the Parties: The Association has proposed that § 4.1.2 of the parties' 2016 – 2018 MOU be deleted from their 2018 – 2019 MOU. Although the County has indicated that it would prefer to retain the provision, during the factfinding hearing it agreed to delete § 4.1.2 from the new MOU if the Union so desires.

Opinion: The provision in question, § 4.1.2 of the parties' 2016 – 2018 MOU, concerns the timing of negotiation for a successor Agreement and establishes a specified date for the commencement of mediation and of factfinding. The provision is redundant in the sense that these impasse resolution procedures are established in California law, specifically § 3505.4 of the Government Code. Moreover, as correctly argued by the Association, that provision of law reserves to the employee organization the sole right to request factfinding and establishes a time line for the process. Finally, by setting firm deadlines for the commencement of mediation and factfinding, § 4.1.2 can force the parties to engage in impasse-resolution procedures before they have actually reached an impasse, as apparently was the case in this instance.

Recommendation. For the above reasons and based on the record as a whole, I recommend that the parties delete § 4.1.2 from their 2018 – 2019 Agreement.

ISSUE 3. SALARY INCREASE

Positions of the Parties: The County has offered no salary increase for employees in the "Big Unit"[1] during the term of the 2018 – 2019 MOU. The Association is seeking an across-the board increase of three percent for all employees in the Big Unit effective July 1, 2018.

Opinion. Arguably the most significant of the factfinding criteria established in California law are the financial ability of the public agency and the comparison of the wages of the affected employees with those of other employees performing similar services in comparable public agencies. Here the County has not asserted an inability to meet the Association's request for a three-percent across-the-board salary increase. Rather, the evidence establishes that the County is in a very strong financial position as compared to many public agencies in California. While it is understandable that the County desires to minimize expenses and to maintain a large budgetary reserve, that is not a persuasive reason for ignoring the other statutory criteria cited above, particularly when the reserves are reasonably sufficient to meet future expenses, including unanticipated costs.

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[1] The so-called "Big Unit" at issue in this factfinding proceeding is actually three separate bargaining units: the Public Services Bargaining Unit (Bargaining Unit 01), the Supervisor Bargaining Unit (Bargaining Unit 05), and the Clerical Bargaining Unit (Bargaining Unit 13); SLOCEA is the exclusive representative of all three units. However, the parties have agreed to meet and confer simultaneously regarding the terms and condition of employment for employees in each of the three units. The recommendations contained herein therefore apply to all of the units that comprise the Big Unit.

The Association argues convincingly that the County is in strong financial shape. It points out that over the past five years, the County's General Fund balance has increased more than 64 percent, from $181.0 million to over $297.3 million, and that during the same period the County's General Fund expenditures increased only 19.5 percent, from $364.4 million to $413.9 million. Moreover, the County's cash balance is well above industry standards and remains available for other necessary expenditures, including reasonable salary increases needed to meet market demands. Although the County has argued that its pension system is significantly under funded, the Association points out that despite having a large surplus for the past several years the County has not seen fit to increase funding of the retirement system. It also cites the 15.25 percent return on investment realized by the County of San Luis Obispo Pension Trust in calendar year 2017, as well as the adoption of reduced pension benefits for more recently hired employees, which suggest that strides are being made toward full funding of the pension system.

In light of the evidence regarding the County's fiscal condition, any contention that it lacks the financial ability to pay for the salary increase sought by the Association is not persuasive. Of course, simply because the County has the ability to pay does not, in and of itself, justify a recommendation for a salary increase.

However, the evidence in this record clearly supports the Association's request for a three-percent across-the-board salary increase for all employees it represents in the Big Unit. Indeed, the County's own survey data[2] show that on average employees in the Big Unit were 9.74 percent behind their counterparts who work for the comparison employers. Moreover, the same data, when limited to the comparison counties selected by SLOCEA,[3] indicate that employees in the Big Unit are on average 17.9 percent behind employees doing substantially similar work for the comparison counties. As the Association correctly points out, Government Code § 3505.4 (d) specifies that comparisons

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[2] The County's survey includes salary data for 48 benchmark employee classifications from the following employers: Cal Poly San Luis Obispo, City of San Luis Obispo, El Dorado County, Fresno County, Kern County, Marin County, Monterey County, Napa County, Placer County, San Luis Obispo Unified School District, Santa Barbara County, Santa Cruz County, Sonoma County, the State of California, Ventura County, and an undisclosed number of unidentified companies in the private sector.

[3] The Association selected all of the counties surveyed by the County plus the County of Marin, but excluded the other public and private employers listed in footnote 2.

of wages are to be made to "other employees performing similar services in comparable public agencies." Given that statutory dictate, and absent any agreement between the parties to consider comparisons to private employers, I find that the Association's compensation analysis to be persuasive. However, regardless of which set of data is utilized, the result is the same: employees in the Big Unit are paid significant less in salary than employees performing similar services for other employers.

Finally, movement in the Consumer Price Index ("CPI") as determined by the federal Bureau of Labor Statistics, which is listed in § 3505.4 (d) as one of the appropriate criteria to be considered in factfinding, supports the Association's position. As the Association points out, the data indicate that during the last 12 months, the CPI increased 4.1 percent for the Los Angeles area, 3.2 percent for the San Francisco area, and 3.5 percent for the Western Region overall. Although the County asserts that over the last few years it has agreed to increases for Big Unit employees that exceeded movement in the CPI, it must be presumed that the current salaries negotiated and agreed to by the parties were justified and appropriate based on the information then available. Past increases are therefore irrelevant to the question of the appropriate salary increase going forward.

Recommendation. For the above reasons and based on the record as a whole, I recommend that the parties adopt the Association's proposal for a three-percent across-the-board salary increase effective July 1, 2018.

ISSUE 4. HEALTH INSURANCE SUBSIDIES

Positions of the Parties: The County has a so-called "cafeteria plan" under which unit employees may select from various medical, dental, and vision insurance coverage for themselves and their dependents. Currently the County's contribution to the plan is $750.58 per month for each unit employee. The County has offered two alternative proposals regarding the cafeteria plan subsidies that it pays for employees in the Big Unit. Under what it has described as its "primary" proposal, the County's monthly contribution would increase by $182.42 for employees enrolled in a family medical plan, which covers the employee and two or more dependents. However, under the County's primary proposal the subsidy for employees enrolled in coverage for the employee-only or the employee plus one dependent would not increase.

The County's alternative proposal is dependant on SLOCEA agreeing to a similar provision for the both the Big Unit and the Trades Unit, which is also represented by SLOCEA.[4] Under this proposal the County's contribution would increase by $173 per month per employee in both the Big Unit and the Trades Unit.[5]

The Association is willing to agree to the increase in the health care subsidy that the County has offered, but it proposes that the County's total contribution be distributed equally among all employees in the Big Unit regardless of the level of coverage selected by an individual employee.

Opinion: The Association argues that, as the exclusive representative of the employees in question, its choice should be honored regarding the distribution of the total money paid by the County among those employees. However, it is also in the County's interest to offer a benefit package that is sufficient to attract and retain employees.

As persuasively argued by the County, the current cafeteria benefit is insufficient for employees with dependents, particularly those with children. The County also cites the results of two surveys of employees regarding their benefits in which the respondents indicated that this insufficiency is one of their primary concerns. According to the County, of the 325 employees in the Big Unit who are eligible to enroll in family coverage, only 150 have elected to do so, presumably at least in part because of the high out-of-pocket cost they currently must pay for such coverage.[6] While its proposal would not completely eliminate the out-of-pocket cost of family coverage for those employees, the County maintains that its offer would improve the standing of unit employees among the comparison employers.

Balancing these interests, I agree with the County that it would be more equitable to provide an increase in its contribution toward family medical coverage rather than distribute the total

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[4] Although the Trades Unit is represented by SLOCEA, it is separate from the Big Unit and is not at issue in this proceeding.

[5] Under the County's primary proposal, Trades Unit employees with family coverage would receive an increase of only $94.05 per month; under the County's alternate proposal, employees in both units who opt for family coverage would receive the same increase, i.e. $173 per month.

[6] According to the County, unit employees currently must pay an average of $890 per month out of their own pockets for family coverage, while those who choose employee-only coverage receive an average of $116 per month in cash back.

amount equally among all employees in the bargaining unit, particularly as many employees apparently do not need or otherwise choose to forego the insurance and instead pocket the difference. While those employees who receive cash back may view this as somehow unfair, it is nonetheless reasonable when considered together with the other recommendations herein, particularly the three-percent salary increase, the needs of children, and the very high cost of heath insurance in this country.

Recommendation. For the above reasons and based on the record as a whole, I recommend that the parties agree to the County's primary proposal to increase its monthly contribution to the cafeteria plan by $182.42 for employees enrolled in a family medical plan.

ISSUE 5. INCREASE IN PENSION COSTS

Positions of the Parties: The current Memorandum of Understanding for the Big Unit provides that pension cost increases are to be split equally between the County and the affected employees. According to the County, the increase that will become effective January 1, 2019, is now projected to be 2.17 percent of salary, meaning that in accordance with the current MOU each employee would be required to contribute half or an additional 1.08 percent of salary. However, the County has offered to absorb the entire increase on a one-time basis contingent on the Association's agreement to no increase in salaries for employees in the Big Unit.

SLOCEA asks that the County absorb the entire increase in pension costs.

Opinion: The County's proposal is entirely reasonable assuming the parties are unable to agree on the three-percent increase in salaries recommended above, in which case it should be implemented. However, if the parties are able to agree on the three-percent increase in salaries, the current 50-50 split of any cost increase should be maintained.

Recommendation. For the above reasons and based on the record as a whole, I recommend that the parties agree to maintain the current 50/50 split of retirement contribution costs if they are able to agree on the three-percent salary increase recommended above. Conversely, if the parties are unable to reach agreement on salaries and no increase is granted, it is recommended that the County's proposal that it absorb the entire increase in pension costs anticipated to become effective January 1, 2019, be implemented.

SUMMARY OF RECOMMENDATIONS

For the above reasons, I recommend that the parties agree to the following package of modifications to their current Memorandum of Understanding for the Big Unit:

Issue 1. Term of Agreement: One year effective July 1, 2018 through June 30, 2019.

Issue 2. Successor Agreement Negotiations: Delete § 4.1.2 from the MOU.

Issue 3. Salary Increase: Three percent across the board effective July 1, 2018.

Issue 4. Health Insurance Subsidies: Increase the County's monthly contribution for employees enrolled in a family medical plan by $182.42 per month.

Issue 5. Increase in Pension Costs: Maintain the current 50/50 split of increased costs.

Respectfully submitted,

R. DOUGLAS COLLINS, Chairman
Factfinding Panel

Dated: July 31, 2018
Hermosa Beach, California

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California Public Employment Relations Board Case No. LA-IM-260-M

FACTFINDING REPORT & RECOMMENDATIONS

☒ I concur.

☐ I dissent.

☐ Opinion attached.

Jim Mallon

JIM MALLON
Association Panel Member

Dated: July 18, 2018

In the Matter of an Factfinding – between – *THE COUNTY OF SAN LUIS OBISPO* – and – *THE SAN LUIS OBISPO COUNTY EMPLOYEES ASSOCIATION.* California Public Employment Relations Board Case No. LA-IM-260-M	*FACTFINDING REPORT & RECOMMENDATIONS*

☐ I concur.

☐ I dissent.

☒ Opinion attached.

MICHAEL J. McDOUGALL
County Panel Member

Dated: July 30, 2018

COUNTY PANEL MEMBER'S PARTIAL DISSENT TO 2018 SLOCEA "BIG UNIT" FACTFINDING RECOMMENDATIONS

As is discussed more fully below, I dissent in part and concur in part with the recommendations included in the Majority's Decision.

On the issue of salary, I strongly disagree with the recommendation to grant a 3% across-the-board increase to "Big Unit" employees. The central fact underlying these negotiations is that the County's elected Board of Supervisors determined, given an unexpected structural budget deficit and numerous other financial uncertainties, that it is necessary and appropriate to "tap the brakes" on salary increases for one year. In my view, the Majority has failed to give appropriate deference and weight to that determination, or indeed to the other fiscal priorities and budget standards that the Board has determined are necessary to protect the interests and welfare of the public. (See, e.g., Gov. Code section 3505.4(d)(4).)

The Majority's salary recommendation has many other flaws as well. It inappropriately downplays the County's unfunded retirement obligations. It endorses a superficial comparability analysis that accepts the parties' historical "total compensation" survey at face value, ignoring the County expert's testimony that (1) the unit is actually competitive with market median on a "salary only" basis, and (2) the unit's poorer showing on a "total compensation" basis is almost entirely driven by comparatively low contributions towards health insurance (an issue, notably, that was specifically addressed by the County's proposals and not by SLOCEA's). It fails to address comparability with private employers, as required by the County's Prevailing Wage Ordinance. Moreover, it dismisses past wage increases out of hand as essentially irrelevant, which flies in the face of common sense - how the unit's cumulative salary increases have compared over time with CPI and increases for other employee groups is *directly* relevant to the issue of whether a further increase should now be granted.

Ultimately, SLOCEA bore the burden of proof to show that its proposed wage increase is justified, and it did not meet that burden. The emphasis that SLOCEA and the Decision both place on the County's relatively healthy reserves ignores a fundamental fact: those reserves are *only* healthy because the County has been fiscally conservative and has not (as is now being recommended) dipped into those reserves to fund ongoing wage increases. I accordingly dissent from the Majority's recommendation on salary, in its entirety.

On the issue of health contributions, I wholeheartedly concur that any increase to health contributions should – consistent with the County's proposal – be targeted at employees enrolled in Family (Employee + 2) coverage. I must dissent, however, from the recommendation to implement any such increase on top of SLOCEA's proposed salary increase. That recommendation disregards the fact that the County's proposals on health and pension were both expressly made as part of a *package*, which was specifically intended to counteract the negative impacts a 0% salary increase might otherwise have on employees' buying power.

Finally, on the issue of retirement I fully concur with the recommendation to only suspend employees' responsibility to pay 50% of the upcoming 2019 pension cost increase if no salary increase is granted, and to otherwise continue 50/50 cost-sharing as required under the parties' MOU. Unlike the other recommendations discussed above, this recommendation appropriately reflects and is consistent with the package nature of the County's proposals.

Michael J. McDougall

Date: 7/30/18