

(PERB Case No. SF-IM-2960-M)

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IN FACTFINDING PROCEEDINGS PURSUANT TO
AGREEMENT BETWEEN THE PARTIES

In the Matter of a Controversy Between:)	
)	
)	
CONTRA COSTA COUNTY DEPUTY DISTRICT)	Arbitrator's
ATTORNEYS' ASSOCIATION,)	File No. 12-134-FF
)	
and,)	
)	
)	FACTFINDING REPORT
)	<u>AND RECOMMENDATION</u>
CONTRA COSTA COUNTY,)	(June 26, 2012)
)	
)	
[Re: Labor Agreement Factfinding])	
)	

Appearances: Christopher E. Platten (Wiley, McBride, Platten & Brenner), attorney for the Contra Costa County Deputy District Attorneys' Association; Arthur A. Hartinger and Jessie Lad (Meyers, Nave, Riback, Silver & Wilson), attorneys for Contra Costa County.

1. Introduction

The undersigned was selected by the parties to conduct a collective bargaining mediation, and, failing a settlement, to

issue a Factfinding Report and Recommendation. The factfinding procedure is based on County Rules Chapter 34-16, and Government Code Section 3505.04. At the session, which was conducted on June 13, 2012 in Martinez, California, the parties offered evidence and argument on the subjects in dispute. The parties also agreed to waive the use of panel representatives for the Report and Recommendation to be issued by the Factfinder. Following the session, the parties provided final proposals on June 15, 2012. The matter was deemed submitted upon the filing of position statements on June 21, 2012.

2. Employment Setting

As with other public entities in California and elsewhere in the United States, the County has suffered substantial economic adversity dating back to 2008 and the onset of a recessionary era. This has been marked by a significant decline in County revenue derived from housing values and property taxes, by State budgetary changes and charges to the County, by exposure to ongoing pension increases, and by pressure on healthcare costs. For several years, County employees, represented and unrepresented, have continued to provide important public service without increases in wages and

benefits, and, at times, with reductions.

Employees in the Association's bargaining unit who carry out a critical prosecutorial function have not been immune from the adverse effects of budgetary shortfalls, with employees last receiving a pay increase five years ago. In the past several years, the bargaining unit also has suffered a decline in the number of unit employees, from about 100 or more, to about 80, comprised of three classifications; advanced, basic or fixed term. Not included in these figures are temporary attorneys, and law school graduates providing unpaid service. These individuals do not receive benefits. It is undisputed that attorneys in the office do not fair as well as comparable attorneys in nearby jurisdictions. That said, in the current economic climate, the Association understandably cannot rely on this disparity as a basis to reject wholesale the County's view of its economic difficulties.

In recent months, virtually all units representing County employees have agreed to several wage and benefit reductions, which generally amount to cutbacks in the range of four or five percent in overall compensation. Some units have fared better, with somewhat smaller reductions, including probation officers

and investigators in the District Attorney's office. Other units have had greater reductions, including professional and technical employees and deputy sheriffs. Fire fighters have faced cutbacks twice as large. Only the nurses's unit has seen an increase in pay, this being the direct result of external labor market pressure faced by the County in striving to hire sufficient staff to maintain a basic level of health care service for County residents.

In spring 2012, following successful negotiations with most of the County's bargaining units, the Board of Supervisors adopted a balanced budget. The budget included an increase of four-plus percent for the office. This increase is intended to provide funds for five new hires. The District Attorney, an elected official, reportedly has stated that he is prepared to live with the budget, and without further concessions from the staff. The County's senior management does not agree and has pressed forward with its proposed cutbacks. Perhaps, with a recent trend toward the stabilization of property values and tax proceeds, there might be a glimmer of light at the end of the long tunnel of recession. Of course, this is without knowing what is in store based on macro-economic forces.

The parties engaged in negotiations in the first half of 2012. On March 20, 2012, the parties arrived at a tentative agreement. The tentative agreement amounted to a cost savings of about \$636,000, or a reduction of 4.42 percent. The tentative agreement included the following key provisions: a two-year term from July 1, 2011 to June 30, 2012; an employee pickup of 100 percent of the basic retirement share for employees, effective April 2012; a new tier for retirement benefits for employees hired after December 31, 2012; a 3.09 percent wage reduction effective July 1, 2012, coupled with a \$50,000 payment by the Association to the County as compensation for a delay from January to April 2012 in implementing the retirement pickup; eliminating a vacation buy-back for new hires; and, a change in the definition of an eligible dependent for healthcare coverage. In addition to these provisions, the parties agreed that a longevity step would be added at 20 years, with a two percent increase at that point, and that 14 extra hours for administrative leave would be available, raising the amount from 80 to 94 hours. Presumably, the administrative leave can be drawn by unit employees in lieu of vacation, which, if not taken, can be bought out at a later point.

Soon after the parties arrived at the tentative agreement,

it was placed before bargaining unit members for a vote. Although a majority in the unit voted to accept the tentative agreement, two-thirds did not ratify it, as required by the Association's governing rules. Following rejection of the tentative agreement, no further movement was evident in negotiations between parties, and factfinding was invoked.

3. Proposals by the Parties

At this stage of the proceeding, the County proposes that the previous two year tentative agreement from March 2012 be recommended by the factfinder, subject to two modifications. One modification would include a 3.567 percent reduction as of July 1, 2012 to recapture intended savings built into the tentative agreement that was not ratified. This assumes that the Association also would provide a \$50,000 payment to avoid a larger percentage reduction. A second modification would delay the effective date of a new retirement tier for employees hired after December 31, 2013.

For its part, the Association's proposed recommendation appears to track the previous tentative agreement, but it also includes changes. Specifically, as one option for wages, the

Association seeks a "sunset" to the wage reduction, and a return, or "snapback," to the current base wage as of June 30, 2013. The Association sees the sunset option as cost-neutral over a two year term. As an alternative wage option, the Association proposes an additional 2.5 percent longevity step at 15 years of County service, costing approximately \$151,000. Compared to the tentative agreement, the Association's proposal also would delay by three months the retirement pickup date from April to June 2012, and makes no reference to the \$50,000 payment previously offered by the Association as an offset for the pre-April 2012 pickup the County had been seeking. In the Association's view, its proposal would bring it closer to other units, including probation officers and the investigators within the District Attorney's office.

4. Recommendation Discussion

The factfinder recommends adoption of the County's proposal that follows the tentative agreement favored by a majority of the bargaining unit. There are two principal reasons for this recommendation.

First, and most important, from the standpoint of

approximate internal parity, the recommendation is consistent with the range of terms in agreements reached with other bargaining units in the County. Granted, as the Association emphasizes, there are some units that have negotiated a slightly better deal, including probation officers and investigators in the District Attorney's office, but the wage levels for these employees are not comparable to those of the more highly paid attorneys in the office. In contrast, several other units, including professional and technical employees and deputy sheriffs, negotiated agreements in a slightly higher range, closer to a five percent figure. Further, the reduction for fire fighters is almost twice the size of the reduction in the tentative agreement for the Association's unit.

While the factfinder does not underestimate the significance of a permanent wage reduction, the frustration of going for years without a pay raise, or the difficulty the Association will experience in seeking to bargain back to the current status quo, the fact remains that, except for nurses, other employees have accepted permanent cuts on the order sought by the County. In comparison, the Association's proposed sunset provision would significantly depart from the pattern of labor agreements, and the alternative of a 15 year longevity step,

even if costing about \$151,000 standing alone, would have a compounding impact by increasing the cost of other wages now and in the future. Taken together, the Association's overall proposal would sharply reduce the savings projected by the tentative agreement, not solely for a two year term, but going forward into later years. Viewed through this lens, the tentative agreement is suitable for recommendation, particularly with the new longevity step at 20 years of service and the extra year before the new retirement tier goes into effect for new hires.

Second, the terms of the tentative agreement are better than the more onerous one year alternative that the County has stated it intends to impose if a recommendation for a two year agreement is not accepted. As a less desirable alternative, the one year "last offer" proffered by the County in bargaining includes a wage reduction of 7.09 percent, subject, as the County cautions, to an increase in order to recapture intended savings resulting from a delayed retirement pickup implementation date. A one year proposal, in the County's view of public sector bargaining law, is the limit of what can be imposed as a last offer after impasse. The factfinder does not take a position on whether this is so, or on the content of the

County's one year alternative, but acknowledges the County's statement of its intent and rationale. In this setting, the difficult choice of how to proceed rests with the Association and employees in the bargaining unit.

RECOMMENDATION

Based on the presentations and submissions of the parties, the undersigned recommends as a resolution of the dispute: Adoption as proposed by the County of the tentative agreement dated March 20, 2012, subject to the modifications noted above as to the amount of a pay reduction and the new retirement tier effective date of December 13, 2013.

Date: June 26, 2012

BARRY WINOGRAD
Factfinder