

<b>In the Matter of a Factfinding under Government Code Section 3505.4 Between</b>	<b>Findings of Fact &amp; Recommendations</b>
<b>Butte County Professional Employees' Association UPEC 792, LIUNA, AFL-CIO and Butte County</b>	<b>NB 3415 SA-IM-105-M</b>

**Before the Panel**

Norman Brand, Neutral Chair  
Steve Allen, Union Appointed Member  
Brian Ring, County Appointed Member

**Appearances**

Butte County Professional Employees' Association  
by **Kurt W. Worley, Esq.**

Butte County  
Liebert Cassidy Whitmore  
by **Jack Hughes, Esq.**

November 2, 2012

## **Jurisdiction**

On May 31, 2012, Butte County ("County") declared impasse in its negotiations with the Butte County Professional Employees' Association ("PEA"). PEA requested factfinding from PERB on June 29, 2012. I was chosen as neutral panel chair on July 16, 2012. The hearing was initially scheduled for September 24, 2012 and later rescheduled to October 8, 2012, at which time a hearing was held at the County Administrative offices. Both parties were present at the hearing. Each had a full opportunity to examine and cross-examine witnesses, present evidence, and argue its position. Neither party objected to the conduct of the hearing.

## **Last Best Offer ("LBO")**

### **County LBO 1**

1. Section 14.02 concerning CalPERS pension amended to provide employee payment of employee share of CalPERS pension as follows; an additional 1.5% of salary paid pre-tax effective the first full pay period following implementation of this Agreement for a total of 4.0% of salary and an additional 3.0% of salary paid pre-tax effective the first full pay period including January 1, 2013 for a total of 7.0% of salary.
2. Section 8.01 concerning wage amended to provide a 2.0% wage increase for all represented classifications effective the first full pay period following implementation of this Agreement.
3. The County will rescind the revision to Section 16.02 implemented during 2011.
4. Section 20.09 amended to reflect expiration of the MOU on September 30, 2013.

**County LBO 2**

1. Section 14.02 concerning CalPERS pension amended to provide employee payment of employee share of CalPERS pension as follows; an additional 1.5% of salary paid pre-tax effective the first full pay period following implementation of this Agreement for a total of 4.0% of salary and an additional 3.0% of salary paid pre-tax effective the first full pay period including January 1, 2013 for a total of 7.0% of salary.
2. No amendments to Section 8.01.
3. No changes to 2011 implementation document.
4. Section 20.09 amended to reflect expiration of the MOU twelve months from implementation.

**PEA LBO**

1. Three (3) year term, 7-1 -12 through 6-30-15.
2. Effective 7-1 -12 Fiscal Year represented classifications to receive a 7% "Market Adjustment" simultaneous with paying the remaining 4.5% PERS Member Contribution to result in the entire 7% PERS Member Contribution paid by the employee.
3. Effective 7-1 -13 Fiscal Year a 8th, 9th and 10th merit step are added to the current merit step structure. Employees to advance through merit steps per County rules, i.e., 12 months at the current step qualifies an employee to advance to the next step.
4. Effective 7-1-14 Fiscal Year the three (3) lowest steps to be dropped off the merit pay schedule thereby returning the structure to a seven (7) step array.
5. Resolve all open and/or pending Personnel Rules Issues, including but not limited to written reprimands, comparable agencies, nepotism,

SDI integration, leave donation, CCW, etc.<sup>1</sup>

6. Effective upon ratification a Joint Labor/Management Committee is created with representation from the PEA and the County to meet monthly to discuss topics of mutual concern. Examples of such topics could be work load, alternative schedule review, etc.

### **Statutory Requirements**

Government Code Section 3505.4(d) requires the factfinding panel convened under Section 3505.4(c) to consider the following criteria:

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.

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<sup>1</sup> This demand was withdrawn at the hearing as no longer applicable.

**(1) State and Federal Law**

The County includes the “California Public Employees’ Pension Reform Act of 2013.” The Act, which applies primarily to employees hired after January 1, 2013, diminishes public pension benefits and requires employees to contribute half the actuarially determined normal cost of their pension. The County LBO requires PEA bargaining unit members to pay 7% of salary towards pension, in two increments: 1.5% on implementation and 3% the first full pay period after January 1, 2013. The 18 month proposal has an offsetting wage increase of 2%. PEA’s LBO also requires employees to increase their contribution from the current 3.5% to the full 7% employee share, but immediately upon receiving an offsetting 7% increase in wages. Both proposals recognize the fiscal imperative reflected in the legislation that pension costs to public entities be brought under control. Consequently, we find that this factor strongly supports increasing the employee retirement contribution to 7% of salary.

**(2) Local rules, regulations, or ordinances**

The County includes a recommendation from its CFO that it establish a minimum 5% of the proposed budget Appropriation for Contingencies, as well as build a General Reserve over time. In addition, it includes a strategy to collect money from each Department to repay its Pension Obligation Bond, a net obligation of \$42 million that must be paid between now and 2034, when the last bonds mature. As discussed further below, neither the County’s desire to create a reserve, nor its requirement to repay a Pension Obligation Bond, is significant for our recommendation. The County has an obligation to repay the bond, and it is

prudent for it to maintain adequate reserves and contingency funds. Nevertheless, the annual cost of the PEA proposals -- \$186,545 in 2013, rising to \$783,963 in 2016—is too small to materially affect either goal.<sup>2</sup> Consequently, we do not find this factor significantly affects our recommendations.

### **(3) Stipulations of the parties**

The parties entered the following stipulations:

1. PEA and Butte County MOU expired June 30, 2010. Imposed Terms and Conditions of Employment July 12, 2011-July 11, 2012.
2. Butte County has approximately 2200 employees of which approximately 80 are represented by PEA. This represents approximately 3.6% of the County's Workplace.
3. The United Public Employees of California Local 792 (UPEC) serves as the recognized representative of the County's PEA Bargaining Unit.
4. Steve Allen served as PEA's Chief Negotiator and Jack Hughes served as the County's Chief Negotiator.
5. PEA and the County had their first negotiation session seeking to establish a successor MOU on February 29, 2012. This was the initial meeting. Ground Rules and County Proposals 1-4 were given to PEA.
6. PEA and the County had their 2<sup>nd</sup> meeting on March 5, 2012. PEA submitted the Association Proposals 1-6. PEA stated that they would not agree to the County's Proposals regarding wages and PERS pickup and

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<sup>2</sup> See, PEA-2(b).

rejected the proposals with their proposals.

7. PEA and the County had their 3<sup>rd</sup> meeting on March 29, 2012. During the meeting the County submitted to PEA a Financial Data Binder. In addition, the County gave PEA and 18 Month and 12 Month Comprehensive Best Offers.
8. PEA and the County had their 4<sup>th</sup> meeting on May 25, 2012. PEA membership rejected both the 18 Month and 12 Month Comprehensive Best Offers.
9. On May 31<sup>st</sup>, 2012 Impasse was declared via email.
10. The Impasse Meeting (5<sup>th</sup> Meeting) took place on June 12, 2012. PEA confirmed again that their position has not changed and still rejected both County offers.
11. On June 29, 2012 PEA formally requested Fact-Finding.
12. On July 6, 2012 the County received a letter dated July 5, 2012 from Public Employment Relations Board (PERB) confirming PEA's request for Fact-Finding
13. On July 16, 2012 Brian Ring sent letter to PERB confirming himself as the County's Panel Member and Norman Brand as the neutral.
14. On July 17, 2012 the County received confirmation from Norman Brand that he would be serving as the Neutral for the Fact-Finding Panel.
15. On July 20, 2012 the County received confirmation from PERB that Norman Brand had been selected by both parties.
16. On August 24, 2012 at Norman Brand's request, the Fact-Finding hearing was rescheduled to October 8, 2012.

17. The Parties are at impasse over all the proposals that were given by each side.

At the hearing the parties stipulated to informal presentation of the facts, without the need for a court reporter, sworn testimony, or application of any formal rules of evidence.

**(4) The interests and welfare of the public and the financial ability of the public agency**

The financial ability of the County to pay the wage increases and new step increases proposed by the PEA is not in issue. The immediate cost of the PEA proposal is \$186,545 in fiscal year 2012-13. The total cumulative cost of all new economic items in the PEA proposal, through fiscal year 2016, is \$1,891,314. (PEA 2-b)<sup>3</sup> The County readily concedes it has the ability to pay that amount. It argues, however, that the interest and welfare of the public will not be served by agreeing to those increases.

The County argument is threefold. First, it asserts it has undergone a contraction in revenue since fiscal year 2005-2006, leading to a “structural gap” between income and expenditures in all of its major funds (General, Welfare, Public Health, and Behavioral Health.) (County G-3) The net costs for 2011-2012 shown in these charts approximate the net costs for 2006-2007, except for the General fund, where there is an increase of approximately \$5 million. This is what

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<sup>3</sup> The cumulative cost is the total additional amount that would be spent on compensation over four fiscal years, as compared to what is currently being spent. The cumulative cost does not reflect the County’s proposal for a 2% increase (with a cumulative cost of approximately \$600,000), nor the cumulative savings of approximately \$1,350,000 achieved by increasing the employee contribution to 7%.

the County calls its “structural” gap. Second, the County argues, the structural gap does not take into account the reduction in its capital through deferred maintenance. (County G-5) It argues that the structural gap is actually larger, but has been reduced by using up its capital assets, rather than maintaining them. Third, it argues, the Board of Supervisors made a fair allocation of the cuts required to close this gap by requiring half to be filled by reductions in expenditures other than personal services and half to be covered by employees paying their statutory share of normal pension costs: 7% for non-safety employees and 9% for safety employees. The increases in individual pension costs are partially offset by small wage increases,<sup>4</sup> while the effect on overall wages is slightly offset by the actual cost being less than the nominal cost, because the increase is paid with pre-tax dollars. For all these reasons, the County argues, it is in the interest and welfare of the public to require PEA to take the same economic terms as all other bargaining units in the County.

PEA argues that the interest and welfare of the public is served by being able to recruit and retain experienced attorneys to ensure the people are competently represented in criminal cases. It notes that because of the current job market it is possible to recruit a new Deputy District Attorney (“DDA”), even with the low salary the County pays. The real difficulty is in recruiting and retaining experienced DDAs. The District Attorney testified to the difficulty of recruiting experienced DDAs, even among those who were willing to take a significant pay

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<sup>4</sup> For employees whose retirement plan requires a 7% employee contribution there is a 2% salary increase. For employees whose retirement plan requires a 9% employee contribution there is a 4% increase.

cut to live in what they regard as a highly desirable place.<sup>5</sup> In the last 5 years he was only able to recruit one lateral DDA and that because the Yuba County DA called him to say he had to lay off an experienced prosecutor. Butte hired her at three steps below the top of the pay scale for DDA IV.<sup>6</sup> Over the past ten years his office has lost experienced employees so that he now has only 11 DDAs with more than 10 years' experience in his office, including his Chief Deputy.<sup>7</sup> According to the District Attorney, the average experience of the Butte County public defender consortium lawyers is 25-30 years. He further testified that it takes over a year for a new DDA to be able to "touch" a felony case. According to the District Attorney's testimony, the biggest obstacle to hiring experienced DDAs is the County's non-competitive pay.

The data show that in the 2011 recruitment there were 3 qualified candidates on the list for DDA III, and 7 for DDA IV. In the 2012 recruitment there were 3 qualified candidates on the list for DDA III, and 2 for DDA IV. (K-4) The District Attorney testified that the quality of the candidates was "bad." He did not offer employment to any of those candidates. It is unknown whether the salary, combined with local living costs, would have caused an experienced person to turn down an offer. The DA subsequently hired a DDA III. Furthermore, there

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<sup>5</sup> The only specific example he gave was of an individual who wanted to give up a \$185,000 a year position at a major law firm to be a prosecutor. When the individual checked housing costs in Chico, he found his family could not live on the \$55,000 he would make as a DDA. (That salary level is approximately Step 4 DDA I, which would be appropriate for a person with no prosecutorial experience.) The District Attorney did not provide any example of an experienced candidate who turned down an offer because of the salary. Because the data presented at the hearing was compiled in August, it failed to reflect the DA hired a DDA III since then.

<sup>6</sup> Current top step, top level DDA compensation in Yuba ranges from approximately \$200 per month more than Butte County (County H-1), to approximately \$2454 per month more than Butte County for top step. (PEA-6)

<sup>7</sup> That amounts to approximately 42% of the DDAs.

is no evidence of the number of DDAs needed to prosecute serious felonies, in light of the workload of the District Attorney's office.

The County argues there is no unique retention problem in the PEA unit, and the recruitment problem is caused by the District Attorney's use of an "essay" question as part of the initial employment application. The County calculates that the DA's office has an 8.7% turnover rate, compared to a turnover rate of 12.5% in County Counsel's office, and 11.9% in the County overall. (County K-2)<sup>8</sup> The County's comparisons are flawed for two reasons. First, there is no logic in comparing turnover rates of employees whose jobs require little training (e.g. janitors, maintenance workers, clericals) with employees whose jobs require years of training. The cost of losing a single employee in whom the County has invested years of training is far greater than for employees who require days or weeks of training. Using an overall County rate of turnover does not address this cost difference, and is therefore not instructive. Second, the use of percentages in small units is uninformative. There are 3 non-management positions in the County Counsel unit, compared to 26 DDAs. (County G-1, p. 448) While the comparison with County Counsel involves employees who need similar years of training, the numbers are too small to make percentage comparisons valid.

The data show that five of the nine DDAs who left during the period did so for other employment. Two left for counties that pay more and three left to become judges.<sup>9</sup> The loss of experienced people, both to other employment and

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<sup>8</sup> The turnover rate for Public Health Nurses, who are in the PEA bargaining unit, is 10.3%.

<sup>9</sup> Compensation may not be the reason for taking a judicial appointment. The job is generally considered quite prestigious, both within and without the legal community and that fact by itself may motivate a DDA to change jobs.

retirement, in the District Attorney's opinion, impairs the ability of his office to effectively prosecute crimes, because of the significant experience advantage in the public defender consortium. The District Attorney did not offer any facts supporting this opinion. Nor do any data presented at the hearing support his opinion.

The District Attorney currently requires applicants to complete a supplemental questionnaire that contains a hypothetical requiring a 5 page response, in points and authorities format. The hypothetical poses a realistic question that a DDA might need to answer in the course of her duties. It is the functional equivalent of a practical examination for the job. The County argues the District Attorney's difficulty recruiting laterals is not because of low pay, but because he uses this hypothetical to screen applicants. It does not question the job relatedness, validity, or propriety of the hypothetical for determining the qualifications of a potential DDA. Instead, it argues that he would be more successful in recruiting if he first screened applicants for the minimum qualifications – a JD and bar membership—and then sent the supplemental questionnaire.<sup>10</sup> The argument lacks logic. Screening for minimum qualifications requires seeing a photocopy of a diploma and bar card, and evidence of the required experience. Nothing more. The County offers no plausible reason that a person without those documents would apply. It argues, nevertheless, that having gotten past the “hurdle” of screening, knowing one was in the select group of potential hirees with JDs and bar membership, would motivate applicants—who do not currently answer the hypothetical – to answer it. The District Attorney's

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<sup>10</sup> The non-entry level DDA positions require 1, 2, or 3 years of prosecutorial experience.

assertion – people who are unwilling to answer the hypothetical are not sufficiently interested in the job—is much more plausible.

The evidence supports the County's overall position that its final offer promotes the interest and welfare of the public. While the opinion testimony of the District Attorney supports the PEA position that low pay causes recruitment and retention difficulties and disadvantages the office because of a very experienced defense bar, the available data do not. It is generally true that, all other things being equal, higher pay makes a job more attractive. But the fact the District Attorney did not find applicants for DDA III,<sup>11</sup> or IV positions who met his standards, among qualified applicants, does not prove poor compensation was the reason. It is one possible explanation, but there are many others.<sup>12</sup> There is no evidence on which to determine how the District Attorney's retention rate compares with District Attorneys in other counties. Finally, the evidence does not demonstrate the District Attorney is forced to use inexperienced DDAs in serious felony cases because only 42% of the office has ten or more years of experience. In the absence of compelling data demonstrating the PEA unit is uniquely disadvantaged by the County offer, we must conclude that it promotes the interest and welfare of the public to apply that offer to the PEA unit.

**(5) Comparison of the wages, hours, and conditions of employment ... with other employees performing similar services in comparable public agencies.**

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<sup>11</sup> As previously noted, after August 2012, the DA hired a DDA III.

<sup>12</sup> The District Attorney's standards are not at issue. He is obliged to hire only those qualified applicants who, in his judgment, are capable of properly representing the People.

The parties present two separate sets of data comparing PEA bargaining unit members with other employees doing similar work. PEA presents data using the comparison group agreed to by the County and its Employee Associations, which Koff & Associates used for the 2006 total compensation study commissioned by the County. (PEA-4(a)) The study was adopted by the County and used to create new salary ranges. (PEA-4(b)(c)) The County relies on a different comparison group, not agreed to by PEA, contained in its current Personnel Rules. (County H-14) It asserts the Koff comparison group was “aspirational,” so it came up with a different comparison group. In the County’s new 9 county comparison group Butte County is the second largest County in population, staff, and budget. In the Koff comparison group it is at, or slightly below the median in each of those categories. (County H-14)<sup>13</sup> Both parties use data that does not include the changes proposed by the other side.

PEA bases its comparisons on top step salary, while the County uses first step salaries. There are seven salary steps, each 5% higher than the next lower step. (PEA-5, p. 22)<sup>14</sup> Because a salary schedule provides percentage increases on bases that are increased by a percentage, there is compounding. Consequently, the difference between two top step salaries will be greater than between two first step salaries. The PEA comparison uses averages, which tends to exaggerate the effect of outliers. The County comparison uses medians, which reduces the effect of outliers. PEA uses the following Koff Study counties: El Dorado, Merced,

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<sup>13</sup> For median household income and median value of owner occupied homes, it is lowest and 3<sup>rd</sup> lowest in both comparison groups. Butte County is fifth highest in unemployment rate in the Koff comparison group and fourth highest in its own comparison group.

<sup>14</sup> The bottom step may bear no relationship to actual wages, because when the bottom step is unrealistically low employers hire new employees above the bottom step.

Napa, Placer, Sacramento, Santa Cruz, Shasta, Solano, Sonoma, Stanislaus, Sutter, and Yolo. The County eliminates certain counties, which are shown with their top step base salary: Merced (\$10,525), Napa (\$11,417), Sacramento (\$11,517), Santa Cruz (\$12,093), Solano (\$11,159), Sonoma (\$11,383), and Stanislaus (\$9354).<sup>15</sup> It adds the following counties, which are shown with their first step base salary: Nevada (\$7303), Plumas (\$5014), and Yuba (\$6741).<sup>16</sup> The County's new comparison group minimizes the extent to which PEA salaries are below market.

The data show the effect of each party's choices. The PEA data show Public Health Nurses 24% below the average, DDA IVs 20% below the average, and Deputy County Counsel IV 22% below the average. (PEA 6) The County data show Public Health Nurses 16.9% below the median, DDA IVs 6.7% below the median, and Deputy County Counsel IV 11.3% below the median. The County data understates the relative compensation gap, while the PEA data overstates it. That leaves the factfinding panel with the understanding that DDA IVs are between 6.7 % and 20% behind employees performing similar work in comparable public agencies. The data provides some support for the District Attorney's opinion that low comparative compensation makes it difficult for him to recruit acceptable experienced DDAs. Even if the parties' separate submissions of comparable agencies were to be merged, DDA IVs are significantly disadvantaged with respect to comparable agencies. This disadvantage will be exacerbated by the net 2.5% decrease in compensation that is part of the County's attempt to reduce its "structural deficit." Even if the data do not support an

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<sup>15</sup> Top step base for DDA IV is \$8532. (PEA-6)

<sup>16</sup> First Step base for DDA IV is \$6366. (County H-1)

increase in overall salaries, they strongly argue for stopping the slippage in top step DDA IV salaries.

**(6) The consumer price index.**

The Western Region CPI-U shows periods of low and even negative growth in the cost of living in the last five years. The total increase in the CPI over 5 years was 9.7%, or less than 2% per year. (County J-1) It supports neither side's position.

**(7) Overall compensation presently received ... continuity and stability of employment.**

PEA's proposals are entirely wage demands. It seeks no increase in any benefit and proposes increasing its contribution to the full employee share of pension, as was done by all other bargaining units. Unlike the other bargaining units, which had offsetting wage increases that reduced their additional pension contributions to a net 5%, PEA proposes a "market adjustment" that reduces their net pension contribution to zero. The County provides a comparison of average compensation and average costs among its bargaining units. PEA members make about 10% more than the general law enforcement unit in salary, when the latter's overtime compensation is considered.<sup>17</sup> Although no updated figures were provided, the average

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<sup>17</sup> Although they are required to meet stringent criminal court timeliness requirements, DDAs are professional employees who do not receive overtime.

member of the general law enforcement unit costs the County more than the average member of PEA, because of the high cost of the 3% at 50 safety retirement. (County J-6)<sup>18</sup> Positions in the PEA unit require an advanced degree, or a college degree with specialized training.<sup>19</sup> Positions in the general law enforcement unit require a GED and POST basic training. While the County suggests PEA compensation compares favorably with other employee groups, that is not true if one considers the minimum educational requirements in each unit.

**(8) Other facts traditionally taken into consideration.**

Both parties provided evidence on recruitment and retention, a factor traditionally taken into account when considering wages. Each has been discussed more specifically above. The County data also shows it pays certain other employees well below the median of employers in its own comparison group.<sup>20</sup> This data shows selected employee groups in Butte County are also paid well below the median. None of these other groups are comprised chiefly of employees who require a professional degree to meet the minimum qualifications.

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<sup>18</sup> Existing PEA unit members have 2% at 55.

<sup>19</sup> The Public Health Nurse requires a bachelor's degree, RN license, and a Public Health Certificate. [http://agency.governmentjobs.com/buttecountyca/default.cfm?action=viewJob&jobID=509302&hit\\_count=yes&headerFooter=1&promo=0&transfer=0&WDDXJobSearchParams=%3CwddxPacket%20version%3D%271%2E0%27%3E%3Cheader%2F%3E%3Cdata%3E%3Cstruct%3E%3Cvar%20name%3D%27CATEGORYID%27%3E%3Cstring%3E92%2C25%3C%2Fstring%3E%3C%2Fvar%3E%3Cvar%20name%3D%27PROMOTIONALJOBS%27%3E%3Cstring%3E0%3C%2Fstring%3E%3C%2Fvar%3E%3Cvar%20name%3D%27TRANSFER%27%3E%3Cstring%3E0%3C%2Fstring%3E%3C%2Fvar%3E%3Cvar%20name%3D%27FIND\\_KEYWORD%27%3E%3Cstring%3E%3C%2Fstring%3E%3C%2Fvar%3E%3C%2Fstruct%3E%3C%2Fdata%3E%3C%2FwddxPacket%3E](http://agency.governmentjobs.com/buttecountyca/default.cfm?action=viewJob&jobID=509302&hit_count=yes&headerFooter=1&promo=0&transfer=0&WDDXJobSearchParams=%3CwddxPacket%20version%3D%271%2E0%27%3E%3Cheader%2F%3E%3Cdata%3E%3Cstruct%3E%3Cvar%20name%3D%27CATEGORYID%27%3E%3Cstring%3E92%2C25%3C%2Fstring%3E%3C%2Fvar%3E%3Cvar%20name%3D%27PROMOTIONALJOBS%27%3E%3Cstring%3E0%3C%2Fstring%3E%3C%2Fvar%3E%3Cvar%20name%3D%27TRANSFER%27%3E%3Cstring%3E0%3C%2Fstring%3E%3C%2Fvar%3E%3Cvar%20name%3D%27FIND_KEYWORD%27%3E%3Cstring%3E%3C%2Fstring%3E%3C%2Fvar%3E%3C%2Fstruct%3E%3C%2Fdata%3E%3C%2FwddxPacket%3E) (Accessed October 16, 2012)

<sup>20</sup> Correctional Deputy 18.5%, Correctional Lieutenant 15%, Deputy Sheriff 23.7%.

## FINDINGS OF FACT

1. The Board of Supervisors attempt to eliminate the “budget gap” through shared efforts in non-employee costs and employee costs is consistent with the interest and welfare of the public. To the extent that it requires all employees to contribute the entire statutory employee contribution to PERS, PEA employees should make that same contribution. For employees in the 2%@55 retirement system, the contribution is a net 5%. PEA employees should contribute a net 5% to their PERS retirement.

2. The parties agree there is no “ability to pay” argument.

3. The data do not support the PEA position that the District Attorney is unable to recruit and retain any competent, experienced prosecutors, the largest single group in the PEA unit, because of uniquely low comparative compensation.

Nonetheless, when compared to employees performing similar services in comparable agencies, the DDA IVs are uniquely behind in their compensation. Accepting the County proposal, which reduces their wages further, would exacerbate this inequity at the top. This could further complicate the DA’s ability to recruit and retain competent experienced DDAs.

3. There is no basis for changing the contract expiration date from the end of the County’s fiscal year.

5. No evidence was presented on the amendment to Section 16.02 implemented in 2011.<sup>21</sup>

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<sup>21</sup> In the absence of information we make no recommendation, but it would be appropriate for the parties to reach agreement on this.

6. No evidence was presented on the need for a Joint Labor Management Committee.<sup>22</sup>

## **RECCOMENDATIONS**

1. Amend Section 14.02 so that PEA represented employees pay an additional 1.5% toward the employee share of CalPERS pension, effective the first full pay period following implementation of the Factfinding Report.

2. Amend Section 8.01 to provide a 2.0% wage increase for all PEA represented employees, effective the first full pay period following implementation of the Factfinding Report.

3. Amend Section 14.02 so that PEA represented employees pay an additional 3.0% toward the employee share of CalPERS pension, effective the first full pay period including January 1, 2013.

4. Effective July 1, 2013, add an 8<sup>th</sup> step to the salary schedules of DDA IVs. The 8<sup>th</sup> step is a 5% increase over the next lower step. Employees will be eligible to move to the 8<sup>th</sup> step after they have been in the 7<sup>th</sup> step for one year, in accordance with existing County policy.

4. Amend Section 20.09 so the contract expires on June 30, 2014.

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<sup>22</sup> In the absence of information we make no recommendation, but it would be appropriate for the parties to reach agreement on this.

*Norman Brand*

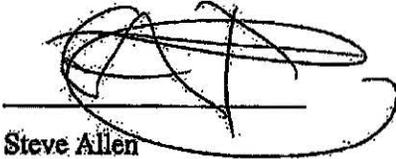
Norman Brand

November 2, 2012

Agree

Dissent

Date: 11-5-12

  
Steve Allen

Agree

Dissent

Date: 11-5-12

  
Brian Ring