

In the Matter of Factfinding)

between)

The Fresno County District Attorney)
Investigators Association)
Unit 10,)
Fresno, California)

and)

The County of Fresno,)
Fresno, California)

FF-699-M

CA.-PERB Impasse Case No: SA-IM-130M

Date Issued: August 6 , 2013

FACTFINDING REPORT AND RECOMMENDATIONS

FACTFINDING PANEL:

Neutral Chairperson:

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County/Employer Member:

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APPEARANCES:

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For the Association:

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INTRODUCTION

The above-named factfinding matter was heard in Fresno, California on July 10, 2013 and continued via a teleconference with the parties' representatives on July 16, 2013. This matter comes before the Factfinding Panel by virtue of a bargaining impasse between the parties, the County of Fresno (the County/Employer) and the Fresno County District Attorney Investigators Association (the Association) after the expiration of their Memorandum of Understanding (MOU) entitled, "Memorandum of Understanding Between Fresno County District Attorney Investigators Association, Unit 10, and the County of Fresno, June 13, 2011-June 9, 2013," hereafter referred to as Jt. Exh. #1. On April 16, 2013, the parties mutually declared an impasse in their negotiations. On June 3, 2013, the parties engaged in voluntary mediation in an attempt to resolve their bargaining impasse. Mediation was unsuccessful. Thus, on June 20, 2013, the Association requested a factfinding hearing pursuant to California Government Code 3505. 5.

This matter was submitted to factfinding in accordance with the provisions of the Meyers-Milias-Brown Act (MMBA), which is codified at California Government Code, Section 3500 et. seq. The MMBA provides collective bargaining rights to employees of cities, counties, and special districts within California. This factfinding matter was also conducted in accordance with the rules and regulations of the California Public Employment Relations Board (CA.-PERB) in effect at the time the parties mutually declared an impasse in their negotiations for a new Memorandum of Understanding (MOU). After her mutual selection by the parties, the Neutral Factfinding Panel Chairperson was appointed by CA.-PERB on June 28, 2013. In a joint stipulation, dated and signed by the parties' representatives on July 8, 2013, the parties agreed to waive the time limits specified by statute (i.e., the MMBA) and/or CA.-PERB regulation for holding the factfinding hearing. The parties agreed to hold, and indeed the factfinding hearing was held on July 10, 2013,

and continued on July 16, 2013. The hearing was closed on July 16, 2013. In the above-noted joint stipulation, the parties further agreed that this factfinding matter was properly before the CA.-PERB. Furthermore, by joint stipulation at the hearing on July 10th, the parties agreed to extend the deadline for the issuance of the Factfinding Report to August 12, 2013.

All evidence was produced during the hearing, and witnesses were permitted to testify fully. Five witnesses were called by the parties and testified, two for the County/Employer, and three for the Association. Twenty-one exhibits were introduced---one jointly, seven by the Association, and thirteen by the County. No transcript was produced, however, a digital recording was made of the hearing. No post-hearing briefs were filed.

The Factfinding Panel met via a teleconference on July 19, 2013 to discuss the evidence and the disputed issues. Panel members openly and thoroughly discussed their perspectives and offered their arguments on the evidence and the disputed issues. They actively engaged in free-flowing discourse during the teleconference. Despite the Chairperson's offer, the Panel Members did not see the need to meet again, and declined to do so.

THE DISPUTED BARGAINING ISSUES AND APPLICABLE MEMORANDUM OF UNDERSTANDING (MOU) PROVISIONS

This factfinding matter is properly before the Factfinding Panel.

The parties could not jointly stipulate to the disputed issues. Thus, it is the responsibility of the Factfinding Chairperson/Panel to identify and define the disputed issues. The Factfinding Panel unanimously agreed that there are eight (8) disputed issues as follows:

ISSUES	COUNTY	ASSOCIATION	MOU PROVISION
1)Base Salaries	7% Reduction	3% Reduction	Page 1 – Salaries
2)Base Salaries - Steps	Effective December 9, 2013 A)Decrease from 5% to 3.125 intervals B)Increase from 6 steps to 9 steps	-Increase from 6 steps to 9 steps @ 3.125% intervals -Applicable to new employees hired on or after December 9, 2013. -Effective June 8, 2014 for employees employed prior to 12/9/13.	Page 1 - Salaries
3)5% Advanced P.O.S.T Incentive Pay	Reduce to 2.5%	Maintain 5%	Page 12- P.O.S.T Incentives
4)Lead Worker Allowance	Eliminate The Provision	Observe Sunset Language and Restore the Benefit.	Page 5 – Lead Worker Allowance
5)Bilingual Skill Pay	Maintain reduction of \$23.08 Per Pay Period and Eliminate Sunset Language	Observe Sunset Language and Restore the Benefit.	Page 14 – Bilingual Skill Pay
6)County Vehicle Assignment / Home-Garaging	Eliminate from MOU – Revert to County Policy	Maintain Provision	Page 11 – County Vehicle Assignments/ Home-Garaging
7)CTO Accumulation	Status Quo	Increase Cap to 80 Hours	Pages 3-4 - Overtime Hours
8)Waiver	Delete Article	Maintain Article	Page 8 – Waiver Clause

BACKGROUND FACTS

According to the 2010 U.S. Census, Fresno County, located in the Central Valley of the State of California, is the tenth most populous county in California, with a population of approximately 930,450. From 2010 to 2012, its population increased by 1.9% to 947,895. The City of Fresno, the fifth largest city in California and the thirty-fifth largest in the U.S., is located within the County. With a population estimated to be 502,303 in 2010, it is the largest city by far in population in the Fresno-Madera Combined Statistical Area (CSA), with Clovis being a distant

second, with 97,218 in population. In 2012, over 73% of Fresno County's population was nonwhite. The largest racial/ethnic group in the County was Hispanic or Latino, consisting of over 51% of its population. The second largest ethnic/racial group in the County in 2012 was Asian, consisting of over 10% of its population. From 2007-2011, 42.9% of the County's population over the age of five spoke a language other than English at home. Over 23% of the County's population is below the poverty line. Median household income from 2007-2011 was \$46,903. ¹

In 2010, the Fresno Metropolitan Statistical Area (MSA), which includes the City and County of Fresno, had 4,976 violent crimes, 39,398 property crimes, 23,296 larceny-thefts, 9082 burglaries, 7,020 motor vehicle thefts, 3,364 aggravated assaults, 1,368 robberies, 181 forcible rapes, and 63 murders and non-negligent manslaughters. When compared with the surrounding counties and Metropolitan Statistical Areas, the Fresno County MSA had the most crime by far in all of the aforementioned categories. Tulare County and the Visalia-Porterville MSA was a distant second in most crime. However, the Visalia-Porterville MSA had only approximately 41% (2075) of the violent crimes, 55% of the murders and non-negligent manslaughters, 55% of the forcible rapes, 32% of the robberies, 44% of the aggravated assaults, 40% of the property crimes, 43% of the burglaries, 41% of the larcenies/thefts, and 31% of the motor vehicle thefts when compared with those in the Fresno MSA. Compared with the Fresno MSA, crime in the Hanford-Corcoran MSA, the Madera-Chowchilla MSA, and the Merced MSA was negligible. A comparison of crime in all of these MSA's in 2011 showed the same patterns and relationships. Furthermore, in the Fresno MSA, crime rates were higher in 2011 in all of the aforementioned categories, with two

¹ See "Profile of General Population and Housing Characteristics:2010 Demographic Profile Data (DP-1)," Fresno County, California, U.S. Census Bureau, American Factfinder; Also see Fresno County Quickfacts from the U.S. Census Bureau, pp. 1-2; U.S. Census Bureau. Census 2000" Census Demographic Profiles, Fresno County, California; " January 2010 Cities Ranked by Size, Numeric and Percent Change," California Department of Finance, 5/7/10; "California-Place: GCT-PH1. Population, Housing Units, Area, and Density, 2000,U.S. Census Bureau. The Factfinder notes here that the term Standard Metropolitan Statistical Area (SMSA) is no longer used by governmental agencies. Metropolitan Statistical Area (MSA) and Combined Statistical Area (CSA) are the current terms used by governmental agencies. The U.S. Office of Management and Budget has designated Fresno County as the Fresno, CA. Metropolitan Statistical Area. Metropolitan Fresno has been designated as a component of the Fresno-Madera Combined Statistical Area. As of 2012, this Combined Statistical Area was the 49th most populous CSA in the U.S. See Tables 1 and 2. Annual Estimates of the Population of Metropolitan and Micropolitan Statistical Areas: April 1, 2010 to July 1, 2012, 2012 Population Estimates, U.S. Census Bureau, Population Division, March 2013

exceptions--- murder and non-negligent manslaughter and forcible rape. Burglaries, in particular, showed a large increase (856) in 2011.²

The land area of the County in 2010 was approximately 5,957 square miles, making it the sixth largest in size in California. The City of Fresno's land area in 2010 was 104.4 square miles, making it the largest city in land area within the Fresno-Madera Combined Statistical Area (CSA). The City of Clovis, was a distant second in land area in 2010, with 22.03 square miles.³

Agriculture is the primary industry in Fresno County. In 2007, agricultural production totaled \$5.3 billion, thereby making it the number one agricultural county in the country. Major employment industries within the Fresno Metropolitan Statistical Area (MSA) in 2012 included non-farming industries such as trade, transportation, utilities, education, health services, and government. Major private employers in the County included the Community Medical Regional Center, Saint Agnes Medical Center, Kaiser Permanente, and Wawona Frozen Foods. Large public employers included the Fresno Unified School District, the City of Fresno, the Clovis Unified School District, California State University-Fresno, State Center Community College District, the U.S. Department of Veterans Affairs-Central California, and the County. In 2013, the County had approximately 6,500 employees.⁴

The unemployment rate for the Fresno MSA in 2012 was 15.2%, considerably higher than the California unemployment rate of 10.5%, and almost double the 8.1% unemployment rate for the country.⁵ In May, 2012, workers within the Fresno MSA had an average/mean hourly wage of \$19.81, which was about 10% below the national average/ mean hourly wage of \$22.01. In May, 2012, in the occupational group of the Protective Services, the average/mean hourly wage was

² See Assoc. Exh. # C-Crime in the United States by Metropolitan Statistical Area 2010-2011, 2 pages.

³ "January 2010 Cities Ranked by Size, Numeric and Percent Change," California Department of Finance, 5/7/10; "California-Place: GCT-PH1. Population, Housing Units, Area, and Density, 2000, U.S. Census Bureau.

⁴ Mr. Johnson's undisputed statement in his presentation for the County.

⁵ Ibid..

\$20.46, which was slightly less than the \$20.70 mean hourly wage for this occupational group nationally.⁶

The non-seasonally adjusted Consumer Price Index (CPI) for all items in Fresno showed a 1.3% change over the 12-month period ending in May, 2013.⁷ Similarly, the average U.S. city, non-seasonally adjusted percent change in the CPI from May, 2012-May, 2013 was 1.4%.⁸

In its Comprehensive Annual Financial Report for the fiscal year that ended on June 30, 2012, the Fresno County's Auditor-Controller gave an economic overview of the County, in which she concluded that:

“...the County's current economic state continues to be difficult with stagnant home prices, continued problems in mortgage markets, tight credit availability, and significant job losses that continue to batter the economy of California and Fresno County. ... This minimal job growth [in nonfarm jobs in California] is in line with national trends, which show the economy has slowly begun to recover. The outlook for the State economy is for moderate growth through 2012, followed by better growth in 2013 and 2014.

After years of strong growth in the County's economy, the recession conditions over the past five years have resulted in a decline in property and sales tax revenues. Property tax revenues have declined by 8.23% from fiscal year 2008-09 while sales tax revenues have declined by 11.77% from fiscal year 2008-09. The rate of decline appears to be slowing and could possibly bottom out in the next fiscal year. The slumping housing sector and mortgage crisis has slowed the residential building industry and some property has been reassessed to a lower value....

The County's unemployment rate is typically higher than the State's or the national average due to the seasonal nature of its large agricultural employment base. The County's unemployment rate ranged to a high of 17.4% during the fiscal year with a summertime level of 14.9% reflecting the availability of seasonal agricultural jobs. These rates contrast with the 20 year low of 9% in 2006 and a 9.21% average for fiscal year 2007-8....

The County remained the leading agricultural county in the State and nation. Total gross agricultural production in 2011 increased by 15.84% over 2010, exceeding the five billion mark for a fifth consecutive year....In recent years, agriculture jobs have declined due to increased efficiencies, farm consolidations, farm land retirements and tight water supplies....”⁹

⁶ See “Occupational Employment and Wages in Fresno-May, 2012.” U.S. Bureau of Labor Statistics, Accessed on 7/15/13, p. 1.

⁷ See “Economy At A Glance-Fresno, CA.” U.S. Bureau of Labor Statistics, Accessed online on 7/23/13, p. 1.

⁸ See “Consumer Price Index for All Urban Consumers (CPI-U): U.S. City Average by Expenditure Category,” U.S. Bureau of Labor Statistics, Accessed online 7/15/13, p. 1.

⁹ See County Exh. #5, “County of Fresno, State of California, Comprehensive Annual Financial Report For the Fiscal Year Ended June 30, 2012,” Vicki Crow, C.P.A., Auditor-Controller/Treasurer-Tax Collector, pp. ix-x.

Regarding the County's budget and long term financial planning, the County's Auditor-Controller concluded that:

"The County's budget is strongly influenced by the State's fiscal budget. The State of California passed the fiscal year 2012-13 State budget of \$91.3 billion on June 27, 2012. For the third consecutive year, California ended the prior period with a deficit, and the continuing deficits and expiration of temporary tax increases have created the need for further reductions in State spending....

The County's 2012-2013 adopted budget is \$11.7 million less than the prior year and continues the salary savings enacted in the prior year budget. The decrease is due to the lower State funding as well as to lower County discretionary revenues including sales and property tax revenues and vehicle license fees as a result of the recession. Significant budget reductions were made in all programs. The County will perform a mid-year review of budget surpluses and deficits and may recommend additional budget reductions. The effect of the recession on County revenues is anticipated to continue through at least this year...."¹⁰

From 2007-2012 County revenues decreased dramatically, while budget expenditures increased by \$115 million. Retirement costs in the County have increased significantly from 2007-08 to 2013-14, having increased by about \$100 million. The County's contribution rate in the Pension Obligation Fund has increased from 24.63% in 2007-08 to 48.04% in 2013-14. From 2007-2013, the County eliminated 1223 positions overall, although in fiscal year 2011-12, it added 54 positions and in fiscal year 2012-13, it added 98 positions.¹¹ From fiscal years 2008 through fiscal year 2011, Unit 10 lost 18 positions.¹²

The County's budget priorities for 2013-14 include Affordable Care Act implementation, jail assessment and building a new jail per SB1022, paying for Pension Obligation Bond cost increases of \$1.3 million, paying for a \$7 million increase in retirement rates, addressing a jail lawsuit, and maintenance of its operational costs. To maintain operational costs, the County's cost reduction strategies have included hiring/promotion controls, furloughs and layoffs, service reductions, salary reductions, a new retirement tier for new hires, and County-imposed reductions on bargaining units, including Unit 10 (the Association), whose members sustained a 7% salary

¹⁰ Ibid., p. xi.

¹¹ See Cty. Exh. #1-Power Point Presentation, pp. 7-9.

¹² Testimony of Ms. Lisa Biggs, President of the Association and Lead Investigator; Mr. Johnson's presentation for the County.

decrease for 2011 and a 7% salary decrease for 2012.¹³ Regarding its wage/salary cutting strategy, in 2011 the County negotiated a 9% salary decrease with its six, SEIU bargaining units, which included Sheriff's and probation personnel, after having negotiated 3% salary cuts with all of these units in both 2009 and 2010. This salary decrease applied to SEIU Unit 12, which represents clerical, paramedical, building, and service employees, and is the largest bargaining unit in the County. Furthermore, the six, SEIU bargaining units represent about two-thirds of the County's workforce, or about 4,000 employees. Also in 2011, the County negotiated a 6% salary decrease with law enforcement personnel, a 7.5% salary decrease with Deputy Probation Officers, a 6% salary decrease with Sheriff Sergeants, a 7% salary decrease with Sheriffs and Correctional Lieutenants, an 8% salary decrease with Sheriff Captains, a 7.5% salary decrease with Probation Services Managers, a 6.5% salary decrease with Engineers, a 6.5% salary decrease with Engineering Technicians, and a 7.5 salary decrease with the Public Defenders Association, amongst lesser percentage salary decreases with other bargaining units and employee groups. For example, bargaining units for craft and trade employees, Operating Engineers, and computer employees only sustained a 3.5% wage/salary decrease in 2011. Professional employees only incurred a 2.5% wage/salary decrease in 2011. In 2012, Deputy District Attorneys sustained a 9% salary decrease, and unrepresented confidential personnel sustained a 7.5% salary decrease. No bargaining units and employee groups received a salary increase in 2012 and there were no salary increases scheduled for 2013.¹⁴

For the fiscal year 2012-13, the adopted District Attorney's Budget for the General Fund showed a 4% or \$307,495 increase in revenues. This increase was anticipated to be primarily due to full-year funding for positions for the city jail per Assembly Bill (AB) 109, an increase in Proposition 172 sales tax revenue, and the elimination of Criminal Justice Temporary Construction

¹³ Op.cit., pp. 10-11.

¹⁴ See Assoc. Exh. D-Salary Increases/Decreases Schedule for Fiscal Years 2009/2010-2012/2013-Chart, City of Fresno Personnel Services Website, 1 page. This Factfinding notes here that this chart does not show a salary reduction for Unit 10 for 2012-2013. Nor does this chart show any salary information for most of the County's bargaining units and employee groups for 2012 and 2013 to date.

Funds. It was based on a 2% salary savings in calculating regular salaries, and \$180,835 in savings for combined related benefits, including retirement, OASDI, and health insurance. In this budget, the Attorney General recommended staffing at 164 positions, which was an increase of thirteen positions over the 2011-12 fiscal year. Of these thirteen new positions, only one was for a new District Attorney Investigator (DAI) at any level. This new position was for a Senior District Attorney Investigator. However, the Attorney General anticipated that the addition of four Investigative Assistants and one Office Assistant to serve subpoenas, would free up Senior Investigators to focus on the investigation of criminal cases. Moreover, this 2012-13 budget showed a Net County Cost Carryover (NCC) from the prior fiscal year (2011-12) of \$1.4 million.¹⁵

For the current fiscal year, 2013-14, the adopted District Attorney's Budget for the General Fund, showed a 12% or \$935,216 increase in revenues. This increase was anticipated to be primarily due to projected increases in Proposition 172 sales tax revenue, and 2011 realignment revenues. A 2% salary savings was used to calculate regular salaries in this budget. A savings of \$189,985 in combined, related benefits for retirement, OASDI, and health insurance was projected. In this budget, the Attorney General recommended staffing 174 positions, which was an increase of 10 positions over the 2012-13 fiscal year. This increase was due to felony workload increases since the effective date of AB 109. Of these 10 new positions, only two were for new DAIS at any level. These two new positions were again for Senior District Attorney Investigators. Moreover, again, this budget showed a Net County Cost Carryover (NCC) from the prior fiscal year, this time in the amount of \$2 million.¹⁶

Unit 10 (the Association) is the exclusive bargaining representative for the job classifications within the District Attorney Investigator Job Classification Series, which include District Attorney

¹⁵ See Assoc. Exh. A-2012-2013 District Attorney Proposed Budget 2860 and 2862, pp. 28-32.

¹⁶ See Assoc. Exh. B-2012-2013 District Attorney Proposed Budget 2860 and 2862, pp. 30-35. The Factfinder notes here this exhibit is mislabeled in the Association Exhibit Index as 2012-13 instead of 2013-14. The Factfinder notes here Ms. Biggs testimony that from 1/1/13-6/30/13 the District Attorney has hired four Senior Investigators.

Investigator I, District Attorney Investigator II, and Senior District Attorney Investigator.¹⁷ The Unit is composed of thirty-nine employees, thirty-four of which are Senior District Attorney Investigators. The remaining five employees within the Unit are District Attorney Investigator II's.¹⁸

District Attorney Investigators II's conduct investigations into allegations of welfare fraud and non-support of children, perform criminal and civil investigations, offer technical assistance to lower level staff, and perform related work. This experienced-level job classification differs from the District Attorney Investigator I job classification in that these job incumbents are fully trained, and are expected to complete investigations with a minimum of supervision. Senior District Attorney Investigators, under minimal supervision, conduct criminal and civil investigations, assign, review, and coordinate the work of lower level staff, and perform related work. It is the highest and most experienced job classification within the District Attorney Investigator Job Classification Series. Moreover, there is no Lead Investigator job classification. Lead duties are encompassed within the Senior District Attorney Investigator job duty of assigning, reviewing, and coordinating the work of lower level staff. Job incumbents of this class have the knowledge and experience to perform difficult and complex investigations with little supervision. Unlike the District Attorney Investigator II, the Senior District Attorney Investigator assigns, reviews, and coordinates the work of lower level staff, however, the Supervising District Attorney Investigator has full supervisory duties over lower level staff. When compared with District Attorney Investigator II's, Senior District Attorney Investigators have increased responsibilities, latitude of judgment, and are assigned more difficult and complex cases. Possession of a valid, basic Peace Officer Standards and Training (P.O.S.T.) Certificate is a minimal job qualification or prerequisite for both the District Attorney Investigator II and Senior District Attorney Investigator positions. Bilingualism in English and another language, is not a prerequisite/job qualification for either of these positions. In fact, providing language

¹⁷ See Jt. Exh. # 1-Memorandum of Understanding Between Fresno County District Attorney Investigators Association, Unit 10 and The County of Fresno, June 13, 2011-June 9, 2013., p. 2.

¹⁸ See Cty. Exh. # 1-Power Point Presentation, p. 5.

translation services is not listed as an essential job function or duty on the job description for either the District Attorney Investigator II or Senior District Attorney Investigator position.¹⁹

Of the thirty-nine County employees within the bargaining unit, thirty-four are Senior District Attorney Investigators, and five are District Attorney Investigator II's. Of the thirty-four Senior District Attorney Investigators, twenty-six or two-thirds of the bargaining unit are at the highest annual base salary level for the District Attorney Job Classification Series (i.e., \$83,434 annual salary). Twenty-six unit members are in the County's best retirement plan, Safety Tier 1, to which the County contributes 80% of the retirement base.²⁰ The current yearly salary range for unit members is \$63,778-\$83,434. The current monthly salary range for unit members is \$5314.83-\$6952.83. The County's proposed 7% salary decrease during the negotiations with Unit 10 for a new MOU would result in a yearly salary deduction of \$5840.38 for each of the highest paid Senior District Attorney Investigators. This salary decrease would result in a yearly salary for each of these employees of \$77,593.62. This 7% proposed salary decrease for the highest paid Senior DAIS translates into a monthly salary reduction for each of \$486.69. The remaining Senior District Attorney Investigators would experience a yearly salary deduction ranging from \$4573.66 to \$5561.92. For the five District Attorney Investigator II's, the proposed 7% salary decrease would translate into a yearly salary deduction ranging from \$4464.46 to \$4923.10. Overall, the County estimated that its proposed 7% salary decrease for Unit 10 members would save it \$213,414 per year. It did not, however, declare an inability to pay during the negotiations for a new MOU. It maintained that its future goals include rehiring employees and restoring County services, amongst others.²¹

The lowest base monthly current salary for Unit 10 members is \$5314.83, while the highest base monthly current salary is \$6952.83. When compared with the surrounding counties of Kings,

¹⁹ See Cty. Exh. #7-District Attorney Investigator II Job Description, Revised 10/1/03, pp. 1-2 and Senior District Attorney Investigator Job Description, Revised 4/21/05, pp. 1-2. Also see the testimony of Ms. Lisa Biggs.

²⁰ See Cty. Exh.# 1-Power Point Presentation, p. 22.

²¹ See Cty. Exh.# 1-Power Point Presentation, p. 5,16,18 and Cty. Exh. # 6-List of Unit 10 Salaries As Of 6/10/13, 2 pages.

Tulare, Merced, and Madera, the County's lowest base current monthly salary for DAIS is the highest, being \$621.75 higher than Tulare County, which has the second highest, lowest base current monthly salary for DAIS. With respect to the highest base monthly salary for Unit 10 members, Fresno County has the highest base monthly current salary when compared with the above-noted counties. This base was \$806.43 higher than that of Merced County, which has the second highest base monthly current salary for DAIS of \$6146.40. When Fresno County's proposed 7% salary decrease is applied to these salaries, the County still retains its number one spot in both lowest base monthly salary and highest base monthly salary for DAIS, when compared with these surrounding counties. In fact the County's lowest base salary for DAIS would still be \$246.72 more than that of Tulare County, which has the second highest, lowest base monthly salary. Furthermore, the County's highest base monthly salary for DAIS would still be \$319.74 more than that of Merced County, which has the second, highest base monthly salary.²² When compared with Stanislaus, Sacramento, Kern, and San Joaquin counties, the Association concluded that the highest monthly salary for DAIS within Fresno County is the second lowest, \$1420 a month less than San Joaquin County, which it maintained has the highest monthly salary for such employees.²³

The expired MOU (Jt. Exh. # 1) provided for a 7% salary reduction for all DAIS during its term. This sunset provision expired on 6/9/13, thereby resulting in the restoration of the salaries of unit members without the 7% salary deduction. Furthermore, effective 6/18/07, the MOU added one additional salary step (i.e., Step 6) to the District Attorney Investigator Job Classification Series. During the latest negotiations, the parties agreed to increase the number of salary steps from six to nine at 3.125% intervals, but they could not fully agree on the Association's proposal to

²² See Cty. Exh. # 1-Power Point Presentation, pp.18, 21..

²³ See Assoc. Exh. E-Salary and Benefits Comparison: District Attorney Investigator/Criminal Investigator, 7/9/13, 1 page. The Factfinder notes here that it is unclear which Fresno County, DAI job classifications are included within the data, which is presented as a salary and benefits comparison for a job entitled "District Attorney Investigator." However, there is no such job classification within the County's District Attorney Investigator Job Classification Series. To the best of the Factfinder's knowledge, there is no job within Fresno County with this job title.

apply the resultant, new salary schedule to new employees hired on or after 12/9/13. Furthermore, the Association also proposed to apply this new salary schedule to unit members hired prior to 12/9/13, on 6/8/14.²⁴

Regarding Bilingual Skill Pay, there are currently eight bargaining unit members receiving Bilingual Skill Pay.²⁵ In the expired, 2011-13 MOU (Jt. Exh. # 1), Bilingual Skill Pay was temporarily reduced from \$50 per pay period to \$23.08 per pay period. This sunset provision expired on 6/9/13, at which time Bilingual Skill Pay reverted back to \$50 per pay period.²⁶ With retirement costs factored in, the cost of Bilingual Skill Pay within the unit for fiscal year 2011-12 was \$8576.19. The cost for Bilingual Skill Pay within the unit for fiscal year 2012-2013 was \$8872.88. For fiscal year 2013-14, the County anticipated that the cost for Bilingual Skill Pay within the unit would more than double due to higher retirement costs.²⁷ The County estimated that its bargaining proposal to maintain the reduced Bilingual Skill Pay rate of \$23.08 per pay period during the 2013-15 term of the new MOU, would save the County \$10,461.²⁸

With respect to compensatory time off (CTO), the expired MOU (Jt. Exh. # 1) allows employees to opt for either overtime pay at one and one-half times their base hourly pay rate or regular rate of pay, or compensatory time off. If CTO is chosen, the employee may accumulate a maximum of forty hours at any given time. Anything over this maximum amount is paid in cash by the department on the next available pay period.²⁹ The employee may, in effect, earn unlimited CTO hours as long as s/he uses the hours or cashes them out after they accumulate to forty hours. In payroll year 2011, unit members used 257.07 hours of CTO, which had a cash value of

²⁴ See Jt. Exh. # 1-Memorandum of Understanding Between Fresno County District Attorney Investigators Association, Unit 10 and The County of Fresno, June 13, 2011-June 9, 2013., p.1. Also see Cty. Exh.#10-History of Association Proposals, DAIA (Unit 10) Proposal #9, 4/16/13, p.1.

²⁵ The parties jointly stipulated to this statement at the hearing.

²⁶ See Jt. Exh. # 1-Memorandum of Understanding Between Fresno County District Attorney Investigators Association, Unit 10 and The County of Fresno, June 13, 2011-June 9, 2013., p.14.

²⁷ See Cty. Exh. #13- Bilingual Pay and CTO Data for Unit 10 Members (2011-12, 2012-13), 7/11/13 with cover email (Bandy to Johnson), 6 pages total.

²⁸ See Cty. Exh. # 1-Power Point Presentation, p. 25.

²⁹ See Jt. Exh. #1-Memorandum of Understanding Between Fresno County District Attorney Investigators Association, Unit 10 and The County of Fresno, June 13, 2011-June 9, 2013., p.3-4.

\$9,267.58. In payroll year 2011, 86.8 hours were cashed out by unit members in the amount of \$3431.04. The total value or equivalent cost to the County for CTO taken by unit members in 2011 was \$12,698.62. At the end of the 2011 payroll year, only one unit member had a CTO balance in excess of 40 hours (i.e., 51.22 hours). In payroll year 2012, unit members used 309.69 hours of CTO, which has a cash value of \$11,172.46. In payroll year 2012, 31.75 hours were cashed out by unit members in the amount of \$1,183.88. The total value or equivalent cost to the County for CTO taken by unit members in 2012 was \$12,356.34. At the end of the 2012 payroll year, only three unit members had a CTO balance in excess of 40 hours (i.e., 42.60, 42.25, 56 hours). In the current, 2013 payroll year, unit members have used approximately 133 hours of CTO, which has a cash value of \$4,675.70. In the current, 2013 payroll year, 16 hours were cashed out by unit members in the amount of \$596.60. The total value or equivalent cost to the County for CTO taken by unit members in 2013 is about \$5,272.30. The current CTO balance for thirty-three unit members is 619.76, which has an equivalent cash value of \$23,764.89. In the current, 2013 payroll year to date, only one unit member has a CTO balance in excess of 40 hours (i.e., 42.60 hours). The County maintained that it prefers overtime pay to CTO accumulation and cash-out because overtime can be controlled within departmental overtime budgets, where as CTO is an uncontrolled, unfunded liability that becomes burdensome to departments. Additionally, it argued that the County has an extensive annual leave plan, resulting in most DAIS earning 7-8 weeks of leave per year.³⁰

Regarding Peace Officer Standards and Training (P.O.S.T.) Incentive Pay, the expired MOU (Jt. Exh. # 1), provided for a unit member to be compensated at a rate of 2.5% above his/her base salary if s/he obtained the Intermediate P.O.S.T. Certificate. A unit member that attained the Advanced P.O.S.T. Certificate was compensated at a rate of 5% above his/her base salary. According to this MOU however, effective 6/13/11, the Intermediate P.O.S.T. Certificate Incentive

³⁰ See Cty.Exh #13- Bilingual Pay and CTO Data for Unit 10 Members (2011-12, 2012-13), 7/11/13 with cover email (Bandy to Johnson), 6 pages total.

Pay of 2.5% was suspended during the MOU's term. When this sunset provision expired on 6/9/13, Intermediate P.O.S.T. Incentive Pay was reinstated.³¹ Nonetheless, only the possession of a valid, Basic Peace Officer Standards and Training (P.O.S.T.) Certificate is a minimal job qualification or prerequisite for both the District Attorney Investigator II and Senior District Attorney Investigator positions, not an intermediate or advanced one.³² The County's estimated that its bargaining proposal to reduce Advanced P.O.S.T. Incentive Pay from 5% to 2.5% would save it \$119,354 per year.³³

With respect to Lead Worker Allowance, the expired MOU (Jt. Exh. # 1) provided for a \$50 per pay period allowance, pro-rated for the actual number of hours worked, and not to exceed eighty hours per pay period, for Senior DAIS who were assigned to perform lead work by the District Attorney. Lead work was defined in this MOU as assigning, reviewing, and coordinating the work of employees. In the Senior District Attorney Investigator Job Description, lead duties are encompassed within the job duty of assigning, reviewing, and coordinating the work of lower level staff. There is no separate job description for a Lead Investigator job. During the term of this MOU, Lead Worker Allowance was reduced from \$50 per pay period to \$23.08 per pay period. However, this sunset provision expired on 6/9/13, thereby resulting in the restoration of this allowance to \$50 per pay period.³⁴ Lead Workers within the unit spend an average of 1-2 hours daily on lead duties, more at the end of the month.³⁵ In the negotiations for a new MOU, the County sought to eliminate this provision, estimating that doing so would save it \$10,095 per year.³⁶

³¹ See Jt. Exh. # 1-Memorandum of Understanding Between Fresno County District Attorney Investigators Association, Unit 10 and The County of Fresno, June 13, 2011-June 9, 2013., p.12.

³² See Cty. Exh. #7-District Attorney Investigator II Job Description, Revised 10/1/03, pp. 1-2 and Senior District Attorney Investigator Job Description, Revised 4/21/05, pp. 1-2.

³³ See Cty. Exh. # 1-Power Point Presentation, p. 23.

³⁴ See Jt. Exh. # 1-Memorandum of Understanding Between Fresno County District Attorney Investigators Association, Unit 10 and The County of Fresno, June 13, 2011-June 9, 2013., p.5.

³⁵ Testimony of Ms. Lisa Biggs, Association President, Lead Investigator, Senior DAI.

³⁶ See Cty. Exh. # 1-Power Point Presentation, p. 24.

Regarding the County's vehicle assignment and home garaging practices, the expired MOU (Jt. Exh. # 1) provided for the permanent assignment of County vehicles and the garaging of them at a unit member's residence based on the strict application of two criteria: 1) the need to transport specialized equipment not easily transferred between vehicles; and 2) the requirement for a specially equipped vehicle for after-hours emergency calls. The MOU designated the District Attorney or his/her designee as the final decision maker relative to permanent vehicle assignment and residence-garaging. It further mandated that the District Attorney or his/her designee make the final decision regarding the total number of vehicles at any time that are assigned within the department, and the total number of such vehicles allocated for permanent assignment and for residence-garaging. Moreover, this provision's language allowed the District Attorney or his/her designee to determine it to be operationally necessary, to reallocate a County vehicle that had been permanently assigned or residence-garaged at any time.³⁷ During the negotiations for a new MOU, the County sought to eliminate this provision and address County vehicle assignment and garaging for unit members via the existing County Automotive Transportation Policy.³⁸ Contrary to the above-noted provisions of the expired MOU, Section 930 of the County Automotive Transportation Policy requires that requests for the long term assignment of vehicles be made to the County Administrative Officer (CAO) or his/her designee, using a form that must be submitted to Fleet Services. This policy specifies that to obtain approval from the CAO or designee for a long-term vehicle assignment, it must be found that the assignment is in the best interest of the County, the Department Head attests that s/he has made every effort to mitigate the need for the assignment, and one or more of the following five criteria must be met:

“...Vehicle is used on the job for a minimum of 6,000 miles annually (for all vehicles with the exception of construction and site maintenance equipment).

³⁷ See Jt. Exh. # 1-Memorandum of Understanding Between Fresno County District Attorney Investigators Association, Unit 10 and The County of Fresno, June 13, 2011-June 9, 2013., p.11.

³⁸ See Cty. Exh. # 1-Power Point Presentation, p. 26. Also see Cty. Exh. # 11- County Automotive Transportation Policy- Management Directives 900 et. seq., 9 pages.

Construction and site maintenance equipment is used on the job for a minimum of 100 hours annually.

Vehicle is used to transport/carry equipment (ladder rack, tool storage, cages/bars, caution/emergency lights) necessary for the department's operations. Department Head must provide justification on GSA-612a form.

Vehicle is used for seasonal work necessary for the department's operations (only when leasing is not effective). Department Head must provide justification on the GSA-612a form.

Vehicle is used for emergency response purposes. Department Head must provide justification on the GSA-612a form...³⁹

Per this Policy, long-term vehicle assignments are valid for only one year and must be renewed annually via completion of a form that includes justification for retaining the vehicle. Moreover, this Policy dictates the criteria to be applied for the approval of the residence garaging of County vehicles by the CAO or designee. Again, such garaging must be in the County's best interests, the Department Head must attest that s/he made every effort to mitigate the need for vehicle garaging, and one or more of the following criteria must be met:

"...Vehicle is used by employee to report to and depart from the field (location other than the employee's normal work site) at least four days per week.

Vehicle is used to respond to an average of 10 or more after-hour emergency calls per month.

Vehicle is used for seasonal work necessary for the department's operations (only when leasing is not effective)....⁴⁰

Again, this Policy requires the Department Head to provide justification on another form, Form GSA-612b. Further, it requires each employee assigned a residence garaged vehicle to track vehicle usage via the Residence Garaged Documentation Form to be submitted to Fleet Services quarterly. Moreover, this Policy requires that residence garaged vehicle assignments are valid for one year only and must be renewed annually.⁴¹

With respect to the Waiver Clause in the expired MOU (Jt. Exh. #1), it acknowledges the parties' agreement for the life of the MOU to voluntarily waive the right to collectively bargain with

³⁹ Op.cit., Section 930-Assignment of Vehicles, p. 930-1.

⁴⁰ Op.Cit, Section 930-Assignment of Vehicles, p. 930-2.

⁴¹ Ibid.

respect to any subject or matter pertaining to or covered by the MOU. This provision also acknowledges the parties' agreement that neither is obligated to collectively bargain with respect to any subject or matter pertaining to or covered by this MOU.⁴² During the negotiations for a new MOU, the County sought to delete this article, whereas the Association sought to maintain it.⁴³

BARGAINING HISTORY

After years of concession bargaining between the County and all of its bargaining units, the negotiations for a new MOU between the County and Unit 10 began on February 6, 2013. There were seven bargaining sessions held over the course of about two and one-third months. The last bargaining session was held on April 16, 2013, when the parties mutually declared an impasse in their negotiations. The last best final offer (LBFO) of the Association included proposals on the disputed issues of salaries, number of salary steps and percentage intervals between those steps and effective date and applicability, P.O.S.T. Incentive Pay, Lead Worker/Investigator Allowance, Bilingual Skill Pay, Overtime/CTO, and the term of the new MOU. The County's LBFO contained the disputed issues of salaries, number of salary steps and percentage intervals between those steps and effective date and applicability, P.O.S.T. Incentive Pay, Lead Worker Allowance, Bilingual Skill Pay, County Vehicle Assignments and Home Garaging, the Waiver Clause, and the term of, and renegotiation for the new MOU. On the salary issue, the Association's LBFO was a 3% salary reduction, and retainment of the sunset language in the MOU. The County's LBFO on the salary issue was to eliminate the sunset language and permanently maintain a 7% salary reduction. Ultimately, for this factfinding, eight disputed issues were unanimously agreed upon by the Factfinding Panel (see the Disputed Bargaining Issues and Applicable Memorandum Of

⁴² See Jt. Exh. # 1-Memorandum of Understanding Between Fresno County District Attorney Investigators Association, Unit 10 and The County of Fresno, June 13, 2011-June 9, 2013., p.8.

⁴³ See Cty. Exh. # 10-History of Association Proposals, DAIA (Unit 10) Proposal #9, 4/16/13, p.1; Also see Cty.Exh. #9-History of County Proposals, County Package Proposal #10, District Attorney Investigators Association-Unit 10, 4/16/13, p. 2.

Understanding (MOU) Provisions Section above).⁴⁴ During the negotiations for a new MOU and during this factfinding, the County did not declare an inability to pay.

On or about June 3, 2013, the parties engaged in voluntary mediation in an attempt to resolve their bargaining impasse. Mediation was unsuccessful. Thus, on June 20, 2013, the Association requested a factfinding hearing pursuant to California Government Code 3505. 5.⁴⁵

Again, the last negotiations meeting between the parties occurred on April 16, 2013. On May 28, 2013, the local newspaper, The Fresno Bee, published an article heralding the County's "financial recovery" with its 1.9 billion, 2013-14 budget. In this article, it was noted that the County's workforce, after years of layoffs and furloughs, is slated to grow from less than 6,500 employees a year ago to nearly 7,000 employees in the 2013-14 fiscal year. Further, it cited increases in local tax revenues and state funding, and more disposable income for the County due to employee salary decreases and reduced costs in recent years. This article further reported the declaration of the County Administrative Officer, John Navarrette, who exclaimed, "It's the year we're going to heal." He further expressed cautious optimism, for he concluded, the economic recovery has been slow since the recession and a number of financial challenges await.⁴⁶

After mediation for a new MOU had failed, on June 23, 2013, The Fresno Bee published an article on the restoration of the full salaries for the County's elected officials, including members of the Board of Supervisors, the Sheriff, and the District Attorney. This article noted that this salary restoration was occurring while most of the County's workforce remained stuck with pay cuts that

⁴⁴ See Cty. Exh. #2-Terms and Conditions-Last Best and Final Offer From the County of Fresno to Bargaining Unit 10, 4/16/2013, 4:38 p.m., pp.1-2; Cty. Exh. # 3-Last, Best, and Final Proposal-District Attorney Investigators Association-Unit 10, 4/16/13, 4:14 p.m., 1 page. The Factfinder notes here significant differences between the disputed issues itemized in the aforementioned LBFOs, and those included in Mr. Johnson's Power Point Presentation (Cty.Exh. #1) on p.3, in which he outlined the issues and differences between the two LBFOs. Not only do Cty. Exhs. # 2 and #3 show more issues within, and differences between the two LBFOs, but the Association's LBFO on salary was indeed 4%, not the 3% noted on p. 3 of the Power Point Presentation (Cty. Exh. #1). However, the Association has presented its LBFO on salaries as 3%, which was undisputed, so that is what is noted here. Moreover, the Association also proposed in its LBFO to retain the sunset language on salaries, which is omitted from p. 3 of the Power Point Presentation (Cty. Exh.#1).

⁴⁵ See Cty. Exh. # 1-Power Point Presentation, p. 14.

⁴⁶ See Assoc. Exh. F-"Fresno County Sees Financial Recovery In 2013-14 Budget," The Fresno Bee Newspaper, 5/28/2013, pp. 1-2.

were implemented to improve “the county’s bottom line.” In this article County Board Chairman Perea concluded that the County’s “...finances are strong enough to begin rescinding pay cuts for everyone.” He further opined that “...we’re not in the same situation anymore. We should be restoring wages and benefits for employees.” This article noted that Mr. Perea cast the only vote in June of 2013 against the continuation of salary deductions for SEIU employees, who make up about two-thirds of the County’s workforce. Furthermore, in this article, SEIU Director Tom Abshere expressed his outrage over the full salary restoration for the County’s elected officials. He decried their poor leadership and failure to lead by example, given that, he said, County employees are suffering as much as a 15% pay cut. Interviewed for this article, Marie Cortez, an Office Assistant in the County’s Child Support Office, where annual salaries were reported to start just above \$20,000, complained, “...they don’t understand the hardships that we’re going through.” She further questioned “...and I wonder, do they even care?”⁴⁷

DISCUSSION, FINDINGS, AND FACTFINDING RECOMMENDATIONS

1) SALARIES

The parties have spent significant effort and time in the negotiations and during the factfinding hearing arguing about which California counties are comparable to Fresno County and therefore, should serve as comparables for evaluating current DAI salaries and adopting one party’s or the other’s LBFO on salaries. The County has argued that the surrounding counties of Kings, Tulare, Merced and Madera, which it asserted comprises its recruiting area for new employees, are the appropriate comparable counties. It stresses that, both the current, lowest and highest base monthly salaries for Unit 10 members are the highest when compared to those of DAIS in the aforementioned counties. Furthermore, the County maintained that even after its proposed 7% salary reduction is applied to the lowest and highest base monthly salary of Unit 10

⁴⁷ See Assoc. Exh. G-“WATCHDOGREPORT-Fresno Leaders Resume Full Pay,” The Fresno Bee Newspaper, 6/23/2013, Section: Front Page, Page A1- 3 pages.

members, both are still the highest when compared to those of DAIS in the aforementioned counties. Yet, with the widespread adoption by employers over the course of the last few decades, including Fresno County and other county governments, of human resources information systems (HRIS) with online recruiting and application processing tools, recruiting areas have enlarged significantly. This expansion in recruitment area is especially true for educated, experienced, and skilled applicants for professional positions, like Senior District Attorney Investigator applicants, some of whom have the means and desire to relocate significantly outside of their immediate locales.

Moreover, the County's comparability arguments ignore the fundamental differences in, and variables of county population, county makeup/demographics (e.g., in 2012, over 73% of Fresno County's population was nonwhite; 51% of the County's population was Hispanic/Latino; from 2007-2011, 42.9% of the County's population over the age of five spoke a language other than English at home; over 23% of the County's population is below the poverty line), county size/area, inclusive city population, urban density and/or core, and critically, violent crime rates between Fresno County and its neighboring counties. Yet, violent crime rates directly affect DAI caseload in terms of the number, type, severity, and complexity of cases, number and type of required investigatory interviews, the total miles traveled and travel time, etc. Still, the County maintains, mostly based upon DAI job description documentary evidence, that DAI jobs (i.e., District Attorney Investigator II and Senior District Attorney Investigator) in Fresno County are the same or similar enough to those in the aforementioned counties to warrant the same or similar salaries. But these job descriptions, which the evidence showed are 8-10 years old respectively for the Senior District Attorney Investigator and District Attorney Investigator II positions in Fresno County, are designed to be mere approximations of jobs and to list their essential functions. They are not intended to be exhaustive, as most human resources professionals know, and the nature and duties of jobs change, often significantly over time, let alone over a decade. This Factfinder must ask--- when

was the last time job analyses were done for the jobs within the District Attorney Investigator Job Classification Series?

More importantly, job descriptions do not adequately reflect the practical realities and challenges, and the differences in the day- to-day nature and requirements of jobs that may be entitled the same, but indeed, in reality, in practice are quite different in different locations. For example, this Factfinder posits ---is the graveyard shift, emergency room nurse's job the same in a public hospital located in the crime-ridden, decaying, poverty-ridden Bay View Section of San Francisco, as the emergency room nurse's job in a small, rural private hospital in Quincy, or a wealthy suburb of Orinda, both of which have very low crime rates? The practical, commonsensical, real-world answer is "of course not." And it simply defies reason that just because these jobs are entitled the same and have some similar essential job functions, they are indeed the same. But again, if one looks only at the limited job description, that's what one, will only see. Further, a similar argument can, and has been traditionally made for salary differentials for other jobs (e.g., police officers, firefighters, teachers, transit workers etc.). The point here is that differences in job location and the resultant complexity, difficulty, and amount of work (e.g., caseload, nurse-patient ratio, class size etc.) of a job, amongst jobs with the same job title are fundamental, sound reasons for salary disparities, and they are often traditionally considered when determining salary/wage rate comparability. In fact, when one examines prevailing wages by occupation and location it is not at all unusual for salaries in urban areas to be higher than those for the same or similar jobs in rural and suburban areas. Such salary differentials are sometimes referred to as "combat pay" for working in the so-called "trenches." In this case, the same reasoning can be applied to the salaries of DAIS in Fresno County. Given their significantly larger, more complex caseloads of violent crimes of every type, higher salaries for its DAIS are warranted when compared with DAIS in surrounding counties. However, the Association, failed to "connect these dots," in its arguments during the hearing. It simply presented county violent crime rate data

without effectively showing how such data impacts the size, the makeup, and the difficulty of DAI caseloads, and the day-to-day challenges and requirements in those jobs.

Further, although the Association argued that the County's, county comparables were inappropriate because they are significantly more rural and less populated than Fresno County, they do not have a large urban city within them equivalent in population to the City of Fresno, and have significantly lower rates of violent crimes in all categories, again it failed to "connect the dots." In other words, it failed to show how the aforementioned variables impact and differentiate DAI jobs in Fresno County as compared with those in the surrounding counties. Furthermore, the Association cited (Assoc. Exh. D) Stanislaus, Sacramento, Kern, and San Joaquin Counties as the appropriate county comparables, and argued that its data show DAIS in Fresno County have the second lowest monthly salary when compared with DAIS in those counties. However, it failed to explain why it chose those particular California counties, and demonstrate how they are comparable with Fresno County. Moreover, the Association did not identify its sources for this data, or delineate which DAI jobs/job titles by county are included within the data. Further, it is even unclear as to which DAI jobs from Fresno County's District Attorney Investigator Job Classification Series were included in this data. Frankly, this data is unclear, questionable, and unconvincing.

Thus, the end result here relative to comparable wage or salary data by county, is that neither party in this factfinding has provided effective, convincing evidence. Furthermore, by focusing their arguments on salary comparability, both parties have missed the mark, and obscured the real issues. The underlying issues in this case, "the elephants in the room," so to speak, are: 1) Does the County's current and future economic condition in 2013-15 warrant continuing salary and other compensation reductions for Unit 10 members, during the term of the new MOU? And if so, 2) What is the appropriate amount/percentage of such reductions, and why?

The County has not entered into evidence specific budgetary projections showing its overall, anticipated revenues and expenditures for the fiscal years of 2013-14 and 2014-15, or presented

testimony from its Auditor-Controller on the County's budgetary projections. It has in its arguments, however, substantially relied on the vague, unsupported, somewhat dire projections of the County's Auditor-Controller in the County's 2012 financial report (Cty. Exh. #5). In that Report, she somehow predicted stagnant home prices, continued problems in mortgage markets, tight credit availability, and significant job losses in Fresno County. She admitted, however, that the outlook for the state economy was for moderate growth through 2012, followed by better growth for 2013 and 2014.

Yet, even California's and the country's most expert economists and other economic prognosticators admit they simply don't know what will occur in the housing, mortgage, and labor/job markets in 2014, let alone 2015, although some conclude these markets have improved somewhat. Nor have they been able to predict what will happen with interest rates and credit availability. What many of these so-called experts agree on is that the future is uncertain. Indeed, it is this very uncertainty about this country's, California's, and especially Fresno County's economic condition in 2013-15 that strongly supports the County's position for continuing salary cuts. This uncertainty coupled with skyrocketing pension and retirement costs, costs that are strangling public entities throughout the state, are convincing evidence of the need for continuing salary cuts. The County is rightfully cautious about its economic future, and its being so, is in the best interest of the public it serves. Moreover, it is important to note that the Association has admitted to, and agreed with the County during the negotiations and in its LBFO that continuing salary cuts for Unit 10 members are necessary. Indeed, its LBFO on salaries was for a 3% cut.

With the above said, the County has not raised the inability to pay defense, rather it's position relative to salaries and its proposed cuts on the other disputed compensation issues (i.e., base salary steps, Bilingual Skill Pay, P.O.S.T. Incentive Pay, Lead Worker Allowance, CTO accumulation) reflects its overall goal of reducing employee compensation costs. Yet, the Association has provided persuasive evidence that raises suspicions about, and undermines the

County's position for any salary decrease at all in each year of the new MOU, let alone its demand for MOU language that guarantees a permanent 7% salary reduction. The District Attorney's budgets for the last two fiscal years, 2012-13 and 2013-14, (Assoc. Exhs. A&B) show a 4% and 12% increase in revenues, and a \$1.4 million and \$2 million (NCC) carryover, respectively. Raising suspicions and undermining the County's position further, is the recent, full salary restoration for the County's elected officials, including members of the Board of Supervisors, the Sheriff, and the District Attorney. Furthermore, contrary to the County's position on salaries during the negotiations and this factfinding, are the County Board Chairman's recent, public conclusions that the County's "...finances are strong enough to begin rescinding pay cuts for everyone," and further "...we're not in the same situation anymore. We should be restoring wages and benefits for employees." (Assoc. Exh. G).

Yet, even if this Factfinder agrees with the County that continuing salary cuts are necessary, the County has not provided any convincing evidence to support a 7% salary reduction, let alone a permanent one. This Factfinder must ask, why is a 7% salary reduction warranted? Why not, a 3% or 4% or 6% reduction? Unfortunately, the County's evidence and arguments have not provided an answer to this fundamental question. Thus choosing any of these percentage salary decreases or its 7% proposal would be simply arbitrary, given the lack of any specific County budgetary projections in the evidentiary record. By the same token, the Association has not provided any convincing evidence as to why its LBFO for a 3% salary decrease is warranted, other than its attempt to "whipsaw" the County by citing what it argues is the overall effective/net 3% salary/wage cut for the County's six, SEIU bargaining units since 2009 (Assoc. Exh.D). However, the undisputed fact is that Unit 10 members and their families have withstood a hefty, 7% salary cut during the term of the expired MOU (Jt. Exh. # 1). Another 7% salary cut for each year of the new MOU (2013-2015) for the highest paid, Senior DAIS translates into a monthly salary reduction for each of \$486.69, which is a significant amount for these employees and their families (Cty.Exh.#6).

Further, it defies reason that the estimated \$213,414 per year the County argued it would save with the 7% salary cut for this small bargaining unit of thirty-nine members, would have any significant impact on its overall budget for 2013-14 and 2014-15, a budget that is estimated to be nearly \$2 billion in 2013-14. Moreover, the 4% difference in salary cuts between the parties LBFO's, given the small size of this bargaining unit (i.e., Unit 10), is not likely to impact the County's bottom line.

Nonetheless, having thoroughly examined all of the evidence and analyzed all of the arguments, given the uncertainty of the economy, especially in the job/labor and housing markets, and the possible, negative impact of both on individual purchasing power, which may translate into potential lower sales tax and real estate tax revenues for the County in 2013-15, a salary cut is prudent for 2013-15. This is especially true when coupled with skyrocketing pension and retirement costs for the County. Indeed, such fiscal prudence is in the interest of the public, as is labor peace and stability, and having all County employees focused on what they do best (i.e., doing their jobs and serving the public), rather than on the negotiations process.

Moreover, the essence of, or the fundamental nature of the collective bargaining process is "give and take." Therefore, the contractual provisions ultimately agreed to by bargaining parties are, and should be reflective of the "give and take" that characterizes the collective bargaining process. Thus, this Factfinder recommends splitting the difference between the parties' LBFOs on salaries, which will result in a temporary, 5% salary reduction during the mutually agreed-upon term of the new MOU, with retainment of the sunset provision. In other words, it is recommended that this 5% salary reduction expire on the last day of the new MOU's mutually agreed-upon term. Again, contrary to the County's LBFO on salaries, there is no compelling evidence to support language in the new MOU guaranteeing a permanent 7% salary reduction. Moreover, as the Association has aptly argued, the 7% salary reduction in the expired MOU (Jt. Exh. # 1) was intended by the bargaining parties to be temporary, as evidenced by that sunset provision.

Furthermore, these factfinding recommendations should not unduly inhibit and encumber future negotiations, which should be an open and free, "give and take" exchange between the parties based upon prevailing economic and other conditions in the County at that time.

2) SALARY STEPS

On this issue, the parties were essentially in agreement in their LBFOS. They both agreed to increase the number of base salary steps from six to nine at 3.125% intervals. However, they differed in the effective date for this change. The County sought to effectuate this change for all Unit 10 members on December 9, 2013. The Association, however, wanted to phase in this change by making it applicable to new employees hired on or after December 9, 2013.

Furthermore, the Association also wanted to protect and "grandfather" in, Unit 10 members hired prior to December 9, 2013 by making this base salary step change effective to them on June 8, 2014, the second year of the new MOU. Yet, other than its attempt to protect its existing members by delaying the effect of this contract change for about 6 months (i.e., 12/9/13-6/8/14), the Association has offered no compelling evidence to support its proposal in this regard. Moreover, these aspects of its proposal on this issue would negate significantly by delay, the overall effect of the contract change in base salary steps and intervals for most of its members. Thus, in the new MOU, it is recommended that base salary steps be increased from six to nine steps at 3.125% intervals, effective for all Unit 10 members on December 9, 2013, regardless of hire date.

3) 5% P.O.S.T. INCENTIVE PAY

The expired MOU (Jt. Exh. # 1), provided for a unit member to be compensated at a rate of 2.5% above his/her base salary if s/he obtained the Intermediate P.O.S.T. Certificate. A unit member that attained the Advanced P.O.S.T. Certificate was compensated at a rate of 5% above his/her base salary. However, effective 6/13/11, the Intermediate P.O.S.T. Certificate Incentive Pay of 2.5% was suspended during this MOU's term. When this sunset provision expired on 6/9/13,

Intermediate P.O.S.T. Incentive Pay was reinstated. In its LBFO, the County sought to reduce the 5% Advanced P.O.S.T. Incentive Pay to 2.5%. The County estimated that this bargaining proposal would save it \$119,354 per year. However, the Association in its LBFO sought to maintain the 5% Advanced P.O.S.T. Incentive Pay, arguing that this additional training is valuable to the County and the community, it is valued by Deputy Sheriffs and Police Chiefs, and it has been a longstanding pay differential valued by public agencies. Absent any convincing evidence from the County to the contrary, and given that the County is seeking here to change the status quo, it has the burden of proof, which it has not met. Thus, this Factfinder agrees with the Association here. In other words, the County, as the moving party with the burden of proof, has not produced any evidence, let alone persuasive evidence to show this advanced training/certificate is not more valuable than the intermediate training/certificate, and thus the pay differential for both should be the same (i.e., 2.5%) in the new MOU. It is simply seeking to obtain more cuts and lower its compensation costs. Again, with significant carryovers in the D.A.'s budgets for the last two fiscal years, and given the County's \$1.9 billion 2013-14 budget, this Factfinder is not persuaded that this cut is warranted or will impact the County's budgetary bottom line in any significant way. Further, reducing this pay may result in a disincentive for Unit 10 members to obtain this advanced training/certificate. Further, this advanced training/certificate provides them with additional skills and expertise, which in turn, benefits the public and the community at large. Thus, this Factfinder recommends that the 5% Advanced P.O.S.T. Incentive Pay be retained in the new MOU.

4) LEAD WORKER ALLOWANCE

The expired MOU (Jt. Exh. # 1) provided for a \$50 per pay period allowance, pro-rated for the actual number of hours worked, and not to exceed eighty hours per pay period, for Senior DAIS who were assigned to perform lead work by the District Attorney. Lead work was defined in this MOU as assigning, reviewing, and coordinating the work of employees. During the term of this

MOU, Lead Worker Allowance was reduced from \$50 per pay period to \$23.08 per pay period. However, this sunset provision expired on 6/9/13, thereby resulting in the restoration of this allowance to \$50 per pay period. In the negotiations for a new MOU, the County sought to eliminate this provision, estimating that doing so would save it \$10,095 a year. It argued that in the Senior District Attorney Investigator Job Description, lead duties are encompassed within the job duty of assigning, reviewing, and coordinating the work of lower level staff. Moreover, it argued that the Supervising DAI, who is not a member of Unit 10, will perform these duties. Again, there is no separate job description for a Lead Investigator job. However, the Association argued that this is just another area where the County is taking advantage of unit members by seeking more draconian cuts. Ms. Biggs, the Association's President and a Lead Worker herself estimated that she spends 1-2 hours a day on average on these duties, more at the end of the month. Moreover she testified that Senior DAIS, who are Lead Workers are evaluated on their accomplishment of these additional duties in their performance evaluations. This Factfinder finds the Association's arguments here persuasive. Moreover, the County's Senior District Attorney Investigator's Job Description is over eight years old and a full job analysis is long overdue. In all likelihood, it is not an accurate reflection of this job, as it is practiced currently. It is unlikely that this old job description accurately details the number and type of lead worker duties, and reflects the considerable time it takes job incumbents to complete those duties. Again, with significant carryovers in the D.A.'s budgets for the last two fiscal years, and given the County's \$1.9 billion 2013-14 budget, this Factfinder is not persuaded that this cut is warranted or will impact the County's budgetary bottom line in any significant way. Therefore, this Factfinder recommends that the Lead Worker Allowance remain fully restored in the new MOU at \$50 per pay period.

5) BILINGUAL SKILL PAY

Currently, eight bargaining unit members, or about one-fifth of the bargaining unit, receive Bilingual Skill Pay. In the expired MOU (Jt. Exh. # 1), Bilingual Skill Pay was temporarily reduced from \$50 per pay period to \$23.08 per pay period. This sunset provision expired on 6/9/13, at which time Bilingual Skill Pay reverted back to \$50 per pay period. In its LBFO, the County proposed to maintain the reduced pay rate of \$23.08 for Bilingual Skill Pay. It estimated that this proposal would save the County \$10,461 for each year of the term of the new MOU. Here again, the County argued for reduced compensation costs. Also, it sought to standardize the \$23.08 bilingual pay rate across all of its bargaining units. However, the Association, in its LBFO sought to maintain Bilingual Skill Pay at the restored rate of \$50 per pay period. It argued that bilingual duties are additional duties that are not contained within existing DAI job descriptions, these duties increase the workload of DAIS, and bilingual skills bring significant value to the County and the community, skills and value that should be appropriately compensated. Here again, this Factfinder finds the Association's arguments persuasive. Moreover, bilingual DAIS in providing their bilingual skills and services to the County and the community, are working outside of their job descriptions. Bilingualism in English and another language is not an essential function listed on any of the DAI job descriptions in the District Attorney Investigator Job Classification Series. Nor is bilingualism in English and another language a prerequisite for any of the DAI jobs. As Ms. Biggs testified, much to their credit, bilingual DAIS volunteer their valuable, highly marketable, bilingual skills and services to assist their colleagues with their caseloads. Thus, these bilingual DAIS have to stop work on their assigned caseloads and other duties to provide translation services for others. Moreover, they are uniquely qualified to provide translation services for criminal and civil investigations, as they themselves do such work. They know the context, the language/terms, the timelines, the constraints of such investigations and DAI work, and they bring that knowledge and expertise to their translation services. Additionally, if the County had to hire an outside contractor

to provide translation services to this department, it is likely the costs would be significantly higher, for typically such contractors charge not only by the hour, but by the word, the language translated from English, the translation context, amongst other factors.⁴⁸

Furthermore, the County's demographics serve to underscore the value and the critical importance of these bilingual skills to the community. For example, 73% of the County's population is estimated to be nonwhite. The largest racial/ethnic group in the County is Hispanic or Latino, consisting of over 51% of its population. From 2007-2011, 42.9% of the County's population over the age of five spoke a language other than English at home. Therefore, it is in the community's best interest that the County attracts new bilingual DAIS, and retains its existing bilingual DAIS by adequately compensating them for their valuable bilingual skills and services. Again, with significant carryovers in the D.A.'s budgets for the last two fiscal years, and given the County's \$1.9 billion 2013-14 budget, this Factfinder is not persuaded that the cut the County has proposed in Bilingual Skill Pay is warranted, or that it will impact the County's budgetary bottom line in any significant way. Thus, for all of the above-noted reasons, this Factfinder recommends that Bilingual Skill Pay remain restored at \$50 per pay period during the mutually-agreed upon term of the MOU.

6)COUNTY VEHICLE ASSIGNMENT/HOME GARAGING

The expired MOU (Jt. Exh. # 1) provided for the permanent assignment of County vehicles and the garaging of them at a unit member's residence based on the strict application of two criteria: 1) the need to transport specialized equipment not easily transferred between vehicles; and 2) the requirement for a specially equipped vehicle for after-hours emergency calls. The MOU designated the District Attorney or his/her designee as the final decision maker relative to permanent vehicle assignment and residence-garaging. It further mandated that the District

⁴⁸ See various translation company price sheets online (e.g., Clark Translations). Admittedly, this Factfinder did not obtain competitive bids as the County presumably would if it hired an outside contractor to provide translation services.

Attorney or his/her designee make the final decision regarding the total number of vehicles at any time that are assigned within the department, and the total number of such vehicles allocated for permanent assignment and for residence-garaging. Moreover, this provision's language allowed the District Attorney or his/her designee to determine it to be operationally necessary to reallocate a County vehicle that had been permanently assigned or residence-garaged at any time. During the negotiations for a new MOU, the County sought to eliminate this provision and address County vehicle assignment and garaging for unit members via the existing County Automotive Transportation Policy. It argued that the only difference between this Policy and the County Vehicle Assignments/Home Garaging Clause in the expired MOU is the person managing these assignments. Contrary to the above-noted provisions of the expired MOU, Section 930 of the County Automotive Transportation Policy requires that requests for the long term assignment of vehicles be made to the County Administrative Officer (CAO) or his/her designee, using a form that must be submitted to Fleet Services (Cty.Exh. # 11). However, the Association sought to maintain this MOU provision. It sought to retain its right to collectively bargain on this issue. It argued that the County's policy in this regard would result in different criteria being applied to DAI requests for County vehicles and home garaging of those vehicles, resulting in more denials of those requests. Further, its members feared that response times would be increased because DAIS would have to obtain a County vehicle from a County site first instead of one that is garaged at their home, before going to a crime scene, or serving a subpoena and/or search warrant, which would not as effectively serve the public. After exhaustive review of the evidence, especially Section 930 of the County Automotive Transportation Policy, this Factfinder concurs with the Association, but for some additional reasons. First, the County, as the party seeking to change the status quo here, has the burden of proof. It has not provided any evidence to show that there are currently problems in the way the District Attorney administers this MOU provision and/or in vehicle assignment and home garaging that necessitate reverting to County policy in this regard. Further, extensive review

of Section 930 of the County Automotive Transportation Policy shows significant differences between this Policy and the MOU provision, far more than simply who is assigned to oversee vehicle assignments and garaging for DAIS. The criteria for vehicle assignment and home garaging are quite different, and more extensive in the County's policy than in the MOU. Compared with the simple, stream-lined process in the MOU, the process in the County's policy for obtaining a vehicle and home garaging it, is a significantly more bureaucratic, complex, form-intensive, annual/quarterly process administered by the County's Fleet Services. Furthermore, having this process administered by the CAO vis-à-vis Fleet Services means that it will be overseen by persons not as remotely familiar with D.A. investigative work, as the District Attorney. Thus, the likelihood of DAIS' requests for vehicles and home garaging being delayed and even denied is increased. This bureaucratic, form-driven annual/quarterly process clearly has potential for decreasing response times and impeding investigations, neither of which is in the best interests of the County or the public it serves. Thus, this Factfinder recommends that the County Vehicle Assignments/Home Garaging MOU provision be retained during the mutually agreed-upon term of the new MOU.

7)CTO ACCUMULATION

The expired MOU (Jt. Exh. # 1) allows employees to opt for either overtime pay at one and one-half times their base hourly pay rate or regular rate of pay, or compensatory time off. If CTO is chosen, the employee may accumulate a maximum of forty hours at any given time. Anything over this maximum amount is paid in cash by the department on the next available pay period. The employee may, in effect, earn unlimited CTO hours as long as s/he uses the hours or cashes them out after they accumulate to forty hours. The total value or equivalent cost to the County for CTO taken by unit members in 2011 was \$12,698.62. At the end of the 2011 payroll year, only one unit member had a CTO balance in excess of 40 hours (i.e., 51.22 hours). In payroll year 2012, the

total value or equivalent cost to the County for CTO taken by unit members in 2012 was \$12,356.34. At the end of the 2012 payroll year, only three unit members had a CTO balance in excess of 40 hours (i.e., 42.60, 42.25, 56 hours). In the current, 2013 payroll year, unit members have used approximately 133 hours of CTO, which has a cash value of \$4,675.70. In the current, 2013 payroll year, 16 hours were cashed out by unit members in the amount of \$596.60. The total value or equivalent cost to the County for CTO taken by unit members in 2013 is about \$5,272.30. The current CTO balance for thirty-three unit members is 619.76, which has an equivalent cash value of \$23,764.89. In the current, 2013 payroll year to date, only one unit member has a CTO balance in excess of 40 hours (i.e., 42.60 hours). In its LBFO, the County sought to maintain the status quo in this article. It prefers overtime pay to CTO accumulation and cash-out because, it argued, overtime pay can be controlled within departmental overtime budgets, whereas CTO is an uncontrolled, unfunded liability that becomes burdensome to departments. Further, the County argued that there is no need for increasing the CTO accumulation cap, claiming no unit member exceeded the forty-hour cap. Moreover, it maintained that the County has an extensive annual leave plan, which has resulted in most DAIS earning 7-8 weeks of leave per year (Cty.Exh.# 13). The Association in its LBFO sought to increase the CTO accumulation cap to eighty hours. It argued that CTO costs to the County are the same as those for overtime, and CTO is not a long-term, unfunded liability. Further, given the heavy workload of DAIS, it maintained that the cap should be increased so they can spend more time with their families. On this disputed issue, the Factfinder agrees with, and finds for the County. The Association being the moving party seeking a change in the status quo in this regard has the burden of proof, which it has not met. The Association has not provided any evidence that the forty-hour CTO cap is a problem for its members. In fact, the evidence showed that from 2011-2013, only 1-3 unit members exceeded the forty-hour cap. Moreover, as the County aptly argued, most DAIS have already earned 7-8 weeks

of annual leave. Thus, this Factfinder recommends that there be no change to the CTO cap and the Overtime Pay provision in the new MOU.

8)WAIVER CLAUSE

In the expired MOU (Jt. Exh. #1), the Waiver Clause acknowledged the parties' agreement for the life of the MOU to voluntarily waive the right to collectively bargain with respect to any subject or matter pertaining to or covered by the MOU. This provision also acknowledged the parties' agreement that neither is obligated to collectively bargain with respect to any subject or matter pertaining to or covered by this MOU. During the negotiations for a new MOU, the County sought to delete this article, whereas the Association sought to maintain it. The County as the moving party on this issue, seeking to change the status quo, has the burden of proof, which it has not met. Its only argument here is that the same assurances as those in the Waiver Clause can be accomplished in a zipper clause. However, this Factfinder can find no evidence in the record that indeed the parties reached a tentative agreement on a new zipper clause during the negotiations for a new MOU, thereby making this Waiver Clause duplicative. Without mutual agreement on a new zipper Clause, eliminating this Waiver Clause would, of course, remove its assurances from the new MOU, which this Factfinder is not persuaded by any evidence or argument to do. Thus, this Factfinder recommends maintaining this Waiver Clause during the mutually-agreed upon term of the new MOU.

SUMMARY OF FACTFINDING RECOMMENDATIONS BY DISPUTED ISSUE

For the reasons and findings discussed above, it is recommended that the parties accept, and the County implement the following factfinding recommendations:

1) Salaries- 5% per year, temporary salary reduction during the mutually-agreed upon term of the new MOU; retainment of the sunset provision with an expiration date of the last day of the mutually –agreed upon term of the new MOU.

2) Base Salary Steps- Effective 12/9/13, increase the number of base salary steps from six steps to nine at 3.125% intervals, applicable to all Unit 10 members, regardless of hire date.

3) 5% Advanced P.O.S.T. Incentive Pay- Retain the 5% Advanced P.O.S.T. Incentive Pay during the mutually-agreed upon term of the new MOU.

4) Lead Worker Allowance-Restore this allowance to \$50 per pay period during the mutually-agreed upon term of the new MOU.

5) Bilingual Skill Pay-Restore this pay to \$50 per pay period during the mutually-agreed upon term of the new MOU.

6) County Vehicle Assignment/Home Garaging- There shall be no change in this MOU provision during the mutually-agreed upon term of the new MOU.

7) CTO Accumulation-There shall be no change in the CTO cap and in the overall, MOU's Overtime Pay provision. The CTO accumulation cap remains at "...40 hours at any given time" during the mutually-agreed upon term of the new MOU.

8) Waiver Clause-There shall be no change in this article during the mutually-agreed upon term of the new MOU.

Respectfully submitted by:



ELINOR S. NELSON,
NEUTRAL FACTFINDING PANEL CHAIRPERSON

August 6, 2013.
Dublin, California

FOR THE COUNTY/EMPLOYER*:

_____ Concur

_____ Dissent

FOR THE ASSOCIATION*:

_____ Concur

_____ Dissent

Eileen O'Hare-Anderson,
County Factfinding Panel Member

Kim Gillingham,
Association Factfinding Panel Member

*See attached Dissenting/Concurring Opinions

Respectfully submitted by:

August 7, 2013.
Dublin, California

ELINOR S. NELSON,
NEUTRAL FACTFINDING PANEL CHAIRPERSON

FOR THE COUNTY/EMPLOYER*:

_____ Concur *in part*
_____ Dissent *in part*

See attached

Eileen O'Hare-Anderson,
County Factfinding Panel Member

FOR THE ASSOCIATION*:

_____ Concur
_____ Dissent

Kim Gillingham,
Association Factfinding Panel Member

*See attached Dissenting/Concurring Opinions

Fresno County and Fresno County District Attorney Investigators' Association
Case No. SA-IM-130M

Fresno County's Representative to Factfinding Panel
Eileen O'Hare-Anderson

Dissenting and Concurring Opinion to the Findings of Fact and Recommended Terms of Settlement:

As the representative for Fresno County (County) to the Factfinding Panel, I disagree in part and agree in part with the Panel's Report & Recommendations (Report), and for that reason, I am providing this dissenting and concurring opinion.

A. DISSENT AND CONCURRENCE

I respectfully dissent from the Report's recommendations regarding: 1) 5% temporary salary increase for Association members; 2) increase to a total 5% increase for Advanced P.O.S.T. incentive pay for investigators who achieve the specialization; 3) reinstatement of the lead worker allowance; 4) reinstatement of the full \$50 per pay period for bilingual skill pay; and 5) no change in the County vehicle assignment/home garaging policy.

The Report's recommendations from which I dissent, are contrary to the County's stated goals of reducing long and short-term operational costs and restoring services to the County. The Report recommends that the County assume costs and obligations which may potentially exceed millions of dollars over the coming years. It is my opinion that these additional expenditures would better be spent to restore services to the County rather than increase salaries for District Attorney Investigators, who earn more than similarly situated employees both in the County and in the surrounding Counties. Accordingly, I recommend that the County implement its Last Best and Final Offer (LBFO).

Regarding the Report's specific recommendations, I find as follows:

1) Report Recommendation for 5% Temporary Decrease in Salaries for all Association Members.

Although I agree with the Report's recommendation that the County should decrease salaries for Association members, I cannot agree with a recommendation for a decrease in salaries less than the 7% salary decrease sought by the County. Nor can I recommend that a decrease in salary include a sunset provision.

As established at the hearing, Fresno County's economy over the past few years has been extremely difficult. The County responded to the recession by eliminating positions and curtailing services to the Public. As also established at the hearing, one of the County's highest priorities is to restore services to the public. Accordingly, I believe that any increases in expenditures for County employees should be focused on restoration of positions and services. The evidence presented at the hearing supported the County's conclusion that DA Investigators

receive higher salaries than DA Investigators for the surrounding Counties. Further, DA Investigators earn more than similarly situated Deputy Sheriffs for the County.

The Report makes its recommendation for a 5% temporary decrease in wages largely based on a philosophical belief that the fact-finding process should mirror the "give and take" inherent to collective bargaining. (Report at p. 27.) Accordingly, the Report recommends "splitting the difference between the parties' LBFOs on salaries." (*Id.*) Here, I must respectfully dissent. It is undisputed that the parties engaged in good faith negotiations, including voluntary mediation. This process did not result in an agreement. The time for "the give and take" that characterizes the collective bargaining process" is past. Given the drastic differences between the parties, I do not believe that this fact-finding proceeding is amendable to further attempts to mediate the parties' differences.

The evidence shows that Association members are well compensated and the Association had previously agreed to a 7% salary reduction. I recommend that the County implement its LBFO for a 7% reduction in salaries retroactive to June 10, 2013.

2) Base Salary Steps.

I concur in the Report's Recommendation regarding the base salary steps in so far as it is consistent with the County's proposal contained in the LBFO.

3) Report's Recommendation Regarding Advanced P.O.S.T. Incentive Pay.

I dissent from the Report's recommendation that the P.O.S.T. Incentive Pay should change from the amount agreed to in the parties' prior MOU. The County presented compelling evidence that the Advanced P.O.S.T. incentive was not necessary for recruitment or retention purposes. Further, the Association failed to articulate why the Advanced P.O.S.T. Incentive pay is either necessary or beneficial for that County. As such, it is not entirely clear what benefit the County is receiving in exchange for the increased cost. Accordingly, I would recommend that the County implement its LBFO that the Advanced P.O.S.T. Incentive pay should be decreased from 5% to 2.5%.

4) Bilingual Skill Pay

I dissent from the Report's recommendation that the County should not decrease Bilingual Skill Pay from \$50.00 per pay period to \$23.08 per pay period. The County explained at the hearing that this pay differential exists for numerous other County positions. However, since 2011, the County has attempted to reduce these differentials across the board for all County positions. Accordingly, in 2011 the Parties agreed to reduce the differential to \$23.08 per pay period. Here, the County proposed to maintain the reduction to establish uniformity across the County. Accordingly, I would recommend that the County implement its LBFO that the Bilingual Skill Pay should be decreased from \$50.00 per pay period to \$23.08 per pay period.

5) Lead Worker Allowance

I dissent from the Report's recommendation that the County should not eliminate the Lead Worker Allowance. As testified to at the hearing, the current job description for DA Investigator's provides that employees may be required to provide lead or supervisory type duties. Here, Association members were receiving additional compensation for duties already encompassed in their existing job descriptions. Given the County's goal of reducing long term and short term costs, this is an example of the type of pay differentials that should be eliminated. As such, I would recommend that the County should implement its LBFO and eliminate this contract provision.

6) County Vehicle Assignment Policy

I dissent from the Report's recommendation that the County Vehicle Assignment Policy should not be deleted, in favor the County's pre-existing rules. As established during the hearing, the County seeks to restore the CAO, or the CAO's designee, as the authority to approve the assignment of County Vehicles. Under the County's rules the CAO responsible for overseeing the assignment of County Vehicles. Accordingly, the County's proposal to restore these duties to the COA would provide uniformity across County Departments and ensure administrative efficiency. Accordingly, I would recommend that the County implement its LBFO proposal to eliminate the contrary MOU provision.

7) CTO Accumulation

I concur in the Report's Recommendation regarding the CTO accumulation.

8) Waiver Clause

I dissent from the Report's Recommendation that any agreement reached between the parties should include a Waiver Clause. However, this issue appears to be moot given that it appears very unlikely that the parties will reach an agreement in the immediate future.



Eileen O'Hare-Anderson

August 6, 2013

August 6, 2013.
Dublin, California

ELINOR S. NELSON,
NEUTRAL FACTFINDING PANEL CHAIRPERSON

FOR THE COUNTY/EMPLOYER*:

_____ Concur

_____ Dissent

Eileen O'Hare-Anderson,
County Factfinding Panel Member

FOR THE ASSOCIATION*:

_____ Concur

_____ Dissent

Kim Gillingham,
Association Factfinding Panel Member

*See attached Dissenting/Concurring Opinions

**In the Matter of Factfinding
between
The Fresno County District Attorney Investigators Association
Unit 10, Fresno, California
and
The County of Fresno, Fresno, California**

CA.-PERB Impasse Case No: SA-IM-130M

Association Panel Member:

Kim Gillingham, Labor Representative
Goyette & Associates, Inc.
2366 Gold Meadow Way, Suite 200
Gold River, CA. 95670

As the panel member for the Association, I concur with the Report's recommendations on the following items in dispute:

- 3) 5% Advanced P.O.S.T. Incentive Pay- Retain the 5% Advanced P.O.S.T. Incentive Pay during the mutually-agreed upon term of the new MOU.**
- 4) Lead Worker Allowance-Restore this allowance to \$50 per pay period during the mutually-agreed upon term of the new MOU.**
- 5) Bilingual Skill Pay-Restore this pay to \$50 per pay period during the mutually-agreed upon term of the new MOU.**
- 6) County Vehicle Assignment/Home Garaging- There shall be no change in this MOU provision during the mutually-agreed upon term of the new MOU.**
- 7) CTO Accumulation-There shall be no change in the CTO cap and in the overall, MOU's Overtime Pay provision. The CTO accumulation cap remains at "...40 hours at any given time" during the mutually-agreed upon term of the new MOU.**
- 8) Waiver Clause-There shall be no change in this article during the mutually-agreed upon term of the new MOU.**

However on the items in dispute listed below, I respectfully dissent from the Report's recommendations.

1)Salaries- 5% per year, temporary salary reduction during the mutually-agreed upon term of the new MOU; retainment of the sunset provision with an expiration date of the last day of the mutually –agreed upon term of the new MOU.

The County argued that the Association agreed to the reduction in the prior agreement, and although the agreement included a sunset provision, restoration of salaries is not a priority for the County, but rather service level restoration is their goal and current focus. The County repeatedly stated that they were not asserting an inability to pay and that the Myers-Milias Brown Act (MMBA) Section 3505.4 (d), factfinding criteria #4 which states "The interests and welfare of the public and the fiscal ability of the public agency" places emphasis on the "interests and welfare of the public" given it's placement in the sentence, therefore allowing them to disregard the "financial ability of the public agency" criteria.

The Association disagreed with the County's interpretation and was adamant that both "the interests and welfare of the public" and "the financial ability of the public agency" must be considered. The Association's proposal to maintain a 3% pay cut, in spite of the improvement to the County's fiscal condition, demonstrated their belief that application of the entire sentence captured in MMBA, Section 3505.4 (d) factfinding criteria #4 is appropriate.

The Association agreement to the salary reductions in the prior agreement demonstrated their commitment to the community, partnership with the County and a willingness to do their part to mitigate revenue reductions. However, the Association believed that restoration would be provided as the economic condition approved, and had every reason to believe it would be a priority based on the sunset language contained in the County approved June 2011 – June 2013 Memorandum of Understanding.

For the current fiscal year, 2013-14, the adopted District Attorney's Budget for the General Fund, showed a 12% or \$935,216 increase in revenues. This increase was anticipated to be primarily due to projected increases in Proposition 172 sales tax revenue, and 2011 realignment revenues. Yet the Association was prepared to continue a 3% salary reduction, giving equal consideration to systematic, sustainable restoration of both services and compensation.

The cost of a top step Sr. DA Investigator is roughly \$142,000 per year, using the top step salary of \$83,434 and applying a 70% roll-up. If the County began service restoration by immediately hiring 5 top step Sr. DA Investigators the cost would be \$710,000. The partial salary restoration of 4% sought by the Association is roughly \$122,000 per year.

The County could immediately commence systematic and methodical restoration to service levels and compensation for about \$832,000, or \$103,216 less than the \$935,315 increased revenue assumptions used in the adopted the 2013-14 District Attorney's General Fund budget, if the scenario above, or a similar scenario was applied.

While I understand and respect the recommendations to split the difference and provide the "give and take" that characterizes the collective bargaining process, I believe the Association has demonstrated significant give, considering the personal sacrifices made when they voluntarily adopted two year reductions of 7% to salary, and 53% to bilingual and lead worker differentials.

In light of the County's own budget projections and the fiscal ability of the County to provide incremental restoration to both service levels and compensation, I cannot agree with the recommendation and believe a 3% per year temporary salary reduction should apply.

2) Base Salary Steps- Effective 12/9/13, increase the number of base salary steps from six steps to nine at 3.125% intervals, applicable to all Unit 10 members, regardless of hire date.

The Association sought to phase in the implementation of the 9 step system to avoid a 1.875% reduction in step movement for current employees in Fiscal Year 2013-14. The reduced anticipated step movement would result if the 3.125% incremental 9 step system was applied versus the current 5% incremental 6 step system.

The current employees have already endured significant reductions to compensation through concessions. There are only 9 current employees that will be affected by the immediate implementation of the 9 step system.

While the additional savings the County would realize by immediately applying the new system to current employees is minimal, the cost to employees, in addition to reductions to base salary, is significant to their personal household budgets. Therefore, I dissent from the Report's recommendations on this issue.