FF-719-M

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FINDINGS AND RECOMMENDATIONS PURSUANT TO CALIFORNIA GOVERNMENT CODE 3505.4

In the Matter of a Dispute Between	)	
County of Modoc	)	
Employer	)	
and	)	Collective Bargaining Impasse
United Public Employees of CA Local 792	)	Factfinding
Union	)	PERB Case No: SA-IM-131-M

APPEARANCES:

For the Employer:	Don Demsher, Negotiator County of Modoc 204 South Court St. Alturas, CA 96101
For the Union:	Ocean Mottley, Attorney United Public Employees of California Local 792 1800 Park Marina Dr. Redding, CA 96001

FACTFINDING PANEL:

Appointed by the Employer:	Rick Haeg, Consultant
Appointed by the Union:	Steve Allen, Labor Representative United Public Employees of California Local 792
Neutral Chairperson:	Paul D. Roose, Arbitrator and Mediator Golden Gate Dispute Resolution

STATUTORY FRAMEWORK AND PROCEDURAL BACKGROUND

Under amendments to the Meyers-Milias-Brown Act that went into effect on January 1, 2012, and as amended again on January 1, 2013, local government employers (cities, counties, and special districts) and unions in California have access to factfinding in the event they are unable to resolve contract negotiations. At the request of the exclusive representative, the parties are required to go through a factfinding process prior to the employer implementing a last, best and final offer. In accordance with regulations put in place by the California Public Employment Relations Board (PERB), the exclusive representative can request factfinding either after mediation has failed to produce agreement or following the passage of thirty days after impasse has been declared. Each party appoints a member of the factfinding panel. A neutral chairperson is selected by PERB unless the parties have mutually agreed on a neutral chairperson.

Under the statute, the factfinding panel is required to consider, weigh and be guided by the following criteria in formulating its findings and recommendations:

1) State and federal laws that are applicable to the employer

2) Local rules, regulations, or ordinances

3) Stipulations of the parties

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

5) Comparison of the wages, hours and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours and conditions of employment of other employees performing similar services in comparable public agencies

6) The consumer price index for goods and services, commonly known as the cost of living

7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received

8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations

United Public Employees of California Local 792, affiliated with Laborers International Union of North America, is the exclusive representative for the General Unit in the County of Modoc, California.

The County has at least one other bargaining unit, the deputy sheriffs unit. However, no evidence or testimony was presented in regard to the status of collective bargaining with that unit or any other units.

The parties have a collective bargaining agreement (CBA) that expired on August 31, 2012. The parties conducted bargaining for a successor agreement, and were able to reach many tentative agreements on various aspects of the CBA. When the parties were unable to make further progress, state mediator Ken Glenn was called in and met with the parties in the fall of 2013. Through mediation, the issues were further narrowed, but differences remained.

The Union made a timely request to PERB in November, 2013 for factfinding, invoking the provisions of Government Code Section 3505.4. The parties selected their factfinding panel members as noted above, and PERB notified the undersigned on November 21, 2013 that he had been mutually selected by the parties as the neutral chairperson of the factfinding panel.

The panel convened in Alturas, California on January 30, 2014 and took on-the-record evidence and argument from both sides concerning the remaining issues in dispute. The parties also requested that the neutral factfinder act as a mediator in assisting the parties in off-the-record discussions to attempt resolution of the matter. Accordingly, mediation was also conducted on that date. Mediation efforts proved unsuccessful, and the panel set a deadline of February 10, 2014 for the parties to present their final positions and arguments for the panel's consideration. The record was then closed and the matter was submitted to the panel for its findings and recommendations.

BACKGROUND TO THE DISPUTE

The County of Modoc is a primarily rural county located in the far northeast corner of California. It is one of only two California counties that share a border with two US states (Oregon and Nevada). It has a population of approximately 10,000. The county seat, and the sole incorporated city in the county, is Alturas. County government provides a full range of services to its residents and businesses.

The general bargaining unit, with 105 members, is the County's largest. It includes clerical, technical, professional, and blue collar positions throughout the County's departments. It does not include sworn public safety employees.

The County, like nearly all governmental entities in the state, has suffered a significant decline in revenue due to the economic recession beginning in the mid 2000's. What complicates the financial picture for the County, however, is the ongoing impact of the county hospital, formerly a County department. A ballot measure put before the voters created a healthcare district in August 2010, and the Modoc Medical Center became a separate governmental entity. However, the medical center's debt was the continuing responsibility of the County. The County pays $800,000 per year toward the hospital debt out of the general fund. Projected general fund revenues for the current fiscal year are $10.5 million.

In the face of this economic picture, the Union agreed to concessions in the last round of bargaining. The agreement between the parties that expired on August 31, 2012 was a 24-month agreement beginning September 1, 2010. That agreement included no wage adjustments, suspended cash payment for waived insurance, suspended sick leave incentive program, and suspended floating holidays. Finally, the agreement delayed longevity step increases for one year.

At the hearing on January 30, 2014, both parties presented comparison compensation from other counties. The Employer presented comparisons to two adjacent counties similar in size to Modoc County – Siskiyou and Lassen. The County's comparisons included salary and other forms of compensation for eight selected classifications in the bargaining unit. The survey showed Modoc at the middle spot of the three counties for three classes, at the top for three classes, and at the bottom for two classes. In regard to the disputed issue of longevity pay, the County's survey found that Lassen County pays longevity increments of 2.5% at seven and ten years of service, and 5% at fifteen years. In Siskiyou County, there is a single longevity increment of 2.5% at five years of service. And the County's comparison showed Modoc County in the middle of the three counties in health benefit contribution by the Employer.

The Union presented comparability data from six California counties and one Oregon county, Klamath. The six California counties included the two surveyed by the Employer, Siskiyou and Lassen, but added Shasta, Plumas, Mono and Mariposa. The Union's survey included eight classifications. Only one classification was on both lists – accounting technician[1]. The Union's analysis showed that Modoc County's pay lagged in each classification selected, by an average of 19%. Both the Union and the Employer used top step without longevity pay for comparison.

The cost of a 1% increase for the bargaining unit for one year is about $42,000.

[1] The Union's monthly salary figure for Siskiyou County accounting technician was $3,428. The County used a figure of $3,130. This discrepancy was not explained.

The consumer price index (CPI-U) rose a total of 6.6% since the parties last signed a CBA in September 2010.

ISSUES IN DISPUTE

As noted above, the parties made great strides in reaching tentative agreements on issues prior to factfinding. Both parties agree that a three-year term is desirable. The County prefers that the three years commence upon ratification of the new agreement, while the Union prefers that the new agreement expire three years from the expiration of the prior agreement. Since this was not presented to the panel as a disputed issue, and since the panel's recommendations on the disputed issues would be the same regardless of which term proposal was adopted, the panel will not opine on the somewhat divergent term proposals.

What follows is a description of the two issues in dispute. Each issue will be described separately, beginning with the current agreement on each topic. Following that will be each party's position and a summary of their arguments in favor of that position. Finally, the panel will discuss each disputed issue and make a majority recommendation on each issue. The panel's findings and recommendations take into account all of the statutory criteria referenced above.

From the outset of the process, the undersigned neutral chair made it clear to both parties that he is not inclined to recommend a middle ground between the parties' proposals, but rather to select one or the other. In a similar fashion to "last offer" interest arbitration, the neutral chair believes that the parties are best served by this understanding. Taking this approach encourages each side to move off their opening positions and make proposals that are more likely to win the support of the panel majority. This guideline tends to produce a majority report on each issue in dispute, which the undersigned reads as the intended outcome in the factfinding statute. In conjunction with this guideline, the chair also informed the parties that he welcomed modifications to the parties' positions up until the close of the record.

Longevity Pay

All unit members currently receive 5% longevity salary increases every three years after they reach top step[2]. Top step is reached in the unit member's fifth year of employment. These longevity

[2] Both parties agreed that this is the current agreement, although the actual contract language was not made part of the record. The prior agreement from 2010-2012, as noted above, reflected an agreement to delay these

increases continue for the unit member's entire length of service, with no cap. As a result, top step unit member's salaries advance an average of 1.66% per year, absent any across-the-board modifications to the salary schedule.

The Employer proposes to modify this longevity provision, granting longevity increases of 2% every two years[3]. Under this proposal, top step salaries would advance an average of 1% per year, absent any across-the-board modifications to the salary schedule. The projected savings from this proposal are a little unclear from the record. They range from 2% of payroll a year to 3% of payroll per year. The County's calculation is that, over a six-year period, the bargaining unit's cost would increase by 6% as compared to 12% under the current agreement.

The Employer argues that no other comparator counties have this type of uncapped longevity system. The Employer argues that, with the financial stress of the debt repayment, the County can no longer afford this unusual agreement. And the County argues that this is a modest reform of the existing system that still maintains the uncapped nature of the longevity system. Finally, the County contends that the bargaining unit salaries are in line with comparable counties.

The Union proposes to maintain the status quo in this area of the agreement.

The Union argues that there are other counties with similar longevity schedules. The Union also contends that the County has been reluctant to grant across-the-board pay increases, so that these longevity steps are often the only raises that unit members receive. Testimony was offered that there had been no negotiated increases since 2007. And the Union asserts that the unit's compensation is behind that of comparison counties. To implement this change would cause the unit's pay to fall further behind. Finally, the Union points out that the consumer price index has risen significantly since the last pay increase for the unit.

The factfinding panel recommends the adoption of the Employer's proposal on longevity steps. The primary reason for this recommendation is that there was no evidence presented that this type of uncapped longevity system that grants increases every two or three years is in line with compensation norms in similar jurisdictions. The sole on-the-record comparison data presented was from Siskiyou and

longevity increases for one year. That CBA reflects that delay agreement. The prior language, if there was any, was not made evident.

[3] As a corollary to this proposal, the Employer has proposed a $60 dollar per month increase in the Employer contribution to health benefit premiums. The Union has agreed to this aspect of the proposal, so it will not be addressed further in this report.

Lassen counties. Those counties have a much more typical longevity schedule of one or two longevity increases during the employee's career.

It is the experience of the undersigned neutral that periodic longevity increases that continue for the employee's entire career are highly unusual if not nonexistent in local government in California. The only thing similar in public employee collective bargaining agreements is found in school teacher salary schedules, with extended step and column advancement. However, even these teacher salary schedules are capped. Extended salary schedules are the bargaining norm among certificated school employees. They are not the norm among county or other local government employees. To the Employer's credit, it has proposed a rather modest revision of this longevity system rather than doing away with it altogether.

Collective bargaining agreements reflect the give and take of the parties' needs, desires and means. These often include trade-offs between various forms of compensation, and balancing of compensation with other non-monetary items. In an agreement that contains automatic pay increases each year (or every two or three years) for all employees, it becomes more difficult to reach agreement.

This current Employer proposal creates a step toward a more traditional contract of negotiated across-the-board pay adjustments. In that light, the undersigned neutral suggests that the parties may want to consider a shorter term of agreement in order to move more rapidly into a more traditional bargaining framework. Since each side is proposing a three-year agreement, this shorter term is not a panel recommendation. It is a suggestion from the panel chair that might prove helpful in the ultimate settlement of this matter.

The panel notes the Union's arguments about the consumer price index and comparability. However, there is no evidence that the Employer's proposal (that amounts to a 1% increase per year over the next three years) is less in line with inflation and comparable jurisdictions than is the Union's proposal of a 1.66% increase per year[4].

Cash Payment in Lieu of Health Benefits

[4] It would be advisable for the parties to attempt to reach an agreement on a compensation survey prior to the next bargaining round. That agreement should include the jurisdictions to be surveyed, the benchmark classifications, and the compensation elements to be included. The panel chair found the Employer's included jurisdictions too narrow, but does not agree with the Union's inclusion of an Oregon county and counties in another part of the state (Mono, for example). Perhaps the parties could consider using the three counties that share a border with Modoc (Siskiyou, Lassen and Shasta) plus the City of Alturas, to the extent there are classifications in common.

The other remaining issue in dispute is in the health benefits section of the agreement. Currently, employees who can show proof of other health insurance may waive insurance and receive $350 per month in lieu of health benefits[5]. This waiver option is extended to those who might otherwise be eligible to be covered under the insurance policy of another County employee, such as a spouse or parent.

The Employer proposes to reduce the cash payment to $250 per month. It also proposes to eliminate the cash payment entirely for any employee who waives coverage and would otherwise be eligible for coverage on a family members' county-provided health plan. The Employer estimates an annual savings of $39,000 from this proposal, or slightly less than 1% of payroll. The Employer did not provide demographic data on exactly how many employees might be impacted by this proposal, in what manner they might be impacted, and how it derived its cost-saving estimates.

The Employer argues for this proposal based on the need to find additional areas of savings in order to attain fiscal responsibility. The Employer believes that the proposals are fair and modest. The Employer also contends that its comparator counties (Siskiyou and Lassen) have no similar opt-out provisions.

The Union proposes maintaining the status quo in this area of the agreement. The Union argues that the Employer's proposal is tantamount to a "marriage penalty", in that it treats county-employed married couples less favorably than unmarried ones.

The panel recommends the Union's proposal of status quo in this area of the agreement. The Employer has not demonstrated to the panel's satisfaction that its proposal to reduce the cash amount from $350 to $250 would engender the predicted cost savings. "Cash in lieu" provisions are generally inserted in collective bargaining agreements as arrangements that are intended to be mutually beneficial to the employer and union-represented employees. To the extent that eligible employees can be incentivized to take cash in lieu of more expensive benefits, the employer saves money. At the same time, employees who are covered elsewhere can obtain desired cash supplements to their paychecks.

There is always a balance point that constitutes the appropriate amount of cash to offer that provides sufficient incentive to employees to waive coverage but does not negate any potential savings to the employer. In the experience of the panel chair, these dollar amounts are best worked out between the employer and the union through the joint examination of data, tracking of participant behavior, and

[5] Both parties agreed that this is the current agreement, although the actual contract language was not made part of the record. The prior agreement from 2010-2012, as noted above, reflected an agreement to eliminate these cash payments for two years, ending September 1, 2012. The prior language, if there was any, was not made evident.

informal polling of impacted unit members. In the present case, there was no evidence that such a process had occurred.

The Union has appropriately raised legal concerns about the other portion of the Employer's proposal to do away with cash payment eligibility for certain categories of employees. The panel recommends that the status quo be maintained until these potential legal issues are resolved.

The Employer has legitimate needs to achieve cost savings through the collective bargaining agreement in the face of ongoing debt issues. Reaching those financial goals through changes that disproportionately and precipitously impact only a few bargaining unit members may not be the best way to proceed.

SUMMARY OF RECOMMENDATIONS

1) Longevity Pay: The panel recommends the adoption of the Employer's proposal to modify longevity pay to provide a 2% longevity increase every two years of employment after the employee reaches the top step.

2) Cash Payment in Lieu of Health Benefits: The panel recommends the adoption of the Union's proposal of status quo in this area.

Paul D. Roose

Paul D. Roose, Neutral Chairperson

Date: February 26, 2014

/s/ Steve Allen

Steve Allen, Union-appointed Panel Member

Date: February 26, 2014

___x__I dissent in part from the Recommendations (see attached explanation)

/s/ *Rick Haeg*

Rick Haeg, Employer-appointed Panel Member

Date: February 26, 2014

__x___I dissent in part from the Recommendations (see attached explanation)

United Public Employees of California, Local 792

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UNION PANEL MEMBER RESPONSE
Modoc County General Unit fact Finding

2-25-14

The Union panel member agrees with portions and dissents with portions of the the Findings and Recommendations and submits the following response:

1. Regarding the recommendation on Cash Payment in Lieu of Health Benefits, the Union concurs with this recommendation.

2. Regarding the recommedation on Longevity Pay, the Union dissents from this recommendation.

The longevity pay program in Modoc County was implemented in recognition of a mutual desire to create a career-minded County workforce where individual employees would commit to the County for an entire working career. This benefit has worked successfully to recruit and retain a stable, qualifed work force. The benefit to public service and the citizens of such stability is clear.

Over time, the longevity pay program has replaced annual Cost of Living Adjustments (COLA). Once topped out in their wage range it provides employees an average of 1.67% per year increase in pay. It should be noted that 1.67% per year, over time, is still well below the average increase in the measure of inflation (the Consumer Price Index regardless of what index is used, i.e., all United States indexes or Califormia indexes) and is also below what Social Security and PERS retirees have received.

The longevity pay program is the only reason County employees have been able to financially survive during the long dry spell of missed COLA increases going on at least seven (7) years.

Until the current system of Modoc County longevity pay can be modified through negotiatons to cover all issues, including future COLA increases, it should remain intact.

If the Board of Supervisors unilaterally implements all or portions of its Last, Best & Final Offer prior to impasse we will not have labor peace. We will not have a collaborative approach to pay and benefits. We will be right back in negotiations with a heightened likelihood of acrimony clouding our future efforts.

Respectfully Submitted,

Steve Allen

Union Panel Member